

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

Civil Action No: 1:25-cv-2712

JOHN DOE,

Petitioner-Plaintiff,

v.

PAM BONDI, U.S. Attorney General; SIRCE E. OWEN, Director, Executive Office for Immigration Review; KRISTI NOEM, Secretary, United States 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-Defendants.

**PETITIONER'S REPLY IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

Petitioner seeks release and brings constitutional claims that, as applied, 8 U.S.C. §1225(b)(1) violates his substantive and procedural due process rights. Respondents cite inapposite case law, and their arguments underscore why this Court must intervene. Dkt. 13, Opposition (Opp.).

ADDITIONAL FACTUAL BACKGROUND

Respondents state Petitioner rescheduled his Credible Fear Interview (CFI), Opp. at 2, but omit that DHS pulled Petitioner for his CFI without any advance notice. Because undersigned counsel was unavailable, he requested a brief reset. Respondents also wrongly assert Petitioner was “ordered removed” on February 20, 2025. *Id.* Petitioner entered pleadings to the NTA that day. Dkt. 13-1 ¶11. Noncitizens in removal proceedings are not subject to an order of removal until, inter alia, they are found removable *and* ineligible for, or denied, relief. 8 U.S.C. §§ 1101(a)(47), 1229a(c)(4)-(5). Petitioner has never been ordered removed and continues to pursue relief in immigration court.

ARGUMENT

I. *Thuraissigiam* is inapposite—Petitioner seeks release from custody, not “admission” into the U.S.

DHS v. Thuraissigiam, 591 U.S. 103, 138 (2020), is inapposite. Petitioner seeks release from custody, not “admission” into the U.S., which is a distinct legal concept under the INA.

Thuraissigiam does not foreclose Petitioner’s claims. Opp. at 5. To start, the *Thuraissigiam* decision itself states that its holding is about “admission” to the U.S., not freedom from incarceration. 591 U.S. at 107 (“Habeas has traditionally been a means to secure *release* from unlawful detention, but respondent invokes the writ to achieve an entirely different end, namely,

to obtain additional administrative review of his asylum claim and ultimately to obtain authorization to stay in this country.”). It follows a line of cases similarly limited to the context of “admission.” *See, e.g., Nishimura Ekiu v. U.S.*, 142 U.S. 651, 659 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Kleindienst v. Mandel*, 408 U.S. 753, 765–66 (1972).

The facts of *Thuraissigiam* highlight its inapplicability here. Thuraissigiam, who was apprehended while attempting to enter the U.S., received a negative CFI determination, which an Immigration Judge affirmed. *Thuraissigiam* at 114-15. He then filed a habeas petition, “[a]sserting[] a fear of persecution based on his Tamil ethnicity and political views[] and that he ‘should have passed the credible fear stage.’” *Id.* Thuraissigiam requested “[DHS] provide [him] a new opportunity to apply for asylum and other applicable forms of relief,” but “his petition made no mention of release from custody.” *Id.* Petitioner’s claim is completely different. Petitioner passed his CFI and is pursuing asylum through the normal administrative process. He does not ask this Court to interfere with that process—he challenges his unconstitutionally prolonged confinement, which *Thuraissigiam* did not address.

The distinction between due process rights as to custody and as to admission is well-established. The broad rule Respondents attempt to extract from *Thuraissigiam* is not tethered to the Court’s reasoning, which was premised on the theory that “the Constitution gives the political department of the government plenary authority to decide which aliens to *admit*, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be *admitted*.” 591 U.S. at 139 (emphasis added). In *Zadvydas v. Davis*, the Court rejected a similar argument that the plenary power doctrine means noncitizens have no due process right to challenge detention. 533 U.S. 678 (2001). There, as here, the government asserted that Congress’s

“plenary power” required the “the Judicial Branch [to] defer to Executive and Legislative Branch decisionmaking in [immigration law].” *Id.* at 695. The Court dismissed that argument, stating the plenary power “is subject to important constitutional limitations.” *Id.* Congress’s plenary power is inapplicable where a noncitizen challenges “an indefinite term of imprisonment within the [U.S.].” *Id.*¹

