

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-02955-GPG-TPO

MANUEL MOYA PINEDA,

Plaintiff-Petitioner,

v.

JUAN BALTASAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT GAUDIAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

Defendants-Respondents.

**PETITIONER-PLAINTIFF'S REPLY TO RESPONDENTS-DEFENDANTS' RESPONSE
TO COURT'S ORDER TO SHOW CAUSE**

This Court should join the nearly unanimous chorus of federal courts across the country to grant *habeas* relief to Plaintiff-Petitioner (“Plaintiff”) finding Defendants-Respondents’ (“Defendants”) new interpretation of the Immigration and Nationality Act (INA)’s detention provisions illegal.

I. INTRODUCTION

Before Plaintiff filed this case, federal courts overwhelmingly agreed: Defendants’ policy of excluding people who entered without inspection from bond is unlawful. ECF 8, n. 1. The emphatic judicial consensus rejecting Defendants’ position continues.¹ This includes the Western District of Washington’s grant of summary judgement to a class of incarcerated noncitizens presenting the same arguments Plaintiff does here. *Rodriguez Vazquez v. Bostock*, 3:25-cv-05240, ---F.Supp.3d---, 2025 WL 2782499 (W.D. Wash.

¹ *E.g.*, *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, 1:25-cv-830, (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D. N.J. Sept. 26, 2025); *Savane v. Francis*, 1:25-cv-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v. ICE*, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Santiago Helbrum v. Williams*, 4:25-cv-00349, WL (S.D Iowa, Sept. 30, 2025); *Belsai D.S. v. Bondi*, 0:25-cv-3682, 2025 WL 2802947 (D.Min.. Oct. 1, 2025); *Rocha v. Hyde*, 25-cv-12584, 2025 WL 2807692 (D.Mass. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, 2:25-cv-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Ayala Casun v. Hyde*, 25-cv-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Guerrero Orellana v. Moniz*, 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, 25-cv-12620-IT, 2025 WL 28233324 (D. Mass. Oct. 3, 2025); *Echevarria v. Bondi*, 25-cv-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Artiga v. Genalo*, 25-cv-5208, 2025 WL 2829434 (E.D.N.Y Oct. 5, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Ledesma Gonzalez v. Bostock*, 2:25-cv-01401, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Mena Torres v. Wamsley*, C25-5772-TSZ, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson et al.*, 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D.Minn. Oct. 8, 2025).

Sept. 30, 2025). Defendants' Response ignores these decisions and presses the same arguments that all but one court rejected.² This Court should join the "tsunami" of decisions finding unlawful Defendants' position and grant Plaintiff relief. *Roa*, 2025 WL 2732923, at *1 (citation omitted).

II. This Court has Jurisdiction to Grant the Requested Relief

Supreme Court precedent is clear: the INA's jurisdictional bars do not apply when a noncitizen "challenges the statutory framework that permits his detention without bail." *Demore v. Kim*, 538 U.S. 510, 517 (2003). The Court reaffirmed in *Jennings v. Rodriguez*, that it would be "absurd" to deprive district courts of jurisdiction over detention-related claims as that effectively makes illegal detention claims "unreviewable." 583 U.S. 281, 293 (2018). A proper "narrow reading" of the jurisdiction stripping provisions, see *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 487 (1999), confirms this Court retains jurisdiction over Plaintiff's claims related to his *detention* without bond.

First, Defendants' reliance on 8 U.S.C. § 1252(b)(9) is without merit. That statute limits judicial review to "a final order" of "any action taken or proceeding brought to remove a [noncitizen]." The Supreme Court held § 1252(b)(9) does not prevent hearing detention-related claims: when noncitizens "are not asking for review of an order of removal" but instead are "challenging the decision to ... deny them bond hearings," "§ 1252(b)(9) does

