IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-02211-TPO

H.E.P.,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
GEORGE VALDEZ, in his official capacity as Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary, U.S. Department of Homeland Security; and
TODD BLANCHE, in his official capacity as Acting United States Attorney General,

Respondents.

RESPONSE TO PETITION (ECF No. 1) AND ORDER TO SHOW CAUSE (ECF No. 8)

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 8) directing them to respond to the habeas petition by June 5, 2026.

BACKGROUND

Petitioner entered the United States without inspection or admission on March 12, 2024. ECF Nos. 1-2 at 2 (Notice to Appear), 1-3 at 2 (Petitioner's I-213, Record of Deportable/Inadmissible Alien); *see also* ECF No. 8 at 2 n.1 (Order directing the Parties to "clarify the relevant timeline in their briefings" regarding when Petitioner entered the United States).

Petitioner was later released on an order of recognizance. *See* ECF No. 1-3 at 4. Petitioner was released under neither § 1225(b), § 1226, nor § 1182. *See* ECF No.

8 at 4 (directing the Parties "to address in their briefing . . . whether Petitioner's prior release was pursuant to § 1225(b), § 1226, or some other provision and whether this release was conditional parole."). Nor did his release on an order of recognizance constitute conditional parole. The Department of Homeland Security ("DHS") released Petitioner in an exercise of its prosecutorial discretion. *See Designating Aliens For Expedited Removal*, 69 Fed. Reg. 48877 (August 11, 2004) ("Without limiting its ability to exercise its discretion in the event of a national emergency, other unforeseen events, or a change in circumstances, DHS plans under this designation as a matter of prosecutorial discretion to apply expedited removal only to (1) third-country nationals and (2) to Mexican and Canadian nationals with histories of criminal or immigration violations, such as smugglers or aliens who have made numerous illegal entries. . . . In the interests of focusing enforcement resources upon unlawful entries that have a close spatial and temporal nexus to the border, this notice does not implement the full nationwide expedited removal authority available to DHS pursuant to section 235 of the Act, 8 U.S.C. 1225."); *cf. United States v. Texas*, 599 U.S. 670, 67-80 (2023) ("[T]he Executive Branch must prioritize its enforcement efforts. . . . That is because the Executive Branch (i) invariably lacks the resources to arrest and prosecute every violator of every law and (ii) must constantly react and adjust to the ever-shifting public-safety and public-welfare needs of the American people. . . . [T]he Executive Branch does not possess the resources necessary to arrest or remove all of the noncitizens covered by § 1226(c) and § 1231(a)(2). . . . In light of inevitable resource constraints and regularly changing public-safety and public-welfare needs, the Executive Branch

must balance many factors when devising arrest and prosecution policies.").

"On January 30, 2025, following an arrest for domestic violence, [Petitioner] was taken into ICE custody pending his removal proceedings." ECF No. 1 ¶ 27.

ARGUMENT

I. Petitioner is properly detained pursuant to 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.*, *Colindres Carmona v. Ceja*, No, 25-cv-04061-TPO, ECF No. 22 (Feb. 6, 2026). 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 ¶¶ 24, 27. 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*, 170 F.4th 1128, 1132–38 (8th 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, Eighth Circuit, a court in this district, and some other 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*, 170 F.4th at 1132–38; *Singh v. Blanche*, No. 1:26-cv-00421-DDD-KAS, ECF No. 12 (D. Colo. Apr. 15, 2026); *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 Garrido v. Baltasar*, No. 26-cv-00428-TPO, 2026 WL 638362, at *3 (D. Colo. Mar. 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). Decisions in other districts within this circuit adopting Respondents' position on this issue have also been appealed to the Tenth Circuit. *See Cisneros v. Mullin*, Civil Action No. 2:25cv1170-HCN (D. Utah), *appeal docketed*, No. 26-4015 (10th Cir. Feb. 12, 2026); *Quiroz v. Mullin*, Civil Action No. 5:25-CV-01349-PRW (W.D. Okla.), *appeal docketed*, No. 26-6019 (10th Cir. Jan. 28, 2026). Those appeals all remain 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.[1]

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 ¶ 63. 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

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

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.[2]

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 decision of which is unnecessary to the results they reach.").

II. Petitioner's due process challenge to the prior bond order is not reviewable in this Court.

To the extent Petitioner challenges the immigration judge's bond order from July 2025, such a challenge is prohibited by statute, not within the Court's jurisdiction, and was not exhausted. *See* ECF No. 1 ¶¶ 69-73 (asking the Court to "declare the initial

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[2] *See, e.g.*, *Montanez de la Cruz v. Baltazar*, 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*, 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.").

bond hearing unconstitutional").

