

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Wilson Reynaldo Ramos Lopez,

Petitioner,

v.

WARDEN RENALDO CASTRO, South
Texas ICE Processing Center; et. al.,

Respondents.

Civil Action No. 5:26-CV-00059-JKP

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents respond in opposition to Petitioner's habeas petition.¹ Any allegations that are not specifically admitted herein are denied. Petitioner is in detention because he violated the condition of his release, which resulted in the revocation of his release. Exs. 1, 2. Petitioner does not challenge the revocation. ECF No. 1. Instead, he challenges his detention without a bond hearing. *Id.* Petitioner's challenge is futile because the Court cannot release him without vacating the revocation—the challenge he abandons by not raising it. Regardless, the Court lacks jurisdiction to review or vacate the revocation.

Alternatively, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This conclusion is appropriate under recent Fifth Circuit precedent. The Fifth Circuit Court of Appeals recently held that aliens, like the Petitioner, who are in the United States and not “clearly and beyond a doubt entitled to be admitted,” “shall be detained” under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th

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

Cir. 2026). The *Buenrostro* decision is binding precedent and requires that the Court deny this habeas petition.²

Petitioner was apprehended at the border on the same day he illegally entered the country. Ex. 1. 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, at *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 and the entry fiction applies to some of the due process challenges based on detention of an alien). 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).

BACKGROUND

Petitioner is a citizen of Honduras who unlawfully entered the country on March 29, 2019. Ex. 1. The same day, the Customs and Border Patrol apprehended Petitioner at the border and issued him a Notice to Appear (“NTA”). *Id.* at 2. An immigration judge ordered Petitioner be removed *in absentia* on June 20, 2024. Ex. 2. Petitioner moved to reopen the removal proceedings, which was granted. *Id.*

It appears that Petitioner had been under an order of release on recognizance with various

² The *Buenrostro* decision is a published decision and precedential authority even though the mandate has yet to issue. *See, e.g., Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (explaining that even a stay in the issuance of a mandate does not impact the precedential value of published opinions); *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is not controlling because “the mandate has yet to issue, and thus not properly relied upon as precedent.”).

conditions.³ Ex. 3. The order required Petitioner, among other things, to not violate any law and to successfully enroll and complete an Alternatives to Detention (“ATP”) program. *Id.* The order duly warned Petitioner that Petitioner’s failure to comply with any of the conditions may result in revocation of his release and detention by ICE. *Id.*

Despite the warning, Petitioner violated the condition of his release by committing the offense of driving while intoxicated (“DWI”). Ex. 1 at 2. He was convicted of DWI in 2022 and received a final order in 2024. *Id.* His criminal conviction violated the condition of the ATP program. *Id.* ICE learned of this violation on November 17, 2025. *Id.* ICE arrested him when Petitioner showed up for his biometrics appointment on November 25, 2025. *Id.* Since then, he has remained in custody. *Id.* On March 4, 2026, an immigration judge ordered his removal. Ex. 4. An appeal to this order is due April 3, 2026. *Id.*

THE COURT LACKS JURISDICTION TO REVIEW THE REVOCATION

Petitioner fails to challenge the revocation. But the Court cannot grant the relief Petitioner seeks without vacating the revocation—the challenge he abandons. Petitioner seeks release from custody or a bonding hearing. ECF No. 1. This request entirely ignores that he had already been released under an order of recognizance. Petitioner violated the condition of his release, which resulted in revocation of his release. Ex. 1. Thus, releasing him *again* or ordering a bond hearing requires the Court to review and vacate the revocation.

“We start, as always, with jurisdiction.” *Texas v. Biden*, 20 F.4th 928, 947 (5th Cir. 2021), as revised (Dec. 21, 2021), rev’d and remanded on other grounds, 597 U.S. 785 (2022). Section

³ Petitioner was served with the order of release on March 3, 2025 after an immigration judge ordered him be removed in absentia in June 2024. Even prior to March 3, 2025, Petitioner along with his family were under an order of release with certain conditions. Petitioner missed two check-ins with ICE on July 26, 2024 and September 3, 2025. Respondents can provide a declaration supporting these facts upon request by the Court.

1226(e) strips this Court of jurisdiction to hear a challenge to the Attorney General's discretionary decisions "regarding the detention or release of any alien or the grant, *revocation*, or denial of bond or parole." (emphasis added).

