UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-CV-2720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, for himself and on behalf of others similarly situated,

Petitioners-Plaintiffs,

v.

JUAN BALTASAR, Warden, Aurora ICE Processing Center, in his official capacity,

GEORGE VALDEZ, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity;

U.S. DEPARTMENT OF HOMELAND SECURITY;

AURORA IMMIGRATION COURT; and,

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

PLAINTIFF-PETITIONER'S RESPONSE TO DEFENDANTS' MOTION TO STAY THE ANSWER DEADLINE OR, IN THE ALTERNATIVE, TO REQUIRE FULL BRIEFING ON THE MOTION TO DISMISS (ECF 94)

Plaintiff-Petitioner Nestor Esai Mendoza Gutierrez ("Plaintiff"), on behalf of himself and the certified class, files this Response to Defendants' Motion to Stay the Answer

Deadline or, in the Alternative, to Require Full Briefing on the Motion to Dismiss, and in opposition thereof states as follows:

For unexplained reasons, Defendants want this lawsuit to move at a glacier's pace, while seeking to accelerate companion cases elsewhere addressing the exact same legal issue – whether the government can imprison noncitizens who "entered without inspection" during the pendency of immigration removal proceedings. Taking advantage of procedural rules unique to the federal government, Defendants have waited until the last possible second to respond to the complaint and file their notice of appeal in this case – while elsewhere stepping on the gas. This delay is no longer acceptable – the Court should require Defendants to respond to the Second Amended Complaint.

I. PROCEDURAL HISTORY

a. History of this Case

Defendants began imprisoning Plaintiff at the privately-operated Denver Contract Detention Facility in Aurora on May 25, 2025 – a prison-like facility that judges in this Court have described as "abhorrent." *Arostegui-Maldonado v. Baltazar*, 794 F.Supp.3d 926, 940 (D. Colo. 2025). Under an interpretation of 8 U.S.C. §§ 1225 and 1226 that has now been rejected by hundreds of district court judges in thousands of cases around the nation,[1] Defendants denied Plaintiff release on bond – though he had strong ties to the community and no disqualifying criminal record.

[1] *See* Kyle Cheney, "Our running list of judges who have ruled on ICE's mass detention policy," POLITICO, last updated Feb. 27, 2026 (permalink: https://perma.cc/QZ9Z-QK42); & ECF 14, p. 5. *See also*, *e.g.*, *Chavez Amrenta v. Noem*, 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026) (noting that as of early February 2026, the government's position had "been rejected in more than 1,500 district court decisions");

Plaintiff filed this case on Friday, August 29, 2025, seeking individual *habeas* relief. ECF No. 1. On Tuesday, September 2, 2025, he amended the complaint to additionally seek a class-wide declaratory judgment stating that Defendants' interpretation of 8 U.S.C. §§ 1225 & 1226 was invalid, and for Defendants' new policy (and an unpublished decision of the Board of Immigration Appeals) regarding § 1225 and § 1226 detention to be vacated under the Administrative Procedure Act. ECF No. 6, ¶¶ 73-80 & 81-84. He contemporaneously filed a motion seeking preliminary relief for himself (in the form of either a temporary restraining order or a preliminary injunction) and sought to certify the class. ECF Nos. 14 & 15. Because the BIA issued a precedential opinion – *Matter of Yajure Hurtado*, 29 I.&.N. Dec. 216 (BIA 2025), decided September 5, 2025 – shortly after the Amended Complaint was filed, Plaintiff subsequently filed a Second Amended Complaint (ECF No. 89) to specifically address *Yajure Hurtado*.

Counsel for Defendants first appeared on September 4, 2025, and have participated in this litigation since that time. *See* ECF 16 & 17.

