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

Civil Action No. 26-cv-00095-RBJ

SERHAT GUNES,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary,
TODD M. LYONS, in his official capacity,
ROBERT HAGAN, in his official capacity,
JUAN BALTAZAR, in his official capacity,

Respondents.

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**CONSOLIDATED RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 7) AND PETITIONER'S MOTION FOR AN EMERGENCY TEMPORARY RESTRAINING ORDER (ECF No. 5)**

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Pursuant to the Court's Order, ECF No. 7, Respondents hereby submit this consolidated response to the Amended Petition for Writ of Habeas Corpus, ECF No. 4, and Motion for an Emergency Temporary Restraining Order, ECF No. 5. The Amended Petition and Motion should be denied because Petitioner is properly detained under 8 U.S.C. § 1225(b)(1) following termination of his discretionary parole under 8 U.S.C. § 1182(d)(5)(A).[1]

[1] The Amended Petition, ECF No. 4, and Motion, ECF Nos. 5 and 5-4 (Memorandum of Law in Support of Motion) seek relief based on substantially similar grounds. Respondents therefore address Petitioner's arguments together and aver that the Court should deny both on the same grounds; namely, that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1).

## FACTUAL BACKGROUND

### A. Petitioner's initial detention under 8 U.S.C. §1225(b)(1)

Petitioner is a citizen and native of Turkey. Ex. A ¶ 4 (Decl. of Mark Kinsey). He entered the United States without inspection or parole on November 9, 2024. *Id.* ¶¶ 5-6. He encountered U.S. Customs and Border Protection ("CBP") shortly after he entered the United States. *Id.* ¶ 5. CBP determined that Petitioner is inadmissible to the United States, detained him, and processed him for expedited removal pursuant to 8 U.S.C. § 1225(b)(1). Ex. A ¶¶ 7-8. Petitioner was transferred to the custody of U.S. Immigration and Customs Enforcement ("ICE") to effectuate his removal to Turkey. *Id.* ¶ 9.

On or about November 21, 2024, Petitioner claimed fear of persecution if returned to Turkey. *Id.* ¶ 10. He was referred to an asylum officer from U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii). Ex. A ¶ 10. On December 7, 2024, USCIS determined that Petitioner had established a credible fear of persecution or a reasonable probability of persecution. *Id.* ¶ 11. USCIS issued a Notice to Appear ("NTA"), initiating removal proceedings under 8 U.S.C. § 1229a, and charging Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated) and 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). Ex. A ¶ 11. The NTA scheduled Petitioner for an initial hearing in removal proceedings on August 12, 2025. *Id.* Petitioner remained in detention pursuant to 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 (within the meaning of clause (v)), the alien ***shall be detained*** for further consideration of the application for asylum." (emphasis added)).

**B. Petitioner's discretionary parole under 8 U.S.C. § 1182(d)(5)(A)**

On January 3, 2025, ICE exercised its discretionary authority to parole Petitioner into the United States under 8 U.S.C. § 1182(d)(5)(A). Ex. A ¶ 13. ICE issued an Interim Notice Authorizing Parole, dated January 3, 2025, which granted Petitioner parole into the United States "for one year beginning from the date on th[e] notice." *Id.*; *see also* ECF No. 4-2 at 2. The Notice informed Petitioner that his parole would "automatically terminate upon [his] departure or removal from the United States or at the end of the one-year period," *i.e.*, on January 3, 2026. *See* ECF No. 4-2 at 2. The Notice further informed Petitioner that "ICE may also terminate parole on notice prior to the automatic termination date," and that "Parole is entirely within the discretion of ICE and can be terminated at any time and for any reason." *Id.* Petitioner was released from ICE custody on January 4, 2025. Ex. A ¶ 14.

About three months after Petitioner was paroled into the United States, he filed a Form I-589, Application for Asylum and for Withholding of Removal on March 24, 2025. *Id.* ¶ 15. On April 28, 2025, Petitioner filed written pleadings to the NTA and admitted the allegations and charges in the NTA. *Id.* ¶ 16. On December 31, 2025, ICE officers encountered Petitioner and arrested and detained him pending resolution of removal proceedings. *Id.* ¶ 17. Petitioner's parole automatically terminated four days later, on January 3, 2026. Petitioner is detained under 8 U.S.C. § 1225(b)(1). Ex. A ¶ 21.

