

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

Civil Action No. 26-cv-00319-SKC

ARNOLD URIEL TRIMINIO AVILA,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
PAM BONDI, U.S. Attorney General,
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,
ROBERT HAGAN, Denver Field Office Director, U.S. Immigration and Customs
Enforcement,¹ and
JUAN BALTAZAR, Warden of Denver Contract Detention Facility,²

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 6)

Respondents respond to the Court's January 28, 2026, Order to Show Cause.

See ECF No. 6.

The Application for Writ of Habeas Corpus (ECF No. 1) should be denied.

First, Petitioner is properly detained as an "application for admission" under 8 U.S.C. § 1225 because he presented at a port of entry as an arriving alien. For the same reason, Petitioner's Section 1225 detention satisfies due process.

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Robert Hagan, the ICE Field Office Director, is automatically substituted as an official-capacity respondent in this matter.

² Pursuant to Federal Rule of Civil Procedure 25(d), Juan Baltazar, the Warden of the Aurora Contract Detention Facility, is automatically substituted as an official-capacity respondent in this matter.

Second, Petitioner raises an Equal Protection Clause violation, asserting that he is “similarly situated” to aliens under 8 U.S.C. § 1226(a) who may receive a bond hearing. As an application for admission, however, Petitioner is not similarly situated to an alien who is afforded a bond hearing under Section 1226(a), so no equal protection violation has occurred.

Third, Petitioner also asserts a violation of the Suspension Clause, but no such violation has occurred—the writ of habeas corpus is available to Petitioner as he is currently pursuing habeas relief in this case.

Finally, Petitioner challenges his “warrantless arrest,” but he was arrested pursuant to a warrant. In any event, even if he had been arrested without a warrant, his detention remains lawful.

BACKGROUND

I. Factual Background

Petitioner is a native and citizen of Honduras. *See* Exhibit 1 (Declaration of J. Himelspach), ¶ 4. He applied for admission to the United States at the Hidalgo, Texas, port of entry on December 13, 2023. *See id.* ¶ 5. Petitioner did not have a visa or other document authorizing his admission into the United States. *See id.* At that time, 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), CBP paroled Petitioner into the United States pending removal proceedings. *See id.*

Also on December 13, 2023, but after Petitioner's parole, CBP issued Petitioner a Notice to Appear (NTA). *See id.*, ¶ 6. The NTA initiated removal proceedings under 8 U.S.C. § 1229a before the Executive Office for Immigration Review. *See id.* It classified Petitioner as an "arriving alien." *Id.*, Att. A. The NTA also charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I), which applies to aliens, who, at the time of their application for admission, are not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. *See id.*

On November 12, 2024, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal. *See id.*, ¶ 7. On December 11, 2024, Petitioner conceded proper service of the NTA; admitted the allegations in the NTA; and conceded the charge of inadmissibility in the NTA. *See id.*, ¶ 8.

On February 10, 2025, the immigration judge found Petitioner removable from the United States as charged in the NTA and directed Honduras as the country of removal. *See id.*, ¶ 9.

On September 27, 2025, the Sweetwater County Sheriff's Department in Wyoming arrested Petitioner on a charge of driving without a license. *See id.*, ¶ 10. The next day, ICE officials encountered Petitioner while he was detained at the Sweetwater County Detention Center. *See id.* ICE officials lodged a detainer with the jail. *See id.* The detainer included an immigration arrest warrant, a Form I-200. *See id.* & Att. B.

On September 29, 2025, upon Petitioner's release from state custody, ICE arrested and detained Petitioner—pursuant to its arrest warrant—pending resolution of Petitioner's removal proceedings. *See id.*, ¶ 11.

Because he is classified as an “arriving alien,” Petitioner is detained pursuant to 8 U.S.C. § 1225(b). *See id.*, ¶ 12.

Petitioner's removal proceedings remain pending, and his case is set for an individual hearing on the merits of his asylum application for March 10, 2026. *See id.*, ¶ 13. Petitioner remains detained in Denver, Colorado, pending resolution of removal proceedings. *See id.*, ¶ 14.

