IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00783-TPO

GURDEEP SINGH,

Petitioner,

v.

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

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

Respondents hereby respond to the Court's Order to Show Cause, directing them to respond to the habeas petition on or before March 13, 2026. *See* ECF No. 4.

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 Colindres Carmona v. Ceja et al.*, 25-cv-04061-TPO. 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 addressing Petitioner's detention subject to § 1225(b), as well as his prior release from custody on October 15, 2024. *See* ECF No. 4 at 3.

Petitioner's release from custody on October 15, 2024. The Court's Order to Show Cause directed the Parties to address under which statutory basis Petitioner was released from custody on October 15, 2024, and the impact of such prior release on the Petition. *See* ECF No. 4 at 3. In the Petition, Petitioner claims that he was previously "detained upon entry, processed, and released" pursuant to 8 U.S.C. § 1226(a). *See* ECF No. 1 ¶¶ 6-7; *see also* ECF No. 1-9 at 2 (ICE Order of Release on Recognizance). Respondents do not agree that Petitioner was properly subject to § 1226(a) when he was previously released.[1]

Petitioner entered the United States without inspection on or about August 20, 2024, near Otay Mesa, California. *See* ECF No. 1-8 at 2 (DHS Notice and Order of Expedited Removal). He was detained pursuant to 8 U.S.C. § 1225(b)(1) and determined to be inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I) (immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document). *Id.*

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[1] Respondents have requested Petitioner's records from the National Records Center but, as of the date of this filing, have not yet received those records. Accordingly, the facts set forth herein are solely based on the documents attached to the Petition and may not fully reflect all information contained in Petitioner's official records.

Section 1225(b)(1) permits expedited removal of noncitizens who are arriving in the United States and are inadmissible under 8 U.S.C. § 1182(a)(7), and provides for mandatory detention. *See* §§ 1225(b)(1)(A)(i), 1225(b)(1)(B)(iii)(IV); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018) (describing statutory framework and mandatory detention provisions of 8 U.S.C. § 1225(b)). The paperwork attached to the Petition indicates that Petitioner was initially detained and processed pursuant to § 1225(b)(1). ECF No. 1-8 at 2.

Because Petitioner claimed a fear of persecution, he was transferred out of expedited removal proceedings. *See* ECF No. 1-11 at 2. Section 1225(b)(1) requires detention even if a noncitizen claims a fear of persecution. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also* cf. *Dep't of Homeland Sec'y v. Thuraissigiam*, 591 U.S. 103, 111 (2020) (recognizing that under 8 U.S.C. § 1225(b)(1), "[w]hether an applicant who raises an asylum claim receives full or only expedited review, the applicant is not entitled to immediate release"). Nevertheless, on October 15, 2024, ICE issued an Order of Release on Recognizance (OREC). *See* ECF No. 1-9. The OREC provides that Petitioner was released on his own recognizance pursuant to Section 236 of the Immigration and Nationality Act (INA) (8 U.S.C. § 1226). *Id.* at 2; *see* 8 U.S.C. § 1226(a) (providing for "conditional parole"); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the INS used the phrase 'released on recognizance' as another name for 'conditional parole' under § 1226(a)"). But Petitioner was not actually eligible for release under this section since he was subject to

mandatory detention under § 1225(b)(1).[2] His release under § 1226(a) thus appears to have been improper.

Petitioner's prior detention under 8 U.S.C. § 1225(b). Petitioner's prior release under § 1226(a) has no impact on his current detention under § 1225(b). The facts presented support the conclusion that ICE should not have released Petitioner under § 1226(a) because he was subject to mandatory detention under § 1225(b)(1). Moreover, even under § 1226(a), DHS "may revoke a bond or parole authorized under [§ 1226(a)]." Thus, because release under § 1226(a) is discretionary, it is within the authority of DHS to revoke a grant of conditional parole and re-detain the noncitizen. And, even if Petitioner was paroled under 8 U.S.C. § 1182(d)(5)(A), it would not change the legality of his detention under § 1225(b) because § 1182(d)(5)(A) expressly provides that discretionary parole "shall not be regarded as admission," a principle that the Supreme Court has affirmed. *See Thuraissigiam*, 591 U.S. at 139 ("aliens who arrive at ports of entry—*even those paroled elsewhere in the country for years pending*

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[2] Petitioner argues in the alternative that if the Court determines Petitioner is not subject to 8 U.S.C. § 1226(a), then the only "mechanism" for Petitioner's prior release was parole under 8 U.S.C. § 1182(d)(5)(A), and Respondents have violated Petitioner's due process rights because he did not receive notice of revocation of his parole. ECF No. 1 ¶¶ 8-12. Petitioner fails to provide any evidence to support his alternative claim that he was formally paroled under the section. At this time, Respondents cannot determine whether Petitioner received a formal grant of parole under § 1182(d)(5)(A) because, as noted above, Respondents have not yet received Petitioner's records from the National Records Center. If the Court so orders, Respondents will update the Court once they receive Petitioner's records. Respondents note that even if Petitioner was paroled under 8 U.S.C. § 1182(d)(5)(A), that parole could have terminated either automatically or "on notice," depending on the notice of parole. *See* 8 C.F.R. § 212.5(e) (distinguishing between: (1) parole that terminates "automatically," i.e., upon the noncitizen's departure from the United States or "expiration of the time for which parole was authorized," 8 C.F.R. § 212.5(e)(1); and (2) parole that terminates "[o]n notice," *id.* § 212.5(e)(2)).

removal—are 'treated' for due process purposes 'as if stopped at the border.'" (quoting *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 215 (1953) (emphasis added)). Accordingly, Petitioner continues to hold the legal status he held when he was apprehended near the border—an arriving noncitizen who is subject to mandatory detention under § 1225(b). *See* ECF No. 1 ¶¶ 73-75 (admitting that Petitioner was issued a Notice and Order of Expedited Removal, and that he was charged "as an alien present in the United States who has not been admitted or paroled").

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b).

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). This position is further supported by *Jennings v. Rodriguez*, 583 U.S. 281 (2018), where the Supreme Court 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).

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, 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). 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, attached hereto as Exhibit A.

If the Court agrees with Petitioner and determines that he is detained under § 1226(a), 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.[3]

This Court's ruling on the Section 1225(b) 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, e.g.*, *Leyva Ramirez*, 2026 WL 318989, at *3–4 ("The Court's analysis begins and ends with Count One, the statutory claim. . . . Having granted Mr. Leyva Ramirez relief as to Count One, the Court does not reach his other claims at this time."); *see also 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 should also not grant any other prospective injunctive relief. *See Montanez de la Cruz*, No. 26-cv-00360-PAB, 2026 WL 439217, at *3–5. 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

[3] *See, e.g.*, *Montanez de la Cruz v. Baltazar et al.*, 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, 2026 WL 318989, at *4 (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.").

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.

Dated: March 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 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 e-mail addresses:

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