IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

OLEKSANDR SHAPOVAL, Petitioner,	§	
V.	§	Civil Action No. 1:26-cv-01065-CNS
MARKWAYNE MULLIN, ET AL.,	§	Judge Charlotte N. Sweeney

REPLY TO GOVERNMENT'S CONSOLIDATED RESPONSE TO AMENDED PETITION FOR HABEAS CORPUS

I. INTRODUCTION

This case is similarly situated to the myriad Habeas Petitions that this Court has recently granted. Recently, in *Singh v. Baltazar*, et al., No. 1:26-cv-01856-RBJ a factually similar case where Petitioner was ***paroled*** into the U.S. at the border, hours/minutes after entry, and subsequently applied for asylum); wherein the judge granted Habeas and ordered immediate release without any conditions or bond.

II. CASE LAW IN SUPPORT OF PETITIONER'S ELIBILITY FOR RELEASE FROM CUSTODY

In *Gonzalez v. Baltazar*, No. 26-cv-00297-PAB, 2026 WL 415600 (D. Colo. Feb. 13, 2026), this Court reviewed myriad decisions holding that § 1226(a)—not § 1225(b)(2)(A)—addresses the

detention of noncitizens who entered without inspection and were arrested in the interior of the United States. The government itself acknowledged in Gonzalez that "the facts of this case are not materially distinguishable" from the Court's prior rulings and filed an abbreviated response preserving only its right to appeal. Id. The six prior PAB decisions surveyed in Gonzalez are: Hernandez-Redondo v. Bondi, No. 25-cv-03993-PAB, 2026 WL 290989 (D. Colo. Feb. 4, 2026); 1Armenta v. Noem, No. 26-cv-00236-PAB, 2026 WL 274634 (D. Colo. Feb. 3, 2026); Portillo Martinez v. Baltazar, No. 26-cv-00106-PAB, 2026 WL 194163 (D. Colo. Jan. 26, 2026); Garcia-Perez v. Guadian, No. 25-cv-04069-PAB, 2026 WL 89613 (D. Colo. Jan. 13, 2026); Alfaro Orellana v. Noem, No. 25-cv-03976-PAB, 2025 WL 3706417 (D. Colo. Dec. 22, 2025); Florez Marin v. Baltazar, No. 25-cv-03697-PAB, 2025 WL 3677019 (D. Colo. Dec. 18, 2025).

III. ARGUMENT

Respondents present no argument that this Court -- by and large -- has not already addressed and rejected. ICE placed Petitioner in removal proceedings before the Immigration Court in Aurora, Colorado and purportedly -- if not erroneously -- classified his detention under 8 U.S.C. § 1225(b)(2), relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The immigration judge found that she had no jurisdiction for an individualized bond hearing and made no individualized determination of flight risk or danger. Petitioner Oleksandr Shapoval's case is materially similar to the petitioners in other Habeas cases granted by this court. The Court has found in myriad cases with similar fact patterns that § 1226—and not § 1225(b)(2)(A)—govern detention for noncitizens who entered the country without inspection and who are not subject to expedited removal, as opined recently in case Singh v. Baltazar,

1:26-cv-01856-RBJ by Judge R. Brooke Jackson[1] See also, e.g., Cervantes Arredondo, 25-cv-03040-RBJ, ECF No. 21; Velazquez de Leon v. Baltazar, 25-cv-03805-RBJ, ECF No. 19 (D. Colo. Dec. 22, 2025); UgarteHernandez v. Baltazar, 25-cv-04066-RBJ, ECF No. 16 (D. Colo. Jan 15, 2026) in each of those cases.

The Petitioner is a citizen of the Ukraine who entered the United States pursuant to Ukrainian Humanitarian Parole on January 11, 2024 at John F. Kennedy International Airport. He was not apprehended at the border. He was arrested on January 11th, 2026, in Wyoming for allegedly -- if not pretextually -- driving over the speed limit. Upon information and belief, Mr. Shapoval, was driving a pickup truck with out of state license plates. When a sheriff stopped him for "speeding"

