IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

JOSE LUIS RIZO REYES,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Civil Action No. 6:26-CV-006-H

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241

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I. Introduction

Petitioner Jose Luis Rizo Reyes seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 requesting that he be released immediately from immigration detention, or in the alternative, that he be provided an individualized bond hearing.[1] However, Petitioner is lawfully detained as an applicant for admission in removal proceedings. Petitioner was lawfully taken into custody as he arrived into the United States at a place other than a designated port of arrival near Eagle Pass, Texas. He was present in the United States without admission or parole, and was an immigrant without valid immigration documents. He was released on discretionary parole and later returned to custody for removal proceedings. He is subject to mandatory detention under the statutes and laws of the United States, and therefore, is not entitled to release upon bond. His detention does not violate the Constitution or laws or treaties of the United States. Therefore, he is not entitled to any relief in this action, and the petition should be denied.

II. Background

Petitioner Rizo Reyes is a native and citizen of Nicaragua. Dkt. No. 1 at 9; App.002, 013. On or about October 20, 2022, he crossed over the Southwest United States border with Mexico near Eagle Pass, Texas and was arrested near there by agents of Customs and Border Protection (CBP). Dkt. No. 1 at 9; App.002.[2] Petitioner was released on parole under INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]. Dkt. No. 1 at 9;

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[1] The petitioner also requests declaratory judgment, attorney fees and costs.

[2] Total CBP encounters along the Southwest border of the United States for 2022 are reported to be 2,378,940, equivalent to the populations of the cities of Dallas and Fort Worth combined. App.009, 018.

App.002. On November 10, 2025, Petitioner was returned to the custody from which he was paroled and is being held at the Eden Detention Center. Dkt. No. 1 at 9, 13; 16; App.002,018,020. Removal proceedings in the Immigration Court as to Petitioner were initiated by the issuance of a Notice to Appear (NTA) on November 10, 2025. App.013-016. A Warrant for Arrest was issued by an authorized immigration officer and served upon Petitioner. App.018. On January 20, 2026, a Master hearing[3] was held at which Petitioner admitted the facts of the NTA and conceded service and the charges as to removability were sustained by the immigration judge, who then set the case for an Individual hearing[4] on March 23, 2026, for consideration of Petitioner's application for relief from removability, his I-589.[5] Dkt. No. 1 at 9, 16, 71, 79; App.022, 025, 002.

III. Argument and Authorities

A. The Detention of Petitioner is mandatory and thus he is ineligible for release on bond under applicable statutory law.

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in

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[3] A Master Calendar Hearing under 4.15 of the Immigration Court Practice Manual. *See*, https://www.justice.gov/eoir/reference-materials/ic/chapter-4/15. At an MCH, undisputed facts are established. *Id.*

[4] An Individual Calendar Hearing under 4.16 of the Immigration Court Practice Manual. See, https://www.justice.gov/eoir/reference-materials/ic/chapter-4/16. "Evidentiary hearings on contested matters are referred to as individual calendar hearings or merits hearings. Contested matters include challenges to removability and applications for relief." *Id.* at (a).

[5] Petitioner's I-589 asylum application was filed with USCIS as immigration court proceedings had not been initiated at the time Petitioner filed his I-589. App.002.

this process, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3).[6] The statute—in a provision entitled "Aliens Treated As Applicants For Admission"—dictates who "shall be deemed for purposes of this chapter an applicant for admission," defining that term to encompass *both* an alien "present in the United States who has not been admitted *or* [one] who arrives in the United States . . . ." *Id.* § 1225(a)(1) (emphasis added).

1. Petitioner is subject to mandatory detention as an arriving alien.

Petitioner is a foreign national and thus is an alien as that term is defined in the Immigration and Nationality Act (INA). INA § 101(a)(3). Petitioner is an arriving alien, as he arrived in the United States from outside of it at a place near the United States Southwestern Border with Mexico, notwithstanding that he did not arrive at a designated port of arrival. INA § 235(a)(1). As such, he is subject to the expedited removal procedures of INA § 235(a)(1). But because Petitioner claimed fear of being returned to his home country, he was not removed without further hearing or review. INA § 235(b)(1)(A)(i). Instead, by claiming fear, he became subject to the procedures of INA § 235(b)(1)(A) and (B). Thus, he became subject to mandatory detention under INA § 235(b)(1)[7]. Petitioner has presented a chart outlining INA § 235(b)(1) that has some helpful information; it is cited here for reference only. Dkt. 1-2 at 95.

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[6] The government's right to examine and inspect all aliens is further protected by federal criminal statute. *See* INA§ 275(a) [8 U.S.C. § 1325(a)] ("Any alien who . . . (2) eludes examination or inspection by immigration officers . . . shall . . . be fined . . . or imprisoned . . . or both . . . .").

