

United States District Court
Western District of Texas
Austin Division

Emerardo Magana-Garcia,
Petitioner,

v.

No. 1:25-CV-00051-ADA

Warden, El Paso Camp East Montana *et al.*,
Respondents.

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

Federal¹ 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, including attorney's fees under the Equal Access to Justice Act ("EAJA")², and this Court should deny this habeas petition without the need for an evidentiary hearing.

Petitioner alleges but for the Board of Immigration Appeals decision in *Hurtado*, 29 I&N Dec. 216, Petitioner would not be detained. ECF No. 1 at ¶ 75. This is inaccurate as Petitioner is an, 'arriving alien' who was ineligible for bond, and is subject to mandator pre-*Hurtado* from an immigration judge. 8 C.F.R. 1003.19(h)(2)(i). The fact that Petitioner was paroled and released does not change the fact that he is an arriving alien. Arriving aliens remain arriving aliens throughout their proceedings. 8 C.F.R. 1001(q).

Additionally, this Court has ordered a stay of removal which prevents ICE from executing any removal order, should one be issued during the pendency of these proceedings. ECF No. 3 at 2. Respondents argue this stay of removal should be immediately dissolved as this Court lacks

¹ The Department of Justice represents only federal employees in this action.
² *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

jurisdiction to grant a stay of removal. *Imran v. Harper*, No. 25-30370 (5th Cir. 2026) (finding the district court lacked jurisdiction to grant a stay of removal as a stay of removal is a challenge to a removal order and federal courts lack jurisdiction over claims directly and immediately with a decision or action by the Attorney General to... execute removal orders (emphasis added); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (citing 8 U.S.C. § 1252(g)).

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Mexico who applied for admission at Gateway Bridge port of entry in Brownsville, Texas.³ Exh. A (2018 I-213) at 2. Petitioner was then paroled pursuant to 8 U.S.C. § 1182(d)(5) (INA § 212(d)(5)). ECF No. 1 at ¶ 2. Petitioner was also issued an NTA designating him an arriving alien. ECF No. 1-3. On September 3, 2019, Petitioner filed his application for relief with the immigration court. ECF no. 1 at ¶ 40. On December 9, 2025, he was stopped for a traffic violation and taken into ICE custody. *See* Exh. B (2025 I-213). He is scheduled for court on the Pearsall, Texas immigration court. *See* Automated Case Information System (last accessed January 16, 2026).

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).

A. Petitioner is an Arriving Alien

Again, 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 and did not enter the United

³ 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.

States unlawfully within the ports of entry.

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)). Additionally, “an arriving alien remains an arriving alien even after paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.” 8 C.F.R. § 1001.1(q).

Since Petitioner applied for admission at the port of entry, he an arriving alien. *See* Exh. A (2018 I-213); 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 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, the regulations state that 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. However, service of an NTA and placement in removal proceedings automatically terminated said parole⁴. 8 C.F.R. § 212.5 (e)(2)(i). Termination of the parole would have reverted Petitioner back to his previous status as an arriving alien, thus subject to mandatory detention. 8

⁴ Petitioner alleges DHS in its discretion choose to renew Petitioner’s parole ECF No. 1 ¶ 61. Given the expedited timeline of surrounding habeas litigation, Respondent’s counsel hasn’t had sufficient time to confirm and corroborate Petitioner’s claims. However, as discussed below Petitioner’s parole and/or revocation of parole has no bearing on the ultimate classification of the petitioner.

C.F.R. § 1001.1(q); *see also* 8 U.S.C. § 1225(b)(2)(A).

Here, as Petitioner is an arriving alien, irrespective of the Board's decision in *Hurtado*, 29 I&N Dec. 216, Petitioner would be ineligible to seek bond from an immigration judge. *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)).

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. The alien was served with a charging document (an NTA) outlining the factual allegations and the charge(s) of removability against him. Exh. A; § 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 the 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. 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.

C. Petitioner's Alleged Wrongful Parole Revocation does not mean Petitioner should be released.

Petitioner alleges his INA § 212(d)(5); 8 U.S.C. § 1182(d)(5) parole was wrongfully revoked, violated his due process rights, and therefore he should be released. *See* ECF No. 1 at ¶¶72,75,80. However, it's a discretionary decision for the Department of Homeland Security (DHS) to grant release on humanitarian parole, INA § 212(d)(5); 8 U.S.C. § 1182(d)(5)(A), and DHS can revoke it. Allowing Petitioner to live and work does not create a due process right to not be redetained without warning. *See Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 (W.D. Tex. 2018).

Furthermore, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *See e.g., Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

For these reasons, Petitioner's petition should be denied.

III. Conclusion

Petitioner is lawfully detained as an arriving alien. The arriving alien classification remains regardless of parole or revocation of parole. In either event, Petitioner remains an arriving alien and subject to mandatory detention. **The Board's decision in *Hurtado* did not affect an alien, like Petitioner, who is an arriving alien, and was ineligible for bond before *Hurtado*'s issuance.** The Court should dissolve its stay of removal and deny the Petition in its entirety.

Respectfully submitted,

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