IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01069-SKC

KELIA DANIELA BRACHO-CORTEZ,

Petitioner,

v.

PAMELA JO BONDI, in her official capacity as Attorney General of the United States;
MARKWAYNE MULLIN, in his official capacity as Secretary of Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement; and
GEORGE VALDEZ, in his official capacity as the Acting Field Office Director of the Denver Field Office, Enforcement and Removal Operations, Immigration and Customs Enforcement.

Respondents.

CONSOLIDATED RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND ORDER TO SHOW CAUSE (ECF Nos. 5, 7), AND MOTION FOR TEMPORARY RESTRAINING ORDER (ECF No. 2)

Respondents hereby respond to the Court's Orders to Show Cause (ECF Nos. 5, 7), directing them to respond to the Petition, ECF No. 1, and Motion, ECF No. 2.

The Court ordered service on Respondents via e-mail and overnight mail on or before March 20, 2026. *See* ECF No. 5. The Court ordered Respondents to respond within 7 days of service by email and mailing. *Id.* Service was not made upon the U.S. Attorney's Office by mailing until March 30, 2026;[1] thus,

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[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*

Respondents' response deadline would be April 6, 2026, pursuant to ECF No. 5.

However, without conferring with counsel for Respondents regarding any relief sought from the Court, *see* Standing Order for Civil Cases (C)(1), and without filing a motion for relief, counsel for Petitioner emailed this Court, requesting that the Court immediately grant the Petition and Petitioner's release on the basis that Respondents have not timely responded to the Petition. *See, e.g.*, ECF No. 7 (detailing dispute regarding service); *see also* Civ. Practice Standard 7.1A(5) ("All requests for the Court to take distinct actions must be contained in separate, written motions.").

On March 30, 2026, the Court ordered Respondents to respond to the Petition by April 1, 2026. *See* ECF No. 7. This response is thus timely.

As discussed below, because Petitioner has failed to name Petitioner's direct custodian (the Warden of the Denver Contract Detention Facility, Juan Baltazar) as a respondent in this matter, the Court cannot grant Petitioner's requested relief unless and until Petitioner properly names her custodian as a respondent.

On the merits of the Petition, Petitioner was apprehended close to the border very shortly after crossing into the United States illegally in November 2023. As such, she was an applicant for admission who was seeking admission and was

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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)).

subject to mandatory detention under 8 U.S.C. § 1225(b). Customs and Border Protection ("CBP") issued a Notice to Appear and released Petitioner, subject to ICE's Alternatives to Detention ("ATD") program. Because Petitioner remains subject to mandatory detention under § 1225(b), her detention is lawful, and the Petition and Motion should be denied.

BACKGROUND

Petitioner was born in Venezuela and is a citizen of Columbia who entered the United States via the U.S. Mexico border in or near El Paso, Texas on November 30, 2023. *See* Exhibit 1, Declaration of M. Lopez ("Lopez Decl.") ¶¶4-5. CBP agents apprehended Petitioner close to the U.S.-Mexico border very shortly after she crossed it illegally. *Id.* ¶ 5. Petitioner did not present herself at a port of entry and was not inspected and admitted or paroled into the United States. *Id.*

That same day, CBP determined that Petitioner was inadmissible pursuant to § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated). *Id.* ¶ 6. On December 1, 2023, DHS issued an NTA, initiating removal proceedings under U.S.C. § 1229a before Executive Office for Immigration Review ("EOIR"), charging Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated). *Id.* ¶ 7. On December 2, 2023, Petitioner was released from physical custody and enrolled in ICE's ATD program, which provides case-

management services and ensures compliance with ICE's reporting requirements for non-detained individuals. *Id.* ¶ 8.

On February 12, 2026, Petitioner was encountered by ICE officers. *Id.* ¶ 10. Petitioner was arrested and detained pursuant to a warrant, pending resolution of her removal proceedings. *Id.* ICE determined that Petitioner had accumulated several ATD violations and thus terminated her enrollment in the program. *Id.*

On February 25, 2026, Petitioner admitted the allegations and conceded the charge of removal in the NTA. *Id.* ¶ 12.

