UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-CV-2720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, for himself and on behalf of others similarly situated,

Petitioners-Plaintiffs,

v.

JUAN BALTASAR, Warden, Aurora ICE Processing Center, 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;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity;
U.S. DEPARTMENT OF HOMELAND SECURITY;
AURORA IMMIGRATION COURT; and,
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

PLAINTIFF-PETITIONER'S REPLY BRIEF IN SUPPORT OF PLAINTIFF-PETITIONER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff-Petitioner Nestor Esai Mendoza Gutierrez ("Plaintiff"), for himself and the class, files this Reply in support of his motion for partial summary judgment (ECF 49).[1]

I. Plaintiff is Not Required to Proceed in *Habeas*

Because Plaintiff and the Class do not challenge the "fact or duration of [their] confinement" – but only the procedures for reviewing their detention – they are not required to seek *habeas corpus* relief. *Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005). *Wilkinson* is controlling. There, the Supreme Court held that *habeas* is a mandatory vehicle only when a detained person "seeks either immediate release … or the shortening of his term of confinement." *Id.* (cleaned up). When a detainee challenges the *procedures* for reviewing their detention, they need not proceed in *habeas*. *Id*.

The remedy the Class seeks – a declaratory judgment they are entitled to bond hearings under 8 U.S.C. § 1226 – does not require immediate release, or definitively shorter imprisonment. If class members are properly detained under § 1226, they are only entitled to a bond hearing, where the result may be continued detention if they are a) found to be a flight risk, b) determined to be a danger to the community, or c) unable to post bond in the set amount. Because "success *would not necessarily* imply the unlawfulness" of detention, *habeas* is not their exclusive remedy. *Wilkinson*, 544 U.S. at 81. This is true in immigration cases as well. *See Aracely, R. v. Nielsen*, 319 F.Supp.3d 110, 126 (D. D.C. 2018) (challenge to immigration bond policy not required to be brought in *habeas*); *R.I.L. v. Johnson*, 80 F.Supp.3d 164, 186 (D. D.C. 2015) (APA challenge to

[1] As this case involves a pure question of law, Plaintiff was not required to file a "statement of undisputed facts" as Defendants suggest. ECF 58, n. 1.

detention policy not required to be brought in *habeas*). Conversely, the cases Defendants cite would have all required release from custody.

II. The Plain Language, Context and History of the Statute Make Clear That Class Members Are Entitled to Seek Bond Under 8 U.S.C. § 1226(a)

Defendants ignore this Court's prior ruling, ECF 33, the unanimous consensus in this District, *see* ECF 49, n.2, and hundreds of cases finding the class is entitled to bond hearings under § 1226(a), Movant's App. at 146-158.[2] 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, 2025 WL 3294762, *2 (D. Colo. Nov. 26, 2025) (Sweeney, J.) & Movant's Supp. App. at 164 (*Ortiz Rosales v. Baltzar*, 25-cv-03275, ECF 25, (D. Colo. Nov. 16, 2025) (Gallagher, J.).

A. Defendants' Novel Interpretation Ignores § 1225's Language and Context

Defendants' position cannot be squared with the plain language of § 1225(b)(2) or its statutory context. "[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 [the Class], who ha[ve] been residing in the [U.S.]." ECF 33, *5. "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

[2] Defendants cite a single district court case in support of its position, *Olalde v. Noem*, 25-cv-168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025). *Olalde* is an extreme outlier, *compare with* Movant's App. at 146-85, and courts considering *Olalde* have found its reasoning "circular" and that it "defies" multiple canons of statutory construction. *E.g.*, *Edahi v. Lewis*, 4:25-cv-129, 2025 WL 3466682, at *12-13 (W.D. Ky. Nov. 27, 2025). *See also* Movant's Supp. App. at 6 (*Ortiz Rosales* rejecting application of *Olalde*).

2637503, *10 (N.D. Cal. Sept. 12, 2025).

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* provide in that definition that such applicants are 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 v. U.S. Dep't of Homeland Sec., 25-3050, --- F.4th ----, 2025 WL 3552514, *9 (7th Cir. Dec. 11, 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). A person present in the U.S. after entering unlawfully is not "seeking" – in the sense of "asking for" or "trying to acquire or gain"[3] – lawful entry. Defendants do not account for this ordinary meaning.[4]

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 58, *10. 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

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

[4] Defendants note a neighboring provision, § 1225(b)(1), includes temporal and geographic limitations not in the text of § 1225(b)(2). ECF 58, *10. That is beside the point. Defendants cannot explain how a person present in the U.S., after entering unlawfully, can be be "seeking" a "lawful entry" into the country, as § 1225(b)(2) requires.

"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*, 2025 WL 3552514, *9.[5]

B. Defendants' Position Cannot Be Squared With § 1226's Structure

Even worse, Defendants cannot reconcile their interpretation of the detention statutes with 8 U.S.C. § 1226. *See* ECF 33, *7. Congress recently reaffirmed in the Laken Riley Act ("LRA") that class members – people who entered the U.S. without inspection (or "EWIs") – are eligible for bond under § 1226(a) because the LRA specifically excludes a subset of EWIs from bond based on their criminal history. *See* 8 U.S.C. § 1226(a); *see also id*. § 1226(c)(E) (excluding certain EWIs from bond). 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.

