IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00993-SBP

SABINO PROCOPIO DIAZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility,
GEORGE VALDEZ, Acting Denver Field Office Director of Enforcement and Removal Operations, Immigration and Customs Enforcement
KRISTI NOEM, in her official capacity as Secretary, Department of Homeland Security,
PAMELA BONDI, in her official capacity as U.S. Attorney General,
TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement,

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), directing them to respond to the habeas petition.

The Court ordered Petitioner to serve Respondents by email *and* overnight mail on or before March 13, 2026. ECF No. 4. The Court ordered Respondents to respond "[w]ithin seven days of service." *See id.* Email service was made upon the U.S. Attorney's Office on March 13, 2026. Petitioner's certificate of service, dated March 13, 2026, indicated that Respondents were also "served . . . via U.S. Priority Mail Overnight Express with assigned tracking number 9470130109355014824848." *See* ECF No. 5. The U.S. Attorney's Office did not receive

service by mail until March 16, 2026. *See* Exhibit A, USPS Tracking Results for 9470130109355014824848 (showing delivery on March 16, 2026). Thus, because service was not complete in the manner specified by the Court's order until March 16, Respondents' response deadline is today, March 23, and this response is timely.[1]

The central legal issue presented in this case 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 Merchan-Pacheo v. Noem et al.*, Case No. 25-cv-03860-SBP, ECF No. 14 (D. Colo. 2026). 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.

When Petitioner was detained by ICE, he was present in the United States without having been admitted. *See* ECF No. 1 ¶ 44. 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

[1] 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." (emphasis added)); *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)).

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"—including 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). Many others have not, including this Court, as noted above. 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.[2]

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 ¶ 35. If the Court agrees and determines that Petitioner is detained under § 1226(a) and grants the petition, the 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.[3]

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*

---

[2] A copy of that brief is attached as Exhibit B hereto.

[3] *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.").

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. 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.[4]

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.

Respectfully submitted March 23, 2026.

PETER MCNEILLY
United States Attorney

s/ Alexandra J. Berger
Alexandra J. Berger
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: alexandra.berger@usdoj.gov
Counsel for Respondents

[4] For example, Petitioner argues that the Court should order Respondents to provide him a bond hearing under § 1226(a) pursuant to the declaratory judgment issued as part of a partial final judgment in *Moldonado Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, *appeal filed*, Case No. 25-7958 (9th Cir. filed Dec. 19, 2025). *See* ECF No. 1 ¶¶ 46-51. *Moldonado Bautista* addressed whether class members were unlawfully detained under 8 U.S.C. § 1225(b)(2). Instead of addressing whether Petitioner is part of the *Maldonado Bautista* class—which decision is currently on appeal to the Ninth Circuit—the Court should simply address the proper scope of § 1225(b)(2) based on the analysis set forth above. However, should the Court wish to receive additional briefing on the class issue, Respondents request that the Court issue an order directing Respondents to address it in supplemental briefing.

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Alexandra J. Berger
U.S. Attorney's Office