UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mohammed GHALEB, Petitioner, - against - William P. JOYCE, *et al.*, Respondents.	**No. 25 Civ. 1505 (MMG)**

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

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The government, by its attorney, Matthew Podolsky, Acting U.S. Attorney for the Southern District of New York, respectfully submits this memorandum of law in opposition to the petition for a writ of habeas corpus, filed on February 21, 2025, by petitioner Mohammed Ghaleb ("Ghaleb").

PRELIMINARY STATEMENT

U.S. Immigration and Customs Enforcement ("ICE") has charged Ghaleb, a native of Saudi Arabia and citizen of Yemen, as removable because he is an inadmissible "arriving alien" not in possession of a valid entry document. His detention pending the resolution of removal proceedings is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii), subject to release on discretionary parole. Ghaleb filed this habeas petition challenging his immigration detention and arguing that he is entitled to receive a bond hearing under the Due Process Clause of the Fifth Amendment. The Court should deny the petition. Arriving aliens like Ghaleb are not entitled to bond hearings as a matter of due process. To the contrary, the Supreme Court has long made clear that arriving aliens' constitutional due process rights extend only so far as the procedures Congress affords them—and neither § 1225(b) nor any other relevant provisions render arriving aliens eligible for bond hearings. Accordingly, Ghaleb's detention without a bond hearing is lawful and comports with due process.

FACTUAL AND PROCEDURAL BACKGROUND

A. Ghaleb's Initial Detention and Immigration Proceedings

On March 13, 2023, Ghaleb, a native of Saudia Arabia and citizen of Yemen, appeared at the U.S.-Mexican border and applied for admission to the United States at the port of entry in San Ysidro, California. *See* Declaration of Deportation Officer Jason Mascia ("Mascia Decl.") ¶¶ 4, 5. He did not possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document. *Id.* ¶ 6. U.S. Customs and Border Protection placed Ghaleb into expedited removal proceedings, ordered him removed under 8 U.S.C. § 1225(b)(1), and detained him at the Otay Mesa Detention Center in San Diego, California. *Id.* ¶ 7.

While he was detained, on March 14, 2023, Ghaleb expressed a fear of return to Yemen. *Id.* ¶ 8. On April 14, 2023, an asylum officer conducted a credible fear interview with Ghaleb. *Id.* ¶ 9; 8 U.S.C. § 1225(b)(1)(A)(ii) (aliens who "indicate[] either an intention to apply for asylum . . . or a fear of persecution" shall be referred for an interview under § 1225(b)(1)(B)). The asylum officer determined that Ghaleb had presented a credible fear of persecution, and thus he would be placed in removal proceedings so that he could file an application for relief from removal with an Immigration Judge. Mascia Decl. ¶ 9.

On May 9, 2023, ICE served Ghaleb with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging him as an "arriving alien" who is inadmissible under Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who at the time of his application for admission was not in possession of a valid entry document. *Id.* ¶ 10. ICE served the NTA on the Otay Mesa Immigration Court in San Diego, California (the detained docket), thereby commencing removal proceedings against Ghaleb. *Id.* As an "arriving alien," Ghaleb's detention during removal proceedings is governed by 8 U.S.C. § 1225(b)(1)(B)(ii). Ghaleb may be considered for release on parole by ICE, but he is not eligible to receive a bond hearing before an immigration judge.

On May 18, 2023, Ghaleb appeared *pro se* for his first master calendar hearing before an Immigration Judge at the Otay Mesa Immigration Court; the case was adjourned at Ghaleb's request for him to find an attorney. *Id.* ¶ 11. On June 6, 2023, Ghaleb appeared *pro se* for his second master calendar hearing; he admitted the allegations contained in the NTA, and the Immigration Judge sustained the charge of removability against him. *Id.* ¶ 12. The Immigration Judge adjourned the case to provide Ghaleb an opportunity to find an attorney. *Id.*

