

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

RICARDO LUIS MORENO SANTANA, )

Petitioner, )

v. )

Case No. 1:26-cv-00787-WJM

JUAN BALTAZAR, *in his official* )  
*capacity* as Warden of the Aurora ICE )  
Processing Center; )

GEORGE VALDEZ, *in his official* )  
*capacity* as Field Office Director of the )  
Aurora Field Office of Enforcement and )  
Removal Operations, U.S. Immigrations )  
and Customs Enforcement; )

TODD M. LYONS, *in his official capacity* )  
as Acting Director, Immigration and )  
Customs Enforcement, )

KRISTI NOEM, *in her official capacity* as )  
Secretary, U.S. Department of Homeland )  
Security; and )

PAMELA JO BONDI, *in her official* )  
*capacity* as Attorney General of the United )  
States; )

Respondents. )

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**PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE TO APPLICATION FOR  
WRIT OF HABEAS CORPUS (ECF No. 8)**

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Petitioner, by and through undersigned counsel, submits this Petitioner’s Reply to Respondent’s Response to Application for Writ of Habeas Corpus. Respondents contend that Petitioner should remain detained while the Department of Homeland Security (“DHS”)’s appeal of the Immigration Judge (“IJ”)’s January 20, 2026 order granting Petitioner release on bond is pending with the Board of Immigration Appeals (“BIA”), due to the automatic stay provision of

8 C.F.R. §1003.19(i)(2) ECF No. 8. Respondents also contend that Petitioner's statutory claim, that he may be detained, if at all, under 8 U.S.C. §1226(a), and not 1225(b)(2)(A), should be dismissed as unripe.

It is Petitioner's position that Respondents are incorrect in asserting that the automatic stay provision of 8 C.F.R. §1003.19(i)(2) does not violate his constitutional due process under the Fifth Amendment, as, by Respondents' own admission, the District of Colorado and numerous other federal courts have ruled that it does. *See Merchan-Pacheo v. Noem, et al.*, 1:25-cv-03860-SBP, 2026 U.S. Dist. LEXIS 5493 (D. Colo. Jan. 12, 2026); *L.G. v. Choate*, 744 F. Supp. 3d. 1172, 1181 (D. Colo. 2024). It is also the Petitioner's position that Respondents have conceded in their response that Petitioner is currently detained under 8 U.S.C. §1226(a), and not 1225(b)(2)(A), as that was the IJ's determination at his custody hearing. ECF No. 8 at pg. 11. Yet despite conceding this, and despite the IJ having granted Petitioner release on bond pursuant to §1226(a), Respondents claim that they should be permitted to continue detaining him based on the prospect that the BIA might later hold that he is instead detained under §1225(b)(2)(A), as DHS argued in its appeal. Respondents cannot have it both ways; if they concede that Petitioner is detained under 8 U.S.C. §1226(a), they have rendered their appeal to the BIA baseless, and there is no need to await the BIA's decision before Petitioner is released on the bond granted by the IJ. If Respondents maintain that Petitioner is detained under §1225(b)(2)(A), then his claim in the instant Petition that he is subject to §1226(a) is ripe and should not be dismissed.

## ARGUMENT

### **I. Petitioner's continued detention based solely on the automatic stay provision of 8 C.F.R. §1003.19(i)(2) violates his due process rights**

#### **a. Procedural Due Process**

Respondents contend that they are permitted to continue detaining Petitioner, despite his being granted release on bond by an IJ, because DHS appealed the IJ's order to the BIA, and invoked the automatic stay provision of 8 C.F.R. §1003.19(i)(2), which states that an IJ's order granting release on bond, when appealed by DHS, is stayed for 90 days after the appeal is filed. 8 C.F.R. §1003.6(c)(4). The regulations also permit DHS, if the BIA has not ruled on the appeal in 90 days, to seek a discretionary stay from the BIA, and by merely making that request, extend the original stay for 30 days while the BIA rules on the discretionary stay request. 8 C.F.R. §1003.6(c)(5).

Respondents argue that these regulations, and their actions under them in this case, do not violate due process because the *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), test does not apply in the context of immigration detention. ECF No. 8 at 5-6. However, the District of Colorado, along with many other federal District Courts, have held that *Mathews* does apply. *See Merchan-Pacheo v. Noem, et al.*, 1:25-cv-03860-SBP, 2026 U.S. Dist. LEXIS 5493 (D. Colo. Jan. 12, 2026); *L.G. v. Choate*, 744 F. Supp. 3d. 1172, 1181 (D. Colo. 2024). Contrary to the Respondents assertion, the Supreme Court's ruling in *Demore v. Kim*, 538 U.S. 510 (2003), which involved a respondent who had criminal convictions and had conceded that he was subject to mandatory detention, does not preclude the application of the *Mathews* in a case where the petitioner has been found by an IJ not to be subject to mandatory detention and been granted release on bond. *Merchan-Pacheo*, 2026 U.S. Dist. LEXIS 5493 at \*20; *L.G. v. Choate*, 744 F.

