

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

Civil Action No. 26-cv-00804-TPO

DEIBIS GARCIA CHINEA,

Petitioner,

v.

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

Respondents.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND  
ORDER TO SHOW CAUSE (ECF No. 4)**

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Respondents hereby respond to the Court's Order to Show Cause (ECF No. 4), directing them to respond to the habeas petition.<sup>1</sup>

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

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<sup>1</sup> This Court ordered Respondents to respond to the Order to Show Cause by March 13, 2026. ECF No. 4. This response, which is being filed on March 13, is therefore timely.

noncitizen is entitled by 8 U.S.C. § 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.*, No. 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.

Petitioner is a citizen of Cuba. ECF No. 1, ¶ 19. He entered the United States without inspection on November 8, 2021. ECF 1, ¶ 53. He was then taken into custody. On November 18, 2021, the Department of Homeland Security (DHS) released Petitioner into the United States pursuant to an Order of Release on Recognizance.<sup>2</sup> *See* ECF No. 1-4 at 2-3. Petitioner is present in the United States without having been admitted. 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*,

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<sup>2</sup> In its Order to Show Cause, this Court ordered Respondents to specifically address in this response the statutory basis on which Petitioner was released from custody on November 18, 2021. ECF No. 4 at 4. In compliance with that order, Respondents state that DHS released Petitioner into the United States on an Order of Recognizance, in accordance with 8 U.S.C. § 1226(a). *See* ECF No. 1-4 at 2. Respondents submit that Petitioner's prior release under § 1226(a) is not dispositive of this habeas action. Respondents' position that Petitioner is subject to mandatory detention under § 1225(b)(2)(A) is consistent with the text of the statute and the *Jennings* decision, as discussed in the brief appended as Exhibit A and the Fifth Circuit's decision in *Buenrostro-Mendez*. That Petitioner was previously released pursuant to § 1226(a) does not bar Respondents from effectuating the mandatory-detention provision of § 1225(b)(2)(A) now. *See Nielsen v. Preap*, 586 U.S. 392, 411 (2019) (“[A]s we have held time and again, an official’s crucial duties are better carried out late than never.” (citation omitted)).

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).

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, as noted above. This Court does not find *Buenrostro-Mendez* persuasive. *See, e.g., Martinez Garrido v. Baltasar, et al.*, No. 26-CV-00428-TPO, 2026 WL 638362, at \*3 (D. Colo. Mar. 6, 2026). The Tenth Circuit has not ruled on the 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.<sup>3</sup>

Petitioner contends that he should be viewed as detained under 8 U.S.C. § 1226(a) rather than § 1225(b). *See* ECF No. 1 at 2, 3, 14. 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>4</sup>

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<sup>3</sup> A copy of that brief is attached as Exhibit A hereto.

<sup>4</sup> *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. Baltazar 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.”).

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. 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.

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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 the Court for the United States District Court for the District of Colorado, using the district court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the district court's CM/ECF system.

*s/ Michael C. Johnson*  
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