IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 1:26-cv-359-CNS

JULIO JESUS BUITRAGO MURZI,

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 GUADIAN, Field Office Director, U.S. Immigration and Customs Enforcement of Enforcement,
JUAN BALTAZAR,[1] Warden of the Denver Contract Detention Facility,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 7)

Respondents hereby respond to the Court's Order to Show Cause (ECF No. 7), directing them to respond to the habeas petition and motion for a temporary restraining order or preliminary injunction.

I. Petitioner is subject to mandatory detention under § 1225(b)(2) because he presented himself at a port of entry and was designated an arriving alien applying for admission.

The central legal issue presented in this case concerns whether a noncitizen who is present in the United States and has not been admitted is subject to mandatory detention by U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1225(b)(2), or whether such a noncitizen is entitled by § 1226(a) to seek a bond hearing. The Court is familiar with these

[1] Mr. Baltazar is substituted for Dawn Ceja pursuant to Fed. R. Civ. P. 25(d).

statutes, but this case is materially different from many of the cases recently brought in this district and across the country challenging detention under § 1225(b)(2).

Unlike many petitioners in those cases, the Petitioner here came into the United States via a port of entry, where he presented himself as an applicant for admission. *See* ECF No. 1, ¶¶ 2, 11-12 ("Petitioner entered the United States on or about August 8, 2023, sought protection from persecution, and upon entry was processed by immigration authorities, after which he was placed into full removal proceedings through the issuance of a Notice to Appear ("NTA").) He did not have a valid entry document. *See* ECF No. 1-1 at 2, 5. The NTA issued to him at the time he presented himself at the port of entry stated that he is "an arriving alien" who had "applied for admission to the United States." ECF No. 1-1 at 2. On those facts, Petitioner could have been subject to expedited removal under § 1225(b)(1). However, Petitioner presented a claim for asylum, withholding of removal, and protection under the Convention Against Torture. ECF No. 1, ¶¶ 11-12. Petitioner was placed into removal proceedings and paroled into the United States. *See id.*, ¶¶ 12-13, ECF No. 1-1 at 11 (stating that Petitioner was "paroled into the United States"). On November 19, 2025, he was re-detained pending removal proceedings, after he was arrested by local police in Cheyenne, Wyoming. *Id.* ¶ 13.

Under the circumstances, Petitioner is an "applicant for admission" who is "seeking admission" into the United States. 8 U.S.C. § 1225(b)(2)(A). Unlike noncitizens who were never detained or inspected at a port of entry, Petitioner presented himself at a port of entry, was designated at that point as an "arriving alien" who had "applied for admission." ECF No. 1-1 at 2. The fact that he affirmatively sought asylum in the United States—a claim he "continues to pursue" in immigration court, ECF No. 1, ¶ 16—further underscores his status as an "arriving

alien" who is "seeking admission." Section § 1225(b)(2)(A) provides noncitizens like Petitioner "shall be detained for" removal proceedings under 8 U.S.C. § 1229a—that is, detention is mandatory during Petitioner's removal proceedings, and he is not entitled to a bond hearing. 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, are inapposite.

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). And the political branches have broad power in the realm of immigration. "[A]n 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")).

Of particular relevance here, 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) because he was, and is, an "applicant for admission."

Another court in this district recently considered a case with similar facts and concluded the petitioner was detained pursuant to § 1225(b) and not entitled to a bond hearing. *See Depelian v. Baltazar et al.*, No. 25-cv-03765-SKC-TPO, ECF No. 18. In *Depelian*, the petitioner presented himself at a port of entry and was initially detained by DHS and later paroled. *See id.* at 1-2. Like Petitioner, he was issued an NTA that "classified him as an 'arriving alien.'" *Id.* at 2. And (similar to this case) the petitioner pursued asylum and was paroled into the United States but was later re-detained. *See id.* at 1-2. After a thoughtful analysis, Judge Crews found that the petitioner was "seeking admission into the United States" at the time he "presented himself at the border," and that he "returned to his status of 'applicant for admission' or 'arriving alien' pursuant to statute" after his parole was terminated. *Id.* at 8. The court thus concluded that the petitioner was detained pursuant to § 1225(b) and not entitled to a bond hearing, and that the government did not violate the INA by continuing to detain him. *See id.* at 9. This Court should reach the same conclusion here.

