IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 26-cv-00876-RMR

ALIOU A. JABATEH,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement,
DAREN K. MARGOLIN, Director, Executive Office for Immigration Review,
GEORGE VALDEZ,[1] Acting Field Office Director, Denver, U.S. Immigration and Customs Enforcement, and
JUAN BALTAZAR, Warden, Aurora Contract Detention Facility,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND ORDER TO SHOW CAUSE (ECF No. 5)

As this Court has stated, 8 U.S.C. § 1225 has "traditionally been used for noncitizens seeking admission into the United States who are detained at the border or near the border shortly after entry into the United States," and under that provision "detention is required during the pendency of a noncitizen's immigration removal proceedings." *Mendoza Gutierrez v. Baltasar*, No. 25-cv-02720-RMR, 2025 WL 2962908, at *1 (D. Colo. Oct. 17, 2025). Petitioner fits that description. He was detained near the border shortly after his entry into the United States, and he is in

[1] Pursuant to Fed. R. Civ. P. 25(d), George Valdez, in his official capacity as Acting Director of the Denver Field Office, U.S. Immigration and Customs Enforcement, has automatically been substituted as a party.

removal proceedings. His detention is thus mandated by statute.

Also, because he is in removal proceedings, his detention is also consistent with due process. As the Supreme Court has recognized, "the Government may constitutionally detain deportable aliens during the limited time necessary for their removal proceedings." *Demore v. Kim*, 538 U.S. 510, 526 (2003).

BACKGROUND

Petitioner is a native and citizen of Liberia who was apprehended in the United States on January 31, 2024, shortly after he crossed the United-States-Mexico border. *See* Ex. A (Declaration of Jonathan Himmelspach) ¶ 5. He was not admitted or paroled into the United States. *Id.*

After the Department of Homeland Security (DHS) determined that Petitioner was inadmissible, it issued him a notice to appear, placing him in immigration proceedings under 8 U.S.C. § 1229a. *Id.* ¶¶ 6, 8. He was released on recognizance. *Id.* ¶ 7.

Petitioner remains in removal proceedings. On May 28, 2025, DHS moved to dismiss the removal proceedings. *Id.* ¶ 11. The Immigration Judge (IJ) granted the motion but reserved Petitioner's right to appeal that decision. Id. At this point, the IJ's decision to dismiss the removal proceedings is not final. Petitioner filed a timely appeal of the IJ's decision dismissing the proceedings, and that appeal remains pending with the Board of Immigration Appeals. *Id.* ¶¶ 16-21.

Also on May 28, 2025, Petitioner's release on recognizance was terminated, and he was detained by ICE under 8 U.S.C. § 1225(b). *Id.* ¶¶ 12, 14. He remains detained at ICE's Denver Contract Detention Facility. *Id.* ¶ 22.

In his habeas petition, Petitioner argues that he is not subject to mandatory detention under 8 U.S.C. § 1225(b) and its associated regulations. ECF No. 1 at ¶ 85-109 (Counts I-V). He also contends that his detention violates substantive due process (Count VI) and procedural due process (Count VII). Id. at ¶ 110-125. He seeks immediate release or a bond hearing.

ARGUMENT

As explained below. Petitioner's detention is mandated by 8 U.S.C. § 1225(b), and his detention does not violate due process.

I. Because Petitioner was apprehended shortly after entry and was not admitted, and now is in removal proceedings, he is subject to mandatory detention under § 1225(b).

In the Immigration and Nationality Act ("INA"), Congress determined when certain aliens may or must be detained or removed. As relevant here, 8 U.S.C. § 1225 governs detention and removal of "applicants for admission."

