

United States District Court
Western District of Texas
San Antonio Division

Adrian Conejo Arias, L.C.R.,
Petitioner,

v.

No. 5:26-CV-00415-FB

Todd M. Lyons, Acting Director, U.S.
Immigration and Customs Enforcement, *et al.*,
Respondents.

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

Federal¹ Respondents provide this response to Petitioner's² habeas petition [ECF No. 1], motion for the Court to issue an order to show cause [ECF No. 2], and motion for preliminary injunction and temporary restraining order [ECF No. 3]. 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"),³ and this Court should deny this habeas petition without the need for an evidentiary hearing.

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 the Court because this Petitioner is an arriving alien who presented himself to a port of entry as an

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

² The lead Petitioner is the parent of the minor petitioner. Any reference herein to "Petitioner" applies equally to the lead Petitioner and his child.

³ *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

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, and his minor child, are citizens and natives of Ecuador who applied for admission on December 14, 2024, at the Brownsville, Texas port of entry.⁴ ECF Nos. 1-3 at 1–8 (Notice to Appear). On December 14, 2024, Petitioner was released on parole under INA § 212(d)(5); 8 U.S.C. § 1182(d)(5) until April 18, 2025. ECF No. 1-2. 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 is next scheduled to appear in immigration court on February 2, 2026, before the Pearsall, Texas immigration court. Exh. A.

II. Argument

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).

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.

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 Brownsville, Texas port of entry, he is and remains an arriving alien. *See* ECF No. 1-3 at 1–8; 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 December 14, 2024, to April 15, 2025. ECF No. 1-2.

Humanitarian parole under § 1182(d)(5) “shall not be regarded as an admission,” and when it expired in April 2025, 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 port of entry in Brownsville, Texas. § 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'. ECF No. 1-3 at 1, 5. 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 should be no longer treated as if he is at the port of entry. ECF No. 1 at 12–15. 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. ECF No. 1-3. 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. Addressing the Court's Orders Comparing this Case to those Previously Decided

Respondents turn to responding to this Court's Orders [ECF Nos. 5 at 2–3; 7 at fn.1]. This case is distinguishable. In this case, Petitioner applied for admission at the port of entry, as an applicant for admission, 8 U.S.C. § 1101(a)(13)(A), who was seeking admission and was not clearly and beyond a doubt entitled to be admitted, 8 U.S.C. § 1225(b)(2). *See* ECF No. 1-3 at 1–

8; § 1225(b)(2). In summation, Petitioners detention is authorized by statute. *See Goguev*, 5:25-CV-01593 *4.

The Court's January 26, 2026 Order [ECF No. 5]

Petitioner is in a different procedural posture from the aliens in this Order. The petitioners in *Jaimes*, *Tinoco Pineda*, and *Mendoza Euceda* entered the United States without inspection in between the ports of entry and were issued Notices to Appear. Mr. Mendoza Euceda is further distinguishable because as an unaccompanied child from a noncontiguous country he could not be placed in expedited removal under INA § 235; 8 U.S.C. § 1225 and could only be placed in regular removal proceedings under INA § 240; 8 U.S.C. § 1229a. Those petitioners did not arrive at a port of entry seeking admission and they were not arriving aliens.

The petitioners in *Vega-Vega*, *Gonzalez-Gomez*, *Granados* entered the United States without inspection and were undetected by immigration for years before their first encounter. Again, factually distinguishable from the instant case. They were not arriving aliens.

Finally, the petitioner in *Rahimi* was in a different procedural posture than Petitioner because Mr. Rahimi was subject to a final order of removal under 8 U.S.C. § 1231. Mr. Rahimi attempted to reopen removal proceedings to obtain an additional benefit but is now subject again to post order statutory authority under § 1231, distinguishable from the instant Petitioner.

The Court's January 29, 2026 Order [ECF No. 7]

Again, these cases are distinguishable. In *Lozada v. La Rose*, the District Court determined ICE's *revocation* of parole without an individualized, case by case assessment violated due process. 2025 WL 184205 *3 (S.D. Cal. 2026). In the additional listed cases, the District Courts concluded the same, that DHS's *revocation* of parole without an individualized review, and case by case assessment violated due process, in *Akilov* [2026 WL 74289 *2], *Villegas-Gonzalez*, 2025

WL 376939 *6, *Benavente*, 2025 WL 3760755 *5, *Osuna Benitez*, 2025 WL 3760755 *3, *Kenzhebaev*, 2025 WL 3737975 *6, *Gil Pirona*, 2025 WL 3687339 *6.

