UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

Nurdos Kerimbaev

Petitioner,

v.

Kevin Raycraft, Acting Director, Detroit Enforcement and Removal Operations Field Office at Immigration and Customs Enforcement; David J. Venturella, Acting Director, Immigration and Customs Enforcement; Markwayne Mullin, Secretary, U.S. Department of Homeland Security; Sirce E. Owen, Acting Director, Executive Office for Immigration Review; Todd W. Blanche, Attorney General of the United States; and Richard K. Jones, Sheriff, Butler County Correctional Complex.

Respondents.

No: 1:26-cv-849

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PETITION FOR WRIT OF HABEAS CORPUS AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Petitioner, Nurdos Kerimbaev, by and through his attorney, Joseph Mamari, petitions this Honorable Court to issue a writ of habeas corpus to review his unlawful detention in violation of his constitutional and statutory rights.

INTRODUCTION

1. Petitioner is a citizen and national of Kyrgyzstan who fled his native country due to his [redacted] He entered the United States on March 28, 2023, at El Paso, Texas, during which he was processed as an "arriving alien" before ultimately being granted parole.
2. On August 3, 2026, Petitioner was detained by Respondents and transported to the Butler County Correctional Complex in Hamilton, Ohio. By this time, Petitioner had been living continuously in the United States for over three years. Under Respondents' current policy, a noncitizen like Petitioner who was designated as an arriving alien remains an arriving alien and is subject to mandatory detention under 8 U.S.C. § 1225(b).
3. Petitioner's detention under 8 U.S.C. § 1225(b) violates the Immigration and Nationality Act ("INA") and his Fifth Amendment right to due process. Respondents' statutory interpretation and improper action to detain Petitioner under the mandatory detention statute are unlawful. Petitioner asks this Court to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and order his immediate release.

JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); and the United States Constitution Article I, Section 9 (Suspension

Clause). It also has jurisdiction in conjunction with 28 U.S.C. §1346 (United States as a defendant); 28 U.S.C. §1651 (All Writs Act); and Rules 57 (Declaratory Judgments) and 65 (Injunctions) of the Federal Rules of Civil Procedure, permitting declaratory and injunctive actions.

5. Venue properly lies within the Southern District of Ohio under 28 U.S.C. §1391(e) because this is a civil action in which Respondents are employees, officers, and agencies of the United States, and Petitioner is detained in this district.

PARTIES

6. Petitioner resides in Loveland, Ohio, and is currently detained at the Butler County Correctional Complex in Hamilton, Ohio.
7. Respondent Kevin Raycraft is the Acting Director of the Detroit Enforcement and Removal Operations ("ERO") Field Office at the U.S. Immigration and Customs Enforcement ("ICE"), which is the ERO Field Office responsible for overseeing the detention of noncitizens in Ohio, including individuals detained at the Butler County Correctional Complex. Director Raycraft is sued in his official capacity. He is the immediate and legal custodian of Petitioner and has direct control over Petitioner's detention.
8. Respondent David J. Venturella is the Acting Director of ICE and is sued in his official capacity. ICE is vested with power and enforcement authority over Petitioner.
9. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security ("DHS") and is sued in his official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a). Further, DHS is the parent department that oversees ICE.

10. Respondent Sirce E. Owen is the Acting Director of the Executive Office for Immigration Review ("EOIR"). EOIR is a branch of the Department of Justice ("DOJ") that manages immigration courts throughout the United States. Director Owen is sued in her official capacity.

11. Respondent Todd W. Blanche is the Attorney General of the United States and is sued in his official capacity as the head of DOJ. The Attorney General is responsible for the fair administration of the laws of the United States. Furthermore, EOIR conducts immigration court proceedings under the delegated authority from the Attorney General, who appoints immigration judges.

12. Respondent Richard K. Jones is the Sheriff of the Butler County Correctional Complex, where Petitioner is detained. Sheriff Jones has immediate physical custody of Petitioner and is sued in his official capacity.

