

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

Civil Action No. 26-cv-00664-CNS

MORY CHERIF,

Petitioner,

v.

PAMELA BONDI, Attorney General,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Acting Director of Immigration and Customs Enforcement,
Immigration and Customs Enforcement,
DAREN K. MARGOLIN, Director for Executive Office for Immigration Review,
Executive Office for Immigration Review,
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs
Enforcement, and
JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado,

Respondents.

**RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 8), VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS (ECF No. 1), AND EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER (ECF No. 2)**

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 8), directing them to respond to the Verified Petition for Writ of Habeas Corpus (ECF No. 1), the Emergency Motion for Temporary Restraining Order (ECF No. 2), and to show cause as to why the Petition should not be granted. The Court ordered the Petitioner to serve Respondents by email and overnight mail by February 20, 2026, and ordered Respondents to file this response within five calendar days of service. ECF No. 8. Petitioner served Respondents by email on February 18, 2026. To date, Respondents

still have not received service by mail; thus, service on Respondents in the manner required by the Court's order has not been completed. However, out of an abundance of caution, Respondents are filing this response within five calendar days of service by email.

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 prior rulings in other cases. *See, e.g., Singh v. Baltazar*, No. 26-cv-00336-CNS, ECF No. 13; *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 entered the United States in February 2024 without having been admitted. *See* ECF No. 1 ¶ 34. 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. Respondents are aware that this Court disagrees with the Fifth Circuit’s majority opinion. *See Singh, supra* at 6-13. 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 rulings on this issue 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

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, with which the Court is already familiar.¹ See *Singh*, *supra* at 2 n.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 ¶¶ 88-90. 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.

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 *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.").

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 It should also deny any

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

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

other requests for prospective injunctive relief. *See Montanez de la Cruz*, No. 26-cv-00360-PAB, ECF No. 15, at 9-11. For example, the Court 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.

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.

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.”).

Respectfully submitted February 23, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Jennifer R. Lake
U.S. Attorney's Office