On June 26, 2023, ICE exercised its discretion to release Ghaleb from custody and paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). *Id.* ¶ 13. On November 27, 2023, Ghaleb appeared *pro se* for a master calendar hearing at the San Diego Immigration Court (the non-detained docket). *Id.* ¶ 14. Venue for Ghaleb's proceedings was transferred to the San Francisco Immigration Court, which was closer to where Ghaleb was located at the time. *Id.* The Immigration Court scheduled Ghaleb's next master calendar hearing for February 1, 2027. *Id.*

B. Ghaleb's Detention and Immigration Proceedings in New York

On January 22, 2024, ICE encountered and arrested Ghaleb in New York, New York, and revoked his parole. Mascia Decl. ¶ 15. ICE determined that it would keep him in custody pending the outcome of his removal proceedings. *Id.* Because Ghaleb is still classified under the INA as an arriving alien, his detention remains governed by 8 U.S.C. § 1225(b)(1)(B)(ii). *Id.* On the same date, ICE submitted a motion to change venue to the Varick Street Immigration Court (the detained docket) in New York, New York, which was granted on January 24, 2024. *Id.* ¶ 16.

On January 30, 2024, Ghaleb appeared *pro se* for his first master calendar hearing before an Immigration Judge at the Varick Immigration Court; his case was adjourned at his request so that he could find an attorney. *Id.* ¶ 17. On February 13, 2024, Ghaleb appeared with his counsel Ines Ati before an Immigration Judge for a master calendar hearing; his case was adjourned at his counsel's request for attorney preparation time. *Id.* ¶ 18. On February 28, 2024, Ghaleb appeared before an Immigration Judge for his next master calendar hearing; his prior counsel withdrew from the case and his new counsel, Jessica Coffrin-St. Julien, entered her appearance. *Id.* ¶ 19. The case was adjourned at the request of Ghaleb's new counsel for attorney preparation time. *Id.*

On March 13, 2024, Ghaleb appeared with his counsel before an Immigration Judge for his next master calendar hearing, at which he filed his I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). *Id.* ¶ 20. On April 17,

2024, Ghaleb appeared with his counsel before an Immigration Judge, and the case was scheduled for a merits hearing to occur on April 22, 2024. *Id.* ¶ 21. On April 22, 2024, Ghaleb appeared with his counsel Otilda Colon Pinilla before an Immigration Judge for a merits hearing, but his case was adjourned to May 1, 2024, for a master calendar hearing, because Ghaleb's primary counsel had to take leave and new counsel needed to be assigned. *Id.* ¶ 22.

On May 1, 2024, Ghaleb appeared with his counsel, and a merits hearing was scheduled for May 13, 2024. *Id.* ¶ 23. On May 13, 2024, Ghaleb appeared with his counsel before an Immigration Judge and testified at his merits hearing. *Id.* ¶ 24. At the end of the hearing, the case was adjourned for a written decision within 20 days. On May 22, 2024, Ghaleb appeared with his counsel before an Immigration Judge for a master calendar hearing, at which the Immigration Judge informed the parties that the merits hearing did not record properly in the system and that testimony needed to be re-taken. *Id.* ¶ 25. On June 4, 2024, Ghaleb appeared with his counsel before an Immigration Judge and again testified at his merits hearing. *Id.* ¶ 26. At the end of the hearing, the Immigration Judge adjourned the case for a written decision within 20 days. *Id.*

On June 13, 2024, the Immigration Judge issued a written decision granting Ghaleb's application for asylum. *Id.* ¶ 27. Because the Immigration Judge granted the asylum application, he did not address Ghaleb's applications for withholding of removal and protection under CAT. *Id.* On June 24, 2024, ICE filed a notice of appeal to the Board of Immigration Appeals ("BIA"); and on August 14, 2024, both ICE and Ghaleb filed their respective briefs to the BIA. *Id.* ¶ 28. On November 8, 2024, the BIA remanded the case back to the Immigration Judge to reassess whether the "firm resettlement bar" applied to Ghaleb's case—which, if applicable, would render Ghaleb statutorily ineligible for asylum—and to also address, in the alternative, Ghaleb's applications for withholding of removal and protection under CAT. *Id.* ¶ 29.

