

WESTERN DISTRICT OF TEXAS
UNITED STATES COURT

FILED

Magomed Soltakhanov

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Petitioner,

MAR 11 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY 
DEPUTY CLERK

v.

Case 3:26-cv-00168-DCG

Pamela Bondi, Attorney General, et al.,
Respondents.

RESPONSE TO RESPONDENT'S RESPONSE
TO PETITION FOR WRIT OF HABEAS CORPUS

Respondent's Argument

I. Statutory Interpretation

The Respondents argue that the Petitioner is lawfully detained under §1225(b)(2)(a) because he is an "arriving alien". They state, "Since Petitioner applied for admission at the San Ysidro port of entry, he is and remains an arriving alien." The Respondents continue to argue that since the Petitioner is an arriving alien he does not have a constitutional right for Procedural Due Process in a form of a bond hearing.

II. Order of Removal and Appeal

The Respondents state that since the Petitioner has received an order of removal from an immigration judge it heavily weigh against discretionary release on bond, "as it calls into question the alien's likelihood of compliance with any removal order once it becomes final".

Response to Aforementioned Arguments

I. Statutory Interpretation Argument

Petitioner's detention violates the plain language of the INA because §1225 does not apply to individuals who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, §1226(a) that (1) expressly applies to individuals who are charged as inadmissible for having entered the United States without inspection and (2) allows for release on conditional parole or bond. The Petitioner was not arriving at the time of his detention but was present in the United States for 4 years. "Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693.

Recently, in similar habeas petitions, the Respondents have argued that the recent panel opinion of the 5th Circuit in the *Buenrostro-Mendez v. Bondi* case held that the statute does not entitle people in the Petitioner's position to a bond hearing when they are detained pending removal.

However, even if the statutory interpretation is in favor of the Respondents, the Due Process Violation is still valid.

In *Marceau v. Noem*, No. 3:26-cv-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026) the Court states, "*Buenrostro-Mendez* has no bearing on this Court's determination of whether [a habeas petitioner] is being detained in violation of her constitutional right to procedural due process." And in the case of *Marceau* the Court of Western District of Texas partially granted the Habeas petition on the ground of Procedural Due Process Violation.

II. Order of Removal and Appeal Argument

As admitted by the Respondents, the Petitioner is currently in appeal, therefore his Order of Removal is not final at this time. If an alien appeals, the Immigration Judge's Order of Removal does not become a Final Order of Removal until the appeal is dismissed by the Board of Immigration Appeals (BIA). 8 C.F.R. §1241.1 (a)

Since the Order of Removal is NOT Final the Petitioner still has a right to custody determination hearings, in this case in the form of a bond hearing.

When a bond hearing is held the government must bear the burden of proof to show that the Petitioner is a danger to the community and/or a flight risk, by presenting clear evidence to that affect. In the case of the Petitioner, he has never had arrests nor convictions, and has never given any evidence of being a flight risk.

Conclusion

The Petitioner is being detained unlawfully because his Due Process has been violated. He was paroled into the United States and resided in this country for almost 4 years before being detained. He does not have a criminal record and is being detained without an opportunity for a bond hearing. Respondents argue that his detention is mandatory while he undergoes removal proceedings. The Court of Western District of Texas has already partially granted similar habeas cases on procedural due process violation grounds. The Court should partially grant the Petitioner's Habeas Petition on the grounds of Due Process Violation and order the Respondents to conduct a proper bond hearing.

I affirm, under penalty of perjury, that the foregoing is true and correct. Respectfully submitted this on
March 9th, 2026.



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El Paso, Texas 79925

CERTIFICATE OF SERVICE

I, Magomed Soltakhanov, certify that a true copy of the above document (Motion To Accept A Later Response and Response to Respondent's Response to Petition for Writ of Habeas Corpus) was served on March 9th, 2026 upon the following;

Western District Court of Texas
Albert Armendariz, Sr. United States Courthouse
525 Magoffin Avenue
Room 105
El Paso, Texas 79901

by placing a copy of the above in the mail system at my facility where I am detained.



Magomed Soltakhanov
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El Paso, Texas 79925

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MAR 12 2026
RIO GRANDE
10 MAR 2026 AM

NAME SOLTA KHANA
A# 220-771-070 UNIT 7D

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8915 MONTANA
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MAR 11 2026

CLERK, U.S. DISTRICT COURT
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