UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Betsasar Belzay Estrada Uraliyu, Petitioner, v. Kristi Noem, *et al.*, Respondents.	Civil Action No. 5:26-cv-00595-OLG

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

Federal[1] Respondents timely 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.

This case is not governed by the Board of Immigration Appeals (Board) opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025). Instead, this case fits squarely within a different Board opinion, *Matter of M-S-*, 27 I&N Dec. 509 (2019), which pre-dates *Hurtado* and mandates Petitioner's detention during full removal proceedings. Under *M-S-*, Petitioner is ineligible (and was ineligible, pre-*Hurtado)*, for bond from an immigration judge. *See Canales-Melgar v. Noem*, SA–25–CA–01571–XR (W.D. Tex. Dec. 23, 2025) (Rodriguez, J.) (denying

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

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

habeas petition).[3] Aliens like Petitioner 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.[4]

Petitioner entered the United States in 2023, was processed for expedited removal, claimed credible fear, and was issued a Notice to Appear (NTA) under 8 C.F.R. § 208.30 based on her credible fear claim. ECF No. 1 ¶¶ 16–17; *see also* ECF No. 1-1 (NTA). Because Petitioner was first placed in expedited removal proceedings and ultimately processed into "full" removal proceedings under § 1229a, based on a credible fear claim, she is ineligible for release on bond. *M-S-*, 27 I&N Dec. at 3. In other words, Petitioner: (1) is an applicant for admission; (2) was intercepted at or near the port of entry shortly after unlawfully entering; (3) indicated a credible fear of persecution; and (4) was issued an NTA based on that claim "for further consideration of the application for asylum." Petitioner, therefore, is properly described under § 1225(b)(1)(A)(ii), and not under the "catchall" provision. *Compare* 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii) *with* § 1225(b)(2)(A).

Section 1225 expressly provides for the detention of aliens originally placed in expedited

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[3] In the interest of judicial efficiency, Respondents incorporate herein their jurisdictional and due process arguments outlined in their response to the *Canales-Melgar* habeas petition, as there are no material legal or factual differences in this case as it relates to those arguments.

[4] The *Buenrostro* decision is a published decision and precedential authority even though the mandate has yet to issue. *See, e.g., Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (explaining that even a stay in the issuance of a mandate does not impact the precedential value of published opinions); *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is not controlling because "the mandate has yet to issue, and thus not properly relied upon as precedent."). As such, each pre-*Buenrostro* district court decision cited in this Court's Order to Show Cause is overruled as it relates to ICE's statutory authority to detain certain aliens on a mandatory basis under 8 U.S.C. § 1225(b).

removal, mandating that such aliens "shall be detained pending a final determination of credible fear." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also M-S-*, 27 I&N Dec. at 3. Section 1225(b)(1)(B)(ii) clearly states that, "if an alien in expedited proceedings establishes a credible fear, he "shall be detained for further consideration of the application for asylum." *Id.* "The word 'shall' generally imposes a nondiscretionary duty." *Id.*; *see also SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1354 (2018). The statute's plain language requires detention, and the petition should be denied. *See also Jennings v. Rodriguez*, 583 U.S. 281, 297, 299 (2018).

DUE PROCESS CLAIMS

To the extent Petitioner raises due process claims those should likewise be denied. Petitioner is receiving or has received due process afforded through removal proceedings in immigration court. In upholding the facial constitutionality of § 1225(b) the Supreme Court in *Thuraissigiam* found that applicants for admission are entitled only to the protections set forth by statute in the INA. *Dep't of Homeland Sec. v. Thuraissigiam,* 91 U.S. 103, 140 (2020) (finding aliens who arrive at ports of entry are 'treated' for due process purposes 'as if stopped at the border' and 'only have rights regarding admission that Congress has provided by statute'). Section 1225 does not provide for a bond hearing. 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.

The Fifth Circuit found that *Zadvydas v. Davis* does not apply to detained aliens who are being given due process during removal proceedings. *Buenrostro*, at *9. District courts around the country have also dismissed due process concerns in similar contexts. *See Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026) (Wyrick, J.) (holding that petitioner is unambiguously governed by § 1225 and his due process claim coming three months after arrest is denied as premature); *Montoya v.* Holt, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J) (holding that petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *A.M. v. Joyce*, No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (Walker, J.) (holding that petitioner's approximately one-month detention without a prompt bond hearing is consistent with the INA and the Due Process Clause); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.) (holding that because petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings

are unavailable as a matter of statute and due process); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (holding that petitioner, as an applicant for admission, is properly detained without a bond hearing under § 1225, which does not violate Due Process Clause); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.) (rejecting petitioner's argument that mandatory detention without bond hearing violates substantive due process); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that petitioner is an applicant for admission despite his prior bond and that his detention does not violate due process because it is limited to the conclusion of his removal proceedings).

CONCLUSION

This case fits squarely within the BIA's decision in *M-S*, and the Fifth Circuit's reasoning in *Buenrostro* only reinforces the legality of her continued mandatory detention. Respondents respectfully request that the Court deny this petition.

Dated: February 11, 2026

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: *Lacy L. McAndrew*
Lacy L. McAndrew
Assistant United States Attorney
Florida Bar No. 455017
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (direct)
(210) 384-7312 (fax)
Lacy.McAndrew@usdoj.gov

Attorneys for Federal Respondents