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

SALAMAT BACHSHYGULOV, Petitioner, v. TODD M. LYONS, et al., Respondents.	Civil Action No. 6:26-CV-00013-H

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

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I. Introduction

Petitioner Salamat Bachshygulov 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 near Otay Mesa, California, at a place other than a designated port of arrival. He was arrested as an alien present in the United States without admission or parole. 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 Bachshygulov is a native and citizen of Kazakhstan. Dkt. No. 1 at 14; App.002. On or about June 20, 2023, he crossed over the Southwest United States border with Mexico near Otay Mesa, San Diego, California[2] and was arrested near there by

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

[2] Otay Mesa is a community in the southern exclave of San Diego, California, just north of the U.S.–Mexico border. https://en.wikipedia.org/wiki/Otay_Mesa,_San_Diego (visited 2/9/26)

agents of Customs and Border Protection (CBP). Dkt. No. 1 at ¶ 1; App.002.[3] Petitioner expressed his intent to apply for asylum thereafter Petitioner was released from custody on parole under 8 U.S.C. § 1182(d)(5). Dkt. No. 1 at ¶¶ 1, 9; App.002. On December 11, 2025, Petitioner was driving a commercial truck and during a traffic stop presented an Illinois Temporary Driver's License despite his claims of residency in California. Dkt. No. 1 at ¶¶ 9, 13; App.016. Petitioner was returned to the custody from which he was paroled and is being held at the Eden Detention Center. Dkt. No. 1 at ¶ 14. Removal proceedings under 8 U.S.C. 1229a were initiated by the issuance of a Notice to Appear. App.018-020. A Master hearing[4] is to be held on February 19, 2026. App.022-023.

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[5] governs inspection, the initial step in this process, stating that all alien "applicants for admission . . . shall be inspected by

[3] Total CBP encounters along the Southwest border of the United States for 2023 are reported to be 2,475,670, equivalent to the populations of the Texas cities of Dallas and Fort Worth combined. App.007-010, 012-014.

[4] 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.

[5] References to sections, e.g., 1225 and 1226, refer to those sections within Title 8 of the United States Code.

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). § 1101(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. 1225(a)(1). As such, he is subject to the expedited removal procedures of INA § 1225(a)(1). But because Petitioner claimed fear of being returned to his home country, he was not removed without further hearing or review. INA § 1225(b)(1)(A)(i). Instead, by claiming fear, he became subject to the procedures of INA § 1225(b)(1)(A) and (B). Thus, he became subject to mandatory detention under INA § 1225(b)(1).[7]

Being an arriving alien and claiming fear of being returned to his home country, Petitioner became subject to a screening process. INA § 1225(b)(1)(A)(i). In that screening process, one of two determinations is made, either a positive determination or a

[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).

negative determination. *Id.* Under the procedures of INA § 1225(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. § 1225(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. § 1225(b)(1)(B)(iii)(IV). Either way, the law clearly provides for mandatory detention under § 1225(b)(1).

Being an arriving alien and claiming fear of being returned to his home country, Petitioner became subject to the procedures of § 1225(b)(1)(A) and (B) and thus became subject to mandatory detention. There is no language in § 1225(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 (2018):

> 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).

[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." 8 U.S.C. § 1182(d)(5)(A).

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* § 1225(b)(1)(B)(ii). Petitioner may assert argues that he cannot be subject to both expedited removal proceedings under INA § 1225(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") regardless of whether in an expedited procedure or in removal proceedings. *See* § 1225(b)(1)(B)(ii); *see also* § 1225(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 § 1225(a)(1), and because Petitioner is also present in the United States without admission, he is again an "applicant for admission" under § 1225(a)(1). As an applicant for admission Petitioner is properly subject to mandatory detention under § 1225(b)(2)(A).[9] *See Zuniga v. Lyons*, ___ F. Supp. 3d ____, 2025 WL 3755126, at *3

[9] 8 U.S.C. § 1225(b)(2)(A).

(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).

At the time of this Court's decisions in *Zuniga* and other cases, the Fifth Circuit had not yet weighed in on the issue of whether § 1225 applies to aliens who are present in the United States without having been lawfully admitted. However, late last week, the Fifth Circuit issued its decision in *Buenrostro-Mendez v. Bondi*, ___ F. 4th ___, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026), which holds that "the government's position is correct" on the issue of whether aliens who are present in the United States without having been lawfully admitted are subject to mandatory detention under § 1225—they are. The Fifth Circuit also noted that aliens subject to mandatory detention under § 1225 "are being given due process during removal proceedings," and rejected the idea that *Zadvydas v. Davis*, 533 U.S. 678 (2001)—a case that Petitioner cites in his petition, and in which the Supreme Court indicated that the Due Process Clause would likely be violated if an alien was subjected to "indefinite detention" after being ordered removed—would be applicable. *Buenrostro-Mendez*, 2026 WL 323330, at *9.

