

United States District Court
Western District of Texas
El Paso Division

Magomed Soltakhanov,
Petitioner,

v.

Kristin Noem, Secretary, U.S.
Department of Homeland Security, *et al.*,
Respondents.

No. 3:26-CV-00168-DCG

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

Federal¹ Respondents provide this response to Petitioner's habeas petition [ECF No. 1]. 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.³

Petitioner is principally challenging ICE's ability to detain Petitioner pending resolution of the removal proceedings. *See generally* ECF No. 1. Petitioner is lawfully detained as an 'arriving alien,' and his detention comports with the limited due process rights he is entitled. *See DHS v. Thuraissigiam* 591 U.S. 103, 140 (2020). This petition differs from those frequently filed before

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.

the Court because this Petitioner is an arriving alien who presented himself to a port of entry as an applicant for admission and was seeking admission.

Judge Rodriguez of the Western District of Texas recently denied a petition seeking release for an arriving alien in a similar procedural posture to Petitioner. *See Goguev v. Noem*, 5:25-CV-1593-XR *4 (W.D. Tex. Jan. 13, 2026) (finding 8 U.S.C. §§ 1225 (b)(2) and 1182(d)(5) jointly authorize detention of an arriving alien as a statutory matter). For the following reasons, this petition should also be denied. Detention for arriving aliens who arrive at a port of entry is well established law and has been recognized long before the recent *Matter of Yagure Hurtado* which has been the subject of recent litigation. *See e.g. DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020). *Leng May Ma*, 357 U.S. 185, 188, 190 (1958).

Respondents would further note that an order of removal was issued by an immigration judge on November 10, 2025, which has been appealed by the Petitioner and remains pending. *See* Exh. A, Order (redacted); Exh B, Notice (redacted); *see also* EOIR, Automated Case Information (last accessed Feb. 5, 2026. Although there is no final order of removal, even under 8 U.S.C. § 1226(a), a preliminary removal order by an immigration judge weighs heavily against discretionary release on bond, as it calls into question the alien's likelihood of compliance with any removal order once it becomes final. *See, e.g., Johnson v. Guzman Chavez*, 594 U.S. 523, 544 (2021) (finding that aliens "who have not been ordered removed are less likely to abscond" but those who have been ordered removed pose a higher flight risk).

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Russia who applied for admission on December 7, 2021,

at the San Ysidro, California, port of entry.⁴ ECF No. 1, at p.4; Exh. A, Notice to Appear, at 1 (redacted). On December 9, 2021, Petitioner was released on parole under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5) and issued a Notice to Appear (NTA). See Exh. C, NTA (redacted); Exh D, I-213 (redacted). As stated above, Petitioner was ordered removed on November 10, 2025, and his appeal remains pending. *See* Exh. A, Order (redacted); Exh B, Notice (redacted).

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

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 San Ysidro port of entry, he is and remains an arriving alien. *See* Exh. C, NTA; 8 C.F.R. § 1001.1(q) (noting “an arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked.”). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by the Department of Homeland Security 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

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.

“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, 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 on September 29, 2021. *See* Exh C, I-213 (redacted). However, he has since been ordered removed from the country. *See* Exh. A.

Humanitarian parole under § 1182(d)(5) “shall not be regarded as an admission,” and when it expired in September 2022, he was required to “forthwith return to the custody from which he was paroled,” *i.e.* Petitioner returned to being an arriving alien, seeking admission into the United States at the San Ysidro port of entry in California. § 1182(d)(5); *Gisbert v. U.S. Atty. Gen.*, 988 F.2d 1437, 1440 (5th Cir 1993) (“Although aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never having effected entry into this country.”); *see Goguev v. Noem*, 5:25-CV-1593 *3 (W.D. Tex. Jan. 13, 2026) (citing *Tenemasa-Lema v. Hyde*, No. CV 25-13029-BEM, 2025 WL 3280555, at *4 (D. Mass. Nov. 25, 2025)). “[T]hereafter [the parole expiration], his case shall continue to be dealt with in the same manner as any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5) (emphasis added).

At all times, Petitioner has remained an arriving alien, even after he was released on parole. *See* 8 C.F.R. §§ 212.5(e)(1)(ii), 212.5(e)(2)(i); 1001.1. In addition, he now has a non-final removal order.

B. Petitioner’s Detention is Authorized by 8 U.S.C. § 1225(b)(2).

Section 1225(b)(2) requires detention if the examining immigration officer determines that

an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, except in circumstances not applicable to Petitioner here. *See also* 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

Petitioner cannot reasonably dispute that he is not an applicant for admission because he first arrived in the United States at a port of entry. 8 U.S.C. § 1225(a)(1). Furthermore, his Notice to Appear alleges he ‘applied for admission’. *See* Exh. C at 1. Petitioner has not provided any evidence or alleged that he was clearly and beyond a doubt entitled to be admitted when he presented himself at the port. Therefore, Petitioner’s detention is authorized under statute. *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)).

C. On Its Face, and As Applied to Petitioner, § 1225(b)(2)(A) Comports with Due Process.

Section 1225 comports with due process of law and does not provide for release or 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, like Petitioner here—are “treated” for due process purposes “as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139. Legally, since Petitioner is treated as if he is still stopped at the border, he is only entitled to those rights that Congress has provided by statute. *Id* at 107, 140.

Petitioner disputes this and claims he is entitled to release or in the alternative granted a bond hearing. ECF No. 1 at 13. This Court should not be persuaded. Prior to *Thuraissigiam*, the

Supreme Court decided *Leng May Ma*, and determined that Leng May Ma, who was paroled into the United States for determinations of her admissibility, was *not* treated as being within the United States, and the granting of a temporary parole did not somehow effect a change in her status. 357 U.S. 185, 188, 190 (1958).

Additionally, even looking further into historical case law, the Supreme Court in *Kaplan* determined that despite Kaplan's release from Ellis Island until she could be removed from the United States, she was still under the law treated as if at the boundary line and had gained no foothold into the United States. 267 U.S. 288, 230 (1925).

Although *Leng May Ma* and *Kaplan* are statutory cases, "[they both] relied on due process considerations for the propositions relevant here. *See Goguev*, 5:25-CV-01593-XR *9 (W.D. Tex. Jan. 13, 2026). These cases further support Respondents' position.

Finally, Petitioner's mandatory detention during "full" removal proceedings does not violate due process, because the constitutional protections are built into those proceedings. Petitioner was served with a charging document (a Notice to Appear) outlining the factual allegations and the charge(s) of removability against him. *See* Exh. C; 8 U.S.C. § 1229a(a)(2). He has an opportunity to be heard by an immigration judge and be 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). For any adverse decision, he has the right to seek judicial review of the complete record and that decision not only administratively, but also in a 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. Petitioner's detention satisfies the due process Congress provided to them. *Thuraissigiam*, 591 U.S. at 140. For these reasons, the petition's allegations ICE is wrongfully detaining Petitioner should be denied.

III. Conclusion

Petitioner is lawfully detained. The non-habeas claims should be severed and dismissed. The Court should deny the Petition in its entirety.

Respectfully submitted,

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