IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00524-WJM

WILMER ANTONIO HERNANDEZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
ROBERT HAGAN, in his official capacity as Field Office Director of the 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, Immigration and Customs Enforcement; and
PAM BONDI, in her official capacity as Attorney General of the United States Department of Justice;

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE, ECF No. 11

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 11), directing them to respond to the Petition, ECF No. 1, and Motion for Temporary Restraining Order, ECF No. 3.

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 prior rulings in other cases. *See, e.g.*, *Morales Lopez v. Baltazar et al.*, 25-

cv-30780-WJM-KAS (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 2, 15-16; ECF No. 3 at 5. 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 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*, --- F.4th ---, 2026 WL 323330, at *5–10; *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302, at *5–12 (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.[1]

Respondents anticipate that this Court's ruling on the § 1225(b)(2)(A) issue in this case will resolve this habeas petition and Motion for a Temporary Restraining Order. 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

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

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, Petitioner also seeks additional relief outside of an order directing Respondents to provide him with a bond hearing. That additional relief includes: (1) immediate release; (2) an order dictating that, at the bond hearing, Respondents must demonstrate, by clear and convincing evidence, that continued custody is necessary; (3) an order enjoining Respondents from imposing any conditions upon release, such as GPS monitoring, absent an order of an immigration judge finding that, by clear and convincing evidence, such alternative conditions are necessary; and (4) an order enjoining Respondents from invoking the automatic stay provision in 8 C.F.R. § 1003.19(i)(2), if bond is granted by an immigration judge. *See* ECF No. 1 at 22-23.

The Court should decline to afford additional relief outside of requiring Respondents to provide Petitioner with a bond hearing. As for Petitioner's request that the Court dictate that, at any bond hearing, Respondents must prove that detention is necessary by clear and convincing evidence, such a standard of proof is not statutorily required. Section 1226(a), and the implementing regulations, are silent as to which party bears the burden of proof at bond hearing. *See Abanil v. Baltazar,* No. 25-cv-4029-WJM-STV, 2026 WL 100587, at *8 (D. Colo. Jan. 14, 2026) (citing 8 U.S.C. § 1226(a); 8 C.F.R. § 1003.19(d)). As a court in this District recently observed, agencies, not courts, are tasked with filing such statutory silences or omissions. *See Montanez de la Cruz v. Baltazer, et al.*, 26-cv-00360-PAB, (D. Colo. Feb. 17, 2026), ECF No. 15 at 8 (citing *United*

States v. Home Concrete & Supply, LLC, 566 U.S. 478, 487 (2012)). Thus, the court declined to impose any explicit burden of proof on the ordered bond hearing. *Id.* at 10.

Similarly, the Court should not enjoin Respondents from imposing additional forms of custody or invoking the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) because such an injunction is premature. *See id.* at 11 (declining to enter an injunction ordering Respondents not to impose alternative to detention conditions or to invoke the automatic stay on the basis that the Petitioner had not shown that such an injunction was necessary). By the same logic, the Petition in this case does not allege facts or information from which the Court could conclude that such injunctions are warranted.[2]

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.

Dated February 20, 2026.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

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[2] In Petitioner's Motion for a TRO, he alleges that Respondents' "frequent and unlawful use of the autostay provision and its use of the threat of that provision" warrants preemptive injunctive relief in the form of an order barring use of the auto-stay, as provided for in 8 C.F.R. § 1003.19(i)(2). *See* ECF No. 3 at 28. While Petitioner cites a case in this District finding that the automatic stay regulation violates a detainee's due process rights, Petitioner does not show why an injunction is necessary at this stage—that is, he does not include factual allegations to suggest that Respondents will use the auto-stay or impose alternative to detentions conditions for him. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) (plaintiff lacked standing to pursue a claim for prospective injunctive relief to bar the use of chokeholds by police, where he alleged officers previously illegally choked him, but had not established he was likely to suffer that injury again in the future).

s/Andrew M. Soler
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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on February 20, 2026, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to all counsel of record.

s/ Andrew M. Soler
U.S. Attorney's Office