

1 TIMOTHY COURCHAIINE
United States Attorney
2 District of Arizona

3 THEO NICKERSON
Assistant United States Attorney
4 Connecticut State Bar No. 429356
Two Renaissance Square
5 40 North Central Avenue, Suite 1800
Phoenix, AZ 85004-4449
6 Telephone: (602) 514-7500
7 Fax: (602) 514-7693
Theo.Nickerson2@usdoj.gov

8 *Attorneys for Respondents*

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Sandra Milena Arateco Munoz,

13 Petitioner,

14 v.

15 Pamela Bondi, et al.,

16 Respondents.
17

No. 25-cv-02951-PHX-MTL (ESW)

**ANSWER TO PETITION FOR A
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

18 **I. INTRODUCTION**

19 Respondents, Pamela Bondi, Attorney General of the United States, Kristi Noem,
20 Secretary of the Department of Homeland Security, John Cantu, Arizona Field Office
21 Director, U.S. Immigration and Customs Enforcement (“ICE”), Fred Figueroa, Warden,
22 Eloy Detention Center, by and through counsel, hereby answer the Petition for Writ of
23 Habeas Corpus (Doc. 1). The habeas petition should be denied because Petitioner is an
24 inadmissible arriving alien subject to mandatory detention without a bond hearing pursuant
25 to 8 U.S.C. § 1225(b)(1)(B)(ii).

26 **II. BACKGROUND.**

27 Petitioner, Sandra Milena Arateco-Munoz, is a native and citizen of Columbia, who
28 was apprehended at the border by United States Border Patrol (“USBP”) on June 1, 2021.

1 Exhibit A, Declaration of Deportation Officer Sergio Cabrera, ¶ 2. She was issued a Notice
2 to Appear in removal proceedings, charging her with removability pursuant to section
3 212(a)(6)(A)(i), Immigration and Nationality Act (“INA”) 8 U.S.C. § 1182(a)(6)(A)(i), as
4 an alien who entered the United States without having been admitted, inspected or paroled.¹
5 *Id.* ¶ 4. She was detained by USBP and later transferred into the custody of ICE,
6 Enforcement and Removal Operations (“ERO”) in Phoenix. *Id.* ¶ 5. Two days later, on
7 June 3, 2025, Petitioner was issued a Form I-220A, Order of Release on Recognizance and
8 she was released from custody. *Id.* ¶ 6. Shortly thereafter, on June 15, 2021, Petitioner
9 departed the United States and returned to Bogota, Columbia. *Id.* ¶ 7.

10 On December 22, 2024, Petitioner appeared at the Nogales, Arizona Port of Entry and
11 applied for admission into the United States. Exhibit A ¶ 9. As an inadmissible arriving
12 alien, Petitioner was placed into expedited removal proceedings under INA section 235(b),
13 8 U.S.C. § 1225(b). *Id.* ¶ 10. On December 23, 2024, ERO transferred Petitioner to the
14 Eloy Detention Center, where she currently remains detained. *Id.* ¶ 11.

15 Petitioner claimed to have a fear of return to Columbia and was scheduled for a credible
16 fear interview with an asylum officer from United States Citizenship and Immigration
17 Services (“USCIS”). Exhibit A ¶ 12. USCIS found that the Petitioner had a credible fear
18 and accordingly, her case was referred to the immigration judge (IJ) for the formal filing
19 of an application for asylum and related relief. Before the IJ, on January 12, 2025,
20 Petitioner was charged with removability pursuant to INA section 212(a)(7)(A)(i), 8 U.S.C.
21 § 1182(a)(7)(A)(i), as an immigrant who at the time of application for admission was not
22 in possession of a valid unexpired immigrant visa, reentry permit, border crossing
23 identification card, or other valid entry document as required for admission. *Id.* ¶ 13.

24 On January 24, 2025, the IJ sustained the charge of removability and as relief from
25 removal, Petitioner filed an application for asylum with the immigration court on February

26
27 ¹ This NTA was never filed with the Executive Office of Immigration Review,
28 which houses the immigration courts. This means that removal proceedings, which begin
upon the filing of the NTA in immigration court, were never commenced against Petitioner
in 2021.

