

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NASEER AHMED,

Petitioner,

v.

25-CV-06662-EAW

TODD LYONS, Acting Director U.S. Immigrations and
Customs Enforcement, et al.,

Respondents.

**RESPONDENTS' SUPPLEMENTAL
MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS**

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INTRODUCTION

Respondents present this supplemental legal argument in support of the Petitioner's detention as a "certain other alien" pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). Although the Petitioner was released on bond pursuant to an immigration judge's order in 2016, that order was invalidated by the Attorney General's 2019 ruling in *Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019). Despite initially being enjoined from application pursuant to the U.S. Court of Appeals for the Ninth Circuit in *Padilla v. ICE*, 953 F.3d 1134 (2020), the U.S. Supreme Court vacated the Ninth Circuit's decision in *ICE v. Padilla*, 141 S.Ct. 1041 (2021), and directed the Ninth Circuit to apply the decision in *DHS v. Thuraissigiam*, 591 U.S. 103, 139-140 (2020). As a result, the Attorney General's interpretation of law in *Matter of M-S* remains intact.

STATEMENT OF FACTS

Petitioner is a native and citizen of Pakistan who was apprehended on January 27, 2016, within 500 yards of the U.S./Mexico International Boundary after unlawfully entering the United States without inspection, or parole. Freeman Dec., ¶ 5. On January 29, 2016, Petitioner was processed for Expedited Removal. *Id.* ¶ 6. Petitioner underwent screening to identify whether he had a fear of persecution if returned to his country and an asylum officer determined that Petitioner demonstrated a credible fear of persecution or torture if returned to Pakistan, and the matter was referred to an immigration judge for additional review. *Id.* ¶ 7.

On March 7, 2016, a Notice to Appear for removal proceedings was issued to Petitioner. *Id.* ¶ 8. On June 27, 2016, an immigration judge approved the Petitioner's release from custody upon the payment of a \$10,000 bond. *Id.* ¶ 9.

On September 27, 2021, Petitioner was ordered removed from the United States by an immigration judge. *Id.* ¶ 10. On August 31, 2025, Petitioner was apprehended U.S. Customs and Border Protection at Fort Drum, New York and transferred to the Buffalo Federal Detention Facility in Batavia, New York. *Id.* ¶ 11. On November 24, 2025, the Board of Immigration Appeals dismissed the Petitioner’s appeal of his removal order. *Id.* ¶ 12. Petitioner is currently held at the Buffalo Federal Detention Facility in Batavia, New York. *Id.* ¶ 13.

STATEMENT OF LAW

8 U.S.C. § 1225 governs the detention of a noncitizen who is deemed to be an “arriving alien” at border. Such noncitizens are deemed applicants for admission, 8 U.S.C. § 1225(a)(1), and are defined at 8 C.F.R. § 1001.1(q). With the passage of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, the Secretary of the Department of Homeland Security was authorized to designate “certain other aliens” as also being subject to the expedited removal procedures governing arriving aliens, and the Secretary used this authority to include noncitizens encountered within 100 air miles of the U.S. international land border, apprehended within 14 days of their entry to the United States. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004); *Singh v. Barr*, No. 1:19-CV-01096 EAW, 2020 WL 1064848, at *3 (W.D.N.Y. Mar. 2, 2020) (“In other words, aliens who illegally entered the United States and are detained within 14 days of entry and within 100 miles of the border are treated the same as ‘arriving aliens’ under the current statutory and regulatory scheme.”).

Upon declaring a fear of persecution if removed, an arriving alien is referred to an interview before an asylum officer to determine if that fear is credible. 8 U.S.C.

§ 1225(b)(1)(A)(ii). If a credible fear is found by the asylum officer, the “alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

Certain constitutional protections available to persons inside the United States are simply unavailable to aliens deemed to be outside the country’s geographic borders. *Zadvydas*, 533 U.S. at 693 (stating that due process rights “do not extend to aliens outside territorial boundaries”) (citations omitted). An arriving alien standing on the threshold of entry has no procedural due process rights regarding admission or exclusion and stands on a different footing: whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned. *See Shaughnessy United States ex rel. Mezei*, 345 U.S. 206 at 212 (1953) (finding that physical presence in the United States alone does not extend to an inadmissible alien the constitutional protections which are due those persons legally admitted or who have gained entry to the United States). Congress authorized, and the Supreme Court approved of, the use of detention for aliens subject to § 1225(b) pending the completion of their removal proceedings. *See Shaughnessy*, 345 U.S. 206 (1953); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510, 531, (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”). The Due Process Clause affords an excludable (inadmissible) alien no procedural protection beyond the procedure explicitly authorized by Congress, nor any right to be free from immigration detention. *Id.*

Thus, as a noncitizen who unlawfully entered this county for a brief period of time, an arriving alien’s rights are more limited than those of both a citizen of the United States, an alien who has been lawfully admitted, or even an alien who entered illegally but has established significant connections with the United States. *See, e.g., United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) (“[A]liens receive constitutional protections when they

have come within the territory of the United States and developed substantial connections with this country.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“[O]nce an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly.”); *Ascencio-Rodriguez*, 595 F.3d at 109 n.3 (“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.”).

