IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-3765-SKC-TPO

GRIGOR DEPELIAN,

Petitioner,

v.

JUAN BALTAZAR in his official capacity as Warden of the ICE Denver Contract Detention Facility, owned and operated by GEO Group,
ROBERT HAGAN, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Denver Field Office,
KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, and
PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

RESPONSE TO HABEAS PETITION (ECF No. 2)

Respondents respond to the Petition for Writ of Habeas Corpus (ECF No. 2). The Court should deny the Petition because Petitioner's detention is lawful. Petitioner is a noncitizen subject to mandatory detention during the pendency of his removal proceedings under 8 U.S.C. § 1225(b)(2). Due process does not require a bond hearing while Petitioner's removal proceedings are ongoing, especially where there is no suggestion of any improper or undue delay by the government in pursuing or completing the proceedings. Finally, even if this Court were to order

some relief, the Constitution does not require the specific bond-hearing procedures that Petitioner requests.

FACTUAL BACKGROUND

Petitioner is a citizen and native of Russia. Ex. A ¶ 4 (Decl. of Rosa Escareno). He applied for admission to the United States at the San Ysidro port of entry on October 18, 2022. *Id.* ¶ 5. Petitioner did not have a visa or other document authorizing his admission into the United States; he requested asylum in the United States. *Id.* U.S. Customs and Border Protection ("CBP") determined that Petitioner was inadmissible to the United States and, pursuant to its discretionary authority under 8 U.S.C. § 1182(d)(5), paroled Petitioner into the United States pending removal proceedings and his pursuit of asylum. *Id.*

After Petitioner was paroled into the United State, he was detained by DHS pursuant to 8 U.S.C. § 1225(b). *Id.* ¶ 6. At that point, he was issued a Notice to Appear ("NTA") initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 7. The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document) and classified him as an Arriving Alien. *Id.*

Petitioner was transferred to the custody of Immigrations and Customs Enforcement ("ICE") on October 21, 2022. *Id.* ¶ 8. He was detained at the Otay

Mesa Detention Center in San Diego, California. *Id.* On November 29, 2022, Petitioner appeared before an Immigration Judge ("IJ") and admitted the allegations and charge in the NTA. *Id.* ¶ 10. The IJ sustained the removal charge and scheduled a hearing for December 20, 2022, for Petitioner to file any applications for relief from removal. *Id.* ¶ 10.

A few days later, on December 2, 2022, Petitioner began a hunger strike in ICE custody. *Id.* ¶ 11. He also requested release from custody and presented ICE with documents in support of his request. *Id.* 8 U.S.C. § 1182(d)(5) grants DHS limited discretionary authority to grant parole on a case-by-case basis for urgent humanitarian reasons or a significant public benefit. *Id.* ¶ 13. A grant of parole is not an admission into the United States, and DHS may return an alien to custody when the purpose of parole has been satisfied. *Id.* Pursuant to that discretionary authority, ICE officials reviewed Petitioner's custody on December 21, 2022, and based on his hunger strike, granted him parole from custody. *Id.* ¶ 14. Petitioner had to pay a $5,000 bond and enroll in the Alternatives to Detention ("ATD") program, which required Petitioner to check in or report to ICE at scheduled intervals. *Id.* Petitioner paid the $5,000 bond and was released on parole. *Id.* ¶ 15. Petitioner's removal proceedings were transferred to the non-detained docket. *Id.* ¶ 16. Petitioner subsequently filed a Form I-589, Application for Asylum and for Withholding of Removal, on June 26, 2023. *Id.* ¶ 17.

In August 2025, ICE officials reviewed Petitioner's case and determined that

the purpose of parole had been served. *Id.* ¶ 19. ICE officials arrested Petitioner on August 28, 2025, terminating his enrollment in ATD and detaining him under 8 U.S.C. § 1225(b) pending resolution of the removal proceedings. *Id.* Petitioner's removal proceedings were transferred to the Aurora Immigration Court detained docket. *Id.* ¶ 20. On November 10, 2025, Petitioner appeared before the IJ for a merits hearing on his asylum application. *Id.* ¶ 23. At the conclusion of testimony, the IJ reserved his decision and advised that he would issue a written decision, which has not been issued as of the date of this filing. *Id.* ¶¶ 23-24.

Petitioner filed his habeas petition on November 25, 2025. *See* ECF No. 2. Petitioner challenges the revocation of his parole and subsequent detention during the pendency of his removal proceedings, and he seeks either immediate release or a bond hearing. *Id.* at 2-4, 15.