II. Procedural Background

Petitioner filed his Application on January 27, 2026. *See* ECF No. 1. The Application challenges Petitioner's detention in the custody of U.S. Immigration and Customs Enforcement (ICE). *See id.* Included with the Application are two exhibits. *See* ECF No. 1-1. Those exhibits appear to relate to an individual other than Petitioner. *See* ECF No. 1-1. Petitioner also filed a Motion for Temporary Restraining Order on January 27, 2026. *See* ECF No. 2.

The Application raises six claims for relief. *See* ECF No. 1, ¶¶ 44-102. Those six claims can be separated into four sets of challenges: (1) a challenge to the basis for Petitioner's detention under the Immigration and Nationality Act (INA), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (APA), *see id.*, ¶¶ 44-76; (2) a violation of the Equal Protection Clause of the Fifth

Amendment, *see id.*, ¶¶ 77-88; (3) a violation of the Suspension Clause, *see id.*, ¶¶89-99; and (4) a violation of federal regulations on the basis that Petitioner was “warrantlessly arrested,” *see id.*, ¶¶ 100-02.

As relief, Petitioner requests that the Court order Respondents to immediately release him or provide him “a constitutionally adequate bond hearing.” *Id.* at 22 (Prayer for Relief).

On January 28, 2026, the Court entered its Order to Show Cause. *See* ECF No. 6. The Court stated, “Based upon a preliminary review of the Petition, the facts of this case appear to be controlled by the Court’s recent analysis in *Hernandez v. Baltazar*, No. 1:25-cv-3688-SKC-SBP, 2025 WL 3718159, at *1 (D. Colo. Dec. 23, 2025).” *Id.* The Court then stated, “Consequently, within seven days of service, Respondents shall **RESPOND** to the Petition and **SHOW CAUSE** why the Petition shall not be granted. In their Response, Respondents must first address whether the present case differs factually or legally from *Hernandez* in any material respect, and if so, shall specify the material differences.” *Id.*

Respondents were served on January 29, 2026. Their original deadline to respond to the Order to Show Cause was thus February 5, 2026. Respondents, though, sought and received a five-day extension of time on February 4, 2026. Therefore, Respondents’ deadline to respond to the Court’s Order to Show Cause is February 10, 2026.

ARGUMENT

I. Petitioner is subject to mandatory detention under Section 1225(b), and that detention satisfies due process.

Pursuant to the Court's January 28, 2026, Order to Show Cause, and as explained herein, this case differs factually and legally from the Court's decision in *Hernandez v. Baltazar*, No. 25-cv-3688-SKC-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025). In *Hernandez*, the petitioner "entered the United States without inspection," and the government argued that the petitioner was nonetheless an "applicant for admission" and subject to detention under 8 U.S.C. § 1225. *Id.* at 1. Unlike in *Hernandez*, Petitioner presented at a port of entry and was designated as an arriving alien seeking admission into the United States at that time. Petitioner, therefore, is properly detained under 8 U.S.C. § 1225. This Court has previously reached that same conclusion under similar facts in *Depelian v. Baltazar*, Case No. 25-cv-03765-SKC-TPO, ECF No. 18 (D. Colo. Jan. 20, 2026) (Crews, J.).

A. Petitioner's detention under Section 1225(b) is proper.

Petitioner contends that he should be afforded a bond hearing because he should be subject to 8 U.S.C. § 1226(a), which affords certain aliens a bond hearing, not 8 U.S.C. § 1225(b), which does not. Petitioner is properly subject to detention under Section 1225(b) and, therefore, is not entitled to a bond hearing.

