

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 26-cv-00094-TPO

ABDERRAHMANE MAMADOU GUEYE,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security;  
PAMELA BONDI, U.S. Attorney General;  
ROBERT HAGAN, Field Office Director, Denver Field Office, Immigration and Customs  
Enforcement; and  
JUAN BALTAZAR, Warden of Denver Contract Detention Facility;

Respondents.

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**RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE (ECF NO. 4)**

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Respondents submit this Response to Petitioner's Writ of Habeas Corpus (ECF No. 1, the Petition) and the Court's Order to Show Cause (ECF No. 4). As explained below, the Court should deny the Petition because Petitioner's detention is authorized by statute, and his other challenges to his detention are unavailing.

**INTRODUCTION**

Petitioner entered the United States, was deemed inadmissible, applied for asylum (an application which remains pending), and is now in removal proceedings (which are also pending). The Department of Homeland Security (DHS) is currently detaining him under Section 235(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1225(b)),

which applies to a noncitizen<sup>1</sup> who, like Petitioner, is “an applicant for admission” determined inadmissible. Two statutory provisions—8 U.S.C. § 1225(b)(1) and § 1225(b)(2)—mandate his detention. Section 1225(b)(1) “mandate[s] detention of applicants for admission” until their asylum application proceedings have ended, while § 1225(b)(2) generally mandates detention for applicants for admission in removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

Petitioner argues that, because he was released and remained within the United States and then detained and released again before his current detention, he is no longer subject to § 1225, but rather § 1226. He is incorrect. His immigration history since originally being detained at the border does not change status as an “applicant for admission” under § 1225. The Court should therefore conclude that Petitioner is an applicant for admission within the scope of § 1225(b) based on the text of the statute and the interpretation of that statutory provision by the Supreme Court in *Jennings* and deny Petitioner’s requests for relief.

## BACKGROUND

### I. Petitioner was originally detained under 8 U.S.C. § 1225(b)(1).

Petitioner is a native and citizen of Mauritania who applied for admission to the United States at the San Ysidro, California Port of Entry in 2018. Ex. 1, Benner Decl. ¶¶ 4–5. After determining that he was inadmissible, U.S. Customs and Border Patrol detained Petitioner and processed him for expedited removal under 8 U.S.C. § 1225(b)(1).

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<sup>1</sup> The INA uses the term “alien,” which is defined as “any person not a citizen or national of the United States.” 8 U.S.C. § 1101(a)(3).

*Id.* ¶ 5.

Petitioner sought asylum. He claimed fear of persecution if returned to Mauritania and was therefore referred for a credible fear interview by an asylum officer pursuant to § 1225(b)(1)(A)(ii). *Id.* ¶ 6. While credible fear proceedings were pending, he was transferred to ICE custody. *Id.* ¶ 7.

Later, in July of 2018, DHS issued a Notice to Appear, initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 9. Petitioner was charged with being inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I)—which applies to an 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 as an Arriving Alien. *Id.* An immigration judge ordered his release on bond in December of 2018, and Petitioner posted bond and was released from custody in February of 2019. *Id.* ¶ 11.

## **II. Petitioner's subsequent immigration history.**

In 2020, Petitioner was detained at the Hamilton County Jail in Ohio and subsequently convicted of Criminal Damaging or Endangering in violation of Ohio Rev. Code § 2909.06(A)(1). *Id.* ¶¶ 10, 13–14. ICE took custody of Petitioner on September 30, 2020, upon his release from state custody. *Id.* ¶ 15. ICE then released him on an order of supervision. *Id.* ¶ 19. Then, on May 15, 2025, ICE terminated Petitioner from supervision and detained him under § 1225(b)(1). *Id.* ¶¶ 25, 31.

Petitioner also filed an application for asylum back in 2018, which was denied by an Immigration Judge in 2021. *Id.* ¶¶ 10, 18. Petitioner noticed an appeal of the denial

but has not timely filed an appeal brief; DHS mailed a motion for summary dismissal of Petitioner's appeal on January 22, 2026. *Id.* ¶¶ 20–2. The Immigration Judge's denial of the asylum application is therefore not yet administratively final. *Id.* ¶ 30.

