

1 **ADAM F. DOYLE**
2 California Bar No. 281763
3 The Law Office of Adam F. Doyle
4 444 W. C St., Ste. 310, San Diego CA 92101
5 phone: (619) 438-0816
6 email: adamfdoyle@gmail.com

7 Attorney for Mr. Akuoh
8 

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 NTANGKU DESMOND AKUOH,

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE,
15 Warden at Otay Mesa Detention
16 Center, ET AL,

17 Respondents.

CIVIL CASE: 26-CV-2257-AGS

**Supplemental Briefing
Regarding Impact of
Pretermission of Asylum
Proceedings on Mandatory
Detention under § 1225(b)(1)**

18 **INTRODUCTION**

19 When Ntangku Desmond Akuoh crossed the border into the
20 United States, requested asylum, and received a positive credible fear
21 determination, he fully expected to proceed to a merits hearing on his
22 asylum claim. But that is not what happened. Instead, the government
23 chose to sidestep and terminate the asylum determination altogether
24 and succeeded in pretermittting proceedings in favor of sending Mr.
25 Akuoh to a third country.

26 Mr. Akuoh understands the Court's finding that 8 U.S.C.
27 § 1225(b)(1)(B)(ii) mandates detention during "further consideration of
28 the application for asylum" and that the Supreme Court's decision in
Mezei does not leave room for a due process claim of prolonged

1 detention under that statute. But right now – due solely to the
2 government’s choice to pretermite asylum proceedings – Mr. Akuoh no
3 longer falls under § 1225(b)(1). Instead, he either falls under § 1226(a)
4 or no section at all. In either case, the Court should order the
5 government to provide Mr. Akuoh a bond hearing.

6
7 **STATEMENT OF CASE**

8 Ntangku Desmond Akuoh fled his home country of Cameroon
9 with his wife after he was falsely accused of being a separatist fighter
10 and subjected to traumatic torture. He crossed at an area where he
11 could see Border Patrol agents and immediately claimed asylum after
12 being detained.

13 **A. Parties’ Pleadings.**

14 Mr. Akuoh filed an Amended Petition for relief under § 2241 on
15 May 4, arguing that neither the Supreme Court nor Ninth Circuit
16 Court of Appeals holdings precluded a constitutional due process right
17 to a bond hearing for an asylum seeker falling under § 1225(b)(1) and
18 that the applicable case law suggested there was indeed such a right
19 under certain circumstances. [See ECF 13 at 6-11.]

20 In its Return, the government argued (in relevant part) that
21 § 1225(b)(1) mandates detention of any asylum seeker pending “further
22 consideration of the application for asylum.” [ECF 14 at 5.] The
23 government then argued that there was no statutory exception to
24 mandatory detention under § 1225(b)(1) and that under *Shaughnessy*
25 *v. United States ex rel. Mezei*, 345 U.S. 206 (1953), there could be no
26 due process claim to a bond hearing for prolonged detention. [See *id.* at
27 5-8.]
28

1 **B. Hearing on the Petition.**

2 The Court held a hearing on Mr. Akuoh's petition on June 11. Mr.
3 Akuoh presented three arguments at the hearing: that (1) he was being
4 deprived substantive due process because the government had not first
5 established a legitimate immigration-related interest for mandatory
6 detention; (2) *Mezei* was distinguishable and therefore inapplicable to
7 this case, and (3) mandatory detention no longer applied because the
8 pretermission of Mr. Akuoh's asylum application removed his case
9 from § 1225(b)(1) and that mandatory detention therefore no longer
10 applied.

11 As to the third argument, government counsel responded that
12 mandatory detention should still apply because Mr. Akuoh was still
13 generally in "removal proceedings."

14 The Court found against Mr. Akuoh on the first two arguments
15 but ordered further briefing on the question of whether the
16 pretermission of asylum proceedings had a legal impact on the
17 applicability of § 1225(b)(1) – more specifically, whether a conclusion of
18 asylum proceedings moved Mr. Akuoh's case outside the realm of that
19 code section and its mandatory detention provision.

