IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00913-NYW-KAS

LALENDRA SAH KUMAR,

Petitioner,

v.

TODD M. LYONS, Acting Director, ICE,
GEORGE VALDEZ[1], Field Office Direction, Denver, and
JUAN BALTAZAR, Warden,

Respondents.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

ENTERED BY MAGISTRATE JUDGE KATHRYN A. STARNELLA

This matter is before the Court on the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [#1] (the "Petition"), which was filed by Lalendra Sah Kumar ("Petitioner"), who proceeds pro se.[2] The Court ordered Respondents to show cause within seven days of service why the Petition should not be granted. *Order to Show Cause* [#9]. Respondents filed a Response [#20]. Petitioner did not file a Reply by the March 26, 2026 deadline. *See Order to Show Cause* [#9]. The Petition [#1] has been referred to the

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[1] Petitioner names Robert Guadian as the Denver ICE Field Office Director as a Respondent. *Pet.* [#1] at 1. George Valdez is automatically substituted in Mr. Guadian's place under Fed. R. Civ. P. 25(d).

[2] The Court must liberally construe a pro se litigant's filings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). In doing so, the Court should neither be the pro se litigant's advocate nor "supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf." *Whitney v. New Mexico*, 113 F.3d 1170, 1175 (10th Cir. 1997) (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)). Additionally, pro se parties must follow the same rules of procedure that govern other litigants. *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) (citing *Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992)).

undersigned for a recommendation pursuant to 28 U.S.C. §§ 636(b)(1)(A)-(B), Fed. R. Civ. P. 72(a)-(b), and D.C.COLO.LCivR 72.1(c)(3). *Mem.* [#10]. The Court has reviewed the briefs, the entire case file, and the applicable law. For the reasons set forth below, the Court **RECOMMENDS** that the Petition [#1] be **GRANTED in part**.

I. Background

Petitioner is a citizen of Nepal who has been detained by ICE since September 2025. *Pet.* [#1] at 2. He states that he entered the United States on April 9, 2023, through the Mexico-Arizona border and was apprehended by United States Border Patrol. *Id.* Petitioner was issued a Notice to Appear that charged him with being inadmissible as a noncitizen present in the United States without being admitted or paroled. *Resp'ts' Ex. A, Jackson Decl.* [#20-1] at 2; *see also* 8 U.S.C. § 1182(a)(6)(A)(i). Three days later, Petitioner was released on an Order of Release on Recognizance. *Id.* Petitioner has since been issued a social security number, an employment authorization card, and a driver's license. *Pet'r's Exs.* [#1-1].

Over two years later, in September 2025, Petitioner alleges that he was arrested while he was working at a gas station in New Jersey. *Pet.* [#1] at 2. He states that he was attacked by "someone trying to rob the place." *Id.* In connection with the incident, Petitioner was apparently charged with aggravated assault, making terroristic threats,[3] and unlawful possession of a weapon. *Resp'ts' Ex. A, Jackson Decl.* [#20-1] at 3. ICE took custody of Petitioner once he was released from New Jersey's custody. *Id.* Petitioner

[3] Under New Jersey law, a person commits the crime of "terroristic threats" if he (a) "threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience," or (b) "threatens to kill another with the purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out." N.J. REV. STAT. § 2C:12-3.

was transferred from New Jersey, to Louisiana, to Texas, and finally, to Aurora, Colorado. *Pet.* [#1] at 2-3.

Petitioner alleges that he has had one hearing before an immigration judge since his September 2025 detention. At that hearing, the immigration judge apparently told Petitioner to find legal counsel. *Pet.* [#1] at 3. Petitioner alleges that his next scheduled hearing was postponed four times. *Id.* At a February 23, 2026 hearing, Petitioner states that "I wasn't seen by the Judge and I was sent to the unit again." *Id.* Respondents assert that Petitioner was scheduled for a hearing before an immigration judge on April 1, 2026. *Resp'ts' Ex. A, Jackson Decl.* [#20-1] at 3. The Court ordered Respondents to file a status report after that hearing. *Minute Order* [#21]. Respondents state that Petitioner's hearing has again been rescheduled due to "time constraints." *Status Report* [#22].

