IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-02395-RBJ

MBAREK ABAKCHOU,

Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Center, Aurora, Colorado;
GEORGE VALDEZ, Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement;
DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security;
TODD BLANCHE, United States Attorney General,

Respondents.

RESPONDENTS' RESPONSE TO THE PETITION FOR HABEAS CORPUS (ECF NO.1) AND THE COURT'S ORDER TO SHOW CAUSE (ECF NO. 8)

Respondents submit this response to the Petition for Writ of Habeas Corpus (ECF No. 1, the "Petition") and the Court's Order to Show Cause (ECF No. 8). The Petition raises a single due process claim challenging Petitioner's continued detention during the pendency of his immigration removal proceedings. *See generally* Pet., ECF No. 1. Petitioner, Mr. Mbarek Abakchou, seeks immediate release from custody. *Id.* at 28.

The Petition should be denied because Petitioner, as an unadmitted noncitizen who was detained at the border (and never released into the interior of the United States), has no due process right to be released during the pendency of his removal proceedings.

BACKGROUND

Procedural posture of Petitioner's immigration proceedings. Petitioner is a

citizen of Morocco, currently held in ICE detention under 8 U.S.C. 1225(b)(1) as an applicant for asylum. Goldman Decl. ¶¶ 4, 28, 29, submitted as Exhibit A; Pet., ECF No. 1 ¶ 10. He was detained by Customs and Border Protection ("CBP") on December 21, 2024, shortly after illegally crossing the United States-Mexico border and has never been released into the interior of the United States. Ex. A, Goldman Decl., ¶ 5; Pet., ECF No. 1 ¶ 11. Petitioner has never been admitted, either. *See* Ex. A, Goldman Decl., ¶ 5.

CBP initially processed Petitioner for expedited removal proceedings under § 1225(b)(1) because he did not claim fear of persecution or an intention to apply for asylum. *Id.* ¶¶ 6, 7. However, *after* he was transferred to ICE custody on December 30, 2024, he claimed a fear of persecution, so ICE referred him to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview pursuant to § 1225(b)(1)(A)(ii).[1] *Id.* ¶¶ 7–10. On March 27, 2025, USCIS initiated removal proceedings under U.S.C. § 1229a to allow him to pursue his asylum claim, charging him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). *See id.* ¶ 13.

Petitioner's ongoing immigration proceedings. Since his immigration proceedings under § 1229a began, Petitioner has had several appearances in the immigration court. *Id.* ¶ 15–25. Petitioner claimed that his best language is Hassaniyan Moroccan, and the Executive Office of Immigration Review ("EOIR") has continuously attempted to

[1] An applicant for admission "can avoid expedited removal by claiming asylum. If an applicant '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." . . . If the asylum officer finds an applicant's asserted fear to be credible, the applicant will receive 'full consideration' of his asylum claim in a standard removal hearing." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (citations omitted) (explaining the expedited removal and asylum process).

procure the correct interpreter for him. *Id.* ¶ 15. For example, at one of the hearings, EOIR provided Petitioner with an interpreter who had been to Petitioner's hometown many times. *Id.* ¶ 18.

While Petitioner claims that his immigration proceedings have been delayed because EOIR never provided him with a proper interpreter,[2] Pet., ECF No. 1 ¶ 34, 35, the record in his immigration proceedings shows otherwise. When Petitioner moved to terminate his removal proceedings on this basis in the immigration court, an immigration judge denied the motion, finding that the "Court has procured multiple interpreters who understood the Respondent. Although there are differences between Hassinyan in Morrocco and other countries, there has yet to be provided an example of any difference that cannot be overcome with patient translation, to include material differences." *Id.* ¶ 23, Attach. 1.

The immigration court has also adjusted dates to accommodate Petitioner's need for an interpreter. Petitioner was scheduled for a merits hearing on his asylum application for June 23, 2026. Pet'r's Notice, ECF No. 10. This hearing was rescheduled to July 6, 2026, because the Moroccan Hassaniyan interpreter who was originally booked was not