The statute precludes the Court from reviewing or vacating the decision to revoke Petitioner's release and detain him. "[T]he Attorney General's discretionary judgment regarding the application of release and bond provisions-including the manner in which that discretionary judgment is exercised, and whether the procedural apparatus supplied satisfies regulatory, statutory, and constitutional constraints-is not subject to review." *Kambo v. Poppell*, No. SA-07-CV-800-XR, 2007 WL 3051601, at *8 (W.D. Tex. Oct. 18, 2007) (internal quotation marks omitted); *see also Loa-Herrera v. Trominski*, 231 F.3d 984, 991–992 (5th Cir.2000); § 1226(e). Thus, the Court lacks jurisdiction over the Petition and should dismiss it for lack of jurisdiction.

PETITIONER IS SUBJECT TO MANDATORY DETENTION

Because Petitioner fails to challenge the revocation—the precise reason why he is in detention—and even if he does, the Court lacks jurisdiction to review the challenge, the Court should deny the Petition. Alternatively, the Court should deny the Petition because Petitioner is in mandatory detention.⁴

Petitioner seeks an order from this Court directing the Department of Homeland Security to immediately release Petitioner from immigration detention, or alternatively, a bond hearing in immigration court. Neither is appropriate and the Court should deny the petition in light of the recent Fifth Circuit precedent. The primary issue raised by Petitioner, namely that his detention pursuant to 8 U.S.C. § 1225 and the Board of Immigration Appeals (BIA) decision in *Hurtado* is

⁴ Even if the Court assumes Petitioner is detained under § 1226, the result is the same because he *was indeed released* with the conditions. But he failed to comply with those conditions, which resulted in the revocation of the release.

unlawful, was rejected by the Fifth Circuit. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025)

Petitioner's contention that detention should be governed by, 8 U.S.C. § 1226, that Petitioner is being unlawfully detained and deprived of a bond hearing, and that the detention violates the United States Constitution were rejected in *Buenrostro*. *Id.* To the extent Petitioners claim they are not properly categorized as an applicant for admission "the text and context of § 1225 contradict the petitioners' reading of the statute." *Id.* at 502.

The Fifth Circuit made clear that aliens present in the United States who have not been admitted by lawful means, remain "applicants for admission" who were "seeking admission." *Id.* The court explained that "[w]hen a person applies for something, they are necessarily seeking it." *Id.* In so holding, the court rejected the reasoning that the phrase "seeking admission" in § 1225(b)(2)(A) uses the present tense and thus applies only to individuals "currently and actively seeking to be admitted to the United States when [they are] apprehended." *Id.* The Fifth Circuit held that "the everyday meaning of the statute's terms confirms that being an 'applicant for admission' is not a condition independent from 'seeking admission.'" *Id.*

Buenrostro, recognizing that the plain language of the INA controlled the analysis and outcome, also rejected arguments based on the Executive's past interpretation and application of § 1225 and § 1226. *Id.* at 506. "Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text." *Id.* (citing, *Pereira v. Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111 (2018)). The Fifth Circuit observed that the Government's interpretation and application of § 1225(b)(2) "better honors" the intent of Congress's amendments to the INA—the full enforcement of § 1225(b)(2)'s plain terms "put aliens seeking admission lawfully on equal footing with those who entered without inspection." *Id.* at 508.

Respondents acknowledge that many courts in the Western District of Texas have ruled otherwise in previous habeas cases. However, this significant development in the Fifth Circuit warrants this Court taking a different approach. “After reviewing carefully the relevant provisions and structure of the Immigration and Naturalization Act, the statutory history, and Congressional intent” the Fifth Circuit concluded that the detention authority relied upon by the government is lawful in *Buenrostro*.

The Fifth Circuit is not the only court to so hold. District courts around the country agree. See Exh. A (list of decisions). The Board of Immigration Appeals (BIA), the highest administrative body charged with interpreting and applying the immigration laws, also agreed in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). There, the BIA examined the plain language of § 1225, the INA’s statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub L. No. 104-208, and DHS’s prior practices. After doing so, the BIA held that “under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission.” 29 I&N Dec. at 225. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2) and this petition should be denied.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

“A person seeking habeas relief must first exhaust available administrative remedies.” *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018)(citing, *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.*

There are approximately 3.74 million cases pending in immigration court. See, <https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones> (Sept.