Challenges to “unlawful executive detention,” do not implicate *Thuraissigiam*. Courts have agreed it is “[q]uite clear[]” that “*Thuraissigiam* does not govern [detention challenges], as the Supreme Court there addressed the singular issue of judicial review of credible fear determinations and did not decide the issue of an [IJ] review of prolonged and indefinite detention.” *Leke v. Hott*, 521 F. Supp. 3d 597, 604 (E.D. Va. 2021); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 844–48 (E.D. Va. 2020) (similar). Justice Sotomayor found similarly in her *Thuraissigiam* dissent, explaining that the Court’s due process holding “can extend no further” than the “claims for relief” in *Thuraissigiam*, i.e., claims seeking “promised asylum procedures.” 140 S. Ct. at 2013 n.12 (Sotomayor, J., dissenting). Respondents do not address these cases or cite any decisions holding that *Thuraissigiam* applies to claims focused purely on “unlawful executive detention.” *Id.* at 1975.

II. *Mezei* is inapplicable

Respondents rely on dicta from *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206 (1953),

¹ Other courts have recognized that, while detention pending removal proceedings differs from the indefinite detention at issue in *Zadvydas*, that is of no moment when there is no clear endpoint to removal proceedings. *See, e.g., Villaescusa-Rios v. Choate*, No. 20-CV-03187-CMA, 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021) (while “his detention will definitely terminate at some point, ... that point is likely to be many months or even years from now.”); Dkt. 1 at 25. This is doubly true in Petitioner’s case where, due to his membership in a high-profile political family that has been under government surveillance and held as political prisoners, it is very possible Nicaragua would not accept him even if he were ultimately denied relief. *See, e.g., “Nicaragua: Event of 2024,” Human Rights Watch*, <https://www.hrw.org/world-report/2025/country-chapters/nicaragua#:~:text=January's%20new%20term-,Expulsion%20and%20Deprivation%20of%20Nationality,many%20have%20been%20left%20stateless> (“Over 450 people have been deprived of Nicaraguan nationality since February 2023, and many have been left stateless.”).

regarding the procedural due process rights of noncitizens denied initial entry, Opp. at 6, but ignore critical differences between *Mezei* and Petitioner. First, Mezei challenged his “continued exclusion without a hearing”—rather than prolonged confinement—and sought admission to the U.S. *Mezei*, 345 U.S. at 627. Second, Mezei was excluded under the Passport Act of 1918, which “during periods of international tension and strife” permitted the AG, acting for the President, to “shut out aliens whose ‘entry would be prejudicial to the interest of the [U.S.]’” *Id.* at 210. Respondents do not allege—nor could they—that Petitioner prejudices U.S. interests. Significantly, the Tenth Circuit has rejected applying *Mezei* to detention claims for excludable noncitizens, distinguishing it on numerous grounds. *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1388–89 (10th Cir. 1981) (limiting *Mezei* to the context of heightened security risks during wartime there, finding “*Mezei* does not compel the conclusion that no constitutional problems inhere in petitioner’s detention status,” and ordering release).

Third, unlike Petitioner, Mezei received an individualized determination of dangerousness. *See Jennings v. Rodriguez*, 583 U.S. 281, 340–41 (Breyer, J., dissenting) (Mezei was “denied bail [] *after* the Attorney General had already found, on an individualized basis, not only that Mezei was a security risk and consequently not entitled to either admission or bail but also that he could be denied a hearing on the matter because the basis for that decision could not be disclosed without harm to national security.”). Here, the lack of any individualized determination renders Petitioner’s confinement contrary to the only constitutionally permissible purposes of immigration detention—alleviating danger and risk of flight. *See Hernandez v. Sessions*, 872 F.3d 967, 990 (9th Cir. 2017) (citing *Zadvydas*, 533 U.S. at 690) (“The government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings, but any

detention incidental to removal must “bear a reasonable relation to its purpose.””).