ARGUMENT

Petitioner raises two arguments in support of his habeas petition. First, he contends that the mandatory-detention provision in 8 U.S.C § 1225(b)(2) does not apply to him, despite the fact that he was detained at a port of entry as an applicant for admission. *See* ECF No. 2 at 14. Second, Petitioner asserts that his detention violates the Fifth Amendment's due process clause because DHS's decision to exercise its discretion to release him on parole for humanitarian reasons created an "implicit[] promise[]" that he would not be re-detained. *Id.* at 14-15. For relief, he seeks release from detention or, in the alternative, an order requiring "a bond

hearing at which the government will bear the burden of proving by clear and convincing evidence that his continued detention is justified and during which his ability to pay will be considered in fixing the amount of any bond." *Id.* at 15. As discussed below, both of Petitioner's arguments fail.

A. Petitioner is subject to mandatory detention under §1225(b)(2).

In the Immigration and Nationality Act ("INA"), Congress determined when certain aliens may or must be detained or removed. As relevant here, 8 U.S.C. § 1225 governs detention and removal of "applicants for admission." An applicant for admission is an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . . ." 8 U.S.C. § 1225(a)(1). Section 1225(b)(1) governs the inspection and detention of certain aliens who are arriving and inadmissible on various grounds not relevant here. *See* 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). Section 1225(b)(2) is a "catchall" provision that applies to those applicants for admission not covered by Section 1225(b)(1). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under Section 1225(b)(2)(A), any "applicant for admission" who is "seeking admission" into the United States and who an immigration officer determines is "not clearly and beyond a doubt entitled to be admitted," "shall be detained for" removal proceedings under 8 U.S.C. § 1229a. In other words, for those aliens subject to Section 1225(b)(2)(A), detention is mandatory during removal proceedings. Section 1225 does not provide for bond hearings during removal proceedings.

Noncitizens like Petitioner, who are detained at a port of entry, plainly fall into the statutory definition of "applicants for admission." Indeed, in the NTA that was issued to Petitioner after his encounter at the port of entry—which was attached as an exhibit to the Petition—DHS specifically designated Petitioner as "an arriving alien." *See* ECF No. 2-1 at 2; *see also* Ex. A ¶ 7 ("The NTA classified Petitioner as an Arriving Alien). Thus, Petitioner's reliance on cases involving aliens who were never inspected or detained at a port of entry, but rather were encountered within the United States after living in the country for years, is misplaced. *See* ECF No. 2 at 11. Petitioner is an "applicant for admission" under § 1225(b)(2)(A) and thus is subject to mandatory detention.

Petitioner's removal proceeding is ongoing. Petitioner admitted to the allegations and charges in the NTA, and the IJ sustained the removal charge, in 2022. Ex. A ¶ 10. Petitioner subsequently filed an application for asylum, *id.* ¶ 17, which remains pending after the IJ held a merits hearing on November 10, 2025, *id.* ¶¶ 23-24. Petitioner therefore continues to be subject to mandatory detention under 8 U.S.C. § 1225(b).[1]

[1] Petitioner does not complain about the pace of his removal proceedings or the corresponding length of his current detention—approximately three-and-a-half months as of the date of this filing. Rather, his petition centers on the fact he is detained *at all*.

B. Petitioner's detention does not violate due process.

Petitioner contends he has a "strong interest in being free from confinement" and that his due-process rights are violated by his detention. ECF No. 2 at 15. But, as the Supreme Court has long held, "the Government may constitutionally detain deportable aliens during the limited time necessary for their removal proceedings." *Demore v. Kim*, 538 U.S. 510, 526 (2003). Petitioner's arguments do not change that fundamental reality.

The political branches have broad power in the realm of immigration. 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) (citing cases). That prerogative flows from the political branches' broad power over immigration, which is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004). Thus, "[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) (citation omitted); *accord Sierra v. Immigration & Naturalization Servs.*, 258 F.3d 1213, 1218 (10th Cir. 2001) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). As a Court in this district recently explained it, "[t]his does not mean that an inadmissible arriving alien has no due-process rights, but 'rather, the applicable statutory process shapes [his]

procedural due-process rights.'" *Richards v. Choate*, No. 25-cv-03134-DDD-STV, ECF No. 19, at 8 (D. Colo. Dec. 5, 2025) (quoting *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212 (D.N.M. 2020), in which the court concluded that the petitioner, who was detained under 8 U.S.C. § 1225(b)(2)(A), "has no statutory right to release or a bond hearing" and thus "has no due-process right to the relief requested")).

The Supreme Court has held that "aliens 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.'" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (emphasis added). Here, as discussed, Petitioner's detention pending removal is authorized—indeed, *mandatory*—under section § 1225(b)(2) of the INA because he was, and is, an "applicant for admission."

