TODD BLANCHE
U.S. Deputy Attorney General
ALINA HABBA
Acting United States Attorney
Special Attorney
ALEX SILAGI
Assistant United States Attorney
970 Broad Street, Newark NJ 07102
Alex.Silagi@usdoj.gov
Attorneys for Respondents

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TAMIR MONOROV, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents*.	Hon. Jamel K. Semper, U.S.D.J. Civil Action No. 25-16732 (JKS)

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

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PRELIMINARY STATEMENT

On October 17, 2025, immigration officials detained Petitioner under 8 U.S.C. § 1225(b)(1), which requires detention of "arriving aliens" pending their removal proceedings. Petitioner brings this habeas action under 28 U.S.C. § 2241, alleging that his detention violates the Immigration and Nationality Act ("INA") and the Due Process Clause. The Court should dismiss or deny the Petition.

U.S. Customs and Immigration Enforcement's ("ICE") detention of Petitioner is lawful because § 1225(b)(1) requires ICE to detain Petitioner because he is an "arriving alien." An arriving alien is, in this context, an inadmissible alien who encounters immigration officers upon arrival into the United States at a port of entry, such as at an airport or border crossing point. Unlike the many federal district courts, including this one, that have rejected ICE's interpretation of another portion of statute—§ 1225(b)(2)—concerning aliens apprehended for the first time years after already entering the country, *see, e.g.*, *Contreras Maldonado v. Cabezas*, No. 25-13004 (JKS), 2025 WL 2985256 (D.N.J. Oct. 23, 2025), this case concerns the longstanding law that ICE must detain arriving aliens until their removal unless granted parole on humanitarian grounds. And even if granted parole, an arriving alien is subject to redetention at the unreviewable discretion of DHS. Accordingly, ICE's detention of petitioner is required by the INA and comports with due process.

BACKGROUND

I. Relevant Legal Background

A. Detention of "Arriving Aliens" Under 8 U.S.C. § 1225(b)(1)

"The power to admit or exclude [non-citizens] is a sovereign prerogative." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And "the Constitution gives 'the political department of the government' plenary authority to decide which [non-citizens] to admit." *Id.* (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). "[A] concomitant of that power is the power to set the procedures to be followed in determining whether a[] [non-citizen] should be admitted." *Id.*; *see Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

A noncitizen "who has not been admitted or who arrives in the United States" is considered an "applicant for admission" under the INA. 8 U.S.C. § 1225(a)(1). All "[a]pplicants for admission must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law." *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Id.* at 287.

Any noncitizen that falls under § 1225(b)(1), as Petitioner does here, is subject to expedited removal. As the Third Circuit has recognized,

> under 8 U.S.C. § 1225(b)(1) and its companion regulations, two classes of aliens are subject to expedited removal if an immigration officer determines they are inadmissible due to misrepresentation or lack of immigration papers: (1) aliens "arriving in the United States," and (2) aliens "encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border." *See* 8 U.S.C. § 1225(b)(1)(A)(i) & (iii); Designating Aliens for Expedited Removal, 69 Fed Reg. 48877-01 (Aug. 11, 2004).

Castro v. U.S. Dep't of Homeland Sec., 835 F.3d 422, 425 (3d Cir. 2016).

Likewise, the Supreme Court has stated that noncitizens "covered by §1225(b)(1) are normally ordered removed "without further hearing or review" pursuant to an expedited removal process." *Jennings*, 583 U.S. at 287. Expedited removal means that an immigration officer "shall order" removal without further hearing. 8 U.S.C. § 1225(b)(1)(A)(i); *see also* 8 C.F.R. § 1003.19(h)(2)(i)(B) (prohibiting a redetermination of conditions of custody (i.e., a bond hearing) for "arriving aliens" in removal proceedings).

