UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03805-RBJ

HERBERT ORLANDO VELAZQUEZ DE LEON

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 RESPONDENT-DEFENDANTS' RESPONSE (ECF 15)

This Court should rejoin the chorus of federal courts across the country granting *habeas* relief to Plaintiff-Petitioner ("Plaintiff") finding Defendants-Respondents' ("Defendants") new interpretation of the Immigration and Nationality Act (INA)'s detention provisions illegal. *Cervantes Arredondo v. Baltazar, et al.*, 25-cv-03040-RBJ (D. Colo. Oct. 31, 2025).

I. Introduction

Before Plaintiff filed this case, federal courts overwhelmingly agreed that Defendants' policy of excluding people who entered without inspection (EWIs) from bond is unlawful. ECF 1, ¶¶ 25, 27–29. Defendants' response ignores this Court's prior ruling, *Cervantes Arredondo v. Baltazar,* 25-cv-03040-RBJ, this District's unanimous rulings, ECF 1, ¶ 29, and the hundreds of cases finding Plaintiff entitled to a bond hearing under § 1226(a), *id.*, ¶¶ 25, 27–29. Defendants instead present a "strained reading" of *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and fail "to distinguish the authority rejecting their arguments." *Espinoza Ruiz v. Baltazar*, 25-cv-03642-CNS, 2025 WL 3294762, *2 (D. Colo. Nov. 26, 2025), ECF 18. This Court should join the "tsunami" of decisions finding Defendants' position unlawful and grant Plaintiff relief. *Roa v. Albarran, et al.*, 25-cv-07802-RS, 2025 WL 2732923, *1 (N.D. Cal. Sept. 25, 2025) (citation omitted). The tsunami now includes the Seventh Circuit Court of Appeals, the only circuit court to address the issue. *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 25-3050, --- F.4th ---, 2025 WL 3552514, *10 (7th Cir. Dec. 11, 2025) (finding the government unlikely "to succeed on the merits of their argument that" people who entered without inspection "are subject to mandatory detention under § 1225(b)(2)(A)").

II. Plaintiff's Incarceration is Pursuant to § 1226.

a. A Proper Reading of *Jennings* Supports Plaintiff's Position.

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*, 583 U.S. 281 at 287. The Court notes that §§ 1225(a) and 1225(b) are relevant for this determination, *id.* 287–88 and 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) (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 added). *Accord Castanon-Nava*, 2025 WL 3552514, *9.

While Defendants suggest that the *Jennings* Court applied § 1226 only to "admitted" people, ECF 15, **9-10, *Jennings* did the opposite when noting that "U.S. immigration law authorizes . . . [detention] . . . of certain [noncitizens] *already in the country* . . . under *§ 1226(c)*[,]" *Jennings*, 583 U.S. at 289 (emphasis added). Because § 1226(c) applies to people who were not admitted, 8 U.S.C. § 1226(c)(1)(A), (D), (E), Defendants' "attempt to twist the Supreme Court's decision in *Jennings* ... does not help their cause," *Espinoza Ruiz*, 2025 WL 3294762, *2. This Court, *Cervantes Arredondo*, 25-cv-03040-RBJ, **6–7, and others agree, *E.g.*, *Mendoza Gutierrez v. Baltasar*, 25-cv-22720-RMR, 2025 WL 2962908, *15 (D. Colo. Oct. 17, 2025); *Maldonado Bautista v. Santacruz*, --- F.Supp.3d ----, 2025 WL 3289861, **7 & 9 (C.D. Cal. Nov. 20, 2025).

b. Defendants' Position Cannot be Squared with the Plain Language of § 1225(b)(2)

"[A] proper understanding of the relevant statutes … compels the conclusion that § 1225's provision for mandatory detention of noncitizens 'seeking admission' does not apply to [noncitizens], who ha[ve] been residing in the [U.S.] . . . ." *Mendoza Gutierrez*, 2025 WL 2962908, *5 (citation omitted). "If as the Government argues, all applicants for admission are deemed to be 'seeking admission' for as long as they remain applicants, then the phrase 'seeking admission' would add nothing to" § 1225(b)(2)(A). *Salcedo Aceros v. Kaiser*, 25-cv-6924, 2025 WL 2637503, *10 (N.D. Cal. Sept. 12, 2025). This Court already agreed, finding particularly compelling the fact that the "plain language of § 1225 reflects that, in order to fall" within § 1225, "a noncitizen must be, at the time of removal proceedings . . . (1) 'an applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted,' and that the first and second criteria are not identical." *Cervantes Arredondo*, 25-cv-03040-RBJ, *6 (citation omitted). The Court also correctly acknowledged that "the phrase 'seeking admission,' otherwise undefined in the statute, necessarily requires some sort of present-tense action." *Id.* (citation omitted).

