

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

BOGDAN FADEEV

Petitioner,

-against-

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); MARCOS CHARLES, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; ALEJANDRO N. MAYORKAS, Secretary, U.S. Department of Homeland Security; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; and PAM BONDI, in her official capacity as Attorney General of the United States; ROSE THOMSON or RAYNOLD THOMSON, in her/his capacity as WARDEN OF KARNES COUNTY IMMIGRATION PROCESSING CENTER, TEXAS

Case No.:5:25-CV-01758-XR

Respondents.

**MEMORANDUM/AFFIRMATION IN OPPOSITION TO FEDERAL RESPONDENTS'
MOTION FOR RECONSIDERATION**

As this Court is aware, on or about December 11, 2025, Petitioner Bogdan Fadeev (“Petitioner” or “Mr. Fadeev”) filed this habeas corpus petition challenging the lawfulness of his detention and seeking release, a bond hearing, and other relief. By order dated January 7, 2026, the Court granted the petition and closed the case (Doc. No. 9). However, on January 8, 2026, Respondents filed this Emergency Motion for Reconsideration and Motion to Correct the Record

(Doc. No. 10). Notably, the undersigned was informed on January 8-9, 2026, after Respondents filed their instant emergency application, that Respondents had released the Petitioner. Therefore, as of the time of this opposition, the Petitioner is no longer in Respondents' custody.

In their motion Respondents, in essence, argue that the petitioner is an "arriving alien" because he presented himself at a port of entry, making him ineligible for bond from an immigration judge. They emphasize that even though the petitioner was paroled and released, his status as an arriving alien continues under 8 C.F.R. § 1001.1(q), and the termination of his parole reverted him back to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The Respondents further contend that Petitioner's re-detention more than two years after his release from detention does not change his status as an arriving alien. Finally, the Respondents argue that Petitioner is lawfully detained as an arriving alien, that his eligibility for bond was never restored, and that the Court should deny the habeas petition in its entirety.

It is respectfully submitted that, for the reasons set forth below, Respondents' arguments are without merit, and the Court should therefore deny the instant motion in its entirety and uphold its Order granting the Petition.

A. District Courts of this State have consistently held that similarly situated individuals to Petitioner are entitled to release/bond hearing.

Initially, the Court's attention is directed to matter of AZAMAT MURZABAEV against KRISTI NOEM, in her official capacity as § Secretary, U.S. Department of Homeland § Security, et al., (case no. EP-25-CV-00647-DB, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS), wherein petitioner, AZAMAT MURZABAEV, ("Mr. Murzabaev") filed habeas corpus petition challenging his detention by immigration authorities.

By way of background, Mr. Murzabaev is a Kyrgyzstan national who entered the United States on September 24, 2024, was designated as an “arriving alien” in his NTA, applied for asylum the same day, and was released. Over a year later, on September 27, 2025, he was re-detained at or near Chicago’s airport and was held at the El Paso Camp East ICE Detention Facility. Mr. Murzabaev had no criminal history. Mr. Murzabaev argued that his detention violates the Fifth Amendment’s Due Process Clause and sought either immediate release or a bond hearing. The government argued that mandatory detention under Section 1225(b) precludes any additional due process protections, citing Supreme Court precedent in *Thuraissigiam*. This Court rejected the government’s jurisdictional and substantive arguments, finding that Mr. Murzabaev’s detention arose after he had been living in the United States for over a year following his initial release. The Court emphasized that the Fifth Amendment protects all persons within the United States, including noncitizens, and distinguishes between individuals at the threshold of initial entry and those who have established ties in the country. The Court further found that because Mr. Murzabaev had been living in the U.S. for more than a year with no criminal history, he possessed a strong liberty interest in his freedom from detention. The Court applied the *Mathews v. Eldridge* balancing test (i.e. the same test that the Petitioner attempted to apply in his Petition filed in this action), finding that all factors - Mr. Murzabaev’s private liberty interest, the government’s interest, and the risk of erroneous deprivation - favored Mr. Murzabaev. The Court further concluded that mandatory detention without a bond hearing created a substantial risk of erroneous deprivation of Mr. Murzabaev’s liberty.

As a result, the Court granted Mr. Murzabaev’s petition in part, ordering that Mr. Murzabaev be provided a bond hearing before an immigration judge. Put differently, in its order

this Court determined that immigrants who have been living in the U.S. for an extended period after initial entry, with no criminal history and established ties, are entitled to procedural due process protections, including a bond hearing, even if Section 1225(b) would otherwise mandate detention.

It is further submitted that the underlying facts of Mr. Murzabaev's case are starkly analogous to Mr. Fadeev's circumstances, as Mr. Fadeev was released after initial entry and re-detained after living in the U.S. for more than two years without a criminal history. For Court's convenience, the order issued in Mr. Murzabaev's case is annexed hereto as **Exhibit A**.

