IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00296-NYW

SERGIO MARTINEZ ESCOBAR,

Petitioner,

v.

JUAN BALTASAR, Warden, Denver Contract Detention Facility;
ROBERT HAGAN, Director, Denver Field Office, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security;
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; and
PAM BONDI, Attorney General, U.S. Department of Justice;

Respondents.

RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF NO. 1) AND MOTION FOR PRELIMINARY INJUNCTION (ECF NO. 2)

Respondents submit this Response to Petitioner's Writ of Habeas Corpus (ECF No. 1, the Petition), Motion for Temporary Restraining Order or Preliminary Injunction (ECF No. 2, the Motion), and the Court's Order to Show Cause (ECF No. 8, the Order). On January 27, 2026, this Court ordered the Petitioner to serve the Petition, Motion, and Order on Respondents by January 29, 2026, and Respondents to respond to the Motion and show cause why the Petition should not be granted within 7 days of service. ECF No. 8. Respondents received service on January 28, 2026, making their response deadline February 4, 2026.

Because the Court has ordered simultaneous briefing on both the Petition and Motion, and the Petition and Motion request the same relief, the merits of the underlying habeas petition will be ripe for a decision, which will moot the Motion. *See Su v. Ascent Construction, Inc.*, 104 F.4th 1240, 1244 (10th Cir. 2024) (finding that where permanent relief is granted, a preliminary injunction merges into the final judgment and is moot) (citing *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 314 (1999)). Respondents therefore address the underlying merits of the Petition and Motion without addressing the preliminary injunction factors.

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*, *Loa Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025). 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. 2 at 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.

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, contrary to Petitioner's arguments, the appropriate relief here is not for this Court to conduct the bond hearing itself, or to immediately release the Petitioner. Immediate release is not appropriate because 8 U.S.C. § 1226(a), the statute that Petitioner requests that the Court apply, authorizes detention. *E.g.*, *Alfaro Orellana v. Noem*, No. 25-CV-03976-PAB, 2025 WL 3706417, at *4 (D. Colo. Dec. 22, 2025). Section 1226(a) further provides for the agency—not a federal district court—to consider whether release on bond is appropriate. *See* 8 U.S.C. § 1226(a) (providing that "the Attorney General . . . (2) may release the alien on (A) bond"). Accordingly, if the Court deems Petitioner to be detained under 8 U.S.C. § 1226(a), this section does not demonstrate

that this Court conducts the immigration bond hearing. This Court also recognized in *Lou Caballero* that "an immigration judge is better suited to consider whether Petitioner poses a flight risk and a danger to the community in this instance, where there is an insufficient record before this Court." 2025 WL 2977650, at *9.

Respondents therefore submit that if the Court determines that Petitioner is entitled to relief, the Court should order that Respondents conduct a bond hearing in accordance with 8 U.S.C. § 1226(a), within a reasonable time and should direct Respondents to file a status report confirming that such a bond hearing was held.

Dated: February 4, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 4, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record.

s/ Winnie D. Wu
U.S. Attorney's Office