

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

Civil Action No. 26-cv-00106-PAB

HECTOR PORTILLO MARTINEZ,

Petitioner,

v.

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

ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity

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

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity, and

PAMELA BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents.

COMBINED RESPONSE TO ORDER TO SHOW CAUSE, ECF No. 7

Respondents respond to the Court's Order to Show Cause, ECF No. 7 (entered 1/9/26), as to why the Petition for Writ of Habeas Corpus, ECF No. 1, and Motion for Temporary Restraining Order, ECF No. 2, should not be granted. The Court should deny the Petition and motion because Petitioner's detention is authorized by statute and does not violate due process, and his other challenges fail.

INTRODUCTION

This case involves a question of statutory interpretation. The Department of Homeland Security ("DHS") is detaining Petitioner under a statutory provision of the Immigration and

Nationality Act (“INA”), 8 U.S.C. § 1225(b)(2)(A), that applies to noncitizens¹ who, like Petitioner, entered the United States without inspection and have never been admitted, and thus are deemed as “applicants for admission” by law. Section 1225(b)(2)(A) requires detention of an “applicant for admission” if an “examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.”

Petitioner claims he is not an applicant for admission subject to § 1225(b)(2)(A) but is instead subject to a different provision, 8 U.S.C. § 1226(a), which is a catchall provision that also authorizes detention of certain noncitizens while removal proceedings are pending. The practical difference between the two sections is that noncitizens detained under § 1225(b)(2)(A) are ordinarily *not* eligible for bond hearings, while those detained under § 1226(a) are. Based on the premise that Petitioner’s detention is governed by § 1226(a) (and thus entitles him to a bond hearing), he requests a bond hearing. ECF No. 1 at 15; ECF No. 2 at 16.

The Court should find that Petitioner is an applicant for admission within the scope of § 1225(b)(2) based on the text of the statute and the Supreme Court’s interpretation of that statute in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents recognize that numerous nonprecedential decisions have reasoned otherwise. But as explained below, a close reading of the text and the Supreme Court’s explanation in *Jennings* of the scope of § 1225 supports Respondents’ view.

The Court should deny Petitioner’s requests for relief, because he is subject to 8 U.S.C. § 1225(b)(2)(A) and thus does not have, as he claims, a right to a bond hearing.

¹ The INA refers to noncitizens as “aliens.” See 8 U.S.C. § 1101(a)(3).

BACKGROUND

I. Factual background

Petitioner is a native and citizen of El Salvador. **Exhibit 1**, Declaration of K. Evans (“Evans Decl.”) ¶ 4; ECF No. 2-2 at 4. On March 21, 2005, he entered the United States illegally, without parole or inspection. Evans Decl. ¶ 5; ECF No. 2-2 at 4. He was detained on or around November 24, 2025, and charged with being deportable as a noncitizen present in the United States without being admitted or paroled. Evans Decl. ¶ 28; ECF No. 1 at 15-16. He is being detained pursuant to 8 U.S.C. § 1225(b). Evans Decl. ¶ 29. His removal proceedings remain pending. *Id.* ¶¶ 30-31.

II. Procedural background

On January 9, 2026, Petitioner filed the Petition, which challenges his detention as violating (1) the provisions regarding detention under § 1225(b) and § 1226(a), ECF No. 1 at 16-18, and (2) due process, *id.* at 17. That same day, Petitioner also filed the motion for temporary restraining order, requesting either release from custody, or a bond hearing within 7 days. ECF No. 2 at 16. The Court ordered Respondents to respond to the Petition and the motion for temporary restraining order. ECF No. 7.

ARGUMENT

I. The Supreme Court’s *Jennings* decision supports concluding that 8 U.S.C. § 1225(b)(2)(A) applies to noncitizens who entered without inspection and remain unlawfully present.

The question in this case is whether Petitioner is within the set of noncitizens to which 8 U.S.C. § 1225(b)(2) applies. The Supreme Court analyzed the scope of § 1225 in *Jennings*, which concerned whether certain noncitizens are entitled to periodic bond hearings during prolonged detention. Because in that case, and this one, “[t]he primary issue [wa]s the proper

interpretation of §§1225(b), 1226(a), and 1226(c),” *Jennings*, 583 U.S. at 289, the Supreme Court’s explanation of § 1225’s scope should guide the Court’s analysis here.

