UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1: 26-cv-01081-DDD-NRN

SERALDO VARGAS ARREDONDO,

Plaintiff-Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
GEORGE VALDEZ, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;
MARKWAYNE MULLIN, 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;
TODD BLANCHE, Attorney General of the United States, in her official capacity;[1]

Defendants-Respondents.

PETITIONER-PLAINTIFF'S CONSOLIDATED REPLY TO RESPONDENT-DEFENDANTS' RESPONSES (ECF 17 AND ECF 18)

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[1] Mr. Mullin and Mr. Blanche are substituted as Respondents, in their official capacities, pursuant to Fed. R. Civ. P. 25(d).

I. Introduction

The dispositive question before this Court is not new. Defendants-Respondents' ("Respondents") erroneously claim that their authority to jail Plaintiff-Petitioner ("Mr. Vargas") is pursuant to 8 U.S.C. § 1225(b)(2) because he entered the United States without inspection ("EWI") years ago. *See generally* ECF 17; ECF 18. Judges in this District have unanimously found Respondents' position wrong. *E.g.,* ECF 3-1 (*Ugarte Hernandez v. Baltazar, et al.,* 1:25-cv-04066-RBJ, ECF 16, at *4 (D. Colo. Jan. 15, 2026) (noting this District's unanimity)). In fact, it "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta v. Noem,* No. 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026). Respondents provide no new argument and do not once acknowledge this District's unanimity against them.

II. Mr. Vargas' Incarceration is Pursuant to § 1226

a. *Jennings* Support's Mr. Vargas' Position.

"Respondents' attempt to twist the Supreme Court decision in *Jennings* . . . in support of their position does not help their cause." *Espinoza Ruiz v. Baltazar*, 1:25-cv-03642-CNS, 2025 WL 3294762, at *2 (D. Colo. Nov. 26, 2025); *Martinez v. Baltazar*, 26-cv-00106-PAB, 2026 WL 194163, at *3 (D. Colo. Jan. 26, 2026). Respondents' use of *Jennings* is "selective[,]" as *Jennings* "clearly contemplates that § 1226 applies to those who remain in the country after effecting an unlawful entry . . . ." ECF 3-1 (*Ugarte Hernandez*, 1:25-cv-04066-RBJ, ECF 16 at *14).

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 states 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).

While Respondents suggest that *Jennings* applied § 1226 only to "admitted" people, ECF 17, **2–4; ECF 18, **2-4, *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), Respondents' interpretation is wrong. This District unanimously agrees. *E.g. Mendoza* Gutierrez *v. Baltasar et al.*, 25-cv-2720-RMR, 2025 WL 2962908, at *6 (D. Colo. Oct. 17, 2025).

b. Respondents' Position Cannot be Squared with §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); *Loa Caballero v. Baltazar*, 25-cv-03120-NYW, 2025 WL 2977650, at *7 (D. Colo. Oct. 22, 2025) (same).

Respondents argue that § 1225(a)(1) defines "applicants for admission" to include individuals present without admission. Fatally for Respondents, however, Congress did *not* define

applicants for admission as necessarily "seeking admission." As the Seventh Circuit concluded:

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

Castanon-Nava v. U.S. Dep't. of Homeland Security, 161 F.4th 1048, 1061 (7th Cir. 2025). 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) (emphasis added). A person present after entering unlawfully is not "seeking" – in the sense of "asking for" or "try[ing] to acquire or gain"[2] – lawful entry. Respondents do not account for this ordinary meaning and their interpretation "would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous . . . ." *Castanon-Nava*, 161 F.4th at 1061.[3]

Respondents point to § 1225(a)(3)'s use of the phrase "or otherwise" to argue otherwise. ECF 17, **3-4; ECF 18, **3-4. But Respondents 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, at *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 MERRIAMWEBSTER'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.

