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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Azam Shaheen,

Petitioner,

v.

Eric Rokosky, *et al.*,

Respondents.

No. CV-26-01925-PHX-SMB (MTM)

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

## I. INTRODUCTION

Respondents hereby respond to the Petition for Writ of Habeas Corpus (Doc. 1). Petitioner Azam Shaheen, a citizen of Bangladesh, entered the United States without inspection on January 23, 2025, at approximately 8:00 a.m. I-213, attached as Exhibit A, at 3. A border patrol agent detained him at approximately 4:54 p.m. the same day. and placed him into removal proceedings under 8 U.S.C. § 1229a. *See* Petition at ¶ 4, pp. 22–25. Petitioner alleges that he has been detained since that time. *Id.* at ¶ 2. Petitioner was granted asylum by an immigration judge on October 3, 2025, but the government appealed that order, and the appeal remains pending. *See id.* at ¶¶ 3–4.

Petitioner brings two claims for relief: he claims that he is entitled to a bond hearing under 8 U.S.C. § 1226, Petition at ¶¶ 59–60; and he claims that his detention has become unconstitutionally prolonged in violation of due process. Petition at ¶¶ 61–63. The first claim should be denied because, as the Court has acknowledged, an alien like Petitioner who entered the United States without inspection and who was not subsequently admitted must be detained without bond under 8 U.S.C. § 1225(b). *Gomez-Marroquin v. Noem*, No. CV-25-04579-PHX-SMB (D. Ariz. Mar. 9, 2026). Petitioner's claim that his detention has become unconstitutionally prolonged must be denied because aliens subject to the entry fiction, like Petitioner, cannot bring such claims. *Ibarra-Perez v. Howard*, 468 F. Supp. 3d 1156, 1177 (D. Ariz. 2020). The Court should deny the Petition.

## II. THE PETITION MUST BE DENIED.

### A. Petitioner is not entitled to release based on his prolonged detention claim.

Petitioner also claims that his detention has become prolonged, and he is thus entitled either to immediate release or a bond hearing where the burden is placed on the government to justify his detention. Petition at ¶¶ 61–63. This question has split the district courts in this circuit, but Respondents argue that Petitioner may not bring such a claim because he is subject to the "entry fiction;" that is, he is legally considered to be outside the United States even though he is physically within its borders. Petitioner must show that he has a protected liberty interest as a predicate to a due process claim, and Petitioner cannot make that showing, because he has no liberty interest in being present in the United States. Petitioner does not contest that he is not entitled to admission into the United States. He has never been granted release into the interior of the United States. Under Supreme Court precedent, he must be considered not to have entered the United States at all. In short, Petitioner can identify no source from which he could derive an interest in being allowed to be at liberty in the interior of the United States.

As discussed above, Section 1225(b)(1)(B)(ii) governs Petitioner's detention, and that

statute requires him to be detained through the completion of his removal proceedings.[1] If an alien subject to expedited removal claims a fear of returning to their home country, and an asylum officer finds that fear credible, "the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).

Even an otherwise-inadmissible alien may be temporarily paroled into the United States for "urgent humanitarian reasons," if the Secretary of Homeland Security chooses to do so. 8 U.S.C. § 1182(d)(5). However, the Secretary's decision to grant or revoke parole is not reviewable by any court. 8 U.S.C. § 1252(a)(2)(B)(ii); *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010); *Torres v. Barr*, 976 F.3d 918, 931–32 (9th Cir. 2020).

Aliens detained under 8 U.S.C. § 1225(b) may be detained through the completion of their removal proceedings without bond, *Jennings v. Rodriguez*, 583 U.S. 281, 300–01, 305–06 (2018), and immigration judges are prohibited from releasing such aliens on bond. *See* 8 C.F.R. § 1003.19(h)(2)(i) ("[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to . . . [a]liens designated in § 1236.1(c) of this chapter as ineligible to be considered for release"); *see also* 8 C.F.R. § 1236.1(c)(2) ("[A]n alien subject to the TPCR who is not lawfully admitted is not eligible to be considered for release from custody"). Moreover, the Supreme Court has affirmed that Section 1225(b)(2)(A) means what it says: that an alien subject to detention thereunder must be detained "throughout the completion of applicable proceedings," and that such detention is not unconstitutionally indefinite. *Jennings*, 583 U.S. at 302. It is thus clear that the statute and applicable regulations require Petitioners' detention without bond through the completion of their removal proceedings.