The *Jennings* decision established the following:

First, 8 U.S.C. § 1225 applies to “applicants for admission,” a term of art that includes noncitizens who are unlawfully present but were never admitted. Section 1225 provides in relevant part: “An alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1) (emphasis added). The *Jennings* Court explained that § 1225 applies to “applicants for admission,” and that term applies to *both* (a) an arriving alien as well as (b) an individual who is *present* in this country but has not been “admitted” through a lawful entry at a port of entry. *Jennings*, 583 U.S. at 287.

The Court in *Jennings* recognized that the statute uses the term “applicant for admission” as a term of art. “Under . . . 8 U.S.C. § 1225, an alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has not been admitted,’ is *treated as* ‘an applicant for admission.’” *Id.* (emphasis added). In other words, noncitizens who are present in the country and were never lawfully admitted are “deemed” to be “applicants for admission.” 8 U.S.C. § 1225(a)(1).

Petitioner argues that § 1225 should be construed as limited to just those newly arriving in the United States. Specifically, he argues that § 1225(b)(2)(A) does not apply to noncitizens who were not apprehended while arriving. ECF No. 1 at 5, 14. But that reading of § 1225(b)(2)(A)—that it extends only to *new* arrivals—does not comport with the INA’s text and does not make sense in the context of the whole section. For example, § 1225(b)(1)(A)(i) is not limited to noncitizens “arriving in the United States” who are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead,

§ 1225(b)(1)(A)(i) also applies, through its reference to § 1225(b)(1)(A)(iii), to some noncitizens who have *already* been residing in the United States and are inadmissible for the same reasons—that is, applicants for admission who have “not been admitted or paroled” and have not “affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II). This provision would make little sense if § 1225(b) applied only to newly arriving individuals.

Second, “applicants for admission” are not limited to noncitizens who have submitted an immigration application. The *Jennings* Court’s discussion of “applicant for admission” as a term of art made clear that the term “applicant for admission” is not limited to noncitizens who have submitted some type of immigration application. Rather, as the Court explained, there are two criteria to be an applicant for admission: an alien who (1) “‘is present’ in this country” but (2) “‘has not been admitted’ is *treated as* ‘an applicant for admission.’” *Id.* at 287 (emphasis added).

Elsewhere in § 1225, the *status* of being an applicant for admission is recognized as one way that a noncitizen may be “seeking admission.” The statute states: “[a]ll aliens . . . who are applicants for admission *or otherwise seeking admission* . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3) (emphasis added). Section 1225 thus confirms that a noncitizen can “seek[] admission” simply by meeting the definition of an applicant for admission *or* he can “otherwise” seek admission by directly applying for admission. The Supreme Court confirmed this view, equating “applicant for admission” with “seeking” entry in *Jennings*: “As noted, § 1225(b) applies primarily to aliens seeking entry into the United States (‘applicants for

admission’ in the language of the statute).” 583 U.S. at 297. Because Petitioner is *deemed* by the INA to an applicant for admission, he is also “seeking” admission under the statute, as interpreted by the Supreme Court. *See also Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (stating that the “seeking admission” language “is best read as simply another way of referring to aliens who are applicants for admission”).

The statute does not support a contrary interpretation. Section 1225(b)(1) contains no “seeking admission” language. Its detention provision applies, in the Attorney General’s discretion, even to some noncitizens who are not “arriving” at the time of their inspection by an immigration officer. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (applying to an “alien . . . who is arriving in the United States *or* is described in clause (iii)” (emphasis added)); *id.* § 1225(b)(1)(A)(iii) (describing a noncitizen “who has not been admitted or paroled into the United States . . . who has not affirmatively shown” that they have “been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility”).