FACTUAL AND PROCEDURAL BACKGROUND

13. Petitioner is a citizen of Kyrgyzstan who entered the United States on March 28, 2023, after applying for admission at the El Paso, Texas, port of entry. DHS processed Petitioner as an "arriving alien" and paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). **Exh. 1, 2**. At this time, Petitioner was issued an I-94 form indicating that his parole authorization was valid for one year. **Exh. 2**.

14. Following Petitioner's entry into the United States, DHS placed Petitioner in removal proceedings under 8 U.S.C. § 1229a, charging him with removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant who did not have a valid, unexpired immigrant visa or other proper entry documents. **Exh. 1**.

15. On February 14, 2024, Petitioner filed an application for asylum and withholding of removal, seeking relief due to his fears of arrest and imprisonment on account of his [redacted]. His asylum application remains pending before the Cleveland Immigration Court.

16. On August 3, 2026, Petitioner was detained by ICE and taken to the Butler County Correctional Complex in Hamilton, Ohio, where he is currently held. **Exh. 3**. He is petitioning this Court to challenge his unlawful detention.

17. Petitioner has not filed a request for bond determination before an Immigration Judge. On August 17, 2026, Petitioner appeared at a status (master calendar) hearing on his asylum application before the Honorable Immigration Judge Richard Drucker, who declined to grant a continuance while stating that Petitioner was ineligible for bond as an arriving alien under the applicable regulations.

LEGAL BACKGROUND AND ARGUMENT

I. Statutory Framework

18. This case involves the interplay between the Immigration and Nationality Act's ("INA") detention framework and parole provisions.

19. The two detention statutes primarily at issue are 8 U.S.C. §§ 1225(b) and 1226(a), which generally govern the civil detention of noncitizens pending removal proceedings.

20. § 1226(a) is considered the "default rule" for the detention of immigrants "already in the country" pending the outcome of removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018). § 1226(a) creates a discretionary framework for noncitizens arrested and detained based upon "a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). A noncitizen detained under § 1226(a) may request an initial custody determination,

including setting a bond. *Ortiz Gutierrez v. Raycraft*, 821 F. Supp. 3d 934, 939 (S.D. Ohio 2026).

21. § 1225(b) represents a carveout to § 1226(a)'s default rule and provides for mandatory detention of certain immigrants. *Ontiveros v. Warden Corrections Ctr. of N.W. Ohio*, No. 3:26-CV-632, 2026 WL 1109422, at *2 (N.D. Ohio Apr. 24, 2026) (citing *Jennings*, 583 U.S. at 297). § 1225(b)(1), sometimes referred to as the "expedited removal" provision, applies to noncitizens who are: (1) "arriving in the United States," that is, appearing at a port of entry; or (2) have "not been admitted or paroled into the United States" and they cannot affirmatively show that they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).

22. § 1225(b)(2) is broader than § 1225(b)(1) and applies to "applicants for admission" who are "seeking admission" and "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

23. Noncitizens detained under § 1225(b), while ineligible for bond, may still receive humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Such parole, however, shall not be regarded as an admission of the alien. *Ontiveros*, 2026 WL 1109422, at *2. Instead, the expiration of parole will return the noncitizen to the undocumented status at the threshold of the United States. *Bekzada v. Fields*, No. CV 26-57-DLB, 2026 WL 696555, at *2 (E.D. Ky. Mar. 12, 2026) ("[D]istrict courts across the country have consistently held that the expiration of § 1182 parole does not require treating the noncitizen as if they had never been paroled in the first place. [...] Instead, [...] a noncitizen whose parole has expired is

treated like the vast majority of undocumented immigrants currently living in this country who are not subjected to expedited removal.")

