IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-02129-GPG

ALBERT MAMYROV,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the ICE Denver Contract Detention Facility,

GEORGE VALDEZ, in his official capacity as Director of the Denver Field Office of United States Immigration and Customs Enforcement, Enforcement and Removal Operations,

MARKWAYNE MULLIN, in his official capacity as Secretary of Homeland Security, and

TODD BLANCHE, in his official capacity as Acting Attorney General of the United States,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE (ECF No. 10), FILED Jue 19, 2026

Introduction

Petitioner Albert Mamyrov respectfully submits this reply to Respondents' Response to Petition for Writ of habeas Corpus and Order to Show Cause (ECF No. 10). Given that DHS issued a warrant, which is the triggering instrument for detention under 8 U.S.C. § 1226(a), and that 8 U.S.C. § 1225(b)(2)(B)(ii) specifically excludes those against whom an expedited order of removal could be issued from the ambit of § 1225(b)(2)(A)'s coverage, he maintains that he is properly detained under 8 U.S.C. § 1226(a). Moreover, his detention for nearly 32 months violates his substantive due process rights. He therefore requests that the Court grant his petition and order either his immediate release or a bond hearing.

Argument

I. Mr. Mamyrov is detained under 8 U.S.C. § 1226(a), not § 1225(b)(2).

In his petition, Mr. Mamyrov noted that it was not entirely clear which statute governed his detention. *See* Pet. Writ of Habeas Corpus ¶¶ 28–30, ECF No. 2. The government now claims that he is detained under 8 U.S.C. § 1225(b)(2)(A) because he is no longer detained under 8 U.S.C. § 1225(b)(1)(B) and is thus subject to the catch-all provision of § 1225(b)(2)(A). *See* Resp. Pet. Habeas Corpus & O.S.C. 5–9. ECF No. 10. But as Mr. Mamyrov pointed out in his petition (¶¶ 29–30), this argument faces two obstacles: the text of 8 U.S.C. § 1225(b)(2) and the issuance of the warrant along with the Notice to Appear.

8 U.S.C. § 1225(b)(2)(B)(ii) specifically provides that subparagraph (A)—the command for mandatory detention of applicants for admission who are determined to be inadmissible at the time they are seeking admission—does not apply to those to whom

paragraph (1)—the provision for expedited removal of those who, inter alia, apply for admission without valid entry documents—applies. There is no dispute that when Mr. Mamyrov initially applied for admission to the United States, he was subject to the expedited-removal scheme. Indeed, Officer Allbritton's declaration confirms that in accordance with that scheme, he was referred for a credible fear interview. *See* Declaration of Austin Allbritton ¶¶ 6–7, ECF No. 10–1. But, again as Officer Allbritton confirms, no credible fear interview ever took place. *See id.* ¶ 9. 8 U.S.C. § 1225(b)(1)(A)(i) does not allow, but rather requires, that a noncitizen, like Mr. Mamyrov, who is inadmissible under 8 U.S.C. § 1182(a)(7) be ordered removed without further hearing unless he expresses a fear of returning to his home country or an intention to apply for asylum. Thus, 8 U.S.C. § 1225(b)(1) applied to Mr. Mamyrov, and the plain language of 8 U.S.C. § 1225(b)(2)(B)(ii) excludes him from the mandatory-detention provision of 8 U.S.C. § 1225(b)(2)(A).

DHS confirmed its understanding of this framework when, along with the Notice to appear, it issued a Warrant for Arrest of Alien. ECF No. 2–1 at 5. This is the document required to initiate detention under 8 U.S.C. § 1226(a).

In short, the plain text of 8 U.S.C. § 1225(b)(2)(B)(ii) and the government's conduct in issuing Mr. Mamyrov a warrant when it served the Notice to Appear without first conducting a credible fear interview confirm that he is properly detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A).

II. Mr. Mamyrov's detention, which has already run to nearly 32 months, violates his substantive due process rights under the Fifth Amendment.

As Mr. Mamyrov observes in his petition, his detention has now exceeded five times the detention period the Supreme Court condoned in the pre-removal detention context. *See* Pet. Writ Habeas Corpus ¶ 45. While his due process rights are limited owing to his status as an arriving alien, they are not nonexistent. *See Giraldo Nieto v. Ceja*, No. 1:24-cv-02821-DDD-NRN, 2025 WL 4087626, at *5–*9 (D. Colo. Jun. 12, 2025). Whether the Court elects to find that the constitution requires that detention of an arriving noncitizen is subject to a reasonable time limit in line with cases such as *Em v. Mayorkas*, No. EP-26-CV-00411-DB, 2026 WL 1396218, at *2–*7 (W.D. Tex. May 19, 2026), the fact remains that detaining a noncitizen without any criminal history and with family members in the United States for over two and a half years far exceeds any legitimate nonpunitive purpose the government could have in detaining him. *See Giraldo Nieto*, 2025 WL 4087626, at *8. While it is true that the BIA has issued a briefing schedule and that Mr. Mamyrov submitted his appeal brief earlier this month, the strong likelihood is that the BIA will not issue its decision for another four months at the least. And it is almost certain that Mr. Mamyrov will need to seek review of the BIA's previous decisions before the United States Court of Appeals for the Tenth Circuit if he wishes to vindicate his right to seek asylum in the United States.

Regardless of which statute authorizes his detention, then, Mr. Mamyrov's continued detention violates his substantive due process rights.

Conclusion

When Mr. Mamyrov first arrived in the United States, he was detained under 8 U.S.C. § 1225(b)(1). Once the government elected not to conduct the credible fear interview and issue him an arrest warrant, however, he was detained under 8 U.S.C. § 1226(a), which is the only statute whose prerequisites the government could properly invoke. But even if the Court disagrees with his statutory analysis, his detention for nearly 32 months violates his Fifth Amendment due process rights. He therefore requests that the Court grant his petition.

Respectfully submitted this 29th day of June 2026,

s/ Henry D. Hollithron
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