² Defendants also did not address several arguments raised in Plaintiff's Motion (ECF 8). This Court should therefore find that Defendants "waived or abandoned" argument in opposition to those issues. *Steak N Shake Enterprises, Inc. v. Globex Company, LLC*, F.Supp.3d 1057 (D. Colo. June 23, 2015) (citation omitted); see *Cole v. New Mexico*, 58 Fed. Appx. 825, 829 (10th Cir. 2003). Defendants did not contest the *Nken* factors apart from Plaintiff's likelihood of success on the merits. See *generally* ECF 17. Defendants also did not contest Plaintiff's arguments regarding the legislative history supporting Plaintiff's position. *Id.* Nor did Defendants contest exhaustion or venue. *Id.*

not present a jurisdictional bar.” *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (citing *Jennings*, 583 U.S. 281, cleaned up). Indeed, when Congress added § 1252(b)(9) to the INA, it stated “nothing in the amendment would preclude habeas review over challenges to detention” – which is precisely the claim here. *Kong v. U.S.*, 62 F.4th 608, 614 (1st Cir. 2023) (citing H.R. Rep. No. 109-72, at 175 (2005) (Conf. Rep.), cleaned up). Relatedly, 8 U.S.C. § 1252(a)(5) explicitly does not limit any “habeas corpus provision.” *Id.* It only governs a final “order of removal.” *Id.* Plaintiff only seeks review of his detention, not any removal order. *Ferry v. Gonzales*, 457 F.3d 1117, 1131 (10th Cir. 2006).

Second, Defendants’ assertion regarding 8 U.S.C. § 1252(g) is also misplaced. That statute only strips federal courts of jurisdiction over claims “arising from the decision ... to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders.” None of these apply in this case. Courts consistently hold this language does not limit their ability to hear detention claims either. The First Circuit in *Kong* explained “illegal detention [claims] are plainly collateral to ICE’s prosecutorial decision[making],” and thus § 1252(g) “does not bar judicial review of [petitioner’s] challenge to the lawfulness of his detention.” 62 F.4th at 617. Other courts agree.³ Defendants’ argument that the statutory basis for commencing removal proceedings includes a discretionary choice between §§ 1225 and 1226 is irrelevant here because (1) that is instead a choice between *detention* (not *removal*) provisions, and (2) because Defendants “commence[d]” proceedings against Plaintiff under § 1226. See ECF 17-1, ¶ 8. Even the Eleventh Circuit in *Alvarez v. ICE* – cited by *Defendants* (ECF 17, p. 9) – held district courts can review whether “the

³ *E.g.*, *Ozturk v. Hyde*, 136 F.4th 382, 400 (2nd Cir. 2025); *Arce v. U.S.*, 899 F.3d 796 (9th Cir. 2018); *Madu v. Att’y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006); *Garcia v. Att’y Gen.*, 553 F.3d 724, 729 (3d Cir. 2009).

agency had no statutory ground on which to detain [noncitizens].” 818 F.3d 1194, 1205 (11th Cir. 2016). That is precisely the review Plaintiff requests here. *See also Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (§ 1252(b)(9) and (g) do not bar relief under the APA). The litany of cases rejecting Defendants’ position – including from the District of Colorado – also agree that District Courts clearly have jurisdiction to hear detention-related claims.⁴

III. Defendants’ Response Violates Canons of Statutory Construction

Defendants’ interpretation of § 1225 makes large parts of the code meaningless and “fails to take account of the entirety of the statutory scheme.” *Echevarria*, 2025 WL 2821282, at *9. “In ascertaining the plain meaning of a statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.” *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted).

