IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01065-CNS

OKLEKSANDR SHAPOVAL,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, in his official capacity;
JUAN BALTAZAR, Warden, GEO Aurora Contract Detention Facility, in his official capacity;
GEORGE VALDEZ, Acting Director, Denver Field Office, Enforcement and Removal Operations, U.S Immigration and Customs Enforcement, in his official capacity;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity; and
TODD BLANCHE, Acting Attorney General of the United States, in his official capacity,

Respondents.

CONSOLIDATED[1] RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 10) AND ORDER TO SHOW CAUSE (ECF No. 9) AND MOTION FOR TEMPORARY RESTRAINING ORDER (ECF No. 5)

Respondents hereby respond to the Court's Order to Show Cause, ECF No. 9, directing them to respond to the amended habeas petition, ECF No. 10, and to

[1] Because the Court has ordered simultaneous briefing on both the Petition and Motion, and the Petition and Motion request the same relief, the merits of the underlying habeas petition will be ripe for a decision, which will moot the Motion. *See Su v. Ascent Construction, Inc.*, 104 F.4th 1240, 1244 (10th Cir. 2024) (finding that where permanent relief is granted, a preliminary injunction merges into the final judgment and is moot) (citing *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 314 (1999)). Respondents therefore address the underlying merits of the Petition and Motion without addressing the preliminary injunction factors.

Petitioner's Motion for Temporary Restraining Order, ECF No. 5.

While this habeas case involves detention of an individual under 8 U.S.C. § 1225(b), this case is unlike many of the immigration habeas petitions that have been filed in this district in recent months involving individuals who entered the United States without inspection. In 2024, Petitioner Oleksandr Shapoval sought admission to the United States at a port of entry. He was found inadmissible and was classified as an "arriving alien." As an arriving alien, Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b). He was granted temporary parole, but Congress has provided that, when that parole ends, an arriving alien returns to the status they previously had.

Thus, now that his parole has ended, Petitioner is subject to mandatory detention, just as he was when he initially presented himself at a port of entry in 2024. His detention under § 1225(b) is lawful, and the petition should be denied.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Ukraine. Quinones Declaration, attached as Exhibit A, at ¶ 4. On January 12, 2024, Petitioner applied for admission to the United States at the John F. Kennedy International Airport (New York) Port of Entry. *Id.* at ¶ 5. Petitioner did not have a visa or other document authorizing his admission into the United States. *Id.* U.S. Customs and Border Protection (CBP) paroled Petitioner into the United States pursuant to the Uniting for Ukraine Humanitarian Parole program until January 9, 2026. *Id.*

On January 14, 2026, an officer with the Laramie County Sheriff's Office

encountered Petitioner in Cheyenne, Wyoming, in connection with an investigation into a traffic violation. *Id.* at ¶ 6. The officer is qualified to perform the functions of an immigration officer in relation to the investigation, apprehension, and detention of aliens in the United States pursuant to 8 U.S.C. § 1357(g). *Id.* The officer determined that Petitioner did not possess valid immigration documentation authorizing his presence in the United States. *Id.* Petitioner was arrested and detained pending resolution of removal proceedings. *Id.*

On January 15, 2026, DHS issued a Notice to Appear (NTA), initiating removal proceedings under 8 U.S.C. § 1229a, before the Executive Office for Immigration Review (EOIR). *Id.* at ¶ 7. 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.* Petitioner was personally served with the NTA. *Id.* at ¶ 8.