"Entry" into the United States requires more than simply arriving on American soil. For example, an alien who "arrives at a port of entry—for example, an international airport—. . . is on U. S. soil, but the alien is not considered to have entered the country for the purposes of this rule." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 103, 139 (2022). Indeed, the

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[1] Petitioner admits that his removal proceedings are ongoing. *See* Petition at ¶ 4.

Supreme Court has held that even those paroled into the United States temporarily "from ship to shore . . . [as] an act of legislative grace" have no additional rights by virtue of their parole, and they are "treated as if stopped at the border." *Mezei*, 345 U.S. at 215 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 661–62 (1892)). Courts have called this doctrine the "entry fiction," because it meant that "some individuals within the United States [were], as a result of their status, . . . deemed technically to be outside." *Guo Xi v. Immigr. & Naturalization Serv.*, 298 F.3d 832, 837 (2002). Accordingly, aliens who enter the United States illegally but who are "detained shortly after unlawful entry" are treated as though they have not entered the United States. *Thuraissigiam*, 591 U.S. at 140. Likewise, courts have held that Section 1182(d)(5) parolees are "treated as though they have not effected an entry into the country at all." *Lopez-Sorto v. Garland*, 103 F.4th 242, 252 (4th Cir. 2024); *see also Romero v. Garland*, 999 F.3d 656, 661 (9th Cir. 2021) ("Aliens paroled elsewhere in the country for years pending removal are treated *for due process purposes* as if stopped at the border.") (quoting *Thuraissigiam*, 591 U.S. at 140) (emphasis added); *Make the Road N.Y. v. Noem*, 2025 U.S. App. LEXIS 31160, at *63 (D.C. Cir. 2025) ("[T]he entry fiction extends to individuals who have been paroled and are awaiting removal proceedings.").

The statute under which Petitioner is detained provides no avenue for his release except for humanitarian parole under Section 1182(d)(5), and Petitioner cannot claim a liberty interest in parole that was never granted. Petitioner cannot be held to have a protected liberty interest in freedom from detention because they are required to be detained by statute, and the only way they can be released from detention is totally discretionary. The Due Process Clause "does not protect everything that might be described as a benefit[.]" *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). A person must have a "legitimate claim of entitlement" to a benefit for the Due Process Clause to grant any protections to them, and "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion." *Id.* The decision to grant or revoke parole is squarely placed in the government's discretionary authority. 8 U.S.C. § 1182(d)(5); *see also Syed v. Mayorkas*, 2023 U.S. Dist. LEXIS 181847 at *13 (D. Or. Oct. 10, 2023); *Doe v. Noem*, 152 F.4th 272, 286 (1st Cir.

2025). As such, no statute provides Petitioner with a protected liberty interest.

Further weakening Petitioner's claim to a liberty interest is the fact that he was never released from immigration detention. Courts that have held that due process requires non-statutory procedures for immigration detainees have also determined that it is *release* from detention that creates a liberty interest. *See, e.g.*, *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) ("Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody."); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d. 1130, 1136 (W.D. Wash. 2025) ("When she was released from her initial detention on parole, Petitioner took with her a liberty interest which is entitled to the full protections of the due process clause."); *Acevedo v. Almodovar*, 2025 U.S. Dist. LEXIS 214517, at *14 (S.D.N.Y. Oct. 30, 2025) ("[A] nonadmitted noncitizen is not precluded from seeking the protections of the Due Process Clause *where they are granted limited status in the country by the Government* and that status was revoked without notice.") (emphasis added). Petitioner does not argue that he possesses any status that authorizes his presence in the United States, nor does he allege that he has ever been released from immigration detention since he was originally detained at the border. Under *Thuraissigiam*, aliens who are detained shortly after an illegal entry are treated as though they have not entered the United States. 591 U.S. at 139–40. Petitioner has never been at liberty in the United States, so he cannot claim a liberty interest requiring his release into the interior of the United States.

