IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 26-cv-1242-STV

JOSHUA ORTUA OLVINA,

Petitioner,

v.

GEORGE VALDEZ, Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement,
JUAN BALTAZAR, Warden, Denver Contract Detention Facility,
MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, and
PAMELA BONDI, U.S. Attorney General,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND ORDER TO SHOW CAUSE (ECF No. 5)

Respondents hereby respond to the Court's Order to Show Cause, directing them to respond to the habeas petition by April 2, 2026. ECF No. 5.

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 Inestroza Paguada v. Choate*, No. 25-cv-03970-STV (D. Colo Mar. 5, 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 ¶ 23; *see also id.* ¶ 64 (noting that Petitioner was served a 2012 notice to Appear alleging "that Mr. Olivina is present without admission having entered the country without inspection").[1] Respondents' position is that Petitioner is, therefore, subject to mandatory detention under § 1225(b) under the interpretation of that provision adopted by the Fifth and Eighth Circuits. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502–08 (5th Cir. 2026); *Avila v. Bondi*, -- F.4th --, 2026 WL 819258, at *2–6 (8th Cir. Mar. 25, 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

[1] Petitioner argues that "[i]mmigration agents admitted [him] by waving his bus through the inspection without stopping to obtain documentation from passengers." ECF No. 1 ¶ 23 & n.1. He thus admits that he was never inspected, and even the cases cited by Petitioner note that admission requires an inspection. *See Saldivar v. Sessions*, 877 F.3d 812, 815 (9th Cir. 2017) (noting that "a procedurally regular admission requires only 'an inspection and authorization by an immigration officer'" (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100–01 & n.7 (9th Cir. 2010))).

have not been admitted—are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

The Fifth Circuit, Eighth 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; *Avila*, 2026 WL 2026 WL 819258, at *2–6; *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 ¶ 63. 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.

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

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 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. For example, the Court should not preemptively direct the immigration judge or ICE to follow particular procedures; if the Court 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.

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[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.").

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: April 2, 2026.

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CERTIFICATE OF SERVICE

I certify that on April 2, 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/ Logan P. Brown
U.S. Attorney's Office