IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-002129-GPG

ALBERT MAMYROV,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
GEORGE VALDEZ, in his official capacity as Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary, U.S. Department of Homeland Security; and
TODD BLANCHE, in his official capacity as Acting United States Attorney General,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 2) AND ORDER TO SHOW CAUSE (ECF No. 5)

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 5), directing them to respond to the habeas petition. Petitioner, a noncitizen in immigration detention, challenges his detention under 8 U.S.C. § 1225(b) as a violation of his due process rights. *See* ECF No. 2. He asks the Court to find that his detention is unlawful and to order Respondents either release him or provide a bond hearing under § 1226(a) within seven days. *See id.* at 12.

This case presents different factual circumstances than many of the others recently filed in this district involving detention under 8 U.S.C. § 1225(b). Here, Petitioner presented himself at a port of entry and has been detained ever since. The

Court should deny the Petition because Petitioner is clearly an "arriving alien" who is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and his detention during removal proceedings does not violate due process.[1]

BACKGROUND

Petitioner's entry into the United States and detention. Petitioner is a native of Kyrgyzstan and citizen of Russia. ECF No. 2 ¶ 13; *see also* Ex. A, Declaration of Austin Allbritton, ¶ 4.[2] On November 4, 2023, Petitioner presented himself at the Hidalgo, Texas, port of entry. ECF No. 2 ¶ 24; Ex. A ¶ 5. Petitioner applied for admission by requesting asylum, and he did not have a visa or other document authorizing his admission to the United States. Ex. A ¶ 5. Customs and Border Protection ("CBP") determined that Petitioner is inadmissible to the United States and processed him for expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). *Id.* ¶ 6. Petitioner was referred to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii), but that interview never occurred. *Id.* ¶¶ 7, 9. On November 4, 2023, Petitioner was transferred to ICE custody. *Id.* ¶ 8. Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(2). *Id.* ¶ 28.

---

[1] This response is timely. The Court granted Respondents' unopposed motion for a three-day extension of time to respond. ECF No. 9 (providing Respondents until June 19, 2026, to respond to the Order to Show Cause).

[2] Respondents' records indicate Petitioner is a native of Russia. Ex. A ¶ 4. But for purposes of resolving his Petition, it is not necessary for the Court to resolve this factual discrepancy.

Petitioner's removal proceedings. On January 14, 2024, USCIS issued a Notice to Appear ("NTA"), initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 10. The NTA classified Petitioner as an "arriving alien" and charged him with being inadmissible 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.*

On February 5, 2024, Petitioner appeared before an immigration judge ("IJ") and admitted the allegations in the NTA. *Id.* ¶ 11. Accordingly, the IJ sustained the charge of removability. *Id.*

On February 15, 2024, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal. *Id.* ¶ 12.

On June 27, 2024, the IJ conducted an individual hearing and found Petitioner inadmissible as charged in the NTA. *Id.* ¶ 13. The IJ denied Petitioner's application for asylum and ordered him removed to Russia. *Id.* The IJ also denied Petitioner's application for withholding of removal under 8 U.S.C. § 1231(b)(3) and withholding of removal under the Convention Against Torture. *Id.*

On July 17, 2024, Petitioner timely filed an appeal of the IJ's decision with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 15. On November 1, 2024, the BIA issued a decision remanding Petitioner's case to the immigration court. *Id.* ¶ 17.

On March 20, 2025, the IJ conducted an individual hearing on Petitioner's asylum application. *Id.* ¶ 18. On May 1, 2025, the IJ issued a written decision granting Petitioner's application for asylum. *Id.* ¶ 19. DHS timely filed an appeal of the IJ's

decision with the BIA. *Id.* ¶ 20.

On October 8, 2025, the BIA issued a decision sustaining the appeal, vacating the immigration judge's order granting asylum, and remanding the case. *Id.* ¶ 22. On March 12, 2026, the IJ issued a written decision denying Petitioner's asylum application and ordering him removed to Russia. *Id.* ¶ 24. The IJ also denied Petitioner's application for withholding of removal under 8 U.S.C. § 1231(b)(3) and withholding of removal under the Convention Against Torture. *Id.* On March 30, 2026, Petitioner timely filed an appeal of the IJ's decision with the BIA. *Id.* ¶ 25. On May 23, 2026, the BIA issued a briefing scheduled and set June 15, 2026, as the filing deadline for both parties. *Id.* ¶ 26. Petitioner filed a brief on appeal on June 13, 2026. *Id.* The order of removal is not administratively final due to Petitioner's pending appeal. *Id.* ¶ 27.

Petitioner's Petition. In his Petition, Petitioner argues that his detention violates his due process rights under the Fifth Amendment. ECF No. 2 ¶¶ 41-45. While Petitioner acknowledges that "[i]t is not altogether clear under which statutory scheme [he] is detained," he argues that under any statutory scheme he "cannot request a bond hearing before an Immigration Judge" and, as such, his detention violates due process. *Id.* ¶¶ 28-31.