20 **ARGUMENT**

21 Mr. Akuoh is not asking the Court to engage in some kind of legal
22 gymnastics. Instead, he is simply asking the Court to be faithful to the
23 statutory text of § 1225(b)(1) and to accurately assess the current legal
24 posture of his case. At this moment, there is no longer a live issue of
25 whether Mr. Akuoh should be granted asylum. That is because at the
26 moment the immigration judge granted the government's motion for
27 pretermission, the application for asylum was discarded. And the
28

1 asylum application is not an issue on appeal. There, the only question
2 is whether the IJ erred in pretermittting and ordering removal to a
3 third country. If there is no pending asylum application then
4 § 1225(b)(1) does not apply.

5 **A. The Relevant Statutory Authority.**

6 Mr. Akuoh will begin with the text of § 1225(b)(1) because the
7 government claims he still falls under that section. In broad strokes,
8 § 1225(b)(1) addresses the procedures and detention rules for
9 applicants for admission who make an asylum claim. The statute
10 specifies that an alien is subject to expedited removal unless he
11 indicates “an intention to apply for asylum.” It then states the
12 immigration officer should refer an asylum seeker for an interview by
13 an asylum officer. If the asylum officer finds the person has a credible
14 fear, subsection (b)(1)(B)(ii) states that “the alien shall be detained for
15 further consideration of the application for asylum.” The natural
16 reading of that subsection is that an alien with a pending asylum
17 application is detained pending a merits-based decision on the
18 application by an immigration judge. Section 1225(b)(1) says nothing
19 whatsoever about pretermismission of asylum proceedings or of removal to
20 a third country.

21 Separately, 8 U.S.C. § 1229a addresses the general procedures
22 for removal proceedings. That statute does not mention detention and
23 does not generally provide for mandatory detention in removal
24 proceedings.

25 And 8 U.S.C. § 1226 is titled, “Apprehension and Detention of
26 Aliens.” Unlike § 1229a, it outlines detention procedures and
27 specifically notes the government may release an alien on bond or
28 conditional parole.

1 **B. The Government's Decision to Pretermitt Mr. Akuoh's**
2 **Asylum Application Removed his Case from § 1225(b)(1)**
3 **and its Mandatory Detention Provisions.**

4 Mr. Akuoh has not found any appellate or district court cases
5 discussing this specific issue. That is likely because the government's
6 practice of moving to pretermitt asylum applications and removing
7 aliens to third countries is novel and new. Although government
8 attorneys sought to pretermitt applications during the first Trump
9 Administration under "Asylum Cooperative Agreements" (ACAs), the
10 practice was suspended under the Biden Administration. It was
11 thereafter stepped up considerably during the current administration,
12 particularly in the period from November 2025 to March 2026. Mr.
13 Akuoh's proceedings fell with that period. In March of this year, ICE
14 attorneys received an email "directing them to halt motions that would
15 send asylum-seekers to so-called third countries to pursue their claims
16 for protection," including Uganda. *See* "U.S. pauses tactic to deport
17 asylum-seekers to 'third countries,'" *Seattle Times*, March 13, 2026,
18 *available at* [https://www.seattletimes.com/seattle-news/u-s-pauses-](https://www.seattletimes.com/seattle-news/u-s-pauses-tactic-to-deportasylum-seekers-to-third-countries/)
19 *tactic-to-deportasylum-seekers-to-third-countries/*. The period in which
20 asylum cases were treated in this manner was therefore somewhat
21 limited and has not produced case law on this issue.

22 But the Board of Immigration Appeals (BIA) decision in *Matter of*
23 *C-I-G-M- & L-V-S-G-*, 29 I. & N. Dec. 291 (B.I.A. 2025), provides
24 information about the legal implications of pretermismission under ACAs.
25 There, the BIA noted that "[u]nder the safe third country bar to
26 asylum, an alien is *ineligible* to apply for asylum in the United States."
27 *Id.* at 293. The BIA cited 8 C.F.R. § 1240.11(h)(2) for the proposition
28 that "an alien subject to an ACA is *ineligible* to apply for asylum,

1 withholding of removal, or CAT protection in the United States” unless
2 an immigration judge determines that certain facts preclude
3 pretermission. *Id.* at 294 (emphasis added).