Hotak v. Baltazar, 26-cv-00610-CNS, ECF No. 14 (D. Colo. Feb. 25, 2026) (Sweeney, J.) (attached as Ex. 1); *Gonzalez Rosas v. Baltazar*, 26-cv-00457-RBJ, ECF No. 13 (D. Colo. Feb. 25, 2026) (Jackson, J., acknowledging that he has "now [ruled] many times over" against the government) (attached as Ex. 2); *Martinez Escobar v. Baltazar*, 26-cv-00296-NYW, 2026 WL 503313 (D. Colo. Feb. 24, 2026) (Wang, J.); *Hernandez v. Baltazar*, 26-cv-0524-WJM, 2026 WL 507518 (D. Colo. Feb. 24, 2026) (Martinez, J.); *Marrero Yera v. Baltazar*, 26-cv-00476-SKC-SBP, 2026 WL 472014, (D. Colo. Feb. 19, 2026) (Crews, J.); *Montanez de la Cruz v. Baltazar*, 26-cv-00360-PAB, 2026 WL 439217 (D. Colo. Feb. 17, 2026) (Brimmer, C.J.); *Hernandez Vazquez v. Baltasar*, 25-cv-03049-GPG, 2025 WL 4083603, at *1 (D. Colo. Oct. 23, 2025) (Gallagher, J.: "This case is one of the numerous cases in this District . . .").

After he had been illegally detained for 145 days, the Court ordered Plaintiff's "immediate" release from custody on October 17, 2025, ECF No. 33, p. 25, though he was not actually released until the next day, ECF No. 36.

After hearing evidence that Defendants were detaining "over 500 individuals" in Colorado at the same "abhorrent" facility, under the same fallacious legal theory, the Court certified a class for declaratory judgment relief on November 21, 2025. ECF 47, p. 6. Unrebutted evidence showed that 85% of the people Defendants detain in Colorado do not have counsel, making it unlikely that they could know to (or how to) seek *habeas* relief. *See* ECF No. 15-10, Decl. of M. Sherman.

Shortly thereafter, Plaintiff filed a motion for partial summary judgment on the declaratory judgment claim, which has now been fully briefed for over two months. *See* ECF 49, 58, 69 & 90.

Meanwhile, on December 15, 2025, virtually the last day to do so, Defendants filed an interlocutory notice of appeal regarding the Court's preliminary injunction. *See* ECF No. 68.[2] Their brief was originally due on February 9, 2026. *See Mendoza Gutierrez v. Baltasar*, 25-1460, ECF 14 (10th Cir.). Shortly before that deadline, Defendants asked to extend their deadline to file their opening brief by 30 days, and represented to the Tenth Circuit that "the Solicitor General of the United States has not yet made a final determination regarding whether the United States will pursue this appeal." *Mendoza*

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[2] Unlike virtually all other litigants, the federal government and its officers has 60 days to file a notice of appeal. FED. R. APP. PROC. 4(a)(1)(B). That the government almost ran out the clock on the notice to appeal is especially curious due to the purported urgency in resolving the injunction this Court entered along with granting Plaintiff's release. *See* ECF No. 79.

Gutierrez v. Baltasar, 25-1460, ECF No. 17 (10th Cir. filed Feb. 4, 2026). The motion was granted, and Defendants' brief is now due March 11, 2026. Recently, Defendants requested *another* 30 days extension, explaining "the Solicitor General of the United States has not yet made a final determination regarding whether the United States will pursue this appeal." *Id.* at ECF No. 19.

b. History of Service

Because the case was originally filed as a *habeas* petition, the Clerk docketed it as such and thus would not issue summons to be served on the Defendants. *See*, *e.g.*, ECF No. 11 (request for summons). *But see* ECF No. 32 (proof of service of amended complaint, without summons). Unlike virtually all other litigants, officers of the United States cannot waive service of the summons. *See* FED. R. CIV. PROC. 4(i). The Court ordered the Clerk to "change the nature of the suit" on November 20, 2025, and the summons were issued on December 4, 2025. *See* ECF Nos. 54 & 55-57. Each of the Defendants were served by December 15, 2025. *See* ECF No. 77.