ARGUMENT

In short, Petitioner contends that her detention violates (1) the Immigration and Nationality Act ("INA"), and (2) substantive and procedural due process. *See* ECF No. 1 at 15-25. Both arguments fail.

A. The Court cannot grant relief where Petitioner has not named the person having custody over Petitioner as a respondent.

In the Petition, Petitioner has named four respondents: Pamela Bondi, Markwayne Mullin, Todd Lyons, and George Valdez. *See* ECF No. 1 at 1, 11-12. But Petitioner has not named as a respondent Juan Baltazar, the Warden of the Denver Contract Detention Facility where Petitioner is detained. *See* ECF No. 1 at 10, ¶ 27 ("Upon information and belief, she is being held in the Denver Contract Detention Facility, which lies in the District of Colorado.").

Pursuant to 28 U.S.C. § 2243, a petition for writ of habeas corpus "shall be directed to the person having custody of the person detained." The Supreme Court has explained that, under § 2243, "the default rule is that the proper respondent is

the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004); *see also id.* at 439 ("In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent."). Courts in Colorado have likewise enforced this requirement in the immigration habeas context. *See, e.g., Fuentes v. Choate*, No. 24-cv-01377-NYW, 2024 WL 2978285, at *9 (D. Colo. June 13, 2024) (requiring petitioner to name the warden with physical control over the petitioner, not immigration officials such as the Acting Field Office Director).

Accordingly, because Petitioner has not named Juan Baltazar (the person having custody of Petitioner) as a respondent in this matter, the Court cannot grant Petitioner's requested relief. *See* ECF No. 1 at 27-28. The Court should thus deny the Petition and Motion, without prejudice, to amending or refiling the Petition to include Juan Baltazar as a respondent.[2]

B. Petitioner is subject to mandatory detention under § 1225(b)(2).

To the extent Petitioner does amend or refile the Petition to include the proper respondent, Petitioner's challenge to the statutory basis for his detention is unavailing. In the INA, Congress determined when certain aliens may or must be detained or removed. As relevant here, 8 U.S.C. § 1225 governs detention and removal of "applicants for admission." An applicant for admission is an "alien

[2] On March 31, 2026, undersigned counsel emailed counsel for Petitioner to inform them of this deficiency. On April 1, 2026, counsel for Petitioner informed undersigned counsel that they disagreed with Respondents' position, and that they were not in a position to amend the Petition prior to this response.

present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . . ." 8 U.S.C. § 1225(a)(1). Section 1225(b)(1) governs the inspection and detention of certain aliens who are arriving and inadmissible on various specified grounds. *See* 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). Section 1225(b)(2) is a "catchall" provision that applies to those applicants for admission, like Petitioner, who are not covered by Section 1225(b)(1). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under § 1225(b)(2)(A), any "applicant for admission" who is "seeking admission" into the United States and who an immigration officer determines is "not clearly and beyond a doubt entitled to be admitted" "shall be detained for" removal proceedings under 8 U.S.C. § 1229a. For aliens subject to either § 1225(b)(1) or § 1225(b)(2)(A), detention is mandatory during removal proceedings. Section 1225(b) does not provide for bond hearings during removal proceedings.

Petitioner plainly falls into the statutory definition of an "applicant for admission." She entered the United States without admission in November 2023 (ECF No. 1 at 1; Lopez Decl. ¶5), and she is therefore an "alien present in the United States who has not been admitted . . . ." 8 U.S.C. § 1225(a)(1). Furthermore, because she was detained very shortly after she entered the United States close to the border, Lopez Decl. ¶¶ 4-6, she is differently situated than other noncitizens who were *not* apprehended shortly after entry, but rather, were encountered within the United States after living in the country for years. *Id.* Indeed, as Courts in this district have held, § 1225(b)(2) "applies to noncitizens

'seeking admission' and inspected while trying to enter the country." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *6 (D. Colo. Oct. 17, 2025); *Depelian v. Baltazar*, Case No. 25-cv-03765-SKC-TPO, ECF No. 18 (D. Colo. Jan. 20, 2026) (Crews, J.) (Petitioner who "presented himself at the border … was seeking admission into the United States" and thus an "application for admission"); *see also Maldonado Bautista v. Santacruz*, No. 25-cv-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025) (nationwide class defined to *exclude* noncitizens who were "apprehended upon arrival"). In sum, Petitioner is an "applicant for admission" under § 1225(b).