Petitioner filed this habeas action on January 9, 2026. *See* ECF No. 1. He challenges his

detention and the termination of his discretionary parole. *See* ECF No. 4 (Amended Habeas Petition). He raises three principle arguments in support of the Amended Petition. ***First***, he contends that he is not subject to mandatory detention under 8 U.S.C. § 1225(b)***(2)***; he should instead be detained under 8 U.S.C. § 1226(a), which requires a bond hearing; and his detention without a bond hearing is unlawful. ECF No. 4 ¶¶ 98-111. ***Second***, Petitioner challenges the termination of his parole. He argues that his discretionary release on parole created a "substantial liberty interest" and because the purpose of his parole has not been accomplished his re-detention violates 8 U.S.C. § 1182(d)(5)(A) and the due-process clause. *See* ECF No. 4 ¶¶ 112-18. ***Third***, Petitioner argues that Respondents did not properly terminate his parole under 8 C.F.R. § 212.5—the implementing regulation for § 1182(d)(5)(A). *See* ECF No. 4 ¶¶ 119-133. Petitioner seeks immediate release or a bond hearing under § 1226(a). *See* ECF No. 4 at 26-27 (Prayer for Relief).[2]

**ARGUMENT**

The Court should deny the Petition. As explained below, Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(1)(B)(ii) and his previous discretionary parole under 8 U.S.C. § 1182(d)(5)(A) does not change that. Furthermore, Petitioner is not entitled to release or a bond hearing based on any deficiency in the process by which Respondents terminated his parole.

**A. Petitioner is subject to mandatory detention under § 1225(b)(1).**

In the Immigration and Nationality Act, Congress determined when certain aliens may or

[2] Petitioner seeks various other forms of relief. *See* ECF No. 4 at 26-27 (seeking, among other things, the return of certain personal property in "the event of Petitioner's release" and a declaration that Respondents have "failed to adhere to [their] regulations"). Respondents do not concede that Petitioner is entitled to any form of relief in this action.

must be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the 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). Petitioner plainly falls into the statutory definition of an "applicant for admission." He entered the United States on November 9, 2024, without admission or parole, Ex. A ¶¶ 5-6, and he is therefore an "alien present in the United States who has not been admitted . . . ." 8 U.S.C. § 1225(a)(1).

Section 1225(b)(1) and (b)(2) further specify that "applicants for admission" are subject to mandatory detention, albeit under different circumstances. Section 1225(b)(1) governs the inspection and detention of certain aliens who are arriving and inadmissible on various grounds. *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 § 1225(b)(1). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Contrary to Petitioner's assertions, this case involves detention under § 1225(b)***(1)***, not § 1225(b)***(2)***. As explained by the Supreme Court in *Jennings*, § 1225(b)(1) applies to two subcategories of applicants for admission. One subcategory is certain arriving noncitizens: those who have been "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. § 1225(b)(1)(A)(i)). Another subcategory is certain noncitizens who are designated by the Attorney General in their discretion and who are unlawfully present without being admitted and also are recent arrivals, *i.e.*, who have "not been admitted or paroled into the United States, and . . . ha[ve] not affirmatively shown, to . . . ha[ve] been physically present in the United States continuously for the 2-year

period immediately prior to the date of the determination of inadmissibility . . . ." *See id.*; 8 U.S.C. § 1225(b)(1)(A)(iii). Noncitizens in those two subcategories are subject to a process known as "expedited removal." *Jennings*, 583 U.S. at 287 ("Aliens covered by § 1225(b)(1) are normally ordered removed 'without further hearing or review' pursuant to an expedited removal process." (quoting 8 U.S.C. § 1225(b)(1)(A)(i))).

Here, Petitioner was subject to expedited removal under § 1225(b)(1). At the time Petitioner encountered CBP on November 9, 2024, he plainly fell into the second subcategory of citizens subject to § 1225(b)(1)(A)(iii): he had not been admitted or paroled into the United States, nor had he been physically present in the United States for a continuous two-year period prior to his detention.[3] Ex. A ¶¶ 5-8. He was therefore processed for expedited removal pursuant to 8 U.S.C. § 1225(b)(1). Ex. A ¶ 8.