Also unlike most litigants, the Federal Rules of Civil Procedure grant the federal government 60 days after service to file an answer or other responsive pleading. *Compare* FED. R. CIV. PROC. 4(a)(2) & (3) (60 days for federal government and employees) *with* R. 4(a)(1)(A) (21 days for everyone else). Thus, Defendants' answer was originally due on February 20, 2026. *See* ECF 93. As a courtesy, Plaintiff agreed to extend this deadline another seven days to February 27, 2026. *Id.* Rather than respond to the Second Amended Complaint on that date, Defendants filed this motion.

c. History of Relevant Related Litigation

While the government has sought to advance this case at a snail's pace, it has worked to accelerate companion cases in other Circuits.

In the Fifth Circuit, the government requested (and eventually received) expedited briefing and consideration on a case involving the same legal issue. *See Buenrostro-Mendez v. Bondi*, No. 25-20496, (5th Cir.) ECF Nos. 10 (motion to expedite), 38 (motion to reconsider denial of motion to expedite), 56 (motion for hearing *en banc* to expedite), & 80 (granting expedited appeal). The briefing was completed on January 30, 2026, oral argument was held on February 3, 2026, and an opinion was issued on February 6, 2023.

In the Eighth Circuit, the government also requested expedited briefing and consideration of the same legal issue. *See Herrera Avila v. Bondi*, No. 25-3248 (8th Cir.) filings of 11/17/25, and 12/12/25. Briefing was completed on February 5, 2026, and argument was held on February 19, 2026.

In the Eleventh Circuit, the government again requested accelerated briefing and argument, which was granted in part. *See Hernandez Alvarez v. Warden, Fed. Detention Center Miami*, No. 25-14065, ECF Nos. 14 & 61 (11th Cir.) (granting expedited briefing and argument in part). Oral argument will be held on March 26, 2026.

The government has also sought to accelerate appeals in the Second Circuit[3] and Sixth Circuit.[4]

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[3] *See Barbosa Da Cunha v. Lyons*, No. 25-3141, ECF 24.1 (2d Cir.) (granting expedited briefing and argument).

[4] *See Pizarro Reyes v. Raycraft*, No. 25-1982, ECF 10 (6th Cir.) (granting expedited briefing and argument).

II. LEGAL ARGUMENT

Defendants' arguments for further delaying their answer/response date lack any merit.

First, Defendants incorrectly claim that this Court cannot address substantive matters related to the appeal, citing *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). *Coinbase* is inapposite – it is an appeal of a denial of arbitrability, where the purported benefits of arbitration would have been lost by the appealing party if the entire litigation was not stayed during the appeal. *Id.* at 741. No such situation exists here. Indeed, the Tenth Circuit has long recognized "an interlocutory injunction appeal under [28 U.S.C. §] 1292(a)(1) does not defeat the power of the trial court to proceed further with the case." *Free Speech v. Fed. Election Comm'n*, 720 F.3d 788, 791-92 (10th Cir. 2013) (quoting 16 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. § 3921.1). *Coinbase* did not purport to overrule this binding circuit precedent. *See Barnes v. U.S.*, 776 F.3d 1134, 1147 (10th Cir. 2015) (Courts cannot jettison circuit precedent unless abrogation by intervening U.S. Supreme Court precedent is "indisputable and pellucid").

Indeed, other Courts of Appeal have declined to apply *Coinbase* as Defendants suggest. *See, e.g., California by & through Harrison v. Express Scripts, Inc.*, 139 F.4th 763, 766 n. 2 (9th Cir. 2025) (collecting cases), *cert denied sub nom. Express Scripts, Inc. v. California*, 25-327, 2026 WL 79931 (U.S. Jan. 12, 2026).

