

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IHAR YURKIN,

Petitioner,

v.

WARDEN, PHILADELPHIA DETENTION
CENTER, PHILADELPHIA, PA, et al.,

Respondents.

Civil Action No. 2:26-cv-385
(Judge Quiñones Alejandro)

RESPONDENTS' SUPPLEMENTAL BRIEF REGARDING
PETITIONER'S NOTICE TO APPEAR

I. Introduction

Petitioner advances the argument that because his Notice to Appear (NTA) incorrectly alleges that he is a native and citizen of Russia (not Belarus) that: 1) the document is a dead letter with no legal consequence; 2) with no operative NTA classifying him as an “arriving alien,” he instead is an alien present in the United States who has not been admitted or paroled; and 3) therefore, his detention under § 1225(b)(2)(A) is unlawful under the reasoning of cases that have rejected the BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–24 (BIA 2025).

Petitioner mistakes the government’s argument, which does not depend on the allegation of Russian citizenship in the Notice to Appear, and instead depends on the undisputed allegations of the Petition relating to Petitioner’s manner of entry. Second, he misunderstands the statutory requirements of a Notice to Appear. And third, he ignores that, even if Petitioner were not an “arriving alien,” he would be subject to mandatory detention under § 1225(b)(2)(A), consistent with the BIA’s

decision in *Hurtado* and the lone court of appeals to have considered the question, the Fifth Circuit Court of Appeals in *Buenrostro-Mendez v. Bondi*, --- F. 4th ---, 2026 WL 323330 (5th Cir. 2026).

II. Petitioner’s detention is lawful under § 1225(b)(2)(A) based on the uncontroverted allegations of the Petition.

Regardless of the factual allegations of the Notice to Appear, Petitioner’s detention is lawful under § 1225(b)(2)(A). The government’s principal argument in response to the Petition is that Petitioner is an “arriving alien” subject to mandatory detention under § 1225(b)(2)(A) and that, after the expiration of his discretionary parole, he returns to the custody status—mandatory detention—from which he was paroled, pursuant to 8 U.S.C. § 1182(d)(5)(A). This argument does not allegation of Russian citizenship in the Notice to Appear, but instead is based on Petitioner’s own allegations in the Petition regarding his manner of entry.

The Petition affirmatively alleges that Petitioner, a noncitizen, presented to immigration authorities at the Brownsville, Texas port of entry, was inspected, and was paroled into the United States. *See* Pet. ¶ 20; *see also* Ex. A (I-213 form). That makes him an “arriving alien,” a type of “applicant for admission,” under 8 C.F.R. § 1.2. *See* 8 C.F.R. § 1.2 (“Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry An arriving alien remains an arriving alien even if paroled.”); *see also* 8 U.S.C. § 1225(a)(1) (“An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival ...) shall be deemed for purposes of this chapter an applicant for admission.”).

Thus, he was subject to mandatory detention because he was an applicant for admission, seeking admission, within the meaning of § 1225(b)(2)(A), and was not “clearly and beyond a doubt entitled to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A) (providing that aliens seeking admission not clearly and beyond a doubt entitled to be admitted “shall be detained” pending removal proceedings). And when his parole expired, by statute he returns to mandatory detention, the custody status “from which he was paroled.” 8 U.S.C. § 1182(d)(5)(A).

Thus, Petitioner is subject to mandatory detention under § 1225(b)(2)(A) based on the undisputed factual allegations of the Petition (and consistent with his I-213 form, *see* Ex. A), regardless of the language of the Notice to Appear.

III. The Notice to Appear satisfies statutory requirements and, even if defective, would not render Petitioner’s detention invalid.