[2] Petitioner also summarily states that the immigration court "twice dismissed" his removal proceedings, but that "ICE continued to detain him despite the absence of any lawful basis for doing so." Pet., ECF No. 1 ¶ 36. It does not appear that Petitioner is making a due process claim based on these two dismissals, *see generally* Pet., ECF No. 1, but Respondents briefly address these statements. It appears that these "dismissals" were administrative errors, as the first "dismissal" occurred on February 5, 2025, for failure to prosecute, even though DHS had filed a Notice to Appear with the immigration court only four days prior. *See* Ex. A, Goldman Decl., ¶ 11. The second "dismissal" occurred on March 5, 2025, even though DHS had filed another Notice to Appear with the immigration court on February 24, 2025. *Id.* ¶ 12. The immigration court accepted the Notice to Appear that that DHS filed on March 27, 2025. *Id.* ¶ 13. Petitioner's current immigration proceedings are continuing pursuant to the March 27 Notice to Appear. *See id.*

available at the original hearing time. *Id.* ¶¶ 26, 27, submitted as Exhibit B.

ARGUMENT

28 U.S.C. § 2241 permits habeas relief when a petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." *Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1291 (10th Cir. 2001) (citations omitted). Because Petitioner is a noncitizen who has never been admitted, or released, into the United States, his detention is mandatory under 8 U.S.C. § 1225(b)(1), and does not violate due process. He has not shown that his proceedings are indefinitely delayed and thus potentially permanent. The Petition should be denied.

ARGUMENT

I. As an unadmitted noncitizen who was detained at the border and never released into the interior of the United States, Petitioner is an applicant for admission detained under 8 U.S.C. § 1225(b)(1).

Petitioner does not argue that he should be viewed as detained under 8 U.S.C. § 1226. *See generally id.* Rather, he appears to recognize that he is subject to detention under § 1225(b). But even if the Court were to consider this issue, it should not hold that Petitioner's detention under § 1225(b) is unlawful.

Unlike other noncitizens whom this Court has ruled fall under 8 U.S.C. § 1226 because they were detained after living within the United States for a number of years, Petitioner was detained shortly after he crossed the United States-Mexico border, and has never been released into the interior of the United States. He therefore fits squarely within the statutory definition of an "applicant for admission" under § 1225(b)(1) and is subject to mandatory detention during the pendency of his immigration proceedings.

8 U.S.C. § 1225 governs detention and removal of "applicants for admission." "[A]n 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*) is deemed an 'applicant for admission'" under § 1225(a)(1). *See Thuraissigiam*, 591 U.S. at 109 (emphasis added) (cleaned up) (citations omitted). *See also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("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."). Section 1225(b)(1) governs the detention and inspection of certain noncitizens who are inadmissible on various specified grounds. *See* 8 U.S.C. § 1225(b)(1)(A)(i)–(iii). Specifically, Subsections (b)(1)(A)(i)–(ii) apply to "arriving" noncitizens, like Petitioner, who are inadmissible due to fraud, misrepresentation, or lacking the proper travel documents.

This Court has recognized that a noncitizen falls under § 1225 if, "at the time removal proceedings are initiated: [he is] (1) an applicant for admission; (2) seeking admission; and 'not clearly beyond a doubt entitled to be admitted.'" *Arredondo v. Baltazar*, No. 25-cv-03040-RBJ, 2025 WL 4083607, at *3 (D. Colo. Oct. 31, 2025) (citations omitted). This Court then held that "the phrase 'seeking admission' . . . requires some sort of present-tense action." *Id.* Respondents respectfully disagree, but applying this Court's ruling in *Arredondo*, Petitioner was plainly an applicant for admission, seeking admission, and "not clearly beyond a doubt entitled to be admitted" when removal proceedings were initiated because he had just crossed the border, was not entitled to be admitted, and had not been inspected or admitted. *See, e.g.*, *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d

771, 781–82 (E.D. Mich. 2025) (distinguishing between noncitizens who (like the *Loa Caballero* petitioner) were first apprehended after being in the country for years from those who (like Petitioner here) were "'arriving to the country' or found at the border or a port of entry").

As an applicant for admission under § 1225(b), Petitioner is subject to mandatory detention during the pendency of his immigration removal proceedings. *See infra* Section II. Even though Petitioner raised an asylum claim and was then moved to full removal proceedings under 8 U.S.C. § 1229a, he is still subject to mandatory detention because "[w]hether an applicant who raises an asylum claim receives full or only expedited review, the applicant is not entitled to immediate release." *Thuraissigiam*, 591 U.S. at 111. The only exception to mandatory detention is temporary, discretionary parole "for urgent humanitarian reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5)(A), which does not apply here. Petitioner is currently detained under § 1225(b)(1) as his asylum application proceedings are ongoing.

