United States District Court
Western District of Texas
El Paso Division

Catalina Santiago Santiago, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 3:25-CV-00361-KC

Respondents' Response to Order to Show Cause

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I. Introduction

Respondents timely submit this response per this Court's Order dated September 3, 2025, ordering a response by September 17, 2025. *See* ECF Nos. 12, 15. In her petition, Catalina Santiago Santiago ("Petitioner"), requests the Court grant her writ of habeas corpus, enjoin[1] her removal from the United States and her transfer outside of this district, declare her arrest and continued immigration detention unlawful, order her immediate release, or alternatively, order an immediate bond hearing where the government bears the burden to justify continued detention and the Court considers less restrictive alternatives to detention, or finally, release her on bail during this habeas litigation. She claims that Respondents have violated her due process rights, their own regulations in violation of the *Accardi* doctrine, the Administrative Procedure Act (APA), and the Fourth Amendment.[2] *See* ECF No. 1 at 43–79.

This petition should be denied. Petitioner is lawfully detained in removal proceedings as an arriving alien subject to mandatory detention without a bond hearing until removal from the United States. *See* 8 U.S.C. § 1225(b); *In re Oseiwusu*, 22 I&N Dec. 19 (BIA 1998). For these reasons and those that follow, the Court should sever the non-habeas claims or deny this petition in its entirety.

II. Relevant Factual Background and Procedural History

Petitioner is a 28-year-old female who has lived in the United States since entering

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[1] This Court granted Petitioner's Motion for Temporary Restraining Order on September 9, 2025. ECF No. 15.

[2] Petitioner has not paid the required filing fee in this case for any claims outside the scope of habeas relief. *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)). As explained, *infra*, neither the APA claim, nor the Fourth Amendment claim is cognizable in habeas.

unlawfully as a child in 2005. ECF No. ¶¶ 2, 8, 28. Petitioner is married to a U.S. citizen since January 2025, and because of that marriage, Petitioner alleges she is *prima facie* eligible to apply for adjustment of status to that of a lawful permanent resident. ECF No. 1 ¶¶ 33–34. Petitioner does not claim to have any such application pending yet. *Id.*

A. DACA

In 2012, Petitioner applied for and was granted Deferred Action for Childhood Arrivals (DACA). *Id.* ¶¶ 2, 30. Since that approval, Petitioner has been granted six renewals of her DACA approval every two years. *Id.* DACA allows her to be "lawfully present" in the United States, such that she is not subject to being removed. *Id.* ¶ 23; *see also* 8 C.F.R. § 236.21(c)(3). Further, Petitioner alleges that the government cannot approve her renewal application if she is detained. *Id.* ¶ 25 (citing 8 C.F.R. § 236.23(a)(2)).[3]

Petitioner alleges that only USCIS may terminate DACA, and that to do so, USCIS must first issue and serve her with a Notice of Intent to Terminate that would provide her with an opportunity to response. *Id.* ¶ 26 (citing 8 C.F.R. § 236.23(d)). Petitioner claims that the government has not notified her of any intent to terminate DACA approval. *Id.* ¶ 38.

B. Advanced Parole

As a DACA recipient, Petitioner applied for and was granted advanced parole, which allowed her to travel internationally in 2022 and be granted parole upon returning to the United States on June 12, 2022. ECF No. 1 ¶¶ 17, 33. Petitioner concedes that upon entering the United

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[3] *But see* Frequently Asked Questions | USCIS (last accessed Sept. 17, 2025) (advising that if currently in immigration detention, an applicant "may request consideration of deferred action from USCIS, but [USCIS] will not approve the request ***until*** [the applicant is] released from detention") (emphasis added); Deferred Action for Childhood Arrivals (DACA) | ICE (last accessed Sept. 17, 2025) (providing additional guidance to detained individuals seeking DACA).

States on the advanced parole, she is classified as an arriving alien. *Id.* ¶ 17.

