UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

[redacted],

Petitioner,

v. Case No. 1:25-cv-00996 KWR-KK

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; MARY DE ANDA-YBARRA, in her official capacity as Field Office Director of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations for the El Paso Field Office; JAMIE RAYE CARNES, in official capacity as Warden of Torrence County Detention Facility,

Respondents.

PETITIONER'S RESPONSE TO MOTION TO DISMISS WRIT OF HABEAS CORPUS

Pursuant to the Court's Order Setting Briefing Schedule (Doc. 14), Petitioner respectfully submits his Response in opposition to Respondents' Motion to Dismiss filed on November 17, 2025 (Doc. 11). The Court, in line with federal courts across the country, should deny the Motion to Dismiss and grant Petitioner's Writ of Habeas Corpus. As grounds, Petitioner states as follows:

I. Petitioner's final immigration hearing is on November 25, 2025.

Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") on July 10, 2025, inside the Albuquerque Probation and Parole Office. Ex. A, Decl. of [redacted] ¶¶ 7–9, Ex. 4 to *State Ethics Comm'n v. Lucero*, State of New Mexico First Judicial District Court Case No. D-101-CV-2025-02343, Complaint for Declaratory Judgment (filed Sept.

12, 2025), (stating that Petitioner was led into a room inside the Probation and Parole Office on Gold Avenue in Albuquerque, New Mexico, where he was arrested by an ICE agent). The undersigned counsel is not representing Petitioner in his immigration proceedings and does not have a copy of the Notice to Appear—the administrative charging document issued by ICE—for Petitioner, nor any other records created by ICE regarding the circumstances of his apprehension. Respondents are best positioned to furnish the Court with the relevant records. On information and belief, no judicial warrant was issued for Petitioner's arrest by ICE.[1] The sole question before this Court, however, is the lawfulness of Petitioner's detention; Petitioner does not here challenge the circumstances of his apprehension.

As Respondents have already acknowledged, Petitioner is currently in detained removal proceedings before an Immigration Judge. Doc. 11 at 2–3. Petitioner's final hearing in immigration court—known as an "individual" hearing or a "merits" hearing—is scheduled for November 25, 2025. Ex. B.[2] At that hearing, on information and belief, the Immigration Judge will adjudicate Petitioner's pending application for relief from removal. If the Immigration Judge denies that relief, Petitioner will be ordered removed from the United States.[3]

If a noncitizen respondent in immigration court opts to reserve the right to appeal, there is a 30-day appeal window from the date of the removal order during which the respondent cannot

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[1] The text of the Immigration and Nationality Act ("INA") refers to the Attorney General as the government official responsible for immigration. In 2003, Congress amended the INA to identify the Secretary of Homeland Security as the responsible official and stated that any references in the INA to the Attorney General for functions that have been transferred to the Department of Homeland Security "shall be deemed to refer" to the Secretary of Homeland Security. *See* 6 U.S.C. § 557; 8 U.S.C. § 1103(a).

[2] The Court may take judicial notice of information available on websites administered by the federal government. *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 702 n.22 (10th Cir. 2009).

[3] Petitioner stands ready to file a joint status update on or after November 25, 2025, notifying the Court of the status of Petitioner's immigration proceedings at that time.

be removed from the United States. *See* 8 C.F.R. § 1240.15 ("An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision."); 8 C.F.R. § 1241.1 ("An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final … [u]pon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time…."); 8 U.S.C. § 1231(a)(1)(B) (removal of noncitizen from United States may occur as of the "date the order of removal becomes administratively final"). After the expiration of that 30-day window, if the respondent has not filed an appeal to the Board of Immigration Appeals ("BIA"), the removal order issued by the Immigration Judge becomes administratively final and ICE may then execute the removal order. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 534–35 (2021) ("[O]nce the BIA has reviewed the order (or the time for seeking the BIA's review has expired), DHS is free to remove the [noncitizen]…."). Until that time, the removal order is not final.

For so long as Petitioner remains detained in the custody of ICE, the instant habeas petition is not moot. *See Rodas Lopez v. Terry*, No. CV 12-0726 LH/WPL, 2013 WL 12335260, at *1–2 (D.N.M. Mar. 18, 2013) (explaining that "when [a noncitizen] is removed from the United States, then the § 2241 habeas petition becomes moot" unless an exception to the mootness doctrine applies) (cleaned up); *Molina Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF, 2025 WL 3125846, at *5 (D.N.M. Nov. 7, 2025) (finding, where an Immigration Judge issues an order for removal after a habeas petition is filed, the habeas court retains jurisdiction until the removal order becomes administratively final).

II. The Court has jurisdiction to grant the requested relief.

Respondents mischaracterize the nature of Petitioner's challenge. *See generally* Doc. 11 at 7, 11–12. Petitioner has not challenged any removal order, which does not exist. Petitioner has only challenged the legality of his mandatory detention without a bond hearing. The U.S. Supreme Court and the Tenth Circuit have held that jurisdiction is proper in this case.