Petitioner relies on the Supreme Court’s decision in *Niz-Chavez v. Garland*, 593 U.S. 155 (2021), to argue that an inaccuracy in the Notice to Appear fatally undermines it as a charging document. But *Niz-Chavez*, and the Supreme Court’s earlier decision in *Pereira v. Sessions*, 585 U.S. 198 (2018), concern themselves with an express statutory requirement of § 1229(a)(1). Namely, that provision expressly requires that a Notice to Appear specify the “time and place at which the proceedings will be held.” 8 U.S.C. § 1229(a)(1)(G)(i). For that reason, the Supreme Court held that an NTA lacking that information (or that only satisfies the statute across multiple documents) fails to comply with § 1229(a)(1) for purposes of the “stop-time rule” in immigration proceedings. *See Pereira*, 585 U.S. at 209; *Niz-Chavez*, 593 U.S. at 171.

Section 1229(a)(1) requires that the NTA specify, among other additional items, the “nature of the proceedings against the alien,” the “legal authority under which the proceedings are conducted,” the “acts or conduct alleged to be in violation of law,” and the “charges against the alien and the statutory provisions alleged to have been violated.” *Id.* § 1229(a)(1)(A)–(D). Petitioner’s NTA satisfies those requirements. *See* Pet. Ex. B. But the statute does not require further specification of Petitioner’s country of origin. His undisputed status as a noncitizen immigrant without valid entry documents is a sufficient factual basis for the charges set forth in the NTA.¹

Further, Petitioner cites no authority for the proposition that an NTA that erroneously identifies an immigrant’s country of origin is fatal to the removal proceeding and associated detention authority. To the contrary, a defective NTA is not fatal to § 1229a proceedings, even when lacking statutorily required components. *See Chavez-Chilel v. Att’y Gen.*, 20 F. 4th 138 (3d Cir. 2021) (holding that failure of DHS to include time and date information on NTA does not require termination of proceedings); *Matter of R-T-P-*, 28 I&N Dec. 828 (BIA 2024) (permitting written amendments by immigration judge to NTA that lacks time and date information); *Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021) (NTA

¹ In any event, if Petitioner’s position is that the NTA’s allegations fail as a factual matter, he is free to raise that defense in his removal proceedings, which ultimately will be subject to a petition for review in the Court of Appeals. Under the Third Circuit’s recent decision in *Khalil v. President, United States*, 164 F.4th 259 (3d Cir. 2026), this Court likely lacks jurisdiction to consider such issues intertwined with the merits of his removal proceedings.

that does not specify date and time does not deprive the immigration judge of jurisdiction and still constitutes a charging document sufficient to terminate grant of parole).

Thus, Petitioner's NTA is not defective in a manner that undermines Petitioner's detention under § 1225(b)(2)(A).

IV. Even accepting Petitioner's argument, he is subject to detention under § 1225(b)(2)(A) and the BIA's decision in *Hurtado*.

Finally, even if the Court were to accept Petitioner's argument that his NTA is defective such that he should not be considered an "arriving alien," he still would be subject to mandatory detention as an "applicant for admission," under § 1225(b)(2)(A) and the BIA's decision in *Hurtado*. The government acknowledges that all courts in this district (and many more elsewhere) have rejected the reasoning of *Hurtado* and have instead reasoned that § 1225(b)(2)(A) requires that an "applicant for admission" be actively "seeking admission" at or near the border to fall within its scope. *See, e.g., Kashranov v. Jamison*, 2025 WL 3188399, *6–7 (E.D. Pa. 2025). However, the lone court of appeals to have considered the issue, the Fifth Circuit Court of Appeals, has agreed with the government. *See Buenrostro-Mendez v. Bondi*, --- F.4th ---, 2026 WL 323330, at *1, *4–*6 (5th Cir. Feb. 6, 2026) ("The everyday meaning of the statute's terms confirms that being an 'applicant for admission' is not a condition independent from 'seeking admission.'"). The *Buenrostro-Mendez* court concluded, correctly, that an "applicant for admission" is "necessarily someone who is 'seeking admission.'" *Id.* at *5.

Here, Petitioner is indisputably an “applicant for admission.” Therefore, he is also “seeking admission” and subject to mandatory detention under § 1225(b)(2)(A).

Respectfully submitted,

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Dated: February 11, 2026

CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Supplemental Brief Regarding Petitioner's Notice to Appear via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: February 11, 2026

/s/ Landon Y. Jones
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