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

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| Isamara Jacqueline San Miguel Pena,<br><br>Petitioner,<br><br>v.<br><br>Rose Thompson, Facility Warden<br>*Karnes County Immigration Processing Center, et al.*,<br>Respondents. | Civil Action No. 5:26-cv-00296-FB |

**Federal Respondents' Response to Petition for Writ of Habeas Corpus**

Federal[1] Respondents provide this response to Petitioner's habeas petition. ECF No. 1. 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. Any non-habeas claims should be severed or dismissed.[3]

In this case, the issue is *not* based on the *Hurtado* 1225/1226 statutory application but rather

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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).

3 Petitioner did not pay the filing fee for non-habeas claims. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). "When a filing contains both habeas and non-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3.

rests on whether the Petitioner is entitled to release from custody pending her removal proceedings.[4] Respondents contend that Petitioner is entitled to a bond hearing under 8 U.S.C. § 1226, but that this petition is premature at this time.

In the Court's Order of January 22, 2026, Respondents were asked to consider prior orders issued in the San Antonio Division of the Western District of Texas as referenced in the Order and identify any material factual differences that exist between those cases and this one. ECF No. 2. Respondents have considered the referenced orders and at this time would note that because this case is not a *Hurtado* situation and the petition is premature, the petition should be denied.

**I. Relevant Facts and Procedural History**

Petitioner is a native and citizen of Mexico who was inspected and admitted to the United States at Laredo, Texas, on or about September 15, 2019, with a nonimmigrant Visa for Pleasure with authorization to remain in the United States for a temporary period not to exceed March 14, 2020. *See* ECF No. 1, at 2; Exh. A, Notice to Appear at 1 (redacted). Petitioner concedes she was detained on or about December 21, 2025. ECF No. 1, at 1, 3. She was issued a Notice to Appear (NTA) on December 21, 2025, which charged her as being removable under INA Section 237(a)(1)(B) for having remained in the United States longer than permitted and without authorization from immigration authorities. *See* Exh A, NTA at 1 (redacted). Petitioner concedes that she was placed into removal proceedings after being taken into custody by ICE and placed in detention. ECF No. 1 at 3. Petitioner is scheduled for a hearing before an immigration judge on February 13, 2026. *See* EOIR Automated Case Information (last accessed Feb. 3, 2026).

**III. Argument**

Petitioner seeks from this Court an order of release from custody. ECF No. 1, at 5. Whether

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[4] *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

Petitioner merits release on bond under 8 U.S.C. § 1226(a) or should be detained pending further proceedings is a mixed factual and legal question that is not ripe for review. Respondents agree that she can seek a bond hearing before the immigration judge under 8 U.S.C. § 1226. Petitioner is scheduled for a master hearing on February 13, 2026. There is no indication in the petition whether Petitioner has requested a bond hearing, and instead she argues that requesting a bond hearing would be futile. To the contrary, if the immigration judge denies bond, Petitioner may seek review of the immigration judge's decision from the Board of Immigration Appeals.

Further, appealing to the BIA would not be futile in this case, because the issue on appeal would be whether, as a factual matter, she poses a danger to persons or property or poses a risk of flight and failure to appear that cannot be mitigated under 8 U.S.C. § 1226. If the BIA grants the appeal, she would be released. Thus, the BIA can provide Petitioner the remedy she seeks, such that exhaustion of remedies would not be futile. *See Petgrave v. Aleman*, 529 F.Supp.3d 665, 672 n. 14 (S.D. Tex. 2021) (finding futility where the BIA could not remedy the constitutional claim and where the detention had already become prolonged).

While "the Fifth Amendment entitles aliens to due process of law in deportation proceedings, . . . this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in this habeas petition that Petitioner's detention is unconstitutional. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018).

Moreover, Petitioner's instant petition is not the proper vehicle to dispute an immigration judge's discretionary findings. 8 U.S.C. § 1226(e). Section 1226(e) strips this Court of jurisdiction to hear such a challenge, and provides in relevant part:

> (e) Judicial review
> The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.
> 8 U.S.C. § 1226(e).

The bar to judicial review was discussed and analyzed by the Supreme Court, determining that 8 U.S.C. § 1226(e) barred challenges to discretionary decisions. *See Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708 (2003) (explaining that 8 U.S.C.§ 1226(e) bars an alien's challenge to "a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release") (internal quotations omitted); *Pensamiento v. McDonald*, 315 F. Supp.3d 684, 688 (D. Mass 2018) ("Congress has eliminated judicial review of discretionary custody determinations"); *see Blandon v. Barr*, 434 F.Supp.3d 30, 36 (W.D. N.Y. 2020) (while the Court may consider whether the IJ complied with the Court-ordered procedural protections, it does not reweigh the evidence nor consider whether it would have made the same determination as the IJ). Thus, even if this Court disagrees with the determination made by the IJ after the upcoming scheduling hearing, it may not review that determination. Rather, Petitioner would need to first appeal the decision to the BIA.

Petitioner has been detained for approximately one month, since on or about December 21, 2025, and has a master hearing scheduled before an immigration judge on February 13, 2026. Thus, her detention while she is pending removal proceedings has not been prolonged. Further, Petitioner has not shown that her claim for release is properly before this Court. Respondents agree that Petitioner is entitled to a bond hearing, and there is no indication that she has requested one. As such, she is not being denied a bond hearing. Nor has she shown an entitlement to immediate release from custody. Consequently, her detention pending her removal proceedings is lawful.

**V. Conclusion**

Accordingly, Petitioner is lawfully detained pending removal proceedings, and she does not claim any immigration status that would entitle her to immediate release from custody. Therefore, for the foregoing reasons, the Court should deny the Petition in its entirety.

Respectfully submitted,

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