In the 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. 8 U.S.C. § 1225(b)(2)(A). In other words, for those aliens subject to Section 1225(b)(2)(A), detention is mandatory during removal proceedings. *See Jennings*, 583 U.S. at 287-88. Section 1225 does not provide for bond hearings during removal proceedings. *See id.*

Aliens like Petitioner, who are detained at a port of entry as arriving aliens, plainly fall into the statutory definition of “applicants for admission.” *See Depelian*, ECF No. 18 at 8 (Crews, J.) (Petitioner who “presented himself at the border ... was seeking admission into the United States” and thus an “application for admission”). Indeed, in the NTA issued to Petitioner after his encounter at the port of entry, the Department of Homeland Security specifically designated Petitioner as “an arriving

alien.” Ex. 1, ¶ 6 (“The NTA classified Petitioner as an Arriving Alien.”) & Att. A.³ Thus, Petitioner is unlike aliens who were never inspected or detained at a port of entry and were first encountered within the United States after living in the country for years. Instead, Petitioner, as a designated arriving alien, is an “applicant for admission” under Section 1225(b) and thus subject to mandatory detention.⁴

Petitioner’s removal proceeding is ongoing. Petitioner admitted to the allegations and charges in the NTA. *See* Ex. 1, ¶ 8. The immigration judge sustained the removal charge and found Petitioner removable. *See* Ex. 1 ¶¶ 9-10. Petitioner’s removal proceedings remain pending as his asylum application is set for an individual merits hearing on March 10, 2026. *See id.*, ¶ 13. Petitioner, therefore, continues to be subject to mandatory detention under 8 U.S.C. § 1225(b) during removal proceedings.

B. Petitioner’s Section 1225(b) detention accords with due process.

Petitioner also asserts that his detention under Section 1225(b) violates due process. *See* ECF No. 1, ¶¶ 56-66. Because Petitioner has been accorded the process due to him under Section 1225, his ongoing detention satisfies due process.

³ Unlike in *Depelian*, Petitioner’s NTA terminated his parole. *See* 8 C.F.R. § 212.5(e)(2)(i) (“When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified.”).

⁴ The premise of Petitioner’s APA claim is that Respondents have not properly detained him under Section 1225. *See* ECF No. 1, ¶¶ 67-76. Because Petitioner is properly detained under Section 1225, *see supra*, his APA claim fails as well.

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). That prerogative flows from the government’s significant 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, for aliens who present themselves at the border, “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citation omitted); *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (“[A]liens 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.’” (cleaned up)). As a Court in this District recently explained, “[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)).

Here, as discussed, Petitioner’s detention pending removal is authorized—indeed, *mandatory*—under Section 1225(b) because Petitioner was, and is, an “applicant for admission.”

II. No violation of the Equal Protection Clause has occurred.

Petitioner also argues that Respondents have violated the Equal Protection Clause by not providing him a bond hearing under 8 U.S.C. § 1225. *See* ECF No. 1, ¶¶ 77-88. He contends that Respondents lack a rational basis for treating him differently from other “similarly situated” aliens in removal proceedings who receive a bond hearing. *See id.*, ¶ 83. In doing so, Petitioner appears to assert that all aliens in removal proceedings should receive a bond hearing because some aliens are afforded a bond hearing under 8 U.S.C. § 1226(a). *See id.*

The Fifth Amendment provides that no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. V. The Fifth Amendment contains an implicit guarantee of equal protection identical to the Fourteenth Amendment’s Equal Protection Clause. *See Sessions v. Morales-Santana*, 582 U.S. 47, 52 n.1 (2017). The Equal Protection Clause is “essentially a direction that all persons similarly situated should be treated alike.” *Ashaheed v. Currington*, 7 F.4th 1236, 1249 (10th Cir. 2021) (quoting *A.M. ex rel. F.M. v. Holmes*, 830 F.3d 1123, 1166 (10th Cir. 2016)).

