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

Case No. 1:26-cv-00913-NYW-KAS

LALENDRA SAH KUMAR,

Petitioner,

v.

TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement, GEORGE VALDEZ, Director, Denver Field Office, United States Immigration and Customs Enforcement, and
JUAN BALTAZAR, Warden, Denver Contract Detention Facility,

Respondents.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 7) AND ORDER TO SHOW CAUSE (ECF No. 9)**

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Petitioner, who proceeds *pro se*, was apprehended close to the border very shortly after crossing into the United States illegally three years ago. As such, he was an applicant for admission who was seeking admission and was subject to mandatory detention under 8 U.S.C. § 1225(b). Customs and Border Protection (CBP) issued a Notice to Appear and released Petitioner on his own recognizance. In September 2025, Petitioner was arrested on various criminal charges and taken into state custody. Immigration and Customs Enforcement (ICE) encountered him at the local jail, determined he was subject to removal, took him into custody, and terminated his release on recognizance.

Because Petitioner remains subject to mandatory detention under § 1225(b), his detention is lawful, and his petition should be denied.

**BACKGROUND**

Petitioner is a native and citizen of Nepal who entered the United States via the Arizona border on April 6, 2023. ECF No. 7 at 2; Ex. A ¶¶ 4-5 (Declaration of Dakota Jackson). CBP agents apprehended Petitioner close to the U.S.-Mexico border very shortly after he crossed it illegally. *Id.*; *see also* ECF No. 7 at 2. Petitioner did not present himself at a port of entry and was not inspected and admitted or paroled into the United States. Ex. A ¶ 5.

CBP determined that Petitioner was inadmissible pursuant to § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated). Ex. A ¶¶ 6, 8. CBP issued a Notice to Appear (NTA), initiating removal proceedings before the Executive Office for Immigration Review (EOIR) under 8 U.S.C. § 1229(a). Ex. A ¶ 8. On April 9, 2023, Petitioner was released from custody on an Order of Release on Recognizance (OREC). ECF No. 7 at 2; Ex. A ¶ 9.

In June 2023, Petitioner filed an application for relief from removal with EOIR. Ex. A ¶ 10. He proceeded to file written pleadings to the NTA. Ex. A ¶ 11. He admitted the allegations and conceded the charge of removal. Ex. A ¶ 11.

In September 2025, Petitioner was arrested and held in state custody in New Jersey on several charges, including aggravated assault, terroristic threats, and unlawful possession of a weapon. ECF No. 7 at 2; Ex. A ¶ 12. ICE officers encountered Petitioner while he was detained at the local jail and determined that he was subject to removal from the United States. Ex. A ¶ 12. ICE lodged a detainer with the jail and took Petitioner into custody upon his release from state custody. ECF No. 7 at 2; Ex. A ¶ 12. His release on OREC was terminated. Ex. A ¶ 12.

Petitioner is now detained pursuant to 8 U.S.C. § 1225(b) pending resolution of his ongoing removal proceedings. *See* Ex. A ¶¶ 14-15. His case is scheduled for an individual hearing before the Immigration Judge on April 1, 2026. Ex. A ¶ 15.

**ARGUMENT**

The precise nature of Petitioner's claims is unclear, but he appears to (a) challenge the statutory basis for his detention or (b) raise a due-process claim. Both arguments fail.

**A. Petitioner is subject to mandatory detention under § 1225(b)(2).**

To the extent he challenges the statutory basis for his detention, those arguments are unavailing. In the Immigration and Nationality Act, 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 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). Section 1225(b)(1) governs the inspection and 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) is a "catchall" provision that applies to those applicants for admission, like Petitioner, who are not covered by Section 1225(b)(1). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under § 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.

Petitioner plainly falls into the statutory definition of an "applicant for admission." He entered the United States without admission in April 2023, Ex. A ¶¶ 4-5, and he is therefore an "alien present in the United States who has not been admitted . . . ." 8 U.S.C. § 1225(a)(1). Furthermore, because he was detained very shortly after he entered the United States close to the border, Ex. A ¶¶ 4-5, he is differently situated than other noncitizens who were *not* apprehended shortly after entry, but rather, were encountered within the United States after living in the country for years. Indeed, as another court in this district has held, § 1225(b)(2) "applies to noncitizens 'seeking admission' and inspected while trying to enter the country." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *6 (D. Colo. Oct. 17, 2025); *see also Maldonado Bautista v. Santacruz*, No. 25-cv-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025) (nationwide class defined to *exclude* noncitizens who were "apprehended upon arrival"). In sum, Petitioner is an "applicant for admission" under § 1225(b).

