IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01158-RBJ

GONZALO PEREZ-PEREZ,

Petitioner,

v.

PAMELA BONDI, in her official capacity as U.S. Attorney General,
MARKWAYNE MULLIN, in his official capacity as Secretary, Department of Homeland Security,
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement,
GEORGE VALDEZ, Acting Denver Field Office Director of Enforcement and Removal Operations, Immigration and Customs Enforcement,
JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility,

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 should deny the Petition, for multiple reasons. *First*, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because, at the time that he was detained, he was present in the United States without having been admitted. *Second*, even to the extent the Court were to conclude that Petitioner should be detained under 8 U.S.C. § 1226(a), the Court should deny the Petition because Petitioner cannot show that he has been denied a bond hearing under 8 U.S.C.

§ 1226(a); on the contrary, he has already received one.

BACKGROUND

Petitioner is a native and citizen of Mexico. ECF No. 1 ¶ 40.[1] He entered the United States without inspection in September 2001. *Id.* ¶¶ 40-41.

Petitioner alleges that, on or about November 8, 2025, he was a passenger in a vehicle driven by his son "when a Florida State trooper stopped the vehicle and detained Petitioner without any accompanying traffic or criminal charges." *Id.* ¶ 43. He was transferred to ICE custody. *Id.* He was charged with removal under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." *See* ECF No. 1-6 (Notice to Appear). He is currently detained at the Aurora Contract Detention Facility. *See* ECF No. 1 ¶ 1.

Petitioner filed a motion for custody determination on January 8, 2026. ECF No. 1 ¶ 46; *see also* ECF No. 1-7. The Immigration Judge held a bond hearing on January 14, 2026, and denied Petitioner bond. ECF No. 1 ¶¶ 48, 51; *see also* ECF No. 1-8. The Immigration Judge issued a full written decision on the bond hearing on February 19, 2026, explaining that: (1) she lacked authority to review Petitioner's custody because he had not received a custody determination hearing; but (2) that, regardless, Petitioner should be denied bond because he is a flight risk. *See* ECF No. 1-11 at 1-2 (Memorandum of Bond Decision and Order). Petitioner filed a motion to reconsider the Immigration Judge's decision, *see* ECF No. 1 ¶ 52; *see also* ECF No. 1-9, which the

[1] The following facts are drawn from the Petition and accompanying exhibits.

Immigration Judge denied on March 11, 2026, *see* ECF No. 1 ¶ 56; *see also* ECF No. 1-12.

Petitioner has exercised his right to appeal the Immigration Judge's bond decision to the Board of Immigration Appeals. *See* ECF No. 1 ¶¶ 53, 57; *see also* ECF No. 1-10. That appeal remains pending.

Petitioner filed this habeas action on March 20, 2026. *See* ECF No. 1. He challenges his detention on five grounds: (1) that he is improperly detained without bond under 8 U.S.C. § 1225(b)(2), *see* ECF No. 1 ¶¶ 121-129; (2) that his detention without bond violates the Due Process Clause of the Fifth Amendment, *see id.* ¶¶ 130-35; (3) that he is entitled to relief as part of the "Bond Eligible Class" pursuant to the declaratory judgment issued as part of a partial final judgment in *Moldonado Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, *appeal filed*, Case No. 25-7958 (9th Cir. filed Dec. 19, 2025), *see* ECF No. 1 ¶¶ 136-42; (4) that Petitioner's "arrest . . . without a warrant is unlawful" and violates the Fourth Amendment, *see id.* ¶¶ 143-44; and (5) that the Immigration Judge's determination that she lacked authority to review Petitioner's custody because he had not received a custody determination hearing was erroneous, *see* ECF No.1 ¶¶ 145-46. Petitioner seeks immediate release from custody. *See id.* at 37 (Request for Relief). The Court issued an Order on March 23, 2026, directing Respondents to show cause. ECF No. 4.

This response is timely. The Court's Order required Petitioner to serve Respondents with the Petition, exhibits, and the Court's Order by email and overnight mail. ECF No. 4 at 1. Respondents' response was then due "within three calendar

days of service." *Id.* Respondents received service by email on March 24, 2026, and then received service by mail on March 26, 2026.[2] Three calendar days from March 26 is March 29, 2026, which was a Sunday. Because the Court stated Respondents' deadline in days, the period of time to respond "continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." Fed. R. Civ. P. 6(a)(1)(C). Accordingly, Respondents' deadline to respond is Monday, March 30, 2026.

ARGUMENT

The Court should deny the Petition. As a noncitizen present without admission, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Furthermore, even if Petitioner were subject to detention under § 1226(a), he has already received a bond hearing before an immigration judge.

I. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

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

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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)).

ruling in another case. *See, e.g., Cervantes Arredondo v. Baltazar*, Civil Action No. 25-cv-03040-RBJ (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 argument.