Third, unlike *Mezei*, Petitioner does not merely challenge the lack of procedures afforded to him nor his “admission” to the U.S. *See Rodriguez-Fernandez*, 654 F.2d at 1388 (“the primary focus of *Mezei* was upon the excluded alien’s right to a due process hearing concerning his right of reentry into this country”). Instead, he brings a substantive due process challenge to his incarceration, requesting release because his detention is prolonged and he is neither a danger nor a flight risk. The constraints of substantive due process clearly restrain executive power, even over noncitizens who have not “entered” the U.S. *See id.* at 1387 (even “excluded alien[s] in physical custody within the [U.S.]” may not be imprisoned indefinitely); *cf. Hernandez-Carrera v. Carlson*, 547 F.3d 1237, 1251 (10th Cir. 2008) (civil detention “schemes which comport with due process typically apply narrowly to a small segment of particularly dangerous individuals and include meaningful procedural protections.”). At the very least, Petitioner’s substantive due process challenge is not precluded by *Mezei* and is clearly permissible under Tenth Circuit precedent.

III. Courts have recognized that §1225(b) is subject to as-applied challenges.

Respondents’ reliance on *Bonilla Espinoza v. Ceja*, 25-cv-01120, Dkt. No. 11 (D. Colo. May 21, 2025), is similarly unavailing, as that case did *not* involve a substantive due process challenge. *See id.* at 15, n.4. Furthermore, *Espinoza* explicitly left open the possibility of an as-applied due process challenge predicated on government-caused delay. *Id.* at 22 (relying on Justice Kennedy’s concurrence in *Demore v. Kim*, 538 U.S. 510 (2003), to recognize that detention may become unreasonable where government arbitrarily delays proceedings). Here, Respondents have arbitrarily delayed Petitioner’s proceedings by transferring him from California and continuously resetting his merits hearing. Dkt. 5 at 7-8. Respondents do not dispute these facts. Opp. at 2-3.

Petitioner's as-applied challenge is therefore distinguishable from *Espinoza* and limited to the circumstances here, where Respondents have repeatedly delayed proceedings and never claimed he is a danger or a flight risk.

Courts across the country have also concluded that procedural due process challenges to §1225(b) are permissible even after *Thuraissigiam*. See, e.g., *A.L. v. Oddo*, No. 3:24-CV-302, 2025 WL 352471, at *2 (W.D. Pa. Jan. 6, 2025) (“an arriving alien such as Petitioner has a constitutional due process right to a bond hearing once his detention becomes unreasonable to the same extent as an alien who is subject to removal under § 1226(c)"); *Arechiga v. Archambeault*, No. 223CV00600CDSVCF, 2023 WL 5207589, at *3 (D. Nev. Aug. 11, 2023) (“the majority of courts across the country ... have concluded that an unreasonably prolonged detention under [] §1225(b) without an individualized bond hearing violates due process.”) (cleaned up) (citations omitted).

Petitioner also brings a substantive due process challenge. *Espinoza*, 25-cv-01120-GPG 15-16, n.4. This challenge was not at issue in *Espinoza* and is squarely authorized by Supreme Court precedent holding that non-punitive detention violates the Constitution unless strictly limited and accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that imprisonment serves legitimate government interests. See *U.S. v. Salerno*, 481 U.S. 739, 750–51 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 360, 364 (1997).

IV. The Suspension Clause requires individualized review.

“The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. “[B]ecause of that Clause, some ‘judicial intervention in deportation cases’ is unquestionably ‘required by the

Constitution.”” *I.N.S. v. St. Cyr*, 533 U.S. 289, 300 (2001) (citation omitted). To limit the writ, a statute “must overcome both the strong presumption in favor of judicial review of administrative action and the longstanding rule requiring a clear statement of congressional intent to repeal habeas jurisdiction.” *Id.* at 298. Further, Congress can remove jurisdiction without violating the Suspension Clause only where it provides “a collateral remedy which is neither inadequate nor ineffective to test the legality of a person’s detention.” *Swain v. Pressley*, 430 U.S. 372, 381 (1977). Any substitute must provide “a meaningful opportunity to demonstrate that [Petitioner] is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (citation omitted). If §1225(b) did preclude review here, it would be unconstitutional because there is no alternative forum for Petitioner to bring his claims.