Respondents' position is that Petitioner, as a noncitizen "who . . . 'is present' in this country but [who] 'has not been admitted,' is treated as 'an applicant for admission" subject to mandatory detention under § 1225(b)(2). *Jennings*, 583 U.S. at 287. But in any event, Petitioner was plainly "seeking admission" at the time she was apprehended very soon after crossing the border into the United States. *See, e.g.*, *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 781-82 (E.D. Mich. 2025) (distinguishing between noncitizens who were first apprehended after being in the country for years from those who (like Petitioner) were "'arriving to the country' or found at the border or a port of entry"); *Buenrostro-Mendez v. Bondi*, 166 F. 4th 494, 498, 508 (5th Cir. 2026) (Douglas, J., dissenting) (dissent to the Fifth Circuit's opinion in the government's favor emphasizing this distinction and arguing that noncitizens detained when they have already been present in the interior of the country should not be treated "on the same terms as if they were apprehended at

the border"). Indeed, Petitioner admits that she was seeking admission upon her entry into the United States. *See* ECF No. 1 at 3 ("Ms. Bracho Cortez was 'seeking admission' at the border in December of 2023 ....").

That Petitioner was originally released pursuant to ICE's ATD program does not alter that analysis. *Cf. Sierra v. INS*, 258 F.3d 1213, 1218 (10th Cir. 2001) (petitioner who was "physically present in the United States for more than twenty years" was nonetheless "legally considered to be detained at the border and hence as never having effected entry into this country")). Section 1225(b)(2) does not make detention during removal proceedings contingent on release or parole. Rather, the text of the statute and the facts here would suggest that Petitioner should not have released *at all* in December 2023, and that by re-detaining her in February 2026, ICE was simply rectifying the situation and detaining her as § 1225(b)(2) requires. *See Nielsen v. Preap*, 586 U.S. 392, 411 (2019) ("[A]s we have held time and again, an official's crucial duties are better carried out late than never." (citing *Sylvain v. Attorney General of U.S.*, 714 F.3d 150, 158 (3d Cir. 2013) (collecting cases)); *see also Buenrostro-Mendez*, 166 F.4th at 506 ("[The fact] that prior Administrations decided to use less than their full enforcement authority under § 1225(b)(2)(A) does not mean they lacked the authority to do more.").

C. Petitioner's detention does not violate due process.

Petitioner's due process arguments fail because she is properly detained under § 1225(b), which does not provide for bond hearings during removal proceedings.

The political branches have broad power in the realm of immigration. The Supreme Court "has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citing cases). That prerogative flows from the political branches' broad power over immigration, which is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004).

Thus, "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citation omitted); *accord Sierra*, 258 F.3d at 1218 (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). More recent Supreme Court precedent makes clear that this principle applies to individuals like Petitioner, who are detained shortly after unlawfully entering the country. *See DHS v. Thuraissigiam*, 591 U.S. 103, 107, 114 (2020) (habeas petitioner who "attempted to enter the country illegally" but was apprehended approximately 25 yards into the United States "has no entitlement to procedural rights other than those afforded by statute"). As this Court recently explained, "[t]his does not mean that an inadmissible arriving alien has no due-process rights, but 'rather, the applicable statutory process shapes [his] procedural due-process rights.'" *Doe v. Bondi et al.*, No. 1:25-cv-02712-DDD-SBP, 2025 WL 3516292, at *5 (D. Colo. Nov. 4, 2025) (quoting *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202,

1212 (D.N.M. 2020), in which the court concluded that petitioner who was detained under 8 U.S.C. § 1225(b)(2)(A) "has no statutory right to release or a bond hearing" and thus "has no due-process right to the relief requested")).