Defendants offer no real response to this argument. Defendants assert § 1226(c)(E), which targets only people *inadmissible* under 8 U.S.C. § 1182, can apply to

[5] 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 those actions, but they do not somehow encompass *all* applicants for admission.

noncitizens "admitted in error." ECF 58, *11. That is both beside the point and wrong. People admitted, even in error, are exclusively subject to the grounds of *deportability* at 8 U.S.C. § 1227. *See Matter of V-X*, 26 I.&N. Dec. 147, 150 (BIA 2013); 8 U.S.C. § 1227(a)(1). Because ICE cannot sustain a § 1182 ground of inadmissibility for an admitted noncitizen, it cannot detain an admitted noncitizen pursuant to § 1226(c)(1)(E), because § 1226(c) applies only when ICE is "substantially likely" to sustain a ground of removability found therein. *Matter of Joseph*, 22 I.&N. Dec. 799, 807 (BIA 1999); 8 U.S.C. § 1226(c).

Defendants also argue there is "overlap under any possible reading of the statute," because the LRA imposes no-bond detention on "arriving" noncitizens too – that is, noncitizens arriving at a port of entry. ECF 58, *12. This ignores the LRA's history. When the LRA was passed, § 1225(b)(2) was understood to mandate detention of "arriving" noncitizens, and § 1226(a) was understood not to apply to them. *See Jennings*, 583 U.S. at 287-88. Thus, in passing the LRA, Congress took aim at denying bond to a subset of EWIs – not to "arriving" noncitizens. Congress's broad drafting of the LRA based on grounds of inadmissibility including "arriving" noncitizens in no way undermines Plaintiff's point: Congress had no reason to pass the LRA if § 1226(a) did not provide EWIs bond.[6]

C. *Jennings* Supports the Class's Position

A proper reading of *Jennings* supports the Class'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." 583

[6] Defendants also note § 1226(c)(1) requires detention "when [a noncitizen] is released" from criminal custody, while § 1225(b)(2)(A) provides noncitizens "shall be detained" after immigration officers' examination. ECF 58, **12-13. This distinction is irrelevant.

U.S. at 287. The Court notes §§ 1225(a) and 1225(b) are relevant for this decision, *id*. at 287–88, and concludes the latter is for noncitizens who "shall be detained for a removal proceeding if an immigration officer determines that they are not … entitled to be admitted *into the country*." *Id*. at 288 (emphasis added, citing § 1225(b)(2)). The Court discusses that "once inside the [U.S.], [noncitizens] do not have an absolute right to remain[,]" *id*., 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. *Accord Castanon-Nava*, 2025 WL 3552514, *9.

Defendants' "attempt to twist the Supreme Court's decision in *Jennings* … does not help their cause." *Espinoza Ruiz*, 2025 WL 3294762, *2. This Court and others agree. ECF 33, at *15; *e.g.*, *Maldonado Bautista v. Santacruz*, --- F.Supp.3d ----, 2025 WL 3289861, **7 & 9 (C.D. Cal. Nov. 20, 2025). While Defendants suggest the *Jennings* Court applied § 1226 only to "admitted" people, ECF 58, *14, § 1226 also plainly includes inadmissible people (like the class). *Jennings* does not hold otherwise.

D. Defendants Mischaracterize Congress' Intent When Enacting the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)

In the IIRIRA "the legislative history suggests that Congress did not intend to alter the detention authority for noncitizens," 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. *See* 8 U.S.C. § 1226(a).[7]

[7] 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).

> 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* ECF 33, *20. 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. *See id*. at 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.

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

III. Entry of Rule 54(b) Judgment is Necessary and Appropriate

Rule 54(b) "protects litigants from undue hardship … in lawsuits involving multiple … claims." *Jordan v. Pugh*, 425 F.3d 820, 829 (10th Cir. 2005). The analysis is "based largely on practical concerns." *Id.* at 827. To enter a Rule 54(b) judgment, courts make

two findings: "First, … the order it is certifying is a final order," and "[s]econd … there is no just reason to delay review of the final order." *Okla. Tpk. Auth. v. Bruner*, 259 F.3d 1236, 1242 (10th Cir. 2001). Here, delaying review creates a grave injustice for the class.

Plaintiff's declaratory judgment claim satisfies both elements. First, the facts are undisputed and do not require separate resolution, while the APA claim seeks separate relief. *See Est. of Beauford v. Correct Care Sol'ns, LLC*, 2021 WL 50873, *2 (D. Colo. Jan. 5, 2021), *rev'd on other grounds sub nom.*, *Est. of Beauford v. Mesa Cnty., Colo.*, 35 F.4th 1248 (10th Cir. 2022) (even when "factual issues significantly overlap," Rule 54(b) judgment is appropriate when "the legal issues that the court of appeals might confront do not"). While the government now argues the APA claim "concern[s] the same … legal issues" as the declaratory judgment claim, ECF 58, *16, it previously argued the opposite. *See* ECF 40, *8; ECF 41, **3 & 4-5. An order on the declaratory judgment claim would be final and separable from subsequent orders on the APA and Due Process claims.

