IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00614-SKC

RAUL FLORES RODRIGUEZ,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity;
GEORGE VALDEZ, Acting 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
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents.

CONSOLIDATED RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 7) AND MOTION FOR A TEMPORARY RESTRAINING ORDER (ECF No. 4)

Respondents[1] hereby respond to the Court's Order to Show Cause (ECF No. 7) directing them to respond to the habeas petition (ECF No. 1) and Petitioner's Motion for a Temporary Restraining Order (ECF No. 4).

[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.

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. 7.

This case *does not* 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. Respondents' position on that issue is set forth in § II below. But this case *does* differ factually and legally from *Hernandez* in that Petitioner is this case seeks relief not sought or granted in *Hernandez*. Those additional requests for relief are discussed in § III below.

II. Response to the Petition for a Writ of Habeas Corpus.

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. 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, ECF No. 18 (D. Colo. Jan. 27, 2026). Respondents respectfully disagree with those rulings. 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.

Petitioner is present in the United States without being admitted. *See* ECF No. 1 at ¶ 36. Petitioner has resided in the United States for close to twenty years. *Id.* ¶ 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). 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. 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 Ramirez-Francisco v. Bondi, et al.*, 26-cv-00488-SKC-NRN, ECF No. 9 at 4 (D. Colo. Feb. 20, 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, 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.[2]

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 ¶¶ 34, 36. 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.").

III. 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, by clear and convincing evidence, such alternative conditions are necessary;

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

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 (prayer for relief).

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 this court has recognized. *Perez Zepeda*, No. 25-cv-3789-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.").

The Court should also deny any other requests for prospective relief. *See Montanez de la Cruz v. Baltazar*, No. 26-cv-00360-PAB, 2026 WL 439217, at *3-5 (D. Colo. Feb. 17, 2026). 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 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.

IV. 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. 4. The Court granted, in part, the Motion for a TRO, when it issued an order enjoining Respondents from transferring Petitioner. *See* ECF No. 7. Because the remaining relief requested by Petitioner's Motion is the same as the which he requests in his habeas Petition, Respondents rest on their arguments asserted in Sections II & III, above, regarding whether such relief should be afforded.

* * *

In sum, Respondents submit that if the Court grants the Petition and determines that Petitioner is detained under 8 U.S.C. § 1226(a), the Court should order that they 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.

Dated: February 26, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 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:

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s/ Benjamin Gibson
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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/ Benjamin Gibson
U.S. Attorney's Office