IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00925-NYW

A.T,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity;
GEORGE VALDEZ, in his official capacity;
KRISTI NOEM, in her official capacity;
TODD LYONS, in his official capacity; and
PAMELA BONDI, in her official capacity,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE [ECF NO. 11]

Respondents hereby respond to the Court's Order to Show Cause, ECF No. 11, on Petitioner's Petition for Writ of Habeas Corpus, ECF No. 1.[1] Petitioner alleges that her ongoing detention by the Department of Homeland Security ("DHS"), without a bond hearing, is unlawful. Specifically, she alleges that she is detained in violation of procedural and substantive due process principles. She also alleges that, because she has completed a preliminary step towards seeking lawful status under the Trafficking Victims Prevention Act ("TVPA"), her pre-removal detention is arbitrary and capricious and therefore a violation of the Administrative Procedure Act ("APA"). Petitioner seeks,

[1] The Court ordered Respondents to file their response within seven days of service and noted that service by mail is effective upon receipt, not upon mailing. ECF No. 11 at 4; n.2. The U.S. Attorney's Office received paper service via certified mail on March 9. *See* ECF No. 9 at 5; USPS Tracking Results, attached as Exhibit A. This response, filed on March 16, is thus timely.

inter alia, either her immediate release or a bond hearing conducted by this Court and subject to a variety of novel procedural requirements.

However, Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1225(b), a provision of the Immigration and Nationality Act ("INA") which does not afford her a bond hearing. Even assuming *arguendo* that the applicable INA provision is 8 U.S.C. § 1226(a), the appropriate remedy is for Petitioner to receive a bond hearing, before an immigration judge, under the standard established by law. Because Petitioner cites no authority for most items in her list of desired procedural requirements, this Court should decline to order such relief. Similarly, due process does not require her immediate release, because there is a legitimate government interest in her detention. Finally, Petitioner's APA claim fails, because pre-removal detention is not inconsistent with the mere *potential* for TVPA protections, and is therefore not arbitrary and capricious.

INTRODUCTION

Petitioner is a Honduran national who has been present in the United States, without admission, since 2019. ECF No. 1 ¶ 1; [redacted] attached as Exhibit B, ¶¶ 4-5. She has been in the custody of U.S. Immigration and Customs Enforcement ("ICE") since March 19, 2024. Ex. B ¶ 11. Because Petitioner is uncertain of the statutory basis for her detention, the Petition presents a variety of arguments in the alternative, addressing different detention authorities. *See* ECF No. 1 ¶ 59.

It is Respondents' position that Petitioner is detained pursuant to 8 U.S.C. § 1225(b). Ex. B ¶ 49. However, as set forth *infra*, Respondents recognize that this Court is likely to hold that Petitioner is detained pursuant to 8 U.S.C. § 1226(a).

Consequently, this Response does not address Petitioner's arguments for release under 8 U.S.C. § 1226(c). *See* ECF No. 1 at ¶¶ 82-102.

ARGUMENT

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

A threshold 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 ICE under 8 U.S.C. § 1225(b), or whether such a noncitizen is entitled by § 1226(a) to seek a bond hearing. When Petitioner was detained by ICE, she was present in the United States without having been admitted. *See* Ex. B ¶ 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' 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).

However, the Tenth Circuit has not ruled on this issue,[2] and this Court has consistently rejected Respondents' interpretation of the relevant legal provisions. *See, e.g.*, *Caballero v. Baltazar*, et al., 25-cv-03120-NYW. Respondents are also 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). Respondents respectfully disagree with those rulings. But Respondents also acknowledge that this Court is likely 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). 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]

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[2] 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.

[3] If the Court determines that Petitioner is entitled to a bond hearing on the ground that she is detained under § 1226(a), 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.*

B. If the Court holds that Petitioner is detained under 1226(a), the appropriate relief is a bond hearing before an immigration judge.

If the Court holds 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 before an immigration judge, under the standard established by law. The Court should not impose additional procedural requirements.

1. Immediate release is not an appropriate remedy

Assuming *arguendo* that the Court determines that Petitioner is detained under § 1226(a), it should simply order the bond hearing provided under the statute—not immediate release. Multiple decisions in the District of Colorado have recognized this principle. *See, e.g.*, *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)."); *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."); *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.)

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.").

