

United States District Court
Western District of Texas
Austin Division

Leonardo Matos Martinez, by Next Friend
Leandro Matos Martinez,
Petitioner,

v.

Pamela Bondi, *et. al.*
Respondents.

No. 1:26-CV-00247-ADA-SH

**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 is an 'arriving alien' who is ineligible (and was ineligible even pre-Hurtado), for bond from an immigration judge. ECF No. 1-3 at 14 (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). Additionally, Petitioner has an order of removal that was entered in his removal proceedings by an immigration judge on February 3, 2026. *See* <https://acis.eoir.justice.gov/en/caseInformation> (last accessed Feb. 9, 2026).³ Even if Petitioner's detention were governed by § 1226(a), which it

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

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

³ The automated system shows that any appeal of this decision is due with the Board of Immigration Appeals (BIA) by March 5, 2026, but it is not clear from that system whether Petitioner waived or reserved appeal).

is not, 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).

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* decision is binding precedent and requires that the Court deny this habeas petition.⁴

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Cuba who applied for admission at the port of entry on and was paroled into the country until January 19, 2025.⁵ *Id.* Petitioner alleges that he has been in ICE custody since March 2025. ECF No. 1 at 4. On February 3, 2026, an immigration judge ordered Petitioner removed from the United States.⁶

⁴ 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).

⁵ **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 at 2 (erroneously referring to his entry via parole as an "admission").**

⁶ *See* <https://acis.eoir.justice.gov/en/caseInformation> (last accessed Feb. 9, 2026).

II. Argument

A. Petitioner's Brother, Leandro, Lacks Standing as "Next Friend."

Prior to reaching the merits, this Court must first decide whether "next friend" standing is proper in this case. Respondents aver that Petitioner's brother does not qualify as "next friend" sufficiently to trigger this Court's jurisdiction over this habeas petition. *See Whitmore v. Arkansas*, 495 U.S. 149, 164 (1990) (finding that restrictions on "next friend" standing are necessary to preserve the jurisdictional limits of Article III). For example, in *Whitmore*, the Court ruled that the proposed next friend "failed to establish that [the prisoner was] unable to proceed on his behalf" where "there was no meaningful evidence that he was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision." *Id.* at 166.

Under *Whitmore's* two-pronged framework, Petitioner's brother has not established the first prong. The only stated reason for appearing as "next friend" is that Petitioner "is detained and unable to file on his own behalf." ECF No. 1 at 5. The petition does not claim that Petitioner is otherwise unavailable or inaccessible. In denying a mother "next friend" standing where her adult daughter might be "temporarily" unavailable due to military service, a court relied on the absence of a showing of "a complete inability to access the courts." *J.B. ex rel. K.E. v. Charley*, No. 21-632 MV/SCY, 2021 WL 5768907, at *2 (D.N.M. Dec. 6, 2021). There is no such showing here, and "next friend" status should be denied in this case.

B. 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 herself to immigration authorities at a port of entry. *See* ECF No. 1-3 at 14. 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 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.

C. 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.

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 her 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 in removal proceedings. The Board’s decision in *Hurtado* has no bearing on an arriving alien, like Petitioner, who was already ineligible for bond before *Hurtado*’s issuance. **Regardless, the Fifth Circuit has held that applicants for admission are properly detained on a mandatory basis under § 1225(b)(2). *Buenrostro*, 2026 WL 323330 at *1.** The Court should deny the Petition in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2026, I caused the Federal Respondents' Response to Petitioner's Writ of Habeas Corpus (Dkt. 4), to be served on Petitioner's Father, Leandro Matos Martinez, who is acting on Petitioner's behalf as his Court approved "next friend", by sending copies via first-class U.S. mail as follows:

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Respectfully submitted,

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