1 18, 2025. *Id.* ¶¶ 14-15. On August 5, 2025, the IJ conducted a final merits hearing on
2 Petitioner’s Form I-589, application for asylum and related relief. Exhibit A ¶ 16. At the
3 conclusion of the merits hearing the IJ indicated that he would issue a written decision. *Id.*
4 Despite the IJ not issuing a final written decision, on August 18, 2025, Petitioner filed a
5 Notice of Appeal of the IJ’s decision to the Board of Immigration Appeals (“BIA”). *Id.* ¶
6 17.

7 On September 5, 2025, the IJ issued a written decision denying Petitioner’s application
8 for asylum and any other relief from removal. Exhibit A ¶ 18. On September 10, 2025, the
9 BIA acknowledged Petitioner’s NOA filed on August 18, 2025, and on September 26,
10 2025, the BIA issued a briefing schedule in Petitioner’s appeal. *Id.* ¶¶ 19-20. As of
11 September 29, 2025, Petitioner’s case is still pending on appeal before the BIA. *Id.* ¶ 21.
12 Petitioner remains detained under 8 U.S.C. § 1225(b) as an arriving alien. *Id.* ¶ 22.

13 **III. ARGUMENT**

14 **A. Petitioner’s continued detention is both mandatory and constitutional.**

15 Here, Petitioner is an inadmissible arriving alien in expedited removal proceedings
16 and is therefore subject to mandatory detention without bond pursuant to 8 U.S.C. §
17 1225(b)(1)(B)(ii). The Supreme Court has held that mandatory detention without bond
18 under 8 U.S.C. § 1225(b) comports with the due process requirements of the Fifth
19 Amendment. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020).
20 Petitioner’s continued detention is therefore both statutorily mandated and constitutionally
21 permissible.

22 An arriving alien is defined as:

23 “an applicant for admission coming or attempting to come into the United States at
24 a port-of-entry, or an alien seeking transit through the United States at a port-of-
25 entry, or an alien interdicted in international or United States waters and brought
26 into the United States by any means, whether or not to a designated port-of-entry,
and regardless of the means of transport.”

27 *See* 8 C.F.R. § 1.2.

28

1 Here, Petitioner is an arriving alien and as such, is subject to mandatory detention
2 under 8 U.S.C. § 1225(b), and that detention throughout the remainder of her asylum
3 proceedings is mandatory. *See* 8 U.S.C. 1225(b)(1)(b)(ii). Further, the Supreme Court has
4 considered whether 8 U.S.C. § 1225(b) imposes a time-limit on the length of detention and
5 whether such aliens detained under this statutory authority have a statutory right to a bond
6 hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 296-303 (2018). The Supreme Court held
7 that “nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length
8 of detention” nor “says anything whatsoever about bond hearings.” *Id.* at 297.

9 What is more, the Supreme Court has also held that mandatory detention for arriving
10 aliens under 8 U.S.C. § 1225(b) comports with due process. *Thuraissigiam*, 591 U.S. at
11 139. Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it
12 affords to “arriving aliens” like Petitioner, is critical because, for “more than a century”
13 now, the Supreme Court has held that the rights of such noncitizens are confined
14 exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also*
15 *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (holding that with regard to
16 “foreigners who have never been naturalized, nor acquired any domicile or residence
17 within the United States, nor even been admitted into the country pursuant to law,” “the
18 decisions of executive or administrative officers, acting within powers expressly conferred
19 by Congress, are due process of law.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This
20 Court has long held that an alien seeking initial admission to the United States requests a
21 privilege and has no constitutional rights regarding his application, for the power to admit
22 or exclude aliens is a sovereign prerogative”); *Shaugnessy v. United States ex rel. Mezei*,
23 345 U.S. 206, 212 (1953) (rejecting noncitizens’ habeas petitions premised on their claim
24 that their detention without a bond hearing violated their Fifth Amendment Due Process
25 rights because “an alien on the threshold of initial entry stands on a different footing:
26 ‘Whatever the procedure authorized by Congress is, it is due process as far as an alien
27 denied entry is concerned.’”).
28

1 Indeed, *Thuraissigiam* was a habeas action involving an alien, like Petitioner,
2 seeking initial entry to the United States and detained under 8 U.S.C. § 1225(b) who raised
3 a Fifth Amendment Due Process Clause challenge. There, the Supreme Court “reiterated
4 th[e] important rule,” *id.* at 138, that a noncitizen seeking initial entry to the United States
5 “has no entitlement” to any legal rights, constitutional or otherwise, other than those
6 expressly provided by statute. *Id.* at 107 (“Congress is entitled to set the conditions for an
7 alien’s lawful entry into this country and [] as a result [] an alien at the threshold of initial
8 entry cannot claim any greater rights under the Due Process Clause.”)