2. If the Court orders a bond hearing, that bond hearing should be before an immigration judge.

If the Court orders that a bond hearing be held, it should order that an immigration judge preside. The statute gives that authority to immigration judges. *See* 8 U.S.C. § 1226(a) (providing that "the Attorney General … (2) may release the alien on (A) bond"). "This Court—again following the clear weight of persuasive authority—has held that a bond hearing before an immigration judge is sufficient to vindicate the procedural protections afforded by § 1226(a)." *Martinez Escobar v. Baltazar*, No. 26-CV-00296-NYW, 2026 WL 503313, at *4 (D. Colo. Feb. 24, 2026) (citations omitted). Furthermore, this Court has repeatedly held that "an immigration judge is better suited than this Court to conduct the hearing and consider whether [petitioner] poses a flight risk or danger to the community." *Id.*; *Garia Bautista v. Noem*, No. 26-CV-00272-NYW, 2026 WL 532427, at *4 (D. Colo. Feb. 26, 2026) (same); *Ramirez v. Baltasar*, No. 26-CV-00199-NYW, 2026 WL 318989, at *4 (D. Colo. Feb. 6, 2026) (same). Other judges in this district have held the same. *See, e.g., Martinez Garrido v. Baltasar*, No. 26-CV-00428-TPO, 2026 WL 638362, at *4 (D. Colo. Mar. 6, 2026) (denying immediate release because "the immigration judge is in a better position to decide between detention or release in the immigration context.") (citations omitted); *Hernandez v. Baltazar*, No. 26-CV-0524-WJM, 2026 WL 507518, at *4 (D. Colo. Feb. 24, 2026) ("The Court believes, on the limited record before it, that an Immigration Judge is better suited to consider whether he poses a flight risk or danger to the community in the first instance."); *Martinez v. Baltazar*, No. 26-CV-00106-PAB, 2026 WL 194163, at *5 (D. Colo. Jan. 26, 2026) ("an immigration judge is better suited to consider whether petitioner poses a

flight risk or danger.") (citation omitted).

Petitioner cites cases in other districts in which courts have decided to hold immigration bond hearings themselves. *See* ECF No. 1 ¶ 136. This Court has considered that argument before and did not find it persuasive. *See Martinez Escobar*, 2026 WL 503313, at *4. The Court observed that petitioner in that case did not identify any cases in this district which have done so, and the Court was not aware of any. *Id.* (citing *De La Cruz v. Baltazar*, No. 26-cv-00360-PAB, 2026 WL 439217, at *4 (D. Colo. Feb. 17, 2026) (ordering that the custody hearing be conducted by an immigration judge and observing that the petitioner had provided no cases from this District in which the court held its own custody hearing). Furthermore, one of the out-of-district cases Petitioner cites points to the challenges a district court faces in holding immigration hearings. In *L.G.M. v. Larocco*, No. 2:25-CV-2631-PKC (E.D.N.Y.), the district court ordered on June 25, 2025, that a bond hearing be held. *See id.* ECF No. 30. In that case, the district court held the bond hearing two weeks later, on July 9, 2025. *See id.* Minute Order dated 7/9/25. The court did order release on bond until July 31, 2025, subject to conditions to be set. *See id.* ECF No. 43. And it was not until 96 days later (and 26 docket entries including motions later), on November 3, 2025, that the petitioner was actually released on bond. *See id.* ECF No. 69. In contrast, this Court has routinely ordered Respondents to hold immigration bond hearings within one week, and Respondents have complied. *See, e.g., Diaz Lopez v. Noem*, et al., 25-CV-04089-NYW (D. Colo.), ECF No. 12.

Petitioner also argues that courts in other districts have found that ICE violates

orders, so this Court should hold immigration-bond hearings. In at least one analogous case, the Court has rejected this argument. Specifically, "the Court [did] not find evidence that ICE violated court orders in the past sufficiently establishes that ICE will violate a court order in this case. This is particularly true given that ICE has generally complied with this Court's orders in its past immigration cases." *De La Cruz v. Baltazar*, No. 26-CV-00360-PAB, 2026 WL 439217, at *3 (D. Colo. Feb. 17, 2026).[4] Judge Brimmer found that "a bond hearing before an immigration judge is sufficient to vindicate the procedure protections afforded by § 1226(a)" and ordered that an immigration judge conduct that hearing. *Id.* at *4.[5]

3. The Court should not order other injunctive relief in connection with a bond hearing.

Petitioner asks this Court to order numerous other forms of injunctive relief in connection with any bond hearing. Most notably, Petitioner asks the Court to order that (1) the use of unauthenticated evidence be prohibited;[6] (2) the weight the adjudicator

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[4] Judge Brimmer did cite one instance in which there was an issue with ICE complying with his orders. *See id.* n.6. There was a dispute over the speed with which ICE accepted a bond payment. *See id.* However, the issue was mooted, and the Court "did not find that its habeas order was violated." *Id.*

[5] Petitioner cites a case in which Judge Jackson found that the immigration judge failed to comply with his order that the government should bear the burden of proof in the bond hearing before an immigration judge that he ordered. *See* ECF No. 1 ¶ 127 (citing *Cervantes Arredondo v. Baltazar*, No. 1:25-CV-03040-RBJ, Order, ECF No. 26 at 4-7, (D. Colo. Oct. 31, 2025). However, even in that case, the Court did not hold an immigration-bond hearing itself; rather, it ordered the immigration judge to hold the hearing again, applying the burden as specified in its order. *Id.* at 15-16.

[6] In her Prayer for Relief, Petitioner asks this Court to order that "undue weight is not placed on unauthenticated or antiquated documents regarding alleged criminal legal contacts." ECF No. 1 at 47.

gives to Petitioner's criminal history must be considered in light of the impact of her disabilities and trauma history; (3) alternatives to detention be considered; (4) consideration be given to Petitioner's ability to pay the bond; (5) undue weight cannot be given to allegations underlying dismissed criminal charges; and (6) if bond is granted, that Petitioner's release include no conditions that "effectively constitute re-detention, such as GPS monitors of other limitations to her freedom."[7,8] ECF No. 1 at 42-44, 47.

