IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01128-CNS

CESAR JOVANY BENCOMO-GIRON,

Petitioner,

v.

GEORGE VALDEZ,[1] Acting Field Officer Director, Denver Field Office, U.S. Immigration & Customs Enforcement, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,
PAMELA BONDI, United States Attorney General, in her official capacity, AND
JUAN BALTASAR, Warden, Denver Contract Facility, in his official capacity,

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 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* Order, *Nava Hernandez v. Baltazar*, 25-cv-03094-CNS, ECF

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

No. 26. 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.

According to documents attached to the Petition, Petitioner entered the United States approximately twenty-four years ago without inspection and without being admitted. *See* ECF No. 1-1 at 1–2 (Form I-213 stating that Petitioner is 27 years old, and that he was brought to the United States by his parents at age 3). He apparently has lived in the United States since that time. *See id.* 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 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. 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]

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

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, ¶ 2. 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 that 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.[3]

This Court's ruling on the § 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

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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*, 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.").

decision of which is unnecessary to the results they reach.").[4] 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 (D. Colo. Feb. 17, 2026). 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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[4] In particular, to the extent Petitioner asserts that the Court should afford preclusive effect to the declaratory judgment in *Maldonado Bautista v. Santacruz*, No. 25-CV-01873-SSS-BFM (C.D. Cal.), *appeal docketed*, No. 25-7958 (9th Cir. Dec. 19, 2025), the Court should decline to do so for multiple reasons. First, 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 v. Padilla*, 542 U.S. 426, 443 (2004) ("[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). Additionally, 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 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 24, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record,

s/ *Lana Sawaked*
Lana Sawaked

U.S. Attorney's Office