In *Demore v. Kim*, the U.S. Supreme Court determined that the Immigration and Nationality Act ("INA") jurisdictional bars are not applicable when noncitizens challenge the statutory framework permitting detention without bail. 538 U.S. 510, 517 (2003).

> Section 1226(e) contains no explicit provision barring habeas review, and we think **its clear text does not bar respondent's constitutional challenge to the legislation authorizing his detention without bail**. Having determined that the federal courts have jurisdiction to review a constitutional challenge to § 1226(c), we proceed to review respondent's claim.

Demore, 538 U.S. at 517 (emphasis added). This determination was reaffirmed in *Jennings v. Rodriguez*. 583 U.S. 281, 293 (2018) (noting it would be "absurd" not to give jurisdiction over claims of illegal detention as that would functionally make claims about mandatory detention "unreviewable").

8 U.S.C. § 1252(a)(5) explicitly does not prohibit any "habeas corpus provision." *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 487 (1999). It exclusively governs a final removal order. *Id.* Also, when noncitizens "are not asking for review of an order of removal" but instead are "challenging the decision to … deny them bond hearings," section 1252(b)(9) "does not present a jurisdictional bar." *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (citing *Jennings*, 583 U.S. at 294–95) (cleaned up). In short, the U.S. Supreme Court has repeatedly ruled on the merits of habeas corpus claims by detained noncitizens after announcing their jurisdiction to do so. This Court should follow suit.

Respondents rely on the faulty premise that Petitioner is challenging a removal order—*which he is not, as no removal order exists*—in order to mischaracterize Congressional intent to suggest judicial review is extremely narrow.[4] Doc. 11 at 8. In actuality, when Congress added section 1252(b)(9) to the INA, it stated "nothing in the amendment would preclude habeas review over challenges to detention"—which is precisely the claim here. *Kong v. United States*, 62 F.4th 608, 614 (1st Cir. 2023) (citing H.R. Rep. No. 109-72, at 175 (2005) (Conf. Rep.)) (cleaned up). The Tenth Circuit found that "Congress did not intend the zipper clause to cut off claims that have a tangential relationship with pending removal proceedings. ... A claim only arises from a removal proceeding when the parties in fact are challenging removal proceedings." *Mukantagra v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113, 1116 (10th Cir. 2023) (cleaned up). Courts in the Tenth Circuit have also rejected Respondents' argument, correctly pointing out that these claims are "legal in nature" as they challenge conduct that is not related to removal proceedings. *Garcia Cortes*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *2 (D. Colo. Sept. 16, 2025) (citing *Mukantagara v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113, 1116 (10th Cir. 2023)); *see also Gutierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v.*

[4] Respondents appear to erroneously assert that Petitioner is detained under 8 U.S.C. § 1225(b)(1). Doc 11 at 2. That subsection relates to individuals placed in "expedited removal," which is an entirely different immigration posture than Petitioner's. Petitioner is in standard removal proceedings before an Immigration Judge, not the fast-track abbreviated process of expedited removal. *See* 8 U.S.C. § 1229a. Thus, Respondents' arguments as to 8 U.S.C. § 1252(e)(2) are inapplicable, because Petitioner challenges no determination made pursuant to expedited removal proceedings. Section 1252(e)(2) in no way precludes this Court from adjudicating Petitioner's habeas petition. As to Section 1252(e)(5), likewise, because Petitioner is not in expedited removal proceedings, the Cout's scope of inquiry is in no way limited to whether an expedited removal order has been issued for Petitioner.

Baltasar, No. 25-cv-02955, ECF 18 (D. Colo. Oct. 20, 2025). Petitioner requests that the Court continue the clear trend in finding that jurisdiction is proper in this case.

III. The Court should find that Petitioner is detained pursuant to 8 U.S.C. § 1226(a), making his detention discretionary, not mandatory.

As alleged in Petitioner's Verified Petition for Writ of Habeas Corpus, this case is governed by the detention provisions in § 1226(a). Respondents' incorrect jurisdictional arguments regarding the plain-text reading of 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) fight against a strong headwind of court orders that have granted *habeas* relief after rejecting those arguments.[5] In several recent cases, this Court has separately found that § 1226 governs, consistent with the findings of a majority of district courts addressing the same issue. *See, e.g.*, *Pu Sacvin*, No. 2:25-cv-01031-KG-JFR, 2025 WL 3187432, at *3 ("Consistent with the majority of district courts to address the issue, this Court finds that § 1226 governs here…. The Government's reading of § 1225

[5] *See e.g.*, *Pu Sacvin v. de Anda-Ybarra*, No. 2:25-cv-01031-KG-JFR, 2025 WL 3187432 (D. N.M. Nov. 14, 2025); *Molina Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF, 2025 WL 3125846 (D. N.M. Nov. 7, 2025); *Pastrana-Saigado v. Lyons*, No. 2:25-cv-00950-MLG-LF, Doc. 24 at 1-2 (D. N.M. Oct. 24, 2025); *Cortez-Gonzalez v. Noem*, No. 2:25-cv-00985-MLG-KK, Doc. 16 at 1-2 (D. N.M. Oct. 24, 2025); *Garcia Domingo v. Castro*, No. 1:25-cv-00979-DHU-GLF, --F.Supp.3d, 2025 WL 2941217, at *4-5 (D. N.M. Oct. 15, 2025); *Velasquez Salazar v. Dedos*, No. 1:25-cv-835, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, *3 (D. Colo. Sept. 16, 2025); *Gutierrez v. Baltazar*, No. 25-cv-2720, 2025 WL 2962908, *8 (D. Colo. Oct. 17, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, *8 (D. Colo. Oct. 22, 2025); *Jose J.O.E. v. Bondi*, --- F. Supp.3d ----, No. 25-cv-3051, 2025 WL 246670 (D. Minn. Aug. 27, 2025); *Vasquez Garcia et al. v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Doe v. Moniz*, No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Francisco T. v. Bondi*, --- F. Supp.3d ----, No. 25-cv3219, 2025 WL 2629839 (D. Minn. Sept. 5, 2025). *See also Palma Perez v. Berg*, --- F.Supp.3d --- , 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921, 2025 WL 2533110 (N.D. Cal Sept. 3, 2025); *Lopez Santos v. Noem*, 25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Lamidi v. FCI Berlin*, No. 25-cv-297, ECF 14 (D. N.H. Sept. 15, 2025); *Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, ECF 31 (D. N.J. Sept. 26, 2025).

contradicts the statute's plain text."); *see also Salazar*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729, at *9 (granting petitioner's habeas challenge to petitioner's classification under § 1225 instead of § 1226(a)); *Garcia Domingo*, No. 1:25-cv-00979-DHU-GLF, -- F. Supp. 3d --, 2025 WL 2941217, at *4–5 (finding that petitioner had established a substantial likelihood of success on the merits of his claim that he had been erroneously classified as an "applicant for admission" subject to § 1225); *Cortez-Gonzalez*, No. 2:25-cv-00985-MLG-KK, Doc. 16 at 1–2 (ordering respondents to schedule individualized bond hearing pursuant to § 1226(a)). This Court should follow the plain-text reading of the statutes, the barrage of court orders across the nation, and the decades of precedent in finding that Petitioner is currently detained pursuant to section 1226(a).

Finally, Respondent relies heavily on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025), to claim "Petitioner is appropriately classified under § 1225[.]" Doc. 11 at 5–6, 10–11. Yet, *Yajure Hurtado* is a nonbinding agency decision, which this Court can and should decline to follow. Agency interpretations carry only persuasive value. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024). As addressed above, the majority of jurisdictions have rejected *Yajure Hurtado* as inconsistent with the plain language of § 1226. *See Molina Ochoa*, 2025 WL 3125846, at *8 (recommending rejection of the holding of *Yajure Hurtado*, in keeping with "numerous other district courts"). Accordingly, this Court too should reject *Yajure Hurtado* and find that Petitioner is detained pursuant to § 1226(a), making his detention discretionary, not mandatory.

IV. Conclusion

For these reasons, Petitioner respectfully requests that the Court promptly adjudicate his habeas petition. Unless the Court wishes to hear from the parties at oral argument, Petitioner's

position is that his petition can be decided on the pleadings once briefing of the Motion to Dismiss is complete.[6]

The proper remedy in this case is two-fold. First, the Court should deny Respondents' Motion to Dismiss as contrary to the plain text of § 1226(a), consistent with the majority of jurisdictions reaching the same result. Second, Petitioner respectfully requests the Court grant Petitioner's Verified Petition for Writ of Habeas Corpus by ordering his immediate release or conducting a prompt, constitutionally adequate bond hearing where the government bears the burden to justify continued detention.[7]

Respectfully submitted,

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[6] Because Respondent Ortiz, as acting Warden of the Torrance County Detention Facility, admits that she "has no involvement in Petitioner's immigration proceedings and no independent authority to release Petitioner," and has joined the Respondents' Motion to Dismiss in full, Petitioner understands that Respondent Ortiz does not seek to further brief the instant Motion to Dismiss separately. Doc. 13.

[7] It is within this Court's equitable power to conduct a bond hearing for Petitioner. *See, e.g.*, *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 455, 477 (D. Mass. 2010) (holding that "it is most appropriate that the [habeas] court conduct the bail hearing" to avoid a "circuitous and potentially lengthy process" and to "serve[] the historic purpose of the writ, namely, to relieve detention by executive authorities without judicial trial") (cleaned up). At any such bond hearing, the Government should bear the burden of proof. *See Molina Ochoa*, 2025 WL 3125846, at *11–13 (recommending in a similar case that the Court follow *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept, 17, 2025), and order that the Government bear the burden at a § 1226(a) bond hearing); *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 693 (D. Mass. 2018) ("With the guideposts of *Zadvydas* and *Demore*, this Court holds that the Constitution requires placing the burden of proof on the government in § 1226(a) custody redetermination hearings.").

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2025, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Rebecca Sheff
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