

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

Civil Action No. 26-cv-00442-SKC

LEOBARDO BALDERAS RIVAS,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora U.S.
Immigration and Customs Enforcement Processing Center;

ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field
Office, U.S. Immigration and Customs Enforcement;

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

TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and
Customs Enforcement; and

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

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 10)

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 10), directing them to respond to the Petition for a Writ of Habeas Corpus (ECF No. 1, the "Petition") and Motion for a Temporary Restraining Order and/or Preliminary Injunction (ECF No. 4, the "Motion"). Specifically, the Court ordered Respondents to "show cause why the Petition shall not be granted based on the analysis in" *Merchan-Pacheo v. Noem*, No. 25-cv-03860-SBP, 2026 WL 88526 (D. Colo. Jan. 12,

2026). ECF No. 10.

The central legal issues presented in this case concern (1) 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; and (2) whether ICE may invoke an automatic stay and continue to detain a noncitizen after an Immigration Judge (“IJ”) has ordered bond pursuant to 8 C.F.R. § 1003.19(i)(2). These issues are not materially different from the issues this Court has resolved in prior rulings in other cases. *See, e.g., Perez Zepeda v. Hagan, et al.*, No. 25-cv-03789-SKC, ECF No. 18 (D. Colo.); *Merchan-Pacheo*, 2026 WL 88526. Respondents respectfully disagree with those rulings. 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.

I. Petitioner is subject to mandatory detention during his removal proceedings under Section 1225(b).

As to the first issue, when Petitioner was detained by ICE, he was present in the United States without being admitted or paroled. *See* ECF No. 1 ¶¶ 14, 53. 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 (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). *See, e.g., Perez Zepeda*, No. 25-cv-03789-SKC, ECF No. 18. 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

II. Petitioner's detention pursuant to an automatic stay pending an appeal of the Immigration Judge's initial bond determination is proper.

Respondents' position is that the application of the automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2) does not violate Petitioner's due-process rights, is not *ultra vires*, and does not violate the Administrative Procedures Act ("APA").

As to Petitioner's due-process claims, to the extent the Court applies the

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

Mathews v. Eldridge, 424 U.S. 319, 335 (1976) factors², Respondents respectfully submit that those factors do not favor a due-process violation. In support of this argument, Respondents rely upon, and incorporate by reference, the Federal Register notice that adopted the automatic-stay regulation, which addressed due process challenges to the regulation. Exhibit B, 71 Fed. Reg. at 57876-57881. Respondents here briefly address the *Mathews* factors.

Under *Mathews*, to analyze due-process claims, courts consider (1) “the private interest that will be affected by the official action,” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards,” and (3) the Government’s interest” 424 U.S. at 335.

As to the first factor, to be sure, Petitioner has a recognizable liberty interest in connection with his pre-removal detention, but as a noncitizen in removal proceedings, “that liberty interest is limited.” *Rojas v. Olson*, No. 25-cv-1437-BHL, 2025 WL 3033967, at *13 (E.D. Wis. Oct. 30, 2025) (rejecting a due-process challenge to the automatic stay provision of 8 C.F.R. § 1003.19(i)(2)); *see also Demore v. Kim*, 538 U.S. 510, 514, 521-31 (2003) (no due-process violation for mandatory detention without an individualized assessment of whether the alien “posed either a danger to society or a flight risk” during removal proceedings).

² Respondents contend that the *Mathews* factors do not apply to Petitioner’s due process claims because the Supreme Court has not applied *Mathews* in this context. *See* Exhibit C, *Merchan-Pacheo*, No. 25-cv-03860-SBP, ECF No. 12 at 11.

The second *Mathews* factor—the risk of an erroneous determination—has also been referred to as the “concern for accuracy.” *See City of Los Angeles v. David*, 538 U.S. 715, 718 (2003). Here, the automatic stay “rule establishes a process, well within the discretion of the Attorney General, to regulate the workings of the decision-making process and provide for the opportunity for review not only by the immigration judge but also by the Board in certain cases or even by the Attorney General personally before an alien is released from custody.” Exhibit B at 57881. In maintaining the status quo during an expedited higher-level review of the IJ’s initial decision, the automatic stay rule enhances, rather than reduces, accuracy. *See* Exhibit B at 57873. Indeed, the automatic stay ensures that the IJ’s initial, provisional custody determination is promptly reviewed before a noncitizen is released. *See also, e.g.*, 8 C.F.R. § 1003.39 (“Except when certified to the Board, the 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.”); *Ali v. Sessions*, No. CV 18-2617 (DSD/LIB), 2019 WL 13216944, at *1 (D. Minn. Feb. 1, 2019) (citing 8 C.F.R. § 1003.39 in recognizing that an immigration judge’s order, when appealed, “is provisional and not final until affirmed by the Board of Immigration Appeals”).

As to the third *Mathews* factor—the government’s interest—the Federal Register notice explains the strong governmental interest served by the automatic stay provision. Exhibit B at 57878. Specifically, the Department of Justice justified

its interest in the stay rule with statistics about the difficulties of removing aliens who were *not* detained, establishing a strong interest in preventing flight risks. See *id.* at 57878, 57880, 57882. After the Immigration Judge’s initial determination, the Attorney General has a strong interest in putting in place a prompt review process to maintain the status quo while a nonfrivolous appeal of an immigration judge’s order is made.

In short, Respondents position is that the *Mathews* factors—to the extent they apply in this context—do not support Petitioner’s due process claims.

In any event, the issues presented in the Petition and Motion regarding the application of the automatic stay are not materially different from the issues this Court resolved in *Merchan-Pacheo*, 2026 WL 88526. Respondents acknowledge that, absent a ruling from the Tenth Circuit 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 the application of the automatic stay provision violates Petitioner’s due process rights. Thus, while Respondents do not consent to issuance of the writ and reserve the right to appeal, Respondents hereby rely upon, and incorporate by reference, the legal arguments Respondents presented on this issue in *Merchan-Pacheo v. Noem*, No. 25-cv-03860-SBP, ECF No. 12.³

³ A copy of that brief is attached as Exhibit C hereto.

* * *

Respondents anticipate that this Court's rulings on the § 1225(b)(2)(A) issue and/or on whether the automatic stay violates Petitioner's due process rights in this case will resolve this habeas petition. If the Court grants the petition on one of those two grounds, 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."); *see also Merchan-Pacheo*, 2026 WL 88526, at *17 (declining to reach petitioner's additional arguments). 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.

Dated: February 9, 2026

Respectfully submitted,

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AI CERTIFICATION

Pursuant to the Court's Standing Order Regarding the Use of Generative Artificial Intelligence ("AI") in Court Filings, undersigned counsel certifies that generative artificial intelligence was not used to draft this filing.

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka _____

Julia M. Prochazka

Assistant United States Attorney
Counsel for Respondents