IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01099-SKC

JIORDAN HECTOR LOPEZ RICARDO,

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;
MARKWAYNE MULLIN, 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. 5)

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 5), directing them to respond to the habeas petition. Specifically, the Court ordered that "Respondents must first address whether the present case differs factually or legally from" the Court's prior decision in *Rivas v. Baltazar*, No. 1:26-cv-00442-SKC, 2026 WL 444732 (D. Colo. Feb. 17, 2026), "and if so, shall specify the material differences." As discussed more fully below, this case is both factually and legally distinct from the Court's decision in *Rivas*. *Rivas* concerned the application of the

[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).

automatic stay regulation after an Immigration Judge had granted a petitioner release on bond. Here, Petitioner has not been granted bond, is not subject to an auto-stay, and instead is detained under 8 U.S.C. § 1225(b)(2) during the pendency of his removal proceedings.

The Court ordered service on Respondents by email and overnight mail. ECF No. 5. The Court ordered Respondents to respond within 5 days of service. *Id.* Service was made upon the U.S. Attorney's Office on March 24, 2026; thus, Respondents' response deadline is March 30, 2026, and this response is timely.[2] *See* Fed. R. Civ. P. 6(a)(1) ("When the period is stated in days" "if the last day is a . . . Sunday" "the period continues to run until the end of the next day that is not a . . . Sunday").

I. This case is legally and factually distinct from *Rivas*, 2026 WL 444732, because it does not involve the application of the automatic stay regulation, 8 C.F.R. § 1103.19(i)(2).

This Petition is both factually and legally distinct from *Rivas*, 2026 WL 444732. In *Rivas*, the Court addressed the application of the automatic stay of an order of an Immigration Judge authorizing release on bond pursuant to 8 C.F.R.

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[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."); *A.T. v. Baltazar et al.*, No. 26-cv-00925-NYW, ECF No. 11 at 2 n.2 (D. Colo. Mar. 6, 2026) ("Service by mail of a summons and complaint is effective *upon receipt*, . . . not upon mailing." (citing *Klein v. Williams*, 144 F.R.D. 16, 19 (E.D.N.Y. 1992) (emphasis added)).

§ 1003.19(i)(2). 2026 WL 444732 at *1 (petitioner Rivas challenged "Respondents use of the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2) [as] unconstitutional and [a] violat[ion of] his procedural and substantive due process rights"); *see* 8 C.F.R. § 1003.19(i)(2) ("stay of custody order pending appeal by the government"). The petitioner in *Rivas* had been provided a bond hearing and the Immigration Judge ("IJ") found that petitioner was "neither a flight risk nor a danger to the community and ordered that he be released upon payment of a $5,000 bond." *Rivas*, 2026 WL 444732 at *1. However, the petitioner was not permitted to post bond because DHS invoked the automatic stay regulation so it could appeal the IJ's bond determination. *Id.* In that case, this Court found that "the automatic stay regulation, 8 C.F.R § 1003.19(i)(2), violates [petitioner's] procedural due process rights under the Fifth Amendment." *Id.* at *4.

Here, the IJ did not order Petitioner released on payment of bond and Respondents did not invoke the automatic stay regulation, 8 C.F.R § 1003.19(i)(2). Rather, as explained more fully below, Petitioner is detained pursuant to 8 U.S.C. § 1225(b) during the pendency of his removal proceedings. As explained further below, his removal proceedings are ongoing and are not yet final because the IJ's decision granting Petitioner adjustment of status has been appealed to the Board of Immigration Appeals ("BIA"). Accordingly, because this case does not involve the application of the automatic stay pursuant to 8 C.F.R § 1003.19(i)(2), it is not legally or factually similar to *Rivas*.

II. 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., Perez Zepeda v. Hagan, et al.*, No. 25-cv-03789-SKC, ECF No. 18 (D. Colo.). 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 ¶¶ 12, 19, 23. Respondents' position is that Petitioner is, therefore, subject to mandatory detention under § 1225(b) under the interpretation of that provision adopted by the Fifth and Eighth Circuits. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502–08 (5th Cir. 2026); *Avila v. Bondi*, -- F.4th --, 2026 WL 819,258, 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 819,258, 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, as noted above. Respondents are aware that this Court disagrees with the Fifth Circuit's majority opinion. *See, e.g., Marrero Yera v. Baltazar*, No. 26-cv-00476-SKC-SBP, 2026 WL 472014, at *2 (D. Colo. Feb. 19, 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 ¶¶ 39-43, 57. 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, 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.*

III. 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 ¶¶ 41-43, 48-50. He alleges that his removal proceedings have been finally terminated because the IJ granted Petitioner's Application for Adjustment of Status under the Cuban Adjustment Act. *See id.* ¶¶ 2, 40-41. 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, Petitioner's proceedings have not been finally terminated because the IJ's order granting him adjustment of status is on appeal, and he is still subject to detention pursuant to § 1225(b)(2).

On February 6, 2026, the IJ issued an order granting Petitioner's Application for Adjustment of Status. *See* ECF No. 1 ¶ 2. But that decision was not immediately final. Rather, Department of Justice regulations (which govern immigration judges and the BIA) provide that a "decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no

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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.").

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)).

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 March 9, 2026. ECF No. 1 at 34. 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 BIA on March 9, 2026. ECF No. 1 at 42-54. Accordingly, the IJ's decision granting Petitioner adjustment of status is not yet final. 8 C.F.R. § 1003.39. Rather, the decision will become final once the BIA rules on the appeal. Thus, Petitioner continues to be subject to detention under § 1225(b)(2).

IV. 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 14. Further, 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.

Respondents are aware that this Court has ordered in other cases that respondents must immediately release the petitioner and, if the petitioner resides outside of Colorado, transport the petitioner to his place of residence within 36 hours. *See, e.g.*, *Carrillo Alonzo*, No. 26-cv-0666-SKC, ECF No. 14, at 5–6 (D. Colo.

Feb. 25, 2026). Respondents submit that, if the Court is inclined to order Petitioner's immediate release, the Court should (1) require counsel for Respondents promptly to confer with counsel for Petitioner to determine whether Petitioner wishes for ICE to transport him back to his residence, or would prefer for ICE to simply release him from custody; (2) require Respondents to submit a status report updating the Court on such conferral within 36 hours of the date and time of the order; and (3) if Petitioner prefers to be transported by ICE to his residence, afford Respondents three days in which to effect such transportation.

Dated: March 30, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 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