

UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AYDELYS DEL SOCORRO PONCE-
PINEDA,

Plaintiff-Petitioner,

v.

PAMELA JO BONDI, United States
Attorney General, KRISTI LYNN NOEM,
Secretary of Homeland Security, TODD M.
LYONS, Acting Director, United States
Immigration and Customs Enforcement,
MIGUEL VERGARA, Field Office Director
for Detention and Removal, U.S.
Immigration and Customs Enforcement,
and Rose Thompson, Facility
Administrator, Karnes County
Immigration Processing Center,
in their official capacities,

Defendants-Respondents.

Civil Action No.: 5:25-cv-01021

PETITIONER'S REPLY TO FEDERAL RESPONDENT'S RESPONSE
TO PETITIONER'S WRIT OF HABEAS CORPUS AND OPPOSITION
TO PARTIAL MOTION FOR SUMMARY JUDGMENT

Petitioner Aydelys Del Socorro Ponce-Pineda (Petitioner or Ms. Ponce-Pineda) files this her reply to Federal Respondents' response to her petition for writ of habeas corpus and opposition to partial motion for summary judgment. In support of her reply, Petitioner states as follows:

1. Federal Respondents wrongly assert that *Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 U.S. Dist. LEXIS 107254 (W.D. Tex. June 18, 2020) excuses from responding to Petitioner's claims that she is detained in violation of the Administrative Procedure Act (APA). *See* Fed. Respts' Resp. to Pet. Writ of Habeas Corpus and Opp. to Partial Mot. For Sum. J. ("Federal Respondents' Response") at n.1. *Ndudzi v. Castro* concerned a habeas petition that presented both a challenge to her detention as well as challenges to conditions of confinement. *Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 U.S. Dist. LEXIS 107254 at *2. It is true that where a petition includes habeas and non-habeas, the district court should separate the claims. *Id.*

2. But Ms. Ponce-Pineda is not complaining about her conditions of confinement or is otherwise presenting non-core habeas claim. She contends that her detention violates the U.S. Constitution, the Immigration and Nationality Act (INA), its implementing regulations as well as the APA. And the habeas statute allows her to raise the APA claim: "The writ of habeas corpus shall not extend to a prisoner unless...[h]e is in custody in violation of the Constitution or *laws* or treaties of the United States...." 28 U.S.C. § 2241(c)(3) (emphasis added).

3. The APA is a “law” within the meaning of § 2241(c)(3). Further, federal courts have granted habeas relief and issued writs based on violations of the APA. *See, e.g., Sanchez v. Larose*, No. 25-cv-2396-JES-MMP, 2025 U.S. Dist. LEXIS 190593 at *11-12, 2025 WL 2770629 (S.D. Cal. Sep. 26, 2025) (where noncitizen challenged her detention as violative of the Constitution and the APA, the district court concluded “that the APA also provides separate adequate grounds to grant [the] petition for writ of habeas corpus” because the detention was arbitrary and capricious); *Jimenez v. Bostock*, No. 3:25-cv-00570-MTK, 2025 U.S. Dist. LEXIS 163484 at *16-17, 2025 WL 2430381 (D. Or. Aug. 22, 2025) (in challenge to noncitizen’s re-detention by ICE, district court found that that the agency’s actions were arbitrary and capricious and violated the APA and granted habeas relief on that basis); *Lopez v. Sessions*, Case No. 18 Civ. 4189 (RWS), 2018 U.S. Dist. LEXIS 98712, 2018 WL 2932726 (S.D.N.Y. June 12, 2018) (in noncitizen’s challenge to his re-arrest and detention without a bond hearing, district court granted habeas relief under the TVPRA and the APA for the re-arrest); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 U.S. Dist. LEXIS 183335 at *13-14, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (in noncitizen’s challenge to detention under 8 U.S.C. § 1225(b)(2), district court granted habeas relief for violation of the APA).

