

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

SALMERON, Wilber Alexander

Petitioner,

v.

JUAN BALTASAR, Warden, Aurora
Immigration and Customs Enforcement
Processing Center, **ROBERT HAGAN**, Denver
Field Office Director of Enforcement and
Removal Operations, Immigration and Customs
Enforcement; **TODD LYONS**, Acting Director
U.S. Immigration and Customs Enforcement,
Kristi NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; **Pamela BONDI**,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; Respondents.

Case No. 26-cv-00846-NYW

**PETITION FOR WRIT OF
HABEAS CORPUS**

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS**

Petitioner Wilber Alexander Salmeron, by and through undersigned counsel, respectfully submits this Reply to Respondents' Response to the Petition for Writ of Habeas Corpus (ECF No. 7). Respondents' Response mischaracterizes the nature of this detention, misconstrues the applicable statutory framework, and relies on a disputed assertion that the Board of Immigration Appeals has jurisdiction over an untimely appeal that the BIA itself has not yet accepted on the merits. For the reasons set forth herein, the Court should grant the writ.

PRELIMINARY STATEMENT

Respondents devote the bulk of their brief to the question of mandatory detention under 8 U.S.C. § 1225(b). This framing is a red herring. The central question presented here is not whether applicants for admission may be mandatorily detained during *ongoing* removal proceedings. The central question is whether the government may *continue* to detain a noncitizen whose removal proceedings were *terminated* by an Immigration Judge, after DHS filed what it itself characterized as a *late* appeal and is presently seeking permission from the Board of Immigration Appeals to accept that untimely filing. The answer is no.

Termination of removal proceedings is not an order of removal. It is not a continuance of proceedings. It is the end of the proceeding. The government's attempt to collapse these distinct concepts must be rejected.

ARGUMENT

I. THIS CASE IS NOT ABOUT MANDATORY DETENTION UNDER § 1225(b): IT IS ABOUT THE GOVERNMENT'S AUTHORITY TO DETAIN A MAN WHOSE PROCEEDINGS HAVE BEEN TERMINATED.

Respondents spend considerable effort defending their position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), relying primarily on *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), and *Jennings v. Rodriguez*, 583 U.S. 281 (2018). See ECF No. 7 at 2–3. But that argument, however framed, assumes that removal *proceedings* are *pending*. They are not, or at least they should not be.

Section 1225(b) authorizes detention of an applicant for admission during a "proceeding under section 1229a." 8 U.S.C. § 1225(b)(2)(A). If there is no pending proceeding, because the

Immigration Judge terminated proceedings, then § 1225(b) provides no detention authority. The statute's own text requires an ongoing proceeding as the basis for detention.

This Court has already recognized this precise issue in *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025), wherein it rejected the Government's mandatory detention argument. Respondents themselves concede that this Court's prior ruling in *Caballero* would lead the Court to reach the same result here if it adheres to that decision. ECF No. 7 at 3–4. Petitioner urges this Court to do so.

II. TERMINATION OF REMOVAL PROCEEDINGS IS NOT AN ORDER OF REMOVAL AND IT ENDS PROCEEDINGS.

Respondents argue that because DHS filed an appeal, the Immigration Judge's termination order has not become "final" and proceedings therefore remain pending. ECF No. 7 at 5–6. This argument conflates two distinct concepts: finality of the *order* and the *nature* of the order.

A termination order is not an order of removal. The regulations governing finality of orders enumerate the types of orders that become final under 8 U.S.C. § 1101(a)(47)(B), specifically, orders that become final upon BIA affirmance or expiration of the appeal period. But a *termination* order is inherently different from an *order of removal*. See 8 C.F.R. § 1241.1 (defining when a removal order becomes final and listing applicable order types, termination is conspicuously absent). A termination does not merely pause proceedings; it dissolves them without a finding of removability. See *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

Courts and the BIA have drawn a clear distinction between *administrative closure*, which suspends but does not end proceedings, and *termination*, which ends them. See *Matter of Coronado-Acevedo*, 28 I&N Dec. 648, 650 (A.G. 2022) (distinguishing termination from other

docket management tools and acknowledging that termination without prejudice ends active proceedings). Administrative closure, unlike termination, preserves the government's ability to recalendar. Termination without prejudice ends the case entirely, leaving only the option to reinstitute new proceedings. Thus, as incorrectly suggested by the government, the removal proceedings are not suspended pending appeal, there exits **no removal proceedings**.

