

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

Civil Action No. 26-cv-00293-CYC

BEIBY DE OMAR DIAZ MARQUEZ,

Petitioner,

v.

JUAN BALTASAR, in his official capacity as Warden of the GEO Aurora ICE Detention Facility,

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

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

TODD M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security, and

ROBERT HAGAN,¹ in his official capacity as Field Office Director of the Denver Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

Pursuant to the Court's January 26, 2026, Order, ECF No. 4, Respondents hereby respond to Petitioner Beiby de Omar Diaz Marquez's Application for a Writ of Habeas Corpus, ECF No. 1 (filed January 23, 2026) (the "Petition"). The U.S. Attorney's Office was served on January 29, 2026. Respondents' deadline to respond to the Order to Show Cause is February 5, 2026. See ECF No. 4 ("Within seven days of service,

¹ Pursuant to Fed. R. Civ. P. 25(d), Robert Hagan has been substituted as Respondent in this action in place of John Fabbriatore.

Respondents shall RESPOND to the Petition and SHOW CAUSE why the Petition shall not be granted.”).

The central legal issue presented in this case concerns whether a noncitizen who is present in the United States and has not been admitted or paroled is subject to mandatory detention by U.S. Immigration and Customs Enforcement (“ICE”) under 8 U.S.C. § 1225(b)(2), 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 *Jiminez Facio v. Baltasar, et al.*, 25-cv-03592-CYC (D. Colo.). Respondents respectfully disagree with that ruling. But to conserve judicial and party 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 being admitted or paroled. See ECF No. 1 ¶ 5. Respondents’ position is that Petitioner is, therefore, subject to mandatory detention under § 1225(b), on the grounds set forth in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025). Respondents submit that this position is supported by *Jennings v. Rodriguez*, 583 U.S. 281 (2018). The Court in *Jennings* 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 have not been admitted or paroled—are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

Some district courts in this circuit have agreed with Respondents’ interpretation of the statute. *See, e.g., 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, in order to conserve judicial and party resources 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. A copy of that brief is attached as Exhibit A hereto.

Respondents anticipate that this Court's ruling on the Section 1225(b)(2)(A) issue in this case will resolve this habeas petition. If the Court grants the petition on this ground, it should decline to address additional arguments. *See 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."). But 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 8 U.S.C. § 1226(a), the Court should order that Respondents conduct such a bond hearing in accordance with that provision within a reasonable time and should direct Respondents to file a status report confirming that such a bond hearing was held.

Dated: February 5, 2026.

PETER MCNEILLY
United States Attorney

s/ Erika A. Kelley
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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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Counsel for Petitioner

s/ Erika A. Kelley
U.S. Attorney's Office