And there is a strong argument that delaying review denies the class justice.[8] The government's actions in response to the declaratory judgment in *Maldonado Bautista* confirm a final judgement should be entered now. The government is ignoring the nationwide declaratory judgment in that case on the grounds that a Rule 54(b) judgment has not yet been entered. "[T]he Office of Immigration Litigation ha[s] already issued a memorandum … instructing Immigration Judges [(IJs)] to hold the position that [the BIA

[8] When the class is held without bond, many members simply give up meritorious claims for immigration relief to gain release from detention. *See*, *e.g.*, O. Prentzel, "Durango father, two kids ask to return to Colombia after being picked up by ICE on their way to school," COLO. SUN, Nov. 19, 2025, permalink: https://perma.cc/7ZUM-JCYJ ("weeks in a Texas detention center have 'left them unable to continue fighting'").

decision] in *Yajure Hurtado* remains good law." Movant's Supp. App. at 174. *See also id.* at 180-81. Thus, IJs in Colorado, Movant's Supp. App. at 201-214, and elsewhere, *id*. at 167-200, are openly defying the declaratory judgment because the *Maldonado Bautista* court did not enter a final judgment. IJs reason they still cannot grant bond without a Rule 54(b) judgment. *Id*., *e.g.* at 204. The government is talking out of both sides of its mouth and should not be rewarded for seeking to evade clear court orders. *Compare* ECF 58, *18 ("Now that the *Maldonado Bautista* court has certified a nationwide class and ordered declaratory relief" this court's transfer order serves no purpose), with Movant's Supp. App. at 170, 179, 184, 187, 190, 193, 196, 199, 204, 207 (*Maldonado Bautista* not binding due to a lack of Rule 54(b) judgment). Here, entering a Rule 54(b) judgment is appropriate as it assists with providing a remedy. *See Lambland, Inc. v. Heartland Biogas, LLC*, 18-cv-1060, 2024 WL 3400484, *2 (D. Colo. July 12, 2024) (Rule 54(b) judgment assists in collections).

IV. Notice to the Class and Class Counsel is Appropriate

If the Court grants declaratory relief, the Court should provide notice to class members. For a Rule 23(b)(2) class, the Court "may direct appropriate notice." FED. R. CIV. PROC. 23(c)(2). A declaratory judgment only lets class members seek bond if they know their rights. And 85% of Colorado detainees are *pro se*. Movant's App. p. 144.

Identifying class members to Class Counsel before transfer is also warranted. Without this notice, Class Counsel cannot contact class members to enforce their rights. Identifying the class members to be transferred out of Colorado does not run afoul of 8 U.S.C. § 1252(f)(1)'s bar on injunctive relief. An order to identify a subset of class

members does not "enjoin or restrain" the INA's operation. *See Al Otro Lado v. Exec. Off. for Immigr. Review*, 120 F.4th 606, 628 (9th Cir. 2024). Likewise, providing Class Counsel notice "five days before effectuating the transfer" (ECF 49, *20) does not "restrain or enjoin" Defendants' activities – it merely requires them to tell Class Counsel before transferring a class member.[9] But even if prior notice did "enjoin or restrain" Defendants' operations, that notice would still be authorized pursuant to the All Writs Act to preserve this Court's jurisdiction. *D.B.U. v. Trump*, 779 F.Supp.3d 1264, 1278 (D. Colo. 2025).

Finally, the Court should not delay providing notice due to the *Maldonado Bautista* nationwide class. First, that class is defined differently. *Compare* 2025 WL 3289861 at *9 *with* ECF 47, **3-4. Second, in Colorado, the government is not complying with that declaratory judgment, creating a need for local remedies. *Supra* at 8-9. Finally, there is no risk of confusing class members with duplicative notices because the remedy – bond hearings – is the same in both cases. Delaying notice to class members – particularly as 85% of them are *pro se* – delays their ability to request release from "abhorrent" "penal" conditions. *Arostegui-Maldonado v. Baltazar*, 794 F.Supp.3d 926, 940 (D. Colo. 2025).

V. Conclusion

The Court should grant summary judgment on the class's declaratory judgment claim, grant Plaintiff's individual *habeas* claim, certify the judgment under Rule 54(b), and order notice to the Class and Class Counsel as described above.

[9] If transfer decisions are made less than five days before the transfer occurs, then Defendants should provide Class Counsel notice as soon as practicable before the transfer, but with sufficient time for class members to seek a bond hearing or other appropriate remedies.

Dated: December 15, 2025.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF-PETITIONER
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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025, I electronically filed the foregoing **PLAINTIFF-PETITIONER'S REPLY BRIEF TO PLAINTIFF-PETITIONER'S MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system, and that in accordance with Fed. R. Civ. P. 5, all counsel of record shall be served electronically through such filing.

s/ Scott Medlock
Counsel for Plaintiff-Petitioner and the Plaintiff Class