IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JESUS NAVARRO RODRIGUEZ,

Petitioner,

v. No. 25-cv-01149-JB-JFR

DORA CASTRO, et. al.,

Respondents.

RESPONDENTS' MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents, Immigration and Customs Enforcement ("ICE"), the Department of Homeland Security ("DHS"), and the United States Attorney General ("USAG") (collectively "Respondents")[1], hereby submit this Response to Petition for Writ of Habeas Corpus (Doc. 1).

Petitioner is a noncitizen of the United States and national of Cuba who asks this Court to order Respondents to release him from federal custody or order a bond hearing. Doc. 1, at 19. Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Petitioner alleges violations of the 5th Amendment Due Process Clause and the Immigration and Nationality Act ("INA"). Doc. 1, at 10-16.

Respondents respectfully request this Court dismiss Petitioner's Writ of Habeas Corpus (Doc. 1) for the following reasons:

I. Court Lacks Subject Matter Jurisdiction

[1] The undersigned does not represent Dora Castro, Warden, Otero County Processing Center, as Otero is a private facility, and Warden Castro is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply equally to Warden Castro.

When an immigration officer determines a noncitizen is inadmissible under §1225(b), that officer shall order the noncitizen removed from the United States without further hearing or review, stripping the court of jurisdiction. *See* 8 U.S.C. § 1225(b)(1)(A)(i). There is, therefore, no subject matter jurisdiction for this Court to review the §1225(b)(1) determination[2] in this case.

Additionally, while Petitioner's asylum proceedings are pending his claims are not ripe for review.

II. Petitioner's Due Process Rights Have Been Met

Petitioner is an "arriving alien" under §1225(b)(1)(A), and as such is not entitled to any additional due process beyond that specifically prescribed by statute, which have been followed. There has been no due process violation as a matter of law.

III. Petitioner Fails to State a Claim Upon Which Relief Can Be Granted

Respondents conduct, as a matter of law, was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 5 U.S.C. § 706(2)(A). Petitioner's requested remedy of release is not authorized nor warranted under the INA, the APA, or any other legal authority.

FACTUAL BACKGROUND

On or about June 13, 2019, Petitioner entered the United States without inspection or parole and was not in possession of valid documentation that would allow him lawful entrance into the United States. [redacted]. On September 11, 2019, an Immigration Judge ("IJ") ordered Petitioner removed in absentia to Cuba. [redacted]l. On September 20, 2024, an IJ granted Petitioner's motion to reopen his immigration proceedings. [redacted] Reopen.

[2] For clarity throughout this motion, a §1225(b)(1) determination is the finding of inadmissibility and order for expedited removal of an arriving alien by an immigration officer.

On January 4, 2025, Petitioner applied for admission into the United States at the Paso Del Norte Port of Entry in El Paso, Texas. *See* Exhibit D – I-213.

In summary, Petitioner entered the United States as an arriving alien, who is inadmissible to the United States. Petitioner is detained pursuant to 8 U.S.C. § 1225(b) pending re-opened removal proceedings.

LEGAL BACKGROUND

I. Detention of "Arriving Aliens" Under §1225 and Aliens Under §1226

Generally, when a noncitizen, such as Petitioner, arrives in the United States, they are "an applicant for admission," who must "be inspected by immigration officers" to ensure that they may be admitted into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as "arriving aliens" and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; *See also* 8 U.S.C. § 1225(b)(1)(A)(i). Aliens who enter illegally, but are detained shortly after unlawful entry, cannot be said to have "effected an entry" and remain, similar to an alien detained at a port of entry, "on the threshold" and subject to §1225. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

These arriving aliens can be subject to an expeditious process to remove them from the United States. 8 U.S.C. § 1225(b)(1). Under this process, known as expedited removal, arriving aliens who entered illegally, lack valid entry documentation or make material misrepresentations shall be "order[ed]...removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). Even if an arriving alien is not determined to be

inadmissible pursuant to §1225(b)(1), they may still be subject to mandatory detention. *See e.g.*, 8 U.S.C. § 1225(b)(2)(A). An applicant who is not determined to be inadmissible nonetheless "shall be detained for a [removal] proceeding" unless the examining immigration officer determines that the noncitizen is "clearly and beyond a doubt entitled to be admitted." *Id.*

When a noncitizen, unlike Petitioner, is charged as removable *from within the United States*, §1226 "generally governs the process of arresting and detaining...aliens pending their removal." 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under §1226(a), "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). By contrast, §1226(c) provides that the government "shall" take into custody any alien who has committed any one in a set of articulated crimes. 8 U.S.C. § 1226(c)(1).

