

United States District Court
Western District of Texas
San Antonio Division

Luis Ernesto Camargo-Barreto,
Petitioner,

v.

Pamela Jo Bondi, *et al.*,
Respondents.

No. 5:26-CV-0659-JKP

**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 essentially alleges but for the Board of Immigration Appeals decision in *Hurtado*, 29 I&N Dec. 216, he would be eligible for bond. *See generally* ECF No. 1. This is inaccurate as Petitioner is an 'arriving alien' who was ineligible for bond pre-*Hurtado* from an immigration judge. 8 C.F.R. § 1003.19(h)(2)(i). The fact that Petitioner was paroled and his removal proceedings later terminated does not change the fact that he is an arriving alien. Arriving aliens remain arriving aliens whenever they are placed into proceedings. 8 C.F.R. 1001(q).

The Western District of Texas recently denied a petition seeking release for an 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

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

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

arriving alien as a statutory matter).

I. Addressing the Court's Order

Pursuant to the Court's Order [ECF No. 2 at fn.1], Respondents advise this case is distinguishable. In this case, Petitioner applied for admission at the port of entry, as an applicant for admission, 8 U.S.C. § 1101(a)(13)(A), who was seeking admission and was not clearly and beyond a doubt entitled to be admitted, 8 U.S.C. § 1225(b)(2). *See* ECF No. 1; § 1225(b)(2).³

II. Relevant Facts and Procedural History

Petitioner is a citizen and native of Venezuela who applied for admission at the Laredo, Texas, port of entry on September 8, 2018.⁴ ECF No. 1-2 at 1 (Notice to Appear, dated November 5, 2018). Petitioner is next scheduled for court on February 18, 2026, at the Pearsall Immigration Court.

III. 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

Again, this petition differs from those frequently filed before 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. 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

³ Addressing the cases in footnote 1: the aliens in these cases entered without inspection whereas in this case Petitioner applied for admission at a port of entry. *See* ECF No. 2 at fn.1; ECF No. 2 at 1.

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.

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 an arriving alien. *See* ECF No. 1-2 at 1; 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 a “alien arriving in the United States” is “subject to the Secretary’s discretionary authority to parole him into the United States “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, the regulations state that an immigration judge does not have authority to review the custody determination. 8 C.F.R. § 1003.19(h)(2)(i)(B).

At the time Petitioner was at the port of entry, he was ‘seeking admission’ to the United States. Petitioner also has not provided evidence he was clearly and beyond a doubt entitled to be admitted. *See* 8 U.S.C. § 1225(b). His detention under 8 U.S.C. § 1225(b)(2) is authorized. *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)).

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. *Thuraissigiam* applies here because of the “entry fiction,” and Petitioner is treated as if he is at the port of entry, even if paroled for a number of years. *Id.* at 140; *Goguev* at *7. Petitioner’s due process comports with the limited due process he is owed. *Id.*

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. The alien was served with a charging document (an NTA) outlining the factual allegations and the charge(s) of removability against him. ECF No. 1-4 at 1; § 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 the 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. 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. The Board’s decision in *Hurtado* did not affect an alien, like Petitioner, who is an arriving alien, an applicant for admission who was

seeking admission and not clearly and beyond a doubt entitled to be admitted. The Court should deny the Petition in its entirety.

Respectfully submitted,

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