

United States District Court
Western District of Texas
San Antonio Division

Jonathan Camilo Pena Mensa,
Petitioner,

v.

Warden, Karnes, *et. al.*,
Respondents.

No. 5:26-CV-00591-JKP

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

Federal¹ Respondents provide this response to Petitioner's habeas petition². 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 an 'arriving alien' who is ineligible (and was ineligible even pre-*Hurtado*), for bond from an immigration judge. Exh. A at 1 (Notice to Appear, charging Petitioner as an arriving alien); 8 C.F.R. 1003.19(h)(2)(i); *see also Goguev v. Noem*, et al, SA-25-CA-01593-XR (W.D. Tex. Jan. 13, 2026) (Rodriguez, J.) (denying habeas petition to an arriving alien). Arriving aliens are applicants for admission, and Fifth Circuit precedent now confirms that an applicant for admission is subject to mandatory detention. *Buenrostro v. Bondi*, No. 25-20496, --- F.4th --- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). The *Buenrostro* decision is binding precedent and

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

² The Court's Order directs a response by Friday, February 12, 2026, by 1pm. ECF No 3 at 1. If this response is untimely, undersigned apologizes for the delayed response.

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

requires that the Court deny this habeas petition.⁴

Pursuant to the Court's Order For Service (ECF No. 3), Respondents reviewed the cases cited by the Court and note said cases were decided prior to the Fifth Circuit's decision in *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, (5th Cir. Feb. 6, 2026), as such, there has been a material change to the legal landscape applicable to this case.

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Colombia who was charged as an arriving alien and inadmissible to the United States under INA § 212(a)(7)(A)(i)(I). Exh. A at 1. Petitioner previously sought bond from the immigration judge but was denied because the immigration judge lacks jurisdiction to grant bond to arriving aliens. Exh. B at 1; 8 C.F.R. 1003.19(h)(2)(i). On July 1, 2025, an immigration judge denied Petitioner's applications for relief from removal and Petitioner reserved appeal. Exh. C. Petitioner filed his notice of appeal with the Board of Immigration Appeals on July 28, 2025. *See Automated Case Information System* (last accessed Feb. 12, 2026). The appeal remains pending. *Id.*

II. Argument

A. Petitioner Is an Arriving Alien Subject to Mandatory Detention under § 1225(b) As an Applicant for Admission.

On the merits, this petition differs from those frequently filed before the Court because this

⁴ 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."). As such, each pre-*Buenrostro* district court decision cited in this Court's Order to Show Cause is overruled as it relates to ICE's statutory authority to detain certain aliens on a mandatory basis under 8 U.S.C. § 1225(b).

Petitioner is an arriving alien who presented himself to immigration authorities at a port of entry. *See* ECF No. 1-3 at 1. 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 is an arriving alien, as the immigration judge has determined, he is an arriving alien. *See* Exh. B; 8 C.F.R. § 1001.1(q). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by ICE on a discretionary parole. 8 C.F.R. § 1235.3(c); *Clark*, 543 U.S. at 373 (explaining that detention of an “alien arriving in the United States” is “subject to the Secretary’s discretionary authority to parole” her into the United States); *see also* 8 U.S.C. § 1182(d)(5)(A). Whether the government decides to parole an arriving alien or keep him detained, the regulations state that an immigration judge does not have authority to review the custody determination of an arriving alien in removal proceedings. 8 C.F.R. § 1003.19(h)(2)(i)(B). This regulation pre-dates *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) and is well-settled law. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see also Garibay-Robledo v. Noem*, --- F.Supp.3d ---, No. 1:25-CV-177-H, 2026 WL 81679 at *4 (N.D. Tex. Jan. 9, 2026).

Petitioner, therefore, is currently properly detained under § 1225(b)(2)(A) as an arriving alien in removal proceedings under 8 U.S.C. § 1229a. *See Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 521, 523 (BIA 2011); 8 C.F.R. § 239.1 (DHS has the discretion to issue an NTA at the port of entry in lieu of expedited removal proceedings). As an arriving alien, irrespective of the Board’s decision in *Hurtado*, the regulations bar Petitioner from seeking bond from an immigration judge. *See also Buenrostro*, 2026 WL 323330 at *1.

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

Section 1225 does not provide for 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. Mandatory detention of an applicant for admission during “full” removal proceedings does not violate due process, because the constitutional protections are built into those proceedings. *See* 8 U.S.C. § 1229a.

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.

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. For aliens, like Petitioner, who are detained during removal proceedings as applicants for admission, what

Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. As applied here to Petitioner, his detention does not violate due process.

III. Conclusion

Petitioner is lawfully detained as an arriving alien in removal proceedings. The Board's decision in *Hurtado* has no bearing on an arriving alien, like Petitioner, who was already ineligible for bond before *Hurtado*'s issuance. **Regardless, the Fifth Circuit has held that applicants for admission are properly detained on a mandatory basis under § 1225(b)(2). *Buenrostro*, 2026 WL 323330 at *1.** The Court should deny the Petition in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On February 12, 2026, I directed a copy of this filing to be mailed to Petitioner at the following address:

Jonathan Camilo Pena Mensa

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Karnes County Immigration Processing Cener

409 FM 1144

Karnes City, Texas 78118

/s/ Anne Marie Cordova

AUSA Anne Marie Cordova