IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00777-NRN

JOSE MILLAN OLIVAS,

Petitioner,
v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as Secretary of U.S. Department of Homeland Security; and
PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents.

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 4), directing them to respond to the habeas petition.[1] Petitioner raises three issues: (1) whether he should be accorded a bond hearing under 8 U.S.C. § 1226(a) (count 4); (2) whether he should be released because of alleged constitutional and regulatory violations (counts 1-3), and (3) whether this response is timely. The United States acknowledges that the Court has already made determinations in similar cases on the first issue (count 4 of the Petition) and submits abbreviated

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[1] Pursuant to the Court's order, Respondents' response is due within three calendar days of service. Service was completed on March 2, 2026, and therefore this response was due March 5, 2026, and is timely filed. Petitioner disagrees with the government's calculation. Respondents' position on the calculation is explained more fully in the body of this response.

briefing on that issue. The United States respectfully asserts that the Court lacks jurisdiction, and the Petitioner has not exhausted administrative remedies as to the second issue (counts 1-3), and those counts should be denied. Finally, Respondents request the Court find that Respondents' calculations of the due date are correct as to the third issue.

I. Application of 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 Vasquez Gomez v. Bondi et al.*, No. 26-cv-00489-NRN. 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* Petition, ECF No. 1, at 5. 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). 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*, 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. Respondents are aware that this Court disagrees with the Fifth Circuit's majority opinion. *See Vasquez Gomez* at 4. 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.[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 at 21. 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 on this issue, as multiple decisions in this district have recognized.[3]

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 sum, Respondents submit that if the Court grants count 4 of the petition and determines that Petitioner is entitled to a bond hearing under 8 U.S.C. § 1226(a), the Court

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

3 *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 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.

II. Claims related to the arrest of Petitioner

The Petitioner also challenges the circumstances of his arrest into immigration custody. Petitioner alleges that he was arrested by the Laramie County Sheriff and was held for six months on criminal charges. ECF No. 1 at 6. He alleges that after his criminal case was dismissed, he was held for three additional days in the custody of Laramie County pursuant to an immigration detainer. *Id.* He alleges that he was then was taken into ICE custody without an I-200 warrant. *Id.* at 5-6.

This Court lacks jurisdiction to review any alleged deficiencies in the Petitioner's arrest, because the Immigration and Nationality Act (INA) channels review to the Court of Appeals. Congress has consolidated "[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States," 8 U.S.C. § 1252(b)(9), into "a single proceeding: the petition for review." *Nken v. Holder*, 556 U.S. 418, 424 (2009) (citing, among other provisions, 8 U.S.C. § 1252(b)(9)). Petitions for review must be filed in the courts of appeals, not the district courts, and may only be filed after a removal order has been entered and become final. 8 U.S.C. § 1252(a)(5), (b)(1); *see also Riley v. Bondi*, 606 U.S. 259, 266–67 (2025) (discussing the finality requirement). In general, no other court has jurisdiction "to review such an order or such questions of law or fact." 8 U.S.C. § 1252(b)(9).

The Tenth Circuit has held that "the legality of [an alien's] arrest and search challenges are customarily tested . . . when a deportation order is received." *Min-Shey Hung v. United*

States, 617 F.2d 201, 202 (10th Cir. 1980). In *Min-Shey Hung*, an alien who was arrested without a warrant filed a habeas petition shortly after his arrest, seeking his release based on the allegedly unlawful arrest. *Id.* at 201. The Tenth Circuit held that the alien could not bring an immediate challenge to the arrest in habeas. *Id.* at 202–03. Rather, the alien could seek review of the arrest later as part of review of his deportation order (if one was issued). *Id.*

Accordingly, the propriety of Petitioner's arrest is a "question[] of law [or] fact . . . arising from [an] action taken . . . to remove [him] from the United States." *See* 8 U.S.C. § 1252(b)(9). Jurisdiction thus lies only in the court of appeals upon a petition for review. *See id.*

Further, Petitioner should exhaust his administrative remedies by challenging his arrest within his removal proceedings. Generally, "[t]he exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although . . . the statute itself does not expressly contain such a requirement." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). In a different immigration context, the Tenth Circuit has held that "the failure to exhaust issues before the BIA bars judicial review through habeas just as it does through a petition for review." *Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004). Here, as indicated above, Petitioner can challenge the legality of his detainer and arrest within his removal proceedings, and can seek to terminate those proceedings based on the purported illegality of the arrest. *See Aguayo v. Garland*, 78 F.4th 1210, 1217 (10th Cir. 2023) (citing *In re Garcia-Flores*, 17 I & N Dec. 325 (BIA 1980) (in the context of an allegedly unlawful arrest, "assum[ing], without deciding, that termination of removal proceedings is an appropriate remedy for egregious statutory or regulatory violations").