Third, § 1225(b) applies to *all* applicants for admission, not just arriving aliens or those who unlawfully entered the United States recently. The *Jennings* Court’s discussion of § 1225’s scope supports the view that “applicants for admission” does not *exclude* individuals who entered the United States years ago.

The Court explained that the first subsection of § 1225(b), § 1225(b)(1), applies to two subcategories of applicants—categories that do not include Petitioner and are not relevant in this case. *See Jennings*, 583 U.S. at 287 (citing § 1225(b)(1)(A)(i)). The Court then explained that *all* applicants for admission who fall outside those narrow two subcategories in § 1225(b)(1) are covered by the second subsection of § 1225(b)—*i.e.*, § 1225(b)(2). It described 1225(b)(2) as a

“*catchall*” provision that applies to *all* applicants for admission not covered by § 1225(b)(1)” 583 U.S. at 287 (emphasis added).

Thus, a noncitizen who (like Petitioner) meets the general definition of “applicant for admission” (*e.g.*, an individual who is unlawfully present in the United States and has not been admitted) but does not fall within the § 1225(b)(1) subcategories is still an “applicant for admission” who falls under the “catchall” provision of § 1225(b)(2). *See id.*

To interpret the statute otherwise would create a perverse incentive for noncitizens to avoid ports of entry when arriving in the United States. Noncitizens who successfully evaded immigration officials for a period of time would later be bond-eligible if detained, whereas noncitizens who arrived at a port of entry and who sought admission through official channels would not be. There is no indication that Congress intended this result with § 1225(b).

Fourth, in § 1225, Congress did not grant applicants for admission a right to a bond hearing. The *Jennings* Court recognized that § 1225 does not provide a bond hearing for noncitizens detained under that provision. It explained that Congress has provided that noncitizens covered by § 1225(b)(2) generally “shall be detained” during their removal proceedings, with narrow exceptions. *Jennings*, 583 U.S. at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A)). Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are “not clearly and beyond a doubt entitled to be admitted” shall be detained for removal proceedings under 8 U.S.C. § 1229a.

Fifth, § 1226, in contrast, provides for detention, and bond hearings, for *other* categories of noncitizens subject to removal. The Court in *Jennings* recognized that a different statutory provision—§ 1226(a)—governed the detention of other noncitizens, including those who *had* been “admitted.” The Court explained:

Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls ‘within one or more . . . classes of deportable aliens.’ § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses *since admission*. See §§ 1227(a)(1), (2).

Jennings, 583 U.S. at 288 (emphasis added).

In other words, § 1226(a) extends to noncitizens who have been admitted (such as noncitizens who were admitted on a visa and then overstayed). The Court did *not* suggest that § 1226(a) governs the detention of noncitizens who are covered by § 1225(b)(2). Rather, the Court appeared to recognize that these *two* provisions—1225(b)(2) and 1226(a)—authorize detention for *different* sets of individuals: the detention of noncitizens covered by § 1225 is authorized by § 1225, and *other* individuals in the country not covered by § 1225 may be detained under § 1226.

Indeed, the *Jennings* Court distinguished between these detention authorities:

U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

583 U.S. at 289. The *Jennings* Court did *not* suggest that noncitizens who are properly covered by § 1225 (where Congress has not authorized bond) should instead governed by the detention authority set forth in § 1226(a)—the provision where Congress *has* expressly authorized bond.

III. The legislative history further supports this view of § 1225’s scope.

Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (“IIRIRA”) to stop conferring greater privileges and benefits on those who entered the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“H. Rep.”) (“illegal aliens who

have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”). The Act had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). Thus, in enacting what is now 8 U.S.C. § 1225, which requires the detention of any alien “who is an applicant for admission,” and defines that term to encompass any alien present in the United States who has not been admitted following inspection by immigration authorities, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been *lawfully* admitted.” H. Rep. at 225 (emphasis added).

IV. Petitioner’s arguments that § 1226 applies to him are unavailing.

Under the framework described in *Jennings*, Petitioner is an applicant for admission properly detained under § 1225(b)(2)(A). He does not show otherwise.