An "applicant for admission" is a term of art that applies to 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 . . .) . . . ." 8 U.S.C. § 1225(a)(1). The Supreme Court has held that this term of art applies to a noncitizen who is apprehended shortly after crossing the border. "An alien who arrives at a 'port of entry,' *i.e.*, a place where an alien may lawfully enter, must apply for admission. An alien . . . who is caught trying to enter at some other spot is treated the same way." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). In that case, the noncitizen had crossed the border without inspection and then was promptly apprehended. *Id.* at 114. The Court explained that he was deemed an applicant for admission because "an alien who tries to enter the country illegally is treated as an 'applicant for admission.'" *Id.* at 140. The

Court further explained that he was deemed legally "on the threshold" because, like "an alien detained after arriving at a port of entry," "an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'" *Id.*

Petitioner thus falls into the statutory definition of an "applicant for admission." He is an "alien present in the United States who has not been admitted . . . ." 8 U.S.C. § 1225(a)(1). Because he was apprehended shortly after crossing the border, he is treated—just like a noncitizen who arrives at a port of entry—as a person who "must apply for admission," as the Supreme Court recognized in *Thuraissigiam*, 591 U.S. at 108.

An "applicant for admission" is subject to mandatory detention under § 1225(b). Section 1225(b)(1) governs the detention of certain aliens who are arriving and inadmissible on various specified grounds. *See* 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). Section 1225(b)(2) then serves as a "catchall" provision that applies to *all* other applicants for admission not covered by § 1225(b)(1). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under Section 1225(b)(2)(A), any "applicant for admission" who is "seeking admission" into the United States and who an immigration officer determines is "not clearly and beyond a doubt entitled to be admitted," "shall be detained for" removal proceedings under 8 U.S.C. § 1229a. For aliens subject to either § 1225(b)(1) or § 1225(b)(2)(A), detention is mandatory during removal proceedings. Section 1225(b) does not provide for bond hearings during removal proceedings.

Here, Petitioner is in removal proceedings. While the IJ issued an order dismissing the removal proceedings, that order is not a final order terminating the proceedings. Department of Justice regulations (which govern immigration judges and

the Board of Immigration Appeals) provide that a "decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first." 8 C.F.R. § 1003.39 (in 8 C.F.R. Part 1003, Subpart C (Immigration Court—Rules of Procedure)). This rule reflects the authority that Congress has granted federal agencies to specify, by rule, that an interim ruling is inoperative until an internal agency appeal is completed. 5 U.S.C. § 704 (providing that an agency decision is not final if "the agency otherwise requires by rule and provides that the action meanwhile is inoperative"); *Darby v. Cisneros*, 509 U.S. 137, 151-152 (1993) (recognizing that 5 U.S.C. § 704 permits an agency to "avoid the finality of an initial decision" by adopting a rule providing that the initial decision is "inoperative pending appeal").

Here, the IJ's order dismissing the removal proceedings was timely appealed. The IJ order was issued on May 28, 2025, so an appeal was due on or before June 27, 2025, under 8 C.F.R. § 1003.38(b), which provides 30 calendar days for the filing of the notice of appeal after "the mailing or electronic notification of an immigration judge's written decision." Here, in accordance with section 1003.38(b), Petitioner timely filed an appeal with the Board of Immigration Appeals on June 10, 2025. Accordingly, the IJ's decision did not become a final decision terminating removal proceedings. 8 C.F.R. § 1003.39. Rather, a final decision will be made once the Board of Immigration Appeals rules on the appeal. Until then, Petitioner remains in removal proceedings.

In sum, Petitioner is (1) an applicant for admission and (2) is in removal proceedings. Accordingly, DHS is required by 8 U.S.C. § 1225(b)(2) to detain him during those removal proceedings. Indeed, as this Court has recognized, § 1225(b)(2)

"applies to noncitizens 'seeking admission' and inspected while trying to enter the country." *Mendoza Gutierrez*, No. 25-cv-02720-RMR, 2025 WL 2962908, at *6.