Supp. 3d. at 1180-81 (citing *Marin v. King*, 720 Fed. Appx. 923, 940-41 (10th Cir. 2018) and *J.B. v. Washington County*, 127 F.3d 919, 924-25 (10th Cir. 1997)); see also *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 670 (D.N.J. 2003); *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1185 (D. Minn. 2025).

As Petitioner described in his original petition, the *Mathews* factors:

- (1) “the private interest that will be affected by the official action”;
- (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and
- (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail,” 424 U.S. at 335,

weigh strongly in favor of his release from detention. ECF No. 1 at 22-23. In addition, the District of Colorado, among other District courts, has held that detention of a noncitizen who has been granted release on bond by an IJ under the stay provision of 8 C.F.R. §1003.19(i)(2) is not permissible under the *Mathews* factors. *Merchan-Pacheo*, 2026 U.S. Dist. LEXIS 5493 at \*38-50. By prolonging detention, contrary to an IJ’s order, through DHS’s mere act of filing a notice of appeal, detention under §1003.19(i)(2) “allows the government to bypass its burden of proof at bond hearings and usurp the role of the Immigration Judge,” and “inverts the traditional burdens and standards governing requests for stays pending appeal,” which require the party seeking a stay to “‘make “a strong showing” that they are likely to succeed on the merits of their appeal and likely to be irreparably injured without a stay.’” *Sampiao v. Hyde*, 799 F. Supp. 3d

14, 32-33 (D. Mass. 2025) (*quoting Nken v. Holder*, 556 U.S. 418, 434 (2009)). Due process does not allow a regulation to “permit an agency official to unilaterally detain a person after a judge has ordered the person's release.” *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1185, 1190 (D. Minn. 2025). Accordingly, as the sole reason for Petitioner’s present continued detention is Respondents’ invocation of the automatic stay under 8 C.F.R. §1003.19(i)(2), due process, as set forth in *Mathews*, mandates his immediate release under the bond granted to him by the IJ.

Respondents attempt to avoid the findings of the District of Colorado and numerous other Courts that detention under 8 C.F.R. §1003.19(i)(2) violates due process by arguing that all those decisions mischaracterize such detention as “an exercise of power by DHS, not the adjudicator (the Attorney General).” ECF No. 8 at 10. They argue that because §1003.19(i)(2) is a Department of Justice regulation, it is the Attorney General – to whom the BIA and IJs ultimately answer – who is imposing the stay, not the DHS attorneys who act as prosecutor’s in immigration proceedings. However, to which department of the government the regulation pertains should have no bearing on the reasons why numerous District Courts have found it to violate due process. *Merchan-Pacheo*, 2026 U.S. Dist. LEXIS 5493 at \*42-43. The automatic stay provision, regardless of whom it is seen to be exercised by, leads to continued detention despite a judge’s order granting release, without any consideration of the interests at stake as set forth in *Mathews*, or any requirement that the party benefitting from the stay demonstrate likelihood of success on the merits of its appeal, or meet any other requirement that parties seeking a stay of a judge’s order pending appeal in American courts are normally required to meet. *Sampiao*, 799 F. Supp. 3d at 32-33. Therefore, detention under 8 C.F.R. §1003.19(i)(2) remains a violation of due process even under Respondents’ framing.

**b. Substantive Due Process**

Respondents also contend that their detention of Petitioner under 8 C.F.R. §1003.19(i)(2) does not violate his substantive due process rights, quoting *Demore v. Kim* in stating that “detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” 538 U.S. at 523. However, as the District of Colorado has noted, *Demore* involved a petitioner in a very different factual situation – one who “did not contest that he had committed and had been convicted of crimes, that he was subject to mandatory detention, or that he was subject to being deported; instead, the petitioner merely contested his continued detention without bond pending his deportation.” 2026 U.S. Dist. LEXIS 5493 at \*10. The *Demore* decision also rested on “the understanding that detention under § 1226(c) would be brief, and this assumption was key to [the Court's] conclusion that the law complied with due process.” *L.G. v. Choate*, 744 F. Supp. 3d. at 1182-83 (internal citations omitted). “Brief” immigration detention, at the time *Demore* was decided, meant an average of “roughly a month and half in most cases and five months in the minority of cases where the noncitizen chose to appeal.” *Id.* Petitioner’s detention has already lasted well beyond this. Even if “some detention is permissible,” a noncitizen detainee “suffers significant liberty deprivations,” and thus “the government’s exercise of its power to detain immigrants pending removal ‘is subject to important constitutional limitations.’” *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28-29 (1st Cir. 2021)(citing *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001)).

