

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
TEXAS

Elias Moises Lopez Diaz v. Grant Dickey, et al.

Lopez Diaz v. Dickey · No. 4:26-CV-00723 · Decided February 26, 2026

OPINION

Dickey

PER CURIAM.

Southern District of Texas

ENTERED

UNITED STATES DISTRICT COURT February 26, 2026 SOUTHERN DISTRICT OF TEXAS

Nathan Ochsner, Clerk

HOUSTON DIVISION

ELIAS MOISES LOPEZ DIAZ, §

§ Petitioner, § §

VS. § CIVIL ACTION NO. 4:26-CV-00723

§ GRANT DICKEY, ef al., § § Respondents. §

ORDER OF DISMISSAL

The petitioner, Elias Moises Lopez Diaz, is a detainee in the custody of United States Department of Homeland Security, Immigration and Customs Enforcement (“ICE”) officials. Through counsel, petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging his continued detention. Doc. No. 1. While this case was pending, the Fifth Circuit decided *Buenrostro-Mendez v. Bondi*, --- F.4th ----, No. 25-20496, 2026 WL 323330 (Sth Cir. Feb. 6, 2026). The Court may dismiss a habeas petition on the pleadings “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (authorizing preliminary review and summary dismissal of habeas petitions on the pleadings).’ 1 A district court may apply any of the rules governing habeas petitions filed under 28 U.S.C. § 2254 to those filed under 28 U.S.C. § 2241. See Rule 1(b), Rules Governing § 2254 Cases in the United States District Courts. 1/3 The petition and attached exhibits reflect that Petitioner is a noncitizen who entered the United States in 2021 and is in removal proceedings, where ICE alleges that he is an “applicant for admission.” Doc. No. | at 2. Petitioner pleads no facts to show that he has been admitted lawfully into the United States. However, Petitioner contends that he was not “seeking admission” and therefore is entitled to a bond hearing under 8 U.S.C. § 1226(a), the statute permitting discretionary bond. He contends that Respondents have erroneously categorized him as an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner’s arguments regarding

sections 1225 and 1226 and their implementing regulations are foreclosed by *Buenrostro-Mendez*, supra. Likewise, his Fourth and Fifth Amendment claims that he is being held under the wrong statutory authority are also foreclosed by *Buenrostro-Mendez*. Additionally, Petitioner's Fifth Amendment Due Process Clause claims are precluded, at this juncture, by *Demore v. Kim*, 538 U.S. 510, 531

(2003), because "[d]etention during removal proceedings is a constitutionally permissible part of that process." /d. (citations omitted); see also *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (explaining that "§§1225(b)(1) and 1225(b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded"). Accordingly, the Court ORDERS as follows:

1. The petition (Doc. No. 1) is DENTED.
2. This case is DISMISSED without prejudice.
3. All other pending motions, if any, are DENIED as MOOT.

2/3

4. If the Fifth Circuit, en banc, or the United States Supreme Court enters a decision that is contrary to the decision in *Buenrostro-Mendez v. Bondi*, supra, Petitioner is granted leave to file a motion for reconsideration or initiate a separate petition. SO ORDERED. SIGNED this (2G _ day of February 2026.

ANDREW S. HANEN

UNITED STATES DISTRICT JUDGE

3/3