United States District Court
Western District of Texas
San Antonio Division

Jose Alberto Gomez-Gonzalez, Petitioner, v. Miguel Vergara, *et. al.* Respondents.	No. 5:26-CV-00598-DAE

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] 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 is an 'arriving alien' who is ineligible (and was ineligible even pre-*Hurtado*), for bond from an immigration judge. ECF No. 1 at ¶¶ 41-42, 57; ECF No. 1-2 (Notice to Appear, charging Petitioner as an arriving alien); 8 C.F.R. 1003.19(h)(2)(i); *see also Goguev v. Noem*, et al, SA–25–CA–01593–XR (W.D. Tex. Jan. 13, 2026) (Rodriguez, J.) (denying habeas petition to an arriving alien). Arriving aliens are applicants for admission, and Fifth Circuit precedent now confirms that an applicant for admission is subject to mandatory detention. *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). The *Buenrostro*

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

decision is binding precedent and requires that the Court deny this habeas petition.[3]

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Mexico who applied for admission at the port of entry on and was paroled into the country.[4] ECF No. 1 ¶¶ 40-42; ECF No. 1-2 at 2. Petitioner's parole was only valid until January 16, 2015. ECF No. 1-2 at 35. On March 23, 2012, USCIS found Petitioner to have a credible fear and issued a notice to appear. ECF No. 1 at ¶ 44. On October 1, 2015, the immigration court administratively closed Petitioner's removal proceedings. ECF No. 1 at 44. ICE took Petitioner into ICE custody on or about August 2025. ECF No. 1 ¶¶ 54-55.

II. Argument

A. Petitioner Is an Arriving Alien Subject to Mandatory Detention under § 1225(b) As an Applicant for Admission.

On the merits, this petition differs from those frequently filed before the Court because this Petitioner is an arriving alien who presented himself to immigration authorities at a port of entry. *See* ECF No. 1 at ¶¶ 41-42, 57; ECF No. 1-2 (Notice to Appear, charging Petitioner as 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

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[3] The *Buenrostro* decision is a published decision and precedential authority even though the mandate has yet to issue. *See, e.g., Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (explaining that even a stay in the issuance of a mandate does not impact the precedential value of published opinions); *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is not controlling because "the mandate has yet to issue, and thus not properly relied upon as precedent."). As such, each pre-*Buenrostro* district court decision cited in this Court's Order to Show Cause is overruled as it relates to ICE's statutory authority to detain certain aliens on a mandatory basis under 8 U.S.C. § 1225(b).

[4] **This is a material factual difference between this petition and the others frequently filed before the court, as Petitioner here presented himself at a port of entry, as opposed to entering without inspection between ports of entry.** *See* ECF No. 1 ¶¶ 41-42 (conceding that he appeared at the port of entry and was paroled into the United States for removal proceedings).

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)).

Petitioner concedes he is an applicant for admission. ECF No. 1 at ¶¶ 41-42, 57; ECF No. 1-2 (Notice to Appear, charging Petitioner as an arriving alien). Since Petitioner applied for admission at the port of entry, he is an arriving alien. 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 "alien arriving in the United States" is "subject to the Secretary's discretionary authority to parole" her into the United States); *see also* 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 of an arriving alien in removal proceedings. 8 C.F.R. § 1003.19(h)(2)(i)(B). This regulation pre-dates *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025) and is well-settled law. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see also Garibay-Robledo v. Noem*, --- F.Supp.3d ---, No. 1:25–CV–177–H, 2026 WL 81679 at *4 (N.D. Tex. Jan. 9, 2026).

Petitioner, therefore, is currently properly detained under § 1225(b)(2)(A) as an arriving alien in removal proceedings under 8 U.S.C. § 1229a. *See Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 521, 523 (BIA 2011); 8 C.F.R. § 239.1 (DHS has the discretion to issue an NTA at the port of entry in lieu of expedited removal proceedings). As an arriving alien, irrespective of the Board's decision in *Hurtado*, the regulations bar Petitioner from seeking bond from an immigration judge. *See also Buenrostro*, 2026 WL 323330 at *1.

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. *See* 8 U.S.C. § 1229a.

C. APA Claims Are Not Cognizable in the Habeas Context

In this proceeding, Petitioners expressly challenge their civil detention. *See, e.g.*, ECF 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, **his sole federal remedy is a writ of habeas corpus** [emphasis added]"); *see also, e.g.*, *Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ of habeas corpus[.]" (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, "release from ICE custody . . . is a remedy that is *only* available through a habeas petition." *Armando C. G. v. Tsoukaris*, No. 20-5652, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added).

Petitioner purports to assert a claim under the Administrative Procedure Act ("APA")—a civil claim. *Id.* ¶¶ 61–68. This they may not do for three separate reasons.