On November 20, 2024, Ghaleb appeared with his counsel before an Immigration Judge to discuss the BIA's decision; a merits hearing was scheduled for December 4, 2024, to address the issues identified by the BIA. *Id.* ¶ 30. On December 4 and December 9, 2024, Ghaleb appeared with his counsel before an Immigration Judge and testified at his merits hearing. *Id.* ¶ 31. The case was adjourned to December 31, 2024, for a master calendar hearing to address any additional submissions and written arguments. *Id.* On December 23, 2024, ICE filed written closing arguments, and on December 30, 2024, Ghaleb filed written closing arguments. *Id.* ¶ 32. On December 31, 2024, Ghaleb appeared with his counsel before an Immigration Judge for a master calendar hearing; the Immigration Judge adjourned the case to issue a written decision. *Id.* ¶ 33.

On January 28, 2025, the Immigration Judge issued a written decision (1) denying Ghaleb's asylum application on the basis that he was statutorily ineligible for asylum in light of the "firm resettlement bar," (2) ordering that Ghaleb be removed from the United States to Yemen, and (3) granting Ghaleb's application for withholding of removal to Yemen pursuant INA § 241(b)(3), 8 U.S.C. § 1231(b)(3). *Id.* ¶ 34. On February 26, 2025, Ghaleb filed a notice of appeal to the BIA to contest the Immigration Judge's denial of asylum.[1] *Id.* ¶ 35. The appeal remains pending. *Id.* ICE did not appeal the grant of withholding of removal to Yemen. *Id.* On March 19, 2025, the BIA issued a briefing schedule and set a deadline of April 9, 2024, for the parties to submit briefs. *Id.* ¶ 36. On the same date, Ghaleb filed a request seeking a 21-day briefing extension; the BIA granted the request and set a new deadline of April 30, 2025. *Id.* ¶ 37.

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[1] The Immigration Judge's January 28 order is not administratively final until the conclusion of any appeal to the BIA. *See, e.g.*, *Matter of Joseph*, 22 I. & N. Dec. 660, 668-69 (BIA 1999) (en banc) ("An Immigration Judge's decision is not administratively final when the parties have not waived appeal and the time to appeal has not lapsed, or where, as here, a timely appeal has been filed with the Board of Immigration Appeals from the Immigration Judge's decision on removability.").

Although Ghaleb's removal order is not yet administratively final, ICE has started to seek to identify whether a third country will accept Ghaleb (the grant of withholding of removal prevents ICE from removing him to Yemen, but not to a third country that may accept him). *Id.* ¶ 40.

C. ICE's Consideration of Parole

As noted above, ICE had granted Ghaleb discretionary parole on June 28, 2023. Mascia Decl. ¶ 12. But ICE revoked that parole grant on January 22, 2024, when Ghaleb was encountered and arrested in New York. *Id.* ¶ 15. Since then, Ghaleb has submitted two requests for release on parole. First, on December 10, 2024, Ghaleb filed a parole request with ICE, which ICE denied on January 7, 2025 (with an amended denial being issued on January 13, 2025). *Id.* ¶ 38. Following the denial of the first parole request, Ghaleb requested a case review. *Id.* This is a process that provides for review of decisions made by local field offices with ICE. *Id.* On January 21, 2025, ICE denied Ghaleb's case review request. *Id.* On January 28, 2025, Ghaleb file a second parole request with ICE after the Immigration Judge granted him withholding of removal. *Id.* ¶ 39. On March 5, 2025, ICE denied Ghaleb's second request. *Id.*

D. Ghaleb's Habeas Petition

On February 21, 2025, Ghaleb filed the instant habeas petition, arguing that his detention without a bond hearing since January 22, 2024, violates due process.[2] *See* Pet. (ECF No. 1) ¶¶ 112-

