UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Yessica Madelin Rodriguez Cuba, *by next friend* Delia Moreno Martinez, Petitioner, v. Kristi Noem, Secretary, Department of Homeland Security, *et al.*, Respondents.	Civil Action No. 5:26-cv-00586-FB

RESPONSE TO PETITION FOR HABEAS CORPUS

Federal Respondents[1] 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 sought, 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 (IJ). Exhibit (Exh) A (Notice to Appear) (NTA); 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-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. Feb. 6, 2026). The *Buenrostro-Mendez* decision is binding precedent and requires that the Court deny this habeas

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

petition.[2]

RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner is a citizen and native of Cuba. Exh A (NTA). On July 15, 2024, Petitioner applied for admission to the United States.[3] *Id.* Petitioner was released sometime later. See generally ECF No. 1 ¶ 36. On or about September 18, 2025, Petitioner was detained by U.S. Immigration and Customs Enforcement (ICE) following a traffic stop. *Id.* pg 5. While detained, Petitioner had an immigration hearing, and on December 12, 2025, the IJ ordered petitioner removed to Cuba. Exh B (Removal Order). On or about January 9, 2026, Petitioner appealed the removal order, and her appeal is pending. *See* Exh C (Appeal Payment Receipt); see also ECF No. 1 ¶ 6. Petitioner is detained in the Karnes County Immigration Processing Center in Karnes City, Texas, pending the resolution of her appeal. ECF No. 1 pg 5.

ARGUMENT

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

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[2] The *Buenrostro-Mendez* 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 adverse pre-*Buenrostro-Mendez* district court decision in this district should be deemed unpersuasive as it relates to ICE's statutory authority to detain certain aliens on a mandatory basis under 8 U.S.C. § 1225(b).

[3] **This is a material factual difference between this petition and the others frequently filed before the court, as Petitioner here presented herself at a port of entry, as opposed to entering without inspection between ports of entry.** *See* Exh A (NTA, alleging that she applied for admission at the port of entry).

Petitioner is an arriving alien who presented herself to immigration authorities at a port of entry. *See* ECF No. 1 ¶ 15; Exh A (NTA). 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, she 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 her 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 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-Mendez, 166 F.4th at 498.

On its Face, and as Applied to Petitioner, § 1225(b)(2)(A) Comports with Due Process.

Petitioner alleges her detention without a bond hearing violated her due process rights. ECF No. 1 pgs 11-13. 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 constitutional protections are built into those proceedings. *See* 8 U.S.C. § 1229a. *See Demore v. Kim*, 538 U.S. 510, 526 (2003) (recognizing the constitutionality of detention during the limited period of removal proceedings).

In *Demore,* the Supreme Court distinguished the *Zadvydas v. Davis* analysis and its 8 U.S.C. §1231 post-order framework, because petitioners in *Demore* were still pending removal proceedings. *Id.* at 527-528 (finding the potentially indefinite detention of a post-final-order case where petitioner cannot be removed from the United States materially distinguishable from continued detention tied to pending removal proceedings). The petitioner in *Demore* filed a habeas petition after being in immigration custody for approximately six months while removal proceedings were pending. *Id.* at 530. The District Court granted the petition, and the Ninth Circuit affirmed, finding that continued detention, "as applied" to him, violated substantive due process. *Id.* at 509. Reversing, the Supreme Court concluded that since removal proceedings were ongoing, detention was "a constitutionally permissible part" of the removal process. *Id.* at 530.

Consistent with the Supreme Court's long-standing precedent, the Fifth Circuit in *Buenrostro-Mendez* found that *Zadvydas v. Davis* did not apply to detained aliens who received or were receiving due process through removal proceedings. *Buenrostro-Mendez*, 166 F.4th at 508. *Buenrostro-Mendez* also dismissed claims of abuse of detention, finding that those concerns were "wholly speculative" *Id.* 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 he has been detained for only a brief period pending 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. Indeed, Petitioner has filed an appeal of the IJ's removal order, exercising her due process right to seek judicial review of a removal order. Such a decision necessarily prolongs the removal proceedings, but not unconstitutionally. Any claims arising from the length of detention based on Petitioner's choice to continue to litigate matters in removal proceedings should be dismissed. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite). As applied here to Petitioner, detention does not violate due process.

STAYS AND ORDERS NOT TO TRANSFER

The Court in this case entered an order staying removal. ECF No. 7. That order should be vacated. The Fifth Circuit recently stated in an unpublished decision that district courts lack

jurisdiction to enter stays of removal. *Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

CONCLUSION

Petitioner is lawfully detained as an arriving alien in removal proceedings. The Fifth Circuit has held that applicants for admission are properly detained on a mandatory basis under § 1225(b)(2). *Buenrostro-Mendez*, 166 F.4th at 498. Petitioner is receiving the process she is owed during removal proceedings, and her continued detention during that process is not unconstitutional. The Court should deny the Petition in its entirety.

Dated: March 13, 2026

Respectfully submitted,

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Certificate of Service

I hereby certify that on March 13, 2026, I sent this document to the following by Certified First Class Mail:

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