United States District Court
Western District of Texas
San Antonio Division

Bogdan Fadeev, Petitioner, v. Todd Lyons, Acting Director of U.S. Immigration and Custom Enforcement, et. al. Respondents	Case No. 5:25-CV-01758-XR

Emergency Motion for Reconsideration and Motion to Correct the Record

Federal[1] Respondents provide this Motion for Reconsideration and Motion to Correct the Record of its original response to Petitioner's habeas petition[2]. 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")[3], and this Court should deny this habeas petition without the need for an evidentiary hearing.

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 at the San Ysidro,

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

2 The Original response, had briefing related to the typical 1225/1226 arguments which have been before the court previously. Respondent files this Motion for Reconsideration because Petitioner is actually an arriving alien, which means he is ineligible for bond.

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

California port of entry.[4] Exh. A; ECF No. 1, ¶ 7. Petitioner's application for asylum was denied on July 23, 2025. *Id.* ¶ 12. Petitioner has allegedly appealed the decision on August 13, 2025 and it remains pending. *Id.* ¶ 13. Currently, the parties are waiting on the decision of the appeal as the briefing was completed on December 1, 2025; *See* EOIR Automated Case Information (last accessed January 6, 2026). Upon information and belief obtained from ICE, Petitioner was not arrested at a routine check in, he was arrested by the Sarasota County Sheriff's Office for driving without a license on March 3, 2025 and subsequently arrested after ICE placed a detainer at the jail.

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 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

[4] This is a factual difference between this petition and the others frequently filed before the court, where Petitioner entered the United States *in between* the ports of entry. Petitioner here presented himself to a port of entry.

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 is an arriving alien. *See* ECF No. 1 ¶ 7; 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); Ex. A, NTA. 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 is 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 had 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 a well established basis for detention that precedes *Hurtado*. The Board's decision in *Hurtado* did not affect an alien, like Petitioner, who is an arriving alien, and was ineligible for bond well before *Hurtado*'s issuance. The Court should deny the Petition in its entirety.

Respectfully submitted,

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