As discussed above, Petitioner is subject to mandatory detention under § 1225(b)(2). This Court has recognized that § 1225(b) does not "implicitly give detained aliens the right to periodic bond hearings during the course of their detention." *Doe*, 2025 WL 3516292, at *5 (citing *Jennings*, 583 U.S. 281). Nor is detention under § 1225(b) pending removal proceedings indefinite. Such detention has "a definite termination point—the conclusion of removal proceedings." *Id.* at *5 (citing *Jennings*, 583 U.S. at 299). Relatedly, "[i]nadmissible arriving aliens like the petitioner do not have a cognizable liberty interest in being released on parole as a matter of procedural due process." *Id.* (citing *Sierra*, 258 F.3d at 1217).

In light of the statute's mandatory-detention provision, and applying the principles of *Jennings* and *Sierra*, "procedural due process does not afford inadmissible arriving aliens subject to prolonged detention a right to release or a bond hearing prior to the conclusion of removal proceedings." *Doe*, 2025 WL 3516292, at *6. Petitioner's due-process claim therefore fails.[3]

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[3] Petitioner also raises a Fourth Amended claim, alleging she was arrested without a warrant. *See* ECF No. 1 at 4, . As an initial matter, she was arrested pursuant to a warrant. Lopez Decl. ¶ 10. In any event, Petitioner cannot obtain habeas relief (*i.e.*, release from detention) based on this challenge. In *Min-Shey Hung v. United States*, 617 F.2d 201 (10th Cir. 1980), the Tenth Circuit addressed the viability of a habeas challenge to an immigration arrest. The Tenth Circuit held that a habeas petitioner could not bring a challenge to his immigration arrest during deportation proceedings where a probable cause determination has been made: "The deportation proceedings thus commenced must be allowed to proceed without the intervention of proceedings in the district court challenging the arrest." *Id.* at 202. Instead,

D. Petitioner has not met her heavy burden to show entitlement to a TRO.

In the Motion, Petitioner seeks emergency injunctive relief. A court may enter such relief only after the moving party proves "(1) that she's substantially likely to succeed on the merits, (2) that she'll suffer irreparable injury if the court denies the injunction, (3) that her threatened injury (without the injunction) outweighs the opposing party's under the injunction, and (4) that the injunction isn't adverse to the public interest." *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (internal quotation marks omitted).

When a movant seeks a "disfavored injunction," she must meet a heightened standard. *Id.* at 797. An injunction is disfavored when "(1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win." *Id.* When seeking a disfavored preliminary injunction, the moving party must make a "strong showing" as to the likelihood-of-success-on-the-merits and the balance-of-harms factors. *Id.*

The Motion seeks a disfavored injunction. Petitioner requests that the Court order Respondents to immediately release her from detention—a request to change the status quo. *See* ECF No. 2 at 17-18. In the alternative, Petitioner requests that Respondents provide her with a bond hearing—a request that mandates action. *Id.* Thus, Petitioner must make a strong showing on both the likelihood-of-success and

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according to the Tenth Circuit, that challenge could only be raised after a deportation order is issued. *See id.* at 203. As a result, "[t]he trial court should not have considered the arrest challenge while the" petitioner's removal proceedings were pending. *Id.*

balance-of-harms factors. She has not done so for the reasons explained in §§ B and C above.

CONCLUSION

The Petition and the Motion should be denied and the case dismissed.

Dated April 1, 2026.

Respectfully submitted,

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Certification Re: Use of Generative Artificial Intelligence for Drafting

The undersigned counsel certifies that generative artificial intelligence was not used to draft this filing.

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on April 1, 2026, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to all counsel of record.

s/ Andrew M. Soler
U.S. Attorney's Office