Petitioner points to the fact that, after his encounter and detention at a port of entry, he was released on parole and then, more recently, re-detained. But under the plain language of the INA, these facts do not support the relief he seeks. 8 U.S.C. § 1182(d)(5)(A) provides that DHS "may," with certain exceptions not relevant here, "in [its] discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States." The statute continues:

> such parole of such 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.

Id. (emphases added). That is, after DHS determined the purpose of Petitioner's parole was served and he was re-detained, Ex. A ¶ 19, Petitioner was back to the same status as he was at the port of entry: as an applicant for admission subject to mandatory detention under § 1225(b)(2). *Cf. Richards*, No. 25-cv-03134-DDD-STV, ECF No. 19 (denying motion for preliminary injunction in a habeas case brought by a lawful permanent resident who lost that status as a result of a criminal conviction, left the United States, and was detained when he attempted to re-enter the country at a port of entry as an applicant for admission under § 1225(b)(2)); *Basra v. Napolitano*, No. 09–4264 (JLL), 2010 WL 1027410, at *1-3 (D.N.J. Mar. 17, 2010) (denying habeas petition under similar circumstances).

Petitioner's argument that he was entitled to a hearing before being re-detained based on an "implied promise" similarly fails. The out-of-circuit, non-binding cases Petitioner cites for this premise, *see* ECF No. 2 at 13, rely on *Morrissey v. Brewer*, 408 U.S. 471 (1972) and cases similar to it.[2] But *Morrissey* and

[2] Two of the cases Petitioner cites, *Sampiao v. Hyde*, No. 25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) and *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) do not analyze the "implicit promise" theory espoused by Petitioner. In fact the court in *Lopez Benitez* made clear that it was *not* requiring "some sort of adversarial hearing-like process" before DHS could exercise its discretion to detain

its ilk did not arise in the immigration context, in which Congress and the executive branch have broad power. *See, e.g.*, *Flores-Montano*, 541 U.S. at 152-53. And those cases pre-dated *Thuraissigiam*, in which the Supreme Court made clear that an arriving alien has no entitlement to procedural rights other than those afforded by statute. *See* 591 U.S. at 139-40.

Petitioner points to no statutory authority requiring a hearing before he was re-detained. Indeed, the text of 8 U.S.C. § 1182(d)(5)(A) makes clear that parole "***shall*** forthwith" be revoked "when the purposes of such parole shall, ***in the opinion of the Secretary of Homeland Security***, have been served." (emphases added).

C. Even if Petitioner's arguments are correct—which they are not—he is not entitled to release or a bond hearing at which the government bears the burden.

Petitioner seeks either "immediate[] release" or a bond hearing. ECF No. 2 at 15. Even if the Court credits Petitioner's arguments about the basis for his detention or purported due-process violations in his re-detention, the remedy for such ills is not release. Rather, if the Court finds that Petitioner is detained not under § 1225(b)(2) but under § 1226(a)(1), the proper remedy is a bond hearing—as expressly contemplated in § 1226(a)(1). Similarly, if the Court finds that

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a non-citizen under § 1226(a) (the provision under which the court found that petitioner to be detained, based on the specific facts of that case). *See id.* at 491, 494.

Petitioner's re-detention lacked sufficient process, the appropriate remedy is not release, but more process.

Petitioner requests that, if a bond hearing is granted, the government should bear the burden to prove by "clear and convincing evidence that his continued detention is justified." ECF No. 2 at 15. The Petition offers no authority for that proposed burden allocation.

The government has flexibility in establishing the procedural rules for bond hearings, particularly where, as here, "any policy toward aliens is vitally and intricately interwoven with contemporaneous polices in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Basri v. Barr*, 469 F. Supp. 3d 1063, 1072 (D. Colo. 2020) (quotations omitted) (quoting *Demore*, 538 U.S. at 522). Congress demands that a noncitizen seeking admission "shall be detained" pending removal proceedings. 8 U.S.C. § 1225(b)(2)(A) (emphasis added). A noncitizen applicant for admission bears the burden of establishing that they are "clearly and beyond a doubt entitled to be admitted and is not inadmissible." 8 U.S.C. § 1229a(c)(2)(A). Petitioner's proposed allocation of the burden of proof would flip this statutory command on its head. Thus, even if the Court were to reach the argument of the allocation of burden at a bond hearing—which it should not—the Court should not put the burden on the government to show that bond is not appropriate

CONCLUSION

The Court should deny the habeas petition.

Respectfully submitted December 15, 2025.

PETER MCNEILLY
United States Attorney

s/ Alexandra J. Berger
Alexandra J. Berger
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: alexandra.berger@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Alexandra J. Berger
U.S. Attorney's Office