IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01069-SKC

KELIA DANIELA BRACHO-CORTEZ,

Petitioner,

v.

TODD BLANCHE,[1] Acting United States Attorney General;
MARKWAYNE MULLIN, in his official capacity as Secretary of Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement; and
GEORGE VALDEZ, in his official capacity as the Acting Field Office Director of the Denver Field Office, Enforcement and Removal Operations, Immigration and Customs Enforcement.

Respondents.

RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 14) AND ORDER TO SHOW CAUSE (ECF No. 17)

Respondents hereby respond to the Court's Orders to Show Cause (ECF No. 17) directing them to respond to the Amended Petition, ECF No. 14, on or before April 20, 2026.

Petitioner was apprehended close to the border very shortly after crossing into the United States illegally in November 2023. As such, she was an applicant for admission who was seeking admission and was subject to mandatory detention under 8 U.S.C. § 1225(b). Customs and Border Protection ("CBP") issued a Notice

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[1] Mr. Blanche is substituted pursuant to Fed. R. Civ. P. 25(d).

to Appear and released Petitioner, subject to ICE's Alternatives to Detention ("ATD") program. Because Petitioner remains subject to mandatory detention under § 1225(b), her detention is lawful, and the Amended Petition and (and the Motion for Temporary Restraining Order, ECF No. 2) should be denied.

BACKGROUND

Petitioner was born in Venezuela and is a citizen of Columbia who entered the United States via the U.S. Mexico border in or near El Paso, Texas on November 30, 2023. *See* ECF No. 9-1, Declaration of M. Lopez ("Lopez Decl.") ¶¶4-5. CBP agents apprehended Petitioner close to the U.S.-Mexico border very shortly after she crossed it illegally. *Id.* ¶ 5. Petitioner did not present herself at a port of entry and was not inspected and admitted or paroled into the United States. *Id.*

That same day, CBP determined that Petitioner was inadmissible pursuant to § 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.* ¶ 6. On December 1, 2023, DHS issued an NTA, initiating removal proceedings under U.S.C. § 1229a before Executive Office for Immigration Review ("EOIR"), 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). *Id.* ¶ 7. On December 2, 2023, Petitioner was released from physical custody and enrolled in ICE's ATD program, which provides case-

management services and ensures compliance with ICE's reporting requirements for non-detained individuals. *Id.* ¶ 8.

On February 12, 2026, Petitioner was encountered by ICE officers. *Id.* ¶ 10. Petitioner was arrested and detained pursuant to a warrant, pending resolution of her removal proceedings. *Id.* ICE determined that Petitioner had accumulated several ATD violations and thus terminated her enrollment in the program. *Id.*

On February 25, 2026, Petitioner admitted the allegations and conceded the charge of removal in the NTA. *Id.* ¶ 12.

ARGUMENT

In short, Petitioner contends that her detention violates (1) the Immigration and Nationality Act ("INA"), and (2) substantive and procedural due process. *See* ECF No. 14 at 16-25. Both arguments fail.

I. Petitioner is subject to mandatory detention under § 1225(b)(2).

Petitioner's challenge to the statutory basis for her detention is unavailing. 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 specified 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, like Petitioner, who are not covered by Section

1225(b)(1). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under § 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. For aliens subject to either § 1225(b)(1) or § 1225(b)(2)(A), detention is mandatory during removal proceedings. Section 1225(b) does not provide for bond hearings during removal proceedings.

Petitioner plainly falls into the statutory definition of an "applicant for admission." She entered the United States without admission in November 2023 (ECF No. 14 at 1; Lopez Decl. ¶5), and she is therefore an "alien present in the United States who has not been admitted . . . ." 8 U.S.C. § 1225(a)(1). Furthermore, because she was detained very shortly after she entered the United States close to the border, Lopez Decl. ¶¶ 4-6, she is differently situated than other noncitizens who were *not* apprehended shortly after entry, but rather, were encountered within the United States after living in the country for years. *Id.* Indeed, as Courts in this district have held, § 1225(b)(2) "applies to noncitizens 'seeking admission' and inspected while trying to enter the country." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *6 (D. Colo. Oct. 17, 2025); *Depelian v. Baltazar*, Case No. 25-cv-03765-SKC-TPO, ECF No. 18 (D. Colo. Jan. 20, 2026) (Crews, J.) (Petitioner who "presented himself at the border ... was seeking admission into the United States" and thus an "application for admission"); *see also Maldonado Bautista v. Santacruz*, No. 25-cv-01873-SSS-BFM,

--- F. Supp. 3d ---, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025) (nationwide class defined to *exclude* noncitizens who were "apprehended upon arrival"). In sum, Petitioner is an "applicant for admission" under § 1225(b).