On February 3, 2026, DHS issued a Form I-261, Additional Charges of Inadmissibility/Deportability, with EOIR. *Id.* at ¶ 9. The NTA added allegations to support the charge of inadmissibility in the NTA. *Id.* The Form I-261 also classified Petitioner as an arriving alien. *Id.*

On February 13, 2026, Petitioner filed a motion to terminate removal proceedings with EOIR. *Id.* at ¶ 10. Petitioner withdrew the motion on February 19, 2026. *Id.* On February 20, 2026, Petitioner filed a second motion to terminate removal proceedings. *Id.* at ¶ 11. DHS opposed the motion. *Id.*

On February 26, 2026, DHS filed another Form I-261 with EOIR. *Id.* at ¶ 12. The Form I-261 further clarified the allegations in support of the NTA. *Id.* No additional charges of inadmissibility were lodged against Petitioner, and he remains classified as an arriving alien. *Id.*

On March 5, 2026, the Immigration Judge (IJ) found Petitioner inadmissible as charged and denied his motion to terminate. *Id.* at ¶ 13. The IJ found that Petitioner's parole had automatically terminated on the date of expiration, and that Petitioner had received written notice that parole terminated with the service of the NTA as well as the subsequent Form I-261s. *Id.*

On March 25, 2026, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal, with EOIR. *Id.* at ¶ 14. EOIR then scheduled Petitioner's case for an individual hearing on the merits of his application on April 20, 2026. *Id.* at ¶ 15. On April 15, 2026, Petitioner filed a motion to continue the individual hearing. *Id.* at ¶ 16. The IJ granted the motion, and EOIR subsequently rescheduled Petitioner's case for an individual hearing on June 8, 2026. *Id.* at ¶¶ 16-17.

Petitioner is detained at the Denver CDF pursuant to 8 U.S.C. § 1225(b). *Id.* at ¶¶ 18-19. Petitioner's removal proceedings remain pending before EOIR. *Id.* at ¶ 20.

LEGAL FRAMEWORK

Noncitizens who have not been legally admitted into the country are applicants for admission under 8 U.S.C. § 1225 and may be subject to expedited removal under § 1225(b)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); 8 U.S.C. § 1225(a) ("An alien present in the United States who has not been admitted or who arrives in the

United States … shall be deemed for purposes of this chapter an applicant for admission."). As courts in this district have recognized, detention is mandatory under § 1225(b) during the pendency of the noncitizen's immigration removal proceedings. *See, e.g.*, *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720-RMR, 2025 WL 2962908, at *1 (D. Colo. Oct. 17, 2025). This is in contrast to § 1226(a), which gives the Attorney General discretion to release the noncitizen on bond or conditional parole during their immigration removal proceedings. *Id.*; 8 U.S.C. § 1226(a).

A noncitizen who has presented to a port of entry can "avoid expedited removal by claiming asylum." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Under § 1225(b)(1), if such noncitizen "indicates either an intention to apply for asylum or a fear of persecution, the immigration officer shall refer the alien for an interview by an asylum officer" to determine whether they have a "credible fear of persecution." *Id.* at 109–10 (cleaned up) (citing § 1225(b)(1)). If the noncitizen's asserted fear is found credible, they will receive full consideration of the asylum claim in a standard removal hearing. *Id.* (citing 8 U.S.C. § 1225(b)(1)(B)(ii)). Applicants for admission who apply for asylum are not entitled to immediate release under § 1225(b)(1), but "shall be detained" pending a determination as to whether they are removable or entitled to asylum relief. *Id.*; 8 U.S.C. §§ 1225(b)(1)(B)(iii), 1225(b)(2)(A).

A noncitizen who is applying for admission to the United States may be "paroled" into the United States "for urgent humanitarian reasons or significant public health benefit." 8 U.S.C. § 1182(d)(5)(A). However, "such parole … shall not be regarded as an admission of the [noncitizen]." *Id.* When the noncitizen is returned to the custody

from which [s]he was paroled, his "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

"[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.'" *Thuraissigiam*, 591 U.S. at 139 (2020) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). As such, "whatever the procedure authorized by Congress is, it is due process." *Shaughnessy*, 345 U.S. at 212 (cleaned up).

ARGUMENT

Petitioner asserts that his detention under § 1225(b)(2)(A) of the Immigration and Nationality Act ("INA") is unlawful, and that § 1226(A) governs his custody. ECF No. 10 at 17. He further asserts that his detention without an individualized bond hearing violates the Fifth Amendment's Due Process Clause. *See id.* at ¶ 50. Both claims fail.

