IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00610-CNS

IFRAN HOTAK,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora ICE Processing Center;
GEORGE VALDEZ, in his official capacity as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; and
PAM BONDI, in her official capacity as U.S. Attorney General,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE, ECF No. 9

Respondents[1] hereby respond to the Court's Order to Show Cause, ECF No. 9, directing them to respond to the habeas petition, ECF No. 1 (filed Feb. 17, 2026).[2]

---

[1] Pursuant to Fed. R. Civ. P. 25(d), George Valdez, in his official capacity as Acting Director of the Denver Field Office, U.S. Immigration and Customs Enforcement, has automatically been substituted as a party.

[2] The Court ordered Petitioner to serve Respondents with a copy of the Petition by email and overnight mail. ECF No. 9. Respondents received service via mail on February 19, 2026. *See* ECF No. 10. The Court ordered Respondents to respond to the Petition within five days of service. ECF No. 9. This Response is therefore timely. *See* Fed. R. Civ. P. 6(a)(1).

I. Detention is authorized under § 1225(b)(2).

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)(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 similar cases. *See, e.g.*, *Manriquez Hernandez v. Baltazar*, No. 26-cv-00529-CNS, ECF No. 8; *Singh v. Baltazar,* 26-cv-00336-CNS, 2026 WL 352870 (D. Colo. Feb. 9, 2026); *Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS, ECF No. 26; *Marquez Rico v. Baltazar*, No. 25-cv-03943-CNS, ECF No. 9. Respondents respectfully disagree with those rulings. To preserve Respondents' legal arguments, and reserving all of Respondents' rights, Respondents submit this abbreviated response.

Petitioner is present in the United States without being admitted. *See* ECF No. 1 ¶ 37. He had previously been detained by ICE in 2023 and released him on his own recognizance. ECF No. 1 ¶ 1. Respondents' position is that Petitioner is subject to mandatory detention under § 1225(b), under the interpretation of that provision adopted by the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, --- F.4th ---, 2026 WL 323330, at *5–10 (5th Cir. Feb. 6, 2026). This position is further 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—are subject to mandatory detention under § 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. 25-cv-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 Singh*, 2026 WL 352870, at *3–6. 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*, No. 25-cv-02720-RMR (D. Colo.), *appeal docketed*, No. 25-1460 (10th Cir. Dec. 15, 2025). That appeal remains pending.

Respondents acknowledge that this Court's prior rulings would lead the Court to reach the same result here, as the facts of this case are not materially distinguishable from those cases for purposes of whether Petitioner is subject to mandatory detention under § 1225(b)(2). Thus, while Respondents do not consent to issuance of the writ

and reserve the right to appeal, in order to preserve their arguments, Respondents incorporate their 10-page discussion of this issue in *Mendoza Gutierrez v. Baltazar*, No. 25-cv-02720-RMR, ECF No. 26 at 10-19, with which the Court is already familiar.[3] *See Singh*, 2026 WL 352870, at *1 n.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 ¶¶ 35, 37. 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 § 1226(a) before an immigration judge. Respondents anticipate that this Court's ruling on the § 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.").

II. The Court should deny the additional relief Petitioner seeks.

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,

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

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 24-25.

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.[4]

The Court should also deny any other requests for prospective relief. *See Montanez de la Cruz*, 2026 WL 439217, at *3-5. It 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 5 (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). For example, an automatic stay only occurs "upon DHS's filing of a notice of intent to appeal the custody redetermination." 8 C.F.R. § 1003.19(i)(2). 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 appeal

---

[4] *See, e.g.*, *Montanez de la Cruz v. Baltazar*, No. 26-cv-00360-PAB, 2026 WL 439217, at *3 (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.").

and 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).

The Court thus should not preemptively direct the immigration judge or ICE to follow particular procedures. If the Court nevertheless does so, it should specify what procedures are required and the legal basis for requiring them. 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. Motion for a Temporary Restraining Order or Preliminary Injunction

Petitioner has also moved for a Temporary Restraining Order or Preliminary Injunction 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. 2 at 35-36. The Court granted, in part, the Motion for a Temporary Restraining Order, when it issued an order enjoining Respondents from transferring Petitioner. *See* ECF No. 9. The remaining relief requested by Petitioner's Motion is the same as that which he requests in his habeas Petition. Respondents rest on their arguments asserted in §§ I & II, above, regarding whether such relief should be afforded.

* * *

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

Respectfully submitted on February 24, 2026.

PETER MCNEILLY
United States Attorney

s/ Benjamin Gibson
Benjamin Gibson
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0336
E-mail: thomas.isler@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on February 24, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record, including:

hans@themeyerlawoffice.com
conor@themeyerlawoffice.com
sarah@themeyerlawoffice.com

s/ Benjamin Gibson
Benjamin Gibson