The Fifth Circuit's decision in *Buenrostro-Mendez* confirms that Petitioner in this case is appropriately considered detained under § 1225, and therefore is subject to

mandatory detention without a bond hearing in immigration court—such that his habeas petition must be denied. Moreover, even if Petitioner were to claim that his petition in this case raises arguments that differ slightly from those presented by the petitioners in *Buenrostro-Mendez*, the Fifth Circuit's decision controls. *See United States v. Wilkerson*, 124 F.4th 361, 368 (5th Cir. 2024) (explaining that the Fifth Circuit's rule of orderliness, under which future panels are bound by precedential decision of a prior panel, applies "even when a party raises 'new arguments that were not presented to a prior panel.'" (quoting *Mendez v. Poitevent*, 823 F.3d 326, 335 (5th Cir. 2016)); *see also United States v. Berry*, 951 F.3d 632, 636 (5th Cir. 2020). ("[A]n earlier panel decision binds even if that panel's opinion does not explicitly address arguments presented to the later panel."); *In re Bonvillian Marine Serv., Inc.*, 19 F.4th 787, 792 (5th Cir. 2021) ("This rule is strict and rigidly applied.").[10]

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[10] For example, Petitioner in this case might advance an argument based on the absence of a warrant requirement in § 1225 and the potential Fourth Amendment implications of this aspect of the statute. *See* Dkt. No. 1, ¶ 25. It is not clear whether this exact argument was presented in *Buenrostro-Mendez*, but nonetheless the decision there controls for the reasons discussed in the text above.

Even if a warrantless arrest is the means by which an alien is placed in detention under § 1225, that would not entitle the alien to habeas relief. The "great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention." *Walker v. Wainwright*, 390 U.S. 335, 337 (1968) (emphasis added). And under § 1225(b)(2)(A), an alien "shall be detained for a proceeding under section 1229a of this title," i.e., for removal proceedings in immigration court. That means aliens detained under § 1225 have a proceeding—in immigration court—in which the alien can seek relief against the alleged invalidity of their current detention. And whether that detention was initiated by a warrantless arrest, an arrest with a warrant, or in some other fashion, is at that point immaterial.

For this reason, the Seventh Circuit has explained that even assuming an alien is "arrested illegally," the alien is only "entitled to obtain their freedom through a habeas corpus proceeding" if immigration officials "ha[ve] made no move to begin deportation proceedings." *Arias v. Rogers*, 676 F.2d 1139, 1142 (7th Cir. 1982). However, "once deportation proceedings have begun[,] the legality of the alien's detention" based on the absence of a warrant "can no longer be tested by way of a habeas corpus proceeding." *Id.* at 1143–44. Rather, the alien must obtain relief through "administrative remedies" in removal proceedings. *Id.* at 1143. This is because once a "petitioner[ ] [is] able to pursue" those

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

Petitioner acknowledges his release upon a claim of asylum. Dkt. No. 1 at ¶¶ 1, 9. As applicable to the case at bar, this power is statutory. § 1182(d)(5)(A). 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 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

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administrative remedies, "their detention [is] no longer so lawless as to allow a judge to free them under the habeas corpus statute." *Id.*; *see also Rodriguez v. Olson*, No. 1:25-CV-12961, 2025 WL 3672856, at *4 (N.D. Ill. Dec. 17, 2025) (rejecting a § 1225 detainee's argument that the fact that he was arrested "without a warrant" entitled him to habeas relief); *Chavez de Vasquez v. Baker*, No. SAG-25-03657, 2025 WL 3713773, at *2 (D. Md. Dec. 23, 2025) (rejecting a petitioner's argument "that habeas relief is warranted because she was subjected to a warrantless arrest," and explaining that "Petitioner offers no authority, and this Court is not aware of any, granting an individual habeas relief as a result of a warrantless immigration arrest after the individual's immigration proceedings had begun").

Nor does *Thuraissigiam* support Petitioner's claim. (*See* Doc. 1, ¶ 125.) The issue in that case was whether the alien—who as Petitioner notes was encountered and detained approximately 25 yards from the border—could obtain a writ of habeas corpus to challenge his placement in so-called expedited removal proceedings, which occur quickly and without the benefit of the full procedural protections and appeal rights afforded in immigration court in so-called full removal proceedings. *Thuraissigiam*, 591 U.S. at 114–15. The Supreme Court said no, and that decision in no way supports Petitioner's assertion that he cannot properly be detained under § 1225. Moreover, Petitioner's detention arises under a different provision of the statute—at § 1225(b)(2)(A)—that is separate and apart from the provision that applies to aliens in expedited removal proceedings, which is at § 1225(b)(1)(B)(IV).

To sum up, Petitioner's Fourth Amendment-based arguments do not require interpreting § 1225 in the manner he advocates, nor do they show any other entitlement to habeas relief.

persons paroled after arrival pursuant to section 212(d)(5) [8 U.S.C. 1182(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 ¶¶ 1, 9. However, 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) and as in *Buenrostro-Mendez v. Bondi*, ___ F. 4th ___, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). *See also, Ladak v. Noem*, ___F.Supp.3d ___, 2025 WL 3764016 at *2 (N.D. Tex 2025) (discussing *Mathews v. Eldridge* in an immigration law context).

C. The Administrative Procedures Act provides no relief.

Petitioner alleges unlawful agency action, invoking agency regulation 8 C.F.R. § 1236.1(c)(8). Dkt. No. 1 at ¶¶ 32, 33. However that regulation deals with detention under § 1226, applicable to those aliens who have been admitted but are placed into removal proceedings. The proper regulation is 8 C.F.R. § 1003.19(h)(2)(i)(B). discussed above.

IV. Conclusion

The petition should be denied.

Respectfully submitted,

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Certificate of Service

On February 9, 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).

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