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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JORGE GEOVANNI MERCADO
ROSALES,

Petitioner,

v.

Todd BLANCHE, Acting Attorney
General of the United States; Markwayne
MULLIN, Secretary, United States
Department of Homeland Security; Daren
K. MARGOLIN, Director, Executive
Office for Immigration Review (EOIR);
Moises BECERRA, Acting Field Office
Director, U.S. Immigration and Customs
Enforcement (ICE) San Francisco Field
Office; Christopher CHESTNUT, Warden
of the California City ICE Detention
Facility,

Respondents.

**REPLY TO RESPONDENT'S
OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS**

Case No. 1:26-cv-05214-EJD

Agency Case Number:



INTRODUCTION

Petitioner, JORGE GEOVANNI MERCADO ROSALES, has been detained without a bond hearing in violation of his constitutional due process rights. In its Opposition to Petition for Writ of Habeas Corpus, Respondent argues that Petitioner may be detained indefinitely under 8 U.S.C. § 1225(b) without a bond hearing and that the Due Process Clause affords him no protection beyond the narrow procedures Congress prescribed for arriving noncitizens. This argument rests on a fundamental misreading of the statute. Respondent conflates the statutory phrases "applicant for admission" and "seeking admission," construing § 1225(b) as mandating detention of noncitizens who entered without inspection, even those who have long resided in the United States. That interpretation contradicts the overwhelming consensus of federal courts, which have widely held that § 1225(b)(2)(A) does not extend to individuals already living within this country.

Petitioner is an applicant for admission, but he is not "seeking admission" to the United States in any meaningful sense. He is a longtime resident of the United States whose continued detention without an individualized determination of flight or public safety risk violates fundamental principles of due process. Respondent misapplies § 1225(b) to Petitioner, prolonging his detention without a bond hearing and further violating his due process rights. Therefore, this Court should grant his Petition for Writ of Habeas Corpus or, alternatively, order a bond hearing with procedural protections to prevent the Government's invocation of the automatic stay regulation of 8 C.F.R. § 1003.19(i)(2).

STATEMENT OF FACTS

Petitioner, JORGE GEOVANNI MERCADO ROSALES, entered the United States alone in 2021 and has resided continuously in Utah since that time. He married U.S. citizen Hilaria

Magdalena Delgado on May 20, 2025, and has a U.S. citizen daughter, [REDACTED]

[REDACTED] On February 25, 2026, he filed an I-130 Petition for Alien Relative that remains pending. On April 16, 2026, Petitioner was charged with four felonies in Salt Lake County District Court. ICE detained Petitioner upon his release from state custody on June 11, 2026, transported him first to the Uinta County Jail in Wyoming, then to the California City ICE Detention Facility in California City, California, where he is now held. Soon after, all charges were dismissed on June 16, 2026. Thus, Petitioner seeks a writ of habeas corpus requiring that he be released immediately or, alternatively, be allowed a bond hearing within five days.

Respondent argues that Petitioner is detained under 8 U.S.C. § 1225(b) rather than § 1226(a). As set forth below, the plain text of the statute and the weight of authority in this District require the opposite conclusion. Petitioner is detained under § 1226(a), and both the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment entitle him to a prompt, constitutionally adequate bond hearing.

ARGUMENT

1. Petitioner is Detained Under 8 U.S.C. § 1226(A), not 8 U.S.C. § 1225(B), Because he is not Seeking Admission.

Respondent argues that Petitioner is detained under 8 U.S.C. § 1225(b) as an "applicant for admission," but the plain text of § 1225(b)(2)(A) mandates detention for a noncitizen who is both an "applicant for admission" and is "seeking admission." The statute's construction presumes an inspection at the border: § 1225(a)(3) requires all "applicants for admission" to "be inspected by immigration officers"; § 1225(b)(2)(A) applies where "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." As the Supreme Court has explained, § 1225(b) applies "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to

enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Courts in this District have widely rejected the interpretation of § 1225(b)(2) as applicable to all "applicants for admission" already residing in the United States. *Valencia v. Chestnut*, 809 F. Supp. 3d 1064, 1067 (E.D. Cal. 2025) (noting that "in the Eastern District of California, recent decisions have largely rejected the government's interpretation of Section 1225(b)(2) as applicable to all 'applicants for admission,'" and that "[o]ther district courts have also reached the result that Section 1226(a), not Section 1225(b)(2), provides the appropriate framework for noncitizens already residing in the United States"). *See also, Luis v. Warden of the Mesa Verde Detention Facility*, No. 1:26-cv-01761-JLT-SKO (HC), 2026 U.S. Dist. LEXIS 90010, at *4 (E.D. Cal. Apr. 23, 2026); *Hortua v. Chestnut*, No. 1:25-cv-01670-TLN-JDP, 2025 U.S. Dist. LEXIS 254930 (E.D. Cal. Dec. 9, 2025); *M.R.R. v. Chestnut*, No. 1:25-CV-01517-JLT, 2025 U.S. Dist. LEXIS 230783, at *22–23 (E.D. Cal. Nov. 24, 2025); *Estrada-Samayoa v. Orestes Cruz*, No. 1:25-CV-01565-EFB (HC), 2025 U.S. Dist. LEXIS 230807, at *4 (E.D. Cal. Nov. 24, 2025); *Ramazan M. v. Andrews*, 2025 U.S. Dist. LEXIS 221796, at *23 (E.D. Cal. Nov. 10, 2025); *Donis v. Chestnut*, No. 1:25-CV-01228-JLT, 2025 U.S. Dist. LEXIS 200565, at *30 (E.D. Cal. Oct. 9, 2025). This Court should follow the majority view.

Where the government has previously determined that a noncitizen does not pose a danger or flight risk and has released him, and he has complied with all conditions of release, a noncitizen acquires a protected liberty interest in his continued release unless circumstances change. *Alberto R.C. v. Murray*, 817 F. Supp. 3d 917, 926 (E.D. Cal. 2025); *Dayana M.R. v. Chestnut*, 2026 U.S. Dist. LEXIS 16033, at *12 (E.D. Cal. 2026). Here, Petitioner is not a person previously released on Order of Recognizance from DHS custody; rather, his liberty interest arises from approximately five years of open residence in the U.S., his marriage to a U.S. citizen,

his U.S. citizen child, his pending I-130, and the dismissal of the state charges that occasioned his transfer to DHS custody.

Petitioner is not seeking admission. Section 1225(b) governs noncitizens "seeking admission" as those who present themselves at a port of entry or are apprehended at the border for inspection. A noncitizen who entered without inspection and has been residing in the United States ever since is not "seeking admission" and therefore does not fall under § 1225(b)(2)(A). Petitioner entered the United States in 2021 without inspection and has resided continuously in Utah for nearly five years. DHS encountered and detained him at the Salt Lake County Jail, not at a port of entry or border crossing.

Unlike a noncitizen apprehended at or near the border, Petitioner has been living in the United States since 2021. He married a U.S. citizen on May 20, 2025; his U.S. citizen daughter was born on January 3, 2026; and a Form I-130 that was filed on his behalf on February 25, 2026 and remains pending. Petitioner's detention began after DHS encountered him at the jail. No immigration officer made any determination regarding his admissibility at the border at the time of assumption of custody. Instead, DHS detained him upon his release from state custody and transported him first to the Uinta County Jail in Wyoming, then to the California City ICE Detention Facility where he remains. This detention of a longtime resident encountered in the interior constitutes detention under § 1226(a), not § 1225(b). Thus, Petitioner is undoubtedly entitled to a prompt bond hearing.

2. Respondent's Reliance on *Shaughnessy* and *Thuraissigiam* is Misplaced

Respondent invokes *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), for the proposition that Petitioner "does not possess the right to freedom from immigration detention in any form other than the form

provided by Congress." That argument misreads the cases and ignores the Supreme Court's consistent recognition that the Due Process Clause constrains prolonged immigration detention. *Shaughnessy* addressed the government's exclusion power at the border, not the constitutional limits on prolonged detention of noncitizens already present in the United States. *Thuraissigiam* concerned the substantive admission criteria for arriving noncitizens subject to expedited removal, not procedural safeguards required when the government detains a longtime resident without a bond hearing. Neither case holds that noncitizens living in the interior may be detained indefinitely without any individualized determination of flight risk or danger.

The statement in *Thuraissigiam* that applicants for admission have "only those rights regarding admission that Congress has provided" addresses substantive admission criteria, not procedural safeguards required when the government exercises its detention authority. As the Supreme Court explained in *Carlson v. Landon*, 342 U.S. 524, 538 (1952), "[d]etention is necessarily a part of [the] deportation procedure," but the necessity of detention as part of this process does not eliminate all constitutional constraints on duration and conditions of detention.