In 2019 the Attorney General issued *Matter of M-S-* ruling that the Board of Immigration Appeals (“BIA”) decision in *Matter of X-K-*, 23 I&N Dec. 731 (B.I.A. 2005) was an incorrect interpretation of the statute pertaining to custody determinations for arriving aliens. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). Specifically, the Attorney General ruled that an alien transferred from expedited removal proceedings to removal proceedings before an immigration judge after establishing a credible fear of persecution remains ineligible for release on bond. *Id.* at 518-19. Although this decision was initially enjoined from being applied by the Ninth Circuit Court of Appeals in *Padilla v. ICE*, 953 F.3d 1134 (2020), the U.S. Supreme Court vacated the Ninth Circuit’s decision in *Padilla* and specifically directed the Ninth Circuit to apply *DHS v. Thuraissigiam*, 591 U.S. 103 (2020). *ICE v. Padilla*, 141 S.Ct. 1041 (2021).

In *Thuraissigiam*, the Supreme Court held that a noncitizen in Petitioner’s position as a “certain other alien” who was encountered within 100 miles of the border within 14 days of his or her unlawful entry to the United States “has no entitlement to procedural rights other

than those afforded by statute.” *Id.* at 107. And although *Thuraissigiam* was decided with regard to a challenge to immigration admission procedures, the Supreme Court made clear “the continuing vitality of *Mezei*, which addressed the issue of detention. *See Thuraissigiam*, at 139 (citing *Shaughnessy v. U.S. ex. rel. Mezei*, 345 U.S. 206, at 212 ‘Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned’).

This issue has been addressed in the Western District of New York. In *Aguilar-Villalobos v. Kurzdorfer*, No. 24-CV-1110 (JLS) (W.D.N.Y. Jun. 10, 2025), Judge Sinatra cited *Thuraissigiam*, to find that a petitioner was squarely in the category of “certain other aliens” and was to be treated as an “arriving alien” under the statutory and regulatory framework recognized by the U.S. Supreme Court. In *Kharshiladze v. Philips*, No. 6:20-CV-06423 EAW, 2021 WL 1525869, at *2 (W.D.N.Y. Apr. 19, 2021), Chief Judge Wolford noted, “The holding in *Thuraissigiam* requires a conclusion that aliens who are on the threshold of entry into the United States are not protected by the procedural protections of constitutional due process and are thus entitled only to the process authorized by Congress.”

ARGUMENT

I. MATTER OF M-S- IS AN INTERPRETATION OF A STATUTE THAT APPLIES RETROACTIVELY.

Prior to the issuance of *Matter of M-S-* in 2019, the BIA’s 2005 decision in *Matter of X-K-* was followed to determine whether an arriving alien was eligible to be released on bond. The Attorney General issued *Matter of M-S-* to correct the BIA’s misinterpretation of an existing statutory provision. *Matter of M-S-* did not promulgate of a new regulation or statute and the reasoning contained therein was retroactively applied to the individual that was the subject of *Matter of M-S-*, just as the reasoning should be applied to the Petitioner. As an arriving alien, the due process clause does not apply equally to Petitioner, or to other foreign

citizens who, like him, are seeking admission to the United States. *See Mejia v. Ashcroft*, 360 F. Supp. 2d. 647, 651-52 (2005). Petitioner has been provided all the due process to which he is entitled as an arriving alien detained pursuant to 8 U.S.C. § 1225(b).

Petitioner argues that Respondents' authority to detain Petitioner changed upon the previous release of the Petitioner by the immigration judge's issuance of a bond, but the decision of the immigration judge in 2016 is now known to have been an incorrect interpretation of the existing statute. The Attorney General's issuance of *Matter of M-S-* in 2019 makes clear that the Petitioner is ineligible for a bond as a "certain other alien" as described in 8 U.S.C. § 1225(b)(1)(B)(ii). The Supreme Court's ruling in *Thuraissigiam* must be applied to prevent the Petitioner from being accorded rights beyond what Congress intended. The Petitioner's detention is required pursuant to the expedited removal process outlined in 8 U.S.C. § 1225(b).

CONCLUSION

Petitioner's due process claims are without merit and there is no viability to Petitioner's due process challenge to his mandatory detention as an arriving alien. Accordingly, Petitioner failed to state a claim upon which relief can be granted and the Petition should be dismissed in its entirety.

Respectfully Submitted,

MICHAEL DIGIACOMO
United States Attorney

DATED: December 29, 2025

BY: /s/ Marvin Muller
Special Assistant United States Attorney