Respondents have exceeded those limitations by continuing to detain Petitioner. They are detaining him solely on the basis of 8 C.F.R. §1003.19(i)(2), which, as described above, violates Petitioner’s due process rights. His detention during his removal proceedings does not, as Respondents contend, have a “definite end point.” ECF No. 8 at 8. As described in the original

petition, there is no certainty as to when the BIA will make a decision on DHS's bond appeal, it is unlikely to make a decision prior to Petitioner's scheduled Individual Hearing before the IJ on May 4, 2026, and additional lengthy appeal processes may follow beyond that. ECF No. 1 at 12. Without relief from this Court, there is no definite endpoint to Petitioner's detention.

**II. Respondents concede that Petitioner is detained under 8 U.S.C. §1226(a); he therefore should be immediately released on the bond granted by the IJ**

In their Response to the Petition, Respondents have conceded that Petitioner is currently detained under 8 U.S.C. §1226(a), and not §1225(b)(2)(A), as was determined by the IJ. ECF No. 8 at 11. On this basis, they ask this Court to dismiss Count IV of the original Petition, which relates to that very statutory question of which section Petitioner is detained under, as not ripe. *Id.* at 11-12. However, Respondents also state that "DHS' appeal is based on the premise that Petitioner is properly detained under §1225(b)(2)(A), and thus that the immigration judge lacked jurisdiction to order a bond." *Id.* at 11.

This argument is not only internally self-defeating, it negates all of Respondents' arguments in opposition to this Petition. all of Respondents actions in seeking to detain Petitioner contrary to the IJ's order granting him release on bond to be legally baseless pretextual attempts to avoid compliance with the rulings of this Court, and of hundreds of other Courts nationwide, that noncitizens who are detained and placed in removal proceedings under circumstances similar to Petitioner can be lawfully detained only under 8 U.S.C. §1226(a), with the right to seek release on bond, and not detained indefinitely without recourse under §1225(b)(2)(A). *See Garcia Abanil v. Baltazar*, No. 25-cv-4029-WJM-STV, 2026 U.S. Dist. LEXIS 7440 at \*16 (D. Colo. Jan. 14, 2026).

If Respondents, as they appear to do in their response, concede that Petitioner is detained under 8 U.S.C. §1226(a), they have abandoned the very basis for DHS's argument in its appeal of the IJ's order granting Petitioner's release on bond. *See* ECF No. 1 at Exh. 8. That appeal is premised on the contention that Petitioner is an "applicant for admission" and is subject to 8 U.S.C. §1225(b)(2)(A). *Id.*; ECF No. 8 at 11. As Petitioner indicated in the original Petition, DHS's appeal also argues that the IJ should have found that he is a flight risk. ECF No. 1 at Exh. 8. However, it did so in such a brief, cursory, and unsupported fashion as to indicate that this secondary argument was only included as a pretext to claim that the statutory issue of whether Petitioner is detained under 8 U.S.C. §1225(b)(2)(A) or §1226(a), which has already been firmly resolved by this and many other Courts, is not the sole issue in the appeal pending before the BIA and that Petitioner should therefore be required to await the conclusion of the BIA appeal process before seeking relief from this Court. ECF No. 1 at 11-12. Respondents' Response to the Petition, does not even dispute that this is so; it instead refers to the §1225(b)(2)(A)/§1226(a) statutory question as the only basis for DHS's appeal. ECF No. 8 at 2-3, 11.

If the sole issue in DHS's appeal to the BIA is whether Petitioner is detained under §1225(b)(2)(A) or §1226(a), then there is no issue for the BIA to resolve at all. The question has been answered by this and hundreds of other Courts in the United States: §1226(a) applies. *See Garcia Abanil v. Baltazar*, No. 25-cv-4029-WJM-STV, 2026 U.S. Dist. LEXIS 7440 at \*16 (D. Colo. Jan. 14, 2026). Having now conceded this themselves in their Response in this case, in an attempt to have Count IV of the Petition dismissed as unripe, Respondents are now arguing against themselves. In doing so, they have conceded that DHS had no lawful basis on which to appeal the IJ's grant of release on bond to the BIA, and therefore no lawful basis to invoke the automatic stay provision under 8 C.F.R. §1003.19(i)(2) in order to continue detaining Petitioner

during that appeal. They have, and have had, no lawful basis to detain Petitioner since the IJ's ruling granting his release on bond, and this Court should order Respondents to immediately release him pursuant to that bond, as Petitioner sought in his original Prayer for Relief. ECF No. 1 at 24.

