IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00461-SBP

SOKHIBDZHON RAFIBAEV,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security;
TODD M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement;
ROBERT GUARDIAN, in his official capacity as Field Office Director of Enforcement and Removal Operations, Denver Field Office, U.S. Immigration and Customs Enforcement; and
JUAN BALTAZAR, in his official capacity as Warden of the Aurora ICE Processing Center,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

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

FACTUAL BACKGROUND

Petitioner is a citizen and native of Tajikistan. Ex. A ¶ 4 (Decl. of Mark Kinsey). He presented for admission to the United States at the Progreso (Texas) port of entry

on December 6, 2023. *Id.* ¶ 5. Petitioner did not have a visa or other document authorizing his admission into the United States. *Id.*

On December 6, 2023, 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)(A), paroled Petitioner into the United States for one year pending removal proceedings. Ex. A ¶ 5; ECF No. 8 ¶ 1; ECF No. 8-1. ICE issued a Form I-94, Arrival/Departure Record, which indicates parole was granted until December 4, 2024. Ex. A ¶ 5; ECF No. 8-1. Petitioner was released from ICE custody on December 6, 2023. Ex. A ¶ 6. Petitioner's parole automatically terminated on December 4, 2024. *Id.* ¶ 5; *see also* ECF No. 8-1.

On December 6, 2023, CBP issued a Notice to Appear ("NTA"), initiating removal proceedings under 8 U.S.C. § 1229a. Ex. A ¶ 6. 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). *Id.* The NTA classified Petitioner as an Arriving Alien. *Id.*

On June 28, 2024, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal, with U.S. Citizenship and Immigration Services ("USCIS"). *Id.* ¶ 7. On August 28, 2024, USCIS closed Petitioner's application due to pending removal proceedings. *Id.* ¶ 8. On September 18, 2024, EOIR entered a "failure to prosecute" completion code in the court's system. *Id.* ¶ 9.

ICE encountered Petitioner in Rock Springs, Wyoming, on November 13, 2025. *Id.* ¶ 10. ICE determined that Petitioner has no legal status in the United States and arrested and detained him under 8 U.S.C. § 1225(b) pending resolution of his removal proceedings. *Id.* ¶ 11. ICE served on Petitioner a Warrant for Arrest of Alien, Form I-200. *Id.* ¶ 12. Petitioner is detained under 8 U.S.C. § 1225(b)(1). *Id.*

DHS became aware that EOIR had issued a failure to prosecute completion code regarding the initial NTA. *Id.* ¶ 13. On November 20, 2025, DHS issued an NTA charging Petitioner with inadmissibility 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). *Id.*

On November 21, 2025, DHS filed a Form I-261, Additional Charges of Inadmissibility/Deportability, charging Petitioner with inadmissibility pursuant to 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I). *Id.* ¶ 14. On January 26, 2026, DHS filed another Form I-261 charging Petitioner as inadmissible solely under U.S.C. § 1182(a)(7)(A)(i)(I) and classified Petitioner as an Arriving Alien. *Id.* ¶ 16. On February 10, 2026, Petitioner appeared before the Immigration Judge and conceded removability as charged. *Id.* ¶ 17. Petitioner's removal proceedings remain pending before the immigration court. *Id.* ¶ 18. Petitioner is scheduled for an individual hearing on the merits of his application on May 4, 2026. *Id.*

Petitioner's Amended Petition. Petitioner filed this habeas action on February 6, 2026. *See* ECF No. 1. He amended his petition on February 16, 2026. ECF No. 8. He challenges his detention and the termination of his discretionary parole. *See id.* He

raises three principal arguments in support of the Amended Petition. *First*, he contends that the mandatory-detention provision in 8 U.S.C § 1225(b) does not apply to him, despite the fact that he presented himself at a port of entry as an applicant for admission and actively sought asylum in the United States. *See id.* ¶¶ 1, 4, 21-22, 25-41, 55-60. Instead, he argues that he is detained under 8 U.S.C. § 1226(a) and so his detention without a bond hearing is unlawful. *Id.* ¶¶ 40-41. *Second*, Petitioner argues that, even if he is detained pursuant to § 1226(a), such detention is improper because ICE failed to issue a Form I-200, Warrant of Arrest. *Id.* ¶¶ 43-49, 58-60. *Third*, 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. *Id.* ¶¶ 50-54, 62-70. Petitioner seeks immediate release. *Id.* at 16.[1]

