

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

Civil Action No. 25-cv-02712-DDD-SBP

JOHN DOE,

Petitioner,

v.

PAM BONDI, U.S. Attorney General,
SIRCE E. OWEN, Director, Executive Office for Immigration Review,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Director, U.S. Immigration and Customs Enforcement,
ROBERT GUADIAN, Denver Field Office Director, U.S. Immigration
and Customs Enforcement,
DAWN CEJA, Warden of Denver Contract Detention Facility,

Respondents.

**RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Respondents submit this response to Petitioner John Doe's Motion for Temporary Restraining Order and Preliminary Injunction. ECF No. 5. As a noncitizen apprehended at the southern border, the petitioner has no right to a bond hearing under the Due Process Clause.

BACKGROUND

On January 7, 2025, Petitioner arrived at the San Ysidro Port of Entry and applied for admission to the United States. Declaration of Shane Blea ¶ 5 (Sep. 12, 2025). At the port of entry, U.S. Customs and Border Protection ("CBP") immigration officers determined that Petitioner was subject to expedited removal pursuant to

8 U.S.C. § 1225(b)(1). *Id.* At that time, Petitioner claimed fear of persecution if returned to his home country. *Id.* CBP referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii). *Id.* ¶ 6. Pending a final determination of his credible fear claim, DHS detained Petitioner pursuant to U.S.C. § 1225(b)(1)(B)(iii)(IV) and housed him at an ICE detention center in San Diego, California. *Id.* ¶ 7.

On January 24, 2025, Petitioner appeared before USCIS for an interview on his credible fear claim. *Id.* ¶ 8. At that time, Petitioner's attorney requested that USCIS reschedule the interview due to a conflict in his schedule. USCIS granted his request. *Id.* On February 4, 2025, Petitioner appeared before USCIS for an interview on his credible fear claim. *Id.* ¶ 9. At the conclusion of the interview, USCIS determined that Petitioner was ineligible for asylum pursuant to 8 C.F.R. § 208.35(a) but had established a reasonable probability of persecution. *Id.*

USCIS then issued a Notice to Appear ("NTA"), initiating immigration court proceedings before the Executive Office for Immigration Review ("EOIR"). *Id.* ¶ 10. The NTA charged Petitioner with inadmissibility to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document). *Id.*

Petitioner was then ordered removed. Specifically, On February 20, 2025, Petitioner appeared before the Immigration Judge ("IJ") at the Otay Mesa Immigration Court in San Diego for his initial hearing in removal proceedings. *Id.* ¶ 11. At that time,

Petitioner admitted the allegations and charge in the NTA. *Id.* The IJ sustained the removal charge and scheduled the case for another hearing on March 27, 2025, for the Petitioner to file any applications for relief or protection before the immigration court. *Id.*

On February 23, 2025, ICE transferred Petitioner to the Denver Contract Detention Facility (CDF). *Id.* ¶ 12. On March 28, 2025, Petitioner filed an application for protection before the immigration court. *Id.* ¶ 16. On March 31, 2025, he appeared before the IJ for a master calendar at which time he filed evidence in support of his application. *Id.* ¶ 17.

Petitioner's request for protection from removal has not yet been decided. The IJ scheduled the case for an individual hearing on August 19, 2025. *Id.* On May 28, 2025, Petitioner filed a motion to advance his individual hearing date. *Id.* ¶ 18. On May 29, 2025, the IJ granted Petitioner's motion to advance and scheduled the individual hearing for July 11, 2025. *Id.* ¶ 19. On July 11, 2025, Petitioner appeared before the IJ for his individual hearing. *Id.* ¶ 20. The IJ heard testimony in Petitioner's case, but did not conclude the hearing due to time constraints and rescheduled the matter to continue testimony. EOIR rescheduled the hearing for August 8, 2025. *Id.* On August 8, 2025, Petitioner appeared before the IJ for his continued individual hearing, but due to time constraints the IJ did not complete the hearing and rescheduled the matter to continue testimony. *Id.* ¶ 22. On August 27, 2025, Petitioner appeared before the IJ for his continued individual hearing, but the IJ did not complete the hearing due to time constraints and rescheduled the matter to continue testimony. *Id.* ¶ 23. EOIR rescheduled the hearing for September 22, 2025. *Id.* ¶ 24.

Petitioner remains detained at the Denver CDF under 8 U.S.C. § 1225. *Id.* ¶ 25.