To prove an equal protection claim, a plaintiff must first make a “threshold showing” that he was “treated differently from others who were similarly situated to [him].” *Tenison v. Byrd*, 826 F. App’x 682, 688 (10th Cir. 2020) (quoting *Barney v. Pulsipher*, 143 F.3d 1299, 1312 (10th Cir. 1998)). A plaintiff is “similarly situated” to other individuals “only if they are alike in all relevant respects.” *Requena v.*

Roberts, 893 F.3d 1195, 1210 (10th Cir. 2018) (quotation omitted) (citation omitted); see also *Ebonie S. ex rel. Mary S. v. Pueblo Sch. Dist. 60*, 819 F. Supp. 2d 1179, 1189 (D. Colo. 2011) (“To be ‘similarly situated’ the individuals ‘must be prima facie identical in all relevant respects or directly comparable in all material respects; although this is not a precise formula, it is nonetheless clear that similarly situated individuals must be very similar indeed.’” (quoting *United States v. Moore*, 543 F.3d 891, 897-98 (7th Cir. 2008))).

Petitioner has not demonstrated a violation of the Equal Protection Clause because he is not similarly situated to individuals receiving a bond hearing under 8 U.S.C. § 1226(a). Unlike aliens who receive a bond hearing under Section 1226(a), Petitioner arrived at a U.S. port of entry as an arriving alien and is thus treated as if he was stopped at the border. See *Thuraissigiam*, 591 U.S. at 139. In other words, he is “legally considered to be detained at the border and hence as never having effected entry into this country.” *Sierra Immigr. & Naturalization Serv.*, 258 F.3d 1213, 1218 (10th Cir. 2001). Thus, unlike an alien lawfully admitted into the United States, “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Id.* (alteration in original) (quotation marks omitted) (citation omitted).

Here, Congress has determined that, as an applicant for admission, Petitioner should be subject to mandatory detention under 8 U.S.C. § 1225, rather than be entitled to a bond hearing under 8 U.S.C. § 1226. That is the process that

Congress has determined is appropriate for aliens like Petitioner. *See Sierra*, 258 F.3d at 1218.

The Supreme Court in *Jennings* has endorsed this statutory scheme of differentiating between admitted aliens subject to Section 1226 and applicants for admission under Section 1225. As the *Jennings* Court observed, certain aliens may be able to receive a bond hearing under Section 1226(a). *See Jennings*, 583 U.S. at 288-89. Unlike Section 1225, Section 1226(a) “applies to admitted aliens who overstay their visas, become deportable on many different grounds, or were admitted erroneously due to fraud or some other error.” *Buenrostro-Mendez v. Bondi*, --- F. 4th ---, No. 25-20496, 2026 WL 323330, at *7 (5th Cir. Feb. 6, 2026). In contrast, Congress has accorded aliens who are “applicants for admission” under Section 1225 a different process. As the *Jennings* Court observed, Section 1225 does not provide for a bond hearing. *See Jennings*, 583 U.S. at 297. Instead, aliens covered by Section 1225 generally “shall be detained” during their removal proceedings, with narrow exceptions. *Id.* at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A)).

In sum, Petitioner has not stated an Equal Protection Clause violation—as an “applicant for admission” under Section 1225, he is not similarly situated to those aliens afforded a bond hearing by Congress under Section 1226. His claim under the Equal Protection Clause should, therefore, be denied.

III. No violation of the Suspension Clause has occurred.

Petitioner next asserts a violation of the Suspension Clause. *See* ECF No. 1, ¶¶ 89-99. The Suspension Clause of the U.S. Constitution states, “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. Art. I, § 9, cl. 2.

Petitioner contends that, because the immigration judge stated it did not have jurisdiction to hold a bond hearing, “no alternative remedy exists outside of habeas corpus through which Petitioner may obtain judicial review of the legality of his confinement.” ECF No. 1, ¶ 95. But he does not explain how this equates to a suspension of the writ. Indeed, Respondents have not argued that the Court lacks the power to issue habeas relief here. Instead, Respondents have argued only that Petitioner’s claims do not merit any such relief. In sum, the writ of habeas corpus has *not* been suspended, and Petitioner can bring a habeas petition as he has done via his Application. His Suspension Clause claim should, therefore, be denied.

IV. Petitioner was not warrantlessly arrested, and, in any event, a habeas remedy is not available for the challenge he asserts.

