IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 1:26-cv-00855-NYW

ISAIAS RAFAEL MORENO-GUERRERO,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,
TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement,
GEORGE VALDEZ, in his official capacity as Field Office Director of the ICE Enforcement and Removal Operations Denver Field Office,
JUAN BALTAZAR,[1] in his official capacity as Warden, Aurora Contract Detention Facility,
PAMELA BONDI, in her official capacity as Attorney General of the United States,
THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and
THE BOARD OF IMMIGRATION APPEALS,

Respondents,

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND ORDER TO SHOW CAUSE (ECF No. 4)

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 4, "Order"), directing them to respond to the Petition for Habeas Corpus (ECF No. 1,

[1] Juan Baltazar is the current Warden of the Aurora Contract Detention Facility, and George Valdez is the current Denver Field Office Director, they are hereby automatically substituted as parties in this case in their official capacities, in accordance with Federal Rule of Civil Procedure 25(d).

"Petition"). The Court ordered Petitioner (1) to serve Respondents with a copy of the Petition, any accompanying papers, and a copy of the Order, via e-mail and overnight mail on or before March 9, 2026; and (2) to promptly file proof of such service on the docket by March 11, 2026. ECF No. 4, at 3. The Court ordered Respondents to respond to the Petition and to show cause as to why the Court should not grant it within seven days of service. ECF No. 4, at 3. Service was made upon the U.S. Attorney's Office via e-mail on March 9, 2026, and via United States Postal Service (USPS) Priority Mail on March 11, 2026; thus, Respondents' response deadline is March 18, 2026, and this response is timely.[2]

I. Petitioner was an applicant seeking admission at the time ICE detained him in December 2025 and remains in that status presently.

Petitioner asserts he was encountered and paroled into the United States on or about September 4, 2022. *See* ECF No. 1, at 2 and Exh. 2. He concedes, however, that he entered the United States without inspection. *See* ECF No. 1, at 11. Because Petitioner was only paroled into the United States for a specific period of time – September 4, 2022, until November 2, 2022 – his parole automatically expired without written notice at the end of that period. *See* ECF No. 1, at Exh. 2; *see* 8 C.F.R. § 212.5(e)(1) ("[p]arole shall be automatically terminated without written notice . . . at the

[2] Service is effective as of the date it is "made upon" Respondents in the manner specified in the Court's Order—that is, the date it is received. *See, e.g.*, C. Wright *et al.*, 4B Fed. Prac. & Proc. Civ. § § 1346 (4th ed.) ("Time for Serving and Filing") ("Federal officers and employees sued in their official capacities have sixty days from the date service is *made upon* the United States to serve their response."); *A.T. v. Baltazar et al.*, No. 26-cv-00925-NYW, ECF No. 11 at 2 n.2 (D. Colo. Mar. 6, 2026) ("Service by mail of a summons and complaint is effective *upon receipt*, . . . not upon mailing." (citing *Klein v. Williams*, 144 F.R.D. 16, 19 (E.D.N.Y. 1992) (emphasis added)).

expiration of the time for which parole was authorized"). Further, the Department of Homeland Security issued a notice to appear for removal proceedings to Petitioner and served him with that notice on December 14, 2025.[3] Service of the Notice to Appear also terminated Petitioner's parole status. *See* 8 C.F.R. § 212.5(e)(2)(i) ("[w]hen a charging document is served on [an] alien, the charging document will constitute written notice of termination of parole, unless otherwise specified"). Finally, parole of an alien into the United States shall not be regarded as an admission of the alien. *See* 8 U.S.C. § 1182(d)(5)(A). Therefore, Petitioner's temporary, discretionary parole into the United States did not at any time change his status as an "applicant for admission" for § 1225(b)(2) purposes.

In authorizing discretionary parole into the United States under § 1182(d)(5)(A), Congress specifically prescribed that

> such parole shall not be regarded as admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

Id. Accordingly, after Petitioner's parole terminated, he reverted to the same status he held at the time parole was initially granted: an alien who unlawfully entered the United States at a time and place other than as designated by the Secretary of Homeland Security.[4] Therefore, after Petitioner's parole terminated, and continuing through the

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[3] A copy of the Notice to Appear served on Petitioner is attached as Exhibit A hereto.
[4] A copy of the I-213 form documenting Petitioner's unlawful entry into the United States at a time and place other than as designated by the Secretary of Homeland Security is attached as Exhibit B hereto.

present date, Petitioner was and is present in the United States without having been admitted and is an applicant for admission subject to detention pursuant to § 1225(b)(2).

That Petitioner was not immediately detained following the termination of his parole on November 2, 2022, does not preclude his detention under § 1225(b)(2). *See Nielsen v. Preap*, 586 U.S. 392, 411 (2019) ("[A] statutory rule that officials "'shall' act within a specified time" does not by itself "preclude action later." (alteration and citation omitted)). The United States' power over aliens on the "threshold of entry" does not change because an alien sets foot on United States' soil. *Dep't of Homeland Sec'y v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Nor does the power change because an alien is "paroled elsewhere in the country for years pending removal"; they, too, are "'treated' for due process purposes 'as if stopped at the border.'" *Id.* at 139 (citations omitted); *see Kaplan v. Tod*, 267 U.S. 228 (1925) ("in theory of law," an inadmissible alien who immigration officers permit to reside in the United States for nine years nonetheless remains "at the boundary line" and for purposes of due process has "gained no foothold in the United States" for purposes of due process").

II. Petitioner is properly detained pursuant to § 1225(b)(2).

The central legal issue presented in this case thus concerns whether a noncitizen who is present in the United States and has not been admitted is subject to mandatory detention by U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1225(b), or whether such a noncitizen is entitled by § 1226(a) to seek a bond hearing. This issue is not materially different from an issue this Court has resolved in a prior ruling in another case. *See, e.g., Caballero v. Baltazar, et al.,* No. 25-cv-03120-NYW.

