IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-999-RMR

JORGE ROBLERO VASQUEZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as the Warden of the Denver Contract Detention Facility, Aurora, Colorado
GEORGE VALDEZ, in his official capacity as Field Office Director of the ICE Enforcement and Removal Operations Denver Field Office;
MARKWAYNE MULLIN, in his official capacity as Secretary of the Department of Homeland Security[1]; and
Pamela Bondi, in her official capacity as United States Attorney General;

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER (ECF No. 1) AND ORDER TO SHOW CAUSE (ECF No. 10)

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 10), directing them to respond to the Petition for Habeas Corpus and Motion for a Temporary Restraining Order (ECF No. 1, "Petition and Motion for TRO"). Consistent with the relief requested in the petition, *see* ECF No. 1 at 17, if the Court decides to grant the petition and order Petitioner's release, Respondents request that the Court afford them 24 hours

[1] George Valdez is the current Denver Field Officer Director, and Markwayne Mullin is the current Secretary of the Department of Homeland Security, and they are hereby automatically substituted as parties in this case in their official capacities, in accordance with Federal Rule of Civil Procedure 25(d).

in which to effect that release.

The Court ordered Petitioner to (1) serve Respondents with a copy of the Petition and Motion for TRO, any accompanying papers, and a copy of the Order, via e-mail and overnight mail on or before March 24, 2026; and (2) promptly file proof of such service on the docket. (ECF No. 10). Proper service was made upon the United States Attorney's Office via e-mail on March 18, 2026, and by mail on March 19, 2026. Thereafter, the parties jointly moved the Court to set a briefing schedule. (ECF No. 13). The Court granted that joint motion and ordered the Respondents to respond to the Petition and Motion for TRO by March 30, 2026. (ECF No. 14). Thus, this response is timely.

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., Mendoza Gutierrez v. Baltazar, et al., 25-cv-02720-RMR*. 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, Petition for Writ of Habeas Corpus, ¶¶

32, Motion for Temporary Restraining Order, p. 12. 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 and Eighth Circuits. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502–08 (5th Cir. 2026); *Avila v. Bondi*, -- F.4th --, 2026 WL 819258, at *2–6 (8th Cir. Mar. 25, 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)(2).

The Fifth Circuit, Eighth 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; *Avila*, 2026 WL 2026 WL 819258, at *2–6; *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025). Many others have not, including this Court. *See Kumar v. Baltazar*, et al., Civil Action No. 26-cv-00254-

RMR at 2, n.3 (D. Colo. March 6, 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.[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, ¶¶ 36, 38, 40. 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

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

§ 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)(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, 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 issue, Respondents request that the Court issue an order directing Respondents to

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[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.").

address such issues.[4]

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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[4] The Motion for Temporary Restraining Order requests relief based on the nationwide class in *Maldonado Bautista v. Santacruz*, No. 25-CV-01873-SSS-BFM (C.D. Cal.), *appeal docketed*, No. 25-7958 (9th Cir. Dec. 19, 2025). *See* ECF No. 1, 24–25. The Court should decline to do so for multiple reasons and instead should simply decide the petition based on the statutory analysis discussed above. *First*, the *Bautista* court's decision certifying the class and granting declaratory relief beyond the Central District of California has been temporarily stayed by the Ninth Circuit. *See Maldonado Bautista v. Santacruz*, No. 26-1044, ECF No. 5 (9th Cir. Mar. 6, 2026). *Second*, the *Bautista* court lacked jurisdiction to determine the legality of Petitioner's detention. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) ("Regardless of whether . . . detainees formally request release from confinement," if "their claims for relief necessarily imply the invalidity of their confinement[], their claims fall within the core of the writ of habeas corpus and thus must be brought in habeas." (internal quotations omitted)); *Rumsfeld*, 542 U.S. at 443 ("[Habeas] jurisdiction lies in only one district: the district of confinement." (citation omitted)); *Calderon v. Ashmus*, 523 U.S. 740 (1998) (district court lacks authority to grant declaratory judgment in a class action to determine a preliminary issue class members then rely on to seek relief in individual habeas actions). *Finally*, granting preclusive effect is disfavored because it would be applied against the government, there are prior inconsistent judgments, and the decision is currently on appeal. *See United States v. Mendoza*, 464 U.S. 154, 159, 162–63 (1984); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329–31 (1979); *In re Hedged-Invs. Assocs., Inc.*, 48 F.3d 470, 472–73 (10th Cir. 1995); 9 A.L.R.2d 984; C. Wright, 18A Fed. Prac. & Prod. § 4404.

Dated: March 30, 2026.

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CERTIFICATE OF SERVICE

I certify that on March 30, 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 persons who have registered for such notifications.

s/ Adam D. McConney
U.S. Attorney's Office