

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

Civil Action No. 26-cv-00618-PAB

BINOR GOYTOM ADEM,

Petitioner,

v.

KRISTI NOEM, Secretary of Homeland Security in her official capacity;  
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement in his  
official capacity;

GEORGE VALDEZ, Denver Field Office Director, U.S. Immigration and Customs  
Enforcement in his official capacity;<sup>1</sup>

PAMELA BONDI, Attorney General in her official capacity; and

JUAN BALTASAR, Warden, Denver Contract Detention Facility in his official  
capacity,

Respondents.

---

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1)  
AND ORDER TO SHOW CAUSE (ECF No. 7)**

---

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 7),  
directing them to respond to the habeas petition (ECF No. 1).

On February 17, 2026, Petitioner filed the Petition for Writ of Habeas Corpus  
which initiated this case. *See* ECF No. 1. On February 18, the Court ordered:

"Petitioner shall, by overnight mail and email, serve respondents with a copy of the

---

<sup>1</sup> George Valdez, the Acting Director of Immigration and Customs Enforcement's  
Denver Field Office, is substituted for Robert Guadian pursuant to Fed. R. Civ. P.  
25(d).

petition and this order on or before February 20, 2026. Petitioner shall file proof of service.” ECF No. 7. The Court also ordered that, within seven days of service, Respondents must show cause why the petition should not be granted. On February 23, the Court issued a Minute Order observing that Petitioner had not filed proof of service and directing Petitioner to file such proof of service by February 25. *See* ECF No. 8. On February 23, Petitioner filed proof that he had mailed the petition to the Respondents via overnight mail, but said nothing about his compliance with the Court’s order to serve Respondents by email. *See* ECF No. 9. On February 24, when prompted by a representative of the U.S. Attorney’s Office for the District of Colorado, Petitioner complied with the Court’s order regarding email service. Later that day, he filed an amended proof of service stating, “undersigned counsel inadvertently failed to execute service via email, which was also required. As soon as her error was discovered, Petitioner corrected it earlier today, on February 24, 2026, by sending the Petition . . . and the Court’s order . . . via email to the U.S. Attorney’s Office . . . .” ECF No. 10. Because Respondents were properly served on February 24, they must respond to the Court’s order to show cause by March 3, 2026. This response is, therefore, timely.

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., Alfaro Orellana v. Noem, et al.*, 25-cv-03976-PAB. 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, at 1, 11-12. 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*, --- F.4th ---, 2026 WL 323330, at \*5–10 (5th Cir. Feb. 6, 2026). Respondents submit that 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 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, 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.<sup>2</sup>

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, at 14-15. 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. 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.<sup>3</sup>

This Court's ruling on the § 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 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

---

<sup>2</sup> A copy of that brief is attached as Exhibit A hereto.

<sup>3</sup> *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.").

should also deny any other requests for 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 such issues.

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 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

Respectfully submitted,

s/Peter McNeilly  
PETER MCNEILLY  
United States Attorney  
United States Attorney's Office  
1801 California Street, Suite 1600  
Denver, Colorado 80202  
Telephone: (303) 454-0100  
Fax: (303) 454-0405  
E-mail: [peter.mcneilly@usdoj.gov](mailto:peter.mcneilly@usdoj.gov)  
Attorney for the United States

**CERTIFICATE OF SERVICE**

I 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 all counsel of record.

s/ Peter McNeilly  
United States Attorney's Office