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[1] "The Court has concluded, now many times over, that § 1226—and not § 1225(b)(2)(A)—governs detention for noncitizens who, like petitioner, entered the country without inspection and are not subject to expedited removal. See, e.g., Cervantes Arredondo, 25-cv-03040-RBJ, ECF No. 21; Velazquez de Leon v.Baltazar, 25-cv-03805-RBJ, ECF No. 19 (D. Colo. Dec. 22, 2025); Ugarte Hernandez v. Baltazar, 25-cv-04066-RBJ, ECF No. 16 (D. Colo. Jan 15, 2026).
Most recently, the Court set forth its complete analysis in Ugarte Hernandez, and now incorporates the reasoning in that Order and adopts it in full. See, e.g., Espinoza Ruiz v. Baltazar, 25-cv-03642-CNS, 2025 WL 3294762, at *2 (D. Colo. Nov. 26, 2025) (district court, on the same statutory question, "accept[ing] in full" Case No. 1:26-cv-01856-RBJ Document 8 filed 05/21/26 USDC Colorado pg 2 of 7 and "adopt[ing]" its reasoning outlined in a previous case).
The Court is aware of and has read the split decisions from the Fifth and Eighth Circuits adopting respondents' interpretation of the relevant statutory provisions, but remains unpersuaded. See Buenrostro v. Bondi, ---F.4th---, 2026 WL 323330 (5th Cir. Feb. 6, 2026); Avila v. Bondi, ---F.4th---, 2026 WL 819258 (8th Cir. Mar. 25, 2026).
Instead, the Court respectfully agrees with the dissenting judge in Buenrostro that the majority's reading of § 1225(b)(2)(A) is inconsistent with "the statutory definition of 'admission,' the provision's context, the Supreme Court's understanding of the statutory scheme, and the whole history of American immigration law." 2026 WL 323330 at *11 (Douglas, J., dissenting). The dissenting judge in Avila makes essentially the same points. 2026 WL 819258 at *7 (finding that the majority's interpretation "is not supported by the plain meaning of 'seeking,' the context of the [Immigration and Nationality Act], or the history of the [Illegal Immigration Reform and Immigration Responsibility Act]") (Erikson, J., dissenting)."

outside Cheyenne, he ascertained vis-a-vis Mr. Shapoval's foreign accent, *albeit* ethnic profiling, that Mr. Shapoval was an immigrant and he immediately ordered him to produce a "green card" and/or U.S. passport,. The Laramie County Sheriff detained him pursuant to 8 U.S.C. section 1357(g). On about January 15th, 2026, ICE took Petitioner into custody at Cheyenne, Wyoming -- while detained for a "traffic" stop -- in the interior of the United States, **not at a port of entry or the border**. He was not 'arriving' in the United States at that time. He had been living in the United States for just over years. He has a pending asylum application before the Immigration Court, no criminal history, family members with strong ties to the community, and steady employment as a truck driver. He has been held for nearly four months with no individualized bond hearing and no determination of flight risk or danger to the public. The immigration judge found that there was no jurisdiction for a bond hearing.

A. Parole Followed byAsylum Trajectory

Petitioner timely filed an extension of his Parole and as such, there may still be jurisdiction to adjudicate this extension. *See 290B Motion To Reconsider, Exhibit 8, Habeas Petition.* Notwithstanding the parole extension denial which has been challenged; the mandatory detention is inapplicable as Section 1225(b) for the foregoing enumerated grounds. Moreover the Ukrainian Humanitarian Parole -- which was issued at the John F. Kennedy International Airport Port of Entry -- is the equivalent of the U.S. government providing permission to enter the United States. Although it is not permanent status; it certainly is permission by the government to remain in the United States. Notwithstanding the ephemeral nature of "parole;" Mr. Shapoval has a pending compelling asylum case which will provide him asylee status if he prevails. In short, assuming the Ukrainian Parole has expired; Petitioner's pending asylum case insulates him

from removal and if he has a fundamentally fair asylum hearing he can obtain asylee status and then become eligible for lawful permanent residency. In sum, the pending asylum case provides the Petitioner with a valid -- if not compelling -- claim for relief from Removal. This further incentivizes him to not abscond in order to have his asylum case heard. Even if his status reverts to "no status" his asylum claim can trump that.

B. The Laramie County Sheriff's Detention of the Petitioner Pursuant to Section 1357(g) May Not Have Been Lawful

On May 26, 2026, a Complaint For Declaratory Relief was filed with the Laramie, Wyoming District Court challenging lawfulness of the 8 U.S.C. section 1357(g) as it pertains to an agreement with ICE insofar that it was purportedly done unilaterally and in violation of the Wyoming Administrative Procedures Act. *See Exhibit A.* Mr. Shapoval was held in the Laramie County Sheriff's custody for **four days** on an "ICE" hold. This potentially unlawful arrest and detention is another example of a pattern and practice of local law enforcement *ultra vires* conduct and warrants immediate relief, e.g., release from ICE custody. This arrest and detention -- if unlawful -- is factually similar to the Seventh Circuit case, addressing unlawful arrests by ICE. *Castañon Nava et al. v. Department of Homeland Security et. al.* 161 F.4th 1048,(7th Cir. 2025)(the Court of Appeals for the Seventh Circuit issued a decision affirming an October 2025 ruling by the U.S. District Court Judge, and ordered the release of individuals unlawfully arrested without warrants by ICE and Border Patrol officers.

C. Petitioner's Unlawful Detention Is Not Supported by The Respondents' Assertions

In *Gonzalez*, this Court reviewed the government's response in *Mendoza Gutierrez v.*

Baltazar, No. 1:25-cv-02720-RMR (D. Colo.), the case the government had appealed to the Tenth Circuit, and found "no additional relevant arguments that the Court has not already addressed in its past orders on this issue." 2026 WL 415600, at *2. The response filed here is materially identical to the arguments this Court has already considered and rejected in seven cases. Respondents' primary contentions are:

(1) That Jennings v. Rodriguez, 583 U.S. 281 (2018), compels application of § 1225(b)(2)(A) to all EWI noncitizens regardless of time in the country. This Court rejected that reading in Garcia-Perez, 2026 WL 89613, at *3, holding that Jennings "said nothing about whether persons like [Petitioner] were subject to those provisions in the first place" and that the Supreme Court's own language — applying § 1225 to those "seeking admission into the country" and § 1226 to those "already in the country" — confirms § 1226(a) governs.

