UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03642-CNS

JOSE ALONSO ESPINOZA RUIZ,

Plaintiff-Petitioner,

v.

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

ROBERT HAGAN, 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 (ECF 14)

This Court should join the 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 that Defendants' policy of excluding people who entered without inspection from bond is unlawful. ECF 1, p. 9, ¶ 25. The emphatic judicial consensus rejecting Defendants' position continues with recent decisions from this District, *Mendoza Gutierrez v. Baltazar, et al.*, No. 25-cv-02720-RMR (D. Colo. filed Aug. 29, 2025); *Moya Pineda v. Baltasar, et al.*, No. 25-cv-02955-GPG (D. Colo. filed Sept. 19, 2025); *Hernandez Vazquez v. Baltasar, et al.,* 1:25-cv-03049-TPO (D. Colo. filed Sept. 29, 2025); *Domingo Campos v. Baltazar et al*, 1:25-cv-03062-NRN (D. Colo. filed Sept. 30, 2025) ; *Nava Hernandez v. Baltazar et al*, 1:25-cv-03094-CNS (D. Colo. filed Oct. 2, 2025); *Loa Caballero v. Baltazar et al*, 1:25-cv-03120-NYW (D. Colo. filed Oct. 3, 2025); *Ortiz Rosales v. Baltazar et al*, 1: 25-cv-03275-GPG-KAS (D. Colo. Filed Oct. 16, 2025); *Artola Aruaz v. Baltazar, et al.*, 1:25-cv-03260-CNS (D. Colo. Oct. 31, 2025), ECF 16; *Cervantes Arredondo v. Baltazar, et al.*, 1:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025), ECF 21, and around the country.[1]

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[1] *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); *Ortiz Donis v. Chestnut*, 1:25-cv-01228, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Mugliza Castillo v. Lyons*, 25-cv-16219, 2025 WL 2940990 (D. N.J. October 10, 2025); *Alejandro v. Olson,* 1:25-cv-02027, 2025 WL 2896348 (S.D. Ind.); *Singh v. Lyons*, 1:25-cv-01606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *Teyim v. Perry*, 1:25-cv-01615, 2025 WL 2950183 (E.D. Va. Oct. 15, 2025); *Hernandez Hernandez v. Crawford*, 1:25-cv-01565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *Menjivar Sanchez v. Wofford*, 2025 WL 2959274 (C.D. Cal. Oct. 17, 2025); *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626 (W.D.N.Y. Oct. 19, 2025);*Sanchez Alvarez v. Noem et al.*, 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Polo v. Chestnut et al.*, 1:25-cv-01342 JLT HBK, 2025 WL 2959346 (E.D. Ca. Oct.17, 2025); *Chavez v. Director of Detroit Field Office et al.*, 4:25-cv-02061-SL, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *HGVU v. Smith et al.*, 25-cv-10931, 2025 WL2962610 (N.D. Ill. Oct. 20, 2025) *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL269163 (D. Mass. Oct. 21, 2025*); Buestan v. Chu,* No. 25-16034 (MEF), 2025 WL2972252 (D. N.J. Oct. 21, 2025); Maldonado v. Baker, No. 25-3084-TDC (D. Md. Oct. 21,2025); *Gonzalez Martinez v. Noem*, EP-25-cv- 430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Miguel v. Noem*, 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120 2025, WL 2977650 (D. Colo Oct. 22, 2025); *Lopez Lopez v. Soto*, 2:25-cv-16303, 2025 WL 2987485 (D.N.J. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Castellanos Lopez v. Warden Otay Mesa Det. Ctr.*, 25-cv-2527, 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025); *Ramirez Valverde v. Olson*, 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *L.A.E. v. WAMSLEY*, 3:25-CV-01975, 2025 WL 3037856 (D. Or.Oct. 30, 2025); *Rosales Ponce v. Olson*, 25-cv-13037, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *J.A.M. v. Streeval*, 25-cv-342, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Flores v. Olson*, 25-cv-12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *Hernandez-Alonso v. Tindall*, 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Reyes Arizmendi v. Noem*, 25-cv-13041, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025); *Hernandez-Luna v. Noem*, 1:25-cv-00881, 2:25-cv-01818, 2025 WL 3102039 (D. Nev. Nov. 6, 2025); *Molina Ochoa v. Noem*, 2025 WL 3125846 (D.N.M. Nov. 7, 2025); *Lira Perez v. Noem*, 1:25-cv-13442, 2025 WL 3140692 (N.D. Ill. Nov. 10, 2025); *Ramirez Martinez v. Noem*, No. 25-CV-12029, 2025 WL 3145103, at *7 (N.D. Ill. Nov. 11, 2025); *Becerra Vargas v. Bondi,* 5:25-cv-1023, No. 5:25-cv-1023 (S.D. Tex. Nov. 12, 2025); *Maravilla Amaya v. Noem*, 3:25-CV-2892, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025); *Yupangui v. Hale*, 2:25-CV-884, 2025 WL 3207070 (D. Vt. Nov. 17, 2025); *Guzman Cardenas v. Almodovar*, 25-cv-9169, 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025);

This includes the Western District of Washington's recent 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. Sept. 30, 2025). Defendants' Response ignores these decisions and presses the same arguments courts routinely reject. Plaintiff is likely to succeed on the merits of his petition, and this Court should join the "tsunami" of decisions finding Defendants' position unlawful and grant Plaintiff relief. *Roa*, 2025 WL 2732923, at *1 (citation omitted).