4. The Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) changes nothing. Ms. Ponce-Pineda still maintains that she is wrongly detained without the right to a bond hearing. DHS elected to release her under 8 U.S.C. § 1226(a) and initiate removal proceedings

under § 1229a. Respondents are now wanting to re-write the historical record and subject Petitioner to a legal regime where she does not have a right to be released from detention. Further, her detention continues to be in violation of her due process rights and the APA because *Matter of Yajure Hurtado* is unfairly and unlawfully applied retroactively to her.

5. Federal Respondents' argument that 8 U.S.C. § 1252(a)(5), 1252(b)(9), and 1252(g) bar Petitioner's challenge to her detention is misplaced. Section 1252(a)(5) and (b)(9) concern review of final orders of removal. But Ms. Ponce-Pineda is not seeking review of her removal order.

6. Section 1252(g) also does not strip this Court of jurisdiction to her Petitioner's claims. That bars courts from reviewing challenges to the Attorney General's decisions "to commence proceedings, adjudicate cases, or execute removal orders...." 8 U.S.C. § 1252(g). In *Reno v. American-Arab Anti-Discrimination Committee (AADC)*, the Supreme Court interpreted that provision and concluded that §1252(g) does not encompass "the universe of deportation claims." *Reno v. AADC*, 525 U.S. at 482. Rather, the section only applies to three particular *discretionary* decisions or actions: to commence proceedings, adjudicate cases, or execute removal orders. *Id.* Ms. Ponce-Pineda's habeas petition does not present any issue relating to the decision to commence proceedings, adjudicate her case, or execute a removal order.

7. Further, the Supreme Court three times has heard challenges to detention brought by noncitizens and § 1252(g) was never a bar to the Court's

jurisdiction. *Zadvydas v. Davis*, 533 U.S. 678 (2001) (challenge to detention under § 1231); *Demore v. Kim*, 538 U.S. 510 (2003) (challenge to detention under § 1226(c)); *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (challenge to detention under § 1225(b) and 1226(c)).

8. Federal Respondents appear to stand solely on their jurisdictional arguments and do not dispute that *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, *supra*, are impermissibly retroactive and in violation of the Due Process Clause and the APA. Thus, the Court should grant habeas relief on this basis. That is also true for Petitioner's claim that the Attorney General acted arbitrarily and capriciously by instructing immigration judges that they are not bound by the rule of orderliness.

9. Lastly, Federal Respondents were obliged to respond to Petitioner's partial motion for summary judgment without having filed an answer. Federal Rule 56 permits the filing of a summary judgment motion "at any time until 30 days after the close of all discovery." Fed. R. Civ. P. 56(b). There is no discovery in APA suits and so the 30 days is triggered with the filing of the lawsuit. Further, under Local Rule CV-7, Federal Respondents were required to file their response 14 days after the filing of the motion, subject to any extensions granted. Thus, the Court can proceed to rule on Petitioner's partial motion for summary judgment without regard to the Federal Respondents' answer.

Dated: October 6, 2025

Respectfully submitted,

/s/ Javier N. Maldonado

Javier N. Maldonado

TX Bar No. 00794216

Fed. Bar No. 20113

Law Office of Javier N. Maldonado, PC

8620 N. New Braunfels, Ste. 605

San Antonio, Texas 78217

Telephone: (210) 277-1603

Facsimile: (210) 587-4001

Email: jmaldonado.law@gmail.com

ATTORNEYS FOR PLAINTIFF-PETITIONER

CERTIFICATE OF SERVICE

On October 6, 2025, undersigned counsel filed the instant pleading using the Court's electronic filing system which will give notice to all counsel of record.

Respectfully submitted,

/s/ Javier N. Maldonado

Javier N. Maldonado
TX Bar No. 00794216
Fed. Bar No. 20113

Law Office of Javier N. Maldonado, PC
8620 N. New Braunfels, Ste. 605
San Antonio, Texas 78217
Telephone: (210) 277-1603
Facsimile: (210) 587-4001
Email: jmaldonado.law@gmail.com

ATTORNEY FOR PLAINTIFF-PETITIONER