United States District Court
Western District of Texas
El Paso Division

Taras Pilipenko Petitioner, v. Kristi Noem, *et. al.* Respondents.	No. 3:26-CV-0348-DCG

Federal Respondents' Response to
Petition for Writ of Habeas Corpus

Federal[1] Respondents provide this response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, 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. Gov't Exh. A (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.

requires that the Court deny this habeas petition.[2]

Independent of Petitioner's arriving alien status, as an application for admission, intercepted at or near the port of entry shortly after unlawfully entering, who indicates a fear of persecution[3], and whom an asylum officer determines has a credible fear of persecution or torture, "shall be detained for further consideration of the application for asylum," properly described under § 1225(b)(1)(A)(ii).

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Russia who applied for admission at San Ysidro, California on March 22, 2022.[4] *See* Gov't Exh. A (NTA). Petitioner was processed for expedited removal and after a positive credible fear determination he was placed into full removal proceedings. *See* Exh. B (Form I-213). In April 2022, Petitioner was paroled into the Unites States and his parole terminated on March 30, 2023. ECF No. 1 at ¶¶ 8, 17; *see also*, Pet. Exh. C. Petitioner claims he was placed on an Order of Supervision. ECF No. 1 at 4 ¶ 17. There is no

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[2] 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 adverse pre-*Buenrostro* district court decision in this district should be deemed unpersuasive as it relates to ICE's statutory authority to detain certain aliens on a mandatory basis under 8 U.S.C. § 1225(b).

[3] Petitioner's case fits squarely within the analysis and reasoning found in *Canales-Melgar v Noem*, SA-25-CV-01571-XR *7 (W.D. Tex. Dec. 23, 2025) (determining detention without a bond hearing is authorized and required by statute); *see also*, *Matter of M*-S-, 27 I&N Dec. 509 (A.G. 2019).

[4] **This is a material factual difference between this petition and the others frequently filed before the court, as Petitioner here presented himself at a port of entry, as opposed to entering without inspection between ports of entry**. *See* Ex. A (NTA, alleging that he applied for admission at the port of entry).

evidence in the record to support Petitioner's claim. On or about August 19, 2025, Petitioner was placed back in ICE custody when he reported to the ICE/ERO in San Francisco. ECF No. 1 at ¶ 8; *see also*, Gov't Exh. B (Form I-213). Petitioner filed an application for asylum relief[5] within his first year of entering the United States. ECF No. 1 at ¶ 18; *see also*, Pet. Exh. C. Petitioner claims he was granted employment authorization that has been extended at least once. ECF No. 1 at ¶ 19. Petitioner offers no evidence to establish his employment authorization remains valid. Petitioner concedes he was arrested in June 2024, for domestic violence. ECF No. 1 at ¶ 20. Petitioner claims the alleged offense was reduced to a misdemeanor. *Id.* However, it would seem Petitioner's charge remains pending and is a felony charge. *See* Exh. Gov't Exh. B (Form I-213). Petitioner claims he was enrolled in "certain classes[6]" and because of his detention he is unable to continue those classes. ECF No. 1 at ¶ 20; *see also*, Pet. Exh H. Petitioner has a pending Form I-130[7], and Form I-485[8] pending with the United States Citizen and Immigration Services ("USCIS"). During Petitioner's removal proceedings, he requested a custody redetermination and an Immigration Judge denied Petitioner's request for a change in custody because Petitioner is an arriving alien. ECF No. 1 at ¶ 24; *see also, Pet.* Exh. F. Since Petitioner's detention he claimed fear of removal to Russia and underwent a another credible fear determination. ECF No. 1 at ¶ 25; *see also*, Pet. Exh. G and Gov't Exh. B (Form I-213). Petitioner received a positive credible fear determination. ECF No. 1 at ¶ 25; *see also*, Pet. Exh. G.

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[5] A pending Application for Asylum (Form I-589) neither confers lawful immigration status or a benefit.

[6] Petitioner is enrolled in a 52-week domestic batterer's course. *See* Pet. Exh. H.

[7] Form I-130, Petition for Alien Relative, confirms the familial relationship. *See* 8 U.S.C. § 1154(a). An approved application, neither grants lawful immigration status, lawful presence or removal.

[8] Form I-485, Application to Register Permanent Residence or Adjustment of Status, is the next step following an approved Form I-130. Relief is discretionary. *See* 8 U.S.C. § 1255(a).

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 Petitioner is an arriving alien who presented himself to immigration authorities at a port of entry. *See* Ex. A (NTA). 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 port of entry, he is an arriving alien. 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 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 constitutional protections are built into those proceedings. *See* 8 U.S.C. § 1229a. *See Demore v. Kim*, 538 U.S. 510, 526 (2003) (recognizing the constitutionality of detention during the limited period of removal proceedings).

In *Demore,* the Supreme Court distinguished the *Zadvydas v. Davis* analysis and its 8 U.S.C. §1231 post-order framework because petitioners in *Demore* were still pending removal proceedings. *Id.* at 527-528 (finding the potentially indefinite detention of a post-final-order case where petitioner cannot be removed from the United States materially distinguishable from continued detention tied to pending removal proceedings). The petitioner in *Demore* filed a habeas petition after being in immigration custody for approximately six months while removal proceedings were pending. *Id.* at 530. The District Court granted the petition, and the Ninth Circuit affirmed, finding that continued detention, "as applied" to him, violated substantive due process. *Id.* at 509. Reversing, the Supreme Court concluded that since removal proceedings were ongoing, detention was "a constitutionally permissible part" of the removal process. *Id.* at 530.

Consistent with the Supreme Court's long-standing precedent, the Fifth Circuit in *Buenrostro* found that *Zadvydas v. Davis* did not apply to detained aliens who received or were receiving due process through removal proceedings. *Buenrostro*, at *9. *Buenrostro* also dismissed claims of abuse of detention finding that those concerns were "wholly speculative" *Id.* 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 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. Indeed, Petitioner has filed an appeal of the immigration judge's removal order, exercising his due process right to seek judicial review of a removal order. Such a decision necessarily prolongs the removal proceedings, but not unconstitutionally. As applied here to Petitioner, detention does not violate due process.

C. Any Stay of Removal Should Be Lifted

If the Court in this case entered an order staying removal, that order should be vacated. The Fifth Circuit recently reiterated in an unpublished decision that district courts lack jurisdiction to enter stays of removal. *Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

III. Conclusion

Petitioner is lawfully detained as an arriving alien in removal proceedings. 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. Petitioner is receiving the process he is owed during removal proceedings, and his continued detention during that process is not unconstitutional. The Court should deny the Petition in its entirety.

Respectfully submitted,

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Certificate of Service

I certify that on February 27, 2026, I mailed a copy of the Response in Opposition to Petition for Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

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