II. Defendants' Position Violates the Statute and Misinterprets *Jennings*.

Defendants' response mischaracterizes *Jennings'* analysis of the relevant statutes. ECF 14 p. 4-10. *Jennings* begins with a discussion of our "*Nation's borders and ports of entry*, where the Government must determine whether a [noncitizen] *seeking to enter* the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, at 287 (2018).[2] The Court notes that §§ 1225(a) and 1225(b) are relevant for this determination. *Id.* 287–88. It concludes that the latter is for noncitizens who "shall be detained for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted *into the country*." *Id.* at 288 (emphasis added and cleaned up) (citing § 1225(b)(2)).

The Court then transitions to discuss that "*once inside the United States*, [noncitizens] do not have an absolute right to remain here[,]" *id.* (emphasis added), concluding that "U.S. immigration law authorizes the Government to detain certain [noncitizens] *already in the country* . . . under § 1226(a) and (c)." *Id.* at 289 (emphasis

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Villafana Rodriguez v. Knight, 1:25-cv-600, 2025 WL 3228285 (D. Idaho Nov. 19, 2025).

[2] This Court's emphasis of the "seeking admission" requirement in its prior decisions is consistent with the Supreme Court's discussion of §1225's breadth. *E.g.*, *Garcia Cortes v. Noem,* 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025), at *3.

added). Defendants' response arguing otherwise is wrong.

Indeed, Defendants' citations to *Jennings* omits key statements from the Court. ECF 14, p. 4–6. For example, the Court states that "[a]pplicants for admission must be 'inspected by immigration officers' to ensure that they may be admitted *into the country* consistent with U.S. immigration law." *Jennings*, 583 U.S. at 287 (emphasis added). The Court again emphasizes that noncitizens "covered by § 1225(b)(2) are detained" to determine whether they should be "admitted *into the country*." *Id.* at 288. Defendants' response does not once contend with the Court's discussion that § 1225's purpose is to determine whether someone should be admitted *into the country*. *See generally* ECF 14.

Additionally, Defendants fail to distinguish Plaintiff's claim from this Court's decision in *Garcia Cortes*. ECF 14, pp. 6-7. There, like here, Defendants rest their erroneous position on the definition of applicant for admission. *Compare Garcia Cortes*, 2025 WL 2652880, at 2 ("At bottom, Respondents contend that Petitioner falls squarely within the ambit of section 1225(b)(2)(A) . . .given he is an applicant for admission") *with* ECF 14, p. 6-7 (claiming Plaintiff is an "applicant for admission"). While not factually on all fours, *Garcia Cortes* correctly interprets §§ 1226 and 1225, noting, *inter alia*, that "three conditions must be satisfied" for the latter to apply. *Garcia Cortes*, 2025 WL 2652880, at *3 (citations omitted). One of those conditions is that the noncitizen be "seeking admission." *Id.* (citing § 1225(b)(2)(A)). There, as here, "Respondents do not contend with § 1225(b)(2)(A)'s 'seeking admission' requirement" and similarly ignore that Plaintiff "has resided in this country for years" *Id.* (citations omitted).

Defendants' similarly fail to distinguish Plaintiff's case here to this Court's decision in *Nava Hernandez v. Baltazar*, et al., 1:25-cv-03094-CNS, 2025 WL 2996643, (D. Colo.

Oct. 24, 2025), ECF 26. There, this Court correctly found that the "plain text suggests" that Defendants' position is wrong. *Id.* at *10. *Nava Hernandez* correctly interprets §§ 1226 and 1225, noting that "several conditions must be met" for a non-citizen to be considered an applicant for admission in particular "an examining immigration officer' must determine that the individual is: (1) an 'applicant for admission (2) seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted." *Id.* at 10-11. (citations omitted). There, as here, respondents again do not contend with § 1225(b)(2)(A)'s seeking admission requirement and similarly ignore that Plaintiff has resided in this country for year.

Courts acknowledge Defendants' failure to address the seeking admission requirement and its misuse of *Jennings*. *E.g.*, *J.A.M. v. Streeval*, 4:25-cv-342 (CDL), 2025 WL 3050094, at *4. (M.D. Ga. Sept. 1, 2025). The Court in *Jennings* "did not specifically engage in any statutory construction of the phrase '[noncitizen] seeking admission' in the context of § 1225(b)(2)." *Id.* That failure is important because "[t]he statute that mandates detention does not state that all 'applicants for admission' shall be detained. It narrows this mandatory detention to [noncitizens] who are 'seeking admission'" into the United States. *Id.* at 3.[3].