II. Petitioner has not shown that his detention during his immigration proceedings violates due process.

Petitioner appears to challenge his detention on the ground that it violates due process. But he appears to conflate two issues: whether he is receiving due process in his underlying immigration removal proceedings, versus whether his detention during those proceedings violates due process. The two are not the same. "The fundamental purpose of a § 2241 habeas proceeding is to allow a person in custody to attack the legality of that *custody*, and the traditional function of the writ is to *secure release* from illegal *custody*." *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012) (emphasis

added) (citations and quotations omitted). Section 2241(c)(3) gives federal district courts jurisdiction to hear statutory and constitutional challenges to pre- and post-removal immigration detention. *Demore v. Kim*, 538 U.S. 510, 517–18 (2003) (holding that federal courts have jurisdiction to review challenges to pre-removal detention); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) ("§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention"). Petitioner brings a single § 2241 claim under the Fifth Amendment's Due Process Clause. *See generally* Pet., ECF No. 1. Accordingly, the only issue properly before this Court is the constitutionality of Petitioner's continued *detention*, and not the constitutionality of his pending immigration removal proceedings.

This Court does not have jurisdiction to review whether Petitioner is receiving due process during his immigration proceedings. Under 8 U.S.C. § 1252(a)(5), district courts do not have jurisdiction to hear challenges to the legality of final orders of deportation, exclusion and removal—such jurisdiction rests exclusively in the circuit courts. *Ferry v. Gonzales*, 457 F.3d 1117, 1131 (10th Cir. 2006) (explaining that "petitions of review filed with the court of appeals are the 'sole and exclusive means' of review of most administrative orders of removal, deportation, or exclusion" (citing 8 U.S.C. § 1252(a)(5)); *Thoung v. United States*, 913 F.3d 999, 1001 (10th Cir. 2019) (concluding that the REAL ID Act limited district courts' review, including habeas review, of final orders of removal).

This Court thus should examine solely whether Petitioner's detention during his proceedings violates due process. As explained below, it doesn't.

A. Petitioner has no substantive due process right to immediate release.

Petitioner argues that his continued detention violates due process under *Zadvydas*, as it "bears no reasonable relation to the purpose for which he was committed" because there is "no significant likelihood" of his removal "in the reasonably foreseeable future." Pet., ECF No. 1 ¶¶ 56–61. He further argues that his detention violates due process by citing different cases in the criminal, non-immigration context. *Id.* at ¶¶ 62–63. Petitioner's arguments are inconsistent with settled due-process principles in the immigration removal context.

The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S at 523. The Court in *Demore* relied on a broad principle: the Court's "longstanding view that the Government may constitutionally detain deportable [noncitizens] during the limited period necessary for their removal proceedings . . . ." *Id.* at 526. Specifically, the Court relied on *Reno v. Flores*, 507 U.S. 292 (1993), where the Court had rejected a due process challenge to the detention of minors during deportation proceedings, *id.* at 313–14, and on *Carlson v. Landon*, 342 U.S. 524 (1952), where the Court had rejected a due process challenge to detention by noncitizens on the ground that they did not pose a flight risk. *Id.* at 538. Later, in *Jennings*, the Court observed that in *Demore*, the Court, in rejecting the due process challenge, had relied on the principle that the detention during removal proceedings has "a definite termination point: the conclusion of removal proceedings." 583 U.S. at 304 (internal marks omitted). And the Court has warned lower courts against devising "some arbitrary time limit" where detention already has a definite termination point

under the statute. *Cf. Jennings*, 583 U.S. at 304 (holding in the context of § 1226(c) and distinguishing it from detention under § 1231).

The criminal cases that Petitioner cites are therefore inapplicable as, in addition to the principles outlined above, it is well established that the "extensive constitutional safeguards attending criminal proceedings do not apply" to immigration proceedings, which are civil in nature. *Schroeck v. Gonzales*, 429 F.3d 947, 951 (10th Cir. 2005). Petitioner's reliance on *Zadvydas* is also misplaced as his argument directly contradicts *Jennings*. In *Jennings*, the Supreme Court expressly overruled the Ninth Circuit's decision to impose a due process time limitation on mandatory detention under § 1225(b) based on *Zadvydas*. 583 U.S. at 297–301. The Court laid out the material differences between the immigration statute at issue in *Zadvydas* (§ 1231) and § 1225(b), explaining that "*Zadvydas*'s reasoning is particularly inapt here because," other than discretionary parole under § 1182(d)(5)(A), "there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* at 300. Essentially, the reasons underlying the Court's decision to impose a due process limit on detention under § 1231 in *Zadvydas* do not apply in the § 1225(b) context.