But Defendants still argue that § 1225(a)(1) defines "applicants for admission" to include individuals present in the U.S. without admission.[1] Fatally for Defendants, however, Congress did *not* define applicants for admission as necessarily "seeking

[1] Defendants unconvincingly cite to a single district court decision in support of their position. ECF 15, *8 (citing to *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025). *Rojas* is an extreme outlier, *e.g.*, ECF 10 n. 1, and courts considering *Rojas* have found its reasoning contrary to several canons of statutory construction, *e.g.*, *Edahi v. Lewis*, 4:25-cv-129-RGJ, 2025 WL 3466682, **10–11 (W.D. Ky. Nov. 27, 2025).

admission." As the Seventh Circuit recently concluded:

> [I]t is Congress's prerogative to define a term however it wishes, and it has chosen to limit the definition of an "applicant for admission" to "a[] [noncitizen] present in the [U.S.] who has not been admitted or who arrives in the [U.S.]." 8 U.S.C. § 1225(a)(1). It could easily have included noncitizens who are "seeking admission" within the definition but elected not to do so.

Castanon-Nava, 2025 WL 3552514, *9. This plain reading is reinforced by the definition of "admission": "the lawful entry of the [noncitizen] into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). A person present in the U.S. after entering unlawfully is not "seeking" – in the sense of "asking for" or "try[ing] to acquire or gain"[2] – lawful entry. Defendants do not account for this ordinary meaning and their interpretation of the statute "would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous . . . ." *Castanon-Nava*, 2025 WL 3552514, *9.[3]

Defendants attempt to avoid this reality by pointing to § 1225(a)(3)'s use of the phrase "or otherwise" to argue all applicants for admission are seeking admission. ECF 15, **7-8. But Defendants overlook that the ordinary use of the term "or" is "almost always disjunctive, that is, the words it connects are to be given separate meanings," and "otherwise" means "something or anything else." *J.G.O. v. Francis*, 25-cv-7233, 2025 WL 3040142, *3 (S.D. N.Y. Oct. 28, 2025). "Taken together, 'or otherwise' is used to refer to something that is different from something already mentioned." *Id.* (quoting MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (10d. 2001)). In other words, "seeking admission" in § 1225(b)(2)(A) refers to "something that is different from" the previously mentioned term

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[2] "Seeking," Merriam-Webster.com, permalink: https://perma.cc/P9ZJ-J6EF.

[3] Defendants note a neighboring provision, § 1225(b)(1), includes temporal and geographic limitations not in the text of § 1225(b)(2). ECF 15, **6-7. That is beside the point. Defendants cannot explain how a person present in the U.S., after entering unlawfully, can be "seeking" a "lawful entry" into the country, as § 1225(b)(2) requires.

"applicant for admission." *See id.*; *see also Castanon-Nava*, 2025 WL 3552514, *9.[4]

c. Defendants' Position Cannot be Squared with § 1226's Structure.

Defendants cannot reconcile their interpretation of the detention statutes with 8 U.S.C. § 1226. Congress recently reaffirmed in the Laken Riley Act ("LRA") that people who entered the U.S. without inspection are eligible for bond under § 1226(a) because the LRA specifically excludes a new subset of EWIs from bond based on criminal history. *See* 8 U.S.C. § 1226(a); *see also id.* §§ 1226(c)(A), (D) (E) (excluding certain EWIs from bond). "If 8 U.S.C. § 1225 already mandates detention for noncitizens 'already in the country' . . . , it would have been superfluous for Congress to pass the Laken Riley Act . . ." *Mendoza Gutierrez*, 2025 WL 2962908, *7 (citation omitted). In fact, Defendants "endorse an interpretation of § 1225 that effectively removes § 1226 from existence." *Maldonado Bautista*, 2025 WL 3289861, *10. If § 1226(a) did *not* generally provide bond to EWIs – as Defendants insist – Congress would not have needed to specifically exclude certain EWIs from bond in the LRA. *Stone v. I.N.S.*, 514 U.S. 386, 397 (1955) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect").

Defendants offer no real response to this argument. Judge Rodriguez in *Mendoza Gutierrez* already rejected their assertion that § 1225 is more specific and therefore an acceptable redundancy. *Mendoza Gutierrez*, 2025 WL 2962908, *7. And with good

[4] Defendants also ignore the rest of § 1225(a)(3) and fail to explain why "applicants for admission" are a subset of those "seeking admission" when the provision also refers to people who are "otherwise seeking . . . readmission to or transit through the [U.S.] ..." 8 U.S.C. § 1225(a)(3). *See Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 625 (D.C. Cir. 2020) ("a basic rule of statutory construction is to '[r]ead on'"). Applicants for admission are undisputedly not subsets of *those* actions. Thus, at most the actions that follow the phrase "or otherwise" *might* describe certain applicants for admission where they engage in one of those actions, but they do not somehow encompass *all* applicants for admission.