24. The current position of DHS and EOIR is that an individual designated as an "arriving alien" at the port of entry retains this designation throughout their removal proceedings even if paroled pursuant to 8 U.S.C. § 1182(d)(5)(A) and even after such parole is terminated or revoked. 8 C.F.R. §1.2. Under this understanding, a noncitizen who was an arriving alien at the time of entry is subject to mandatory detention under § 1225(b) when detained, regardless of whether they were granted parole at any point in their proceedings.

25. Petitioner's mandatory detention by Respondents under § 1225(b) violates the INA. The plain reading of the relevant statutes indicates that Petitioner was not "arriving" in the United States when he was detained on August 3, 2026. A noncitizen is only "arriving in the United States" for purposes of § 1225(b) if they are in the act of reaching the United States. *Ontiveros*, 2026 WL 1109422, at *6. An immigrant, such as Petitioner, who, at the time of his detention, had lived in the United States for over three years, is not an immigrant "arriving" in the United States under § 1225(b). *Ontiveros*, 2026 WL 1109422, at *6. As a noncitizen detained while in the country, Petitioner falls within § 1226(a)'s default rule, and the Respondents' application of § 1225(b) to his detention violates the INA.

26. Petitioner's position has been affirmed by opinions of the courts in the Sixth Circuit, which held that "detention under § 1226(a) attaches where DHS encounters a noncitizen within the interior after admission or after a substantial period of continuous presence, whereas § 1225(b) applies only where the individual encountered is seeking admission at the border." *Munoz Soto v. Raycraft*, No. 1:26-CV-509, 2026 WL 1615277, at *2 (S.D. Ohio June 5, 2026); *Ortiz Gutierrez v. Raycraft*, 821 F.Supp.3d 934, 939 (S.D. Ohio 2026); *Ontiveros v.*

Warden Corrections Ctr. of N.W. Ohio, No. 3:26-CV-632, 2026 WL 1109422, at *6 (N.D. Ohio Apr. 24, 2026); *Martinez Herrera v. Olson*, No. 4:26-cv-52, 2026 WL 561101, at *3 (W.D. Ky. Feb. 27, 2026). Petitioner's reading of the detention statutes is also consistent with the Sixth Circuit's opinion in *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026), where the Court held that noncitizens entered without inspection and established residence within the United States are not "seeking admission" for purposes of § 1225(b) because they are not actively attempting lawful entry into the country.

27. Petitioner was designated as an arriving alien when he first presented at the El Paso point of entry on March 28, 2023. However, once he was paroled and released into the United States, he was no longer in the act of reaching the United States and no longer an "arriving alien." *Ontiveros*, 2026 WL 1109422, at *3.

28. This assertion holds true despite the expiration of Petitioner's parole. Applying § 1225(b) to an individual apprehended in the interior after years of continuous presence, regardless of whether they had been previously granted parole, is impermissible under the applicable statutory framework and the relevant case law. *Ortiz Gutierrez*, 821 F. Supp. 3d at 940. Furthermore, the parole statute provides that upon completion of parole, the immigrant's "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) (emphasis added). As courts have reasoned, this language suggests that a noncitizen whose parole has expired is treated like undocumented immigrants who have resided in the United States for years. *Ontiveros*, 2026 WL 1109422, at *5 (rejecting the government's argument that an arriving immigrant who is paroled and whose parole expires remains an arriving immigrant); *Araque-Marquez v. Olson*, No. 26-cv-84, 2026 WL 836121, at *2 (E.D. Ky. Mar. 26, 2026) (collecting cases

and rejecting that expiration of parole under § 1182(d)(5)(A) "return[s] the undocumented immigrant to the status of an 'arriving alien' at the threshold of the United States"); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 302 (E.D.N.Y. 2025) (holding "a noncitizen whose parole has expired is treated like the vast majority of undocumented immigrants currently living in this country").