Section 1225(b) governs Petitioner's detention, not Section 1226(a). Because Petitioner presented at a port of entry seeking admission to the United States, *see id.* at ¶ 16, he is an arriving alien.[2] Despite being paroled into the United States, he continues to be an arriving alien. As such, he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1). Even assuming *arguendo* that his five days in the United States

[2] Peitioner asserts that "[h]e was apprehended in the interior of the United States—**not at the border**—and is being held without bond." ECF No. 10 at 2 (emphasis in original). But he later acknowledges that he arrived in the United States via the JFK airport. *Id.* ¶ 16. For the purposes of the INA, there is no distinction between a port of entry in the interior of the United States and one at the geographical border. *See* 8 C.F.R. § 40.1(p);

after his parole expired nullifies his status as an arriving alien, he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), because he is an "applicant for admission" who is also "seeking admission [and] is not clearly and beyond a doubt entitled to be admitted."

Moreover, because he is an arriving alien, Petitioner is owed only the due process that Congress has provided.

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

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 any "applicant 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) (emphasis added).

Section 1225(b)(1) governs the inspection and detention of certain aliens who are arriving and inadmissible on various specified grounds, including § 1182(a)(7), the provision under which Petitioner is charged with being inadmissible. *See* ECF No. 1 at ¶ 6. For aliens subject to detention under § 1225(b)(1), detention is mandatory during removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B)(iv). Section 1225(b) does not provide for bond hearings during removal proceedings. *See Jennings*, 583 U.S. at 297 (observing that "neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings").

Petitioner, who presented at a port of entry seeking admission to the United States, is plainly an "alien arriving in the United States," as described in § 1225(b)(1).

He is therefore subject to mandatory detention under the INA. That Petitioner was afforded temporary parole does not change this status. As the parole statute expressly provides, parole of an alien applying for admission to the United States

> ... *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) (emphasis added). Here, after his period of parole ended, Petitioner "returned to his status of 'applicant for admission' or 'arriving alien' pursuant to statute." *Depelian v. Baltazar*, No. 25-cv-3765-SKC-TPO (D. Colo. Jan. 20, 2026), ECF No. 18;[3] *see also Thuraissigiam*, 591 U.S. at 139.

Moreover, the regulatory definition of "arriving alien" promulgated pursuant to the INA makes clear that a noncitizen's status as an arriving alien persists regardless of whether they are paroled into the United or are otherwise at liberty after they first present at a port of entry. Specifically, 8 C.F.R. § 1.2 defines "arriving alien" to include "an applicant for admission coming or attempting to come into the United States at a port-of-entry," and explicitly states that "[a]n arriving alien remains an arriving alien even if paroled ... and even after any such parole is terminated or revoked."

Tenth Circuit precedent affirms this principle. In *Sierra v. Immigration & Naturalization Service* ("INS"), the petitioner was a Cuban citizen paroled into the

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[3] Respondents are aware that this Court disagrees with the decision in *Depelian*. *See Murzi v. Noem*, No. 1:26-CV-00359-CNS, 2026 WL 395111, at *1-2 (D. Colo. Feb. 12, 2026).

United States during the Mariel boat lift. 258 F.3d 1213, 1215-16 (10th Cir. 2001). Because he was subsequently convicted of several crimes, his application to become a lawful permanent resident was denied. *Id.* at 216. However, Cuba would not agree to his repatriation, and he was detained in federal prison for several years. *Id.* When the INS withdrew his parole, he filed a habeas corpus petition, arguing, *inter alia*, that he was entitled to a hearing on his parole withdrawal. *Id.* The Court denied his petition, holding that, "[a]lthough ha[d] been physically present in the United States for more than twenty years, [he was] legally considered to be detained at the border and hence as never having effected entry into this country." *Id.* at 1218 (cleaned up).