But a noncitizen subject to § 1225(b)(1) can be placed in full removal proceedings under 8 U.S.C. § 1229a. One way for that to occur is if the immigration officer, in his or her discretion, chooses to initiate full removal proceedings. *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011). Another way—which occurred here—is when the noncitizen in expedited removal proceedings announces an intention to apply for asylum or expresses a fear of persecution, including torture under the Convention Against Torture. In those instances, expedited removal is postponed pending further proceedings on the asylum application. 8 U.S.C. § 1225(b)(1)(A)(ii), (B). If an asylum officer finds that the arriving noncitizen has a credible fear of persecution or torture, the noncitizen is referred from expedited

removal to full removal proceedings under 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that an alien has a credible fear of persecution . . . , the alien shall be detained for further consideration of the application for asylum."); 8 C.F.R. § 208.30(f).

Full removal proceedings under § 1229a provide more robust procedures and due process than expedited removal, *compare* 8 U.S.C. § 1229a *with id.* § 1225(b)(1), including a right to appeal to the Board of Immigration Appeals ("BIA") and petition for review by a federal appellate court, *id.* § 1252(a)(1). However, noncitizens detained at a port of entry and subject expedited removal, such as Petitioner, "shall be detained" throughout that process even if they have a credible fear of persecution and enter full removal proceedings. *Id.* § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV). "Indeed, § 1225 explicitly calls for the mandatory detention of an alien following an asylum officer's determination that an alien, such as petitioner, has a credible fear of persecution in his home country." *Doe v. Rodriguez*, No. 17-1709 (JLL), 2018 WL 620898, at *5 (D.N.J. Jan. 29, 2018).

Although detention under § 1225(b) is mandatory, it is not indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue until immigration officers have finished 'consider[ing]' the application for asylum or until removal proceedings have concluded." *Id.* (internal citation omitted). "Once those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297.

Section 1225(b) does not provide for bond hearings, *Jennings*, 583 U.S. at 297-303, but the statute has "a specific provision authorizing release from . . . detention." Immigration officials "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole [non-citizens] detained under §§ 1225(b)(1) and (b)(2)." *Id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)). This is commonly called humanitarian parole. Federal courts lack jurisdiction "to review the . . . exercise of discretion in decisions to grant or deny parole." *Ashish v. Att'y Gen. of U.S.*, 490 F. App'x 486, 487 (3d Cir. 2013); *see* 8 U.S.C. § 1252(a)(2)(B)(ii). Nor can a noncitizen claim a "due process violation for the denial of this discretionary relief." *Ashish*, 490 F. App'x at 487.

Although parole allows a noncitizen to leave immigration custody and enter the United States, parole does not change their status as an arriving alien. That is, parole of an "alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his 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(b)(5)(A).

B. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention on a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), immigration officials may detain an alien during his

removal proceedings, release him on bond, or release him on conditional parole.[1] By regulation, immigration officers can release an alien if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention, release the alien on bond, or release the alien on conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

II. Petitioner's Immigration History

Petitioner is a citizen of Russia. Pet. ¶ 3. Ans. Ex. A, Notice to Appear ("NTA").[2] On February 1, 2022, he entered the United States from Mexico through the San

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[1] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of [INA § 212(b)(5)(A),] § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

[2] Respondents are attaching Petitioner's relevant immigration records as exhibits to this Answer under Federal Rule of Civil Procedure 10(c), which is

Ysidro Port of Entry. Pet. ¶ 36; *see* Pet. Ex. 1, Notice and Order of Expedited Removal, ECF No. 1-4. He was arrested and detained by U.S. Customs and Border Patrol ("CBP"). Pet. ¶ 36. CBP determined he was an "arriving alien" who was inadmissible under INA § 212(a)(7)(i)(I), 8 U.S.C. § 1182(a)(7)(i)(I), because he did not possess valid entry documents, and therefore issued a Notice and Order of Expedited Removal under 8 U.S.C. § 1225(b)(1). Pet. Ex. 1, Notice and Order of Expedited Removal, ECF No. 1-4. Petitioner requested asylum upon being apprehended. Pet. Ex. 1, Notice and Order of Expedited Removal at 6-7, ECF No. 1-4.