II. §1225 and §1226 Due Process Considerations

The difference between these noncitizens is significant for due process purposes. *Thuraissigiam*, 591 U.S. at 106–07, 138–40; *See also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the "unique constitutional status of arriving aliens with no ties to the United States"). For example, the Supreme Court considered whether §1225(b) imposes a time limit on the length of detention and whether such noncitizens detained under this authority have a statutory right to a bond hearing. *Jennings*, at 296–303 (The Supreme Court held that "nothing in the statutory text [of §1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings.") The sole means of release for noncitizens detained pursuant to §1225(b) is temporary parole *at the discretion of DHS* under 8 U.S.C. § 1182(d)(5). *Id.* at 300.

For "more than a century" the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Thuraissigiam*, 591 U.S. at 131; *See also*

Nishimura Ekiu v. United States, 142 U.S. 651, 660 (1892) ("the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This 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"); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (an alien on the threshold of initial entry 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").

Thuraissigiam dealt with a habeas action involving a noncitizen, like Petitioner, detained under §1225(b) who raised 5th Amendment Due Process challenges. *Thuraissigiam*, 591 U.S. at 106–07. The Supreme Court reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 107 (a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"); *See also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Mezei*, 345 U.S. at 212) ("[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission…and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Supreme Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'").

Accordingly, Congress may authorize the detention of aliens at the border, even for prolonged periods of time, and such detention does not deprive aliens "of any statutory or constitutional right." *Id*. An alien who enters the country illegally is treated as an "applicant for

admission" and has only those rights that Congress has provided by statute. *Thuraissigiam,* 591 U.S. at 140. The due process clause requires nothing more. *Id*.

III. Judicial Review of §1225(b)(1) Determinations

More broadly, the Supreme Court has long recognized the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit or exclude aliens "have been legion"). Control of the nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

Therefore, the Executive Branch has broad constitutional and statutory power over the administration and enforcement of the nation's immigration laws. *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see, e.g.*, 6 U.S.C. § 202(4); 8 U.S.C. § 1103(a)(1), (3). Congress has delegated broad discretion to executive officials under the Immigration and Nationality Act ("INA"), and these grants of statutory authority are particularly sweeping in the context of parole. *Amanullah v. Nelson*, 811 F.2d 1, 6 (1st Cir. 1987). Similarly, the Executive Branch is provided significant deference when it decides to admit or exclude noncitizens, as this power is a sovereign prerogative. *Thuraissigiam*, 591 U.S. at 139 (quoting *Landon v. Plasencia*,

459 U.S. 21, 32 (1982)). The Constitution gives the political department of the government "plenary authority to decide which aliens to admit." *Id.* (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). Critically, "a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Id. See also Jennings*, at 286 ("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."); *Shaughnessy*, at 544.

In 2007, the 10th Circuit held that "[t]he scope of judicial review of orders of removal under §1225(b)(1) is extremely narrow." *Vaupel v. Ortiz*, 244 F. App'x 892, 894 (10th Cir. 2007). Judicial review of determinations made under 8 U.S.C. § 1225(b)(1) is available in habeas corpus proceedings, but such review is strictly limited to determinations of:

(a) Whether the petitioner is an alien,

(b) Whether the petitioner was ordered removed under such section, and

(c) Whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee…or has been granted asylum

Id. at 894. *See also* 8 U.S.C. § 1252(e)(2)(A)-(C).

Section 1252(e)(5) further provides that in determining whether an alien has been ordered removed under §1225(b)(1), the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. *Id.* at 895 ("There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal").