A statute’s title is “especially valuable where it reinforces what the text’s nouns and verbs independently suggest.” *Yates v. U.S.*, 574 U.S. 528, 552 (2015) (Alito, J., concurring). Here, the title of § 1225 includes “arriving” “indicat[ing] that the statute governs ‘arriving’ noncitizens, not those present already.” *Barrera v. Tindall*, 3:25-cv-541-RGJ, 2025 WL 2690565, at *4 (W.D.Ky Sept. 19, 2025) (citation omitted). The remaining text, focused on crewman or stowaways, further “reinforces the interpretation that [§] 1225 is much more limited in scope than the [government] asserts.” *Id.*

⁴ *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880, **1-2 (D. of Colo. Sept. 16, 2025); *Benitez v. Noem*, No. 5:25-cv-02190, ECF 11, at 3 (C.D. Cal. Aug. 26, 2025); *Aguilar Maldonado v. Olson*, --- F.Supp.3d ----, 2025 WL 2374411, **5-8 (D. Minn. Aug. 15, 2025); *Jose J.O.E. v. Bondi*, ---F.Supp.3d---, 2025 WL 2466670, *7 (D.Minn. Aug. 27, 2025); *Garcia v. Noem et al.*, 25-cv-02180-DMS-MMP, 2025 WL 2549431, **3-4 (S.D.Cal. Sept. 3, 2025); n. 1, *supra*; ECF 8, n.1 (collecting cases).

Contrary to Defendants' claim, § 1225(b)(1)(A)(iii)(II) does not support their reading. That section concerning mandatory detention of noncitizens in the interior subject to expedited removal supports Plaintiff's position under the *expressio unius est exclusio alterius* doctrine. "[W]here Congress includes particular language in one section of a statute but omits it in another section . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. U.S.*, 464 U.S. 16, 23 (1983). Congress' explicit language to limit mandatory detention to noncitizens who have been in the U.S. for *less than two years* when Defendants jail them in the interior shows Congress knew when to apply § 1225 mandatory detention to people ICE jails inside the United States. *Id.* It chose not to for people like Plaintiff who have resided here for decades. *Id.*

Also contrary to Defendants' assertion, acknowledging § 1225(b)(2)(A)'s limited application to noncitizens *arriving* to the U.S. does not incorrectly restrict its breadth.

[Section] 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7) (which are the grounds that put an arriving noncitizen on the track for expedited removal). The statute governing inadmissibility lists ten grounds for inadmissibility, many of which have distinct sub-grounds. See 8 U.S.C. § 1182(a)(1)-(10). There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1).

Salcedo Aceros v. Kaiser, 25-cv-3637503, 2025 WL 2637503, at *11 (N.D. Cal. Sept. 12, 2025). That also includes lawful permanent residents "seeking admission" who fall within the six categories of 8 U.S.C. § 1101(a)(13)(C)(i)-(vi). Section 1225(b)(2) plays many roles, but detaining Plaintiff without bond is not one.

Defendants' position that Plaintiff is presently "seeking admission" because he filed an application for relief from removal is irrelevant. ECF No. 17 at 12. Plaintiff seeks an

opportunity “to obtain a lawful means to *remain*” in the U.S, rather than “seek[] admission” to the United States. *Lopez Benitez v. Francis et al.*, ---F.Supp.3d---, 2025 WL 2371588, at 6 n.7 (S.D.N.Y. Aug. 13, 2025) (emphasis in original).

Also unpersuasive is Defendants’ argument that § 1225(b)(2)(A) is more specific than § 1226 and any redundancy between §§ 1225(b)(2)(A) and 1226(c)(1)(E) does not render the latter superfluous. Defendants ignore that “[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect,” *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995), and “[i]f § 1225(b)(2) already mandated detention of any [noncitizen] who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless.” *Barrera*, 2025 WL 2690565, *4 (cleaned up). Congress’ recent enactment of the Laken Riley Act’s (LRA) new detention provisions would be utterly meaningless under Defendants’ interpretation.