Here, the Immigration Judge did not close proceedings, she *terminated* them, expressly invoking her regulatory authority under 8 C.F.R. § 1003.18(d)(1)(ii)(C), which explicitly contemplates termination, not merely closure, for persons granted deferred action. The Respondent's removal proceedings ended on January 17, 2026. The government had 30 days to appeal under 8 C.F.R. § 1003.38(b). It failed to do so within that period.

III. DHS'S APPEAL IS UNTIMELY AND HAS NOT BEEN ACCEPTED BY THE BIA.

Respondents represent to this Court that "*the BIA issued a filing receipt for that appeal on February 21, 2026*" and that "*the appeal has not been rejected by the BIA as untimely.*" ECF No. 7 at 6. This representation is incomplete.

DHS filed the appeal on February 18, 2026, accompanied by a *separate motion* explicitly asking the BIA to accept the *late filing*, a motion captioned "Department of Homeland Security's Motion to Accept Late Filing." See **Exhibit A** (DHS Motion to Accept Late Filing). In that motion, DHS acknowledged that its appeal was being filed on the last possible day but noted that January 17, 2026, the date of the Immigration Judge's order, was a non-business calendar day. Crucially, DHS tendered no legal justification or showing of "extraordinary circumstances" for any lateness, it merely apologized.

The BIA's issuance of a "filing receipt" **does not** constitute acceptance of jurisdiction over an untimely appeal. A filing receipt is an administrative acknowledgment that a document was received, not an adjudication on timeliness. The BIA **has not** ruled on DHS's motion to accept the late filing. That motion is still pending. Thus, technically, DHS **does not** presently have an appeal pending with BIA. Petitioner swiftly filed a Motion for Summary Affirmance before the BIA, urging the Board to deny DHS's motion and affirm the IJ's decision. See Exhibit B (Petitioner's Motion for Summary Affirmance at BIA).

The BIA has long held that appeal deadlines are *mandatory and jurisdictional*. *Matter of Liadov*, 23 I&N Dec. 990, 993 (BIA 2006) ("The time limit for filing an appeal is mandatory and jurisdictional."). Where a party fails to comply with filing deadlines, "dismissal is appropriate, absent extraordinary circumstances." *Id.* DHS has offered no extraordinary circumstances, only an apology. See DHS Motion at 2. Such a bare apology falls far short of the showing required to excuse a late appeal. See also 8 C.F.R. § 1003.38(c) (notice of appeal "must be received" within the prescribed time).

Critically, under 8 C.F.R. § 1003.39, an IJ's decision becomes final "upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken." If the BIA ultimately rejects DHS's late filing, as it should, the termination order became final on February 18, 2026, the date the appeal period expired. At that point, there would be **no** pending proceedings, **no** final removal order, and **no** statutory authority to detain Petitioner under any provision of the INA.

IV. EVEN IF THE BIA ACCEPTS THE LATE APPEAL, § 1225(b) CANNOT SUSTAIN MANDATORY DETENTION HERE.

Even accepting, *arguendo*, that the BIA accepts DHS's late appeal and proceedings are deemed pending, mandatory detention under § 1225(b)(2) still cannot be sustained. This Court has so held in *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025), and Respondents do not dispute that this Court's prior analysis would apply with equal force here. ECF No. 7 at 3–4.