Petitioner contends that he was warrantlessly arrested in violation of federal regulations. *See* ECF No. 1, ¶¶ 100-02. That contention fails for several reasons.

As an initial matter, Petitioner *was* arrested pursuant to an immigration arrest warrant (*i.e.*, a Form I-200, Warrant for Arrest of Alien), and so no federal regulation was violated. He was originally arrested by Sweetwater County Sheriff’s Department in Wyoming in September 2025. *See* Ex. 1, ¶ 10. While Petitioner was

in state custody, ICE learned of his arrest. *See id.* ICE officers then, prior to Petitioner's arrest, obtained a Form I-200 to arrest Petitioner. *See id.* & Att. B. Upon Petitioner's release from state custody, ICE officers then effectuated Petitioner's arrest pursuant to its arrest warrant. *See id.* Because Petitioner was arrested pursuant to an arrest warrant, the federal regulations that he relies on are inapplicable, and no violation of those regulations has occurred. *See* 8 C.F.R. § 287.8(c)(2)(ii) (stating that, where no arrest warrant is obtained, the immigration must have "reason to believe that the person is likely to escape before a warrant can be obtained"). In short, Petitioner's claim based on a warrantless arrest fails.

In any event, Petitioner cannot obtain habeas relief (*i.e.*, release from detention) based on this challenge because he is in removal proceedings supported by probable cause. In *Min-Shey Hung v. United States*, 617 F.2d 201 (10th Cir. 1980), the Tenth Circuit addressed the viability of a habeas challenge to an immigration arrest. The Tenth Circuit held that a habeas petitioner could not bring a challenge to his immigration arrest during deportation proceedings where a probable cause determination has been made: "The deportation proceedings thus commenced must be allowed to proceed without the intervention of proceedings in the district court challenging the arrest." *Id.* at 202. Instead, according to the Tenth Circuit, that challenge could only be raised after a deportation order is issued. *See id.* at 203. As a result, "[t]he trial court should not have considered the arrest challenge while the" petitioner's removal proceedings were pending. *Id.*; *see also*

Arias v. Rogers, 676 F.2d 1139, 1143 (7th Cir. 1982) (noting that once petitioners can avail themselves of the administrative remedies described in the INA, “their detention was no longer so lawless as to allow a judge to free them under the habeas corpus statute,” even in the case of an illegal arrest).

As in *Min-Shey Hung*, Petitioner cannot obtain habeas relief based on a challenge to his arrest because he is in removal proceedings supported by probable cause. See Ex. 1, ¶¶ 8-9, 13. Other courts facing similar habeas challenges have reached the same conclusion. See *Rodriguez v. Olson*, No. 25-cv-12961, 2026 WL 63613, at *5 (N.D. Ill. Jan. 8, 2026) (“In this case petitioner’s deportation proceedings have begun. Thus, *Arias* requires that any issues concerning his arrest are not redressable in this habeas petition.”); *Chavez de Vasquez v. Baker*, No. 25-cv-03657-SAG, 2025 WL 3713773, at *1 (D. Md. Dec. 23, 2025) (“[W]ith Petitioner’s bond determination already made in immigration court and her removal proceedings underway, habeas review challenging her original arrest is not cognizable.”). As in those cases, Petitioner’s claim challenging his arrest should be denied because that claim cannot be brought in this habeas proceeding.

Accordingly, because Petitioner was arrested with a warrant and his challenge to his arrest cannot be brought in this habeas proceeding, Petitioner’s claim asserting a violation of federal regulations should be denied.

CONCLUSION

For the reasons stated herein, the Application (ECF No. 1) should be denied.

Dated: February 10, 2026.

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Certification Re: Use of Generative Artificial Intelligence (AI) for Drafting

Respondents' counsel certifies that no portion of the filing was drafted by AI.

CERTIFICATE OF SERVICE

I hereby certify that, on February 10, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Nicholas A. Deuschle
Nicholas A. Deuschle
United States Attorney's Office