First when review of an agency action is sought "under the general review provisions of the APA, the 'agency action' in question must be 'final agency action.'" Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 882 (1990) (quoting 5 U.S.C. § 704) ("Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review") (emphasis added). "Agency action must meet two conditions to be final: (1) 'the action must mark the 'consummation' of the agency's decisionmaking process' and (2) 'the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" Patterson v. Def. POW/MIA Acct. Agency, 343 F. Supp. 3d 637, 651 (W.D. Tex. 2018) (citing Am. Airlines, Inc. v. Herman, 176 F.3d 283, 287 (5th Cir. 1999)). If, as in this case, there is no final agency action, federal courts lack subject matter jurisdiction. Qureshi v. Holder, 663 F.3d 778, 781 (5th Cir. 2011).

Qureshi is relevant and binding precedent on this Court. *Qureshi* affirmed dismissal of an APA challenge to USCIS's termination of asylum, finding that termination of asylum is not a final agency action because it is "only an intermediate step in a multi-stage administrative process, succeeded (or accompanied) by removal proceedings." 663 F.3d at 781. The Court noted that "the IJ and BIA lack jurisdiction to review asylum terminations, they both retain the power to halt removal proceedings altogether, either by an alien's successful contest to removability . . . or by a successful new asylum application . . ." Id.

Here, ICE retains discretionary authority to release Petitioner on humanitarian parole. *See Jennings v. Rodriguez,* 581 U.S. 281, 300 (holding DHS authority has to release an arriving alien subject to 8 U.S.C. § 1225(b)(2)(A), and the authority is the parole authority provided by 8 U.S.C. § 1182(d)(5)(A)).

Also, Petitioner is in removal proceedings, and thus the immigration court and the BIA retain authority to grant relief or order removal in this case, thereby demonstrating that "further administrative relief" is available and his detention is not the final decision in ICE or EOIR's decision making process. *See* 8 U.S.C. § 1229a; *see also* 8 C.F.R. § 1003.1.

Two district courts within the Fifth Circuit have applied *Qureshi's* reasoning regarding agency decisions in the immigration detention context. *See Santiago Santiago v Noem*, 3:25-CV-361-KC, 2025 WL 2792588 at *5-6 (W.D. Tex. Oct. 2, 2025) (finding no jurisdiction to rule on an APA claim due to lack of final agency decision); *Bhatia v. United States*, No. 16-cv-11, 2016 WL 6127799, at *2 (S.D. Miss. Sept. 19, 2016), *report and recommendation adopted*, 2016 WL 6126666 (Oct. 20, 2016) (citing *Qureshi*, 663 F.3d at 781). Another district court also held that detention was not a final agency decision. *See Gamez Lira v. Noem*, No. 25-cv-855, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025).

This same reasoning could also be applied in the 4th amendment arrest context. The decision to arrest and detain Petitioner is not a final agency decision. It is merely the first step in in a "multi-stage administrative process, succeeded (or accompanied) by removal proceedings."

Secondly an APA claim is not cognizable in the habeas context. *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim").

Lastly, 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 on-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.

D. Petitioners Habeas Petition is Not The Proper Vehicle To Present Fourth Amendment Claims

Lastly, Petitioner raises some novel Fourth and Fifth Amendment due process arguments. *See generally* ECF No. 1. Petitioner argues that his apprehension during the traffic stop without a judicial warrant, violates the Fourth Amendment. *See id.* These claims are without merit.

First, the basis of Petitioner's argument – that his *warrantless arrest* on civil immigration grounds was unlawful – is not cognizable in this habeas petition, which vests jurisdiction in this Court solely to review the legal propriety of Petitioner's *current detention*. The question is not whether his detention was unlawful in the past. "[T]he great and central office of the writ of habeas corpus is to test the **legality of the prisoner's current detention [emphasis added]**." *Walker v. Wainwright*, 390 U.S. 335, 336, (1968).

In habeas, the Court does not review all possible previous errors, it asks only whether the confinement is justified. *See Lane v. Williams*, 455 U.S. 624, 631, (1982) (explaining that where detainment or its consequences have expired, a habeas petition is moot); *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (distinguishing between backward-looking remedies and habeas); *Lindh v. Murphy*, 521 U.S. 320, 342, (contrasting backward-looking actions like damages with "the writ of habeas corpus is prospective in nature," and **it "does not compensate for past wrongful incarceration ..[emphasis added]..**") (Scalia, J., dissenting). Whatever the circumstances and facts before now, they are thus irrelevant to resolution of the legality of the current detention.

III. Conclusion

The purpose of a habeas petition is to review the legality of the Petitioners **current confinement.** Petitioners are lawfully detained as an arriving alien in removal proceedings. This is supported by Supreme Court precedent and was most recently upheld by when analyzing applicants for admission and mandatory detention.

Petitioners parole did not bestow any additional rights to Petitioner. *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 929 (W.D. Tex. 2018) ("the Court cannot agree that Respondents' grace of allowing them to remain on parole for nearly a decade has created a due process right. It was a discretionary decision for Respondents to grant them parole, and Respondents had the authority to revoke that parole.")

Petitioners' 4th Amendment and APA claims fail as well. As such, the Petition should be denied in its entirety.

Respectfully submitted,

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