IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00574-WJM

GILBERTO QUIROZ ZACARIAS,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
ROBERT GUADIAN, Field Office Director, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operation's Field Office; and
JUAN BALTAZAR, Warden of the Denver Contract Detention Facility,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND ORDER TO SHOW CAUSE (ECF No. 9)

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 9), directing them to respond to the habeas petition by March 9, 2026.

I. Petitioner is properly detained under 8 U.S.C. § 1225(b).

The central legal issue presented in this case concerns whether a noncitizen who is present in the United States and has not been admitted is subject to mandatory detention by U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1225(b), 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., Morales Lopez v. Baltazar et al.*, No. 25-cv-3078-WJM-KAS, 2026 WL 25161 (D. Colo. Jan. 5, 2026). Respondents respectfully disagree with that ruling. But to conserve 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 having been admitted. *See* ECF No. 1 ¶¶ 19, 21. Respondents' position is that Petitioner is, therefore, subject to mandatory detention under § 1225(b) under the interpretation of that provision adopted by the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502–08 (5th Cir. 2026). This position is further supported by *Jennings v. Rodriguez*, 583 U.S. 281 (2018), where the Supreme Court 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*, 166 F.4th at 502–08; *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. Respondents are aware that this Court disagrees with the Fifth Circuit's majority opinion. *See Temaj Lopez v. Baltasar, et al.*, No. 26-cv-0688-WJM, 2026 WL 628199, at *4 (D. Colo. Mar. 6, 2026). 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, to expedite disposition of this case, 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]

The Petition contends that Petitioner should be viewed as detained under 8 U.S.C. § 1226(a) rather than § 1225(b). *See* ECF No. 1 ¶ 42. If the Court agrees and determines that Petitioner is detained under § 1226(a) and grants the petition, the appropriate relief is for the Court to direct a bond hearing be conducted pursuant to

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

§ 1226(a) before an immigration judge. In particular, the Court should not order further relief beyond directing that Petitioner be granted a bond hearing under § 1226(a). It should not order immediate release, as multiple decisions in this district have recognized.[2]

This Court's ruling on the Section 1225(b)(2)(A) issue in this case should resolve this habeas petition. If the Court grants the petition on this ground, it should decline to address additional arguments. *See, e.g.*, *Leyva Ramirez v. Baltasar et al.*, No. 26-cv-00199-NYW, 2026 WL 318989, at *3–4 (D. Colo. Feb. 6, 2026) ("The Court's analysis begins and ends with Count One, the statutory claim. . . . Having granted Mr. Leyva Ramirez relief as to Count One, the Court does not reach his other claims at this time."); *see also 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."). The Court should also not grant any other prospective injunctive relief. *See Montanez de la Cruz*, No. 26-cv-00360-PAB, ECF No. 15, at 9–11. If the Court wishes to receive additional briefing on any other issue, Respondents request that the Court issue an order directing Respondents to address

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[2] *See, e.g.*, *Montanez de la Cruz v. Baltazar et al.*, No. 26-cv-00360-PAB, ECF No. 15, at 8 (D. Colo. Feb. 17, 2026) ("[B]ecause § 1226 authorizes detention, the Court does not find that petitioner's immediate release is an appropriate remedy. Instead, the Court will order that a bond hearing be conducted."); *Leyva Ramirez v. Baltasar et al.*, No. 26-cv-00199-NYW, ECF No. 23, at 7–8 (D. Colo. Feb. 6, 2026) ("[A] bond hearing before an immigration judge is sufficient to vindicate the procedural protections afforded by § 1226(a)."); *Perez Zepeda v. Hagan et al.*, No. 25-cv-3789-SKC-STV, ECF No. 18, at 17 (D. Colo. Jan. 27, 2026) ("[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.").

such issues.

II. Petitioner's due process challenges are unavailing.

Petitioner also alleges that his detention without a bond hearing violates his due process rights. *See* ECF No. 1 ¶¶ 39-46. To the extent he is bringing a substantive due process challenge, Petitioner has not shown that his detention violates due process, as his detention is during removal proceedings that will have a definite end point, and the Supreme Court has approved such detention. To the extent he is bringing a procedural due process challenge, this argument fails because Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2)(A), as set forth above, and he has received the due process that is set forth by statute.

First, Petitioner has not shown that his detention violates substantive due process. The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). The Court in *Demore* relied on a broad principle: the Court's "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings. . . ." *Id.* at 526. Specifically, the Court relied on *Reno v. Flores,* 507 U.S. 292 (1993), where the Court had rejected a due process challenge to the detention of minors during deportation proceedings, *id.* at 313-14, and on *Carlson v. Landon*, 342 U.S. 524 (1952), where the Court had rejected a due process challenge to detention by noncitizens on the ground that they did not pose a flight risk. *Id.* at 538. Later, in *Jennings*, the Court observed that in *Demore,* the Court, in rejecting the due process challenge, had relied

on the principle that the detention during removal proceedings "has "a definite termination point: the conclusion of removal proceedings." 583 U.S. at 304 (internal marks omitted).

Here, under *Demore*, Petitioner has not shown that his detention is unconstitutional. He is detained during his removal proceedings, which will have a definite end point. He has been detained for approximately four months as of the date of this submission. *See* ECF No. 1 ¶ 21. Those circumstances do not show a substantive due process violation under the general principles set forth in *Demore*.

Second, to show that he has been denied procedural due process, Petitioner would need to show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important rule" that for "foreigners who have never been . . . admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). In *Thuraissigiam*, the Court explained that an alien who was an "applicant for admission" had "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Id.* at 140. For the reasons set forth above, Petitioner has not been deprived of any statutory right as he is properly detained under Section 1225(b)(2)(A).

Also, Petitioner has not shown any prejudice from any procedural violation. He has not shown that he is being denied procedures in his immigration proceedings where he can challenge the determination that Section 1225(b)(2)(A) applies. He thus has not

shown a violation of procedural due process. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where an alien failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim"). As another Court in this District has explained in analyzing a due-process challenge to immigration detention, "so long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the *merits* determinations that are keeping them in custody, continued custody is permissible." *Bonilla Espinoza v. Ceja*, No. 25-cv-01120-GPG, ECF No. 11 at 13 (D. Colo. May 21, 2025).

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 within seven days and should direct Respondents to file a status report within seven days of the bond hearing, confirming that it was held.

Dated: March 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

s/ Julia M. Prochazka
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