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

[3] Respondents note a neighboring provision, § 1225(b)(1), includes temporal and geographic limitations not in the text of § 1225(b)(2). ECF 17, **4-5; ECF 18, **4-5. That is beside the point. Respondents 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.

Finally, Respondents unconvincingly cite the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*,--- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). ECF 17, *9; ECF 18, *9. But courts in this District have held that *Buenrostro* is non-binding and wrong. *Singh v. Baltazar*, ---F.Supp.3d---, 2026 WL 352870, at **3 – 6 (D. Colo. Feb. 9, 2026); *Marrero Yera v. Baltazar*, 1:26-cv-00746-SKC-SBP, 2026 WL 472014, at *2 (D. Colo. Feb. 19, 2026) (agreeing with decisions that "surgically dismantle" *Buenrostro*).

Respondents do not present any meaningful challenge to this District's unanimous rulings against them. In fact, their challenges have been rejected. This Court should do the same.

c. Respondents 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." *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. *See* 8 U.S.C. § 1226(a).[4]

> 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). 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

[4] 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).

209, 216–17 (1997). Respondents' suggestion that Congress simultaneously required detaining another *two million plus people* in silence is implausible. 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).

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

The Government also previously rejected Respondents' position. 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. Incarceration Under the Circumstances Violates Due Process.

This Court should agree "with other courts that have, against substantially similar factual

backgrounds, concluded that detention without a bond hearing amounts to a due process violation." *Pineda v. Baltasar*, No. 25-cv-02955-GPG, 2025 WL 3516291, at *2 (D. Colo. Oct. 20, 2025) (citing *Garcia Cortes v. Noem*, 1:25-cv-02677-CNS, 2025 WL 2652880, at *4 (D. Colo. Sept. 16, 2025) (collecting cases). While 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, Respondents strip Mr. Vargas 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*; ECF 3, pp. 5–16. The likelihood of erroneous deprivation is overwhelming considering Respondents' misapplication of the statutory scheme. *See Id.*; *See also* ECF 6 n. 1. Respondents' erroneous reading of *DHS v. Thuraissigiam,* 591 U.S. 103, 107 (2020) to deny Mr. Vargas Due Process is unavailing. ECF 17, *12; ECF 18, *12. In fact, "[t]he legal and factual context in *Thuraissigiam* . . . are different from those presented here." *Alejandro v. Olson*, ---F.Supp.3d---, 2025 WL 2896348, at *5 (S.D. Ind. Oct. 11, 2025). The Supreme Court 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 Mr. Vargas bond eligibility. Mr. Vargas has resided in the United States for years and Respondents jailed him in the interior of the United States.

Respondents' reliance on *Orande Ahinsha Richards v. Choate*, 1:25-cv-03134-DDD-STV, 2025 WL 4474703 (D. Colo. Dec. 5, 2025) is misplaced and, in fact, supports Mr. Vargas. ECF 17, **12-13; ECF 18, **12-13. There, this Court found the Government jailed the Petitioner under

the correct statute, i.e., § 1225(b)(2)(A) mandatory detention, because his criminal conviction rendered him a returning lawful permanent resident ("LPR") "seeking admission *into the United States* . . . ." *Id.* (emphasis added). Here, Respondents jailed Mr. Vargas in the interior of the United States and hold him under the wrong statute. That is a due process violation. *E.g.*, *Pineda*, 2025 WL 3516291, at *2.