4 The BIA further noted that “[t]he ACA Rule was promulgated to
5 facilitate ‘a threshold screening to determine whether an alien is
6 barred from applying for asylum in the United States pursuant to an
7 ACA.’” (citing 84 Fed Reg. at 63998). The BIA continued,

8 [T]he Immigration Judge should determine whether the safe
9 third country bar applies *prior to and separate from considering a*
10 *respondent’s eligibility for asylum. . . . [I]f the respondent does*
11 *not meet his or her burden, the safe third country bar applies,*
12 *and there is no basis for the Immigration Judge to further*
consider asylum.

13 *Id.* at 296 (emphasis added).

14 Mr. Akuoh does not dispute that at the time of his initial asylum
15 proceedings, his case fell under § 1225(b)(1). But for numerous reasons,
16 the government’s pretermission of those proceedings legally altered the
17 case posture and moved proceedings into a different code section.

18 **1. Pretermission Terminated Asylum Proceedings.**

19 At the moment the IJ granted the government’s motion to
20 pretermit, Mr. Akuoh’s asylum application was no longer pending.
21 That much is clear, given that pretermission does not set aside the
22 asylum merits questions but legally dismisses it. In *Matter of H-A-A-V*,
23 29 I&N Dec. 233 (BIA 2025), the BIA stated that “Immigration Judges
24 are not required to hold merit hearings on applications that are
25 incomplete or where an applicant is ineligible for relief and may
26 pretermit those applications.” *Id.* at 235. The BIA then analogized
27 pretermission to dismissal under Rule 12(b)(6) in civil litigation. *Id.* n.
28

1 3.

2 And the BIA's decision in *Matter of C-I-G-M- & L-V-S-G-* goes
3 even further, as noted above, by declaring that when the government
4 seeks pretermission and removal under an ACA, the asylum seeker is
5 rendered legally *ineligible* for asylum. The BIA also stated that if the
6 asylum seeker cannot establish that the ACA bar should not apply,
7 "*there is no basis for the Immigration Judge to further consider*
8 *asylum.*"

9 That "further consideration" language is particularly important
10 because it is also included in the detention subsection of § 1225(b)(1) –
11 "the alien shall be detained for *further consideration* of the application
12 for asylum." Not only does pretermission terminate asylum
13 proceedings but it wholly removes any basis for an IJ to even entertain
14 the very trigger for mandatory detention under § 1225(b)(1).

15 The application to Mr. Akuoh's proceedings is clear: at the
16 moment the IJ granted the government's pretermission motion,
17 asylum proceedings were not merely paused but were terminated,
18 leaving Mr. Akuoh ineligible for asylum and leaving no remaining
19 basis for the IJ to further consider asylum. There was nothing left
20 upon which the IJ could conduct a merits-based determination. The
21 government's own quotation from *Jennings v. Rodriguez*, 583 U.S. 281
22 (2018), supports a finding that once asylum proceedings have
23 terminated (whether at the government's urging or otherwise),
24 mandatory detention under § 1225(b)(1) must terminate as well: "Once
25 those proceedings end, detention under § 1225(b) must end as well."
26 [ECF 14 at 6 (quoting *Id.* at 297).

27 **2. Impact of Appeal.**

28 And the fact that Mr. Akuoh appealed the IJ's grant of

1 pretermission and third country removal does not resuscitate
2 mandatory detention under § 1225(b)(1). At the moment Mr. Akuoh
3 filed his appeal, the only disputable issue left was whether the IJ erred
4 by terminating asylum proceedings and ordering removal to Uganda.
5 That is a separate question of whether the IJ erred in a merits-based
6 asylum denial. Importantly, Congress did not state that mandatory
7 detention applied in “any proceedings that might logically be tied to an
8 asylum claim at some point.” The Court must focus on the language of
9 § 1225(b)(1), which focuses on active consideration of an asylum
10 application and not on what should happen after that application has
11 been dismissed.