In *Vaupel*, the petitioner argued the court may determine whether the expedited removal statue was lawfully applied to an alien. *Id*. However, the 10th Circuit emphasized the language of §1252(e)(5) "clearly and unambiguously precludes review in a habeas proceeding of whether the

alien is actually inadmissible or entitled to any relief from removal." *Id. See also Brumme v. INS*, 275 F.3d 443, 447-48 (5th Cir.2001) (rejecting claim that §1252(e) permits habeas review of whether 8 U.S.C. §1225(b)(1) was applicable to petitioner); *Li v. Eddy*, 259 F.3d 1132, 1134 (9th Cir. 2001) ("on its face, [§1252(e)(2)] does not appear to permit the court to inquire into whether §1225(b)(1) was properly invoked, but only whether it was invoked at all. Were there any doubt of congressional intent, it is resolved by [§1252(e)(5)], that expressly declares that judicial review does not extend to actual admissibility").

IV. Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction, they are empowered to hear only those cases authorized and defined in the Constitution which have been entrusted to them under a jurisdictional grant by Congress. *Henry v. Off. of Thrift Supervision*, 43 F.3d 507, 511 (10th Cir. 1994). The party invoking federal jurisdiction, generally the plaintiff, bears the burden of establishing its existence. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998). Rule 12(b)(1) allows defendants to raise the defense of lack of subject matter jurisdiction by motion. *See* Fed. R. Civ. P. 12(b)(1). Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction "generally take one of two forms: (1) a facial attack on the sufficiency of the complaint's allegations as to subject matter jurisdiction; or (2) a challenge to the actual facts upon which subject matter jurisdiction is based." *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002).

Ripeness is a justiciability doctrine derived from the case or controversy clause of Article III. *Auto-Owners Ins. Co. v. Bolt Factory Lofts Owners Ass'n,* 823 F. App'x 686, 690 (10th Cir. 2020). Whether a claim is ripe for review bears on a court's subject matter jurisdiction. *Id*. The Tenth Circuit has "distilled Article III's ripeness requirement into a two-factor analysis, examining (1) 'the fitness of the issue for review,' and (2) 'the hardship to the parties' of withholding judicial

review." *Travelers Cas. Ins. Co. of Am. v. A-Quality Auto Sales, Inc*., 98 F.4th 1307, 1314 (10th Cir. 2024). As to the first factor, for an action to be ripe for review it cannot be "dependent on 'contingent future events that may not occur as anticipated or indeed may not occur at all." *Id*. The second factor considers whether the challenged action creates 'a direct and immediate dilemma' for the parties. *Id*.

V. Failure to State a Claim Upon Which Relief Can Be Granted

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a party may move for dismissal if the complaint fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This pleading standard does not impose a probability requirement, but it demands "more than a sheer possibility that a defendant has acted unlawfully." *Id*. Although the court must accept the truth of all properly alleged facts and draw all reasonable inferences in the plaintiff's favor, the plaintiff still "must nudge the claim across the line from conceivable or speculative to plausible." *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021). The complaint must provide "more than labels and conclusions" or merely "a formulaic recitation of the elements of a cause of action," because "courts are not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, at 555. There must be something more than "naked assertions devoid of further factual enhancement." *Ashcroft,* at 678.

The court's role when reviewing "a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally

sufficient to state a claim for which relief may be granted." *Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991).

ARGUMENT

I. Court Lacks Subject Matter Jurisdiction to Review §1225(b)(1) Determinations

Petitioner does not contest he is an alien, does not contest that he was lawfully admitted or that he has been granted asylum. *See generally* Doc. 1. Even if Petitioner has a asylum parole claim, judicial review of the §1225(b)(1) determination itself would remain barred. *Vaupel,* at 895 ("There shall be no review of whether the alien is actually inadmissible or *entitled to any relief from removal"*) (emphasis added). Petitioner has not been granted asylum, and therefore the §1225(b)(1) determination remains outside the scope of judicial review. *Id.* at 894. Furthermore, while Petitioner's asylum claim is currently pending this matter is not ripe for judicial review.