C. Recent Immigration Arrest and Detention

The Department of Homeland Security (DHS) encountered Petitioner at the El Paso airport in August 2025 while she was preparing to board a domestic flight. ECF No. 1 ¶ 3. Petitioner alleges that DHS arrested her without a warrant, despite showing a copy of her valid employment authorization document. *Id.* ¶ 36. Petitioner claims she was transferred to ICE custody. *Id.* While in detention, immigration officials served Petitioner with a Notice to Appear (NTA) in immigration court, charging her with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i)(I). ECF No. 1 ¶ 36. Given that she is an arriving alien, Petitioner concedes that she is not eligible to seek a bond during removal proceedings. *Id.* ¶ 17.

D. Removal Proceedings

That parties agree that Petitioner is lawfully present in the United States because of DACA and for that reason, ICE cannot remove her from the United States. ICE avers, however, that despite this, nothing prevents ICE from commencing removal proceedings against her. *See* 8 C.F.R. § 236.21(c)(2). Indeed, the immigration judge, in her discretion, may terminate removal proceedings where the alien has deferred action. 8 C.F.R. § 1003.18(d)(1)(ii)(C)

On September 8, 2025, the immigration judge granted Petitioner's motion to dismiss her removal proceedings, citing 8 C.F.R. § 1003.18(d)(1)(ii)(C). ECF No. 16 at 5. The immigration judge granted the motion without prejudice, and the government reserved appeal of the decision. *Id.* Any appeal is due with the BIA by October 8, 2025. *Id.* Notably, the judge did not order Petitioner's release from ICE custody. *Id.* Until the BIA renders a decision on the appeal, or until the appellate period lapses, there is no final administrative order, and Petitioner remains subject to mandatory detention during pending removal proceedings. *See Jennings v. Rodriguez*, 583 U.S.

281, 287–88 (2018).

III. Detention Authority

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings*, 583 U.S. at 286. Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). Section 1225(b)(1) applies to those "arriving in the United States." *Id.* § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). It also contains its own mandatory-detention provision applicable during those expedited proceedings. *Id.* § 1225(b)(1)(B)(iii)(IV). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

In the exercise of discretion, DHS may place an arriving alien into full removal proceedings in lieu of expedited removal. *See, e.g., Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

While Petitioner concedes that she last entered the United States under advanced parole, she does not allege when that parole expired. Upon expiration of her advanced parole, Petitioner

reverted to the status she had at the time she was granted parole: an arriving alien subject to mandatory detention. *See* 8 C.F.R. § 212.5(e)(2)(i). As an arriving alien, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) until she is removed, and she is not eligible for bond. *Jennings*, 583 U.S. at 299.

IV. Argument

A. Any Non-Habeas Claims Should Be Severed or Dismissed Without Prejudice.

As an initial matter, Petitioner, 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, Petitioner paid only the $5 filing fee permitted for habeas applications, as opposed to the $405 filing fee for any other civil suit. *See Ndudzi*, 2020 WL 3317107 at *2 (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 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.

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). The burden, therefore, is on Petitioner to show how her APA claim and her Fourth Amendment claim are cognizable under habeas.

The rules governing habeas differ greatly from the rules governing civil procedural, although the two are designed to work together. *Ndudzi*, 2020 WL 3317107 at *3. Given the government's expedited deadline in this case, the government respectfully requests that the non-habeas claims be either dismissed without prejudice or severed, so that each set of claims can proceed as anticipated under the appropriate federal rules. Otherwise, the government is deprived of the opportunity to respond within the full 60 days contemplated by Rule 4 to the non-habeas claims. *See* Fed. R. Civ. P. 4(i).

B. This Court Lacks Jurisdiction to Review Petitioner's Claims of Unlawful Detention.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. This constitutional challenge to ICE's decision to arrest, detain, and commence removal proceedings against this Petitioner, is not properly before the district court and must be funneled through the court of appeals. *See, e.g., SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL 2617973 (D. Minn. Sept. 9, 2025).