### **III. The Petition.**

Petitioner filed his habeas petition on January 9, 2026. ECF No. 1. He argues that he is not subject to § 1225 but rather § 1226 and seeks release or a bond hearing.<sup>2</sup> See *generally id.* He argues that Respondent's application of § 1225 is contrary to the law and his ongoing detention violates due process. See *generally id.* He asks that he be released from custody "with all of his personal belongings under the reporting and monitoring conditions of his prior release," or alternatively, given a bond hearing under § 1226(a). *Id.* at 19.

On January 12, 2026, this Court ordered the Petitioner to serve the Petition and the Order to Show Cause on Respondents by January 15, 2026, and Respondents to show cause why the Petition should not be granted by January 22, 2026. ECF No. 4.

### **IV. Legal Background**

In the INA, Congress established rules governing when certain noncitizens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of noncitizens who are "applicants for admission." An "applicant for admission" is an "alien present in the United States who has not been admitted or who

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<sup>2</sup> Petitioner argues that the Court should not impose administrative exhaustion requirements here. ECF No. 1, at 5. Respondents do not contend here that Petitioner would need to further exhaust his administrative remedies before seeking a judicial remedy in this case.

arrives in the United States (whether or not at a designated port of arrival)." 8 U.S.C. § 1225(a)(1).

Two provisions relevant here mandate the detention of certain applicants for admission. Section 1225(b)(1) governs the inspection and detention of certain noncitizens who are arriving and inadmissible on various grounds, such as not being in possession of valid entry documents. See 8 U.S.C. § 1225(b)(1)(A)(i)–(iii) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). Section 1225(b)(2) is a "catchall" provision that applies to those applicants for admission not covered by § 1225(b)(1). See *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under § 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 § 1225(b)(2)(A), detention is mandatory during removal proceedings. Section 1225 does not provide for bond hearings during removal proceedings.

By contrast, *other* individuals in the country not covered by § 1225 may be detained under § 1226. *Jennings*, 583 U.S. at 288–89. Sections 1225(b)(2) and 1226(a) authorize the detention of different sets of individuals: the detention of noncitizens covered by § 1225 is authorized by § 1225, while the detention of individuals who *were* admitted (such as on a visa) and then were placed in removal proceedings is covered by § 1226:

U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

See *id.* at 289.

The Supreme Court “has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). Detention “gives immigration officials time to determine an alien’s status without running the risk of the alien’s either absconding or engaging in criminal activity before a final decision can be made.” *Jennings*, 583 U.S. at 285.

## ARGUMENT

### I. Petitioner is subject to § 1225.

#### A. Respondent is an “applicant for admission” under § 1225.

Petitioner argues that Respondents’ reading of the statutes is contrary to weight of district court decisions and that § 1225 does not apply to him because, as a noncitizen who was detained in the interior of the country years after his initial entry, he is not currently “seeking admission” within the meaning of § 1225. ECF No. 1, at 10–11. But, to Petitioner’s point, though many district courts have addressed this issue, no binding precedent has issued and many district courts, including within this circuit, have ruled in favor of Respondents’ position.<sup>3</sup> Petitioner’s position is also not supported by the statutory language or *Jennings*, which do not limit the application of § 1225 only to those noncitizens

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<sup>3</sup> *E.g.*, *Montoya, v. Holt, et al.*, No. CIV-25-01231, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at \*4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at \*2-3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at \*6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

who have recently arrived.

The language Congress used in § 1225 confirm that it deemed, as a matter of law, *anyone* falling within the category of “applicant for admission” to be “seeking admission” by virtue of that status. See 8 U.S.C. § 1225(a)(3) (“All aliens . . . who are applicants for admission or otherwise seeking admission . . . shall be inspected by immigration officers.” (emphasis added)); *id.* § 1225(a)(5) (“An applicant for admission may be required to state . . . the purposes and intentions of the applicant *in seeking admission* . . . .” (emphasis added)). As the Western District of Oklahoma explained:

Section 1225(a)(1) “deem[s]” “an alien present in the United States who has not been admitted . . . an applicant for admission.” The statute doesn’t describe what the alien is doing. *It imposes a status by operation of law.* Section 1225(a)(3) then says “[a]ll aliens . . . who are applicants for admission or otherwise seeking admission” shall be inspected. The word “otherwise” establishes that “aliens . . . seeking admission” is the category to which “applicants for admission” belong. If “applicants for admission” are subject to inspection because they fall within the broader class of those “seeking admission,” then the statute necessarily treats “seeking admission” as a condition that attaches to anyone deemed an “applicant for admission.”