In short, the parole statute, the parole regulation, and the decision in *Sierra* reflect a foundational "legal fiction" in immigration law that aliens paroled into the United States are legally in the same position as aliens standing at the border, regardless of the duration of that parole. The Supreme Court has repeatedly affirmed that legal fiction in an unbroken line of decisions spanning a century. *See Thuraissigiam*, 591 U.S. at 139; *Leng May Ma v. Barber*, 357 U.S. 185, 188-91 (1958); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925). As such, Petitioner is an arriving alien, and is subject to mandatory detention pursuant to § 1225(b)(1).

B. Even if Petitioner is not subject to detention under 1225(b)(1), he is subject to mandatory detention under 1225(b)(2).

Even if Petitioner were correct that an arriving alien who is paroled "has arrived in the United States and is no longer a noncitizen arriving in the United States," ECF No. 1 ¶ 57, he would still be subject to mandatory detention under § 1225(b)(2). "For section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an

'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Hernandez v. Baltazar*, No. 1:25-CV-03094-CNS, 2025 WL 2996643, at *5 (D. Colo. Oct. 24, 2025) (cleaned up).

Here, Petitioner acknowledges facts sufficient to show that the first condition is met: he is an applicant for admission. *See* ECF No. 10 ¶¶ 15-16; *see also* 8 U.S.C. § 1225(a) (defining "applicant for admission" to include an "alien present in the United States who has not been admitted"). Petitioner also implicitly acknowledges that the third condition is met: he is "not clearly and beyond a doubt entitled to be admitted." The Petition itself states that Petitioner is a native and citizen of Ukraine; that he is in removal proceedings; and that he has filed an asylum application, the adjudication of which is pending. *See* ECF No. 1 ¶¶ 15-16, 21.

The remaining question, then, is whether Petitioner is "seeking admission." "For a noncitizen to be deemed 'seeking admission,' they must be currently taking active steps or some kind of present-tense action to seek lawful entry into the U.S." *Hernandez*, 2025 WL 2996643, at *5. Petitioner does not dispute that this is the case; as noted above, he states that he has a pending asylum application. ECF No. 10 ¶ 37. Instead, he argues that he is not seeking admission in April 2026 because he is already in the country *Id.* ¶ 41.[4]

[4] Respondents are aware that in *Hernandez*, this Court adopted reasoning similar to the argument advanced by Petitioner here, *i.e.*, that a noncitizen is not "seeking admission" if he is already present in the United States. For the reasons set forth *infra*, Respondents respectfully disagree with that ruling.

This argument conflates "admission" to the United States with *physical presence in* the United States. But the INA expressly provides that "admission" and "admitted" mean, with respect to a noncitizen, "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added).[5] It further provides that a noncitizen who, like Petitioner, "is paroled under section 1182(d)(5) … shall not be considered to have been admitted." *Id.* § 1102(a)(13)(B). And although Petitioner remained in the United States after his parole expired in October 2024, his unauthorized presence cannot satisfy the express definition of "admission."[6]

Moreover, the language of § 1225(a) is difficult to reconcile with the idea that "admission" is equated with "physical presence." That section defines an "applicant for admission" as a noncitizen "present in the United States who has not been admitted"—suggesting that a noncitizen *can* be physically present *without* being "admitted." Similarly, § 1225(b)(2)(A) provides that, "in the case of [a noncitizen] who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be *admitted*, the [noncitizen]

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[5] *Cf. Singh v. Noem*, No. 25-cv-1110 JB/KK, 2026 WL 146005, at *35 (D.N.M Jan. 20, 2026) (Seeking admission "can … occur in the interior of the United States . . . when an alien who has not been admitted, an applicant for admission, makes some attempt to gain lawful admission, such as filing for an asylum or a visa.").