The Government purports to detain Petitioner under 8 U.S.C. § 1225(b). *Resp.* [#20] at 3. As far as the Court can tell, Petitioner has not been given a bond hearing. *See id.* at 3, 5-6 (arguing that detainees held under section 1225(b) are not entitled to bond hearings). Petitioner asserts that his detention violates his due process rights under the United States Constitution, and he asks to be released from ICE custody. *Pet.* [#1] at 3. He has sued Todd M. Lyons, the acting director of ICE; George Valdez, the Denver ICE Field Office Director; and Juan Baltazar, the Warden of the Aurora ICE Detention Center. *Id.* at 1. The Court previously construed Plaintiff's claims as official-capacity claims. *Order to Show Cause* [#9].

This matter is fully briefed and ripe for disposition. No party has requested an evidentiary hearing or oral argument, and the Court finds that no hearing is necessary. *Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *1 (D. Colo. Sept.

16, 2025) (declining to hold a hearing where the petitioner's habeas challenge was "fundamentally legal in nature").

II. Legal Standard

Section 2241 of Title 28 authorizes a court to issue a writ of habeas corpus when a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Challenges to immigration detention are properly brought directly through habeas." *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

III. Analysis

Petitioner's due process claim turns on whether Respondents detain him pursuant to § 1225(b)(2)(A), such that he is not entitled to a bond hearing. The Court summarizes the statutory framework before turning to Petitioner's claims.

A. Statutory Framework

Sections 1225 and 1226 govern detention of noncitizens prior to a final order of removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1226 "sets forth 'the default rule' for detaining noncitizens 'already present in the United States.'" *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF, 2025 WL 2783800, at *5 (E.D. Va. Sept. 30, 2025) (quoting *Jennings*, 583 U.S. at 303). This section permits, but does not require, the Attorney General to detain noncitizens pending removal proceedings, subject to certain exceptions not applicable here. *Jennings*, 583 U.S. at 303; 8 U.S.C. § 1226(a)(1)-

(2) (the Attorney General "*may* continue to detain" or "*may* release" the noncitizen (emphasis added)). Section 1226(a) thus establishes a discretionary framework for the detention of noncitizens pending removal proceedings.

Section 1225(b) "supplement[s] § 1226's detention scheme." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1246 (W.D. Wash. 2025) (quoting *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022)). Section 1225(b) "applies primarily to [noncitizens] seeking entry into the United States," i.e., "applicants for admission." *Jennings*, 583 U.S. at 297. This section provides, in relevant part, that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained" pending removal proceedings. 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Under § 1225(a)(1), an "applicant for admission" is

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters).

Absent an exception for urgent humanitarian reasons not implicated in this case, "detention under § 1225(b)(2) is considered mandatory," and "[i]ndividuals detained under § 1225 are not entitled to a bond hearing." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484 (S.D.N.Y. 2025) (citing *Jennings*, 583 U.S. at 297).

B. Application

Respondents argue that § 1225(b)(2)(A) requires Petitioner's detention such that he is not entitled to a bond hearing. *Resp.* [#20] at 3-6. Courts in this District have previously addressed Respondents' statutory interpretation arguments in detail and, like the majority of courts across the country, have found them unpersuasive. *See Loa*

Caballero v. Baltazar, No. 25-cv-03120-NYW, 2025 WL 2977650, at *2–7 (D. Colo. Oct. 22, 2025) (interpreting the relevant provisions of §§ 1225 and 1226); *see also id.* at *5 ("[F]ederal courts have overwhelmingly rejected Respondents' 'broad interpretation of section 1225(b)(2).'") (collecting cases).[4]

In *Loa Caballero*, the court reviewed a similar habeas petition filed by a noncitizen who had resided in the United States for nearly 20 years before he was detained by ICE. *See id.* at *1. Like Petitioner here, the Government did not provide the petitioner in *Loa Caballero* with a bond hearing because it asserted that § 1225 mandated his detention. *See id.* The court disagreed, emphasizing that § 1225(b)(2)(A) only provides for mandatory detention of noncitizens "seeking admission" to the country. *Id.* at *6. "The plain meaning of the phrase 'seeking admission' requires that the applicant must be presently and actively seeking lawful entry into the United States." *Id.* Thus, noncitizens who are merely "present"—and have been for "years upon years" without obtaining legal status—are not "seeking admission" under § 1225(b)(2)(A). *Id.* (quoting *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 781 (E.D. Mich. 2025)).

The court also explained that interpreting § 1225(b)(2)(A) to mandate detention for all "applicants for admission" would render the "seeking admission" language superfluous.