Other judges in this District have rejected Defendants' *Coinbase* reasoning as well. *See also U.S. Sec. & Exch. Comm'n v. Reven Holdings, Inc.*, 22-cv-3181-DDD-SBP, 2024 WL 3691603, at *1 n. 1 (D. Colo. Aug. 7, 2024) (Prose, Mag. J., denying motion to

stay requested under *Coinbase*, noting the majority's "reasoning [in *Coinbase*] is limited to § 16(a) of the [Federal Arbitration Act]").

As Defendants still cannot even commit to prosecuting their appeal, the Court should not further extend their deadline to answer or otherwise respond to the Second Amended Complaint based on that appeal.

Second, the Central District of California's recent decision in *Maldonado Baustista v. Santacruz*, --- F. Supp.3d ----, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026) does not augur for a stay here either. In *Maldonado Bautista*, the district court certified a nationwide class, granted a nationwide declaratory judgment, and vacated *Yajure Hurtado* on a nationwide basis under the APA. *See id.* But none of that is a reason to stall out this lawsuit. Most notably, Defendants do not provide this Court with any evidence that the immigration judges hearing the class members' cases in Colorado are actually following the orders in *Maldonado Bautista*. Given the government's intransigence in both *Maldonado Bautista* and the companion *Rodriguez Vazquez v. Bostock* class action litigation in the Western District of Washington, it is clear that additional relief may be required here. Recall that when the Central District of California entered the nationwide declaratory judgment, the government declined to follow it. *See*, *id.* at *3 ("One might assume that four separate orders issued by a federal district court interpreting a federal statute would make clear that enforcing executive policies premised on a contrary legal interpretation is improper. Remarkably, that has not been the case."). Nor did the government respect the declaratory judgment issued by the Western District of Washington in *Rodriguez Vazquez*. *See* 3:25-cv-05240-TMC, ECF No. 74 (W.D. Wash.,

filed Oct. 31, 2025) (attached as Exhibit 3, plaintiffs' motion describing the government's "disregard for this Court's order").

But even if the government were complying with courts' orders in these cases – and there is no evidence in the record that it is, *see also Juan T.R. v. Noem*, 26-cv-107-PJS, ECF 12 (D. Minn. Feb. 26, 2026) (identifying rampant noncompliance in § 1225/§ 1226 litigation in the District of Minnesota) – additional relief is expeditiously warranted here because of differences between the class definition here and in *Maldonado Bautista*. *Compare* ECF 47, pp. 3-4 (class definition) *with Maldonado Bautista v. Santacruz*, 5:25-cv-1873-SSS, 2025 WL 3288403, *9 (C.D. Cal. Nov. 25, 2025) (same).

And, of course, the government has appealed the decisions in *Maldonado Bautista* and *Rodriguez Vazquez* seeking to reverse them. *See Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 25-7958 (9th Cir.); *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir.). This Court should not delay this case any further while the government seeks those results.

III. CONCLUSION

For the above reasons, the Court should deny Defendants' motion to stay the answer deadline and require them to respond to the Second Amended Complaint forthwith.[5]

Dated: March 6, 2026.

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[5] Plaintiff is unopposed to filing a response to any motion to dismiss the Second Amended Complaint on the typical schedule. *See* D. Colo. LCivR. 7.1(d). Or on an accelerated one.

Respectfully submitted,

s/ Scott Medlock

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ATTORNEYS FOR PLAINTIFF-PETITIONER AND THE PLAINTIFF CLASS

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2026, I electronically filed the foregoing **PLAINTIFF-PETITIONER'S RESPONSE TO DEFENDANTS' MOTION TO STAY THE ANSWER DEADLINE OR, IN THE ALTERNATIVE, TO REQUIRE FULL BRIEFING ON THE MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system, and that in accordance with Fed. R. Civ. P. 5, all counsel of record shall be served electronically through such filing.

s/ Scott Medlock

Counsel for Plaintiff-Petitioner and the Plaintiff Class