1. Section 1252(g)

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). 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).

Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[4] Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Petitioner's claims stem directly from ICE's decision to arrest her, detain her, and commence removal proceedings against her. *See, e.g.*, *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

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[4] Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

As other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, judicial review of the claim that Petitioner is entitled to bond during removal proceedings is barred by § 1252(g). The Court should dismiss for lack of jurisdiction.

2. Section 1252(b)(9)

Second, under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. at 483. Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see, e.g.*, 8 U.S.C. § 1252(b)(9); *El Gamal v. Noem*, --- F.Supp.3d---, 2025 WL 1857593 at *5 (W.D. Tex. July 2, 2025) (collecting cases and finding that any challenge to ICE's initial decision to detain the alien during removal proceedings is protected from judicial review in district court, because the alien must appeal any order of removal to the BIA and ultimately petition for judicial review of any

relevant constitutional claims by the court of appeals); *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of

appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]").

Nothing in the regulations precludes DHS from pursuing removal proceedings against an alien who has been granted deferred action under DACA, regardless of whether and when such an order could be executed. *See* 8 C.F.R. § 236.21. Here, Petitioner points to her approved DACA and "lawful presence" to specifically challenge the government's decision to arrest her, detain her, and commence removal proceedings against her, which is an "action taken . . . to remove [her] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from

the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner's claims are unreviewable here. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner *does* challenge the government's decision to detain her in the first place.

Indeed, the fact that Petitioner is challenging the basis upon which she is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). Petitioner must present her claims before the appropriate federal court of appeals because they challenge the government's decision or action to detain her, which cannot be raised in this Court. *See* 8 U.S.C. § 1252(b)(9). Petitioner is lawfully detained in removal proceedings as an arriving alien charged with removability. 8 U.S.C. § 1182(a)(6). Nothing in this petition provides a legal obligation for her release.

C. Section 1225(b) of the INA Mandates Petitioner's Detention Without Bond, Absent the Grant of Humanitarian Parole in the Exercise of ICE's Discretion, Until She Is Removed from the United States.

As Petitioner concedes in her petition, arriving aliens are not entitled to a bond hearing before an immigration judge during removal proceedings. ECF No. 1 ¶ 17, 33; *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (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).

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. *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.*

D. Petitioner's Detention During Removal Proceedings Comports with Substantive Due Process.

Petitioner remains in removal proceedings while the BIA considers DHS's appeal of the dismissal order. *See* 8 U.S.C. §§ 1182(d)(5); 1225(b)(2)(A); 1229a. Petitioner is due only the process afforded to her by statute as an arriving alien in removal proceedings. *See Baltazar v. Barrientos*, No. 24–CV–00005, 2024 WL 5455686 at *5 (S.D. Tex. Dec. 18, 2024) (collecting cases). When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court

has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

This Court's review is limited to whether ICE is providing due process of law to Petitioner within the scope of § 1225(b). *Id.; see also Thuraissigiam*, 591 U.S. at 140 . Indeed, Petitioner remains in "full" removal proceedings (pending appeal), which entitles her to robust procedural and substantive due process protections, including representation by counsel of her choice at no expense to the government and appellate review through the circuit court of any adverse decision. Petitioner is not entitled, however, to anything beyond what § 1225(b) provides him. In other words, due process does not require that she be given a bond hearing or released during the course of her removal proceedings. *See Thuraissigiam*, 591 U.S. at 140.

