IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SERHAT GULBAS, Petitioner, v. KRISTI NOEM, ET AL, Respondents.	Civil Action No. 3:26-CV-00296-K-BN

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

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I. Introduction

Petitioner Serhat Gulbas 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] In connection therewith, he has filed a motion for temporary restraining order and/or preliminary injunction (Dkt. No. 3, the "motion for TRO"). However, Petitioner is lawfully detained as an applicant for admission in removal proceedings. Petitioner 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 Serhat Gulbas is a native and citizen of Turkey (Türkiye).[2] Dkt. No. 1 at ¶¶1, 15. He illegally entered the United States without inspection on or about November 30, 2022 and was arrested near the U.S. border by U.S. Customs and Border Protection (CBP) agents. Dkt. No. 1-1 at p. 136,;App.002. On December 2, 2022, Petitioner was personally served with a Notice to Appear, instituting removal proceedings. Dkt. No. 1-1 at p. 136-138. On December 10, 2022, Petitioner was released from DHS custody on conditions, at which time he gave a United States telephone

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

[2] Petitioner's country of citizenship is referred to by both names within the appendices.

number and a residential address in Murphy, Texas. Dkt. No. 1-1 at p. 129-131; *see* 8 U.S.C. § 1182(d)(5)[3]. On December 28, 2022, by and through counsel, he entered written pleadings in immigration court and filed an I-589 application for asylum. App.006-008, 010. He has been represented by counsel throughout the removal proceedings. App.013-020. On October 31, 2025, he was returned to custody in connection with his removal proceedings. Dkt. No. 1-1 at p. 140-141. On December 22, 2025, after a hearing, he was ordered removed. App.022-025. On January 5, 2026, he filed a motion to reopen. App.027-061. On January 21, 2026, pending consideration of the motion to reopen, he filed an appeal. App.063-065. On January 26, 2026, the immigration judge granted the motion to reopen. App.067-068. On January 28, 2026, the immigration court set the case for a Master Calendar Hearing to be held on February 23, 2026. App.070.

On February 4, 2026, Petitioner has filed the instant habeas petition in which he claims entitlement to a bond hearing in immigration court during the pendency of the reopened removal proceedings. *See* Dtk. No. 1.

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.*

[3] INA § 212(d)(5).

Rodriguez, 583 U.S. 281, 286 (2018). Section 1225[4] governs inspection, the initial step in this process, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." § 1225(a)(3).[5] Section 1225—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 . . . ." § 1225(a)(1) (emphasis added).

By definition, because Petitioner is present in the United States without admission, he is an "applicant for admission" under § 1225(a)(1). And as an applicant for admission, Petitioner is properly subject to mandatory detention under § 1225(b)(2)(A).[6] *See Buenrostro-Mendez v. Bondi*, ___ F. 4th ____, 2026 WL 32330, at *1-*2 (5th Cir. Feb. 6, 2026); *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). 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 are not entitled to a bond hearing. *Buenrostro-Mendez*, 2026 WL 32330, at *1-*2.

The Fifth Circuit's decision in *Buenrostro-Mendez* holds that "the government's

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

[5] 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 . . . .").

[6] § 235(b)(2)(A).

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. 2026 WL 323330, at *1. 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 holding in *Buenrostro-Mendez* follows *Jennings, supra*: "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)." *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018).

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 lengthy 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.").

B. Plaintiff has not met his burden to obtain extraordinary relief.

Rule 65 of the Federal Rules of Civil Procedure governs injunctions and restraining orders. A temporary restraining order is "simply a highly accelerated and temporary form of preliminary injunctive relief, which requires that the party seeking such relief establish the same four elements for obtaining a preliminary injunction." *Greer's Ranch Café v. Guzman*, 540 F. Supp. 3d 638, 644–45 (N.D. Tex. 2021) (citation modified). A court may issue a TRO (or PI) only if the movant demonstrates: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) that the balance of hardships weighs in its favor; and (4) that the issuance of the preliminary injunction will not disserve the public interest. *Daniels Health Servs., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 582 (5th Cir. 2013). The movant, as the party seeking relief, bears the burden of proving all four elements of the requested injunctive relief. *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008). TROs are "extraordinary relief and rarely issued," *Albright v. City of New Orleans*, 46 F. Supp. 2d 523, 532 (E.D. La. 1999), and the decision to grant or deny injunctive relief is committed to a district court's discretion, *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir. 1985).

Petitioner cannot meet his burden of any of the four elements, and clearly he has not shown a substantial likelihood of success on the merits. *See Buenrostro-Mendez*, 2026 WL 323330, at *9 (referring to aliens who are detained and receive due process during removal hearings). Plaintiff has not met his burden to obtain extraordinary relief.

IV. Conclusion

The petition and motion for temporary restraining order should be denied.

Respectfully submitted,

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Certificate of Service

On February 11, 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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