[7] 8 U.S.C. 1225(b)1).

Being an arriving alien and claiming fear of being returned to his home country, Petitioner became subject to a screening process. INA § 235(b)(1)(A)(i). In that screening process, one of two determinations is made, either a positive determination or a negative determination. *Id.* Under the procedures of INA § 235(b)(1)(B), if a positive determination is made—that an alien has a credible fear of persecution—then the alien shall be detained for further consideration of the application for asylum. INA § 235(b)(1)(B)(ii). However, in the event of a negative determination, then the alien shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed. INA § 235(b)(1)(B)(iii)(IV). Either way, the law clearly provides for mandatory detention under INA § 235(b)(1).

Being an arriving alien and claiming fear of being returned to his home country, Petitioner became subject to the procedures of INA § 235(b)(1)(A) and (B) and thus became subject to mandatory detention. There is no language in INA § 235(b)(1) that terminates this mandatory detention until "further consideration of the application for asylum" or a "final determination of credible fear of persecution."[8] In enacting these laws, Congress had in view that all such persons in removal proceedings be subject to detention for the duration of such proceedings. As explained in *Jennings v. Rodriguez*, 583 U.S. 281, 299, 303 (2018):

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[8] Nonetheless, the government has the power of discretionary parole, but such parole shall not be regarded as an admission of the alien and when the such parole is terminated, "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." INA § 212(d)(5)(A).

> Section 1225(b)(1) mandates detention 'for further consideration of the application for asylum,' § 1225(b)(1)(B)(ii), and § 1225(b)(2) requires detention 'for a [removal] proceeding,' § 1225(b)(2)(A). The plain meaning of those phrases is that detention must continue until immigration officers have finished 'consider[ing]' the application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A).
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> * * *
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> While the language of §§ 1225(b)(1) and (b)(2) is quite clear, § 1226(c) is even clearer. As noted, § 1226 applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.

In the case at bar, Petitioner is properly detained as an arriving alien for consideration of his application for asylum by the Immigration Court. That detention is mandatory, and those provisions contemplate detention for the duration of the removal proceedings. *See* INA § 235(b)(1)(B)(ii). Petitioner argues that he cannot be subject to both expedited removal proceedings under INA § 235(b)(1) and removal proceedings before an immigration judge under INA § 240. That is not the relevant consideration; the point is that the mandatory detention provisions of INA § 235(b)(1) continue by their terms ("for further consideration" and "until a final determination") as discussed above. *See* INA § 235(b)(1)(B)(ii); *see also* INA § 235(b)(1)(B)(iii)(IV). Those mandatory detention provisions apply throughout the consideration and determination of an arriving alien's asylum claim. *Id.* That statutory mandate is also reflected in the agency regulations. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B).

2. Petitioner is subject to mandatory detention as an alien applicant for admission.

Petitioner is an arriving alien and is thus an "applicant for admission" as set forth

under INA § 235(a)(1), and because Petitioner is also present in the United States without admission, he is again an "applicant for admission" under INA § 235(a)(1). As an applicant for admission Petitioner is properly subject to mandatory detention under INA § 235(b)(2)(A).[9] *See Zuniga v. Lyons*, ___ F. Supp. 3d ____, 2025 WL 3755126, at *3 (N.D. Tex. Dec. 29, 2025); *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). For all the reasons explained in *Zuniga*, aliens who enter the country surreptitiously and are not lawfully admitted are deemed "applicant[s] for admission" by the statute and are therefore subject to mandatory detention and "not entitled to a bond hearing." *Zuniga*, 2025 WL 3755126, at *3; *see also P.B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025), *Garibay-Robledo v. Noem*, ___ F. Supp. 3d ___, 2026 WL 81679, at *1 (N.D. Tex. Jan. 9, 2026).

3. Petitioner's return to custody after a period of discretionary parole is lawful and his detention continues to be mandatory.

Petitioner acknowledges that the government has the power of discretionary parole, and the power to revoke it. Dkt. No. 1 at 78. As applicable to the case at bar, this power is statutory. INA § 212(d)(5)(A).[10] The statute provides that such parole shall not be regarded as an admission of the alien and when the parole is terminated, "the alien shall forthwith return or be *returned to the custody* from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other *applicant for admission* to the United States." *Id.* (emphases added). Again, the

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[9] 8 U.S.C. § 1225(b)(2)(A).