ARGUMENT

I. As a noncitizen apprehended at the border, Petitioner is subject to mandatory detention and expedited removal.

Noncitizens who have not been formally or legally admitted into the country are deemed, as a matter of law, “applicant[s]” for admission under 8 U.S.C. § 1225(a). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (explaining the application for admission and detention scheme for arriving noncitizens). These individuals “shall be detained” pending a determination as to whether they are admissible or are entitled to asylum relief. 8 U.S.C. §§ 1225(b)(1)(B)(iii)(IV); 1225(b)(2)(A). In *Jennings* the Supreme Court held that “neither provision” of § 1225(b) authorizing detention “can reasonably be read to limit detention to six months,” and that the statutes “*mandate* detention of aliens throughout the completion of applicable proceedings.” 583 U.S. at 301-302 (emphasis added).

As a noncitizen apprehended at the border, Petitioner is subject to mandatory detention under § 1225(b), and he must be detained until his proceedings terminate. For the reasons set forth below, due process considerations do not change this conclusion.

II. Petitioner has no Fifth Amendment right to a bond hearing.

Petitioner claims that the Due Process Clause gives him a right to a bond hearing because he has been subjected to prolonged detention. ECF No. 5 at 13-20. He is incorrect. No Supreme Court case or court of appeals decision of which Respondents are aware has recognized a due-process right to a bond hearing for noncitizens detained at ports of entry.

The Supreme Court has explained that “more than a century of precedent” supports the “important rule” that for noncitizens who have not “been admitted into the country pursuant to law,” the procedure authorized by Congress is sufficient due process. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020). The Court “has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citing cases). That prerogative flows from the political branches’ broad power over immigration, which is “at its zenith at the international border.” *United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004). Thus, “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied [initial] entry is concerned.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

Under this longstanding rule, noncitizens seeking initial admission to the United States (like Petitioner here) do not have the same constitutional protections as individuals who have already been admitted into the United States:

[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely “on the threshold of initial entry.”

Leng May Ma v. Barber, 357 U.S. 185, 187 (1958) (quoting *Mezei*, 345 U.S. at 212).

The Court reiterated this rule in *Zadvydas v. Davis*, where it observed that “[i]t is well-established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders.” 533 U.S. 678, 693

(2001) (internal citations omitted). The Court thus “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to [U.S.] citizens.” *Demore v. United States*, 538 U.S. 510, 522 (2003) (citing, e.g., *Matthews v. Diaz*, 426 U.S. 67, 79-80 (1976)).

Citing the strong national interest at the border and the diminished constitutional protections enjoyed by noncitizens seeking admission into the United States, the Supreme Court has held that noncitizens seeking entry may be subject to detention without the possibility of release, pending their admission or removal. See *Mezei*, 345 U.S. at 207-08. *Mezei* remains binding law with respect to its findings on the due process rights afforded to arriving noncitizens. See *Thuraissigiam*, 591 U.S. at 140 (holding that an arriving noncitizen has no entitlement to procedural rights other than those afforded by statute (citing *Mezei*, 345 U.S. at 212)).

Consistent with decades of Supreme Court precedent recognizing Congress’s authority to establish the process for initial entry and admission to the United States, this Court should hold that because Petitioner’s detention is authorized by statute, he has not been deprived due process. Because Petitioner stands in the shoes of an arriving noncitizen on the threshold of entry, the only question is whether the Department has followed § 1225(b)(2)’s instruction to detain him “for a [removal] proceeding under section 1229a.” It has, and so Petitioner has not been deprived of due process.

Indeed, surveying this legal landscape, a district court in the District of Colorado recently determined that so long as a noncitizen detained under Section 1225(b) “is

afforded the statutory process provided in immigration law, he is not denied due process.” *Espinoza v. Ceja*, 25-cv-01120-GPG (D. Colo. May 5, 2025), ECF No. 11 (holding that “caselaw from the Supreme Court, Tenth Circuit, and other district courts within the Tenth Circuit compels the Court to conclude that Petitioner, as an applicant for admission, is entitled to only the process Congress has conferred on him by statute. . . . As the Supreme Court has held, § 1225(b) . . . does not create a statutory right to a bond hearing.”).

Rather than citing precedential authority, Petitioner relies on an opinion from the Western District of Washington to argue that noncitizens detained under Section 1225(b) are entitled to bond hearings. *Id.* at 14 (citing *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W. D. Wash. 2023)). But *Padilla* gives insufficient weight to the longstanding precedential principles set forth above, which have been repeatedly affirmed by the Supreme Court. And Petitioner acknowledges that the Supreme Court and Tenth Circuit have not determined that noncitizens have a constitutional entitlement to bond hearings after prolonged detention under Section 1225(b). See ECF No. 5 at 13-14.