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[4] The majority of other judges in this District have concluded that § 1225(b)(2)(A) does not apply to noncitizens similarly situated to Petitioner, who have been present in the country for some time and are not actively "seeking admission." *See, e.g.*, *Briales-Zuniga v. Baltazar*, No. 25-cv-03439-NYW, 2026 WL 35227, at *4 (D. Colo. Jan. 6, 2026) (Wang, J.); *Bautista v. Noem*, No. 26-cv-00272-NYW, 2026 WL 532427, at *4 (D. Colo. Feb. 26, 2026) (Wang, J.); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-02720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2024) (Rodriguez, J.), *appeal docketed*, No. 25-1460 (10th Cir. Dec. 16, 2025); *Moya Pineda v. Baltasar*, No. 25-cv-02955-GPG, 2025 WL 3516291 (D. Colo. Oct. 20, 2025) (Gallagher, J.); *Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025) (Sweeney, J.); *Florez Marin v. Baltazar*, No. 25-cv-03697-PAB, 2025 WL 3677019 (D. Colo. Dec. 18, 2025) (Brimmer, J.); *Aleman Hernandez v. Baltazar*, No. 25-cv-03688-SKC-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025) (Crews, J.); *Garcia Abanil v. Baltazar*, No. 25-cv-04029-WJM-STV, 2026 WL 100587 (D. Colo. Jan. 14, 2026) (Martinez, J.).

Id. at *7. The court concluded that both the plain text of § 1225 and applicable canons of statutory interpretation demonstrated that the petitioner in *Loa Caballero* was detained under § 1226, not § 1225. *See id.* at *5-8.

That Petitioner was detained upon entering the United States and released on his own recognizance does not change the Court's analysis. "Courts have recognized that release on recognizance constitutes a form of conditional parole from detention housed in the provisions of § 1226's discretionary detention." *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *5 (N.D. Ill. Oct. 24, 2025); *see also J.U. v. Maldonado*, 805 F. Supp. 3d 482, 493 (E.D.N.Y. 2025) (collecting cases); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) (noting that the respondents' contrary theory of the procedural history could not explain the petitioner's "release on recognizance because individuals detained following examination under section 1225 can only be paroled into the United States 'for urgent humanitarian reasons or significant public benefit.'") (quoting *Jennings*, 583 U.S. at 300). In addition, Petitioner's Notice to Appear charged Petitioner with being a noncitizen *present in the United States* without being admitted or paroled, not an arriving noncitizen. *Resp'ts' Ex. A, Jackson Decl.* [#20-1] at 2. The Government has consistently treated Petitioner as detained under § 1226(a) since the date he was first apprehended, and the Court joins others in this District in concluding that the Government may not now assert that he is subject to detention pursuant to § 1225(b)(2). *See Toro Rodriguez v. Baltazar*, No. 26-cv-01068-CNS, 2026 WL 820488, at *2 (D. Colo. Mar. 25, 2026); *Marrero Yera v. Baltazar*, No. 26-cv-00476-SKC-SBP, 2026 WL 472014, at *2 (D. Colo. Feb. 19, 2026); *Diallo v. Baltazar*, No. 25-cv-3548-SKC, 2026 WL 237296, at *2 (D. Colo. Jan. 29, 2026).

Accordingly, consistent with the weight of authority in this District, the Court concludes that § 1225(b)(2)(A) does not authorize Petitioner's detention. Respondents do not offer any evidence of a criminal conviction that requires Petitioner's mandatory detention pursuant to § 1226(c). Nor do Respondents argue that the state law crimes with which Petitioner was allegedly charged in connection with the robbery incident fit within § 1226(c)'s mandatory detention scheme. Accordingly, the Court assumes the "default rule" of discretionary detention under § 1226(a) applies. *See*, *e.g.*, *Quispe-Ardiles*, 2025 WL 2783800, at *5, *7. And because Respondents have not provided Petitioner the required bond hearing, Petitioner's continued detention without a bond hearing violates § 1226(a).

Furthermore, having determined that § 1226(a) governs Petitioner's detention, the Court concludes that his detention without a bond hearing violates his due process rights. Because Petitioner is detained under § 1226(a), at a minimum "the process due to him is that which is afforded under [§ 1226(a)]." *Lopez-Campos*, 797 F. Supp. 3d at 785. And as explained above, that process is an individualized bond determination. *See, e.g.*, *Velasquez Salazar v. Dedos*, 806 F. Supp. 3d 1231, 1241 (D.N.M. 2025) (describing the process owed under § 1226 as "an individualized bond hearing before an [immigration judge]"); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 485 (E.D.N.Y. 2025) ("[Section] 1226(a) requires an individualized bond determination."). The Court thus concurs with the numerous other district courts that have held that denying a bond hearing to a noncitizen detained under § 1226(a) violates the noncitizen's due process rights. *See, e.g.*, *Garcia Cortes*, 2025 WL 2652880, at *4; *Lopez-Campos*, 797 F. Supp. 3d at 784–85; *Garcia Abanil v. Baltazar*, --- F. Supp. 3d ----, 2026 WL 100587, at *6–7 (D. Colo. Jan. 14, 2026).