Beyond Defendants' misuse of *Jennings* and ignoring the chorus of decisions against them, Defendants also avoid key 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 v. Bondi, CV-25-03252*, 2025

[3] Defendants' also fail to distinguish this case from the decisions from this Court granting petitions with the exact same legal question. *See supra*, p. 2–3. In other words, the Government provided no persuasive reason for this Court to deviate from its prior holdings in favor of Plaintiff's position.

WL 2821282 (D. Ariz. Oct. 3, 2025), 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). 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.* Defendants' improper reading relies on the broad definition of "application for admission" at § 1225(a)(1). ECF 14 at pp. 4-11. This definition, however, does not control for § 1225(b)(2), which does not apply to *all* applicants for admission, but only those actively "seeking admission" at the border. *See* 8 U.S.C. § 1225. *See also* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996) (purpose of § 1225 regarding noncitizens arriving at the border).

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' 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 misses the mark. 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); *Cordero Pelico*, 2025 WL 2822876, at *14 (finding "no need to" pass the LRA if Defendants' § 1225(b)(2) interpretation were correct); *Lopez Benitez*, 2025 WL 2371588, at *4 (finding that §§ 1225(b)(2) & 1226 are "mutually exclusive"). 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 attempt to do here. *Kungysv U.S.*, 485 U.S. 759, 778 (1988) (emphasis added).

In sum, Defendants' interpretation of the statute is wrong. Countless district courts across the country, including this one, the Supreme Court, and canons of statutory construction support Plaintiff's bond eligibility.

III. IIRIRA's Intent to Limit Some Advantages to Those who Unlawfully Enter the United States is Irrelevant to Plaintiff's Bond Eligibility.

The Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") substituted "admission" for "entry" to address the distinction between noncitizens who "effected an 'entry' into the U.S. [and] were subject to deportation proceedings, while those who had not made an 'entry' were subject to 'more summary' exclusion proceedings." *Salcedo Aceros*, 2025 WL 2637503, at *11. However, H.R. Rep. No. 104-469, which Defendants cite, states "IIRIRA was intended to replace *certain aspects* of the

current 'entry doctrine[,]'" not all of it. H.R. Rep. No. 104-469, pt. 1, at 225 (1995)). "In making these changes, 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 Aceros, 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). The Supreme Court agrees. *Dep't of Homeland Sec'y v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (discussing how those "who have established connections in this country" have greater due process rights than those who are jailed "at the threshold of entry").

Defendants' reliance on *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) to argue the contrary is unavailing. ECF 14, p. 10. "*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 of cases in the Northern District of California finding Defendants' position unlawful); *See* ECF 1, p. 9, 25.1; *see also* n. 1, *supra.*

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

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). Indeed, the current regulations 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. 8 C.F.R. § 1003.19(h)(2)(B) (emphasis added).

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 14, p. 13, 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. Incarceration under the Circumstances Violates Due Process.

Under these circumstances "detention without a bond hearing amounts to a due process violation." *Garcia Cortes*, 2025 WL 2652880, at *4. While Plaintiff does not contest that detention is sometimes permissible during removal proceedings, *Demore v.Kim*, 538 U.S. 510, 531 (2003), the basis for detention must be constitutionally sound and rooted in statutory authority. Here, Defendants' strip Plaintiff of the most significant liberty interest there is, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004), and do so without statutory authority, Section II–IV, *supra*. The likelihood of erroneous deprivation is overwhelming considering Defendants' misapplication of the statutory scheme. *See Id.*; *See also* ECF 1, p. 9, 25; n. 1, *supra*.

Similarly unhelpful is Defendants' use of *Thuraissigiam*. ECF 14, p. 14. "The legal and factual context in *Thuraissigiam* . . . are different from those presented here." *Eliseo Jose Alejandro*, 2025 WL 2896348, at *5. The Supreme Court itself states that

> [w]hile [noncitizens] who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for a [noncitizen's] lawful entry into this country and that, as a result, a [noncitizen] at the threshold of initial entry cannot claim any greater rights under the Due Process Clause. Respondent attempted to enter the country illegally and was apprehended just 25 yards from the border. He therefore has no entitlement to procedural rights other than those afforded by statute.

Thuraissigiam, 591 U.S. at 107. In other words, *Thuraissigiam* supports Plaintiff's claim that his due process rights have been violated by not finding him eligible for bond. Plaintiff has resided in the United States for years and Defendants jailed him in the interior of the United States. Plaintiff's Due Process rights require he be eligible for bond.

Finally, the Government "has no interest in the detention without bond of someone against whom no criminal charges are pending and who is an active member in his community." *Garcia Cortes*, 2025 WL 2652880, at *4 (citation omitted). Plaintiffs due process rights are violated each day he is jailed without process under Defendants' unlawful interpretation of the statute.

VI. 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: November 25, 2025.

Respectfully submitted,

s/DanielHerrera

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 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/ Daniel Herrera
Daniel Herrera