In *Aguayo*, ICE issued a detainer to the county jail where the alien was held, and then took him into custody when the county jail released him. *Id.* at 1213. In the removal proceedings that followed, the alien asked the Immigration Judge to terminate the proceedings based on his contention that the arrest was unlawful. *Id.* Specifically, he claimed that the arrest "violated the Fourth Amendment, the INA, and agency regulations" because (among other things) ICE "t[ook] him into . . . custody without a warrant or reason to believe he would likely escape before a warrant could be obtained[,] . . . issu[ed] an arrest warrant before providing him with a valid NTA[,] and . . . fail[ed] to issue a properly authorized NTA, Notice of Custody Determination, or arrest warrant." *Id.* The Immigration Judge, the BIA, and the Tenth Circuit all found that terminating the removal proceedings was not warranted. *Id.* at 1213–16, 1221.

Petitioner's claims about his detainer and arrest are similar to the non-citizen's claims in *Aguayo*. It follows that he can use the same pathway to challenge his arrest and seek to terminate the ensuing removal proceedings. For this reason, the Court should require him to exhaust his administrative options. *Soberanes*, 388 F.3d at 1309; *see also Reyes v. Lynch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015) ("[F]ederal courts must await exhaustion of all administrative appeals before reviewing immigration decisions, whether by a habeas corpus action or a petition for review.").

The Court should deny counts 1-3 of the petition on these grounds.

III. Due date for response

As noted above, the parties disagree as to when Respondents' response is due pursuant to the Court's Order. The Court ordered Petitioner to serve Respondents "by e-mail and overnight mail." ECF No. 4. Petitioner maintains that the 3-day response deadline was triggered when

Petitioner initiated service by mail (February 27, 2026). However, Respondents' deadline began to run when Respondents actually received service by mail, which occurred on March 2, 2026.

Courts regard the obligation to respond as triggered by when service is "made upon" the defendant. *See* C. Wright et al., 4B Fed. Prac. & Proc. Civ. § 1106 ("Service on the United States") (4th ed.) ("After service is *made upon* the United States Attorney or an equivalent official, the United States has sixty days, rather than the normal twenty-one days, to answer the complaint.") (emphasis added); *id.* § 1346 ("Time for Serving and Filing") ("Federal officers and employees sued in their official capacities have sixty days from the date service is *made upon* the United States to serve their response.") (emphasis added). More generally, various courts have viewed the defendant's obligation to respond as running from the date of receipt. *See Conn v. United States*, 823 F. Supp. 2d 441, 444 (S.D. Miss. 2011) ("[I]t is fundamental to the American system of civil procedure that the duty to answer only arises after service has been perfected. . . . Therefore, logic alone would lead to the conclusion that the United States' responsive period cannot begin until both the United States attorney and the Attorney General have *received* copies of the summons and complaint.") (emphasis added); *George v. HEK Am., Inc.*, 157 F.R.D. 489, 492 (D. Colo. 1994) ("Fed.R.Civ.P. 12(a) requires an answer within twenty days when service of process is made . . . . Defendants were required to answer within thirty days of the *receipt* of the summons") (emphasis added); Kadet-Kruger & Co. v. Celanese Corp. of Am., 216 F. Supp. 249, 250 (N.D. Ill. 1963) ("No court has suggested that this 20 day period begins to run until service has been effected in a legally permissible manner."). This result accords with common sense and fairness, especially in cases—such as this one—where the response deadline is only three days after service.

Since Respondents did not receive service by mail, as directed by the Court, until March 2, 2026, the Court should find that this response is timely.

Conclusion

Respondents maintain that the Court should deny the Petition in its entirety. Nevertheless, should the Court grant the Petition's request for a bond hearing, and determine 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.

Date: March 5, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 5, 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/ *E. Garreth Winstead*
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