12 At Mr. Akuoh’s hearing on his petition, the Court suggested that
13 § 1225(b)(1) may still apply because asylum proceedings might be
14 restarted were the BIA or Ninth Circuit to find the IJ erred in granting
15 pretermission or third country removal. But the detention analysis
16 must focus exclusively on the stage of proceedings in which Mr. Akuoh
17 currently finds himself. That stage is unequivocally something
18 different than one in which his asylum application is under “further
19 consideration”.¹

20 And even if the government were to argue that asylum is under
21 further consideration because asylum proceedings could be reopened
22

23 ¹ The government asserts that because “[t]he appeal is still
24 pending . . . there is no administratively final order of removal at this
25 time [and] Petitioner remains mandatorily detained under 8 U.S.C.
26 § 1225(b)(1)(B). But that misses a key distinction. The question is not
27 whether there is now a final order of removal but under which
28 statutory authority the pending removal proceedings fall. The first
part of the government’s statement does not naturally lead to the
second. While Mr. Akuoh’s removal order is not final, the disposal of
his asylum order is, breaking the link between the specific removal
proceedings now underway and those falling under § 1225(b)(1).

1 on remand, that is hypothetical and not a predestined result. Any
2 number of things could be possible on remand, including the upholding
3 of pretermission but an order to specifically reconsider removal to
4 Uganda. A “win” for Mr. Akuoh on appeal therefore does not mean that
5 he will ever again be in asylum proceedings.

6 Lastly, it is probably true that Mr. Akuoh would seek to restart
7 asylum proceedings if his case were remanded. But any such asylum
8 proceedings would constitute a successive asylum application because
9 his initial application no longer exists. Again, forecasting what may
10 happen in the future does not change the legal posture at this moment
11 – which is that there is no asylum application under further
12 consideration.²

13 **C. The Court Should Proceed Under Either 8 U.S.C. § 1226 or**
14 **a Due Process Analysis.**

15 Once the Court determines that § 1225(b)(1) no longer applies,
16 the question becomes what immigration code section – if any – applies
17 to Mr. Akuoh’s detention. The government must not be permitted to
18 hold Mr. Akuoh under a vague “residual mandatory detention” theory.

19 Given that § 1229a does not include any provisions regarding
20 detention, the most natural option is to apply the detention provisions
21 in § 1226, which generally states that “an alien may be arrested and
22 detained pending a decision on whether the alien is to be removed from
23

24 ² Apart from the legal support for Mr. Akuoh’s position, it bears
25 repeating that the current legal posture of his case is not his doing.
26 Instead, the government made the choice to terminate further
27 consideration rather than allowing his asylum application to be
28 decided on the merits. Had his application been permitted to be
properly adjudicated, Mr. Akuoh would not be making this argument,
even if he had appealed. The government chose an end-run around the
asylum process but cannot avoid the consequences of that decision by
asking the Court to nonetheless apply the statute it avoided.

1 the United States.” That section then specifies that an alien may be
2 released on bond or parole.

3 If the Court finds that § 1226 also does not apply and that Mr.
4 Akuoh’s case does not fall under any immigration code section, the
5 Court should grant bond under due process because at this point Mr.
6 Akuoh is being held in prolonged civil detention. Congress specifically
7 identified when it desired for immigrants to be mandatorily detained
8 by including explicit language regarding mandatory detention in
9 sections such as § 1225(b)(1). In the absence of any such language, the
10 Court should find that Congress did not intend for mandatory
11 detention in other contexts and that due process mandates release
12 under certain conditions. That is particularly true in this type of
13 situation, where the government has not identified any reason to
14 believe Mr. Akuoh is a flight risk or danger to the community. The
15 *Banda* factors cited in Mr. Akuoh’s Amended Petition are the most
16 natural yardstick in that situation and the factors weigh heavily in
17 favor of release.

18 CONCLUSION

19 For the reasons set forth in his Amended Petition, Traverse, and
20 in this Supplemental Briefing, Petitioner Ntangku Desmond Akuoh
21 respectfully requests the Court grant the relief outlined in the
22 Amended Petition.

23
24 Respectfully submitted,

25
26 Dated: June 18, 2026

s/ Adam F. Doyle

Adam F. Doyle

Attorney for Mr. Akuoh

email: adam@doyledefense.com