

United States District Court
Western District of Texas
El Paso Division

JOSE ANGEL GARCIA-BALBUENA,
Petitioner,

v.

No. EP-26-CV-00090-DB

JOEL GARCIA, Acting El Paso Field Office
Director, Immigration and Customs
Enforcement and Removal Operations, *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's administratively unexhausted and non-habeas claims³ should be dismissed. Furthermore, Petitioner's allegations ICE violated the Administrative Procedure Act (APA) should be denied as ICE's discretionary decisions to revoke Petitioner's order of supervision is protected from judicial review. ECF No. 1 at 18–20; 8 U.S.C. § 1252(a)(2)(B). The APA does not permit review of discretionary agency

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

² *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

³ Petitioner did not pay the filing fee for non-habeas claims. *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.

actions. *See* 5 U.S.C. § 701(a).

This case is different from many of the other habeas petitions that have been filed with this court recently as Petitioner is an, ‘arriving alien’ who was ineligible for bond 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).

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Mexico who applied for admission at the El Paso, Texas port of entry.⁴ ECF No. 1 ¶¶ 27, 33-34; ECF No. 1-2 at 1 (Petitioner’s Mother’s Notice to Appear showing they were charged as Arriving Aliens). Petitioner’s case was administratively closed for a period of time. *Id.* ¶ 38. Administrative Closure does not dismiss proceedings but temporarily pauses proceedings and proceedings can be recalendared at any time. *See* 8 C.F.R. § 1003.18(c). Petitioner’s case was recalendared and he is currently in proceedings in the El Paso, Texas immigration court with his next hearing is scheduled for February 26, 2026. *See Automated Case Information System* (last accessed Jan. 22, 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

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.

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* ECF No. 1 ¶¶ 33-34, 42; 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). Once ICE determines that the purposes of the parole have been served, “the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 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 parole. 8 C.F.R. § 212.5 (e)(2)(i). The termination of the parole then reverted Petitioner back to his previous status

as an arriving alien, thus subject to mandatory detention. 8 C.F.R. § 1001.1(q); *see also* 8 U.S.C. § 1225(b)(2)(A); *see also Goguev v. Noem*, SA-25-CV-01593-XR (W.D. Tex. Jan. 13, 2026) (finding an arriving alien, factually similar to this Petitioner, Sections 1225(b)(2) and 1182(d)(5) authorize detention as a statutory matter).

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.

Thuraissigiam also applies here because of the “entry fiction,” that is because Petitioner applied for admission at the port of entry, he is treated for due process purposes as if he is stopped at the border. *Goguev v. Noem*, SA-25-CV-01593-XR (W.D. Tex. Jan. 13, 2026) *citing Thuraissigiam*, 591 U.S. 103, 140 (2020) (*citing Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), *Leng May Ma v. Barber*, 357 U.S. 185 (1958), *Kaplan v. Tod*, 267 U.S. 228 (1925)).

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 if he wishes. *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.

III. Conclusion

Petitioner is lawfully detained as an arriving alien. The Board's decision in *Hurtado* did not affect an alien, like Petitioner, who is an arriving alien, and is ineligible for bond regardless of the *Hurtado* decision. The Court should deny the Petition in its entirety.

Respectfully submitted,

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