Petitioner is subject to mandatory detention under § 1225(b)(2) because he is an "applicant for admission" who is "seeking admission." All of Petitioner's counts in the Petition and arguments in the Motion depend on Petitioner's argument that he is *not* subject to § 1225(b)(2). Because he is subject to mandatory detention under § 1225(b)(2), the Court should deny the Petition and the Motion on this basis.

II. If the Court finds Petitioner's particular circumstances immaterial, Respondents acknowledge the Court is likely to reach the same conclusion it has in other § 1225(b)(2) cases.

To the extent the Court believes the facts discussed above do not establish that Petitioner is subject to mandatory detention under § 1225(b)(2) as an "applicant for admission" who is "seeking admission," Respondents acknowledge that this case is not materially different from cases this Court has resolved in prior rulings. *See, e.g.*, *Nava Hernandez v. Baltazar, et al.*, 25-cv-03094-CNS. Respondents respectfully disagree with that ruling. But to conserve judicial and party resources and expedite this Court's consideration of this case, while preserving legal arguments and reserving all of Respondents' rights including the right to appeal, Respondents submit this abbreviated response.

Respondents' position is that Petitioner is subject to mandatory detention under § 1225(b). Respondents submit that this position is supported by *Jennings v. Rodriguez*, 583 U.S. 281 (2018). The Court in *Jennings* explained that a noncitizen "who . . . 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). The Court then explained that *all* "applicants for admission" are subject to detention under either 8 U.S.C. § 1225(b)(1) or § 1225(b)(2)—both of which *require* detention. *See id.* ("Section 1225(b)(2) . . . serves as a catchall provision that applies to

all applicants for admission not covered by § 1225(b)(1)."); *id.* at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded"). Respondents submit that *Jennings* supports their position that all "applicants for admission"—who include noncitizens, like Petitioner, who are present in the United States after having sought admission at the border—are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

Some district courts in this circuit have agreed with Respondents' interpretation of the statute. *See, e.g.*, *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025). Many others have not, including this Court, as noted above. The Tenth Circuit has not ruled on this issue. A decision in this district rejecting Respondents' position on this issue has been appealed to the Tenth Circuit. *See Mendoza Gutierrez v. Baltazar*, Civil Action No. 25-cv-02720-RMR (D. Colo.), *appeal docketed*, No. 25-1460 (10th Cir. Dec. 15, 2025). That appeal remains pending.

Respondents acknowledge that until the Tenth Circuit rules on this issue, this Court's prior ruling on this issue would lead the Court to reach the same result here if the Court adheres to that decision and perceives no material distinction based on the fact that Petitioner presented himself at a port of entry and sought admission. Thus, while Respondents do not consent to issuance of the writ and reserve the right to appeal, in order to conserve judicial and party resources Respondents hereby rely upon, and incorporate by reference, the legal arguments Respondents presented on this issue in *Mendoza Gutierrez v. Baltazar*, Civil Action No. 25-cv-02720-RMR, ECF No. 26 at 10-19.[2]

[2] A copy of that brief is attached as Exhibit A hereto.

* * *

Respondents anticipate that this Court's ruling on the § 1225(b)(2) issue in this case will resolve the Petition and Motion. If the Court grants the petition on this ground, it should decline to address additional arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."). But if the Court wishes to receive additional briefing on any other issue, Respondents request that the Court issue an order directing Respondents to address such issues.

Finally, Respondents submit that if the Court grants the Petition and determines that Petitioner is entitled to a bond hearing under 8 U.S.C. § 1226(a), the Court should order that Respondents conduct such a bond hearing in accordance with that provision within a reasonable time and should direct Respondents to file a status report confirming that such a bond hearing was held.

Dated: February 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 6, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

lisaguerra@theguerralawoffice.com

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ Timothy Bart Jafek
Timothy Bart Jafek