IV. The Appropriate Remedy is More than a § 1226(a) Bond Hearing

Immediate release is the appropriate remedy. If this Court were to order a § 1226(a) bond hearing instead, due process requires specific remedies to address Respondents' violations. Notably, Respondents do not address, and therefore concede, that immediate release or in the alternative significant procedural protections are the appropriate remedy should the Court grant Mr. Vargas' petition. *Compare* ECF 17 & ECF 18 (not addressing Mr. Vargas' arguments for immediate release or procedural protections at a bond hearing) *with Alfaro Herrera v. Baltazar*, 1:25-cv-04014-CNS, 2026 WL 91470, at *5 (D. Colo. Jan. 13, 2026) ("Where, as here, a party files a response to a motion but does not address all arguments which the motion raises, the party has effectively conceded the arguments which it does not address) *and C1.G ex rel. C.G. v. Siegfried*, 38 F.4th 1270, 1282 (10th Cir. 2022) (same).[5]

The appropriate remedy here is immediate release because Respondents "offered no lawful basis for his detention[.]" *Lopez de Leon v. Baltazar, et al.*, 1:26-cv-00555-SKC-SBP, at *5, ECF 17 (D. Colo. Feb. 20, 2026) (attached as Exh.1). In *Lopez de Leon*, like here, the relevant Notice to Appear ("NTA") checked the box stating that the noncitizen was present in the United States without being admitted or paroled. *Compare id.*, at *4 (discussing the contents of the petitioner's

[5] Respondents do not contest, and therefore also concede, that Mr. Vargas meets the requirements for a Temporary Restraining Order and/or Preliminary Injunction.

NTA, acknowledging that Respondents did not check the arriving noncitizen box) *with* Exh. 2 (same for Mr. Vargas' NTA).[6] The similarities continue.

Like in *Lopez de Leon*, Respondents "had an opportunity in their papers to argue in the alternative that Mr. Lopez de Leon was subject to detention under § 1226 or provide some evidence that a warrant for his arrest had been issued." *Lopez de Leon*, 1:26-cv-00555-SKC-SBP, at *5. They did not, and Judge Crews in *Lopez de Leon* ordered immediate release because "[f]orcing a detainee to wait for a hearing for days or weeks more in custody—under who knows what conditions—when he is not lawfully detained in the first place would gut the purpose of habeas review." *Id.* (quotation and citation omitted). Respondents here suffer from the same flaws.

Indeed, Respondents must "defend [their] actions *based on the reasons it gave* when it acted . . . ." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020) (emphasis added). Respondents have repeatedly—in its actions and in its briefing—maintained that its authority to jail Mr. Vargas is pursuant to § 1225(b)(2). Respondents provide no reason for Mr. Vargas' continued incarceration beyond its interpretation of the statute. This Court should order ICE to immediately release Mr. Vargas.

Alternatively, courts routinely find that the Government must carry a clear and convincing evidence burden at a § 1226(a) hearing. *See Gomez v. Olson*, 25-cv-15300, 2025 WL 3768242, *6 (N.D. Ill. Dec. 31, 2025) (noting the "overwhelming consensus" on this issue). That is also true in this District, *e.g.*, *LG v. Choate*, 744 F.Supp.3d. 1172, 1186 (D. Colo. 2024); *Alfaro Herrara v. Baltazar*, 1:25-cv-04014-CNS 2026 WL 91470, at **10–11 (D. Colo. Jan. 13, 2026).

"Although the Tenth Circuit has not opined on whether the burden" should be on the government, this Court should agree "with other courts in this district, as well as other circuit

[6] Notably, Respondents also served Mr. Vargas with a Warrant noting that its authority to jail him is pursuant to § 1226(a). Exh. 2.

courts nationwide, that allocating the burden to a noncitizen to prove that he should be released on bond under § 1226(a) violates due process as it assigns the risk of error to the party with the greater interest in their individual liberty as balanced against the Government's interests." *Alfaro Herrera*, 2026 WL 91470, at *10 (citation and quotation omitted).

V. Conclusion

Based on the foregoing, this Court should grant Mr. Vargas petition forthwith.

Dated: April 14, 2026

Respectfully submitted,

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CERTIFICATE OF PAGE LIMITATION

I hereby certify that the foregoing paper complies with the length limitation set forth in in DDD Civ. P.S. III(A)(1).

/s/ Conor T. Gleason
Conor T. Gleason

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 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/ Conor T. Gleason
Conor T. Gleason