

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03983-DDD-NRN¹

FRANKLIN HERNANDEZ HERNANDEZ,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs
Enforcement;

GEORGE VALDEZ,² in his official capacity as
Acting ICE Field Officer Director;

JUAN BALTAZAR,³ in his official capacity
as the warden of the Aurora Immigration Detention Facility;

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

THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; and
THE BOARD OF IMMIGRATION APPEALS,

Respondents.

**RESPONSE TO MOTION FOR RELEASE PENDING RESOLUTION OF
PETITION FOR WRIT OF HABEAS CORPUS [ECF No. 13]**

Respondents hereby submit their response to Petitioner's Motion for Release Pending Resolution of Petition for Writ of Habeas Corpus, ECF No. 13 (the "Motion"). The Motion should be denied. Instead, this Court should simply adjudicate the Petition for Writ of Habeas Corpus, ECF No. 1—which is fully briefed—and deny the Motion as moot.

¹ The Parties have unanimously consented to Magistrate Judge Jurisdiction in this matter. *See* ECF No. 14. However, as of the date of this filing, the Court has not yet referred the matter to Judge Neureiter for disposition.

² George Valdez is substituted for Arthur Wilson pursuant to Fed. R. Civ. P. 25(d).

³ Juan Baltazar is substituted for Johnny Choate pursuant to Fed. R. Civ. P. 25(d).

FACTUAL AND PROCEDURAL HISTORY

Petitioner is a native and citizen of Guatemala. ECF No. 8-1, Declaration of John Mansur, ¶ 4. Petitioner was never admitted or paroled into the United States. *Id.* ¶ 6. Petitioner was detained by U.S. Immigration and Customs Enforcement (“ICE”) on June 3, 2025. *Id.* ¶¶ 8-9. On that same date, ICE issued a Notice to Appear (NTA), charging Petitioner with being deportable from the United States and initiating removal proceedings before the Executive Office for Immigration Review (EOIR). *Id.* ¶ 10. On July 22, 2025, the Immigration Judge (“IJ”) granted Petitioner release under \$10,000.00 bond. *Id.* ¶ 14. ICE invoked an automatic stay of the bond pursuant to 8 C.F.R. § 1003.19(i)(2) and appealed to the Board of Immigration Appeals (“BIA”). *Id.* ¶¶ 14, 16. On September 23, 2025, the BIA sustained ICE’s appeal and vacated the IJ’s bond order. *Id.* ¶ 23.

The central legal issue presented in this case concerns whether Petitioner is subject to mandatory detention by U.S. Immigration and Customs Enforcement (“ICE”) under 8 U.S.C. § 1225(b), or whether he is entitled by § 1226(a) to seek a bond hearing. Petitioner filed his Application for Writ of Habeas Corpus (the “Application”) on December 11, 2025. ECF No. 1. Pursuant to this Court’s Order, ECF No. 5, Respondents filed their Response on December 30, 2025. *See* ECF No. 8. Petitioner did not file a Reply. As such, the merits of Petitioner’s habeas application are fully briefed and pending. However, Petitioner now moves this Court for an order granting his release on conditions pending the Court’s resolution of the merits. *See* ECF No. 13.

DISCUSSION

In his Motion, Petitioner argues that this Court should exercise its inherent authority to order his release pending adjudication of his Application. However, this argument is unavailing,

for at least two reasons: First, Petitioner’s situation does not meet the stringent requirements for such an order to issue. Second, it would be more appropriate—and would better conserve this Court’s resources—simply to adjudicate the Application and deny the Motion as moot.

A. The standard for release pending the resolution of the Application is not met.

The Tenth Circuit has held that “it is within the inherent power of a federal district court to [release] a state prisoner on bond, pending hearing and decision on a petition for habeas relief.” *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981). “However, a showing of exceptional circumstances must be made for such relief, or a demonstration of a clear case on the merits of the habeas petition.” *Id.*; *see also* Federal Habeas Manual § 8:78, “Federal Court’s Inherent Authority” (collecting cases). Here—even assuming *arguendo* that the holding in *Pfaff* applies with equal force in the context of immigration detention—this standard is not met.

First, the circumstances of this case are not exceptional. On the contrary, the Application asserts claims that have been considered repeatedly in recent months, both in this District and by federal district courts around the country. *See* ECF No. 13 at 3 n.1 (collecting cases). Second, for the reasons set forth in the Response to the Order to Show Cause, ECF No. 8, Petitioner has not demonstrated a clear case on the merits of the habeas petition. Although cases of this type have been adjudicated in favor of the Petitioner in this District, this Court has not yet ruled on the central legal issue implicated by the Application. Moreover, many courts have issued well-reasoned decisions affirming Respondents’ position.⁴ Most recently, the Fifth Circuit has ruled

⁴ *See, e.g.,* *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025), at *3-7; *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025), at *1-4; *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025), at *1-2; *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872, at *4-8 (C.D. Cal. Nov. 12, 2025); *Chavez v. Noem*, 801 F. Supp. 3d 1133, 1140 (S.D. Cal. 2025), at 1140-41; *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025), at *3-6; *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Sandoval v.*

in Respondents' favor. *Buenrostro-Mendez v. Bondi*, --- F.4th ---, 2026 WL 323330, at *5-10 (5th. Cir. Feb. 6, 2026).

B. It would be more appropriate and efficient simply to adjudicate the Application.

Petitioner's Motion should also be denied because it is both more appropriate and more efficient for this Court simply to adjudicate the Application on the merits. It would be more appropriate for the Court to adjudicate the Application, rather than release Petitioner on bond, because a bond hearing before an Immigration Judge—not release—is the available remedy should Petitioner prevail. *See Morales Lopez v. Baltazar*, No. 25-CV-3078-WJM-KAS, 2025 WL 3251145, at *1 (D. Colo. Nov. 21, 2025) (“Even assuming Morales Lopez is eligible for bond under section 1226(a), the Court does understand how that would authorize his immediate release, untethered to a bond hearing.”)

It would also be more efficient for this Court to adjudicate the Application, rather than ruling on the Motion, for at least two reasons. First, adjudication of the Application will moot the Motion, while the reverse is not true. Second, the Motion is predicated on law that is not well-settled in the Tenth Circuit and asks the Court to apply an imprecise standard rather than a bright line rule. In contrast, the Application raises a purely legal question of statutory interpretation—one which has been considered many times by federal district courts around the country. As such, the Court has the benefit, in reaching its decision on the Application, of other courts' analyses of the issue. The Court's resources are better conserved by traveling this beaten path, rather than the untrodden ground of the Motion.

Acuna, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025), at *2-6; *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025), at *6; *Vargas Lopez v. Trump*, 802 F. Supp. 3d 1132, 1137 (D. Neb. 2025), at 1137-43.

CONCLUSION

For the reasons set forth herein, the Motion should be denied.

DATED: February 26, 2026

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Katherine A. Ross

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing.

s/ Carrie Schiotz
U.S. Attorney's Office