4, 2025). Federal district courts are not intended nor equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 USC § 1226(e) (district courts do not have jurisdiction to review discretionary decisions made by immigration judges regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole). “Challenges to removal proceedings, the government’s evidence, and the merits of asylum claims are properly addressed to the immigration court and should be administratively exhausted before presenting in district court. *Hinojosa*, 896 F. 3d at 314 (5th Cir. 2018); see *Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) (McFarland, J.) (declining to review Petitioner’s detention-based claims due to his failure to exhaust administrative remedies); *Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025) (Calabrese, J.) (holding that Petitioner must first pursue challenge before BIA for exhaustion and that such exhaustion is not futile); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) (McFarland, J.) (holding that Petitioner’s failure to exhaust claims with BIA precluded judicial review of habeas claims); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.) (holding that Petitioner does not demonstrate grounds for excusing exhaustion and must first advance his request for relief to BIA).

Either way Petitioner must first seek relief with the immigration court or the BIA, fully exhausting administrative remedies before coming to this Court. Yet, Petitioner has not even shown he has attempted to seek bond with the immigration court. ECF No. 1. Instead, he simply asserts exhaustion is futile. *Id.* at 3. The Court should order Petitioner to pursue administrative remedies.

DUE PROCESS CLAIMS

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—are “treated” for due process purposes “as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139. In fact, because Petitioner was stopped at the border, he is only entitled to those rights that Congress has provided by statute. *Id.* at 107, 140.

Petitioner appears to dispute the classification of himself as an arriving alien. *See generally* ECF No. 1. This argument lacks merit. 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. Ex. 5; 8 U.S.C. § 1229a(a)(2). He already had an opportunity to be heard by an immigration judge. *Id.* § 1229a(b)(1), (b)(4)(A). The immigration court’s order shows Petitioner could have sought but failed to make an application

for relief from removal. *Id.* § 1229a(b)(4)(B), (c)(4); Ex. 4. 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. 8 U.S.C. § 1229a(b)(4)(C), (c)(5).

In addressing Petitioner's claims of potential abuse of detention pending removal proceedings, the Fifth Circuit found that *Zadvydas v. Davis* did not apply to detained aliens who received due process through removal proceedings. *Buenrostro-Mendez*, 166 F.4th at 508. District courts around the country have also dismissed due process concerns in similar contexts. *See Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026) (Wyrick, J.) (holding that Petitioner is unambiguously governed by § 1225 and his due process claim coming three months after arrest is denied as premature); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J.) (holding that Petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *A.M. v. Joyce*, No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (Walker, J.) (holding that Petitioner's approximately one-month detention without a prompt bond hearing is consistent with the INA and the Due Process Clause); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.) (holding that

because Petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings are unavailable as a matter of statute and due process); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (holding that Petitioner, as an applicant for admission, is properly detained without a bond hearing under § 1225, which does not violate Due Process Clause); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.) (rejecting Petitioner's argument that mandatory detention without bond hearing violates substantive due process); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings).

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 him. *Thuraissigiam*, 591 U.S. at 140. For these reasons, the petition's allegations ICE is wrongfully detaining Petitioner should be denied.

APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioner expressly challenges his civil detention. *See, e.g.*, ECF 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus"); *see also, e.g., Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ

of habeas corpus[.]” (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, “release from ICE custody . . . is a remedy that is *only* available through a habeas petition.” *Armando C. G. v. Tsoukaris*, No. 20-5652, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added).

Some Petitioner purports to assert a claim under the Administrative Procedure Act (“APA”)—a civil claim. ECF No. 1 ¶ 37. This he may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g., Mesina v. Wiley*, 352 F. App’x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim “does not state a habeas claim”).

STAYS AND ORDERS NOT TO TRANSFER

The Court should not stay removal. The Fifth Circuit recently stated in an unpublished decision that district courts lack jurisdiction to enter stays of removal. *Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

CONCLUSION

The Court should deny the Petition for the reasons stated above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On or about March 23, 2026, I directed a copy of this filing to be mailed via US Certified Mail to the Pro Se Petitioner at the below address:

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