Under Plaintiff’s interpretation, however, there is no redundancy because the LRA’s amendment to § 1226(c)(1) was designed to address a set of people to whom § 1225 does not apply. *Lopez-Campos v. Raycraft*, --- F.Supp.3d ----, No. 2:25-cv-12486, 2025 WL 2496379, *8 (E.D. Mich. Aug. 29, 2025) (If “Congress had intended for [§] 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently” enacted new mandatory detention provisions); *Lopez Benitez*, 2025 WL 2371588, at *4 (finding that §§ 1225(b)(2) & 1226 are “mutually exclusive”); *Cordero Pelico*, 2025 WL 2822876, at *14 (finding “no need to” pass the LRA Defendants’ § 1225(b)(2) interpretation were correct). Defendants also ignore that while limited redundancy may occur, it is a “cardinal rule of statutory interpretation that no provision should be construed to be *entirely* redundant,” as Defendants do here. *Kungys v. U.S.*,

485 U.S. 759, 778 (1988) (emphasis added).

IV. The Binding Regulations—in Place for Decades—Align with the Statute.

The implementing regulations further support Plaintiff: § 1225(b)(2)(A) applies to noncitizens arriving in the United States. 8 C.F.R. § 235.3(c)(1) (§1225(b) applies to “any *arriving* [noncitizen] who appears to the inspection officer to be inadmissible”) (emphasis added). “The regulation thus contemplates that ‘applicants *seeking admission*’ are a subset of applicants ‘roughly interchangeable’ with ‘arriving [noncitizens].” *Salcedo*, 2025 WL 2637503, at *10 (quoting *Martinez v. Hyde*, --- F.Supp.3d ----, No. 25-11613, 2025 WL 2084238, *6 (D. Mass. July 24, 2025), emphasis in original). *See also* 8 C.F.R. § 1.2 (defining “arriving [noncitizen]” as applicant for admission “coming or attempting to come into the [U.S.] at a port-of-entry”). This is consistent with EOIR’s statement promulgating the regulations, which have not been amended since: “[i]nadmissible [noncitizens], ... have available to them bond redetermination hearings ..., while arriving [noncitizens] do not.” *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). *Compare* 8 C.F.R. § 1003.19(h)(2) with Procedures for the Detention and Release of Criminal Aliens, 63 Fed. Reg. 27441, 27448 (May 18, 1998). It is also consistent with the current regulations, which remain unchanged since the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) and do not restrict jurisdiction for noncitizens who entered without inspection that ICE jails in the interior. 8 C.F.R. § 1003.19(h)(2). The regulations do, however, explicitly strip IJ’s of jurisdiction to review bond requests by arriving noncitizens, further supporting Plaintiff’s position. *Id.*

Defendants’ argument that the agency’s interpretation should be given minimal weight because it did not include robust analysis is incorrect. After the IIRIRA’s passage,

then-Attorney General Janet Reno proposed a rule that all “[i]nadmissible [noncitizens] in removal proceedings” be ineligible for bond. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, General Reno deleted that proposed provision and replaced it with one applying only to “[a]rriving [noncitizens], as described in § 1.1(q) of this chapter.” 62 Fed. Reg. 10312, 10361 (March 6, 1997). As she explained, “[t]he effect of this change is that inadmissible [noncitizens], ... have available to them bond hearings ..., while arriving [noncitizens] do not.” *Id.* at 10323. Defendants’ response, ECF 17, pp. 16, that the agency did not comprehensively consider its decision to permit bond hearings for noncitizens who entered without inspection is wrong and repudiated by the agency’s own rulemaking history.

V. Defendants’ Reliance on a Single District Court Decision in the Face of the Tsunami of Decisions Deciding in Plaintiff’s Favor is Misguided.

Defendants unconvincingly rely on one solitary case – *Chavez v. Noem*, No. 25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), ECF 17 p. 17 – as the “one apparent exception” to the chorus of decisions agreeing that § 1226 governs Plaintiff’s incarceration, *Echevarria*, 2025 WL 2821282, at *4. For starters, the court in *Chavez* limited its analysis “to determining whether the petitioners, as non-citizens present in the United States but not admitted, were ‘applicants for admission’ under Section 1225.” *Cordero Pelico*, 2025 WL 2822876, at *14 (citing *Chavez*, 2025 WL 2730228). It did not address “the statutory construction issue before this Court.” *Id.*