9 The Supreme Court also has long recognized that aliens seeking admission to the
10 United States do not have the same constitutional protections as individuals who have
11 entered the United States. “[O]ur immigration laws have long made a distinction between
12 those aliens who have come to our shores seeking admission . . . and those who are within
13 the United States after an entry, irrespective of its legality. In the latter instance, the Court
14 has recognized additional rights and privileges not extended to those in the former category
15 who are merely ‘on the threshold of initial entry.’” *Leng May Ma v. Barber*, 357 U.S. 185,
16 187 (1958) (quoting *Mezei*, 345 U.S. at 212). Accordingly, Congress may authorize the
17 detention of aliens at the border, even for prolonged periods of time, and such detention
18 does not deprive aliens “of any statutory or constitutional right.” *See Mezei*, 345 U.S. at
19 212 (upholding detention of lawful permanent resident returning from trip abroad detained
20 for over a year and a half).

21 As an arriving alien, Petitioner has no due process protections beyond those afforded
22 by statute. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-71 (1990) (Aliens
23 “receive constitutional protections when they have come within the territory of the United
24 States and developed substantial connections with this country.”); *Landon*, 459 U.S. at 32
25 (“[A]n alien seeking initial admission to the United States requests a privilege and has no
26 constitutional rights regarding his application.”); *Mezei*, 345 U.S. at 212 (“[A]n alien on
27 the threshold of initial entry stands on a different footing: ‘Whatever the procedure
28 authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”).

1 Here, the statute provides for Petitioner's mandatory detention pursuant to under
2 8 U.S.C. § 1225(b)(1)(b)(ii) and provides for no other statutory procedures. Indeed, even
3 an immigration judge lacks jurisdiction to grant bond for arriving liens subject to
4 mandatory detention under 8 U.S.C. § 1225(b). *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). For all
5 these reasons, Petitioner's habeas petition requesting release from mandatory detention
6 during her expedited removal proceedings should be denied. Her continued detention is
7 both statutorily mandated and constitutional.

8 **B. Petitioner's arguments lack merit.**

9 Petitioner challenges the lawfulness of her ongoing detention without an
10 individualized bond hearing because her detention has exceeded the presumptively
11 reasonable six-month period established in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Doc
12 1 at 1-2. *Zadvydas* and its due-process analysis does not apply to this case because
13 *Zadvydas* analyzed the due process rights of aliens subject to final removal orders, detained
14 under 8 U.S.C. § 1231. *Id.* However, as established, Petitioner is an arriving alien applying
15 for admission into the United States and as such, her due process rights are limited to those
16 afforded by Congress. *Thuraissigiam*, 591 U.S. 106–07. And, Congress has not afforded
17 petitioner the right to a bond hearing. Rather, Congress has determined that arriving aliens,
18 like Petitioner, seeking admission are subject to expedited removal proceedings and
19 mandatory detention. 8 U.S.C. § 1225(b)(1)(b)(ii). Accordingly, Petitioner's request for a
20 bond hearing or release, neither of which are statutorily permitted nor constitutionally
21 required, should be denied.

22 Respectfully submitted this 29th day of September, 2025.

23 TIMOTHY COURCHINE
24 United States Attorney
25 District of Arizona

26 *s/Theo Nickerson*
27 THEO NICKERSON
28 Assistant United States Attorney
Attorneys for Respondents

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2025, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmitted it via U.S. First Class Mail to the following:

Sandra Milena Arateco Munoz



ELOY-AZ-ELOY-DC
DETENTION CENTER
1705 E HANNA RD.
ELOY, AZ 85131

s/ Mary Simeonoff
United States Attorney’s Office