Like the Court in *Espinoza*, this Court should determine that Petitioner has not shown that his detention violates due process. Petitioner, as a noncitizen at the threshold of entry, has been afforded the process he is due: he continues to fully pursue his application for protection, as a noncitizen who presented himself at the border, the government has a legitimate interest in securing him during the administrative process consistent with its authority under § 1225(b). As the Supreme Court has made clear: for

noncitizens at the border seeking admission, “[w]hatever the procedure authorized by Congress is, it is due process.” *Mezei*, 345 U.S. at 212 (internal quotation marks omitted). Petitioner has received such process, and so his petition should be denied.

III. The balancing test courts have used to evaluate detention under 8 U.S.C. § 1226 does not apply here.

Petitioner also argues that the Court should apply a six-factor balancing test that some courts have developed for noncitizens who were detained under 8 U.S.C. § 1226. See ECF No. 5 at 15-20. But there is no basis to apply that test here.

The test Petitioner relies on was developed to apply to the due process rights of noncitizens who face removal under § 1226. But noncitizens facing removal under § 1226 may have gained admission before facing removal, as compared with a noncitizen who was detained at the border (like Petitioner) and detained under § 1225. The government has stronger sovereign interests for noncitizens who are seeking admission than those who were admitted. It thus would be a mistake to apply that test to noncitizens seeking admission at the border like Petitioner is here. See *Espinoza*, 25-cv-01120-GPG at 24-25 (declining to apply six-factor balancing test).

IV. Even if Petitioner must be given additional process, the Court should not order his immediate release and, if the Court orders a bond hearing, it should not order that the government bear the burden of proof.

As discussed above, Petitioner has received all constitutionally required due process. But even if the Court were to find otherwise, it should not grant him the relief he seeks—immediate release or a bond hearing at which the government bears the burden of proof.

A. The Court should not order Petitioner's immediate release.

The Court should not order Petitioner's immediate release for three reasons.

First, the proper remedy for lack of procedural due process in a petitioner's detention is additional process, not immediate release. A procedural-due-process challenge to detention concerns the procedures that are required by the Constitution, not the substance of an individual's detention. Therefore, the Court should not order Petitioner released if it were to find a violation of procedural-due-process rights. Rather, the proper remedy would be to order the additional process needed to satisfy minimum constitutional requirements.

Second, an IJ at a bond hearing is best positioned to make a bond determination. An established administrative structure affords noncitizens a bond hearing through which IJs regularly determine whether a noncitizen is a danger to the community or a flight risk. *See* 8 C.F.R. §§ 236.1, 1003.19, 1236.1 (outlining immigration bond hearing procedures). Given that familiarity with making custody determinations, an IJ at a bond hearing should determine whether Petitioner should be released or detained.

Third, a bond hearing would enable Petitioner to seek release in relatively short order. At a bond hearing, the IJ could order Petitioner detained or released on bond.

B. Petitioner should bear the burden of proof at any bond hearing.

The Supreme Court has never held that it violates the Constitution to have a noncitizen bear the burden of proof in a bond hearing. In fact, it has repeatedly suggested otherwise. And imposing the burden of proof on the government would be

fundamentally inconsistent with the statutory scheme for detention of noncitizens who apply for initial admission.

The Supreme Court has a “longstanding view that the Government may constitutionally detain deportable aliens during the limited time necessary for their removal proceedings.” *Demore*, 538 U.S. at 526. This rests, in part, on the fact that “[t]he Government has a compelling interest in ensuring that removable aliens appear for their scheduled removal proceedings and are, in fact, removed.” *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211, at *9 (D. Colo. Jul. 2, 2019) (citing *Zadvydas*, 533 U.S. at 690).

This compelling interest weighs heavily in favor of placing the burden of proof on the noncitizen in bond hearings. *Cf. Nelson v. Colorado*, 581 U.S. 128, 138 (2017) (finding no legitimate state interest in overturning a requirement for petitioners to bear the burden of proof against the government). Indeed, the Board of Immigration Appeals has determined that noncitizens detained under § 1226¹ should bear the burden in bond hearings. *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1111-13 (BIA 1999); *Matter of Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006).

The government should be granted flexibility in establishing the procedural rules for bond hearings particularly where, as here, “any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.”

¹ 8 U.S.C. § 1225(b)—under which Petitioner is detained—does not provide for bond hearings, whereas § 1226 does in certain circumstances, and so the caselaw regarding § 1226 is relevant regarding the burden of proof in bond hearings.