In yet another matter, litigated before Texas Southern District Court, Santoyo v. Dickey, No. H-25-5555, 2025 U.S. Dist. LEXIS 265636, at *2 (S.D. Tex. Dec. 23, 2025), the court addressed a habeas petition filed by Eden Isaias Arenas-Santoyo, a Venezuelan national who entered the United States with inspection in 2022, applied for asylum in 2023, and lived in the country for several years before being arrested in the interior by ICE in November 2025. He had no criminal history, yet remained detained without a bond hearing while removal proceedings were pending. The government argued that Arenas-Santoyo was subject to mandatory detention under § 1225(b) and therefore not entitled to a bond hearing, relying on a recent DHS policy shift and the BIA's decision in *Matter of Yajure Hurtado*. The court rejected that position, holding that § 1225(b) applies to arriving aliens intercepted at or near the border, while § 1226(a) governs detention of noncitizens apprehended after entry in the interior of the United States. The court emphasized that Congress used distinct phrases, "applicant for admission" and "seeking admission", and that treating them as interchangeable would render statutory language superfluous. The court also relied on statutory titles, Supreme Court precedent (*Jennings v.*

Rodriguez), and decades of DHS practice confirming that § 1225 governs border encounters, while § 1226 governs interior arrests. The court declined to defer to the BIA's decision in *Yajure Hurtado*, finding it inconsistent with the statutory text and longstanding agency interpretation, and noting that courts, not agencies, decide questions of law. Ultimately, the court held that Arenas-Santoyo was not an arriving alien, was not subject to § 1225(b), and instead fell under § 1226(a). As a result, he was entitled to an individualized bond hearing.

In light of the foregoing, it is respectfully requested that the Court denies Respondents' instant emergency motion in its entirety.

B. As of the date of the Petition/the instant opposition Mr. Fadeev has been detained for an unreasonable period of time.

Next, as alleged in the Petition, Mr. Fadeev was re-detained on or about March 28, 2025. (See Petition ¶ 10.) The Petition was filed by the undersigned on or about December 11, 2025. Petitioner was subsequently released by Respondents on January 8, 2026. Accordingly, Petitioner remained in government custody for approximately eight months and thirteen days as of the date the Petition was filed, or for approximately nine months and eleven days when measured through the date of his release on January 8, 2026. It is respectfully submitted that this period represents an unreasonable period of detention under applicable precedents and, in principle, militates in favor of Petitioner's release, notwithstanding the fact that he has since been released as of the date of this opposition.

In *Zadvydas v. Davis*, 533 U.S. 678, 682, 121 S. Ct. 2491, 2494 (2001), the Supreme Court held that six months was a presumptively reasonable period of detention. After this period, once the alien provides good reason that there is no significant likelihood of removal in the

reasonably foreseeable future, the government must rebut that showing with evidence. The Court later extended *Zadvydas* to find inadmissible aliens held in post-removal detention are also entitled to this type of individualized review once their detention exceeds six months.

In the matter of *da Silva v. Nielsen*, No. 5:18-MC-00932, 2019 U.S. Dist. LEXIS 227513, at *21-22 (S.D. Tex. Mar. 29, 2019), the petitioner was an Angolan asylum seeker who arrived at the Laredo port of entry in March 2018, expressed fear of persecution, passed a credible fear interview, and was detained under § 1225(b). An immigration judge denied her asylum application, and she timely appealed to the BIA. While her appeal remained pending, she continued to be detained without access to a bond hearing. By the time she filed her habeas petition, she had been detained for just over one year.

In *da Silva* the Court rejected the government's argument that § 1225(b) categorically foreclosed due process protections, explaining that even inadmissible or arriving aliens possess a fundamental liberty interest protected by the Fifth Amendment. The court further concluded that prolonged detention under § 1225(b) raises serious constitutional concerns once it ceases to serve its limited purposes. The court found the detention unreasonable.

In the case at bar, Mr. Fadeev had been detained for a similar period of time as petitioner in *da Silva*, therefore, his detention became unreasonably prolonged. Accordingly, the duration of Mr. Fadeev's confinement itself constituted a violation of due process, notwithstanding his subsequent release.

C. Respondents' Emergency Motion Is Moot Due to Petitioner's Release from Custody.

Finally, Respondents' instant emergency application is moot because the sole relief they oppose, Petitioner's release from immigration detention/bond hearing, has already occurred. As

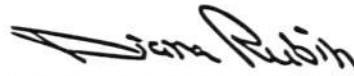
was stated previously, Petitioner was released by Respondents on January 8, 2026. Because Petitioner is no longer in custody, there is no effective relief this Court can grant to Respondents with respect to continued detention or bond eligibility.

In addition, Respondents' instant motion is mooted by the fact that it seeks reconsideration of detention and bond ineligibility for an individual who is no longer detained.. The Court cannot grant Respondents any meaningful relief on their instant motion premised on custody that, in principle, no longer exists. Accordingly, Respondents' instant emergency motion should be denied as moot.

WHEREFORE, for the foregoing reasons, the undersigned/Petitioner respectfully requests that this Court deny Respondents' Emergency Motion for Reconsideration and Motion to Correct the Record in its entirety, and grant such other and further relief as the Court deems just and proper.

Dated: January 12, 2026
Port Washington, New York

Respectfully submitted,



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