UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NEREANCY RODRIGUEZ-HIDALGO, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	§	CASE NO. 4:25-cv-5730

RESPONSE TO THE AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

The Government[1] hereby responds to Nereancy Rodriguez-Hidalgo's amended habeas petition and respectfully requests that this Court deny his petition under 28 U.S.C. § 2241 and grant summary judgment for the Government under Federal Rule of Civil procedure 56.

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), based on the statute's plain language and structure, the history of the Immigration and Nationality Act (INA), the Board of Immigration Appeals (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and the recent decisions from this Court in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) and *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025). Accordingly, this Court should deny the instant petition and grant summary judgment for the Government. In addition,

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

Federal Respondents address the Cuban Adjustment Act raised in the amended petition, which does not alter the result: Petitioner remains subject to mandatory detention.

I. BACKGROUND

Petitioner, Hidalgo Rodriguez, is a native and citizen of Cuba. Dkt. 13-2. In 1997, Petitioner entered the United States without inspection. *Id.*; Dkt. 13 at ¶ 42. ICE served Petitioner with a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Dkt. 13-2. In the NTA, the examining immigration official denied Petitioner admission into the United States, explained the basis for charging Petitioner with being subject to removal, and ordered Petitioner to appear in immigration court. *Id.* Petitioner was released from immigration custody, but ICE recently re-detained the Petitioner. Dkt. 13 at ¶¶ 43, 46. Petitioner remains in removal proceedings. *Id.* at ¶ 47.

II. APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarly a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not

be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As the Supreme Court has stated in no unmistakable terms, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

III. ARGUMENT

A. PETITIONER IS SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225.

Petitioner's habeas petition should be denied because he falls under the plain language of the mandatory detention provisions in 8 U.S.C. § 1225. Here, Petitioner admits that he is an alien present in the United States who entered the country unlawfully "without inspection." Dkt. 13 at ¶ 42. As discussed below, an alien "present in the United States who has not been admitted," is by definition "an applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, Petitioner is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that "the alien *shall* be detained" in the case of "an alien seeking admission" who "is not clearly and beyond a doubt entitled to be admitted" (emphasis added)).

The Court recently decided this issue in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025). In denying the habeas petition and granting the Government's motion for summary judgment, the Court held "[t]he text of § 1225(b)(2)(A) supports the Government's position." The Court reasoned that "[t]he statutory definition of *applicant for admission* is broad and, indeed, so broad that Petitioner doesn't dispute that she is such a person. . . . That factual determination itself resolves the question as to whether § 1225(b)(2)(A) applies." *Id.* at *4 (emphasis in original). Thus, the Court held that the plain language of the Immigration and Nationality Act required a ruling in the Government's favor.

The court also explained why it was not persuaded by the many other district court decisions deciding to the contrary. *Id.* at * 5.

With respect to Petitioner's due process claim, it is a recast of his disagreement with the Government holding an alien without bond under § 1225(b)(2). Dkt. 13 at ¶ 59. In other words, the Petitioner argues that the Government's detention of him without a bond determination violates his right to due process. *Id.* This Court has previously rejected such an argument. *See Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) (in denying a due process claim, noting that "[i]t's thus the 'longstanding view' of the Supreme Court that 'the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.'" (quoting *Demore v Kim*, 538 US 510, 526 (2003)).

The facts of this case do not warrant a deviation from the Court's prior rulings.

B. The Cuban Adjustment Act does not alter the analysis in this case.

The Court need not reach the Cuban Adjustment Act issue but, even if it does, Petitioner's claims fail. The vast majority of the amended habeas petition remains focused on the 8 U.S.C. § 1225/1226 issue, which is addressed above. With respect to the Cuban Adjustment Act, Petitioner argues that "Petitioner is a Cuban national who would be eligible for adjustment of status under the Cuban Adjustment Act if she were deemed to be paroled or admitted into the United States." Dkt. 13 at ¶ 8. Petitioner further contends that denying the Petitioner the "the ability to apply for residency under the Cuban Adjustment Act is a violation of Due Process." Dkt. 13 at ¶ 62.

As a threshold matter, this habeas petition concerns whether Petitioner should be detained during removal proceedings or not. The issue is not whether Petitioner should be allowed to apply for an adjustment of status under the Cuban Adjustment Act. That is for the immigration courts to decide. Relatedly, the fact that Petitioner believes she is eligible for adjustment under the statute is neither here nor there. She must assert that claim in immigration court and if she disagrees with how the immigration courts resolve that issue, she must pursue her appellate remedies and seek any other available review. But the remedy is not to file a writ of habeas corpus seeking release from pre-removal detention.

Even assuming for the sake of argument that the Court reaches the merits of Petitioner's claim regarding eligibility to Cuban Adjustment Act relief, that claim fails. Because Petitioner was neither admitted nor paroled into the United States, she is ineligible for any relief under the Cuban Adjustment Act. The Cuban Adjustment Act, 8 U.S.C. § 1255, "affords Cuban asylum seekers preferential treatment by enabling them to enter the United States and achieve permanent-resident status through a special process not offered to other refugees." *Dominguez v. Sessions*, 708 Fed. Appx. 808, 809 (5th Cir. 2017)(citations and quotations omitted). Section 1255 provides, in relevant part, "the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion." Pub.L. 89-732, 80 Stat. 1161 (Nov. 2, 1966). Again, here, Petitioner was not "inspected and admitted or paroled" into the United States.

Petitioner is arguing that, if he is deemed to be detained under § 1225(b)(2), then the only legal way to release him from 1225(b) custody is a 212(d)(5) parole. The argument then is that his prior Order of Release on Recognizance must be retroactively deemed a 212(d)(5) parole as a matter of law. However, whether or not an alien was paroled is a question of fact and not law. The Government's position in this case is that Petitioner is detained under 8 U.S.C. § 1225(b)(2). Whatever the consequences of the Government taking this position, and a ruling on this issue, are to be resolved in Petitioner's subsequent immigration proceedings.

Thus, for the purposes of resolving this habeas petition, the Court should find that Petitioner is subject to mandatory detention under § 1225(b)(2). A ruling on that issue would resolve the habeas petition and no further order on the Cuban Adjustment Act is necessary.

IV. CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's request for habeas relief and grant the instant motion. The Court should enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

Dated: December 24, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on December 24, 2025, the foregoing was filed and served on all attorneys of record via the District's ECF system.

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