If the BIA ultimately rules in DHS's appeal that §1226(a) applies to Petitioner, it will be reaching the same result as this and other Courts in similar cases have reached, and Respondents will be required to release him pursuant to the IJ's bond order, just as he sought in the Petition. 2026 U.S. Dist. LEXIS 7440 at \*16 If the BIA rules that §1225(b)(2)(A) applies, that ruling will be manifestly contrary to law as found by this and other Courts nationwide. *Id.* There is therefore no need for this Court to wait for the ruling of the BIA before granting relief to Petitioner. Delaying relief, as explained in the original Petition, would allow Respondents to prolong Petitioner's detention past the date of his scheduled Individual Hearing before the IJ on May 4, 2026, at which point the §1225(b)(2)(A)/§1226(a) statutory question would be moot and a different statute, §1231(a), would apply. ECF No. 1 at 12-13. It would allow Respondents to entirely evade judicial review of their unlawful detention of Petitioner. *Id.* Indeed, the fact that Respondents do not even stand by their argument to the BIA that Petitioner is detained under §1225(b)(2)(A) suggests that all of Respondents' actions in seeking to detain Petitioner contrary to the IJ's bond order were legally baseless, pretextual attempts to avoid compliance with the rulings of this Court, and of hundreds of other Courts nationwide, that noncitizens who are detained and placed in removal proceedings under circumstances similar to Petitioner can be lawfully detained only under 8 U.S.C. §1226(a), with the right to seek release on bond, and not detained indefinitely without recourse under §1225(b)(2)(A). *See Garcia Abanil*, 2026 U.S. Dist. LEXIS 7440 at \*16 (D. Colo. Jan. 14, 2026). Despite clearly being put on notice that their

actions were unlawful – this Court’s decision in *Garcia Abanil* being issued just days before Petitioner’s original bond hearing – it appears that DHS filed a legally baseless appeal to the BIA in a mere attempt to hide behind the stay provision of 8 C.F.R. §1003.19(i)(2), and run out the clock until Petitioner’s removal proceedings reached a stage where he could no longer seek relief from this Court on the §1225(b)(2)(A)/§1226(a) statutory issue.

**III. If Respondents maintain that Petitioner is detained under 8 U.S.C §1225(b)(2)(A), Petitioner’s Count IV is ripe**

If Respondents have erred in their Response and do not intend to concede that Petitioner is detained under 8 U.S.C. §1226(a), but instead maintain, as DHS argues in its BIA appeal, that he is detained under §1225(b)(2)(A), then Respondent’s contention that Count IV of the Petition should be dismissed as unripe is incorrect.

If Respondents intend to maintain the position that Petitioner is detained under §1225(b)(2)(A), then he is “in custody in violation of the Constitution or laws or treaties of the United States,” and this Court had jurisdiction to grant a Writ of Habeas Corpus in his case. 28 U.S.C. § 2241(a), (b)(3). *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas*, 533 U.S. at 687–88).

Respondents contend in their response that the lack of a final decision by the BIA in DHS’s appeal of the IJ’s bond order makes his detention under §1225(b)(2)(A) rather than §1226(a) “contingent on future events” and thus not ripe. ECF No. 8 at 12; *Texas v. United States*, 523 U.S. 296, 300 (1998). As stated above, however, if Respondents concede that Petitioner is now detained under §1226(a), then there is no basis for DHS’s appeal or invocation of 8 C.F.R. §1003.19(i)(2), and they must release him on bond immediately. If they do not

concede that, then Petitioner's unlawful detention under §1225(b)(2)(A) is a present condition, not a potential future one, and Count IV of the Petition is therefore ripe.

Petitioner respectfully requests that the Court find that his claim in the Petition, that he may be detained, if at all, under 8 U.S.C. §1226(a), and not 1225(b)(2)(A), is ripe, and to declare, consistent with this and numerous other Courts' recent decisions, that §1226(a) applies to him and his present detention is unlawful.

### CONCLUSION

For the reasons discussed above, the Petitioner prays that this Court will grant his original

Prayer for Relief.

Date: March 11, 2026

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### CERTIFICATE OF SERVICE

I certify that on March 11, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by email:

leslie.schulze@usdoj.gov

*/s/ Scott Brian Petiya*  
Scott Brian Petiya