Moreover, § 1225(b)(2)(A) authorizes detention of applicants for admission "pending" proceedings under § 1229a. Where an Immigration Judge has already terminated proceedings, even if a late appeal nominally remains pending, the detention is not being used to secure the respondent's presence for ongoing proceedings in any meaningful sense. The proceedings were terminated. The IJ found no adverse discretionary factors. USCIS has granted deferred action. DHS's own prior discretionary decisions recognize that Petitioner should not be treated as a removal priority. Detaining him "pending appeal" of that termination does not serve the purposes of § 1225(b).

As the Supreme Court made clear in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the validity of detention "depends on the relation between the detention and its purpose." Where removal is not imminent, where there is no final order of removal, where USCIS has granted deferred action, and where the IJ has terminated proceedings after concluding that Respondent's U-visa petition presents compelling equities, continued detention becomes arbitrary and unsupported by any legitimate governmental interest.

V. THE GOVERNMENT CANNOT BOOTSTRAP CONTINUED DETENTION ON ITS OWN UNTIMELY APPEAL.

Perhaps the most fundamental defect in the government's position is this: the government is using its own untimely appeal to manufacture a basis for continued detention. The IJ terminated proceedings on January 17, 2026. Petitioner had no order of removal. Absent a timely appeal, the termination became final. DHS missed its deadline, filed a motion to accept a late appeal, and then continued to detain Petitioner while the BIA has not yet ruled on whether to accept that untimely appeal.

This bootstrapping violates fundamental principles of due process. As the Supreme Court held in *Zadvydas*, "Freedom from imprisonment....from government custody, detention, or other forms of physical restraint... lies at the heart of the liberty that [the Due Process] Clause protects." 533 U.S. at 690. Civil detention "must bear a reasonable relation to a legitimate governmental purpose." *Id.* A governmental purpose manufactured by the government's own procedural failure does not qualify.

The government cannot extend detention by filing a late appeal and then arguing that the late appeal keeps proceedings alive. The BIA's mandatory and jurisdictional appeal deadline exists for good reason: to give finality to IJ decisions. *Matter of Liadov*, 23 I&N Dec. at 993. Permitting the government to avoid finality, and to keep a man imprisoned, through the mere act of filing an untimely notice of appeal would eviscerate the finality rules and incentivize dilatory government practice.

The Immigration Judge herself noted that DHS filed its opposition to termination late, after the court-imposed January 15, 2026, deadline, and failed even then to identify any adverse discretionary factors. DHS is now attempting to remedy its own procedural failures at the expense of Petitioner's liberty. This Court should not permit it.

VI. PETITIONER'S POSITIVE EQUITIES AND THE ABSENCE OF ANY DANGER OR FLIGHT RISK WARRANT RELEASE.

Even under the government's preferred framework, Petitioner presents compelling equities that counsel in favor of release rather than continued detention. Petitioner:

- Entered the United States as an unaccompanied minor in 2016;
- Is the father of two U.S. citizen children;
- Has been granted deferred action by USCIS based on a bona fide U-visa determination, reflecting DHS's own prior recognition that his removal should not be prioritized;
- Holds a valid Employment Authorization Document valid through May 14, 2029;
- Has been compliant with ICE check-ins;
- Has been lawfully employed and paying taxes;
- Has no criminal history cited by the government;
- Was detained while en route to work — not in connection with any adverse conduct.

The government **does not** identify a *single* adverse discretionary factor. The IJ expressly found none. The government's response identifies none. Under these circumstances, continued detention, without bond, without a bond hearing, without a final order of removal, is constitutionally arbitrary and serves no legitimate governmental purpose.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court:

- (1) Reject the government's § 1225(b) mandatory detention argument, consistent with this Court's reasoning in *Caballero v. Baltazar*;

(2) Find that DHS's untimely appeal, filed without the BIA having accepted it on the merits, does not preserve detention authority;

(3) Grant the writ of habeas corpus and order Petitioner's immediate release.

Respectfully submitted,

DATED this 12th day of March, 2026.

Respectfully submitted,

/s/ Claudia Phaneuf

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2026, a true and correct copy of the foregoing Petitioner's Reply was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

/s/ Claudia Phaneuf

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