Basri v. Barr, 469 F. Supp. 3d 1063, 1072 (D. Colo. 2020) (quotations omitted) (quoting *Demore*, 538 U.S. at 522); see also *Mathews v. Diaz*, 426 U.S. 67, 80 (1976) (“[T]he exclusion of aliens and the reservation of the power to deport have no permissible counterpart in the Federal Government’s power. . . .”). Congress has determined that the United States has a compelling interest in detaining noncitizens to give the government the opportunity to vet their identity and claims and in placing the burden on the noncitizen to show that they are not a risk. It would be inconsistent with these considerations to let an arriving noncitizen who is not clearly entitled to be released into the United States unless the *government* can prove, by clear and convincing evidence, that they are a flight risk or a danger—particularly when the government may know little about a newly arriving noncitizen.

Supreme Court precedent supports the constitutionality of imposing the burden of proof in bond hearings on noncitizens. The Supreme Court has never ruled that shifting the burden of proof to a noncitizen in bond proceedings violates due process. In fact, it has repeatedly suggested otherwise. *Demore* is particularly instructive because the Court upheld a due-process challenge to § 1226(c), which, like § 1225(b)(2), does not provide for any bond hearing. 538 U.S. at 531. If the government chooses to provide a detainee with a bond hearing, the Constitution dictates no specific procedures in that proceeding, including the allocation of the burden of proof. *Basri*, 469 F. Supp. 3d at 1074 (emphasis in original). Even in *Zadvydas*—the only case in which the Supreme Court has implied a due-process right to a bond hearing for an immigration detainee—the Court still placed the burden on the noncitizen to show “that there is no significant

likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701.

Furthermore, the Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings notwithstanding that the government has never borne the burden to justify that detention by clear-and-convincing evidence. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952); see *Zadvydas*, 533 U.S. at 701.

In *Jennings*, a six-justice majority concluded that requiring the government to bear the burden of proof at bond hearings under 8 U.S.C. § 1226(a) is “clearly contrary” to that statute. 583 U.S. at 306. All eight justices rejected the argument that the canon of constitutional avoidance compelled the contrary conclusion—that the government must bear the burden of proof at bond hearings for noncitizens who had been detained for six months or longer. See *id.* at 356 (Breyer, J., dissenting).

In short, the Supreme Court’s decisions do not support finding a due-process problem in allocating the burden of proof in a bond hearing to the noncitizen.

In this district, at least one decision has held that the Constitution does not require that the government bear the burden of proof in bond hearings for detainees. *Basri*, 469 F. Supp. 3d at 1073-74. Other courts have likewise found that due process does not require the government to bear the burden of proof. See, e.g., *Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018); *Francisco M. v. Decker*, 20-2176(CCC), 2020 WL 1846674, at *1 (D.N.J. Mar. 25, 2020); *Lopez v. Barr*, No. 19-cv-1232(JLS), 2020 WL 2059789, at *6 (W.D.N.Y. Apr. 29, 2020) (finding after considering contrary authority that “neither Section 1226(a) nor the Due Process Clause

requires that a clear and convincing evidence standard be placed on the government in bond hearings.”).

Some courts in this district have imposed a requirement that the government bear the burden of proof in some immigration bond hearings. ECF No. 1 at 22-23. None of those cases, however, arose in the § 1225(b) setting at the border, where the political branches’ power over immigration is “at its zenith.” *Flores-Montano*, 541 U.S. at 152-53. Thus, none of those decisions recognized the government’s interest in detaining noncitizens at the border when they are not clearly entitled to enter the country. See, e.g., *Juarez v. Choate*, No. 24-cv-00419-CNS, 2024 WL 1012912, at *8 (concluding in a § 1226 case, without analysis of government’s interest, “that placing the burden of proof on the government comports with due process requirements”). The government should not bear the burden of proof in any bond hearing.

V. Petitioner has not met his heavy burden to show entitlement to a TRO.

For the reasons set forth above, Petitioner is unlikely to succeed on the merits of his claims. The remaining factors also weigh in favor of denying the TRO. Petitioner contends that he will suffer irreparable harm because his constitutional rights are being violated. See ECF No. 5 at 23. But, as described above, his detention under section 1225(b) does not violate his constitutional rights.

The balance of equities and public interest also weigh in favor of the government. The detention of a noncitizen under section 1225(b) serves an important public interest: preventing deportable aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully

removed. *See Demore*, 538 U.S. at 528. The balance of equities and public interest do not favor his release.

CONCLUSION

For the reasons set forth above, Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction should be denied.

Dated: September 12, 2025.

Respectfully Submitted,

PETER MCNEILLY
United States Attorney

s/ Logan Brown

Logan Brown

Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0411
Logan.Brown@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notice to the following persons:

Johnny Sinodis
Jsine@vblaw.com
Counsel for Petitioner

s/ Logan Brown
U.S. Attorney's Office