UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ANTON SMIRNOV, **PETITIONER,** **V.** **WARDEN, EL PASO CAMP EAST MONTANA *ET AL.*,** **RESPONDENTS.**	**NO. 3:25-CV-00669-KC**

FEDERAL RESPONDENTS' RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS

STATEMENT OF ISSUES

1. **Under what authority is Petitioner subject to mandatory detention.**
2. **On its face, and as applied, does § 1225(b)(2)(A) Comports with Due Process.**
3. **Are conditions of confinement cognizable claims in habeas petitions.**

Federal[1] Respondents provide this response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, including attorney's fees under the Equal Access to Justice Act ("EAJA")[2], and this Court should deny this habeas petition without the need for an evidentiary hearing.

Petitioner alleges but for the Board of Immigration Appeals decision in *Hurtado*, 29 I&N Dec. 216, his client would be eligible for bond. ECF No. 1 at 4 (emphasis added). **This is inaccurate as Petitioner is an, 'arriving alien' who was ineligible for bond pre-*Hurtado* from an immigration judge.** 8 C.F.R. 1003.19(h)(2)(i). **The fact that Petitioner was paroled and released does not change the fact that he is an arriving alien. Arriving aliens remain arriving aliens throughout their proceedings.** 8 C.F.R. 1001(q).

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Russia who applied for admission into the United States, and concedes he is an arriving alien. ECF No. 1 at 1. Upon entering he was paroled into the United States. *Id.* at ¶2. Petitioner is scheduled for his immigration hearing on February 18, 2026. *See* Automated Case Information System (last accessed Dec. 22, 2025)

II. Argument

The only relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020).

A. Petitioner is an Arriving Alien

Again, this petition differs from those frequently filed before the Court because this Petitioner is an arriving alien who presented himself to a port of entry and did not enter the United

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1 The Department of Justice represents only federal employees in this action.

2 *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

States unlawfully within the ports of entry.

The term "arriving alien" means an applicant for admission coming or attempting to come into the United States at a port-of-entry ...." 8 C.F.R. § 1001.1(q). Arriving aliens are inspected immediately upon arrival in the United States and, unless " ' clearly and beyond a doubt entitled to be admitted,' " are placed in "removal proceedings to determine admissibility." *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (quoting 8 U.S.C. § 1225(b)(2)(A)). Additionally, "an arriving alien remains an arriving alien even after paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked."8 C.F.R. § 1001.1(q).

Since Petitioner applied for admission at the port of entry, he an arriving alien. *See* ECF No. 1 at 1; 8 C.F.R. § 1001.1(q). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by ICE on a discretionary parole. 8 C.F.R. § 1235.3(c); *Clark*, 543 U.S. at 373 (explaining that detention of an a "alien arriving in the United States" is "subject to the Secretary's discretionary authority to parole him into the United States "for urgent humanitarian reasons or significant public benefit," "to meet a medical emergency[,] or ... for a legitimate law enforcement objective."); 8 U.S.C. § 1182(d)(5)(A). Whether the government decides to parole an arriving alien or keep him detained, the regulations state that an immigration judge does not have authority to review the custody determination. 8 C.F.R. § 1003.19(h)(2)(i)(B). Here, Petitioner was paroled. However, service of an NTA and placement in removal proceedings automatically terminated said parole. 8 C.F.R. §212.5 (e)(2)(i). The termination of the parole then reverted Petitioner back to his previous status as an arriving alien, thus subject to mandatory detention. 8 C.F.R. § 1001.1(q); *see also* 8 U.S.C. § 1225(b)(2)(A).

Here, as Petitioner is an arriving alien, irrespective of the Board's decision in *Hurtado*, 29 I&N Dec. 216, Petitioner would be ineligible to seek bond from an immigration judge. *See also*

Maldonado v. Macias, 150 F.Supp.3d 788, 797–98 (W.D.T.X. Dec. 15, 2015) (the parties agree [Maldonado] is an arriving alien, and the Court finds this to be accurate, as [Maldonado] applied for admission to the United States at a port-of-entry… As such, Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(2)(A)).

B. On Its Face, and As Applied to Petitioner, § 1225(b)(2)(A) Comports with Due Process.

Section 1225 does not provide for a bond hearing. The Supreme Court upheld the facial constitutionality of § 1225(b) in *Thuraissigiam*, 591 U.S. 103, 139 (2020). Aliens 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.

Mandatory detention of an applicant for admission during "full" removal proceedings does not violate due process, because the constitutional protections are built into those proceedings. The alien was served with a charging document (an NTA) outlining the factual allegations and the charge(s) of removability against him. Exh. A; § 1229a(a)(2). He has an opportunity to be heard by an immigration judge and represented by counsel of his choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). He can seek reasonable continuances to prepare any applications for relief from removal, or he can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should he receive any adverse decision, he has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5).

While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioner here raises no such claim where he has been detained for only a brief period pending his removal proceedings. For aliens, like Petitioner, who are detained during removal proceedings as applicants for admission, what

Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. As applied here to Petitioner, his detention does not violate due process.

C. Claims Related to Conditions of Confinement are not Subject to Review

Petitioner bears the burden of establishing this Court's jurisdiction to hear his claims for relief. *See, e.g.*, 8 U.S.C. §§ 1252(g); 1252(a)(2)(B); 1226(e). Conditions of confinement claims are not cognizable in habeas. *See Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021) (habeas is not available to review questions unrelated to the cause for detention, nor can it be used for any purpose other than granting relief from unlawful imprisonment); *Ahmed v. Warden*, No. 1:24-cv-1110, 2024 WL 5104545, at *1 (W.D. La. Sept. 25, 2024) (conditions of confinement not cognizable under habeas). "A demand for release does not convert a conditions-of-confinement claim into a proper habeas request." *Nogales v. Dep't of Homeland Security*, 524 F.Supp.3d 538, 543 (N.D. Tex. 2021).

III. Conclusion

Petitioner is lawfully detained as an arriving alien. The Board's decision in *Hurtado* did not affect an alien, like Petitioner, who is an arriving alien, and was ineligible for bond before *Hurtado*'s issuance. The Court should deny the Petition in its entirety.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ANTON SMIRNOV,	§	
	§	
Petitioner,	§	
	§	
v.	§	**CAUSE NO. EP-25-CV-669-KC**
	§	
WARDEN, EL PASO CAMP EAST MONTANA et al.,	§	
	§	
	§	
Respondents.	§	

FINAL JUDGMENT

On this day, the Court considered the case. On December 23, 2025, the Court granted in part Anton Smirnov's Petition for Writ of Habeas Corpus and ordered Respondents to either (1) provide him with a bond hearing before an IJ, at which the Government was to bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk, his continued detention; or (2) release him from custody, under reasonable conditions of supervision. Dec. 23, 2025, Order 3, ECF No. 7. Respondents have now informed the Court that, on January 2, an Immigration Judge ("IJ") ordered Smirnov to be released from custody on a $5,000.00 bond. Notice, ECF No. 9; *see id.* Ex. A ("IJ Order") at 1, ECF No. 9-1. But, as of that date, Smirnov had not yet posted bond and had not been released. *See* Notice.

It appears that that no matters remain pending for the Court's consideration. *See generally* Pet., ECF No. 1; Dec. 23, 2025, Order. Accordingly, **the Clerk shall close the case**. To the extent Smirnov wishes to seek additional relief from the Court, he may file a motion to reopen.

SO ORDERED.

SIGNED this 8th day of January, 2026.

KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE