

United States District Court
Western District of Texas
El Paso Division

Artur Petriakov,
Petitioner,

v.

Warden of the El Paso Processing
Center, *et al.*,
Respondents.

No. 3:26-CV-00040-LS

**Federal Respondents' Response to
Petition for Writ of Habeas Corpus**

Federal¹ Respondents provide this response to Petitioner's habeas petition [ECF No. 1]. 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.³

Petitioner is principally challenging ICE's ability to detain Petitioner pending resolution of the removal proceedings. *See generally* ECF No. 1. Petitioner is lawfully detained as an 'arriving alien,' and his detention comports with the limited due process rights he is entitled. *See DHS v. Thuraissigiam* 591 U.S. 103, 140 (2020). This petition differs from those frequently filed before

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

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

³ Petitioner did not pay the filing fee for non-habeas claims. *See Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). "When a filing contains both habeas and non-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id.* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3.

the Court because this Petitioner is an arriving alien who presented himself to a port of entry as an applicant for admission and was seeking admission.

Judge Rodriguez of the Western District of Texas recently denied a petition seeking release for an arriving alien in a similar procedural posture to Petitioner. *See Goguev v. Noem*, 5:25-CV-1593-XR *4 (W.D. Tex. Jan. 13, 2026) (finding 8 U.S.C. §§ 1225 (b)(2) and 1182(d)(5) jointly authorize detention of an arriving alien as a statutory matter). For the following reasons, this petition should also be denied. Detention for arriving aliens who arrive at a port of entry is well established law and has been recognized long before the recent *Matter of Yagure Hurtado* which has been the subject of recent litigation. *See e.g. DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020). *Leng May Ma*, 357 U.S. 185, 188, 190 (1958).

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Russia who applied for admission on September 24, 2021, at the San Ysidro, California, port of entry.⁴ ECF No. 1, at p.4; Exh. A, Notice to Appear (redacted). On September 29, 2021, Petitioner was released on parole under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5) until September 27, 2022. ECF No. 1, at Exh C. Petitioner does not allege his parole was extended or that he is otherwise within an approved period of § 1182(d)(5) parole. *See generally* ECF No. 1. Petitioner also has a pending application for asylum. *See* ECF No. 1, at Exh. D. Petitioner is next scheduled to appear in immigration court on February 12, 2026, before the El Paso, Texas immigration court. *See EOIR, Automated Case Information* (last accessed Feb. 2, 2026).

II. Argument

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.

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

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)).

Since Petitioner applied for admission at the San Ysidro port of entry, he is and remains an arriving alien. *See* ECF No. 1, at p. 4; Exh. A, NTA; 8 C.F.R. § 1001.1(q) (noting “an arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked.”). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by the Department of Homeland Security 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, 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 from September 29, 2021, to September 27, 2022. ECF No. 1, at Exh C.

Humanitarian parole under § 1182(d)(5) “shall not be regarded as an admission,” and when it expired in September 2022, he was required to “forthwith return to the custody from which he

was paroled,” *i.e.* Petitioner returned to being an arriving alien, seeking admission into the United States at the San Ysidro port of entry in California. § 1182(d)(5); *Gisbert v. U.S. Atty. Gen.*, 988 F.2d 1437, 1440 (5th Cir 1993) (“Although aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never having effected entry into this country.”); *see Goguev v. Noem*, 5:25-CV-1593 *3 (W.D. Tex. Jan. 13, 2026) (citing *Tenemasa-Lema v. Hyde*, No. CV 25-13029-BEM, 2025 WL 3280555, at *4 (D. Mass. Nov. 25, 2025)). “[T]hereafter [the parole expiration], his case shall continue to be dealt with in the same manner as any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5) (emphasis added).

Because Petitioner’s parole expired prior to his present detention, when he was detained, he had already returned “to the custody from which he was paroled.” 8 U.S.C. § 1182(d)(5). At all times, Petitioner has remained an arriving alien, even after he was released on parole, and certainly after it expired. *See* 8 C.F.R. §§ 212.5(e)(1)(ii), 212.5(e)(2)(i); 1001.1.

B. Petitioner’s Detention is Authorized by 8 U.S.C. § 1225(b)(2).

Section 1225(b)(2) requires detention if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, except in circumstances not applicable to Petitioner here. *See also* 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

Petitioner cannot reasonably dispute that he is not an applicant for admission because he first arrived in the United States at a port of entry. 8 U.S.C. § 1225(a)(1). Furthermore, his Notice to Appear alleges he ‘applied for admission’. *See* . Petitioner has not provided any

evidence or alleged that he was clearly and beyond a doubt entitled to be admitted when he presented himself at the port. Therefore, Petitioner's detention is authorized under statute. *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)).

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

Section 1225 comports with due process of law and does not provide for release or 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, like Petitioner here—are “treated” for due process purposes “as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139. Legally, since Petitioner is treated as if he is still stopped at the border, he is only entitled to those rights that Congress has provided by statute. *Id* at 107, 140.

Petitioner disputes this and claims he is entitled to release or in the alternative granted a bond hearing. ECF No. 1 at p.2. This Court should not be persuaded. Prior to *Thuraissigiam*, the Supreme Court decided *Leng May Ma*, and determined that Leng May Ma, who was paroled into the United States for determinations of her admissibility, was *not* treated as being within the United States, and the granting of a temporary parole did not somehow effect a change in her status. 357 U.S. 185, 188, 190 (1958).

Additionally, even looking further into historical case law, the Supreme Court in *Kaplan* determined that despite Kaplan's release from Ellis Island until she could be removed from the United States, she was still under the law treated as if at the boundary line and had gained no

foothold into the United States. 267 U.S. 288, 230 (1925).

Although *Leng May Ma* and *Kaplan* are statutory cases, “[they both] relied on due process considerations for the propositions relevant here. *See Goguev*, 5:25-CV-01593-XR *9 (W.D. Tex. Jan. 13, 2026). These cases further support Respondents’ position.

Finally, Petitioner’s mandatory detention during “full” removal proceedings does not violate due process, because the constitutional protections are built into those proceedings. Petitioner was served with a charging document (a Notice to Appear) outlining the factual allegations and the charge(s) of removability against him. *See* Exh. A; 8 U.S.C. § 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 a 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. Petitioner’s detention satisfies the due process Congress provided to them. *Thuraissigiam*, 591 U.S. at 140. For these reasons, the petition’s allegations ICE is wrongfully detaining Petitioner should be denied.

III. Claims Related to Conditions of Confinement are not Subject to Review in Habeas Petition

Respondents turn to Petitioner's claims of inadequate medical care and poor conditions at the detention facility. 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).

A civil rights suit, rather than a § 2241 petition, is the proper vehicle for challenging the conditions of confinement. *E.g., Melot v. Bergami*, 970 F.3d 596, 599 (5th Cir. 2020) ("We have noted that a habeas petition 'is the proper vehicle to seek release from custody,' while a civil rights suit . . . is the proper vehicle to attack unconstitutional conditions of confinement and prison procedures."); *Cheek v. Warden of Fed. Med. Ctr.*, 835 F. App'x 737, 738 (5th Cir. 2020) (*per curiam*) ("Section 2241 applications are used to challenge the *length* of a prisoner's sentence. If the prisoner wishes to challenge the *conditions* of his confinement, that claim is brought under 42 U.S.C. § 1983.") (citations omitted) (emphasis in original). Thus, "a challenge to the conditions of confinement is not properly brought under § 2241." *Falcetta v. Rosalez*, No. 23-50159, 2024

WL 890124, at *2 (5th Cir. Mar. 1, 2024) (per curiam).⁵

The Fifth Circuit has adopted a “bright-line rule” to determine whether a claim was properly brought pursuant to a habeas petition: “if a favorable determination of the prisoner’s claim would not automatically entitle him to accelerated release, then the proper vehicle is a civil rights suit.” *Melot*, 970 F.3d at 599 (citation omitted); *accord, e.g., Falcetta*, 2024 WL 890124, at *2 (discussing cases applying bright-line rule); *Blake v. Rosalez*, No. SA-24-CV-00498-XR, 2024 U.S. Dist. LEXIS 113440, at *3-4 (W.D. Tex. June 27, 2024) (recognizing bright-line rule); *Nel v. Cole*, No. PE-20-CV-00048-DC, 2020 WL 6535787, at *3 (W.D. Tex. Oct. 31, 2020) (same); *Schotz v. Willis*, No. EP-17-CV-19-FM, 2017 WL 1190148, at *2 (W.D. Tex. Mar. 3, 2017) (same).

Thus, courts have dismissed § 2241 petitions challenging conditions of confinement for lack of subject matter jurisdiction. *E.g., Boyle v. Wilson*, 814 F. App’x 881, 882 (5th Cir. 2020) (per curiam) (affirming dismissal of § 2241 petition challenging conditions of confinement for lack of jurisdiction); *Blake*, 2024 U.S. Dist. LEXIS 113440, at *6 (dismissing § 2241 claim attacking condition of confinement for lack of jurisdiction); *Nel*, 2020 WL 6535787, at *5 (same).

Here, a favorable determination as to Petitioner’s complaints about his medical care and the facility’s conditions “would not automatically entitle [him] to accelerated release,” *Falcetta*, 2024 WL 890124, at *2. Accordingly, his claims should be dismissed for lack of jurisdiction.

⁵ In a recent unpublished decision, *Barrientes v. Warden USP Pollock*, No. 23-30896, 2024 WL 2369376, at *1 (5th Cir. May 23, 2024) (per curiam), a panel of the Fifth Circuit stated that § “2241 is the proper procedural vehicle for challenging the conditions of a prisoner’s confinement” Respondent respectfully submits that this dictum was incorrect and does not overturn the Fifth Circuit decisions discussed above. *Barrientes* did not involve a challenge to the conditions of confinement, but instead involved an improper challenge to a sentence through a petition under § 2241 instead of § 2255.

IV. Conclusion

Petitioner is lawfully detained. The non-habeas claims should be severed and dismissed.
The Court should deny the Petition in its entirety.

Dated: February 2, 2026

Respectfully submitted,

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Certificate of Service

I certify that on February 2, 2026, a copy of the foregoing document was mailed to Petitioner (*pro se*) at the following address:

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