For these reasons, the Court does not have subject matter jurisdiction to review this matter, and Petitioner's Writ of Habeas Corpus (Doc. 1) should be dismissed. To the extent Petitioner may assert a constitutional challenge that would confer jurisdiction, Petitioner similarly fails to establish jurisdiction because there is no exception in §1252(e) providing authority to review constitutional claims related to the application of §1225(b)(1).[3] *See generally* 8 U.S.C. § 1252(e).

II. Petitioner's Due Process Rights as §1225 "Arriving Alien" Have Been Met

Even should this Court find jurisdiction to review Petitioner's §1225(b)(1) removal order, which would cut against binding 10th Circuit precedence, Petitioner's limited due process rights have been met. Noncitizens in pre-removal detention generally fall within two categories: §1225 noncitizen arriving aliens seeking an initial entry and §1226 noncitizens who previously entered

[3] In another context, Congress has specifically authorized judicial review of constitutional claims, notwithstanding statutory limitations on judicial review. *See* 8 U.S.C. § 1252(a)(2)(D). But that provision applies to the construction of subparagraphs (B) and (C) of § 1252(a)(2), which are inapplicable here, and explicitly does not apply to other provisions of § 1252 limiting judicial review. It is also applicable only to constitutional claims raised in petitions for review filed in an appropriate court of appeals. *Id.*

the United States. Petitioner's temporary parole in the United States from November 2024 to June 2025 does not move him from the former into the latter classification, as the revocation of parole returns Petitioner to his original status. *See supra* n. 2. As an arriving alien under §1225, Petitioner has no due process protections beyond those afforded by statute. Petitioner has received all of the protections allowed by the relevant statutes, and therefore his due process challenge must fail. *See generally United States v. Verdugo-Urquidez*, 494 U.S. 259, 270–71 (1990); *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Thuraissigiam*, 591 U.S. at 131.

Additionally, ordering Petitioner's immediate release would be contrary to the law governing immigration habeas proceedings. For example, in the context of noncitizens detained under §1226(c), courts have repeatedly held that they lack authority to order a mandatory detainee's release pending conclusion of his immigration proceedings. *See generally Nyamekye v. Oddo*, 2023 WL 9271844, at *5 (W.D. Pa. Mar. 28, 2023) (denying request for immediate release and noting lack of authority to support such a request); *Davis v. Warden of Pike Cnty. Corr. Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022) ("The only remedy for an alien challenging their mandatory detention is a bond hearing") (citing *Hernandez T. v. Wolf*, 2020 WL 634235, at *3 (D.N.J. Feb. 11, 2020). Thus, even if a bond hearing was an available remedy for Petitioner, granting immediate release is not authorized or warranted.

III. Petitioner Has Failed to State a Claim Upon Which Relief May be Granted

Petitioner alleges Respondents violated 5 U.S.C. § 706(2)(A) of the APA by: 1) failing to articulate facts that led to termination of parole status, 2) failing to make an individual finding regarding danger to community or flight risk. Doc. 1, 33-37. Petitioner's allegations are without merit as they seek to impose requirements on DHS not contemplated by the law governing arriving aliens. *See* 8 C.F.R. § 212.5(e)(2)(i); *Supra* note 3. Petitioner cites no authority indicating this

process was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Id.* Similarly, Petitioner cites no authority that he would be entitled to *release* even if all Petitioner's allegations were accepted as true.

For these reasons, Petitioner has failed to state a claim upon which relief may be granted, and Petitioner's Writ of Habeas Corpus (Doc. 1) should be dismissed.

CONCLUSION

The Court should dismiss Petitioner's Writ for Habeas Corpus (Doc. 1) for the following separate and independent reasons: 1) it lacks subject matter jurisdiction, as §1225(b)(1) determinations are barred from judicial review and Petitioner's claims are not ripe; 2) Petitioner's due process rights as a §1225 "arriving alien" have been met as a matter of law; and 3) Petitioner has failed to state a claim upon which relief may be granted. For these reasons, individually or collectively, dismissal is appropriate.

Petitioner opposes this motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 5, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Allison Shokes
ALLISON SHOKES
Assistant United States Attorney