When Petitioner was detained by ICE, he was present in the United States without having been admitted. *See* ECF No. 11 ¶¶ 40-41, 44; *see also* ECF No. 1-6 (Notice to Appear charging Petitioner with being present in the United States without being "admitted or paroled"). 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 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 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. 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—that is, to determine that Petitioner's detention is governed by § 1226(a), not § 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] As articulated in the *Mendoza Gutierez* brief, the Court should conclude that Petitioner is subject to mandatory detention under

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

§ 1225(b)(2) and deny the Petition.[4]

II. Petitioner has already received a bond hearing before an immigration judge.

Should the Court find that Petitioner is detained under 8 U.S.C. § 1226(a) rather than § 1225(b) (as Petitioner urges, *see* ECF No. 1 ¶ 24), the Petition should still be denied. Petitioner has already received the appropriate relief under § 1226(a)—a bond hearing before an immigration judge. *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)."); *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."). Thus, there is no statutory or constitutional basis to order such relief. *See* ECF No. 1 ¶¶ 121-35 (Claims 1 and 2 arguing that Petitioner's detention without bond violates the Immigration and Nationality Act and Due Process Clause).

Petitioner concedes in the Petition that he received a bond hearing before an immigration judge. The Immigration Judge held a bond hearing on January 14, 2026.

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[4] The Court should address the proper scope of § 1225(b)(2) based on the analysis set forth above, not Petitioner's assertion in Claim 3 that he is part of the *Maldonado Bautista* class—which decision is currently on appeal to the Ninth Circuit. Should the Court wish to receive additional briefing on the class issue, Respondents request that the Court issue an order directing Respondents to address it in supplemental briefing.

See ECF No. 1 ¶ 49. The Immigration Judge denied bond, finding that Petitioner "did not establish that he would not be a flight risk if released from custody. See Matter of R-A-V-P, 27 I&N Dec. 803 (BIA 2020)." *See* ECF No. 1 ¶ 51; *see also* ECF No. 1-8 (Order of the Immigration Judge). Notably, the Immigration Judge did *not* find that she lacked jurisdiction to consider bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* ECF No. 1-8.

On February 19, 2026, the Immigration Judge issued a full written decision on the bond hearing. The Immigration Judge made two separate, independent findings: (1) that she lacked authority to review Petitioner's custody because he had not received a custody determination hearing and an immigration judge's authority is limited to reviewing previously rendered custody or bond determinations;[5] and (2) that, in any event, Petitioner should be denied bond because he is a flight risk. *See* ECF No. 1-11 at 1-2 (Memorandum of Bond Decision and Order).

As to the latter conclusion, the Immigration Judge made specific and detailed findings on Petitioner's flight risk. The Immigration Judge recognized that Petitioner "provided evidence of employment and family ties, as well as a nearly twenty-five year residence in the United States." *See id.* at 3. But the Immigration Judge also found that Petitioner had entered the United States without inspection and that his application for cancellation of removal was speculative, as he had failed to "provide information as to whether he would be able to meet [his] burden of proof [for such relief], and . . . the

[5] Petitioner argues that this determination was erroneous. *See* ECF No.1 ¶¶ 145-46 (Claim 5). The Court need not reach that issue, as the Immigration Judge made alternative findings denying bond based on Petitioner's flight risk. *See* ECF No. 1-11.

unlikelihood that he would be granted future relief contributes to the . . . risk of flight." *Id.* The Immigration Judge further determined that Petitioner's letter from a friend and proposed sponsor did not "adequately ensure" that Petitioner would appear for his removal proceedings "and, if necessary, his removal from the United States." *Id.* at 4. Thus, the Immigration Judge found that "bond is not warranted in this case." *Id.*

Petitioner filed a motion to reconsider the Immigration Judge's decision. *See* ECF No. 1 ¶ 52; *see also* ECF No. 1-9. The Immigration Judge denied the motion to reconsider on March 11, 2026. *See* ECF No. 1 ¶ 56; *see also* ECF No. 1-12. Petitioner also filed an appeal of the bond decision with the Board of Immigration Appeals. *See* ECF No. 1 ¶¶ 53, 57; *see also* ECF No. 1-10. That appeal remains pending.

Thus, Petitioner has not shown that he has been denied a bond hearing before an immigration judge. Because Petitioner has already received the process he would be due under § 1226(a), the Petition should be denied.[6]

III. Petitioner's Fourth Amendment claim fails.

Finally, the Court should deny Petitioner's request for relief under the Fourth Amendment. Petitioner argues that his "arrest by Respondents without the issuance of a warrant" violates the Fourth Amendment, *see* ECF No. 1 ¶ 144, but in support, he simply alleges that he was detained by a "Florida State Trooper" following a traffic stop.

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[6] While Petitioner seeks immediate release, the Court should not order such relief, as multiple decisions in this district have recognized. *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*, 2026 WL 318989, at *4; *Perez Zepeda*, ECF No. 18, at 17.

See id. ¶ 43. He makes no attempt to show how his original detention by state law enforcement shows that his later ICE detention is unlawful under the Fourth Amendment. This challenge to his detention should be rejected.

CONCLUSION

The Court should deny the Petition, ECF No. 1.

Respectfully submitted March 30, 2026.

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CERTIFICATE OF SERVICE

I hereby 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 counsel of record.

s/ Alexandra J. Berger
U.S. Attorney's Office