reason. "[T]he language in § 1225 and § 1226 is not redundant but contradictory" because when '"Congress has created specific exceptions to a rule, it 'proves' the general applicability of that rule, absent those exceptions.'" *Romero v. Hyde*, 795 F.Supp.3d 271, 287 (D. Mass. 2025) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

Here, Congress explicitly created a rule that EWIs are bond eligible absent certain criminal contact. 8 U.S.C. § 1226(c)(1)(A), (D), (E). Defendants' suggested redundancy swallows the rule, *Barrera v. Tindall*, 3:25-cv-541-RGJ, 2025 WL 2690565, *4 (W.D.Ky Sept. 19, 2025), while Plaintiff's position of the statutes aligns with Congress's intent in § 1226 to address a set of people to whom § 1225 did not apply, *Lopez-Campos v. Raycraft*, --- F.Supp.3d ----, 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 the LRA); *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 485 (S.D.N.Y. Aug. 2025) (§§ 1225(b)(2) & 1226 are "mutually exclusive").[5]

d. Defendants Mischaracterize Congress's Intent when Enacting the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA").

The IIRIRA "legislative history suggests that Congress did not intend to alter the detention authority for noncitizens who entered unlawfully," but Defendants claim Congress accomplished the opposite. *Guerrero Orellana v. Moniz*, --- F.Supp.3d ----, 2025 WL 2809996, *9 (D. Mass. Oct. 3, 2025). Congress amended § 1226(a) to omit references to the § 1227 grounds of deportability to ensure EWIs were eligible for bond.

[5] Defendants' position also violates the "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant.." *Kungys v. U.S.*, 485 U.S. 759, 778 (1988) (emphasis added).

See 8 U.S.C. § 1226(a).[6]

> Congress' concern [in the IIRIRA] 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 1226(a) – the scope of which Congress did not alter.

Salcedo Aceros, 2025 WL 2637503, *12 (quoting H.R. Rep. 104-469, 229); *see also Mendoza Gutierrez*, 2025 WL 2962908, *8. The broader context confirms this: Congress expanded crime-based mandatory detention by enacting § 1226(c) and gave the government two years to expand detention capacity by 9,000 beds to do so. H.R. Rep. 123–24; M.H. Taylor, *The 1996 Immigration Act: Detention and Related Issues*, 74 INTERREL 209, 216–17 (1997). Defendants' suggestion that Congress simultaneously required detaining another *two million plus people* in silence is implausible and cannot be squared with the record. It also violates the principle that "Congress . . . does not alter fundamental details of a regulatory scheme in vague terms or ancillary provision – it does not, one might say, hide elephants in mouseholes." *Whiteman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457 (2001).

Furthermore, Congress had good reasons to keep the pre-IIRIRA scheme affording EWIs bond. Detention implicates a fundamental liberty interest, and "once [a noncitizen] enters the country, the legal circumstances change, for the Due Process Clause applies to all 'persons' within the [U.S.], including [noncitizens], whether their presence is lawful, [or] unlawful ..." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Congress did not intend to radically alter detention statutes such to raise serious

[6] The pre-IIRIRA scheme permitted noncitizens who entered unlawfully and were subject to the grounds of deportability access to bond. 8 U.S.C. § 1252(a)(1) (1994).

constitutional concerns. *See Clark v. Martinez*, 543 U.S. 371, 381 (2005).

Defendants' explicit rejection of excluding people who entered without inspection from bond eligibility supports Plaintiff's petition. 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. The agency's implementing regulations continue to make this distinction plain. *E.g.*, 8 C.F.R. § 1003.19(h)(2)(i).

III. Defendants' Incarceration of Plaintiff Violates Due Process.

Under the circumstances "detention without a bond hearing amounts to a due process violation." *Garcia Cortes v. Noem*, 1:25-cv-02677-CNS, 2025 WL 2652880, *4 (D. Colo. Sept. 16, 2025). 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, *see Zadvydas*, 533 U.S. at 690. 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, *supra*. The likelihood of erroneous deprivation is overwhelming considering Defendants' misapplication of the statutory scheme. *See Id*; *see also* ECF 10.

Defendants' reliance on *Thuraissigiam* to argue otherwise is futile. ECF 15, **13-14. "The legal and factual context in *Thuraissigiam* . . . are different from those presented here." *Alejandro v. Olson*, 1:25-cv-02027-JPHMKK, 2025 WL 2896348, *5 (S.D. Ind. Oct. 11, 2025). 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 (emphasis added). In other words, *Thuraissigiam* supports Plaintiff's claim that his due process rights have been violated by finding him ineligible for bond. Plaintiff has resided in the United States for years and Defendants jailed him in the interior. Plaintiff's Constitutionally protected 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, *4 (citation omitted). Plaintiffs due process rights are violated each day he is jailed without process under Defendants' unlawful interpretation of the statute.

IV. Conclusion

Based on the foregoing, this Court should order Defendants to immediately release Plaintiff or schedule a bond hearing within seven days.

Dated: December 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 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