

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Miguel Barriga Reyes,

Petitioner,

v.

Krist Noem, *et al.*,

Respondents.

Civil Action No. 5:26-CV-0651-JKP

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

Federal Respondents provide the following response to Petitioner's habeas petition.¹ Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought, including attorney's fees under the Equal Access to Justice Act ("EAJA").² Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This conclusion is appropriate under recent Fifth Circuit precedent. The Fifth Circuit Court of Appeals recently held that aliens, like the Petitioner, who are in the United States and who are not "clearly and beyond a doubt entitled to be admitted," "shall be detained" under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *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.³

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 *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

Pursuant to the Court's Order For Service (ECF No. 2), Respondents reviewed the cases cited by the Court and note said cases were decided prior to the Fifth Circuit's decision in *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, (5th Cir. Feb. 6, 2026), as such, there has been a material change to the legal landscape applicable to this case.

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 and the entry fiction applies to some of the due process challenges based on detention of an arriving alien). 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).

BACKGROUND

Petitioner is a citizen of Mexico who first entered the United States without inspection in 2002. ECF No. 1 at 3. He no longer has DACA status. *Id.* He has a pending self-petition application with Citizenship and Immigration Services. *Id.* He voluntarily departed the United States, returned on September 18, 2024, and presented himself to Customs and Border Protection Officers at the Dallas Airport. ECF Nos. 1 at 3; 1-3 at 1–2. Considering Petitioner obtained advance parole, or

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.”).

permission to depart the United States,⁴ he was paroled under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5), for a period of 1 year. *Id.* The parole stamp facially put Petitioner on notice his parole expired on September 18, 2025. ECF No. 1-3 at 1. Petitioner does not allege or establish that his parole was extended. *See generally* ECF No. 1.

On December 19, 2025, ICE issued Petitioner a Notice to Appear. Exh. A. On January 13, 2026, ICE amended the Notice to Appear to generally allege that Petitioner remained in the United States after his parole expired and is not in possession of a valid unexpired immigrant visa, reentry permit, etc. Exh. B⁵; 8 U.S.C. § 1182(a)(7)(A)(i). Petitioner's next hearing before the immigration judge is on March 12, 2026. *See Automated Case Information System* (last accessed Feb. 11, 2026).

PETITIONER IS SUBJECT TO MANDATORY DETENTION

Petitioner seeks an order from this Court directing the Department of Homeland Security to immediately release Petitioner from immigration detention and/or on a bond. Neither is appropriate and the Court should deny the petition in light of the recent Fifth Circuit precedent. The primary issue raised by Petitioner, namely that his detention pursuant to 8 U.S.C. § 1225 and the Board of Immigration Appeals (BIA) decision in *Hurtado* is unlawful, was rejected by the Fifth Circuit. *Buenrostro-Mendez v. Bondi*, No. 25-20496, No. 25-40701, 2026 WL 323330 at *1 (5th Cir. Feb. 6, 2026); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). Furthermore, Petitioner also does not address how the BIA's pre-*Hurtado* opinion in *in re Oseiwusu* should not

⁴ Petitioner can apply for an advance parole document which authorizes an alien to appear at a port-of-entry to seek parole into the United States after temporary travel abroad. *See Advance Parole Documents for VAWA Self-Petitioners* (last accessed Feb. 11, 2026).

⁵ The document has internal pagination on the bottom left-hand corner. Undersigned removed the surplusage documents included in the original filing. Undersigned can file the surplusage pages if necessary.

apply or is unlawful. 22 I&N Dec. 19 (1998) (holding that aliens returning pursuant to a grant of advance parole are “arriving aliens”); *Momin v. Gonzales*, 447 F.3d 447 (5th Cir. 2006) (*abrogated on other grounds* 462 F.3d 497 (5th Cir. 2006)).

Petitioner’s contention that detention should be governed by, 8 U.S.C. § 1226, that Petitioner is being unlawfully detained and deprived of a bond hearing, and that the detention violates the United States Constitution were rejected in *Buenrostro*. *Id.* To the extent Petitioners claim they are not properly categorized as an applicant for admission “the text and context of § 1225 contradict the petitioners’ reading of the statute.” *Id.* at *9.

The Fifth Circuit made clear that aliens present in the United States who have not been admitted by lawful means, remain “applicants for admission” who were “seeking admission.” 2026 WL 323330 at *4. The court explained that “[w]hen a person applies for something, they are necessarily seeking it.” *Id.* In so holding, the court rejected the reasoning that the phrase “seeking admission” in § 1225(b)(2)(A) uses the present tense and thus applies only to individuals “currently and actively seeking to be admitted to the United States when [they are] apprehended.” *Id.* at *3. The Fifth Circuit held that “the everyday meaning of the statute’s terms confirms that being an ‘applicant for admission’ is not a condition independent from ‘seeking admission.’” *Id.* at *4.