Specific provisions control over general ones. Petitioner argues that § 1225(b)(2)(A) does not apply to him because § 1226(a) should. Petitioner’s arguments contradict normal rules of statutory interpretation. Section 1226(a)’s general detention authority, which permits the issuance of warrants to detain noncitizens for their removal proceedings, must be read alongside § 1225, which *specifically* addresses the detention of applicants for admission. And § 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. Where “there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one.” *Guidry v. Sheet Metal Workers Nat’l Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). Here, § 1225 is narrower in scope than § 1226. It applies only to “applicants for admission,” which includes noncitizens present in the United States who

have not been admitted. *See* 8 U.S.C. § 1225(a)(1). The Court should not read § 1226(c) to require courts to ignore the express scope of § 1225.

V. Petitioner has not shown that he has a due process right to a bond hearing.

Petitioner also claims that he is entitled to a bond hearing as a matter of due process. *See* ECF No. 1 at 18-19. This argument should be rejected.

First, for Petitioner to show that he has been denied due process, he would need to show that he has been deprived of a statutory right. The Supreme Court has “often reiterated” the “important rule” that for “foreigners who have never been . . . admitted into the country pursuant to law,” “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020). There, the Court explained that a noncitizen who was an “applicant for admission” had “only those rights regarding admission that Congress has provided by statute,” and “the Due Process Clause provides nothing more” *Id.* at 140. Congress has not given detainees the *right* to a bond hearing. Rather, it has given the Attorney General discretion to grant bond. *See* 8 U.S.C. § 1226(a)(2).

Second, Petitioner’s detention is constitutional. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court explained that noncitizens who were subject to a different mandatory-detention scheme—under § 1226(c)—could be detained during the entire course of their removal proceedings: “Detention during removal proceedings is a constitutionally permissible part of that [removal] process.” 538 U.S. at 531. The Court reasoned that detention was not indefinite, because it had a definite and obvious termination point (the end of removal proceedings) and that detention “increas[ed] the chance that, if ordered removed, the aliens will be successfully removed.” *See id.* at 527-29. The same analysis applies here. Removal proceedings advance

toward a definite endpoint. Petitioner’s detention will conclude with a final order of removal or a denial of the charges against him. Detention during removal proceedings is a “constitutionally permissible part of [this] process.” *See Demore*, 538 U.S. at 531.

Additionally, Petitioner’s detention has not become unreasonably prolonged. He has been detained for approximately two months. *See Evans Decl.* ¶ 28. In a different immigration context—noncitizens already ordered removed and indefinitely awaiting their removal—the Supreme Court has explained that detention of less than six months is presumptively constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Petitioner has failed to demonstrate that the Fifth Amendment requires any additional process be provided to him.

VI. The Due Process Clause does not require the government to bear the burden to justify continued detention at immigration bond hearings.

Due process does not require that the government bear the burden of proof at any bond hearing. If the Court determines that Petitioner is subject to § 1226(a)—rather than § 1225(b)(2)(A)—nothing in the text of § 1226(a) “even remotely supports” imposing the burden of proof on the government at a bond hearing. *Jennings*, 583 U.S. at 306; *see also Nielson v. Preap*, 586 U.S. 392, 397-98 (2019) (a § 1226(a) detainee “may secure his release *if he can convince the officer or [IJ]* that he poses no flight risk and no danger to the community” (emphasis added)). Section 1226(a) states that the government “*may* continue to detain” an arrested noncitizen, or it “*may* release” him on bond. 8 U.S.C. § 1226(a) (emphases added). The statute’s implementing regulations similarly make clear that the burden of proof should fall on the noncitizen. *See* 8 C.F.R. § 236.1(c)(8) (“*[T]he alien must demonstrate* to the satisfaction of the [DHS] officer that such release would not pose a danger to property or persons, and that the

alien is likely to appear for any future proceeding.” (emphasis added)). Thus, if the Court determines § 1226(a) applies to Petitioner, the only relief he should receive is what he would be entitled to under that statute: a bond hearing at which *he* bears the burden of proof, not the government.

The Tenth Circuit has not addressed the appropriate burden at immigration bond hearings, but the appropriate course was recently charted by the Fourth Circuit in *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022), which declined to place the burden on the government at bond hearings under § 1226(a).² This court should follow the same path.

