

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00478-SKC

MOUSSA KOMARA, an individual,

Petitioner,

v.

PAMELA BONDI, Attorney General,  
KRISTI L.A. NOEM, Secretary, U.S. Department of Homeland Security,  
TODD M. LYONS, Acting Director of Immigration and Customs Enforcement,  
Immigration and Customs Enforcement,  
DAREN M. MARGOLIN, Director for Executive Office for Immigration Review,  
Executive Office for Immigration Review,  
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and  
Customs Enforcement, and  
JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado,

Respondents.

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**RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 7)**

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Respondents submit this response to the Court's February 10, 2026, order to show cause why the Verified Petition for Writ of Habeas Corpus (ECF No. 1, the Petition) and Emergency Motion for Temporary Restraining Order (ECF No. 6, the Motion) should not be granted.

The facts and legal issues in this matter are materially indistinguishable from those presented in *Hernandez v. Baltazar*, No. 25-cv-3688-SKC-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025), and *Diallo v. Baltazar*, 25-cv-3548-SKC, 2026 WL

237296 (D. Colo. Jan. 29, 2026), in which the Court ruled that 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A) provided the proper detention authority, thus entitling the petitioners in those cases to a bond hearing or release. *Hernandez*, 2025 WL 3718159, at \*6; *Diallo*, 2026 WL 237296, at \*3-4. While Respondents must respectfully preserve their right to appeal these issues, they recognize that this Court's prior rulings on this issue would lead it to reach the same result here. Thus, while Respondents do not consent to issuance of the writ, in order to conserve judicial and party resources and expedite the Court's consideration of this case, and while preserving legal arguments and reserving all of Respondents' rights including the right to appeal, Respondents submit this abbreviated response.

### RESPONSE

The central legal issue presented in this case concerns whether a noncitizen who entered the United States without having 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.

When Petitioner was initially detained, he had entered the United States without being admitted or paroled. See ECF No. 1 ¶¶ 33; ECF No. 6 at 2 (“After he entered the United States, Mr. Komara surrendered to Border Patrol . . .”) (emphasis added). Respondents have thus taken the position 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). See ECF No. 1 ¶ 24; ECF No. 1-3 at 2.

Respondents submit that this position finds support in *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—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 district 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 rulings on this issue would lead the Court to reach the same result here if the Court adheres to those decisions. Thus, in order to conserve judicial and party resources Respondents 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.<sup>1</sup>

Respondents anticipate that this Court's ruling on the § 1225(b)(2)(A) issue in this case will resolve the 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 respectfully request that the Court issue an order directing Respondents to address such issues.

Finally, Respondents submit that should the Court determine that a bond hearing under 8 U.S.C. § 1226(a) is the appropriate relief, the Court should order that Respondents conduct such a bond hearing in accordance with that provision within a

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<sup>1</sup> A copy of that brief is attached as Exhibit A.

reasonable time and should direct Respondents to file a status report confirming that such a bond hearing was held.

Dated: February 13, 2026.

Respectfully submitted,

PETER MCNEILLY  
United States Attorney

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### CERTIFICATE OF SERVICE

I certify that on February 13, 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 recipients by e-mail:

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Attorney for Petitioner

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

*s/ V. William Scarpato III*  
V. William Scarpato III

**CERTIFICATION REGARDING THE USE  
OF ARTIFICIAL INTELLIGENCE FOR DRAFTING**

Pursuant to the Court's Standing Order for Civil Cases, undersigned counsel certifies that no portion of this filing was prepared using generative artificial intelligence.

*s/ V. William Scarpato III*

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V. William Scarpato III