Respondents' position is that Petitioner, as a noncitizen "who . . . 'is present' in this country but [who] 'has not been admitted,' is treated as 'an applicant for admission" subject to mandatory detention under § 1225(b)(2). *Jennings*, 583 U.S. at 287. Respondents acknowledge this Court has previously held that the phrase "seeking admission" in § 1225(b)(2)(A) imposes a separate, additional criterion for mandatory detention. *See, e.g.*, *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *5-7 (D. Colo. Oct. 22, 2025). Respondents respectfully disagree with that decision. But in any event, Petitioner was plainly "seeking admission" at the time he was apprehended very soon after crossing the border into the United States. *See, e.g.*, *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 781-82 (E.D. Mich. 2025)

(distinguishing between noncitizens who (like the *Loa Caballero* petitioner) were first apprehended after being in the country for years from those who (like Petitioner here) were "'arriving to the country' or found at the border or a port of entry"); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 508 (5th Cir. 2026) (Douglas, J., dissenting) (dissent to the Fifth Circuit's opinion in the government's favor emphasizing this distinction and arguing that noncitizens detained when they have already been present in the interior of the country should not be treated "on the same terms as if they were apprehended at the border").

That Petitioner was originally released on his own recognizance does not alter that result. *Cf. Sierra v. Immigration & Naturalization Servs.*, 258 F.3d 1213, 1218 (10th Cir. 2001) (petitioner who was "physically present in the United States for more than twenty years" was nonetheless "legally considered to be detained at the border and hence as never having effected entry into this country"). Section 1225(b)(2) does not make detention during removal proceedings contingent on release or parole. Rather, the text of the statute and the facts here would suggest that Petitioner should not have been released *at all* in June 2023, and that by re-detaining him in September 2025, ICE was simply rectifying the situation and detaining him as § 1225(b)(2) requires. *See Nielsen v. Preap*, 586 U.S. 392, 411 (2019) ("[A]s we have held time and again, an official's crucial duties are better carried out late than never." (citing *Sylvain v. Attorney General of U.S.*, 714 F.3d 150, 158 (3d Cir. 2013) (collecting cases)).

**B. Petitioner's detention does not violate due process.**

To the extent Kumar argues that his detention without a bond hearing violates due process, that argument also fails because he is properly detained under § 1225(b), which does not

provide for bond hearings during removal proceedings.[1]

The political branches have broad power in the realm of immigration. 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*, 258 F.3d at 1218 (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 DHS v. Thuraissigiam*, 591 U.S. 103, 107, 114 (2020) (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 has no due-process rights, but 'rather, the applicable statutory process shapes [his]

[1] It is unclear whether Kumar's due process claim pertains to his continued detention without a bond hearing, or to the process he is receiving in his immigration proceedings. *See* ECF No. 7 at 3 (alleging "I was in court on 10/20/2025 and I was told by the Judge to find a lawyer and gave another say in court" and discussing postponement of an immigration court hearing). In any event, for the reasons discussed in this response, Kumar has not established a due-process violation that would justify habeas relief because he is subject to mandatory detention under § 1225(b)(2) and he is receiving the process he is entitled to under the statute.

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")).

As discussed above, Petitioner is subject to mandatory detention under § 1225(b)(2). A court in this district has recognized that § 1225(b) does not "implicitly give detained aliens the right to periodic bond hearings during the course of their detention." *Doe*, 2025 WL 3516292, at *5 (citing *Jennings*, 583 U.S. 281). Nor is detention under § 1225(b) pending removal proceedings indefinite. Such detention has "a definite termination point—the conclusion of removal proceedings." *Id.* at *5 (citing *Jennings*, 583 U.S. at 299). Relatedly, "[i]nadmissible arriving aliens like the petitioner do not have a cognizable liberty interest in being released on parole as a matter of procedural due process." *Id.* (citing *Sierra*, 258 F.3d at 1217).

In light of the statute's mandatory-detention provision, and applying the principles of *Jennings* and *Sierra*, "procedural due process does not afford inadmissible arriving aliens subject to prolonged detention a right to release or a bond hearing prior to the conclusion of removal proceedings." *Doe*, 2025 WL 3516292, at *6. Petitioner's due-process claim therefore fails.

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## CONCLUSION

The Petition should be denied and the case dismissed.

Dated: March 19, 2026.

PETER MCNEILLY
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**CERTIFICATE OF SERVICE**

I certify that on March 19, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all persons who have registered for such notifications.

*s/ Marissa R. Miller*
U.S. Attorney's Office