Respondents respectfully disagree with that ruling. But to conserve resources and expedite this Court's consideration of this case, while preserving legal arguments and reserving all of Respondents' rights including the right to appeal, Respondents submit this abbreviated response.

Respondents' position is that Petitioner is, therefore, subject to mandatory detention under § 1225(b) under the interpretation of that provision adopted by the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502–08 (5th Cir. 2026). This position is further supported by *Jennings v. Rodriguez*, 583 U.S. 281 (2018), where the Supreme Court explained that a noncitizen "who . . . 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). The Court then explained that *all* "applicants for admission" are subject to detention under either 8 U.S.C. § 1225(b)(1) or § 1225(b)(2)—both of which *require* detention. *See id.* ("Section 1225(b)(2) . . . serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)."); *id.* at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded"). Respondents submit that *Jennings* supports their position that all "applicants for admission"—who include noncitizens, like Petitioner, who are present in the United States and have not been admitted—are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

The Fifth Circuit and some district courts in this circuit have agreed with Respondents' interpretation of the statute. *See, e.g.*, *Buenrostro-Mendez*, 166 F.4th at 502–08; *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26,

2025). Respondents are aware, however, that the Fifth Circuit's majority opinion in *Buenrostro-Mendez* is not binding on this Court and that many courts have rejected the majority's reasoning in *Buenrostro-Mendez*. *See Bautista v. Noem, et al.*, No. 25-cv-00272-NYW at 3, n. 3. The Tenth Circuit has not ruled on this issue. A decision in this district rejecting Respondents' position on this issue has been appealed to the Tenth Circuit. *See Mendoza Gutierrez v. Baltazar*, Civil Action No. 25-cv-02720-RMR (D. Colo.), *appeal docketed*, No. 25-1460 (10th Cir. Dec. 15, 2025). That appeal remains pending.

Respondents acknowledge that until the Tenth Circuit rules on this issue, this Court's prior ruling on this issue would lead the Court to reach the same result here if the Court adheres to that decision, as the facts of this case are not materially distinguishable from that case for purposes of the Court's decision on the legal issue of whether Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Thus, while Respondents do not consent to issuance of the writ and reserve the right to appeal, to expedite disposition of this case, Respondents hereby rely upon, and incorporate by reference, the legal arguments Respondents presented on this issue in *Mendoza Gutierrez v. Baltazar*, Civil Action No. 25-cv-02720-RMR, ECF No. 26 at 10–19.[5]

The Petition contends that Petitioner should be viewed as detained under 8 U.S.C. § 1226(a) rather than § 1225(b). *See* ECF No. 1, at *passim*. If the Court agrees and determines that Petitioner is detained under § 1226(a) and grants the petition, the

[5] A copy of that brief is attached as Exhibit C hereto.

appropriate relief is for the Court to direct a bond hearing be conducted pursuant to § 1226(a) before an immigration judge. In particular, the Court should not order further relief beyond directing that Petitioner be granted a bond hearing under § 1226(a). It should not order immediate release, as multiple decisions in this district have recognized.[6]

This Court's ruling on the Section 1225(b)(2)(A) issue in this case should resolve this habeas petition. If the Court grants the petition on this ground, it should decline to address additional arguments. *See, e.g.*, *Leyva Ramirez*, 2026 WL 318989, at *3–4 ("The Court's analysis begins and ends with Count One, the statutory claim. . . . Having granted Mr. Leyva Ramirez relief as to Count One, the Court does not reach his other claims at this time."); *see also INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."). The Court should also not grant any other prospective injunctive relief. *See Montanez de la Cruz*, No. 26-cv-00360-PAB, 2026 WL 439217, at *3–5. For example, the Court should not preemptively direct the immigration judge or ICE to follow particular procedures; if the Court

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[6] *See, e.g.*, *Montanez de la Cruz v. Baltazar et al.*, No. 26-cv-00360-PAB, 2026 WL 439217, at *3 (D. Colo. Feb. 17, 2026) ("[B]ecause § 1226 authorizes detention, the Court does not find that petitioner's immediate release is an appropriate remedy. Instead, the Court will order that a bond hearing be conducted."); *Leyva Ramirez v. Baltasar et al.*, No. 26-cv-00199-NYW, 2026 WL 318989, at *4 (D. Colo. Feb. 6, 2026) ("[A] bond hearing before an immigration judge is sufficient to vindicate the procedural protections afforded by § 1226(a)."); *Perez Zepeda v. Hagan et al.*, No. 25-cv-3789-SKC-STV, ECF No. 18, at 17 (D. Colo. Jan. 27, 2026) ("[Section] 1226 does not require release—it provides DHS the discretion to grant a noncitizen release on bond. . . . Additionally, the Court concludes that an immigration judge is in a better position to consider whether Petitioner poses a flight risk and a danger to the community.").

nevertheless does so, it should specify what procedures are required and the legal basis for requiring them. If the Court wishes to receive additional briefing on any other issue, Respondents request that the Court issue an order directing Respondents to address such issues.

Finally, Respondents submit that if the Court grants the petition and determines that Petitioner is entitled to a bond hearing under 8 U.S.C. § 1226(a), the Court should order that Respondents conduct such a bond hearing within seven days and should direct Respondents to file a status report within seven days of the bond hearing, confirming that it was held.

Dated: March 18, 2026.

PETER MCNEILLY
United States Attorney

s/ Adam D. McConney
Adam D. McConney
Assistant United States Attorney
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0100
Email: adam.mcconney@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on March 18, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all persons who have registered for such notifications.

s/ Adam D. McConney
U.S. Attorney's Office