[2] Ghaleb has failed to name the proper respondent for this § 2241 habeas petition. "Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004). While this is the proper venue for this action, Ghaleb has not named the proper respondent: the warden of the Orange County Jail. Instead, he names three respondents: William Joyce (the Acting Field Office Director of ICE's New York City Field Office), Kristi Noem (the Secretary of Homeland Security), and Pamela Bondi (the Attorney General)—but none of these individuals are Ghaleb's immediate custodian (i.e., his warden), and are at best considered only legal custodians. Under *Padilla*, the "legal reality of control" standard does not determine the proper respondent in a petition that challenges or seeks release from physical confinement. Indeed, by reaffirming the "immediate custodian" rule, the

120. Ghaleb seeks an order directing that he be released from detention or provided an individualized bond hearing before an immigration judge at which the government must demonstrate that his continued detention is justified. *Id.* at 33-34 (Prayer for Relief).

ARGUMENT

GHALEB'S HABEAS PETITION SHOULD BE DENIED

The Court should deny Ghaleb's habeas petition. Ghaleb's detention under 8 U.S.C. § 1225(b)(1)(B)(ii) for the duration of his removal proceedings is mandatory, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A). *See Jennings v. Rodriguez*, 583 U.S. 281, 298-301 (2018). Having been placed in removal proceedings to pursue an asylum application and having been considered for release on parole, Ghaleb has been afforded all of the process that he is due, and his continued detention is authorized by law and comports with his limited due process rights under the Constitution as an arriving alien.

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)

Supreme Court rejected the "legal reality of control standard" that Ghaleb appears to rely on here. *Padilla*, 542 U.S. at 437-39. In unambiguous terms, the Supreme Court explained that, "[i]n challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439; *see also id.* at 435 ("[T]he proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."). Dozens of judges within this District—indeed, the overwhelming majority of judges to have considered this issue in this District—have applied this standard to § 2241 petitions brought by aliens challenging their immigration detention. *See, e.g.*, *Khalil v. Joyce*, No. 25 Civ. 1935 (JMF), --- F. Supp. 3d ----, 2025 WL 849803, at *6 (S.D.N.Y. Mar. 19, 2025) ("[A] clear majority of courts in this circuit" . . . "have held that the 'immediate custodian' rule applies" to "core" immigration habeas cases in which a petitioner challenges his or her detention pending removal "and that jurisdiction [in such cases] lies only in the district of confinement."). Thus, this petition is subject to dismissal for its failure to name the proper respondent.

(citing cases). Because arriving aliens have not been admitted to the United States, their constitutional rights are truncated: "[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); *see also DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (under the Due Process Clause, arriving aliens have "only those rights regarding admission that Congress has provided by statute"). Here, "the procedure authorized by Congress" in § 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Mezei*, 345 U.S. at 212.

The broad scope of the political branches' authority over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004). Accordingly, "certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). That includes arriving aliens, who are "treated, for constitutional purposes, as if stopped at the border," *id.*, even if they are paroled into the United States for a limited purpose, *see United States ex rel. Kordic v. Esperdy*, 386 F.2d 232, 235 (2d Cir. 1967) ("A 'parolee,' even though physically in the country, is not regarded as having 'entered' and thus has not acquired the full protection of the Constitution."); *see also Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958).[3]

Among other things, aliens seeking admission may be detained without a bond hearing pending admission or removal. In *Mezei*, the Supreme Court held that an alien's detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. Mezei arrived at Ellis Island seeking admission into the United

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[3] *See also, e.g.*, *Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) ("It is well established that aliens detained at the border are not entitled to the same protections as those who have been admitted into the United States. . . . Providing aliens at the border with more limited procedural protections than persons 'admitted' to the United States is not only rooted in precedent, it is also essential to the effective administration of our immigration laws.").

States; although he had resided in the United States previously, he had since been "permanently excluded from the United States on security grounds." *Id.* at 207. His home country would not accept him, and he had been detained for more than a year and a half to effectuate his exclusion when he filed a habeas petition seeking release into the United States. *Id.* at 207-08.