ARGUMENT

Respondents are aware that the Court has already addressed their arguments regarding mandatory detention under 8 U.S.C. § 1225(b)(2) for noncitizens already present in the United States. *See, e.g., Moya Pineda v. Baltasar*, 25-cv-02955-GPG-TPO, 2025 WL 3516291 (D. Colo. Oct. 20, 2025) (finding "[b]ecause Petitioner was not

detained while attempting to enter the country . . . Petitioner is not subject to § 1225(b)(2)(A)'s mandatory detention provision"). But this case presents a different factual circumstance than the Court's prior decisions because Petitioner was not already present in the United States when he was detained but rather is an "arriving alien" who has been detained ever since he presented himself at a port of entry seeking asylum. *See* ECF No. 2 ¶¶ 9 (explaining Petitioner "has been classified as an arriving alien"), 24, 27 ("[o]n the NTA, he is designated as an arriving alien."); ECF No. 2-1 at 2 (NTA noting Petitioner is "an arriving alien"); *Cf. Moya Pineda*, 2025 WL 3516291, at *1 (noting that petitioner "has lived in the Untied States for nearly twenty years"). Under these circumstances, the Court should conclude that Petitioner is an applicant for admission within the meaning of § 1225(b)(2) based on the statutory text and the Supreme Court's interpretation of it in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). As such, Petitioner's mandatory detention during his removal proceedings does not violate due process.

I. Petitioner is an "arriving alien" and is properly detained under 8 U.S.C. § 1225(b)(2).

In the INA, Congress determined when certain noncitizens may be detained or removed. Section 1225 governs the detention and removal of noncitizens who are "applicants for admission." *See* 8 U.S.C. § 1225(a)(1). Section 1225 provides, in relevant part, that "[a]n alien . . . who arrives in the United States (whether or not at a designated port of arrival . . . *shall be deemed* for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). The Supreme Court in *Jennings* confirmed that an "arriving alien" is an "applicant[] for admission" under § 1225

and those individuals are subject to mandatory detention.[3]

Specifically, the Court explained that § 1225(b)(1) applies to two subcategories of applicants for admission (not at issue here): (1) arriving noncitizens who have been "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation," *Jennings*, 583 U.S. at 287 (citing § 1225(b)(1)(a)(i)); and (2) noncitizens who are designated by the Attorney General in her discretion, unlawfully present without being admitted, and recent arrivals. That is, § 1225(b)(1) applies to those who have "not been admitted or paroled into the United States, and . . . ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." *See id.* at 287. Noncitizens in those subcategories "are normally ordered removed 'without further hearing or review' pursuant to an expedited removal process." *Id.* (quoting § 1225(b)(1)(A)(i)).

The Court then explained that the detention of *all other* applicants for admission who fall outside those two subcategories is governed by § 1225(b)(2). It described § 1225(b)(2) as a "*catchall* provision that applies to *all* applicants for admission not covered by § 1225(b)(1)." 583 U.S. at 287 (emphases added). In sum, *all* "applicants for admission" are subject to detention—either under § 1225(b)(1) if they fit within one of two subcategories, or, if not, under § 1225(b)(2).

---

[3] The INA defines "admission" and "admitted" to mean "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

Thus, a noncitizen who meets the general definition of applicant for admission (such as an individual who is an arriving noncitizen at a port of entry) but does not fall within the two § 1225(b)(1) subcategories is an "applicant for admission" subject to the "catchall" detention provision of § 1225(b)(2).

The *Jennings* Court recognized that § 1225(b)(2) mandates the detention of applicants for admission. It explained that Congress has provided that noncitizens covered by § 1225(b)(2) generally "shall be detained" during their removal proceedings, with narrow exceptions. *Jennings*, 583 U.S. at 287-88 (quoting § 1225(b)(2)(A)). Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a. *See id.* at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded"). Such noncitizens are not entitled to a bond hearing.

While numerous courts, including this one, have previously ruled that section 1225(b)(2)'s mandatory detention provision does not apply to petitioners *already present* in the United States, those courts have acknowledged that Section 1225(b)(2) *would* apply to noncitizens, like Petitioner, who are detained at the border or port of entry upon their arrival to the United States. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 513 (5th Cir. 2026) (J. Douglas, dissenting) (dissent from majority ruling that Section 1225(b)(2) applies to noncitizens who have not been present in the United States, noting that historically "§ 1225(b)(2)(A) applied to noncitizens arriving in the