As relevant here, noncitizens subject to § 1225(b)(1) are ordered "removed from the United States without further hearing or review ***unless*** the alien indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added). Aliens who indicate an intent to apply for asylum or a fear of persecution are referred for an interview by an asylum officer. *Id.* § 1225(b)(1)(A)(ii). Such aliens "***shall be detained*** pending a final determination of credible fear of persecution." *Id.* § 1225(b)(1)(B)(iii)(IV) (emphasis added). If an asylum officer determines that an alien does not have a credible fear of persecution, then the alien is ordered removed "without further hearing or review," *id.* § 1225(b)(1)(B)(iii)(I),

[3] For this reason, Petitioner is differently situated then aliens who were never inspected or detained but rather were encountered within the United States after living in the country for ***years***. Thus, the Amended Petition's discussion of those cases, in which courts have found that such aliens are properly subject to detention under 8 U.S.C. § 1226(c), are inapposite.

and "shall be detained . . . until removed," *id.* § 1225(b)(1)(B)(iii)(IV). If an asylum officer determines that an alien ***does*** have a credible fear or persecution (like Petitioner), then the "alien ***shall be detained*** for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii) (emphasis added).

Here, Petitioner is subject to mandatory detention under this last provision, § 1225(b)(1)(B)(ii). During his initial detention by ICE, Petitioner stated a fear of persecution if he were removed to Turkey. Ex. A ¶ 10. He was referred to an asylum officer for an interview, and USCIS concluded that Petitioner had established a credible fear. *Id.* ¶¶ 10-11. At that point, pursuant to § 1225(b)(1)(B)(ii), Petitioner became subject to mandatory detention pending further consideration of an application for asylum.

Petitioner's discretionary parole into the United States under 8 U.S.C. § 1182(d)(5)(A) did not change his status as an applicant for admission subject to mandatory detention under § 1225(b)(1)(B)(ii). In authorizing discretionary parole into the United States under § 1182(d)(5)(A), Congress specifically prescribed that

> 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***.

8 U.S.C. § 1182(d)(5)(A) (emphases added). Accordingly, Petitioner's parole into the United States was not any form of "admission" and, upon termination of the parole, he was back to the same status as he was when he was released on parole: subject to mandatory detention under § 1225(b)(1)(B)(ii). *Cf. Depelian v. Baltazar, et al.*, No. 25-cv-3765-SKC-TPO, ECF No. 18, at 8-9 (D. Colo. Jan. 20, 2026) (concluding that alien who presented at port of entry, was initially

subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and was subsequently paroled into the United States under 8 U.S.C. § 1182(d)(5)(A), was again subject to mandatory detention under § 1225(b)(2) upon his re-detention); *Richards v. Choate*, No. 25-cv-03134-DDD-STV, ECF No. 19, at 8 (D. Colo. Dec. 5, 2025) (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)).

**B. Petitioner's detention following termination of his parole complied with due process.**

Petitioner contends that his release on parole created a "substantial liberty interest" that Respondents violated in terminating his parole and detaining him. *See* ECF No. 4 ¶¶ 112-18. 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.

As a threshold matter, to the extent Petitioner is challenging the discretionary decision to parole him and then terminate that parole, those decisions are not judicially reviewable. *See* 8 U.S.C. § 1252(a)(2)(B)(ii) ("[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any . . . decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security" (with a limited exception not applicable here)); *id.* § 1182(d)(5)(A) (providing that the Secretary of Homeland Security "*may . . . in his discretion* parole" an applicant for admission into the United

States temporarily, and that the noncitizen shall be returned to custody "when the purposes of such parole shall, *in the opinion of the Secretary of Homeland Security*, have been served" (emphases added)). As the Tenth Circuit has clarified, a constitutional challenge to the *procedures* used in a parole proceeding may be heard in habeas, but a challenge to the *discretionary decision* whether to grant parole may not. *See Sierra v. Immigration & Naturalization Serv.*, 258 F.3d 1213, 1217 (10th Cir. 2001).

Furthermore, Petitioner has received the procedural due process he is entitled to in connection with his parole termination. Congress addressed discretionary parole into the United States in 8 U.S.C. § 1182(d)(5)(A). That statute vests in the Secretary of Homeland Security discretionary authority to both parole a noncitizen into the United States subject to certain conditions and return a noncitizen to custody "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served." 8 U.S.C. § 1182(d)(5)(A). Thus, Congress left revocation of parole to the discretion of the Secretary. *See id.*[4]

Petitioner has received the process he is due by statute. He was granted limited parole into the United States for one year, starting on January 3, 2025, and ending on January 3, 2026. Ex. A ¶ 13; *see also* ECF No. 4-2 at 2. The Interim Notice Authorizing Parole does not specify any other "purpose" of parole; it simply grants Petitioner parole for that one-year period. *See* ECF No. 4-2 at 2. Petitioner contends that he was paroled so that he could pursue his asylum application, and the purpose of his parole cannot be deemed accomplished while that application remains pending. *See* ECF No. 4 ¶ 116. But he does not point to any evidence that he was