V. Petitioner has a protected interest in his freedom.

Respondents ignore extensive caselaw establishing Petitioner’s liberty interest remains substantial, regardless of his status as an arriving alien, because “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that due process protects. *Zadvydas*, 533 U.S. at 690. “These protections apply to all persons within the U.S., including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent, and to immigration detention as well as criminal detention.” *Id.* at 693. Petitioner’s challenges are based on that fundamental interest. *See also Padilla v. ICE*, 704 F. Supp. 3d 1163, 1174 (W.D. Wash. 2023) (finding similarly situated noncitizens have “substantial liberty interest” in freedom from confinement and arbitrary detention).

VI. The *Singh* test applies.

Respondents rely on *Espinoza* to argue that the *Singh v. Choate*, No. 19-cv-00909-KLM,

2019 WL 3943960 (D. Colo. Aug. 21, 2019), test does not apply to §1225(b), Opp. at 8, but ignore that *Espinoza*'s holding is limited to situations where the government has not delayed proceedings. 25-cv-01120-GPG at 24-25 (“[I]t is arbitrary government delay in moving proceedings along that potentially triggers a due process problem. *Unless that prerequisite were satisfied*, the Court would decline to engage in a due process analysis along the lines of that described in *Singh*.”) (emphasis added). Petitioner has met that prerequisite by detailing numerous instances of arbitrary government delay. The Court should follow the extensive weight of authority in this District applying *Singh*'s balancing test to various mandatory detention statutes.

VII. At any custody hearing, Respondents bear the burden.

Requiring the government to justify detention by clear and convincing evidence ensures a detention scheme meets due process requirements. *See Hernandez-Carrera*, 547 F.3d at 1253 (holding it “[e]qually important[]” in determining a regulatory scheme met due process that “the burden of proof is now on the agency to prove dangerousness, rather than on the alien to show non-dangerousness.”); *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011) (due process requires government bear burden by clear and convincing evidence); *see also Foucha*, 504 U.S. at 81-83 (striking down civil detention scheme that placed burden on detainee); *Application of Gault*, 387 U.S. 1, 29, 57 (1967) (delinquency proceedings violated Due Process because they lacked adversarial hearings). In other civil detention contexts, the Supreme Court found due process met because the government bore the burden of proof by at least clear and convincing evidence. *See, e.g., U.S. v. Comstock*, 130 S. Ct. 1949 (2010) (government had to prove claim by clear and convincing evidence at initial hearing followed by periodic review every six months); *see also Addington v. Texas*, 441 U.S. 418, 433 (1979) (requiring government to bear “burden equal to or

greater than the ‘clear and convincing’ standard” affords due process). If this Court does not order outright release, Petitioner is entitled to the same rights and protections during his custody hearing. *See Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016), *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (cleaned up) (emphasis added) (“[D]ecisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of [noncitizens in immigration custody],” who are “most decidedly entitled to *more* considerate treatment than those who are criminally detained.”).

VIII. Petition would suffer irreparable harm and the public interest tips in his favor.

Respondents do not meaningfully contest that Petitioner will suffer irreparable harm. Opp. at 13. Though Respondents may have an interest in “preventing deportable aliens from fleeing,” *id.*, that interest is satisfied by the hearing Petitioner requests, where Respondents can present whatever evidence they have to show Petitioner is a danger or a flight risk. *See also Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal 2019) (noting “minimal cost of[]a bond hearing”). Petitioner’s interest, meanwhile, in being free from arbitrary detention is heightened by the numerous irreparable harms he is enduring each day in “abhorrent” conditions at the Aurora Detention Facility. *Arostegui-Maldonado*, --- F.Supp.3d ----, 2025 WL 2280357, at *7 (emphasis added); Dkt. 1-1 at Ex. A.

CONCLUSION

The Court should grant Petitioner a TRO and order his immediate release from custody or, alternatively, order that he be provided a constitutionally compliant bond hearing.

Dated: September 19, 2025

/s/ Johnny Sinodis
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