And because § 1225(a)(1) imposes that label on every “alien present in the United States who has not been admitted,” the condition of “seeking admission” is likewise imposed. “Seeking” does not describe what the alien is voluntarily doing or the alien’s mindset. The alien is “seeking admission” in the same way the alien is “an applicant for admission”—by congressional decree.

*Montoya*, 2025 WL 3733302, at \*9 (emphasis added). In other words, the *status* of being an “applicant for admission” is but one way a noncitizen may be “seeking admission.”

The *Jennings* Court recognizes that the definition of “applicant for admission” does not impose any additional requirements, such as that the person only recently arrived in

the United States or submitted an immigration application. See 583 U.S. at 287–89. Rather, the Court found that the only necessary criteria are that the alien be (1) “present in this country” and (2) “not admitted.” *Id.* at 287. Thus, based on the language of the statute and *Jennings*, § 1225 applies to Petitioner.

**B. Respondent’s interpretation of § 1225 does not render the “seeking admission” language superfluous.**

Petitioner argues that Respondent’s reading of § 1225 equates the phrase “applicant for admission” with “seeking admission,” rendering the latter superfluous, violating basic principles of statutory interpretation. ECF No. 1, at 15. This is incorrect, and an inaccurate representation of Respondents’ position.

As explained above, the phrase “applicant for admission” confers a status by operation of law and is just one way that a noncitizen may be “seeking admission.” In other words, the phrase “seeking admission” in § 1225(a)(3) is not *equivalent* to “applicant for admission,” but rather denotes a *broader* class of noncitizens to which an “applicant for admission” belongs. In using this phrase, Congress “leaves open the possibility that some aliens who are not applicants for admission may nonetheless be ‘seeking admission.’” *Montoya*, 2025 WL 3733302, at \*8–9.

**C. Respondent’s interpretation does not render the mandatory detention provisions of § 1226 unnecessary.**

Petitioner next argues that Respondents’ interpretation of § 1225 would render the mandatory detention provisions of § 1226 “unnecessary.” ECF No. 1, at 16. This is not so, because § 1226’s detention provisions apply to situations other than those covered by § 1225. As explained in *Montoya*:

First, parts (A) and (D) of § 1226(c)(1) still operate when an alien is erroneously found admissible. This is because the statutes referenced in parts (A) and (D) of § 1226(c)(1) apply to “any alien.” 8 U.S.C. § 1182(a)(2), (a)(3)(B). If an applicant for admission is erroneously admitted, he or she is no longer subject to § 1225. Such an alien may later be found to have been inadmissible in the first instance under parts (A) and (D) of § 1226(c)(1). To define or narrow the scope of a statute does not render it superfluous. . . .

2025 WL 3733302, at \*11.

With respect to 1226(c)(1)(E), this subsection “applies to *all* aliens who commit certain *crimes*, while § 1226(b)(2)(A) reaches only applicants for admission regardless of criminal history.” *Id.* Section 1226(c)(1)(E) therefore employs a different enforcement mechanism whereby detention is procured by the issuance of a warrant, and not all noncitizens who fall under 1226(b)(2)(A) fall under 1226(c)(1)(E). *Id.*

**D. Respondent’s position is supported by legislative history.**

The legislative history further supports Respondent’s view of § 1225’s scope. Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA) to stop conferring greater privileges and benefits on those who entered the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“H. Rep.”) (“[I]llegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection.”). The Act had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

Thus, in enacting what is now 8 U.S.C. § 1225, which requires the detention of any alien “who is an applicant for admission” and defines that term to encompass any alien present in the United States who has not been admitted following inspection by immigration authorities, Congress made the “pivotal factor in determining an alien’s status” “whether or not the alien has been *lawfully* admitted.” H. Rep. at 225 (emphasis added).