Where immigration is concerned, the Supreme Court has held “over and over,” *Miranda*, 34 F.4th at 359, that “[i]n the exercise of its broad power over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 521. Thus, noncitizens “are due less process when facing removal hearings than an ordinary citizen would have.” *Miranda*, 34 F.4th at 361. The judiciary’s role “is limited to determining whether the procedures [chosen by Congress] meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy.” *Landon v. Plasencia*, 459 U.S. 21, 35 (1982).

² The Third and Ninth Circuits came to the same conclusion. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202-14 (9th Cir. 2022); *Borbot v. Warden Hudson Cnty. Corr. Fac.*, 906 F.3d 274, 279 (3d Cir. 2018). Two other circuits have held that § 1226(a)’s procedures were constitutionally inadequate, but in those cases, the noncitizen-petitioners had been detained for a “prolonged” period of many months—far longer than the two months Petitioner has been detained. *Rodriguez Diaz*, 53 F.4th at 1203-04 (discussing *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021) (ten months of detention) and *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020) (fifteen months of detention)).

In *Miranda*, the Fourth Circuit applied the three-factor test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), to assess what process was due under the Fifth Amendment. 34 F.4th at 358-59.

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. Here, *Mathews* does not support allocating the burden—by clear and convincing evidence or otherwise—to the government.

The private interest. The private interest at issue here is freedom from detention, which “lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. The force of that interest, however, is modulated for noncitizens. Due process “is not a one size fits all proposition.” *Miranda*, 34 F.4th at 359. Instead, the flexible doctrine “calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Congress made bond determinations purely discretionary, 8 U.S.C. § 1226(a)(2) (“*may* release the alien”) (emphasis added), and courts should not “impose [their] own policy judgment on how best to ensure aliens’ attendance at future removal proceedings.” *Miranda*, 34 F.4th at 360.

Risk of erroneous deprivation and value of additional safeguards. In terms of information-access, allocating the burden to the detainee rather than the government is not likely to give rise to a significant risk of erroneous detention. As the *Miranda* court noted, “aliens should know as much or more than the government about their own criminal history,” “mitigating evidence related to that history,” how they entered the United States, what they have

been doing while in the United States, and “family or employment information, which could bear on their risk of flight and any danger they pose to the community.” *Id.* at 362.

The value of additional safeguards is also low. The government’s regulations already provide noncitizens “the fundamental features of due process—notice and an opportunity to be heard.” *Id.* Noncitizens have “three separate opportunities to make their case concerning bond,” *id.*, before an immigration officer, before an immigration judge, and before the Board of Immigration Appeals. *Id.* And flipping the burden “conflicts with Supreme Court precedent in similar circumstances.” *Id.* at 362-63 (citing *Carlson v. Landon*, 342 U.S. 524 (1952), *Demore*, 538 U.S. at 531, *Reno v. Flores*, 507 U.S. 292, 315 (1993), and *United States v. Salerno*, 481 U.S. 739, 755 (1987)). The existing “process is more than sufficient” to address overbreadth concerns. *Id.* at 364.

The government interest. The government’s interest in managing the system of both legal immigration and removal of noncitizens is particularly weighty. “Over no conceivable subject is the legislative power of Congress more complete” than immigration. *Flores*, 507 U.S. at 305. “[I]t must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon*, 459 U.S. at 34. For more than a century, the Supreme Court has recognized that “deportation proceedings ‘would be in vain if those accused could not be held in custody pending the inquiry into their true character.’” *Miranda*, 34 F.4th at 364 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). The government has a “significant interest in detaining aliens pending their removal hearings.” *Id.* at 365.

In sum, the *Mathews* factors do not support placing a clear-and-convincing-evidence burden on the government at a bond hearing.

CONCLUSION

For the reasons discussed above, the Court should dismiss or deny the Petition and the motion for temporary restraining order.

Respectfully submitted on January 23, 2026.

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CERTIFICATE OF SERVICE

I certify that on January 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

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Andrew M. Soler