UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1: 26-cv-00360-PAB

JOSE MANUEL MONTANEZ DE LA CRUZ,

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 13)

I. Introduction

Federal courts overwhelmingly agree that Defendants-Respondents' (Defendants') policy of excluding people who entered without inspection (EWIs) from bond is unlawful. ECF 1, ¶¶ 24, 26–29; ECF 3, pp. 2–3. This Court alone has found Defendants' position unlawful no less than six times. *E.g.*, *Hernandez-Redondo v. Bondi*, No. 25-cv-3993-PAB, 2026 WL 290989 (D. Colo. Feb. 4, 2026); *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, (D. Colo. Feb. 3, 2026); *Portillo-Martinez v. Baltazar*, No. 26-cv-00106-PAB, 2026 WL 194163 (D. Colo. Jan. 26, 2026); *Garcia-Perez v. Guadian*, No. 25-cv-04069-PAB, 2026 WL 89613 (D. Colo. Jan. 13, 2026); *Alfaro Orellana v. Noem,* No. 25-cv-03976-PAB, 2025 WL 3706417 (D. Colo. Dec. 22, 2025*Flores Marin v. Baltazar, et al.*, 25-cv-3697-PAB, 2025 WL 3677019 (D. Colo. Dec. 18, 2025). In fact, this Court acknowledged that Defendants' position "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta*, 2026 WL 274634, at *2. That number includes this District's unanimous rulings against Defendants. *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, at *4 (D. Colo. Jan. 15, 2026), ECF 16 (noting this Districts unanimity) (attached as Exh. 1). Defendants' response unconvincingly asks this Court to change course. It should not.[1]

[1] Defendants cite without analysis the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, ---F.4th---, 2026 WL 323330, at *5–10 (5th Cir. Feb. 5, 2025) and a single district court adopting their erroneous position, *Montoya v. Holt*, No. CVI-25-01231-JD, 2025 WL 3733303 (W.D. Okla. Dec. 26, 2025). ECF 13, at *3. The unanimous consensus in this District disagreeing with Defendants is more persuasive, and Defendants' response should not sway this Court to be the only Court in the District to agree with its incorrect position. Indeed, even district courts in the Fifth Circuit continue to find that people Defendants claim are subject to mandatory detention under § 1225(b) are entitled procedural due process and merit bond hearings. *E.g.*, *Hassen v. Noem, et al.*, EP-26-CV0048-DB (W.D. Tex. Feb. 9, 2026) (attached as Exh. 2); *Duran Aguila v. Warden, et al.*, EP-26-CV-241-KC (W.D. Tex. Feb. 9, 2026) (attached as Exh. 3).

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 v. Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added). 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 v. U.S. Department of Homeland Security*, 161 F.4th 1048, 1061 (7th Cir. 2025).

While Defendants suggest that *Jennings* applied § 1226 only to "admitted" people, ECF 14, **4–5, *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) explicitly 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 v. Baltazar*, No. 1:25-cv-3294762, 2025 WL 3294762, at *2 (D. Colo. Nov.

26, 2025). This Court already found similarly, concluding that it "disagrees with respondents' contention that *Jennings* supports mandatory detention." *Martinez*, 2026 WL 194163, at *3. Defendants' response provides no reason for this Court to change course now. *See Mendoza* Gutierrez *v. Baltasar et al.*, 25-cv-2720-RMR, 2025 WL 2962908, *6 (D. Colo. Oct. 17, 2025); 3713987, *10 (C.D. Cal. Dec. 18, 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 *v. Baltasar et al.*, 25-cv-2720-RMR, 2025 WL 2962908, *at 5 (D. Colo. Oct. 17, 2025); (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). Once again, this Court agrees. *Martinez*, 2026 WL 194163, at *5.

But Defendants still argue that § 1225(a)(1) defines "applicants for admission" to include individuals present in the U.S. without admission. Fatally for Defendants, however, Congress did *not* define applicants for admission as necessarily "seeking 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, 161 F.4th at 1061. 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*, 161 F.4th at 1061.[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 13-1, at 12. 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 "applicant for admission." *See id.*; *see also Castanon-Nava*, 161 F.4th at 1061.[4]

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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 13, *3. 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.

[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

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

Defendants cannot reconcile their interpretation of the detention statutes with 8 U.S.C. § 1226. "Congress's 2025 amendment of § 1226(a) to add subsection (c)(1)(E) provides further support that [Plaintiff] is subject to § 1226." *Martinez*, 2026 WL 194163, at *4. 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 v. Santacruz*, ---F.Supp.3d---, 2025 WL 3713987, at *11 (C.D. Cal. Dec. 18, 2025). 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"). As this Court already acknowledged, § 1226(c)(1)(E) "would be meaningless if noncitizens already residing in the United States were all subject to mandatory detention." *Martinez*, 2026 WL 194163, at *5.

Defendants offer no real response to this argument, and this District already

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of those actions, but they do not somehow encompass *all* applicants for admission.

rejected their assertion, ECF 13-1, at 14, that any redundancy between § 1225 and § 1226 is acceptable because the former is more specific, *Mendoza Gutierrez*, 2025 WL 2962908, at *7. And with good 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' view of the alleged 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] This Court agrees. *Martinez*, 2026 WL 194163, at *4–5.

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

Defendants' reliance on IIRIRA's change to the "entry doctrine" is misplaced. ECF 13-1, at 15-16. The IIRIRA "legislative history suggests that Congress did not intend to alter the detention authority for noncitizens who entered unlawfully." *Guerrero Orellana v.*

[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).

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. *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

[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).

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

Defendants' past 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, at *4 (D. Colo. Sept. 16, 2025). The appropriate remedy therefore is immediate release. That is particularly true where, as here, Defendants' violation of Plaintiff's right to liberty and due process will inevitably be violated at a custody hearing with an immigration judge. *See* ECF 2, at 15–20. This Court and the public[7] are on notice of Defendants'

[7] Cheney, Kyle, POLITICO, *How ICE Defies judges' orders to release detainees, step by step* Feb. 10, 2026 (available at https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727?cid=apn),

lawlessness. *E.g.*, *Martinez v. Baltazar*, No, 26-cv-00106-PAB, 2026 WL 194163, ECF Nos. 15, 15-1, 15-2, 15-3. (D. Colo. Jan. 26, 2026) (detailing ICE's refusal to accept bond payment for four days). The only appropriate remedy is immediate release.

IV. Conclusion

Based on the foregoing, this Court should grant Plaintiff relief.

Dated: February 16, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2026, 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