In sum, under the framework described in *Jennings*, Petitioner is an applicant for admission and is properly detained under § 1225(b). He does not show otherwise.

**II. As a noncitizen “who arrive[d] in the United States” and was “seeking admission” at the border at the time of his initial detention, Petitioner remains an applicant for admission under 8 U.S.C. § 1225.**

Petitioner was originally apprehended at the border and detained under § 1225(b)(1) and is therefore properly classified as an applicant for admission under §1225. He is also charged with being inadmissible under § 1182(a)(7)(A)(i)(I). Respondents properly detained Petitioner under § 1225, and this Court should not find otherwise and disturb decades of Supreme Court precedent outlining the political branches’ authority to control initial entry and admissions into the United States.

**A. Petitioner’s classification within § 1225 has never changed.**

Petitioner argues that his detention and then release in 2021 “converted” his status from under § 1225 to § 1226, but this interpretation is not supported by Supreme Court precedent or the statutes. ECF No. 1, at 13. Petitioner was originally detained at the border as an asylum applicant under § 1225(b)(1) and then released on bond. Since his release, nothing has changed his status as an “applicant for admission” under § 1225, despite his arguments to the contrary.

The *Jennings* Court explicitly stated that the release of such noncitizens “shall not be regarded as an admission” of the noncitizen and “when the purpose of the parole has been served, the noncitizen “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.” 583 U.S. at 288 (emphasis added) (quoting 8 U.S.C. § 1182(d)(5)(A)). In other words, Petitioner’s status as an inadmissible, applicant for admission does not change, even if he is released into the country. Accordingly, the fact that Petitioner was later detained again and “spent time in the United States after being released on an order of recognizance” does not change the fact that he falls within the scope of § 1225. *Garcia v. United States*, No. 2:25-cv-1053-KCD-DNF, 2025 WL 3537592, at \*1 (M.D. Fla. Dec. 10, 2025) (denying a habeas petition where the petitioner was originally apprehended at the border but then released on his own recognizance before being detained again).

**B. Respondents’ decision to detain Petitioner under § 1225 is supported by Supreme Court precedent.**

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 [initial] entry is concerned.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212

(1953) (citation omitted). And, under the “entry fiction” doctrine, “[a]lthough aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never having effected entry into this country.” *Gisbert v. U.S. Att’y Gen.*, 988 F.2d 1437, 1440 (5th Cir. 1993).

The Supreme Court has also recognized that noncitizens seeking initial admission to the United States, like Petitioner, do not have the same constitutional protections as individuals who have entered the United States:

[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 Court has recognized additional rights and privileges not extended to those in the former category who are merely “on the threshold of initial entry.”

*Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Mezei*, 345 U.S. at 212). In *Zadvydas v. Davis*, the Supreme Court reiterated that “[i]t is well-established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders.” 533 U.S. 678, 693 (2001) (internal citations omitted). Moreover, the Supreme Court “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to [U.S.] citizens.” *Demore v. United States*, 538 U.S. 510, 522 (2003) (citing, e.g., *Matthews v. Diaz*, 426 U.S. 67, 79–80 (1976)).

Because of the strong national interest at the border and the diminished constitutional protections enjoyed by noncitizens seeking admission into the United States, the

Supreme Court has held that noncitizens, like Petitioner, seeking initial entry may be subject to detention without the possibility of release pending admission or removal. In *Mezei*, the Supreme Court held that a noncitizen's detention at the border without a hearing did not violate due process. Mezei arrived at Ellis Island seeking admission into the United States. Although he had resided in the United States previously, he had since been "permanently excluded from the United States on security grounds." *Mezei*, 345 U.S. at 207. His home country would not accept him, and he had been detained for more than a year and a half when he filed a habeas action seeking release into the United States. *Id.* at 207–08; see *United States ex rel. Mezei v. Shaughnessy*, 101 F. Supp. 66, 66 (S.D.N.Y. 1951). The Supreme Court held that Mezei's detention was lawful and did not "deprive[] him of any statutory or constitutional right." 345 U.S. at 215.