The fact that DHS elected to temporarily release Petitioner on recognizance does not change the applicability to him of § 1225(b)(2)(A). That provision does not make detention during removal proceedings contingent on release or parole. Moreover, Congress has provided that the parole of a noncitizen applying for admission to the United States does not change the noncitizen's status and the noncitizen remains subject to detention when the parole ends:

> ***shall not be regarded as an admission of the alien*** and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith ***return or be returned to the custody from which he was paroled*** and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5)(A) (emphases added). Thus, Petitioner's parole into the United States was not any form of "admission" and, upon termination of the parole, he was back to the same status as he was when he was released on parole: subject to mandatory detention under § 1225(b).[2] *Cf. Depelian v. Baltazar, et al.*, No. 25-cv-3765-SKC-TPO, ECF No. 18, at 8-9 (D. Colo. Jan. 20, 2026) (concluding that alien who presented at port of entry, was initially subject to mandatory detention under 8 U.S.C.

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[2] Petitioner could have been detained under *either* § 1225(b)(1) (the provision that governs the inspection and detention of certain aliens who are arriving and inadmissible on various specified grounds, including inadmissibility under § 1182(a)(7), *see* 8 U.S.C. § 1225(b)(1)(A)(i)-(iii), or § 1225(b)(2), a "catchall" provision that applies to those applicants for admission not covered by Section 1225(b)(1), *see Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Singh v. Andrews*, No. 1:26-cv-00457-DC-SCR, 2026 WL 292649, at *3 (E.D. Cal. Feb. 4, 2026). Which subsection he is now detained under is ultimately immaterial, since detention is mandatory under both. *See, e.g.*, *Richards v. Choate*, No. 1:25-cv-03134-DDD-STV, 2025 WL 4474703, at *4 (D. Colo. Dec. 5, 2025).

§ 1225(b), and was subsequently paroled into the United States under 8 U.S.C. § 1182(d)(5)(A), was again subject to mandatory detention under § 1225(b) upon his re-detention).[3]

II. Due process does not compel Petitioner's release.

Petitioner's re-detention under § 1225(b) does not violate substantive or procedural due process. Petitioner suggests that his re-detention violates due process, and he urges the Court to conduct a due-process inquiry, which he argues undermines any justification for his continued detention. *See* ECF No. 1 ¶¶ 110-25. He is incorrect.

First, Petitioner has not shown that his detention violates substantive due process. The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. The Court in *Demore* relied on a broad principle: the Court's "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings. . . ." *Id.* at 526. Specifically, the Court relied on *Reno v. Flores,* 507 U.S. 292 (1993), where the Court had rejected a due

[3] Respondents acknowledge two decisions from other courts in this district that have held otherwise, but those decisions are not availing. In *Rafibaev v. Noem et al.*, No. 26-cv-00461-PAB, ECF No. 12, the Court addressed *only* whether the petitioner was properly detained under § 1225(b)(1) after parole was terminated; it did not consider the alternative basis for detention that Respondents raise here, § 1225(b)(2)(A), which *also* requires mandatory detention. In *Buitrago Murzi v. Noem*, No. 26-cv-00359-CNS, ECF No. 14, the Court found that the petitioner who was paroled and subsequently re-detained was not an applicant for admission and was necessarily held under § 1226(a). But that decision did not contend with the plain language of § 1182(d)(5)(A), which provides that parole under that section—as Petitioner was—"*shall not be regarded as an admission of the alien*," and that when parole is terminated, the "alien shall forthwith *return or be returned to the custody from which he was paroled*" (emphases added). Thus, these cases are distinguishable. The Court should reach the same result Judge Crews did in his well-reasoned opinion in *Depelian* and deny the petition.

process challenge to the detention of minors during deportation proceedings, *id.* at 313-14, and on *Carlson v. Landon*, 342 U.S. 524 (1952), where the Court had rejected a due process challenge to detention by noncitizens on the ground that they did not pose a flight risk. *Id.* at 538. Later, in *Jennings*, the Court observed that in *Demore,* the Court, in rejecting the due process challenge, had relied on the principle that the detention during removal proceedings "has "a definite termination point: the conclusion of removal proceedings." 583 U.S. at 304 (internal marks omitted).

