United States District Court
Western District of Texas
San Antonio Division

Umut Eskin, Petitioner, v. Karnes County Immigration Processing Center, *et. al.*, Respondents.	No. 5:26-CV-00047-XR

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] Respondents timely 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.

This case is not governed by the Board of Immigration Appeals (Board) opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025). Instead, this case fits squarely within a different Board opinion, *Matter of M-S-*, 27 I&N Dec. 509 (2019), which pre-dates *Hurtado* and mandates Petitioner's detention during full removal proceedings. Under *M-S-*, Petitioner is ineligible (and was ineligible, pre-*Hurtado)*, for bond from an immigration judge. *See Canales-Melgar v. Noem*, SA–25–CA–01571–XR (W.D. Tex. Dec. 23, 2025) (Rodriguez, J.) (denying habeas petition).[3]

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

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

3 In the interest of judicial efficiency, Respondents incorporate herein their jurisdictional and due process arguments outlined in their response to the *Canales-Melgar* habeas petition, as there are no material legal or factual differences in this case as it relates to those arguments. See ECF No. 3 at 2.

Petitioner, who is *pro se* in this litigation, entered the United States in 2022 and was issued an order of expedited removal at or near the border. Ex. A (A-File Excerpts) at 1–2, 5. In the exercise of discretion, DHS released Petitioner from custody via humanitarian parole while he pursued his fear claim. *Id.* at 7–8; 8 U.S.C. § 1182(d)(5)(A). Petitioner, however, affirmatively filed an asylum application with USCIS when he should have been processed for a credible fear review. Ex. A at 1, 5–6. Having no jurisdiction over an affirmatively filed asylum application where the applicant is subject to expedited removal proceedings, USCIS notified Petitioner in August 2025 that his asylum application had been dismissed for lack of jurisdiction. *Id.* USCIS concurrently issued Petitioner a Notice to Appear (NTA) under 8 C.F.R. § 208.30 based on his credible fear claim. *Id.* at 2–3; *see also* ECF No. 1; No. 5 at 7 (conceding that petitioner gave a "positive credible fear interview" in August 2025 at the asylum office). At that time, ICE took Petitioner into ICE custody to await his removal proceedings on the detained docket. ECF No. 1.

Because Petitioner was first placed in expedited removal proceedings and ultimately processed into "full" removal proceedings under § 1229a, based on a credible fear claim, he is ineligible for release on bond. *M-S-*, 27 I&N Dec. at 3. In other words, Petitioner: (1) is an applicant for admission; (2) was intercepted at or near the port of entry shortly after unlawfully entering; (3) indicated a credible fear of persecution; and (4) was issued an NTA based on that claim "for further consideration of the application for asylum." Petitioner, therefore, is properly described under § 1225(b)(1)(A)(ii), and not under the "catchall" provision. *Compare* 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii) *with* § 1225(b)(2)(A).

Section 1225 expressly provides for the detention of aliens originally placed in expedited removal, mandating that such aliens "shall be detained pending a final determination of credible fear." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also M-S-*, 27 I&N Dec. at 3. Section

1225(b)(1)(B)(ii) clearly states that, "if an alien in expedited proceedings establishes a credible fear, he "shall be detained for further consideration of the application for asylum." *Id.* "The word 'shall' generally imposes a nondiscretionary duty." *Id.*; *see also SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1354 (2018). The statute's plain language requires detention, and the petition should be denied. *See also Jennings v. Rodriguez*, 583 U.S. 281, 297, 299 (2018).

III. Conclusion

Petitioner is lawfully detained under *Matter of M-S-* while in removal proceedings. The Board's decision in *Hurtado* has no bearing on his detention. The Court should deny the Petition in its entirety.

Respectfully submitted,

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Certificate of Service

I certify that I caused a copy of this filing to be placed in outgoing mail to this *pro se* petitioner at this address on February 2, 2026.

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