country."); *Avila v. Bondi*, 170 F.4th 1128, 1137 (8th Cir. 2026) (holding Section 1225(b)(2) applies to noncitizens "in the nation's interior as well as at the border."); *see also id.* at 1140 (J. Erickson, dissenting) (noting that prior practice "interpreted § 1225 to apply only to those arriving at the border."); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258, 1262 (11th Cir. 2026) (holding section 1225(b)(2)'s "no-bond detention generally applies to arriving aliens seeking lawful entry to the country, and not to aliens who are simply present here."); *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 175 F.4th 828, 845 (7th Cir. 2026) ("reading § 1225(b)(2)(A) to apply only to unadmitted noncitizens seeking lawful entry at our country's border and ports of entry"); *Barbosa da Cunha v. Freden*, 175 F.4th 61, 75 (2d Cir. 2026) (finding "Section 1225(b)(2)(A) applies to those noncitizens who present themselves at a port of entry for admission . . . but are apprehended at the threshold of initial entry." (internal citation and quotation marks omitted)).

As explained above, § 1225(a)(1) deems a noncitizen "who arrives in the United States" to be an "applicant for admission" as a matter of law. Here, Petitioner is an "arriving alien" and has never been "admitted"—*i.e.*, he has not made a "lawful entry . . . after inspection and authorization by an immigration officer."[4] 8 U.S.C. § 1101(a)(13)(A); *see* ECF No. 2 ¶ 27, ECF No. 2-1 at 1 (Notice to Appear); Ex. A ¶¶ 5 (explaining "Petitioner applied for admission to the United States at the Hidalgo (Texas)

[4] An "immigration officer" is "any employee . . . of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title." 8 U.S.C. § 1101(a)(19).

Port of Entry."). The text of § 1225, and the *Jennings* Court and other court's interpretation of it, compels the conclusion that Petitioner is an "applicant for admission" as a matter of law.

Petitioner was initially detained under 8 U.S.C. § 1225(b)(1). However, now that Petitioner no longer qualifies for detention under § 1225(b)(1), he is subject to § 1225(b)(2)(A), the "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *See Jennings*, 583 U.S. at 287. Here, ICE has charged Petitioner with being inadmissible, *see* ECF No. 2-1 at 1, and therefore he is not "clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). In short, the statute requires Petitioner's detention.

II. Petitioner's due process challenge is unavailing.

Petitioner alleges that his detention without a bond hearing violates his due process rights. *See* ECF No. 2 ¶¶ 41-45. To the extent he is bringing a substantive due process challenge, Petitioner has not shown that his detention violates due process, as his detention is during removal proceedings that will have a definite end point, and the Supreme Court has approved such detention. To the extent Petitioner is bringing a procedural due process challenge, this argument fails because Petitioner is subject to detention under 8 U.S.C. § 1225(b), as set forth above, and he has received the due process that is set forth by statute.

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 v. Kim*, 538 U.S.

510, 523 (2003). 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 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. *See* ECF No. 2 ¶¶ 32-37. These circumstances do not show a substantive due process violation under the general principles set forth in *Demore.*

Second, to show that he has been denied procedural due process, Petitioner would need to show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important 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." *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). 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. For the reasons set forth above, Petitioner has not been deprived of any statutory right as he is properly detained under Section 1225(b)(2).

Also, 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) 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).

A Court in this district recently conducted a thorough analysis of substantive and procedural due process requirements in the context of § 1225(b)(2)(A). *See* Order Denying Mot. for Prelim. Inj. at 7-18, *Orande Ahinsha Richards v. Choate*, No. 25-cv-03134-DDD-STV (D. Colo. Dec. 5, 2025), Doc. 19 (Domenico, J.). The Court concluded

that detention during removal proceedings did not offend substantive due process, because the "detention has an endpoint—when his removal proceedings conclude." *Id.* at 15. And "simply to 'facilitate deportation' is a rational, nonpunitive purpose for detention." *Id.* at 16 (citing Justice Kennedy's concurrence in *Demore*, 538 U.S. at 532-33). After surveying case law, the Court concluded that procedural due process does not afford inadmissible noncitizens subject to detention the right to release or a bond hearing before removal proceedings conclude. *See id.* at 7-12. As an "applicant for admission," a noncitizen "is entitled only to the process Congress has conferred on him by statute," and, "under *Jennings*, the procedures authorized by Section 1225(b) do not provide for bond hearings or place a time limit on detention while removal proceedings are pending." *Id.* at 13.

The same analysis applies here: Petitioner has not been denied statutory procedures, and his detention has a logical endpoint. Detention pending removal under § 1225(b)(2)(A) is a "constitutionally permissible part of that [removal] process." *Demore*, 538 U.S. at 531; *see also* Order Denying Mot. for Prelim. Inj. at 12-18, *Orande Ahinsha Richards*, *supra* (rejecting due process challenges to § 1225(b)(2)(A) detention).

CONCLUSION

For the reasons stated above, the Court should deny the Petition.

Dated: June 19, 2026

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: julia.prochazka@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
Counsel for Respondents