IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00436-PAB

NESTOR LUIS MONCADA-HERNANDEZ,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States;
SHERYL HAYASHI, in her official capacity as Denver Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations;
TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;
PETE R. FLORES, in his official capacity as Acting Commissioner for U.S. Customs and Border Protection;
KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security;
MARCO RUBIO, in his official capacity as Secretary of State;
PAMELA BONDI; in her official capacity as U.S. Attorney General; and
JOHNNY CHOAT, Warden, Aurora ICE Processing Center;

Respondents.

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

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 5) directing them to respond to a habeas petition (ECF No. 1) and a motion for temporary restraining order (ECF No. 2).

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, e.g., Alfaro Orellana v. Noem, et al.,* 25-cv-03976-PAB. 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* Ex. A ¶ 6 (Decl. of Jared Todd). 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).

The Fifth Circuit and some district courts in this circuit have agreed with Respondents' interpretation of the statute. *See, e.g.*, *Buenrostro-Mendez v. Bondi*, --- F.4th ---, 2026 WL 323330, at *5–10 (5th. Cir. Feb. 6, 2026); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302, at *5–12 (W.D. Okla. Dec. 26, 2025). Many other courts 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.[1]

Respondents anticipate that this Court's ruling on the Section 1225(b)(2)(A) issue

[1] A copy of that brief is attached as Exhibit B hereto.

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.

Because the Court has ordered simultaneous briefing on Petitioner's habeas petition and Motion for Temporary Restraining Order, the merits of the underlying habeas petition will be ripe for a decision. A decision on the habeas petition will moot the Motion for a Temporary Restraining Order. *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)).

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.

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Dated: February 17, 2026.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Elliot Wertheim

Elliot Wertheim
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: Elliot.Wertheim@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I filed the foregoing with the Clerk of Court for the District of Colorado using the CM/ECF system.

s/ Elliot Wertheim
U.S. Attorney's Office