United States District Court
Western District of Texas
El Paso Division

Michely Paiva Alves, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 3:25-CV-00306-KC

Federal Respondents' Response to Petitioner's Writ of Habeas Corpus

Statement of Issues

1. Whether this habeas petition is now moot, given that Petitioner is no longer subject to an expedited removal order.

2. Whether this Court has jurisdiction to review ICE's custody decision in this case when it is inextricably intertwined with the decision to commence removal proceedings.

3. Whether Petitioner is entitled to process beyond what the statute affords her as an applicant for admission pending removal proceedings.

I. Introduction

Federal Respondents timely submit this response per this Court's Order, directing service and ordering a response no later than September 9, 2025. *See* ECF No. 6. Petitioner filed this petition *pro se* on or about August 11, 2025, while subject to a final order of expedited removal. *See* ECF No. 1, ¶¶ 1, 16. Since the filing of her habeas petition, however, ICE has placed Petitioner into "full" removal proceedings under Section 240 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1229a, and she is scheduled for an initial appearance before an Immigration Judge in El Paso, Texas, on September 18, 2025. *See* Ex. A (NTA).

The statute governing her detention during these removal proceedings, however, has not changed, and she remains subject to mandatory detention as an applicant for admission. *See* 8 U.S.C. § 1225(b). This statute provides for her release from ICE custody only in three circumstances, if she is: (1) granted relief from removal by an Immigration Judge; (2) released on humanitarian parole under 8 U.S.C.§ 1182(d)(5) in the exercise of ICE's discretion; or (3) removed from the United States pursuant to a final order of removal.

As a threshold issue, Respondents submit that Petitioner's claims as articulated in her habeas petition are now moot, because she is no longer subject to a final order of expedited removal. Further, this Court lacks jurisdiction over ICE's decision to continue her detention during removal proceedings, because Petitioner, as an applicant for admission, is not entitled by statute to seek a bond hearing. *See, e.g., Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Finally, Petitioner's detention during removal proceedings comports with due process, and she has not properly alleged an as-applied challenge. This Court should deny this petition.

II. Facts and Procedural History

Petitioner is a native and citizen of Brazil. ECF No. 1 ¶ 16; Ex. A (NTA). She entered the United States unlawfully and was initially processed for removal under the expedited removal statutes. *See* ECF No. 1. ¶¶ 1, 16. In the exercise of discretion, ICE issued her a Notice to Appear (NTA) on or about August 27, 2025, and served it on Petitioner in person the same day. Ex. A (NTA). The NTA was filed with the immigration court the following day, commencing removal proceedings under INA § 1229a on August 28, 2025. *Id.* The NTA notifies Petitioner of the allegations and charge against her and orders her appearance before an immigration judge on September 18, 2025, in El Paso, Texas. *Id.* The NTA charges Petitioner as an applicant for admission under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. 1182(a)(7)(A)(i)(I). As such, ICE avers that the detention authority governing her custody throughout these removal proceedings is 8 U.S.C. § 1225(b). *Id.*

To the extent this Court requires a response, nonetheless, to the factual allegations in Petitioner's now-moot habeas petition, Respondents deny that Petitioner was ever granted relief by an immigration judge in the form of withholding of removal or relief under the Convention Against Torture. *See* ECF No. 1 ¶¶ 1, 11, 15, 16, 18, 20–23, 31, 43, 49. Respondents further deny that Petitioner's detention violates the Suspension Clause or the Due Process Clause. *Id.* ¶¶ 35–49. In her Prayer for Relief, Petitioner seeks an order for Respondents to (1) stay her removal pending the resolution of this petition; (2) declare that her detention is unauthorized by statute, contrary to law, and unconstitutional; (3) declare that the alleged revocation of her alleged grant of withholding of removal is unauthorized by statute, contrary to law and unconstitutional; (4) require ICE to provide her with a constitutionally valid bond hearing; and (5) enjoin her transfer outside the Court's jurisdiction. *Id.* at 26–27.

Petitioner is not entitled to the relief she seeks, and this petition should be denied. Petitioner is lawfully detained on a mandatory basis while she seeks relief from removal in immigration court in "full" removal proceedings. These proceedings entitle her to robust procedural and substantive due process protections, including judicial review of any adverse decisions. Her claims are either moot or meritless, as she is no longer subject to an expedited removal order.

III. Petitioner's Request for a Stay Is Moot Because She Is No Longer Subject to a Final Order of Removal.

Petitioner is now in "full" removal proceedings where she can seek all relief available to her under the INA. *See Thuraissigiam* 591 U.S. at 108–13 (comparing the expedited removal process with the full removal process). Given there is no removal order to enforce, Petitioner's request for a stay is moot. *Id.* While she is subject to mandatory detention during this time, there is a definite ending to those proceedings, and she is afforded robust constitutional protections throughout the proceedings. *Id.*

IV. Petitioner's Pre-Removal Order Detention Is Mandated by Statute.

Petitioner's attack on ICE's custody decision is mandated by statute should be denied for lack of subject matter jurisdiction. 8 U.S.C. §§ 1225(b); 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.* § 1252(a)(5). Additionally, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). ICE's decision to place Petitioner into "full" removal

proceedings, therefore, is not subject to review.

V. The Constitution Does Not Afford Petitioner the Right to a Bond Hearing, Because She Is an Applicant for Admission.

Petitioner is an applicant for admission who is pending removal proceedings. 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). An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983). Indeed, the Supreme Court has held that applicants for admission such as Petitioner are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more." *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). In other words, continued detention of applicants for admission without a bond hearing during removal proceedings comports with the Constitution. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018).

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 pre-removal-order detention is unconstitutional. *See Jennings,* 583 U.S. at 312. This Court's scope of review, if any, is limited under *Thuraissigiam* to whether Petitioner, as an applicant for admission on the threshold of entry to the United States, is receiving the process afforded to her by the INA. Indeed, ICE's decision to exercise its discretion to commence "full" removal proceedings in lieu of expedited in this case provides Petitioner with far more robust procedural due process protections, including the right to seek appellate review of any adverse decision. Petitioner is receiving the process she is owed by statute, and her detention is lawful.

VI. Conclusion

Petitioner is lawfully detained as an applicant for admission pending removal proceedings. Accordingly, the Court should deny this petition.

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Certificate of Service

I certify that on September 9, 2025, I mailed a copy of Federal Respondents' Response to Petition for Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

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PRO SE

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/s/ Lacy L. McAndrew
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