IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00846-NYW

WILBER ALEXANDER SALMERON,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility;
GEORGE VALDEZ[1],Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement;
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security; and
PAMELA BONDI, United States Attorney General,

Respondents.

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

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

The Court ordered service on Respondents by email and overnight mail. ECF No. 4 at 2. The Court ordered Respondents to respond within 3 days of service. *Id.* Service was made upon the U.S. Attorney's Office on March 6, 2026; thus, Respondents' response deadline is March 9, 2026, and this response is timely.[2]

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[1] George Valdez, the Acting Field Office Director for ICE's Denver Field Office, is substituted for Robert G. Hagan pursuant to Fed. R. Civ. P. 25(d).

[2] Service is effective as of the date it is "made upon" Respondents in the manner specified in the Court's Order—that is, the date it is received. *See, e.g.*, C. Wright *et al.*, 4B Fed. Prac. & Proc. Civ. § § 1346 (4th ed.) ("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);

I. Petitioner is properly detained under 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*, *e.g.*, *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025). 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 ¶¶ 7, 11. 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

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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); *see also A.T. v. Baltazar et al.*, Civil Action No. 26-cv-00925-NYW, ECF No. 11 at 2 n.2 (noting that service is "effective upon receipt . . . not upon mailing" (internal citation omitted)).

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, as noted above. Respondents are aware that this Court disagrees with the Fifth Circuit's majority opinion. *See Garcia Bautista v. Noem, et al.*, No. 26-cv-00272-NYW, 2026 WL 532427, at *3, n.3 (D. Colo. Feb. 26, 2026). 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.[3]

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 ¶ 40 ("detention authority, if any, must arise under 8 U.S.C. § 1226"). 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.[4]

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[3] A copy of that brief is attached as Exhibit A hereto.

[4] *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

II. Petitioner's removal proceedings have not terminated.

In addition to the legal basis for his detention, Petitioner raises the issue of whether his removal proceedings have been finally terminated. *See* ECF No. 1 ¶¶ 13-15, 37-39. He alleges that his removal proceedings have been finally terminated because the Department of Homeland Security ("DHS") failed to file a timely appeal 30 days after the Immigration Judge's ("IJ") decision. *See id.* ¶¶ 37-38; *see also* ECF No. 1-2 (IJ Order and DHS Notice of Appeal). If Petitioner's removal proceedings were finally terminated, Respondents would not have a basis to detain Petitioner pursuant to 8 U.S.C. § 1225(b)(2), which provides that "the alien shall be detained for a proceeding under section 1229a." However, for the reasons explained below Petitioner's proceedings have not been finally terminated, and he is still subject to detention pursuant to § 1225(b)(2).

On January 17, 2026, the IJ issued an order granting termination of the Petitioner's proceedings before the Executive Office of Immigration Review. *See* ECF No. 1-2 at 7-9. But that decision was not immediately final. Rather, Department of Justice regulations (which govern immigration judges and the Board of Immigration Appeals) provide that a "decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first." 8 C.F.R. § 1003.39 (in 8 C.F.R. Part 1003, Subpart C (Immigration Court—Rules of Procedure)).

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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 rule reflects the authority that Congress has granted federal agencies to specify, by rule, that an interim ruling is inoperative until an internal agency appeal is completed. 5 U.S.C. § 704 (providing that an agency decision is not final if "the agency otherwise requires by rule and provides that the action meanwhile is inoperative"); *Darby v. Cisneros*, 509 U.S. 137, 151-152 (1993) (recognizing that 5 U.S.C. § 704 permits an agency to "avoid the finality of an initial decision" by adopting a rule providing that the initial decision is "inoperative pending appeal").

The IJ's order states that the appeal is due on February 18, 2026. ECF No. 1-2 at 9. This deadline is based on 8 C.F.R. § 1003.38(b), which provides 30 calendar days for the filing of the notice of appeal after "the mailing or electronic notification of an immigration judge's written decision."

Here, in accordance with 8 C.F.R. § 1003.38(b) and the IJ's order, DHS filed an appeal with the Board of Immigration Appeals on February 18, 2026. ECF No. 1-2 at 10 (filing header showing that it was "Filed at BIA on: 02/18/2026"), 24 (certificate of service dated 18 February, 2026). Undersigned counsel has confirmed that the BIA issued a filing receipt for that appeal on February 21, 2026. Thus, the appeal has not been rejected by the BIA as untimely. Accordingly, the IJ's decision terminating the removal proceedings is not yet final. 8 C.F.R. § 1003.39. Rather, a final decision will be made once the BIA rules on the appeal. Thus, Petitioner continues to be subject to detention under § 1225(b)(2).

III. Additional Issues

Respondents anticipate that this Court's ruling on the Section 1225(b)(2)(A) issue

in this case will 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 v. Baltasar et al.*, No. 26-cv-00199-NYW, 2026 WL 318989, at *3–4 (D. Colo. Feb. 6, 2026) ("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, ECF No. 15, at 9–11. But 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, Petitioner should receive a bond hearing under 8 U.S.C. § 1226(a), not release, as requested in the Petition. *See* ECF No. 1 at 19. Further, the Court should order that Respondents conduct such a bond hearing in accordance with that provision within a reasonable time and should direct Respondents to file a status report confirming that such a bond hearing was held.

Dated: March 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
Counsel for Respondents