The Court should deny this additional injunctive relief, because Petitioner "makes no attempt to connect the deprivation in this case—ICE's decision to deny [her] a bond hearing—to [her] request that this Court impose restrictions on the immigration judge's bond calculation." *Martinez Escobar*, 2026 WL 503313, at *5. Similarly, she does not "address the usual procedure for determining bond in a § 1226(a) hearing or why such procedure would be constitutionally inadequate." *Id.*; *see also Montanez de la Cruz*, No. 26-cv-00360-PAB, 2026 WL 439217, at *3-5. As to alternatives to detention or conditions on release at the bond hearing, this Court should "leave it to the immigration judge—not Respondents—to determine what … what conditions[] should apply." *Martinez Escobar*, 2026 WL 503313, at *5.

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[7] Petitioner also asks that, at any bond hearing, Respondents bear the burden of establishing by clear and convincing evidence that continued detention is justified. ECF No. 1 at 47. For the reasons set forth in *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022), Respondents oppose this relief. However, Respondents recognize that this Court has concluded that the standard proposed by Petitioner is appropriate in the immigration habeas context. *See*, *e.g.*, *Diaz Lopez v. Noem*, No. 25-cv-04089-NYW, 2026 WL 206220, at *5 (D. Colo. Jan. 27, 2025).

[8] Petitioner's request that her release not include "limitations to her freedom" seems to conflict with her request that alternatives to detention be considered.

Petitioner also asks that the Court permanently enjoin Respondents from re-detaining Petitioner unless they demonstrate at a pre-deprivation bond hearing that he is a flight risk or danger to the community. ECF No. 1 at 47. Such relief could be contrary to law. For example, in 8 U.S.C. § 1226(c), Congress has provided that noncitizens convicted of certain crimes are subject to mandatory detention, with no provision for a bond hearing, and the U.S. Supreme Court has affirmed that this provision comports with due process. *Demore v. Kim*, 538 U.S. 510 (2003). Similarly, 8 U.S.C. § 1231 requires detention of noncitizens who have been ordered removed, with no provision for a bond hearing. Consequently, it is conceivable that Petitioner's re-detention, without bond, could at some future time be both mandatory and lawful.

C. Substantive due process does not require Petitioner's release.

Petitioner argues that substantive due process requires her release, because her detention serves no legitimate objective. ECF No. 1 ¶¶ 104-111, citing *Bell v. Wolfish*, 441 U.S. 520, 53 (1979). But, as the Supreme Court has recognized, detention during the removal process serves a valid governmental purpose by avoiding the risk of noncitizens "skipping their hearings and remaining at large in the United States unlawfully." *Demore*, 538 U.S. at 528. Detention also increases the chance that, if ordered removed, the noncitizen will be successfully removed. *See Rodriguez Diaz*, 53 F.4th at 1208.

Moreover, as Petitioner acknowledges, preventing flight and guarding against danger to the community are legitimate purposes for civil immigration detention. ECF No. 1 ¶ 105, citing *Zadvydas*, 533 U.S. 678, 690. (2018). Petitioner argues that she is

neither a flight risk nor a danger to the community. *Id.* ¶¶ 116-120. But this is precisely what a bond hearing before an immigration judge is designed to evaluate. *See* 8 C.F.R. §§ 236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1112 (BIA 1999).

D. Petitioner's detention is not arbitrary and capricious.

Petitioner alleges that her detention violates the APA because it is arbitrary and capricious. ECF No. 1 ¶¶ 62-68,154-159, citing 5 U.S.C. § 706(2). Specifically, she explains that she is seeking a visa under the TVPA (a "T Visa"), which affords a pathway to lawful immigration status for persons who have experienced human trafficking. *See* 22 U.S.C. § 71021, *et seq.* As an initial step in this process, Petitioner has sought and received a Bona Fide Determination ("BFD") from U.S. Citizenship and Immigration Services. Ex. B ¶¶ 26, 31. Because a BFD stays removal, Petitioner argues, her pre-removal detention by ICE "creates contradictory, opposing positions … which DHS has failed to explain or reconcile." ECF No. 1 ¶ 64.

However, there is nothing irreconcilable about DHS acting in parallel to (1) process Petitioner's application for a T Visa; and (2) pursue a final order of removal. A BFD does not guarantee legal status, nor does it represent an adjudication of the merits of Petitioner's application. Rather, it is a preliminary administrative step. *See* C.F.R. § 214.205(2) (BFD requires only a properly filed and complete application; a signed personal statement; and confirmation that the applicant does not present national security concerns). In the event that Petitioner's T Visa application is denied, she may be subject to removal. In the meantime, Petitioner is protected from removal, but not from removal proceedings or from pre-removal detention.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Dated: March 16, 2026

Respectfully submitted,

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[9] I certify that I am a member in good standing of the bar of this Court.

CERTIFICATE OF SERVICE

I certify that on March 16, 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:

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