The Supreme Court held that Mezei's detention did not "deprive[ ] him of any statutory or constitutional right." *Id.* at 215. The Court reiterated that "the power to expel or exclude aliens" is a "fundamental sovereign attribute exercised by the Government's political departments" that is "largely immune from judicial control." *Id.* at 210. The Court recognized that "once passed through our gates, even illegally," aliens "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at 212. But "an alien on the threshold of initial entry stands on a different footing" than an alien within the United States. *Id.* For aliens seeking admission, "[w]hatever the procedure authorized by Congress is, it is due process." *Id.*

The procedure Congress has established for arriving aliens like Ghaleb does not include the provision of bond hearings. Generally, if immigration officials determine that an alien such as Ghaleb is inadmissible because he cannot produce valid entry documents at a port of entry, 8 U.S.C. § 1182(a)(7), "the officer shall order the alien removed from the United States without further hearing or review," 8 U.S.C. § 1225(b)(1)(A)(i). However, if the alien "indicates an intention to apply for asylum . . . or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer." 8 U.S.C. § 1225(b)(1)(A)(ii). Should the asylum officer determine that the alien has a credible fear of persecution, the alien "shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). That further

consideration occurs within the context of removal proceedings before an immigration judge, which afford the alien a host of procedural protections.[4] *See* 8 U.S.C. § 1229a.

But aliens detained under 8 U.S.C. § 1225(b)(1)(B)(ii) generally cannot be released from custody during their removal proceedings. Indeed, by regulation, immigration judges are prohibited from holding bond hearings for arriving aliens. 8 C.F.R. § 1003.19(h)(2)(i)(B) ("[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act."). And for good reason: the statute mandates detention during the pendency of removal proceedings. Instead, the exclusive means of release for an alien who is seeking admission at a port of entry, found inadmissible, and placed in proceedings is the Department of Homeland Security's discretionary parole authority. *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for "urgent humanitarian reasons" or

[4] During removal proceedings, aliens may apply for various forms of relief or protection from removal, such as asylum, withholding of removal, and protection under the Convention Against Torture. *See* 8 U.S.C. § 1158(a); 8 U.S.C. § 1231(b)(3). The decision whether to order such an alien removed is made by an immigration judge (not an immigration officer). 8 U.S.C. § 1101(b)(4); 8 U.S.C. § 1229a(a)(1). Aliens may obtain continuances during their proceedings for good cause. 8 C.F.R. § 1003.29. They have a right to counsel of their choice at no expense to the government, 8 U.S.C. § 1229a(b)(4)(A); the right to testify; and the right to "examine the evidence against [them]," "to present evidence," and "to cross-examine witnesses presented by the Government," 8 U.S.C. § 1229a(b)(4)(B); *see* 8 C.F.R. §§ 1240.7(a), 1240.46(c). Aliens ordered removed may ask the immigration judge to reconsider that determination. 8 U.S.C. § 1229a(c)(6). They are also informed that they have a right to appeal, 8 U.S.C. § 1229a(c)(5), and they may file an appeal with the BIA, 8 C.F.R. §§ 1003.1(b), 1003.38(a). If an alien appeals and the BIA enters a final removal order, the alien may file a petition for review in a court of appeals, 8 U.S.C. § 1252, and thereafter seek review in the Supreme Court, 28 U.S.C. § 1254(1).

"significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).[5]

Given this broad general authority over the admission of aliens and the specific procedures that Congress has implemented, there is no basis for this Court to conclude that Ghaleb's due process rights extend to include a right to a bond hearing. Importantly, Ghaleb's habeas petition fails to acknowledge the above caselaw and seeks to cabin *Thuraissigiam* to limiting only an arriving alien's due process rights with respect to the application for admission, not to detention. *See, e.g.*, Pet. ¶ 100.[6] But that is incorrect. *Thuraissigiam* reinforced *Mezei*, which is binding Supreme Court precedent that applies to this case and forecloses the relief Ghaleb seeks: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Mezei*, 345 U.S. at 212; *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment"). Indeed, as Judge Sullivan correctly recognized in a similar case (decided after *Jennings*) involving an arriving alien, "because the immigration statutes at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here." *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018); *see*

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[5] Ghaleb was released on parole for roughly seven months after his proceedings were initiated in California, but that parole was revoked in January 2024. His further release on parole pending the resolution of his removal proceedings has not been authorized by the Secretary, and thus he remains detained. Notwithstanding his prior release on parole, Ghaleb is still considered to be on the threshold of initial entry. *See Barber*, 357 U.S. at 190.

[6] Ostensibly, this is also why Ghaleb discusses the Second Circuit's inapposite decisions in *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020) (a case concerning detention under 8 U.S.C. § 1226(a)), and *Black v. Decker*, 103 F.4th 133 (2024) (a case concerning detention under 8 U.S.C. § 1226(c)), and proposes a due process analysis under the framework provided by *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See, e.g.*, Pet. ¶¶ 113-119. But that due process framework and those cases are inapplicable in the context of arriving aliens who are detained under 8 U.S.C. § 1225(b).

also, e.g., *Gonzales Garcia v. Rosen*, No. 19 Civ. 6327 (EAW), 513 F. Supp. 3d 329, 333-36 (W.D.N.Y. 2021) (applying *Mezei* and *Thuraissigiam* and holding that an arriving alien is not entitled to procedural protections beyond those provided by statute); *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 20 Civ. 159, 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) ("Applying this rule in *Thuraissigiam*, which squares with longstanding Supreme Court precedent, this Court similarly holds that arriving aliens' procedural due process rights entitle them only to the relief provided by the INA.").

Moreover, Ghaleb's suggestion that arriving aliens are not treated differently under the law for due process purposes from other categories of detained aliens, *see* Pet. ¶ 100, is flatly incorrect and contrary to more than a century of precedent from the Supreme Court. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). Congress has decided to treat arriving aliens differently, in order to effectuate their exclusion from the United States while considering whether to admit them, by holding them in detention during those ongoing proceedings. Unlike admitted aliens placed in removal proceedings and detained under 8 U.S.C. § 1226, arriving aliens were not living in the United States and are "request[ing] a privilege," *Landon*, 459 U.S. at 32, and therefore "stand[ ] on a different footing," *Mezei*, 345 U.S. at 212-13. Their lack of entitlement to a bond hearing thus flows logically from their lack of admission to the United States in the first place. Further, arriving aliens are not foreclosed from any and all possibility of release during their proceedings: they may secure release through discretionary parole. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c). An alien can also agree to his removal, thus bringing his detention during removal proceedings to an end and ordinarily returning him to freedom (albeit abroad). And unlike the detention at issue in *Mezei*, detention

under § 1225(b) is inherently temporary and has a discernable endpoint: the conclusion of removal proceedings. *See Jennings*, 583 U.S. at 297 (when proceedings end for arriving aliens placed in removal proceedings, "detention under § 1225(b) must end as well").[7]

The constitutional due process rights of arriving aliens are limited to the process that Congress chooses to provide. In § 1225(b) and related provisions, Congress has afforded arriving aliens a variety of protections, but has excluded the possibility of bond hearings. *See Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Ghaleb does not have a due process right to a bond hearing, and so the Court should therefore deny Ghaleb's habeas petition.

CONCLUSION

For the foregoing reasons, the Court should deny Ghaleb's habeas petition.

Dated: New York, New York
March 21, 2025

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[7] The conclusion of removal proceedings is when the proceedings are administratively final. *See, e.g.*, *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) ("An order of removal is 'final' upon the earlier of the BIA's affirmance of the immigration judge's order of removal or the expiration of the time to appeal the immigration judge's order of removal to the BIA." (citing 8 U.S.C. § 1101(a)(47)(B))).