United States District Court
Western District of Texas
San Antonio Division

Z., et al,
Petitioners,

v.

Kristi Noem, Secretary of United States Department of Homeland Security et. al.,
Respondents.

No. 5:25-cv-00716-FB-RBF

Federal[1] Respondents' Response to Order to Show Cause

Petitioners lodge nine claims for relief before this Court, ranging from injunctive relief to declaratory relief to habeas relief, and stemming from alleged constitutional violations and alleged violations of both the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA). In response to this Court's order dated June 26, 2025, the Federal Respondents submit the following and urge the Court to deny the habeas petition, as these aliens are lawfully detained:

1) As an initial matter, Petitioners, through counsel, filed this action under habeas (28 U.S.C. § 2241), while also invoking federal question jurisdiction under 28 U.S. § 1331. ECF No. 1 at ¶ 20. Despite this, Petitioners paid only the $5 filing fee permitted for habeas applications, as opposed to the $405 filing fee for any other civil suit. *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)). The $5 filing fee "relegates this action to habeas relief only," because one "cannot pay the minimal habeas fee and pursue non-habeas relief." *Id.* (collecting cases and further noting the "vast

[1] The warden, Jose Rodriguez, is not a federal employee, and as such, he is not represented herein by the Department of Justice in this action. *See* Dilley Immigration Processing Center, last accessed July 1, 2025. The Federal Respondents in this action, however, are charged under Title 8 of the United States Code with detaining these aliens on a mandatory basis during removal proceedings. 8 U.S.C. § 1225(b).

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.

2) In any event, Petitioners bear the burden of establishing this Court's jurisdiction to hear these claims for relief. *See* 8 U.S.C. §§ 1252(g); 1252(a)(2)(B); § 1226(e); *see also Rice v. Gonzalez,* 985 F.3d 1069, 1070 (5th Cir. 2021) (habeas is not available to review questions unrelated to the cause of detention, nor can it be used for any purpose other than granting relief from unlawful imprisonment); *see also Westley v. Harper*, No. 25–229, 2025 WL 592788 at *4–6 (E.D. La. Feb. 24, 2025) (denying preliminary injunction and dismissing case for lack of jurisdiction where district court lacked jurisdiction to stay removal); *Ahmed v. Warden*, No. 1:24-CV-1110, 2024 WL 5104545, at *1 (W.D. La. Sept. 25, 2024) (conditions of confinement not cognizable under habeas).

3) Given the government's extremely short deadline to respond to these nine mixed claims that were filed only under the $5 habeas filing fee, the government respectfully requests that the non-habeas claims be either dismissed without prejudice or severed, so that the government may be properly served and given the full sixty days to respond to any non-habeas claims, as anticipated by Rule 12(a)(2) of the Federal Rules of Civil Procedure.

4) Regarding the habeas claims, these Petitioners are a family unit from Honduras that applied for admission to the United States at the Brownsville, Texas, Port of Entry on October 26, 2024. *See* Ex. A (Notices to Appear (NTA)). They did not have any valid entry documents required by the Immigration and Nationality Act (INA). *Id.* In the exercise of discretion, Petitioners were placed into removal proceedings under 8 U.S.C. § 1229a in lieu of expedited removal proceedings under 8 U.S.C. § 1225. *Id.*; ECF No. 1 ¶ 70.

5) U.S. Customs and Border Protection (CBP) served the family unit with NTAs, and the family acknowledged receipt of those NTAs in a certificate of service. *Id.* The NTAs charged them each as arriving aliens, removable from the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*; *see also* 8 U.S.C. § 1225(b).

6) Although arriving aliens are not entitled to release on bond, these Petitioners were released from immigration custody via humanitarian parole until April 18, 2025. *See* Ex B (Forms I-94); *see also* 8 U.S.C. § 1225(b)(2)(A); § 1182(d)(5). Humanitarian parole automatically terminates without written notice. 8 C.F.R. § 212.5(e)(1). Upon expiration of the parole, Petitioners reverted to the status they had at the time they were granted parole: arriving aliens subject to mandatory detention. *See* 8 C.F.R. § 212.5(e)(2)(i). There is no indication in the record that Petitioners sought or obtained an extension of their parole documents.[2]

7) On May 29, 2025, Immigration and Customs Enforcement (ICE) moved to dismiss removal proceedings against these Petitioners under 8 C.F.R. § 1239.2(c). Ex. C (Order on Motion to Dismiss). The immigration judge granted the motion without prejudice, and Petitioners reserved appeal of the decision. *Id.* Petitioners' appeal of the dismissal is pending with the Board of Immigration Appeals (BIA). *See* ECF No. 1 ¶¶ 26, 90. Until the BIA renders a decision on the appeal, there is no final administrative order, and these Petitioners remain in removal proceedings under § 1229a. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–88 (2018); 8 U.S.C.

[2] Petitioners mistakenly argue that they are eligible to seek bond in removal proceedings under § 1229a, but arriving aliens are not eligible to seek bond, regardless of the type of removal proceedings they face. *Compare* ECF No. 1 ¶¶ 27, 30, 31, 36, 105, 109, 113, with *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) (an alien detained under § 1225(b) who is released from detention under § 1182(d)(5)(A) parole, and whose grant of parole is subsequently terminated, is returned to custody under § 1225(b) pending the completion of removal proceedings).