That same day, February 1, 2022, CBP released him from custody through humanitarian parole under INA § 212(d)(5)(A). Pet. ¶ 36; Pet. Ex. 2, Parole Permit, ECF No. 1-5.

On December 5, 2022, Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal with U.S. Citizenship and Immigration Service ("USCIS"). Pet. ¶ 31. USCIS scheduled the "credible fear" interview for October 17, 2025. Pet. ¶ 32; Notice of Credible Fear Interview, ECF No. 1-7. *See also* 8 C.F.R. § 208.2(a) (noting USCIS asylum officer has jurisdiction to perform credible fear interview of arriving alien).

ICE arrested Petitioner that day, October 17, 2025, pursuant to § 1225(b)(1). Pet. ¶ 32. On October 30, 2025, an asylum officer served a Notice to Appear ("NTA") on petitioner after a finding that Petitioner demonstrated a credible fear of

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incorporated by Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts (which is applicable to this § 2241 petition through Rule 1(b)).

persecution or torture. Ans. Ex. A, NTA. Accordingly, Petitioner has entered full removal proceedings until the IJ overseeing his removal case adjudicates his asylum application. *Id.*; *see also* 8 C.F.R. § 235.3(b)(4)(ii) ("Pending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained."); 8 C.F.R. § 208.2(b) (noting jurisdiction transfers from USCIS to immigration court to adjudicate asylum claim if asylum officer makes credible fear finding).

III. Procedural History

Petitioner filed this two-count habeas petition on October 19, 2025. ECF No. 1. He asserts that ICE violated the INA by detaining him after granting him parole under INA § 212(d)(5)(A), § 1182(d)(5)(A), and violated the Due Process Clause of the Fifth Amendment because he received parole and has done nothing wrong to warrant redetention. Petitioner seeks immediate release. *Id.*, Prayer for Relief ¶ E.

STANDARD OF REVIEW

28 U.S.C. § 2241(c)(3) authorizes a court to grant a writ of habeas corpus where a prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, which is applicable to § 2241 petitions through Rule 1(b), provides this Court with the authority to dismiss a habeas petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief." *See also Moncrieffe v. Yost*, 367 F. App'x 286, 288 n.2 (3d Cir. 2010) (noting summary dismissal of a § 2241 habeas petition is appropriate pursuant to Rule 4 of

the Rules Governing Section 2254 Cases). "Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face." *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing 28 U.S.C. § 2254, Rule 4).

ARGUMENT
THE COURT SHOULD DISMISS THE HABEAS PETITION

I. Petitioner is an "Arriving Alien" Subject to Mandatory Detention Under § 1225(b)(1).

Petitioner's mandatory detention is lawful under of § 1225(b)(1). As Petitioner concedes, CBP apprehended him after entering unlawfully at a port of entry and issued him an Order of Expedited Removal. He is accordingly an "arriving alien" as defined by 8 U.S.C. § 1225(b)(1) because he encountered immigration officials at the port of entry and requested asylum. Because he received a credible fear of persecution, the asylum officer referred him from expedited removal proceedings into full removal proceedings under § 1229a. Ans Ex. A, NTA. In full removal proceedings, Petitioner will be able to assert his asylum claims before the IJ. 8 C.F.R. § 208.2(b) (noting immigration court's jurisdiction over arriving alien's asylum claim).

That Petitioner was paroled and later re-detained does not change his status as an arriving alien under § 1225(b)(1). *See Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (collecting cases). Being granted parole does not somehow "cancel" his arriving alien status; nor does it prohibit him from redetention as an arriving alien. *See Bermudez Paiz v. Decker*, No. 18-4759, 2018 WL 6928794, at *17 (S.D.N.Y. Dec. 27, 2018) ("[S]ince immigration parole 'is a matter of the Attorney General's discretion,' it 'may be ended without hearings or special

forms.') (quoting *Ofosu v. McElroy*, 98 F.3d 694, 700 (2d Cir. 1996)). Petitioner's detention remains mandatory pending his removal proceedings as per § 1225(b)(1). *See* 8 C.F.R. § 235.3(b)(2)(iii) ("An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal."); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that arriving alien placed in expedited removal and transferred to 8 U.S.C. § 1229a removal proceedings after establishing a credible fear of persecution or torture is subject to detention under 8 U.S.C. § 1225(b)(1) even if granted parole).