Buenrostro, recognizing that the plain language of the INA controlled the analysis and outcome, also rejected arguments based on the Executive’s past interpretation and application of § 1225 and § 1226. 2026 WL 323330 at * 8. “Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute’s plain text.” *Id.* (citing, *Pereira v. Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111 (2018)). The Fifth Circuit observed that the Government’s interpretation and application of § 1225(b)(2) “better honors” the intent of Congress’s amendments

to the INA—the full enforcement of § 1225(b)(2)’s plain terms “put aliens seeking admission lawfully on equal footing with those who entered without inspection.” *Id.* at * 9.

Respondents acknowledge that courts in the Western District of Texas have ruled otherwise in previous habeas cases. However, this significant development in the Fifth Circuit warrants this Court taking a different approach. “After reviewing carefully the relevant provisions and structure of the Immigration and Naturalization Act, the statutory history, and Congressional intent” the Fifth Circuit concluded that the detention authority relied upon by the government is lawful. *Buenrostro*, at *1.

The Fifth Circuit is not the only court to so hold. District courts around the country agree. *See* Exh. A (list of decisions covering aliens not admitted to the United States). The Board of Immigration Appeals (BIA), the highest administrative body charged with interpreting and applying the immigration laws, also agreed in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). There, the BIA examined the plain language of § 1225, the INA’s statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub L. No. 104-208, and DHS’s prior practices. After doing so, the BIA held that “under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission.” 29 I&N Dec. at 225. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2) and this petition should be denied.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

“A person seeking habeas relief must first exhaust available administrative remedies.” *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018)(citing, *United States v. Cleto*, 956 F.2d 83,

84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.*

There are approximately 3.74 million cases pending in immigration court. See, <https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones> (Sept. 4, 2025). Federal district courts are not intended nor equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 USC § 1226(e) (district courts do not have jurisdiction to review discretionary decisions made by immigration judges regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole). “Challenges to removal proceedings, the government’s evidence, and the merits of asylum claims are properly addressed to the immigration court and should be administratively exhausted before presenting in district court. *Hinojosa*, 896 F. 3d at 314 (5th Cir. 2018); see *Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) (McFarland, J.) (declining to review Petitioner’s detention-based claims due to his failure to exhaust administrative remedies); *Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025) (Calabrese, J.) (holding that Petitioner must first pursue challenge before BIA for exhaustion and that such exhaustion is not futile); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) (McFarland, J.) (holding that Petitioner’s failure to exhaust claims with BIA precluded judicial review of habeas claims); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.) (holding that Petitioner does not demonstrate grounds for excusing exhaustion and must first advance his request for relief to BIA).

Petitioner has received a bond determination from an immigration judge that Petitioner contests. ECF No. 1-2. He must first seek relief with the BIA, fully exhausting administrative remedies before coming to this Court.

DUE PROCESS CLAIMS

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 should be no longer treated as if he is at the port of entry. *See generally* ECF No. 1. 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. Exhs. A; B; 8 U.S.C. § 1229a(a)(2). He has an opportunity to be heard by an immigration judge and 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). Should he receive 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).

In addressing Petitioner's claims of potential abuse of detention pending removal proceedings, the Fifth Circuit found that *Zadvydas v. Davis* did not apply to detained aliens who received due process through removal proceedings. *Buenrostro*, at *9. This is the foundation of Petitioner's due process claim. *See* ECF No. 1 at 12. As the Court in *Buenrostro* clarified, *Zadvydas* does not apply to Petitioner. *Buenrostro*, at *9. Petitioner's due process claim should be denied.

District courts around the country have also dismissed due process concerns in similar contexts. *See Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026) (Wyrick, J.) (holding that Petitioner is unambiguously governed by § 1225 and his due process claim coming three months

after arrest is denied as premature); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J) (holding that Petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *A.M. v. Joyce*, No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (Walker, J.) (holding that Petitioner's approximately one-month detention without a prompt bond hearing is consistent with the INA and the Due Process Clause); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.) (holding that because Petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings are unavailable as a matter of statute and due process); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (holding that Petitioner, as an applicant for admission, is properly detained without a bond hearing under § 1225, which does not violate Due Process Clause); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.) (rejecting Petitioner's argument that mandatory detention without bond hearing violates substantive due process); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings).

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 him. *Thuraissigiam*, 591 U.S. at 140. For these reasons, the petition's allegations ICE is wrongfully detaining Petitioner should be denied.

STAYS AND ORDERS NOT TO TRANSFER

If the Court in this case entered an order staying removal that order should be vacated. The Fifth Circuit recently stated in an unpublished decision that district courts lack jurisdiction to enter stays of removal. *Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

CONCLUSION

The concerns expressed by district courts in the Western District of Texas in earlier rulings have been decided by the Fifth Circuit Court of Appeals and are pending before federal appellate courts in other circuits. This Court should follow the Fifth Circuit's reasoning in *Buenrostro*. The orderly legal administration of this issue is now properly before the federal appellate courts. This Court can trust that the issue will be decided in accordance with proper jurisprudence and the expedience that questions of detention deserve. Respondents respectfully request that the Court deny this petition.

Dated: February 11, 2026

Respectfully submitted,

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