IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 1:26-cv-01072-CNS

RICARDO CASTRO-ROMERO,

Petitioner,

v.

GEORGE VALDEZ, Acting Field Office Director of Enforcement and Removal Operations, Denver Field Office, Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security;
PAMELA BONDI, U.S. Attorney General;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; and
JUAN BALTASAR, Warden of Denver Contract Facility, in their official capacities,

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. As discussed below, if the Court is inclined to order Petitioner's immediate release, Respondents respectfully request that the Court afford them at least 24 hours to effect that release, consistent with the request in the Petition. *See* ECF No. 1, at 7 (asking that the Court "[i]ssue a writ of habeas corpus requiring that within one day, Respondents release Petitioner").

The Court ordered Respondents to respond within five days of service. ECF No. 4. Service was made upon the U.S. Attorney's Office on March 18, 2026; thus, Respondents'

response deadline is March 23, 2026, 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 8 U.S.C. § 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.*, *Nava Hernandez v. Baltazar et al.*, No. 1:25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025). 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, at 2, ¶ 4 ("DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection."); 9 (notice to appear asserting, "You are an alien present in the United States who has not been admitted or paroled"). Respondents' position is that Petitioner is, therefore, subject to mandatory detention under § 1225(b) under the interpretation of that provision adopted by the

[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."); *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))).

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 § 1225(a)(1)). The Court then explained that *all* "applicants for admission" are subject to detention under either § 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 § 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, as noted above. Respondents are aware that this Court disagrees with the Fifth Circuit's majority opinion. *See, e.g.*, *Singh v. Baltazar*, --- F. Supp. 3d ----, 2026 WL 352870, at *3–6 (D. Colo. Feb. 9, 2026). 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*, 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 § 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*, No. 25-cv-02720-RMR, ECF No. 26 at 10–19 (D. Colo.).[2]

The Petition contends that Petitioner should be viewed as detained under § 1226(a) rather than § 1225(b). *E.g.*, ECF No. 1 at 2, ¶ 3. 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, notwithstanding Petitioner's request for immediate release. 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] despite Petitioner's request for that relief. *E.g.*, ECF No. 1, at 7. If the Court does order immediate release, it should permit Respondents at least 24 hours to effect that release, consistent with the request in the

---

[2] A copy of that brief is attached as Exhibit A 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*, 2026 WL 318989, at *4 ("[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.").

Petition. *See id.*

This Court's ruling on the § 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 v. Baltasar et al.*, No. 26-cv-00199-NYW, 2026 WL 318989, at *3–4 (D. Colo. Feb. 6, 2026) ("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*, 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.

Finally, Respondents submit that if the Court grants the petition and determines that Petitioner is entitled to a bond hearing under § 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 23, 2026.

PETER MCNEILLY
United States Attorney

s/ *Elizabeth S. Ford Milani*
ELIZABETH S. FORD MILANI
Assistant United States Attorney
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0100
Email: Elizabeth.Ford.Milani@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I 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 all persons who have registered for such notifications.

s/ Elizabeth S. Ford Milani
Assistant United States Attorney
U.S. Attorney's Office