In any event, Petitioner has not shown that his detention is indefinite and potentially permanent, like the detention at issue in *Zadvydas*. Petitioner's detention under § 1225(b) has a definite endpoint and this Court should therefore not impose an "arbitrary time limit" under § 1225(b) by ordering his immediate release. *See also Doe v. Bondi*, No. 1:25-cv-02712-DDD-SBP, 2025 WL 3516292, at *9 (D. Colo. Nov. 4, 2025) (denying substantive due process claim and citing cases where detention during immigration proceedings had

exceeded two years).

Respondents acknowledge that at least one court within this district has discussed the *possibility* that mandatory detention under § 1225(b) might become unconstitutional if the detention "becomes punitive." *Doe*, 2025 WL 3516292, at *8. "But the mere fact that a person is detained does not inexorably lead to the conclusion that the government has imposed punishment." *Id.* (quotations and citations omitted). "A restriction on liberty is punitive rather than regulatory if (a) the government intends to impose punishment, or (b) the restriction is not rationally related to a legitimate nonpunitive governmental purpose or is excessive in relation to that purpose." *Id.* (citations omitted). Petitioner has not provided evidence, much less established, that either is true here.

Petitioner argues that his continued detention bears no reasonable relationship to any legitimate government purpose because it "results purely from the government's failure to procure a Western Sarahan Hassaniya interpreter." Pet., ECF No. 1 ¶ 71. But delays caused by administrative or logistical challenges during removal proceedings, in the absence of actual wrongdoing or bad faith, are "unlikely to trigger due process concerns in most cases because continued detention until completion of removal proceedings still serves the purpose of the statute." *Doe*, 2025 WL 3516292, at *8 (citing cases). In *Banyee v. Garland*, the Eighth Circuit concluded that ""back-and-forth rulings, plus general administrative backlogs, [which] were to blame for [the petitioner's] lengthy detention" did not "turn otherwise legal detention into unconstitutional punishment." 115 F.4th 928, 934 (8th Cir. 2024).

Indeed, interpretation issues are a common feature of the asylum process. *Cf. Solomon v. Gonzales*, 454 F.3d 1160, 1164 (10th Cir. 2006) ("Asylum applicants rarely speak English, and their testimony is plagued with the uncertainties of translation and cultural misunderstanding."). Petitioner has not provided any evidence to establish that any interpretation issues that caused delays in his immigration proceedings were a result of government bad faith, or that his continued detention is not for the legitimate purpose of facilitating his immigration proceedings. Any delays in his proceedings have been a result of general administrative procedures or Petitioner's own dissatisfaction with the interpreters provided, despite EOIR's repeated provision of interpreters.

The Court thus should conclude that Petitioner has not shown that the effects of interpretation on his detention violates substantive de process.

B. Petitioner also has not shown that his detention violates procedural due process because he has not shown that he has a constitutional or statutory right to release during his immigration proceedings.

To the extent Petitioner challenges his detention as a violation of procedural due process, he has not shown either that he has been denied a protected liberty interest in release, or that he has been denied some procedural right granted to him by statute.

Courts considering procedural due process claims must first determine whether there exists a protected liberty interest. *Aguilar-Aguilar v. Napolitano*, 700 F.3d 1238, 1244 (10th Cir. 2012) ("To claim a violation of his right to procedural due process, Petitioner must have a liberty or property interest in the outcome of the proceedings." (citations and quotations omitted)). Petitioner does not have a procedural due process claim

here. He does not have a constitutionally protected liberty interest in release from mandatory detention under § 1225(b). He also has not cited any authority demonstrating that he has a protected Fifth Amendment liberty interest in the adjudication of his removal proceedings within a specific time period. To the extent that he is arguing that his Fifth Amendment rights with respect to his removal proceedings have been violated in other ways, this issue is not ripe for review because his removal proceedings are ongoing.

In any event, Petitioner's procedural due process rights are limited to those granted by statute. The Due Process Clause's protections extend to *all* persons *within* the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. But under the "entry fiction" doctrine, although noncitizens "seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such [noncitizens] are legally considered to be detained at the border and hence as never having effected entry into this country." *Gisbert v. U.S. Att'y Gen.*, 988 F.2d 1437, 1440 (5th Cir. 1993). *See also Thuraissigiam*, 591 U.S. at 139 (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").