Respondents' position is that Petitioner, as a noncitizen "who . . . 'is present' in this country but [who] 'has not been admitted,' is treated as 'an applicant for admission" subject to mandatory detention under § 1225(b)(2). *Jennings*, 583 U.S. at 287. But in any event, Petitioner was plainly "seeking admission" at the time she was apprehended very soon after crossing the border into the United States. *See, e.g.*, *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 781-82 (E.D. Mich. 2025) (distinguishing between noncitizens who were first apprehended after being in the country for years from those who (like Petitioner) were "'arriving to the country' or found at the border or a port of entry"); *Buenrostro-Mendez v. Bondi*, 166 F. 4th 494, 498, 508 (5th Cir. 2026) (Douglas, J., dissenting) (dissent to the Fifth Circuit's opinion in the government's favor emphasizing this distinction and arguing that noncitizens detained when they have already been present in the interior of the country should not be treated "on the same terms as if they were apprehended at the border"). Indeed, Petitioner admits that she was seeking admission upon her entry into the United States. *See* ECF No. 14 at 3 ("Ms. Bracho Cortez was 'seeking admission' at the border in December of 2023 ....").

That Petitioner was originally released pursuant to ICE's ATD program does not alter that analysis. *Cf. Sierra v. INS*, 258 F.3d 1213, 1218 (10th Cir. 2001) (petitioner who was "physically present in the United States for more than twenty

years" was nonetheless "legally considered to be detained at the border and hence as never having effected entry into this country")). Section 1225(b)(2) does not make detention during removal proceedings contingent on release or parole. Rather, the text of the statute and the facts here would suggest that Petitioner should not have released *at all* in December 2023, and that by re-detaining her in February 2026, ICE was simply rectifying the situation and detaining her as § 1225(b)(2) requires. *See Nielsen v. Preap*, 586 U.S. 392, 411 (2019) ("[A]s we have held time and again, an official's crucial duties are better carried out late than never." (citing *Sylvain v. Attorney General of U.S.*, 714 F.3d 150, 158 (3d Cir. 2013) (collecting cases)); *see also Buenrostro-Mendez*, 166 F.4th at 506 ("[The fact] that prior Administrations decided to use less than their full enforcement authority under § 1225(b)(2)(A) does not mean they lacked the authority to do more.").

II. Petitioner's detention does not violate due process.

Petitioner's due process arguments fail because she is properly detained under § 1225(b), which does not provide for bond hearings during removal proceedings.

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." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citation omitted); *accord Sierra*, 258 F.3d at 1218 (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). More recent Supreme Court precedent makes clear that this principle applies to individuals like Petitioner, who are detained shortly after unlawfully entering the country. *See DHS v. Thuraissigiam*, 591 U.S. 103, 107, 114 (2020) (habeas petitioner who "attempted to enter the country illegally" but was apprehended approximately 25 yards into the United States "has no entitlement to procedural rights other than those afforded by statute"). As this Court 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.'" *Doe v. Bondi et al.*, No. 1:25-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), in which the court concluded that 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")).

As discussed above, Petitioner is subject to mandatory detention under § 1225(b)(2). This Court has recognized that § 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). Nor is detention under § 1225(b) pending removal proceedings indefinite. Such detention has "a definite termination point—the conclusion of removal proceedings." *Id.* at *5 (citing *Jennings*, 583 U.S. at 299). Relatedly, "[i]nadmissible arriving aliens like the petitioner do not have a cognizable liberty interest in being released on parole as a matter of procedural due process." *Id.* (citing *Sierra*, 258 F.3d at 1217).

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 subject to prolonged detention a right to release or a bond hearing prior to the conclusion of removal proceedings." *Doe*, 2025 WL 3516292, at *6. Petitioner's due-process claim therefore fails.[2]

CONCLUSION

The Petition and the Motion should be denied and the case dismissed.

Dated April 20, 2026. Respectfully submitted,

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[2] Petitioner also raises a Fourth Amended claim, alleging she was arrested without a warrant. *See* ECF No. 14 at 4, . As an initial matter, she was arrested pursuant to a warrant. Lopez Decl. ¶ 10. In any event, Petitioner cannot obtain habeas relief (*i.e.*, release from detention) based on this challenge. 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.*

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Certification Re: Use of Generative Artificial Intelligence for Drafting

The undersigned counsel certifies that generative artificial intelligence was not used to draft this filing.

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on April 20, 2026, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to all counsel of record.

s/ Andrew M. Soler
U.S. Attorney's Office