Similarly, Petitioner is afforded no additional process simply because she claims *prima facie* eligibility to apply for adjustment of status. Petitioner is not in expedited removal proceedings, and her present detention does not prohibit her from seeking adjustment of status. It is actually USCIS, not the immigration court, that has jurisdiction over such an application, despite pending removal proceedings. *See, e.g., Duarte v. Mayorkas*, 27 F. 4th 1044, 1061 (5th Cir. 2022). Moreover, Petitioner's pre-removal custody is neither prolonged, nor indefinite. Petitioner has been detained for shortly over a month while pending removal proceedings. Pre-removal-order detention "has a definite termination point: *the conclusion of removal proceedings*." *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024) (emphasis in original) (paraphrasing *Jennings*, 583 U.S. at 304). Indeed, the immigration judge has already granted termination of her proceedings. ECF No. 16. Although DHS reserved appeal of that decision, the appeal will necessarily conclude at a

definite point. Petitioner's detention is not delayed beyond anything other than ordinary litigation processes. *See, e.g., Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025).

Petitioner is not entitled to more process than what Congress has provided her by statute. *See Jennings*, 583 U.S. at 297–303; *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). 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). Petitioner's removal proceedings are pending, and Petitioner is entitled to judicial review of any adverse decision through the circuit court. *Id.* Pre-removal-order detention in this case is statutorily mandated, and it is not indefinite or prolonged.

E. Petitioner's Detention During Removal Proceedings Comports with Procedural Due Process.

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). 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).

Petitioner takes issue with the alleged lack of notice and opportunity to respond to DHS's decision to arrest her at the airport in the first place. ECF No. 1 ¶¶ 61–66. Such a claim is directly

refuted by the record, which shows that DHS (1) timely notified Petitioner of the allegations and charge against her; (2) timely provided her with a hearing before an immigration judge where she was entitled to representation at no cost to the government, and (3) reserved appeal of the immigration judge's order granting her motion to terminate, which appeal will provide her additional opportunity to respond to DHS's claims for arresting her and pursuing removal proceedings against her. *See* ECF No. 1 ¶ 36; ECF No. 16. Petitioner has not been deprived of any procedural due process rights.

F. Respondents Are Following the Regulations.

Finally, Petitioner alleges that Respondents have violated the *Accardi* doctrine by failing to follow the agency's own regulations. ECF No. 1 ¶¶ 56–60, 76–79 (citing two separate regulations). Respondents deny these allegations and aver that ICE does not need a warrant to arrest an arriving alien who is subject to removal under 8 U.S.C. § 1225(b). *See Jennings*, 583 U.S. at 302. Respondents further deny that continued detention during removal proceedings violates the regulations where Petitioner is otherwise removable as charged. Indeed, 8 C.F.R. § 236.21(c)(1) provides:

> … this temporary forbearance from removal does not confer any right or entitlement to remain in or reenter the United States. A grant of deferred action under [DACA] ***does not preclude DHS from commencing removal proceedings at any time*** ….

(emphasis added). The regulations, therefore, plainly permit Respondents to commence removal proceedings against Petitioner, despite her approved DACA, and the statute mandates her detention during those proceedings, absent release via discretionary parole. *Id.*; 8 U.S.C. § 1225(b). Moreover, Respondents deny any allegation that they have or will unlawfully terminated Petitioner's DACA, or that DHS intends to remove Petitioner from the United States while her DACA remains valid. Any claim regarding the effect of ICE detention on a DACA

renewal is premature, as Petitioner does not claim that she is currently eligible to apply for renewal, nor can she predict whether she will remain detained when that time does arrive. Her motion to terminate her removal proceedings was granted, and though DHS reserved appeal of that decision, the appeal will necessarily conclude at some point. Whether that will occur and result in her release before or after April 2026 is unknown. Finally, nothing precludes ICE from releasing Petitioner from detention at any point using their discretionary parole authority entrusted to them by state. *See* 8 U.S.C. § 1182(d)(5).

V. Conclusion

The Court should dismiss this habeas petition in its entirety, as Petitioner is lawfully detained without bond under 8 U.S.C. § 1225(b) as an arriving alien in removal proceedings. That her removal has been deferred temporarily does not prohibit DHS from pursuing removal proceedings against her or detaining her during those proceedings. Petitioner fails to identify any legal basis that mandates her immediate release from custody. 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.

Respectfully submitted,

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