[10] 8 U.S.C. § 1182(d)(5)(A).

mandatory detention of Petitioner under statutory law is further reflected in the agency's regulations. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B) (an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens: . . . (B) Arriving aliens in removal proceedings, including persons paroled after arrival pursuant to section 212(d)(5) of the Act).

B. The applicable statutory law does not violate the Fifth Amendment.

Petitioner also asserts that his detention without an individualized bond hearing violates his Fifth Amendment right to procedural due process." Dkt. No. 1 at 80. However, the constitutional analysis applicable to removal proceedings and associated detention under the INA is not to be confused with the constitutional analysis applied under the INA's criminal provisions. *Cf.* INA § 276 [8 U.S.C. § 1326]; *Almendarez-Torres v. U.S.*, 523 U.S. 224 (1998).[11]

The due process claims of Petitioner fail in the case at bar for the same reasons as in *Zuniga v. Lyons*, ___ F. Supp. 3d ____, 2025 WL 3755126 at *8 (N.D. Tex. Dec. 29, 2025). Petitioner cites *Zadvydas v. Davis*, 533 U.S. 678 (2001), in support of his due process claim. Dkt. No. 1 at 76, 80. However, *Zadvydas* was explained at length by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 298-301 (2018), and shown not to support a due process claim with respect to detention during removal proceedings. *See also Zuniga*, 2025 WL 3755126, at *8.

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[11] See Dkt. 1 at 18 (citing *United States v. Quintana*, 623 F.3d 1237 (8th Cir. 2010) (applying Fourth Amendment analysis to interpretation of INA § 276 [8 U.S.C. § 1357] in the context of a criminal case brought under INA § 276 [8 U.S.C. § 1326]).

C. The Fourth Amendment is not implicated by a return to custody.

Without directly stating it, Petitioner discusses Fourth Amendment rights to procedural due process." Dkt. No. 1 at 17-18. It is not clear whether these references address Petitioner's arrest by CBP agents along the border in October 2022 or his return to custody in November 2025.

Petitioner does not appear to complain about his 2022 arrest, as we see him referring to it on page 9 of his Petition as being apprehended:

> Petitioner, Jose Luis Rizo Reyes, is a thirty-three-year-old male, native and citizen of Nicaragua. He entered the United States without inspection on October 20, 2022 and was apprehended near the U.S. border by U.S. Customs and Border Protection (CBP) agents. One day later, he was released by CBP agents under their parole authority found at 8 U.S.C. § 1182(d)(5), and advised to attend regular check-ins with ICE.

In the context of a habeas proceeding under 28 U.S.C. 2241, it would be hard to see how Petitioner could challenge his arrest by Border Patrol agents along the border in October 2022. Border Patrol agents are given broad powers under INA § 276 [8 U.S.C. § 1357] including rights to interrogate and arrest without warrant. *Id.* at (a)(1), (2). It would be hard to read into the Petition a complaint as to the arrest as described above by Petitioner. Dkt. 1 at 9.

Understandably, Petitioner would wish to challenge his being returned to the custody into which he was placed as an arriving alien. *See*, Dkt. 1 at 9 ("Then, having been at liberty for some three years, he was detained at his ICE check-in on November 10, 2025, and is now being held without the possibility of a bond hearing … .").

However, such action does not implicate the Fourth Amendment.

As discussed above, Petitioner was returned to the custody from which he was paroled, and that action is lawful under INA § 212(d)(5)(A)[12] and 8 C.F.R. § 1003.19(h)(2)(i)(B). Generally, a person subject to custody and paroled out of custody has reduced Fourth Amendment protections, if any. *Cf., Samson v. California*, 547 U.S. 843 (2006). Furthermore, Petitioner's arrest was authorized by statute and was lawful. INA § 276 [8 U.S.C. § 1357]. These powers are discussed *United States v. Quintana*, 623 F.3d 1237 (8th Cir. 2010), cited by Petitioner in his petition (Dkt. 1 at 18, 63):

> An alien may be arrested and detained pending a decision whether he is to be removed "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). In addition, a Border Patrol agent acting without a warrant is authorized-
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> (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;
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> (2) ... to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation …

Quintana, 623 F.3d at 1239. Likewise, the Fifth Circuit has recognizes these powers as supportive of law enforcement actions in the face of a Fourth Amendment challenge. *United States v. Vandyck-Aleman*, 201 F. App'x 215 (5th Cir. 2006). Petitioner was returned to custody in accordance with law and a warrant was served upon him and such action was reasonable under any applicable Fourth Amendment examination.

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[12] 8 U.S.C. § 1182(d)(5)(A).

IV. Conclusion

For the reasons articulated herein the petition should be denied.

Respectfully submitted,

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Certificate of Service

On January 20, 2026, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Todd A. Durden
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