UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Leonardo Josue Cueto, Petitioner, v. David Venturella, Field Office Director U.S. Immigration and Customs Enforcement, *et. al.* Respondents.	No. 5:26-cv-04192-OLG

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 19-23 (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* decision is binding precedent and requires that the Court deny this habeas petition.

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

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

Petitioner is also subject to mandatory detention under the Laken Riley Act pursuant to 8 U.S.C. § 1226(c) as he was arrested for a theft offense. *See* Laken Riley Act, Pub. L. No. 119-1, § 2 139 Stat. 3, 3-4 (2025) (amending § U.S.C. § 1226(c)); *see also* Exh. A (I-213).

I. Relevant Facts and Procedural History

Petitioner, a native and citizen of Venezuela, applied for admission at the port of entry in Brownsville, Texas on or about December 1, 2023. ECF No. 1 at 19. He was paroled into the United States with temporary protected status. *Id.* Petitioner was detained by immigration authorities in June 2026. ECF No. 1 at 4. He is scheduled for a removal hearing before an immigration judge on October 8, 2026 at 9:00 AM. *See* https://acis.eoir.justice.gov/en/caseInformation (last accessed July 14, 2026).

On May 3, 2026, Petitioner was arrested by the Bexar County Sheriff's Office for theft of property, misdemeanor. Exh. A at 2-3 (Form I-213). Petitioner's case was dismissed on June 18, 2026. ECF No. 1 at 25.

Petitioner applied for permission to work using form I-765 on March 13, 2024, and the application was denied. Exh. A at 2. He submitted a form I-130, Petitioner for Alien Relative, on April 22, 2024, and the application is pending. *Id.* Petitioner submitted form I-485, Register Permanent Residence or Adjust Status, and form I-765, and both applications are still pending. *Id.*

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. 19-23. 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. *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.

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 she 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, her detention does not violate due process.

C. Petitioner is Also Subject to Mandatory Detention Under the Laken Riley Act.

Petitioner is additionally subject to mandatory detention under the Laken Riley Act pursuant to 8 U.S.C. § 1226(c). Laken Riley Act, Pub. L. No. 119-1, § 2 139 Stat. 3, 3-4 (2025) (amending § U.S.C. § 1226(c)); see also Exh. A at 3. The Laken Riley Act was enacted on January 29, 2025, and amended several sections of the Immigration and Nationality Act (INA). Namely, the Laken Riley Act expanded mandatory detention under 8 U.S.C. § 1226(c) by adding a new category for inadmissible aliens who are charged with, arrested for, convicted of, admit to, or admit committing acts constituting burglary, theft, larceny, shoplifting, assault on a law enforcement officer, or any crime resulting in death or serious bodily injury. Laken Riley Act, Pub. L. No. 119-1, § 2 139 Stat. 3, 3-4 (2025).

In enacting the Laken Riley Act, Congress saw the need to specify that certain aliens are ineligible for bond even though such aliens would already be subject to mandatory detention under

§ 1225(b)(2)(A). The Fifth Circuit addressed this in Buenrostro-Mendez v. Bondi. The Court explained that § 1225(c) sweeps in deportable aliens in addition to the inadmissible aliens covered by § 1225(b)(2)(A). Buenrostro-Mendez, 166 F.4th at 505.

Here, Petitioner was arrested on May 3, 2026, for Theft of Property. Exh. A. at 3. The charge was dismissed on June 18, 2026. ECF No. 1 at 25. Regardless of whether the charge is still dismissed, pending, or resulted in a conviction, Petitioner would still be subject to mandatory detention under 8 U.S.C. § 1226(c)(3); Laken Riley Act, Pub. L. No. 119-1, § 2 139 Stat. 3, 3-4 (2025).

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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