Similarly unavailing is *Chavez* and Defendants’ use of *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020). ECF 17, p. 18. “*Torres* . . . did not cite § 1226 or mention the concept of detention or bond hearings. Additionally, Ninth Circuit cases decided after *Torres*

reiterate, consistent with *Jennings* and *Nielsen*, that [noncitizens] who are 'present' in the United States are, as a general rule, entitled to a bond hearing under § 1226(a)." *Echevarria*, 2025 WL 2821282, at *9. Indeed, District Courts throughout the Ninth Circuit continue to rule in favor of Plaintiff's position here. *E.g.*, *Rodriguez Vazquez*, 2025 WL 2782499 (summary judgment in Western District of Washington); *Hinestroza v. Kaiser*, 25-cv-07559-JD, 2025 WL 2606983, at *2 (N.D. Cal. Sept. 9, 2025) (noting the "tsunami" of cases in the Northern District of California finding Defendants' position unlawful); See ECF 8, n.1; *see also* n. 1, *supra*.

Also erroneous is Defendants reliance on *Chavez's* discussion of IIRIRA's addition of § 1225(a)(1) to address the alleged anomaly between denying bond hearings to people attempting to enter the U.S. and providing bond hearings to those who entered unlawfully. ECF 17 pp. 17–18 (citing *Chavez*, 2025 WL 2730228). Defendants and *Chavez's* "narrow focus on the language of § 1225(a)(1) fails to take account of the entirety of the statutory scheme." *Echevarria*, 2025 WL 2821282 at *9.

Section § 1225 repeatedly refers to [noncitizens] entering the country. The statute further explicitly addresses crewmen and stowaways in § 1225(b)(2), reflecting that Congress envisions applicants for admission as being arriving [noncitizens]. In addition, its sister statute, § 1225a, focuses on the pre-inspections of [noncitizens] entering the country at foreign airports. In sum § 1225 is set up with arriving [noncitizens] in mind. Compare that to § 1226's broader language that realistically applies to any [noncitizen] awaiting a removal decision. Considering § 1225 in its entirety, and in relation to § 1226, reveals that § 1225 is more limited than what the plain text of § 1225(a)(1) might indicate when construed in the abstract.

Id. (cleaned up).

Moreover, IIRIRA was intended to replace only certain aspects of the alleged anomaly. "Congress did not fully disrupt the old system, including the system of detention and release" on bond:

In fact, according to the legislative record, ‘Section [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a [noncitizen] who is not lawfully in the United States.’ ... Congress’ concern about adjusting the law in some respects to reduce inequities in the removal process did not mean Congress intended to entirely up-end the existing detention regime by subjecting all inadmissible noncitizens to mandatory detention, a seismic shift in the established policy and practice of allowing discretionary release under Section 1226a – the scope of which Congress did not alter.

Salcedo, 2025 WL 2637503, *12 (quoting H.R. Rep. 104-469, 229). The pre-IIRIRA distinction continues elsewhere as well. *E.g.*, Pub. L. No. 105-100, § 203(a)(11), 111 Stat. 2160, 2197-98 (1997) (permitting relief from removal for people from certain countries who were “not apprehended after December 19, 1990, *at the time of entry*”) (emphasis added); 8 § C.F.R. § 240.61(a)(1) (same).

VI. This Court is the Only Source of Remedy for Plaintiff as Agency Precedent Forecloses any Meaningful Review of his Custody.

There is no source of relief from Plaintiff’s unlawful incarceration other than Federal Court. Defendants’ argument that Plaintiff can challenge his imprisonment “in immigration proceedings”, ECF 17, p. 18, is belied by the fact that the Board of Immigration Appeals (“BIA”) already decided in a precedential decision that Plaintiff is ineligible for bond, *Matter of Yajure Hurtado*, 29 I &N Dec. 216 (BIA 2025). Plaintiff cannot seek to remedy his unlawful incarceration through the agency. *Id.*

VII. Conclusion

The Court should order Defendants to immediately release Plaintiff or, in the alternative, provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days.

Dated: October 13, 2025.

Respectfully submitted,

s/ Hans Meyer

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

/s/ Hans Meyer

Hans Meyer