Noncitizens "on the threshold of initial entry" are entitled only to the process conferred by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as [a noncitizen] denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (explaining that noncitizens "on the threshold of initial entry" do not have the rights and

privileges extended to those "who are within the United States after entry"); *see also Demore v. Kim*, 538 U.S. 510, 521, 523 (2003) (explaining that it is a "fundamental premise of immigration law" that the federal government need not afford noncitizens the same procedural protections as citizens"). This principle applies to individuals (like Petitioner) who are detained shortly after unlawfully entering into the country. *See Thuraissigiam*, 591 U.S. at 107, 114 (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"). The Tenth Circuit has applied the entry fiction doctrine in the parole context. *See Sierra v. I.N.S.*, 258 F.3d 1213 (10th Cir. 2001).[3]

In this case, Petitioner has not shown that he has been denied a right granted to him by statute. The applicable statute (§ 1225(b)) contains no explicit limitation on the permissible length of detention during immigration removal proceedings.

Section 1225(b) also does not contain any *implicit* limitation on the permissible length of detention while removal proceedings are ongoing. *Jennings*, 583 U.S. at 281–83. "Nor does the statute implicitly give detained aliens the right to periodic bond hearings during the course of their detention." *Richards v. Choate et al.*, No. 25-cv-03134-DDD-

[3] In *Sierra*, the petitioner was a Cuban man who was paroled into the United States, later convicted of several crimes, ordered removed, and remained detained when Cuba would not accept him back. *Id.* at 1216. After he was initially approved for parole, that approval was withdrawn after an alleged fight while in prison. *Id.* He filed a habeas petition, arguing that he was entitled to a hearing on the withdrawal of his parole. *Id.* Applying the entry fiction doctrine and limiting his due process rights, the Tenth Circuit dismissed his petition because "[n]either the statutes nor the governing regulations require a hearing on parole withdrawal." *Id.* at 1219.

STV, 2025 WL 4474703, at *4 (D. Colo. Dec. 5, 2025) (citing *Jennings*, 583 U.S. at 312). Section 1225(b) therefore "mandate[s] detention of aliens *throughout* the completion of applicable proceedings." *Jennings*, 583 U.S. at 302 (emphasis added). The *Jennings* Court rejected an attempt to *impose* a reasonableness limitation or bond requirement onto § 1225(b). *Id.* at 301, 303 (rejecting any implicit six-month limit on detention). Because Petitioner has no protected liberty interest in release during his removal proceedings, and he is not entitled to any procedural due process beyond what is provided for by statute, Petitioner's continued detention does not violate due process.

Petitioner argues that he is entitled to an opportunity to be heard at a meaningful time and in a meaningful manner, including the opportunity to "cross-examine witnesses" and to "produce evidence," citing three Tenth Circuit cases. Pet., ECF No. 1 ¶¶ 54, 55.[4] But this argument appears to focus on his procedural rights during removal proceedings, not any procedural rights to *release* during those proceedings. To the extent that Petitioner is arguing that he is entitled to this process with respect to his custody under § 1225(b), he is incorrect and none of his cited cases support this position. All three of the cases he cites involve petitions to review final orders or removal, submitted directly to the Tenth Circuit, not habeas applications before the district court challenging the legality of detention during such proceedings. In each of these cases, the Tenth Circuit reviewed whether the petitioner had a liberty interest in the desired immigration outcome (such as the granting of asylum) and the immigration proceedings that resulted in that outcome.

[4] Petitioner cites *Aguilera v. Kirkpatrick*, 241 F.3d 1286 (10th Cir. 2001); *Hadjimehdigholi v. I.N.S.*, 49 F.3d 642 (10th Cir. 1995); and *Panjaitan v. Gonzales*, 172 F. App'x 870 (10th Cir. 2006).

Because Petitioner is an "arriving alien" at the threshold of entry, the only question is whether Respondents have followed § 1225(b)(1)'s instruction to detain him pending a final determination of his asylum application. They have. The Petition should therefore be denied.

CONCLUSION

Because Petitioner has not demonstrated that he is in custody in violation of due process, the Court should issue an order denying his Petition (ECF No. 1).

Dated: June 30, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record.

s/ Winnie D. Wu
U.S. Attorney's Office