29. Petitioner's mandatory detention by Respondents under 8 U.S.C. § 1225(b)(2) is unlawful. The plain language of the statute limits DHS's authority to invoke mandatory detention provisions to detain noncitizens who were paroled into the United States and noncitizens who established residence in the interior of the country. An immigrant who arrives and is paroled under § 1182(d)(5)(A) into the United States is "no longer arriving in the United States, and expiration of such parole does not turn the immigrant back into an immigrant arriving in the United States." *Ontiveros*, 2026 WL 1109422, at *5. Petitioner had been living in the United States for over three years at the time of his detention and cannot be described as "arriving." Respondents' application of § 1225(b)(2) violates the laws of the United States and warrants habeas relief.

II. Due Process

30. Petitioner's mandatory detention under 8 U.S.C. § 1225(b)(2) is also in violation of the Fifth Amendment Due Process Clause. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part balancing test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). The Court must weigh: (1) the private interest at stake; (2) the risk of erroneous deprivation and value of additional procedures; and (3) the government's fiscal and administrative burdens. *Mathews*, 424 U.S. at 334-335.

31. All *Mathews* factors favor Petitioner. As an individual who was granted parole and spent more than three years in the United States, Petitioner has a significant private interest in being released from unlawful detention. *Azalyar v. Raycraft*, 814 F. Supp. 3d 926, 934 (S.D. Ohio 2026). Detention without an individualized assessment carries a high risk of erroneous determination. The risk of erroneous deprivation is significantly elevated by the Respondents' disregard of Petitioner's parole and residence in the United States for over three years and refusal to operate under the appropriate statutory framework. Finally, the United States' interest is not harmed here because Petitioner has no known criminal history that would disqualify him from release or eligibility for asylum.

32. Respondents violated the INA and the Fifth Amendment Due Process Clause by subjecting Petitioner to mandatory detention. Petitioner respectfully requests that the Court grant him habeas relief and order his immediate release. Under the regulations, Respondents maintain that Petitioner is statutorily precluded from having a bond hearing. 8 C.F.R. §1.2. Anything short of release would subject Petitioner "to the hardship of [continued] mandatory detention without due process," *Lopez-Campos*, 175 F.4th at 735. For these reasons, Petitioner respectfully requests that this Court follow *Munoz Soto*, which found that ordering a bond hearing would be futile where the Immigration Court refused to hold a bond hearing for a noncitizen who was processed as an arriving alien at the time of his entry, and order his immediate release. *Munoz Soto*, 2026 WL 1615277, at *3.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1225(b)(2)

33. Petitioner incorporates by reference paragraphs 1 through 32 as if fully stated in this Count.

34. The mandatory detention provision at § 1225(b)(2) does not apply to parolees and to noncitizens residing in the United States.

35. Respondents' reliance on § 1225(b)(2) to detain Petitioner is improper due to Petitioner's grant of parole as well as over three years of residence in the United States.

COUNT TWO

Violation of the Fifth Amendment Due Process

36. Petitioner incorporates by reference paragraphs 1 through 32 as if fully stated in this Count.

37. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amen. 5.

38. Petitioner has a fundamental interest in liberty and being free from official restraint. Petitioner's indefinite detention by Respondents under the mandatory detention framework is a violation of his due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Honorable Court:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the jurisdiction of the Southern District of Ohio, or removed from the United States;
3. Declare that Petitioner's mandatory detention under § 1225(b)(2) violates the Due Process Clause of the Fifth Amendment, and the Immigration and Nationality Act;
4. Issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241, requiring Respondents to release Petitioner immediately;
5. Award reasonable attorney fees and costs of this action; and
6. Grant such further relief as is just and equitable.

/s/ Joseph Mamari
Joseph Mamari, esq.
OH Bar: #0097737
Mamari Law, LLC
26915 Westwood Rd, Suite A-6
Westlake, Ohio 44145
(440) 455-9990

Local Counsel for Petitioner

/s/ Esma R. Tedik
Davidson & Seseri, LLC
10 S. LaSalle St, Ste 2300
Chicago, IL 60603
Tell: 312-561-6000
etedik@dsvisalaw.com

Pro Hac Vice Attorney for Petitioner