First, the Court lacks jurisdiction to review the immigration judge's discretionary bond decision. The Immigration and Nationality Act expressly prohibits review of an immigration judge's discretionary bond decision by federal district courts. Section 1226(e) bars judicial set-aside of "any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). The Tenth Circuit has confirmed that, "to the extent [a petitioner] challenges the agency's discretionary bond decision . . . the court lack[s] jurisdiction" pursuant to § 1226(e). *Mwangi v. Terry*, 465 F. App'x 784, 787 (10th Cir. 2012); *see also Jennings v. Rodriguez*, 583 U.S. 281, 295-96 (2018) (concluding that § 1226(e) does not bar challenges to "the statutory framework that permits detention without bail" but continues to preclude challenges to a discretionary judgment to detain (internal citation and quotation marks omitted)). Put simply, the immigration judge's "discretionary decision[s] with respect to the grant or denial of bond [are] not reviewable in this Court." *Rani v. Barr*, No. 19-cv-02017-RBJ, 2019 WL 6682834, at *3 n.2 (D. Colo. Dec. 6, 2019) (explaining the Court lacked jurisdiction over Fifth Amendment due-process challenge as to bond denial); *see also Molina v. Choate*, No. 19-cv-00207-LTB, 2019 WL 13214049, at *4 (D. Colo. Mar. 22, 2019) (under Section 1226(e), an "immigration judge's discretionary decision with respect to the grant or denial of a bond is not reviewable" by a federal district court).

Here, to the extent Petitioner argues that the immigration judge improperly determined Petitioner was a flight risk and imposed the wrong burden of proof, the

Court lacks jurisdiction to review those claims. *See* ECF No. 1 ¶¶ 69-75. These alleged deficiencies all go to the substance of the immigration judge's decision. Accordingly, this Court lacks jurisdiction under § 1226(e) to directly review the grant or denial of bond.

Even if the Court had jurisdiction, Petitioner has not exhausted his administrative remedies with regard to denial of his bond. Generally, "[t]he exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although . . . the statute itself does not expressly contain such a requirement." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Exhaustion is ordinarily nonjurisdictional. *Santos-Zacaria v. Garland*, 598 U.S. 411, 417 (2023). In a different immigration context, the Tenth Circuit has held that "the failure to exhaust issues before the BIA bars judicial review through habeas just as it does through a petition for review." *Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004). Importantly, the exhaustion requirement in the immigration context "extends not only to substantive issues, but to constitutional objections that involve administratively correctable procedural errors, even when those errors are failures to follow due process." *Id.* (emphasis added) (citation and quotation marks omitted).

Petitioner has failed to exhaust because he could have, but did not, pursue the administrative remedies available to him. Petitioner could have appealed the immigration judge's denial of bond to the Board of Immigration Appeals ("BIA"). *See* 8 C.F.R. § 1003.19(f) ("An appeal from the [bond] determination by an Immigration Judge may be taken to the Board of Immigration Appeals. . ."). Petitioner should not be

permitted to use the Petition as a "substitute for direct appeal" to the BIA. *Soberanes*, 388 F.3d as 1309 (citation omitted); *see also Reyes v. Lynch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015) ("[F]ederal courts must await exhaustion of all administrative appeals before reviewing immigration decisions, whether by a habeas corpus action or a petition for review."). Instead, as a matter of judicial efficiency and per applicable regulations, Petitioner should have exhausted his administrative remedies before the BIA.

III. Additional issues.

The Court should not grant any other prospective injunctive relief. *See Montanez de la Cruz*, 2026 WL 439217, at *3–5. In particular, the Court should not prospectively restrain Respondents from potentially invoking a stay under 8 C.F.R. § 1003.19(i) if an Immigration Judge orders Petitioner released on bond. ECF No. 1 at 22.

Petitioner's request that the Court restrain Respondents from potentially invoking a stay under 8 C.F.R. § 1003.19(i) is improper and unwarranted. In a habeas matter, the court evaluates whether the petitioner "***is*** being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (emphasis added) (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 302 (2001)). The Court has no basis now—in advance of any bond hearing the Court may order—to find that Petitioner's *current* detention is unlawful based on a stay under 8 C.F.R. § 1003.19(i) that does not (and may never) exist. And to the extent Petitioner is seeking forward-looking injunctive relief that is collateral to his habeas petition, he has made no attempt to show that the four injunctive relief factors are met. Nor could he: the

potential harm he seeks to avert (continued detention *if* he is granted bond and *if* Respondents invoke 8 C.F.R. § 1003.19(i)) is speculative, not "certain, great, actual and not theoretical."[3] *See Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (quotation and citation omitted). Thus, if the Court orders Respondents to provide Petitioner with a bond hearing, it should not impose the conditions on the bond hearing that Petitioner seeks.

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 bond hearing within seven days and should direct Respondents to file a status report within seven days of the bond hearing, confirming that the bond hearing was held.

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[3] The cases Petitioner cites involving 8 C.F.R. § 1003.19(i) that were decided by courts in this District do not involve situations where the bond hearing was conducted pursuant to an order by a U.S. District or Magistrate Judge granting a writ of habeas corpus. *See* ECF No. 1 ¶ 59; *Arana-Hernandez v. Baltasar*, No. 1:26-cv-00725-CNS, 2026 WL 696642, at *1 (D. Colo. March 12, 2026); *Balderas Rivas v. Baltazar*, No. 1:26-cv-00442-SKC, 2026 WL 444732, at *2 (D. Colo. Feb. 17, 2026); *Merchan-Pacheo v. Noem*, No. 1:25-cv-03860-SBP, 2026 WL 88526, at *1–2 (D. Colo. Jan. 12, 2026).

Dated: June 5, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka
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