[4] That authority is further delegated to other DHS officials by regulation. *See* 8 C.F.R. § 212.5(a) (delegation to, among others, ICE Field Office Directors, Deputy Field Office Directors, "and those other officials as may be designated in writing").

specifically paroled for the purpose of seeking asylum. Indeed, the only reasonable interpretation of the Interim Notice is that Petitioner was simply paroled into the United States for a limited period of time, *i.e.*, for one year. The purpose of that limited parole was therefore accomplished upon the termination of that year, on January 3, 2026. Petitioner had notice that the purpose of his parole would be deemed accomplished on that date. *See* ECF No. 4-2 at 2. Accordingly, he was afforded the process due by statute—an individualized determination that the purpose of his parole shall have been deemed accomplished no later than January 3, 2026. His re-detention under § 1225(b)(1)(B)(ii) following that date does not violate due process.

**C. Petitioner is not entitled to release or a bond hearing based on any deficiency in the process by which Respondents terminated his parole.**

Finally, Petitioner is not entitled to habeas relief based upon any defect in the process by which his parole terminated. As relevant here, 8 C.F.R. § 212.5(e) addresses "[t]ermination of parole," distinguishing between: (1) parole that terminates "automatically," i.e., upon the noncitizen's departure from the United States or "expiration of the time for which parole was authorized," 8 C.F.R. § 212.5(e)(1); and (2) parole that terminates "[o]n notice," *id.* § 212.5(e)(2). Here, Petitioner's re-detention happened four days shy of one year, so subsection (e)(2) is at issue. It provides that:

> [U]pon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in [§ 212.5(a)], neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified.

*Id.* § 212.5(e)(2)(i) (emphasis added).

Here, Petitioner's parole terminated automatically on January 3, 2026. *See* ECF No. 4-2 at 4. The Interim Notice Authorizing Parole indicated that Petitioner would receive written notice of termination should his parole terminate prior to that date. *See id.* Petitioner was re-detained on December 31, 2025, four days before his parole automatically terminated, at which time he was not provided written notice of parole termination. Petitioner's re-detention on December 31, 2025, does not entitle him to release or a bond hearing.

A procedural due-process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. The proper remedy for lack of procedural due process is additional process, not immediate release. The appropriate relief for any alleged due-process violation would therefore be to order that Respondents provide Petitioner the process afforded by 8 C.F.R. § 212.5(e)(2) when parole is terminated "on notice." *See, e.g., United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeal's failure to comply with its regulations, "he should receive a new hearing before the Board," which will afford him the "due process required"). Here, ICE officials are in the process of providing Petitioner such an individualized written notice of parole termination under 8 C.F.R. § 212.5(e)(2), and anticipate doing so on February 10, 2026. *See* Ex. A ¶ 19. Respondents will file a Status Report with the Court confirming that Petitioner has received such written notice, including providing a copy of the written notice.

Additionally, Petitioner fails to establish that any deviation from the procedures for termination of parole is so serious as to amount to a due-process violation. Respondents' issuance of the written notice of termination of parole will cure any due-process violation. *See*

*Depelian*, 25-cv-3765-SKC-TPO, ECF No. 18 at 10-11 (finding no due-process violation when petitioner was initially re-detained under § 1225(b)(2) without written notice of parole termination but received written notice approximately four months later). To succeed on a due-process claim based on the belated issuance of that written notice, Petitioner would need to show prejudice. *Cf. Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) ("In order to prevail on his due process challenge, Petitioner must show he was prejudiced by the actions he claims violated his Fifth Amendment rights."). Petitioner has not done so. As a baseline, Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii). His re-detention under that statute without immediate written notice of parole termination did not deprive him of the ability to challenge his detention. Furthermore, Petitioner's parole expired automatically only four days after he was re-detained. Although Petitioner did not receive separate notice of the termination at the time he was arrested, he has not shown that the failure entitles him to release or a hearing. Indeed, his request for that relief seems largely based in his assertion that he should be detained under 8 U.S.C. § 1226(c), *not* because of any alleged prejudice arising from the termination of his parole without immediate written notice.

## CONCLUSION

For the reasons stated above, the Court should deny the Amended Petition, ECF No. 4, and Motion, ECF No. 5.

Respectfully submitted February 9, 2026.

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 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/ Alexandra J. Berger*
U.S. Attorney's Office