ARGUMENT

The Court should deny the Amended Petition. As explained below, Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(1)(B)(ii). That he was previously granted discretionary parole under 8 U.S.C. § 1182(d)(5)(A) does not change that status. As the

[1] Petitioner seeks various other forms of relief. *See* ECF No. 8 at 16-17 (seeking, among other things, the return of certain personal property and declaratory relief). Respondents do not concede that Petitioner is entitled to any form of relief in this action. Given the limited time for Respondents to submit this response—particularly in light of the amendment to the Petition that was filed only yesterday—Respondents address the primary arguments at issue, which should be dispositive of this case. To the extent additional briefing would be useful to the Court in resolving those issues or any others presented by the Amended Petition, Respondents would appreciate the opportunity to submit such briefing as the Court may request.

Supreme Court has made clear, noncitizens "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, citation omitted). Upon termination of his parole, Petitioner's status reverted to his previous designation and detention as an arriving alien pursuant to Section 1225(b)(1).

Furthermore, as an arriving alien, Petitioner is only entitled to the process afforded by Congress, and Respondents complied with both § 1182(d)(5)(A) and 8 C.F.R. § 212.5 when his parole automatically terminated and then Respondents later detained him.

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

In the Immigration and Nationality Act, Congress determined when certain aliens may or 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 December 6, 2023, without admission or parole, Ex. A ¶ 5, 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)***. *See, e.g.,* ECF No. 8 ¶ 29. 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).

Here, Petitioner was, and is, subject to detention under § 1225(b)(1). At the time CBP encountered Petitioner on December 6, 2023, 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.[2] Ex. A ¶¶ 5-6.

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[2] For this reason, Petitioner is differently situated then aliens who were never inspected

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). *See Singh v. Andrews*, No. 1:26-cv-00457-DC-SCR, 2026 WL 292649, at *3 (E.D. Cal. Feb. 4, 2026) (holding that the petitioner, like Petitioner here, who was initially detained under § 1225(b)(1), paroled under § 1182(d)(5), and then re-detained "remains subject to 8 U.S.C. § 1225(b)(1) after the termination of his parole"); *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);

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or detained but rather were encountered within the United States after living in the country for years. Thus, the 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(a), are inapposite. *See* ECF No. 8 ¶ 36 n.1.

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)).

II. Because Petitioner is subject to mandatory detention under Section 1225(b), no warrant of arrest was required.

Because Petitioner is subject to mandatory detention under Section 1225(b)(1), Respondents were not required to provide him with a Form I-200, Warrant of Arrest, to detain him. *See* ECF No. 8 ¶¶ 43-49 (arguing Petitioner's detention is improper under Section 1226(a) because no warrant of arrest was issued). The requirement of a "warrant issued by the Attorney General" to "arrest and detain" a noncitizen comes from 8 U.S.C. § 1226(a). As Petitioner's detention is governed by § 1225(b), the arrest warrant requirement does not apply to him. But, in any event, Respondents issued Petitioner a Form I-200, Warrant for Arrest of Alien, on November 16, 2025. Ex. A ¶ 11. Accordingly, Petitioner's challenge to his detention based on the issuance (or non-issuance) of a Form I-200 fails.

III. Petitioner's detention following the automatic termination of his parole complied with due process.

Petitioner contends that his release on parole created a "protected liberty interest" that Respondents violated in terminating his parole and detaining him. *See* ECF No. 8 ¶¶ 50-54, 61-70. 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); *see also Basri v. Barr*, 469 F. Supp. 3d 1063, 1074 (D. Colo. 2020) ("Under *Demore*, the government can detain an alien without bond for the entirety of his removal proceedings. The lack of a bond hearing, in other words, doesn't offend the Constitution."). Petitioner's arguments do not change that fundamental reality.