C. Appropriate Remedy

Petitioner asks the Court to release him from ICE custody. *Pet.* [#1] at 3. Because § 1226(a) "does not require release," but instead "provides DHS the discretion to grant an alien release on bond," *Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643, at *8 (D. Colo. Oct. 24, 2025), the Court finds it appropriate to order Respondents to provide Petitioner with a bond hearing before an immigration judge, who "is better suited to consider whether Petitioner poses a flight risk and a danger to the community." *Loa Caballero*, 2025 WL 2977650, at *9. This is particularly so where, as here, Petitioner has been charged with state law violations after his release on recognizance. *But see Toro Rodriguez*, 2026 WL 820488, at *2 ("Given that [the] [r]espondents already determined that it was proper to release [p]etitioner on his own recognizance in 2022 and do not offer any explanation for why it is now proper to hold him in mandatory detention [beyond the recent reinterpretation of §§ 1225, 1226], the Court sees no reason to prolong Petitioner's detention.").

As for the burden of proof applicable at the hearing, the Court joins others in this District that have required the Government to bear the burden of proof at a § 1226(a) bond hearing where the petitioner is initially erroneously detained under § 1225. *See Diaz Lopez v. Noem*, No. 25-cv-04089-NYW, 2026 WL 206220, at *5 (D. Colo. Jan. 27, 2025) (taking same approach in absence of substantive briefing on burden-shifting issue); *see also, e.g.*, *Garcia Abanil*, 2026 WL 100587, at *8 ("[T]he weight of authority in this District is clear: it is the Government's burden to justify a noncitizen's continued detention at a bond hearing." (cleaned up) (collecting cases)); *but see De La Cruz v. Baltazar*, No. 26-cv-00360-PAB, 2026 WL 439217, at *4 (D. Colo. Feb. 17, 2026) (declining to shift burden

to the Government in a similar case). The Court also concurs with the decisions concluding that "the clear and convincing standard that generally applies to civil detention where liberty is at stake is appropriate here as well." *Arredondo v. Baltazar*, No. 25-cv-03040-RBJ, 2025 WL 4083607, at *4 (D. Colo. Oct. 31, 2025) (quotation omitted); *see also, e.g.*, *Garcia Abanil*, 2026 WL 100587, at *8 (finding clear and convincing standard appropriate where noncitizen's "liberty interest hangs in the balance").

IV. Conclusion

For the foregoing reasons,

IT IS HEREBY **RECOMMENDED** that the Petition [#1] be **GRANTED in part**.

IT IS FURTHER **RECOMMENDED** that Respondents shall provide Petitioner a bond hearing no later than **one week after the District Judge adjudicates this Recommendation and any objections thereto**. At the bond hearing, the Government shall bear the burden of proving, by clear and convincing evidence, that Petitioner's continued detention is justified. **If Respondents to not do not provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) as required herein, Petitioner must be immediately released from detention**.

IT IS FURTHER **RECOMMENDED** that, no later than **two weeks after the District Judge adjudicates this Recommendation and any objections thereto**, Respondents shall file a status report concerning (1) the results of any bond hearing that was conducted or, if no hearing was held, advise the Court of the date Petitioner was released from custody; and (2) whether any additional proceedings in this matter are required.

IT IS FURTHER **ORDERED** that any party may file objections **within 14 days** of service of this Recommendation. In relevant part, Federal Rule of Civil Procedure

72(b)(2) provides that, "within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy." "[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review." *United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The objection must be "sufficiently specific to focus the district court's attention on the factual and legal issues that are truly in dispute." *Id.* "[A] party who fails to make a timely objection to the magistrate judge's findings and recommendations waives appellate review of both factual and legal questions." *Morales-Fernandez v. I.N.S.*, 418 F.3d 1116, 1119 (10th Cir. 2005).

Dated: April 3, 2026

BY THE COURT:

Kathryn A. Starnella
United States Magistrate Judge