

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

Case No. 1:26-cv-00556-SKC-KAS

LUIS DANIEL YANEZ CHAVEZ,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity, and
PAMELA BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

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 habeas petition ("Petition") and Petitioner's motion for a temporary restraining order and/or preliminary injunction ("Motion") (ECF No. 4).

This case is similar to *Lopez de Leon v. Baltazar*, No. 26-cv-0055-SKC-SBP, in which the Court recently issued an order. *See id.* ECF No. 17. This case should not be decided in the same way for the reasons provided in § V below.

I. This case as compared to *Hernandez*

In the Order to Show Cause, the Court stated that “Respondents must first address whether the present case differs factually or legally from *Hernandez* [*v. Baltazar*, No. 1:25-cv-3688-SKC-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025)] in any material respect, and if so, shall specify the material differences.” ECF No. 10. This case *does not* materially differ factually or legally from *Hernandez* with respect to 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. But this case *does* differ factually and legally from *Hernandez* in that Petitioner in this case seeks relief not sought or granted in *Hernandez*. Those additional requests are discussed in § III below.

II. Response to the Petition.

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 ICE under 8 U.S.C. § 1225(b)(2), or whether such a noncitizen is entitled by § 1226(a) to seek a bond hearing. Again, this issue is not materially different from an issue this Court has resolved in prior rulings. *See e.g., Hernandez v. Baltazar*, No. 25-cv-3688-SKC-SBP, 2025 WL 3718159, at *1 (D. Colo. Dec. 23, 2025); *Perez Zepeda v. Hagan, et al.*, 25-cv-03789-SKC-STV (D. Colo. Jan. 27,

2026). 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 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. 4-3 at 2 (Notice to Appear). Petitioner has resided in the United States for over twenty years. *Id.* ¶ 1. 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* 2026 WL 323330, at *5–10; *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 10-19.¹

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

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.

III. Relief not sought or granted in *Hernandez*

In the Petition, Petitioner 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 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

² In the Motion, 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

IV. Motion for a Temporary Restraining Order or Preliminary Injunction

Petitioner has also moved for a TRO or PI requesting that the Court enjoin Respondents from transferring him outside the District of Colorado and for the same substantive relief as that requested in his underlying habeas Petition. *See* ECF No. 4. The Court granted, in part, the Motion for a TRO, when it issued an order enjoining Respondents from transferring Petitioner. *See* ECF No. 10. The remaining relief requested by Petitioner's Motion is the same as the which he requests in his habeas Petition, and Respondents rest on their arguments asserted in § I, above, regarding whether such relief should be afforded.

V. This case should not be decided in the same way as *Lopez de Leon*.

In discussing the remedy to be provided in *Lopez de Leon*, the Court found that Mr. Lopez de Leon should be immediately released because "Respondents had an opportunity in their papers to argue that Mr. Lopez de Leon was subject to detention under § 1226 or provide some evidence that a warrant for his arrest had been issued." *Lopez de Leon*, No. 26-cv-00555-SKC-SBP, ECF No. 17 at 17.

in 8 C.F.R. § 1003.19(i)(2). *See* ECF No. 4 at 27-28. 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 detention 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).

If the Court finds that Petitioner is not being held under § 1225, then Respondent relies on Petitioner's concession that he is being held under § 1226. In this case, Petitioner argues repeatedly that he is not being held under § 1225(b)(2) *but instead is being held under § 1226*. That is, he concedes that he is being held under § 1226 but argues that he is not being held under § 1225(b)(2). Thus he states in his Petition:

- “Indeed, the statute's plain text demonstrates § 1226(a)—not § 1225(b)—applies to people like Petitioner.” ECF No. 1 ¶ 35.
- “Thus, § 1226 applies to noncitizens like Petitioner who are present without inspection.” *Id.* ¶ 37.
- He argues that he is part of the Bond Denial Class in *Bautista v. Santa Cruz*, N. 5:25-cv-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 25, 2025), and “[t]he declaratory judgment [in *Bautista*] held that Bond Denial Class members are detained under 8 U.S.C. § 1226(a).” *Id.* ¶ 30.

Petitioner's other arguments also implicitly concede that—if not under § 1225(b)(2)—he is being held under § 1226. For example, in Count 1, titled “Respondents Jail Petitioner in Violation of 8 U.S.C. § 1226(a),” Petitioner argues that § 1225 does not apply to him but that Respondents must provide a bond hearing because those are required for persons detained under § 1226(a) *and he is one of them*. In his summary of that claim he states: “Applying § 1225 to Petitioner unlawfully mandates his continued detention without a custody determination hearing *and violates 8 U.S.C. § 1226(a)*.” *Id.* at 25 (emphasis added). Petitioner's conclusion, that being held without a bond hearing violates his statutory rights,

only makes sense because Petitioner implicitly concedes that he is being held under § 1226(a).

Thus, if the Court finds that Petitioner is not being held under § 1225(b)(2), it should find—as Petitioner concedes—that he is being held under § 1226 and order that Respondents provide a bond hearing. *See, e.g., Perez Zepeda, 25-cv-03789-SKC-STV, ECF No. 18, at 17* (“[Section] 1226 does not require release—it provides DHS the discretion to grant a noncitizen release on bond. . . . Additionally, the Court concludes that an immigration judge is in a better position to consider whether Petitioner poses a flight risk and a danger to the community.”).

* * *

For the foregoing reasons, if the Court grants the Petition and determines that Petitioner is detained under 8 U.S.C. § 1226(a), Respondents’ position is that the Court should order that they conduct such a bond hearing in accordance with that provision within seven days and should direct Respondents to file a status report within five days after the bond hearing is held confirming that it was held.

Dated: February 20, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I 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 all persons who have registered for such notifications.

I also 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/ Timothy Bart Jafek

Timothy Bart Jafek

**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/ Timothy Bart Jafek
U.S. Attorney's Office