Further, Petitioner cannot challenge ICE's decision to redetain him after he obtained a credible fear finding and entered full removal proceedings. As Chief Judge Linares observed, "Congress specifically deprived this Court of jurisdiction to consider claims attacking certain discretionary decisions, including parole determinations" involving detention under § 1225(b)(1). *Doe*, 2018 WL 620898, at *8 (citing 8 U.S.C. § 1252(a)(2)(B)(ii)).

II. Due Process Permits Mandatory Detention Pending Removal Proceedings

The Court should also reject Petitioner's argument that he has not been afforded sufficient process. As a general matter, "applicants for admission are entitled only to those rights and protections Congress set forth by statute," and "the due process clause requires 'nothing more.'" *Pena*, 2025 WL 2108913, at *2 (citing *Thuraissigiam*, 591 U.S. at 140). That is because "the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and

a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Thuraissigiam*, 591 U.S. at 139 (citation omitted) (cleaned up); *see also id.* ("[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border."). Here, once ICE determined that Petitioner entered the United States without admission (a fact that Petitioner does not dispute), it follows that Petitioner is an "arriving alien" and subject to mandatory detention.

Petitioner's current detention also comports with due process. Although the due process clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), some amount of detention is generally permissible, *Demore v. Kim*, 538 U.S. 510, 511 (2003). The Third Circuit's decision in *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203 (3d Cir. 2020), is instructive on this point. There, the court held that when ICE detains a noncitizen pending removal proceedings under 8 U.S.C. § 1226(c) (which, like § 1225(b)(2), requires mandatory detention), the Due Process Clause demands a bond hearing only once detention has become "unreasonably prolonged." *Id.* at 210–11. This is a "highly fact-specific inquiry" without a bright line. *Id.* But courts in this District have held that detentions under § 1225(b) considerably longer than Petitioner's were not unreasonable. *See Adel G. v. Warden, Essex Cnty. Jail*, No. 19-13512 (KM), 2020 WL 1243993, at *2 (D.N.J. Mar. 13, 2020) (collecting cases holding that "detention for fifteen months or less is insufficient to support an as-applied challenge to detention under § 1225(b)").

See also Rodriguez v. Bondi, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025) (same; collecting cases).

Here, Petitioner has been in custody since October 17, 2025, about one month. Pet. ¶ 12. Therefore, his detention is presumptively reasonable. *See, e.g.*, *Pipa-Aquise*, 2025 WL 2490657, at *1 (holding that "Petitioner's two-month detention" under § 1225(b) did not violate due process); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 222 (S.D.N.Y. 2020) ("Here, Mr. Mendez Ramirez has been detained for approximately ten months. That is far less time than other courts in this District have held to comport with due process."); *Traore v. Decker*, No. 19-4612, 2019 WL 3890227, at *4-6 (S.D.N.Y. Aug. 19, 2019) (rejecting due process challenge to 20.5-month mandatory detention of arriving alien).

Finally, even where mandatory detention becomes "unreasonable" under the Due Process Clause, the appropriate remedy is a bond hearing, rather than immediate release. *See, e.g.*, *Akhmadjanov v. Oddo*, No. 25-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025). If the Court finds that Petitioner's detention is unreasonable, it should order a bond hearing instead of release.

CONCLUSION

For the foregoing reasons, the Court should dismiss or deny the Petition.

Respectfully submitted,

TODD BLANCHE
U.S. Deputy Attorney General

ALINA HABBA
Acting United States Attorney
Special Attorney

By: /s/ *Alex Silagi*
ALEX SILAGI
Assistant United States Attorney
Deputy Chief, Civil Division

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