Here, under *Demore*, Petitioner has not shown that his detention is unconstitutional. He is detained during his removal proceedings, which will have a definite end point. He has not shown that where an individual is detained shortly after entering the country and never effects an entry, and then is detained during removal proceedings, that such circumstances show a substantive due process violation under the general principles set forth in *Demore*.

Moreover, since he never effected an entry into the United States, his due process rights are even more attenuated that the individuals at issue in *Demore*. The Supreme 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 entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)

(citation omitted); *accord Sierra v. Immigration & Naturalization Servs.*, 258 F.3d 1213, 1218 (10th Cir. 2001) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)).

More recent Supreme Court precedent makes clear that this principle applies to individuals like Petitioner, who are detained shortly after unlawfully entering into the country. *See Thuraissigiam*, 591 U.S. at 107, 114 (habeas petitioner who "attempted to enter the country illegally" but was apprehended approximately 25 yards into the United States "has no entitlement to procedural rights other than those afforded by statute"). As a Court in this district recently explained, "[t]his does not mean that an inadmissible arriving alien[4] has no due-process rights, but 'rather, the applicable statutory process shapes [his] procedural due-process rights.'" *Doe v. Bondi et al.*, No. 1:25-cv-02712-DDD-SBP, 2025 WL 3516292, at *5 (D. Colo. Nov. 4, 2025) (quoting *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212 (D.N.M. 2020), in which the court concluded that the petitioner, who was detained under 8 U.S.C. § 1225(b)(2)(A), "has no statutory right to release or a bond hearing" and thus "has no due-process right to the relief requested")); *accord Richards*, 2025 WL 4474703, at *4.

Second, Petitioner has not shown that his detention violates procedural due process. To make that showing Petitioner would need to show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important

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[4] Petitioner did not present at a port of entry and so, in that respect, he is distinct from noncitizens who did and are therefore "arriving aliens." However, as explained above, because he was encountered and detained shortly after he illegally entered the United States and then paroled into the country under § 1182(d)(5)(A), he was effectively "denied entry" into the United States, *see Shaughnessy*, 345 U.S. at 212, and is therefore similarly situated to arriving aliens for due process purposes, *see Thuraissigiam*, 591 U.S. at 107, 139.

rule" that for "foreigners who have never been ... admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 140. In *Thuraissigiam*, the Court explained that an alien who was an "applicant for admission" had "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Id.* at 140. Petitioner has not shown that he is being deprived of any right during his removal proceedings to challenge his removal.

Moreover, Petitioner has not shown any prejudice from any procedural violation. He has not shown that he is being denied procedures in his immigration proceedings where he can challenge the determination that Section 1225(b)(2)(A) applies. He thus has not shown a violation of procedural due process. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where an alien failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim"). As another Court in this District has explained in analyzing a due-process challenge to immigration detention, "so long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the *merits* determinations that are keeping them in custody, continued custody is permissible." *Bonilla Espinoza v. Ceja*, No. 25-cv-01120-GPG, ECF No. 11 at 13 (D. Colo. May 21, 2025).

Petitioner argues that his re-detention without "adequate procedural protections" violates due process, and he seeks immediate release. *See* ECF No. 1 ¶ 124. But as explained above, DHS is *required* to detain Petitioner during his removal proceedings. Petitioner thus has no procedural right to object to such detention. There are no grounds to conclude that ICE's failure to provide him something *beyond* what is required, i.e., release or a pre-detention hearing, is warranted. *See Thuraissigiam*, 591 U.S. at 138-39 (for noncitizens like Petitioner who are "treated for due process purposes 'as if stopped at the border,'" "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, *are due process of law*" (citation omitted, emphasis added)).

CONCLUSION

Because Petitioner was apprehended shortly after crossing the border and is in removal proceedings, the INA requires his detention during those removal proceedings. And his detention during removal proceedings does not violate his due process rights. The petition therefore should be denied.

Dated: March 16, 2026

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CERTIFICATE OF SERVICE

I certify that on March 16, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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