§ 1225(b)(2)(A).[3]

8) ICE and immigration judges may reopen removal cases or reconsider removal decisions, and the Executive always has discretion not to remove. *See Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 140 n.28 (2020) (citing 8 C.F.R. §§ 103.5(a)(1), (5), and 1003.23(b)(1); *Reno v. AAADC*, 525 U.S. 471, 483–484 (1999)); *see also Zuniga v. Bondi*, No. 24–60368, 2025 WL 958259 at *1 (5th Cir. Mar. 31, 2025) (circuit court lacks jurisdiction to review concerns regarding an expedited removal order issued by DHS).

9) Arriving aliens are not entitled to a bond hearing before an immigration judge, regardless of whether they are placed into removal proceedings under § 1229a. *See Thuraissigiam,* 591 U.S. at 140 (arriving aliens have "only those rights regarding admission that Congress has provided by statute"). As arriving aliens, detention is authorized until they are either physically removed from the United States, released from custody in the exercise of ICE's discretion, or granted relief from removal that mandates their release. *Id.* at 139 (finding that "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'"). *See also Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) (detention authority during removal proceedings remains under § 1225(b) following the termination of humanitarian parole).

10) Detention during deportation proceedings is "a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). As arriving aliens, detention during removal proceedings is mandated by statute, absent the issuance of humanitarian parole under § 1182(d)(5). *Jennings*, 583 U.S. at 289, 306. Parole is both discretionary and temporary.

[3] This position is consistent with the government's purported position in *Y-Z-L-H*, quoted at ECF No. 1 ¶ 98, n.15.

Id. at 288. The government's discretionary detention decisions are not subject to review. 8 U.S.C. § 1226(e). No court, even in habeas review, may set aside any decision regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole. *Id.*

11) Despite their mandatory detention as arriving aliens following the expiration of their discretionary parole, Petitioners remain in removal proceedings while the BIA considers their appeal. *See* 8 U.S.C. §§ 1182(d)(5); 1225(b)(2)(A); 1229a. Beyond that, Petitioners are due only minimal process as arriving aliens[4] in removal proceedings. *See Baltazar v. Barrientos*, No. 24–CV–00005, 2024 WL 5455686 at *5 (S.D. Tex. Dec. 18, 2024) (collecting cases).

12) To the extent that Petitioners allege an unlawful agency policy of moving to dismiss pending removal proceedings in favor of expedited removal proceedings, such action must be instituted in the U.S. District Court for the District of Columbia. *See* 8 U.S.C. § 1252(e)(3)(A).

13) Federal Respondents deny any allegation that Petitioners' mandatory detention under § 1225(b)(2)(A) during § 1229a removal proceedings is unlawful following the expiration of their discretionary parole. Humanitarian parole automatically terminates without written notice. 8 C.F.R. § 212.5(e)(1). While an agency is required to follow its own procedural regulations for aliens in removal proceedings, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Without unexpired parole, these aliens are subject to mandatory detention under

[4] The *Valdez* decision from the Southern District of New York is distinguishable from this case in that Valdez was not an arriving alien, even though he qualified for expedited removal proceedings. *See* ECF No. 1 at ¶ 53; *Valdez v. Joyce*, No. 25-CIV-4627 (GBD), 2025 WL 1707737 at *1 (S.D.N.Y. June 18, 2025) (noting that Valdez "entered the United States without inspection" and was encountered "near a port of entry"). Further, Valdez was released under an Order of Release on Recognizance under 8 U.S.C. 1226(a)(2)(B), which does not automatically expire, whereas Petitioners here were granted humanitarian parole under § 1182(d)(5)(A), which expired on April 18, 2025. *Id.* In any event, the expiration and automatic termination of parole in this case would constitute a change of circumstances sufficient to justify custody redetermination.

§ 1225 until they are removed from the United States.

14) In any event, a remedy for a procedural due process violation is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, albeit later than expected). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

15) Federal Respondents further deny any allegations of inadequate medical care and aver that the six-year-old Petitioner was evaluated on June 19, 2025, by Carlos Velasco, M.D. at the Frio Regional Hospital. Considering the plethora of privacy concerns at issue in this case, coupled with the limited response time given under this emergency order, Federal Respondents respectfully request additional time to file such evidence under seal, should the Court require it.

16) Finally, Federal Respondents deny that Petitioners are entitled to attorney's fees under the Equal Access to Justice Act (EAJA). *See Gomez Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023) (EAJA fees are not available in habeas actions).

CONCLUSION

The Court should dismiss this habeas petition in its entirety, as these Petitioners are lawfully detained as arriving aliens in removal proceedings under 8 U.S.C. § 1225(b). Alternatively, the Court should dismiss all non-habeas claims as improvidently filed, or at the very least, sever them from the habeas claims to allow for the proper procedural safeguards contemplated by the Federal Rules. Should the Court require additional briefing, the undersigned respectfully requests 30 days to prepare and file a response to any remaining cognizable habeas claims.

Respectfully submitted,

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