As a threshold matter, to the extent Petitioner is challenging the discretionary decisions to parole Petitioner and then to 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. As an arriving alien—a charge that Petitioner has admitted, Ex. A ¶ 17—he is "'treated,' for constitutional purposes, 'as if stopped at the border.'" *Zadvydas v. Davis*, 533 U.S. 678, 692-94 (2001) (discussing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); *see also Thuraissigiam*, 591 U.S. at 139 (an alien who "arrives at a port of entry . . . is on U.S. soil, but the alien is not considered to have entered the country"). Petitioner's parole under 8 U.S.C. § 1182(d)(5)(A) did not change that—§ 1182(d)(5)(A) expressly provides that discretionary parole under that statute "shall not be regarded as admission," a principle that the Supreme Court has affirmed, *see Thuraissigiam*, 591 U.S. at 139 ("[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.'" (quoting *Shaughnessy*, 345 U.S. at 215) (emphasis added)). Thus, because Petitioner has retained his status as "an alien on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process as far as [Petitioner] is concerned." *Shaughnessy*, 345 U.S. at 212 (internal quotation marks and citations omitted).

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.'" *Orande Ahinsha Richards v. Choate*, No. 25-cv-03134-DDD-STV (D. Colo. Dec. 5, 2025), ECF No. 19, at 8 (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")).

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.*[3]

Petitioner has received the process he is due by statute. He was granted limited parole into the United States for one year, starting on December 6, 2023, and ending on December 4, 2024. Ex. A ¶ 5. The I-94 does not specify any other "purpose" of parole; it simply grants Petitioner parole for that one-year period. *See* Ex. A ¶ 5. 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. 8 ¶¶ 42, 51. But he does not point to any evidence that he was specifically paroled for the purpose of seeking asylum. Indeed, the only reasonable interpretation of the I-94 is that Petitioner was simply paroled into the United States for a limited period of time—*i.e.*, for one year—in the government's exercise of its discretion.

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[3] 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").

The purpose of that limited parole was therefore accomplished upon the termination of that year, on December 4, 2024. Petitioner had notice that the purpose of his parole would be deemed accomplished on that date. *See* ECF No. 8-1. 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 December 4, 2024. His re-detention under § 1225(b)(1)(B)(ii) following that date does not violate due process.

IV. Petitioner's parole was automatically terminated in compliance with federal regulation.

Finally, the termination of Petitioner's parole complied with 8 C.F.R. § 212.5. 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). Regarding the former, subsection (e)(1)(ii) provides that "parole shall be automatically terminated *without written notice*" "at the expiration of the time for which parole was authorized" (emphasis added). In contrast, subsection (e)(2) 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). That is, while written notice is required by regulation when parole is terminated because the purpose of the parole is accomplished, it is ***not*** required for automatic termination of parole. *See id.* § 212.5(e)(1) (highlighting the difference in this respect between the two categories of parole termination by stating that, where parole terminates automatically, the alien "shall be processed in accordance with paragraph (e)(2) of this section ***except that no written notice shall be required***" (emphasis added)).

Here, Petitioner's parole terminated automatically on December 4, 2024. *See* Ex. A ¶ 5; ECF No. 8-1. And, contrary to Petitioner's assertions, because his parole automatically terminated, DHS was not required to issue a written determination that the "purpose" of his parole had been accomplished. *See* ECF No. 8 ¶¶ 50-54; *see also* 8 C.F.R. § 212.5(e)(1) (providing "no written notice shall be required" "at the expiration of the time for which parole was authorized"). Petitioner was detained *after* his parole had automatically terminated. Petitioner's re-detention does not entitle him to release or a bond hearing.

To the extent Petitioner's procedural due-process claim has merit—which, as discussed above, it does not—the proper remedy for the purported 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").

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. Petitioner had notice that his parole would automatically terminate on December 4, 2024, and it did terminate. *See* Ex. A ¶ 5. No additional written notice was required, as discussed above. But even if it were, to succeed on a due-process claim, 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. *See Depelian*, 25-cv-3765-SKC-TPO, ECF No. 18 at 10-11 (finding no due-process violation and denying habeas petition where petitioner was initially re-detained under § 1225(b)(2) without written notice of parole termination but received written notice approximately four months later, after the filing of the habeas case). Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii). His re-detention under that statute after the automatic termination of his parole thus did not deprive him of the ability to challenge his detention—that is, notice of his parole termination would not have changed his mandatory detention status.

CONCLUSION

For the foregoing reasons, the Court should deny the Amended Petition, ECF No. 8, and dismiss this action.

Dated: February 17, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka
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