The Supreme Court reiterated that "the power to expel or exclude" noncitizens is a "fundamental sovereign attribute exercised by the Government's political departments" that is "largely immune from judicial control." *Id.* at 210. A noncitizen seeking to enter the United States, like Mezei (and Petitioner here), is "on the threshold of initial entry [and] stands on a different footing" than a noncitizen within the United States. *Id.* at 212–13. A noncitizen within the United States, even illegally, "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at 212. But for those seeking admission like Petitioner, "[w]hatever the procedure authorized by Congress is, it is due process." *Id.* at 212 (internal quotation marks omitted). The Supreme Court has affirmed that *Mezei* remains binding law with respect to its findings on the due process rights afforded to arriving noncitizens. See *Dep't of Homeland*

*Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1982–83 (2020) (holding that an arriving noncitizen has no entitlement to procedural rights other than those afforded by statute (*citing Mezei*, 345 U.S. at 212)).

Supreme Court decisions post-dating *Mezei* suggest that *Mezei* and the entry fiction it relies upon remain good law. In *Zadvydas*, for instance, the Supreme Court distinguished the petitioners' due process challenge from the due process challenge in *Mezei* on the ground that the petitioners in *Zadvydas* had been admitted to the United States. In so doing, the Supreme Court did not question *Mezei* or its logic, instead characterizing *Mezei*'s principles as well established:

Although *Mezei*, like the present cases, involves indefinite detention, it differs from the present cases in a critical respect. As the Court emphasized, the alien's extended departure from the United States required him to seek entry into this country once again. His presence on Ellis Island did not count as entry into the United States. Hence, he was "treated," for constitutional purposes, "as if stopped at the border." And that made all the difference. The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.

*Zadvydas*, 533 U.S. at 693 (citations omitted).

Accordingly, consistent with decades of Supreme Court precedent, this Court should not disturb the political branches' considered judgments and authority to control initial entry and admission to the United States. Because Petitioner stands in the shoes

of an arriving noncitizen on the threshold of entry, he is properly detained.

### **III. Petitioner's detention does not violate due process.**

Petitioner additionally claims that he is entitled to habeas relief as a matter of due process. See ECF No. 1, at 16–19. The Court should reject this argument because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), as set forth above, and he has received the process that is required by statute.

First, for Petitioner to show that he has been denied due process, he would need to show that he has been deprived of a statutory right. The Supreme Court has “often reiterated” the “important rule” that for “foreigners who have never been . . . admitted into the country pursuant to law,” “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020). There, the Court explained that an alien who was an “applicant for admission” had “only those rights regarding admission that Congress has provided by statute,” and “the Due Process Clause provides nothing more.” *Id.* at 140.

Second, Petitioner has not shown any prejudice. He has not shown that he has been denied due process by being denied procedures in his immigration proceedings, where he can challenge the determination that § 1252(b) applies to him. As he will have that opportunity through his immigration proceedings, he has not shown a violation of his rights to procedural due process. See *Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (rejecting due process claim where a noncitizen failed to show “that additional procedural safeguards would have changed” the immigration court’s decision). Petitioner has failed to demonstrate that the Fifth Amendment requires any additional

process be provided to him.

Finally, Petitioner's detention does not violate substantive due process, either. Congress's decision to detain him pending his removal is a "constitutionally permissible part of [this] process." See *Demore*, 538 U.S. at 531. His removal proceedings are moving toward a definite endpoint. Pending the finalization of the Immigration Judge's decision denying Petitioner asylum relief, Petitioner will be removed. See Ex. 1 ¶¶ 18, 29–30.

#### **IV. Petitioner should not be granted immediate release.**

Even if the Court determined that Petitioner should be detained under § 1226 rather than § 1225, the appropriate relief would be to order Petitioner to receive a bond hearing (as he says he would be entitled to under § 1226(a)), not immediate release. Section 1226(a) does not require release—it provides DHS the *discretion* to grant a noncitizen release on bond.

#### **CONCLUSION**

For the reasons discussed above, the Court should dismiss or deny the Petition.

Dated: January 22, 2026.

Respectfully submitted,

PETER MCNEILLY  
United States Attorney

s/ Winnie D. Wu

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**CERTIFICATE OF SERVICE**

I certify that on January 22, 2026, 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/ Winnie D. Wu  
U.S. Attorney's Office