[6] To treat continued presence in the United States following the expiration of parole as constituting "admission" would also create a perverse incentive. For instance, a noncitizen who purposefully evaded re-detention following the expiration or revocation of their parole would be entitled to a bond hearing, while a noncitizen who "forthwith return[ed]" to custody would be subject to mandatory detention under § 1225(b)(2). 8 U.S.C. § 1182(d)(5)(A).

shall be detained ...." (emphasis added). It would be illogical for Congress to use "admission" in the phrase "applicant for admission," and "admitted" in the phrase "entitled to be admitted" as terms of legal art, while using "admission" in the phrase "seeking admission" in the colloquial sense of "physical presence." Likewise, Petitioner's argument supposes that in the phrase "seeking admission," "admission" means *both* "lawful entry into the U.S.," *Hernandez v. Baltazar*, 2025 WL 2996643, at *5, *and* "physical presence in the U.S." Reading the terms "admission" and "admitted" as they are defined by statute—lawful entry, not physical presence—is the more cogent approach. 8 U.S.C. § 1101(a)(13).

In short, the particular facts of this case establish that Petitioner is an applicant for admission who is seeking admission to the United States and is subject to mandatory detention under § 1225(b).

C. Due process does not compel Petitioner's release.

Petitioner asserts that his detention without a bond hearing violates his constitutional right to due process. *See* ECF No. 10 ¶ 50. However, "the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Demore v. Kim*, 538 U.S. 510, 526 (2003). As an arriving alien, Petitioner is owed only the due process that Congress has provided and, as explained above, Congress has not extended bond hearings to noncitizens in Petitioner's position.

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) (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." *Mezei*, 345 U.S. at 212 (citation omitted); *accord Sierra*, 258 F.3d at 1218. This "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.'" *Doe v. Bondi*, No. 25-cv-02712-DDD-SBP, 2025 WL 3516292, at *5 (D. Colo. Nov. 4, 2025) (quoting *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212 (D.N.M. 2020)).

As discussed above, Petitioner is subject to mandatory detention under § 1225(b). Section 1225(b) does not "implicitly give detained aliens the right to periodic bond hearings during the course of their detention." *Doe*, 2025 WL 3516292, at *5 (citing *Jennings*, 583 U.S. 281); *accord Giraldo Nieto v. Ceja*, No. 24-cv-02821-DDD-NRN, 2025 WL 4087626, at *6 (D. Colo. June 12, 2025).

In light of the statute's mandatory-detention provision, and applying the principles of *Jennings* and *Sierra*, "procedural due process does not afford inadmissible arriving aliens . . . a right to release or a bond hearing prior to the conclusion of removal proceedings." *Doe*, 2025 WL 3516292, at *6; *see also Depelian*, *supra*, at 10–11; *Giraldo Nieto*, 2025 WL 4087626, at *6. Petitioner's due-process claim therefore fails.

D. If the Court nonetheless finds a due process violation, the appropriate remedy would be a bond hearing, not immediate release.

As habeas relief, Petitioner requests either immediate release, or a bond hearing where the government bears the burden of proof to justify Petitioner's continued detention by clear and convincing evidence. ECF No. 1 at 21-22. Immediate release is not required here, and neither is Petitioner's requested allocation of the burden of proof.

As explained above, § 1225(b) does not provide for a bond hearing. However, a bond hearing, and not immediate release, may be the appropriate remedy for a due process violation. *See Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (suggesting that a bond hearing before an immigration judge may be the appropriate remedy for a due-process violation in the § 1226(c) context). If the Court were to require a bond hearing, the burden of proof should be placed on Petitioner, and no other conditions or requirements should be imposed on Respondents. At least two courts of appeals have concluded that the Constitution does not require the government to bear the burden of proof at immigration bond hearings. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022); *Borbot v. Warden*, 906 F.3d 274, 279 (3d Cir. 2018) (placing the burden of proof at a bond hearing on noncitizens who are detained under Section 1226(c)). Accordingly, if this Court orders habeas relief, the appropriate relief is a bond hearing where the Petitioner bears the burden of proof to justify release.

CONCLUSION

Petitioner, an arriving noncitizen who sought admission at a port of entry, has not demonstrated that he is in custody in violation of due process. The Court should issue an order denying the Petition. However, if the Court were to grant Petitioner habeas

relief, that relief should be limited to a bond hearing where the Petitioner bears the burden of justifying release.

Dated: May 28, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 28, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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