Here, ICE did *not* terminate Petitioner's parole to detain him. Rather, Petitioner's parole *expired* in April 2025, and Petitioner neither alleges nor establishes that his parole was extended or that he was otherwise within an authorized period of parole at the time he was detained. The notice and termination provisions the District Courts relied upon *supra*, do not apply to Petitioner, whose parole expired by mere passage of time. Even if this Court found notice was required, Petitioner was on notice his parole would expire in April 2025. *See* ECF No.1-2.

IV. Petitioner's Motion for a Preliminary Injunction and Temporary Restraining Order (TRO) Should be Denied.

Respondents additionally oppose this requested relief as part of their general response in opposition to the petition and show herein that Petitioner is unlikely to succeed on the merits of his claim. Petitioner also seeks the same relief in the TRO as he does in the habeas. District Courts have denied a TRO when the relief sought is identical to the relief sought in the already expedited habeas. *See Romero Martinez v. Warden*, SA:25-CV-1832-OLG (collecting cases).

Adhering to the Court's Order, Respondents argue Section 1225(b) comports with due process and Petitioner does not raise a colorable as-applied challenge. A preliminary injunction is an "extraordinary and drastic remedy." *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is "not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion." *Black Fire Fighters Ass'n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). Importantly, temporary restraining orders are ordinarily aimed at temporarily preserving the status quo. *Foreman v. Dallas Cty.*, 193 F.3d 314, 323 (5th Cir. 1999), *abrogated on other grounds by Davis v. Abbott*, 781 F.3d 207 (5th Cir. 2015). "The four prerequisites are as follows:

(1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has “clearly” carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

With respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is in removal proceedings, which entitles the government to detain him, either on a mandatory basis under § 1225(b) or in the exercise of discretion; and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws. Moreover, Petitioner has provided no basis for this Court to determine that his continued detention pending the conclusion of his removal proceedings will cause him irreparable harm. Indeed, Petitioner can apply for relief before an immigration judge. Since nondetained hearings in immigration court are back logged and can take years to be heard, because of his detention, his removal proceedings will advance more quickly than they would on the non-detained docket. Importantly, a TRO preserves the status quo, ordering Petitioner released is not the status quo and in opposite of Petitioner’s detention. The Court should therefore deny the requests for injunctive relief and dismiss the case in its entirety.

V. Petitioner’s Motion for an Order to Show Cause Requiring Respondents to Timely Respond is Moot.

Petitioner’s request to issue an order to show cause and order Respondents to timely respond to the petition is moot. The Court has already ordered Respondent to respond [ECF No. 4, 5, 7].

VI. Petitioner's Non-Habeas Claims Should be Severed and Dismissed.

In his petition, Petitioner alleges non-habeas claims, *e.g.* that he was seized in violation of the Fourth Amendment, ICE violated the APA, and the *Accardi* doctrine. *See generally* ECF No. 1. Additionally, Petitioner raises these allegations without sworn written support. *See* Rule 2(c)(5). (A petition under § 2254 requires facts be attested to under penalty of perjury by the petitioner or a person authorized to sign for him. Rule 2(c)(5)). The statutorily required attestation is not included in the petition.

The non-habeas claims should be severed and dismissed. *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; *see also Gutierrez-Orellana*, 5:26-CV-00207-OLG at 2.⁵

Respondents maintain that its present briefing addresses Petitioner's contention he is

⁵ Regarding claims that ICE has violated "ICE Directive 11064.4" (Directive). Those claims are not appropriate raised here by sworn allegation and should be severed. However, Respondent's note for the Court that the Directive complements ICE's detention standards and policies that govern intake, detention, and removal; however, it does not limit the ability of ICE personnel to make enforcement decisions on a case-by-case basis. Additionally, the Directive states it creates no private right, and “no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.” The Directive also specifically states, “*unless ICE is effectuating an enforcement action against the minor child(ren)*, ICE personnel should not, under any circumstances, take custody of or transport the minor child(ren).”). As set forth more fully above, ICE was engaged in a lawful enforcement action involving Petitioner who was an arriving alien whose parole had expired in April 2025.

unlawfully detained. Should this Court determine the case should be decided on a basis other than what is briefed herein, Respondents respectfully request additional time for briefing to investigate and address those issues which involve additional areas of law, regulation, and require factual investigation.

VII. Conclusion

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

Respectfully submitted,

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