UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Melany Alejandra MORON RODRIGUEZ, Petitioner, v. **Warden**, South Texas Family Residential Center Detention Center; **Miguel Vergara,** Director of San Antonio Field Office, U.S. Immigration and Customs Enforcement; **Todd LYONS,** Acting Director of Immigration and Customs Enforcement; **Kristi NOEM,** Secretary of the U.S. Department of Homeland Security; **Pam BONDI,** Attorney General of the United States; in their official capacities, Respondents.	Case No. 5:25-cv-01592 **PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Melany Alejandra Moron Rodriguez respectfully submits this Reply to Respondent's Response to Petition for Writ of Habeas Corpus. Petitioner will not reply to every issue and argument made by Respondents. The absence of any rebuttal is not, however, a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in her Petition for Writ of Habeas Corpus.

In the Response submitted December 11, 2025, Respondents contend that Petitioner is subject to mandatory detention *only* on the grounds laid out in 8 U.S.C. § 1225(b)(1)(A)(iii)(II). ECF No. 6 at 2. Based on the record and/or Respondent's own admissions, it is undisputed that Petitioner was paroled into the United States and is undergoing "full" removal proceedings under 8 U.S.C. § 1229a. Therefore, Petitioner cannot be subject to mandatory detention under § 1225(b)(1)(A)(iii)(II), and this Court should grant the Petition.

I. Detention under § 1225(b)(1)(A)(iii)(II) applies only to aliens who have not been admitted or paroled.

Respondents contend that Petitioner is "properly described under 1225(b)(1)(A)(iii)(II)." ECF No. 6 at 2.That subsection reads in the relevant parts as follows:

> An alien described in this clause is an alien . . . who has not been admitted or *paroled*, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination if inadmissibility under this subparagraph.

Respondent readily points out that when Petitioner was first apprehended in or around August 2021, she could not then show that she had been physically present for the preceding 2-year period. However, Respondent conveniently leaves out the second requirement for mandatory detention under that subsection: the alien "has not been admitted or paroled." In present case,

Petitioner was paroled on August 3, 2021 by Respondent "pursuant to its authority under 8 U.S.C. § 1182(d)(5)(A)" and "pending a final decision in [Petitioner's] exclusion/deportation hearing." ECF No. 1-3 at 1-2. Upon that grant of parole, Respondent placed Petitioner outside of statutory scheme described in 1225(b)(1)(A)(iii)(II). Therefore, the application of 225(b)(1)(A)(iii)(II) is clearly inappropriate and unlawful.

II. Detention under § 1225(b)(1)A)(iii)(II) applies only to aliens in expedited removal proceedings.

§ 1225(b)(1)A)(iii)(II) requires detention of certain aliens undergoing expedited removal proceedings. In the instant case, however, Respondents readily admit that Petitioner is presently in "full" removal proceedings under 8 U.S.C. § 1229a. ECF No. 6 at 3; ECF No. 6-1 at 1. Respondents did not subject Petitioner to a Credible Fear Interview under 8 U.S.C. § 1225(b)(1)(B)G1), which is indicated by the fact that the box on Petitioner's NTA stating, "[t]]his notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture," remains unchecked. ECF No. 6-1 at 1. Respondent's argument is essentially that, while Petitioner was never in expedited removal proceedings, Petitioner is nonetheless subject to the detention provisions for aliens who are in expedited removal proceedings. This is a novel interpretation that has been shut down by federal districts court around the nation and repeatedly by this Honorable Court. *See Rodriguez v. Madrazo*, No. SA-25-CV-01657-XR (W.D. Tex. filed 2025); *Ouangre v. Thompson*, No. SA-25-CV-01517-XR (W.D. Tex. filed 2025); *Ramos de Lara v. Noem*, No. SA-25-CV-01459-XR (W.D. Tex. filed 2025). Therefore, Petitioner cannot be subject to mandatory detention under 1225(b)(1)A)(iii)(II).

III. Respondent is immediately eligible to obtain Lawful Permanent Residence.

Respondent is eligible to obtain lawful permanent resident based on his marriage to a U.S. citizen. An alien is eligible to obtain lawful permanent resident status if, among other things, she "was inspected and admitted or paroled into the United States . . . ." 8 U.S.C. § 1255(a). Furthermore, immediate relatives of U.S. citizens are explicitly exempt from the requirement to be in lawful status when applying for lawful permanent residence. 8 U.S.C. § 1255(c)(2). Respondents completely disregard the law in their assertion that Petitioner cannot adjust status simply because she lacks a lawful admission. ECF No. 6 at 2. Petitioner's parole into the United States has the same legal significance as a lawful admission for purposes of adjusting status. Moreover, Petitioner has a pending Petition for Alien Relative (Form I-130) with U.S. Citizenship and Immigration Services ("USCIS") and can immediately file an Application for Permanent Residence or Adjust Status (Form I-485), because a visa is always immediately available to immediate relatives of U.S. citizens.

Notably, if Petitioner remains in detention, she will be effectively prevented from pursuing adjustment of status. An immigration judge lacks jurisdiction to adjudicate an I-485 while the underlying I-130 remains pending with USCIS. *See* USCIS Policy Manual (jurisdiction discussion). Because USCIS has exclusive jurisdiction over the I-130—and adjudication commonly takes approximately one year—continued detention would either deprive Petitioner of any meaningful opportunity to seek lawful permanent resident status or require her to remain detained for the duration of USCIS's adjudication. *See* current USCIS processing times showing ranges for Form I-130 petitions.

CONCLUSION

Petitioner's continued detention without bond violates the INA and their right to due process. Because they are being unlawfully detained, Petitioners respectfully requests that this Court grant her petition for writ of habeas corpus and require Respondents to provide a prompt bond hearing pursuant to Section 1226.

DATED this 222nd of December, 2025.

Respectfully submitted,

/s/ Michael Milone Presti

Michael Milone Presti
Texas State Bar No. 24081107
The Presti Law Firm, PLLC
9330 Lyndon B Johnson Fwy, Ste 300
Dallas, TX 75243
T: 214-342-8900
F: 214-342-8901
mp@prestilegal.com

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2025, I electronically filed the foregoing on the Court's CM/ECF system, that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Michael Milone Presti

Michael Milone Presti
Attorney for Petitioner