The Supreme Court has held that "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." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). That protection extends to noncitizens, including those whose presence is unlawful. *Id.* at 693-94. Here, Petitioner does not claim an absolute right to remain in the United States. He claims only the procedural protections the Constitution requires before the government deprives him of liberty.

3. The Mathews V. Eldridge Framework Compels a Bond Hearing for Petitioner

The Due Process Clause of the Fifth Amendment requires courts to evaluate the adequacy of procedural protections through the balancing test articulated in *Mathews v. Eldridge*, 424 U.S.

319, 335 (1976): (1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards; and (3) the Government's interest, including fiscal and administrative burdens. Applied to Petitioner, all factors weigh decisively in favor of a constitutionally adequate bond hearing.

First, Petitioner has a significant private interest in remaining free from detention. He wishes for his freedom to work, socialize, and otherwise participate in U.S. society where he has established himself. He has an interest in providing for his family – a wife and infant daughter who rely on his role as a husband and a father.

Second, the risk of erroneous deprivation of his liberty is extremely high. A bond hearing would substantially reduce that risk. There, Petitioner could present evidence of his ties to the United States including his marriage to a U.S. citizen; his U.S. citizen child; his pending I-130 immediate-relative petition; his nearly five years of continuous residence in Utah since 2021; his employment history in Utah; and the dispositive fact that all state criminal charges against him were dismissed on June 16, 2026, defeating any dangerousness allegation Respondent may attempt to construct. However, even if an immigration judge were to order Petitioner's release at a bond hearing, DHS could invoke the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) to unilaterally override that release decision without judicial review or any requirement to demonstrate error or the likelihood of success on appeal. Therefore, even with a bond hearing, a risk of erroneous deprivation of liberty remains without additional procedural protections.

Third, the government's fiscal and administrative interests are outweighed by the constitutional stakes and are readily accommodated by a single individualized bond hearing. All Petitioner asks is for an individualized bond hearing with procedural protections. This would not pose a significant financial or administrative burden on the government.

Thus, if the Court orders a bond hearing, it should prohibit DHS from invoking the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2). That regulation permits DHS to unilaterally override an immigration judge's release decision without any requirement to demonstrate error or likelihood of success on appeal. The automatic stay regulation undermines the procedural protections due process requires and renders the bond hearing itself a nullity. Thus, any bond hearing ordered by this Court should include the following protections: (1) the government bears the burden of proof by clear and convincing evidence to justify continued detention; (2) the immigration judge must consider Petitioner's ability to pay and alternatives to detention; and (3) DHS is prohibited from invoking the automatic stay under 8 C.F.R. § 1003.19(i)(2) if bond is granted.

CONCLUSION

Respondent does not dispute that Petitioner is entitled to a bond hearing if he is detained under § 1226(a) and offers an interpretation of the statutory text without reference to the weight of authority from this Court holding that § 1225(b)(2) does not apply in similar circumstances. However, Respondent fails to acknowledge the grave constitutional concerns of detaining, without a bond hearing, a longtime U.S. resident whose state criminal case ended with the dismissal of all charges. The Court should thus grant the writ and declare that Petitioner is detained under § 1226(a), that his detention violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment, and that he must be released immediately or, alternatively, that he be afforded a prompt individualized bond hearing with procedural protections set forth above.

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Grant the petition for writ of habeas corpus;
- 2) Order Respondent to release Petitioner immediately or, in the alternative, order an individualized bond hearing under 8 U.S.C. § 1226(a);
- 3) Declare that Petitioner's continued detention without an individualized determination of flight risk or danger violates the Due Process Clause of the Fifth Amendment;
- 4) Prohibit Respondent from transferring Petitioner from this District without the Court's approval;
- 5) Order an individualized bond hearing at which the Government must justify continued detention by clear and convincing evidence, and the immigration judge must consider Petitioner's ability to pay;
- 6) Prohibit Respondent from filing an automatic stay if bond is granted; and
- 7) Grant any other relief this Court deems just and proper.

RESPECTFULLY SUBMITTED this 27th day of July, 2026.

/s/ SERGIO GARCIA
Attorney for Petitioner, Pro Hac Vice
GARCIA LAW PLLC

/s/ MARIANA L. HANNA
Attorney for Petitioner
LAW OFFICES OF MARIANA L. HANNA

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under the penalty of perjury that the facts set forth in the foregoing Reply to Respondent's Opposition to Petition for Writ of Habeas Corpus are true and correct.

Executed this 27th day of July, 2026.

/s/ SERGIO GARCIA

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