(2) That being an "applicant for admission" is synonymous with "seeking admission." This Court rejected that argument in Garcia-Perez, finding that the "otherwise seeking admission" language in § 1225(a)(3) "is simply a catch-all provision" for individuals not covered by the applicant-for-admission definition, and that reading the two phrases as synonymous violates the rule against surplusage. 2026 WL 89613, at *3.

(3) In Ravinder v. Bondi, No.26-cv-00486-CYC, 2026 WL 522853, at *2 (D. Colo. Feb. 25, 2026) (finding that "Judge Sweeney's thorough rebuttal of that divided decision provides a solid foundation to maintain the consensus that exists in this District"); Singh v. Baltazar, No. 25-cv-04185-CAS, 2026 WL352870, at *3–6 (D. Colo. Feb. 9, 2026). This District has already considered and rejected all of these arguments. Nothing in Respondents' brief warrants a different result.

D. Petitioner's Class Membership Provides an Additional Independent Basis for Relief Not Addressed by Respondents.

Petitioner is a certified member of the local class certified in Mendoza Gutierrez v. Baltazar, No. 1:25-cv-02720-RMR (D. Colo. Nov. 21, 2025). But this Court does not need to reach the preclusion questions at all. As in each of the PAB decisions, Petitioner's individual statutory claim independently compels relief. The class certifications are corroborating authority confirming that two separate courts have already resolved the dispositive legal question in Petitioner's favor.

E. The Government's Thirty-Year Practice Confirms the Statute Is at Minimum Ambiguous.

The government's own 1997 Federal Register notice acknowledged that EWI interior residents "will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). The government cannot attempt to recast three decades of bond hearings as mere "discretion"proves the opposite of its argument: if § 1225(b)(2) clearly mandated detention without bond, the agency could not have been exercising discretion to grant bond for thirty years. The statute is at minimum ambiguous, and ambiguity resolves in favor of liberty—and in favor of the reading this Court has adopted many times over given the multitude of Habeas filings in this district.

IV. OBJECTION TO OFFICER IRMA QUINONES' AFFIDAVIT.

The Respondents' Exhibit, Document 17-1, Declaration of Irma Quinones offers no additional evidentiary support for the Respondents' legal positions. Quinones' assertion that the Wyoming Sheriff in this case was "qualified to perform the functions of an immigration officer in relation to the investigation, apprehension, and detention of aliens in the United States pursuant to 8 U.S.C. § 1357(g)," is apocryphal in that Quinones' legal opinion has no basis in fact or law. Pointedly, the Wyoming Sheriff may not even be eligible to partner with ICE. *See Exhibit A.* The Quinones affidavit merely summarizes the charges and allegations of the Notice To Appear and subsequent DHS-261 amendments to the Notice to Appear. In addition, there was no C.V. proffered in support of her expertise, which would have included her training and education. Also, the affiant never stated the date and place where she purportedly had direct contact with the Petitioner.

V. CONCLUSION

This Court has resolved the question presented in a plethora of cases in favor of similarly situated petitioners. In the most recent of those decisions, the government itself conceded the facts were indistinguishable and presented no new arguments. Respondents' brief here presents nothing this District has not already considered and rejected. Petitioner respectfully requests that this Court grant the Petition; grant the Motion for the TRO and find that § 1226(a) governs his custody, and order Respondents to immediately release him without any conditions or bond. Any bond hearing in the immigration court would be superfluous, if not futile in that an immigration judge already found there was no jurisdiction for the Petitioner's bond request. Alternatively, if this Court orders bond, we request that the immigration court provide an

individualized bond hearing under § 1226(a) within seven days of this Court's order, at which the government bears the burden of justifying continued detention by clear and convincing evidence.

Dated: June 3, 2026

Respectfully submitted,

//s// Sandra Saltrese Miller

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EXHIBITS

No.	EXHIBIT
A	*JUNTOS, THE UNITARIAN UNIVERSALIST CHURCH OF CHEYENNE, AND DREW'S BARBERSHOP vs. BRIAN KOZAK AND THE LARAMIE COUNTY SHERIFF'S OFFICE;* Complaint-for-Declaratory-and-Injunctive-Relief, May 26, 2026

CERTIFICATE OF SERVICE

I, Sandra Saltrese Miller hereby certify that on June 3, 2026, I electronically filed the foregoing **REPLY TO GOVERNMENT'S CONSOLIDATED RESPONSE TO AMENDED PETITION FOR HABEAS CORPUS** using the CM/ECF system; therefore serving the Respondents.

//s// Sandra Saltrese Miller

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