IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00390-CYC

HAHSLIN NAOMI HERNANDEZ DE LA CRUZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility in Aurora, Colorado,
ROBERT HAGAN, in his official capacity as Field Office Director, of Denver, Colorado Field Office of Enforcement and Removal Operations, Immigration and Customs Enforcement,
KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security,
TODD M. LYONS, in his official capacity as Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement
PAMELA BONDI, in her official capacity as U.S. Attorney General; and
DAREN MARGOLIN, in his official capacity as Director, Executive Office for Immigration Review,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 5)

Pursuant to the Court's February 4, 2026, Order, ECF No. 5, Respondents hereby respond to Petitioner Hahslin Naomi Hernandez De La Cruz's Application for a Writ of Habeas Corpus, ECF No. 1 (filed February 1, 2026) (the "Petition"). The U.S. Attorney's Office was served on February 9, 2026. Respondents' deadline to respond to the Order to Show Cause is February 20, 2026. *See* ECF No. 5 ("It is further ORDERED that, on or before February 20, 2026, the Respondents shall SHOW CAUSE why the

Petition shall not be granted.").

I. Petitioner is properly detained under 8 U.S.C. § 1225(b).

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 at 4. Respondents' position is that Petitioner is, therefore, subject to mandatory detention under § 1225(b), on the grounds set forth by the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, --- F.4th ---, 2026 WL 323330, at *5–10 (5th. Cir. Feb. 6, 2026). Respondents submit that this position is also 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.

II. Petitioner's removal proceedings have not terminated.

In addition to the basis for her detention, Petitioner raises the issue of whether her removal proceedings have been finally terminated. *See* ECF No. 1 at 5. She alleges that her removal proceedings have been finally terminated because the Department of Homeland Security (DHS) failed to file a timely appeal by the January 16, 2026, deadline set by the Immigration Judge (IJ). *See id.* Ex. C; ECF No. 11. If Petitioner's removal proceedings were finally terminated, Respondents would not have a basis to detain Petitioner pursuant to 8 U.S.C. § 1225(b)(2), which provides that "the alien shall be detained for a proceeding under section 1229a." However, for the reasons explained below Petitioner's proceedings have not been finally terminated, and she is still subject to detention pursuant to § 1225(b)(2).

On December 21, 2025, the IJ issued an order granting termination of the Petitioner's proceedings before the Executive Office of Immigration Review. *See* ECF No. 1 at 5, Ex. C. But that decision was not immediately final. Rather, Department of Justice regulations (which govern immigration judges and the Board of Immigration Appeals) provide that a "decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs

first." 8 C.F.R. § 1003.39 (in 8 C.F.R. Part 1003, Subpart C (Immigration Court—Rules of Procedure).

This rule reflects the authority that Congress has granted federal agencies to specify, by rule, that an interim ruling is inoperative until an internal agency appeal is completed. 5 U.S.C. § 704 (providing that an agency decision is not final if "the agency otherwise requires by rule and provides that the action meanwhile is inoperative"); *Darby v. Cisneros*, 509 U.S. 137, 151-152 (1993) (recognizing that 5 U.S.C. § 704 permits an agency to "avoid the finality of an initial decision" by adopting a rule providing that the initial decision is "inoperative pending appeal").

The IJ's order was served on the parties on December 22, 2025, so any appeal was due on or before January 21, 2026, under 8 C.F.R. § 1003.38(b), which provides 30 calendar days for the filing of the notice of appeal after "the mailing or electronic notification of an immigration judge's written decision." Notably, the IJ in Petitioner's case ordered DHS to file an appeal by January 16, 2026, sooner than the 30-day period provided in the regulations. *See* 8 C.F.R. § 1003.38(b). However, the regulation does not grant an IJ the authority to alter the time period for appeals specified in the regulation.

Here, in accordance with 8 C.F.R. § 1003.38(b), DHS filed an appeal with the Board of Immigration Appeals on January 21, 2026. Undersigned counsel has confirmed that the BIA issued a filing receipt for that appeal on February 3, 2026. Thus, the appeal has not been rejected by the BIA as untimely. Accordingly, the IJ's decision

terminating the removal proceedings is not yet final. 8 C.F.R. § 1003.39. Rather, a final decision will be made once the BIA rules on the appeal. Thus, Petitioner continues to be subject to detention under § 1225(b)(2).

III. Additional Issues

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, Petitioner should receive a bond hearing under 8 U.S.C. § 1226(a), not release, as requested in the Petition. *See* ECF No. 1 at 21. Further, 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 20, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 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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