Likewise, Petitioner has no substantive due process right to a bond hearing. As discussed above, a substantive due process claim requires the claimant to "careful[ly] descri[be] . . . the asserted fundamental liberty interest" and show that the carefully described interest is, "objectively, deeply rooted in this Nation's history and tradition." *Munoz*, 602 U.S. at 910 (quoting *Glucksberg*, 521 U.S. at 720–21). In contrast to a procedural due process claim, which takes as a given the substantive determinations that would justify a deprivation of life, liberty, or property, a substantive due process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation "at all,

no matter what process is provided." *Reno v. Flores*, 507 U.S. 292, 302 (1993).

"[P]rior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings," *Demore v. Kim*, 538 U.S. 510, 523 n.7 (2003) (emphasis in original), so such a right cannot be "'objectively, deeply rooted in this Nation's history and tradition.'" *Munoz*, 602 U.S. at 910 (quoting *Glucksberg*, 521 U.S. at 720-21). Accordingly, rational-basis review is the appropriate standard for analyzing Petitioner's substantive due process claim. *Glucksberg*, 521 U.S. at 728. Under that standard, detention under § 1225(b)(2)(A) is constitutionally permissible as long as it is "rationally related to legitimate government interests." *Id.*

Section 1225(b)(2)(A) easily clears the rational basis bar. In *Demore*, the Supreme Court considered a substantive due process challenge to detention under § 1226(c). 538 U.S. at 515. Like Petitioner, the petitioner in *Demore* "argued that his detention under § 1226(c) violated due process because the [government] had made no determination that he posed either a danger to society or a flight risk." *Id.* at 514. The Court rejected that claim. It explained that its cases had long "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," because "deportation proceedings would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also id.* at 526 (reiterating the "Court's longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings"). Therefore, because "[d]etention during removal proceedings is a constitutionally permissible part of that process," the *Demore* court held that the substantive due process "claim must fail." *Id.* at 531.

This Court has agreed with Respondents' position. In *Ibarra-Perez v. Howard*, Judge Lanza noted that *Barrera-Echavarria v. Rison*, 44 F.3d 1441 (9th Cir. 1995) (en banc)[2] held that "excludable aliens are deemed under the entry doctrine not to be present on United States

[2] The Ninth Circuit has since noted that part of *Barrera-Echevarria*'s holding was superseded by statute. *Xi v. INS*, 298 F.3d 832, 837–38 (9th Cir. 2002).

territory, [so] a holding that they have no substantive right to be free from immigration detention reasonably follows." 468 F. Supp. 3d 1156, 1174 (quoting *Barrera-Echevarria*, 44 F.3d at 1450). Carefully analyzing the Ninth Circuit's subsequent immigration due-process precedents, Judge Lanza noted that the Ninth Circuit consistently affirmed *Barrera-Echevarria*'s core holding that the entry fiction barred constitutional claims for release. *See id.* at 1174–76. Judge Lanza acknowledged the contrary findings from other district courts, including *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019)), but he noted that *Banda* did not contend with *Barrera-Echevarria* nor the entry fiction. *Id.* at 1177 n.25. Judge Lanza has recently reaffirmed *Ibarra-Perez*, finding that "*Thuraissigiam* underscores the conclusion reached" therein, and that he "still concludes there is no constitutional right to a bond hearing in this context." *Mamedova v. Noem*, No. 2:25-cv-04619-DWL, at 5–6 (D. Ariz. Apr. 29, 2026).

The Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 522. Indeed, "[o]ver no conceivable subject is the legislative power of Congress more complete" than that of immigration. *Flores*, 507 U.S. at 305. Here, Congress has made the policy determination that those who have entered without inspection "shall be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A). Petitioner has not identified from where the liberty interest he claims comes, and indeed, Supreme Court precedent supports the idea that he does not have one. Petitioner accordingly cannot show that he has a protected liberty interest, so his due process claim must fail whether it sounds in procedural due process or substantive due process. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

## III. CONCLUSION

In light of the above, Respondents respectfully request that the Court deny the Petition for Writ of Habeas Corpus.

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RESPECTFULLY SUBMITTED this 8th day of May, 2026.

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