United States District Court
Western District of Texas
El Paso Division

Wilnancy CANTILLO MONTERO, Petitioner, v. Joel GARCIA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, et. al. Respondents.	No. 3:25-CV-00706-LS

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] Respondents provide this response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief she seeks, including attorney's fees under the Equal Access to Justice Act ("EAJA")[2], and this Court should deny this habeas petition without the need for an evidentiary hearing.

Petitioner alleges but for the Board of Immigration Appeals decision in *Hurtado*, 29 I&N Dec. 216, his client would be eligible for bond. ECF No. 1 at 5 (emphasis added). This is inaccurate as **Petitioner is an, 'arriving alien' who was ineligible for bond pre-*Hurtado* from an immigration judge.** 8 C.F.R. 1003.19(h)(2)(i); *see* ECF No. 1 at ¶¶ 19–21; *see also* ECF No. 1-2 at 1 (copy of Notice to Appear wherein DHS checked the box to indicate that Petitioner is an arriving alien); *see also Goguev v. Noem*, et al, SA–25–CA–01593–XR (W.D. Tex. Jan. 13, 2026) (Rodriguez, J.) (denying habeas petition to an arriving alien).

I. Relevant Facts and Procedural History

Petitioner is a citizen and native of Cuba who applied for admission at the port of entry on

1 The Department of Justice represents only federal employees in this action.
2 *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

July 22, 2024.[3] ECF No. 1 ¶¶ 19–21; ECF No. 1-2 at 1. In the exercise of discretion, Petitioner was paroled into the United States and placed into removal proceedings, but DHS revoked her parole on or about April 2025. ECF No. 1 ¶¶ 21, 26; ECF No. 1-6. ICE took Petitioner into custody on or about November 5, 2025. ECF No. 1 ¶ 27. Petitioner is scheduled for a detained hearing in her removal proceedings today, January 16, 2026. *See* Automated Case Information System (last accessed Jan. 16, 2026).

Petitioner challenges not only her detention, but also the revocation of her humanitarian parole and the resulting arrest. Petitioner brings her claims not only in habeas, but also under the Administrative Procedure Act (APA), the Due Process Clause, and the Fourth Amendment. Petitioner, however, did not pay the filing fee for any claims other than her habeas claim.

II. Argument

The only relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020). Any claims outside of habeas should be dismissed or severed upon the payment of the appropriate filing fee. *See Nudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020). This Court lacks jurisdiction to review the discretionary decision to revoke humanitarian parole and DHS denies any allegation that the revocation or the re-arrest post-revocation was unlawful.

A. Petitioner is an Arriving Alien

This petition differs from those frequently filed before the Court because this Petitioner is an arriving alien who presented herself to immigration authorities at a port of entry. The term "arriving alien" means an applicant for admission coming or attempting to come into the United

[3] This is a factual difference between this petition and the others frequently filed before the court, as Petitioner here presented herself at a port of entry, as opposed to entering without inspection between ports of entry.

States at a port-of-entry ...." 8 C.F.R. § 1001.1(q). Arriving aliens are inspected immediately upon arrival in the United States and, unless "'clearly and beyond a doubt entitled to be admitted,'" are placed in "removal proceedings to determine admissibility." *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (quoting 8 U.S.C. § 1225(b)(2)(A)).

Since Petitioner applied for admission at the port of entry, she is an arriving alien. 8 C.F.R. § 1001.1(q). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by ICE on a discretionary parole. 8 C.F.R. § 1235.3(c); *Clark*, 543 U.S. at 373 (explaining that detention of an "alien arriving in the United States" is "subject to the Secretary's discretionary authority to parole" her into the United States); *see also* 8 U.S.C. § 1182(d)(5)(A). Whether the government decides to parole an arriving alien or keep her detained, the regulations state that an immigration judge does not have authority to review the custody determination of an arriving alien in removal proceedings. 8 C.F.R. § 1003.19(h)(2)(i)(B). This regulation pre-dates *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025) and is well-settled law. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see also Garibay-Robledo v. Noem*, --- F.Supp.3d ---, No. 1:25–CV–177–H, 2026 WL 81679 at *4 (N.D. Tex. Jan. 9, 2026).

Petitioner is currently detained under § 1225(b)(2)(A) as an arriving alien in removal proceedings under 8 U.S.C. § 1229a. *See Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 521, 523 (BIA 2011); 8 C.F.R. § 239.1 (DHS has the discretion to issue an NTA at the port of entry in lieu of expedited removal proceedings). As an arriving alien, irrespective of the Board's decision in *Hurtado*, the regulations bar Petitioner from seeking bond from an immigration judge.

B. On Its Face, and As Applied to Petitioner, § 1225(b)(2)(A) Comports with Due Process.

Section 1225 does not provide for a bond hearing. The Supreme Court upheld the facial constitutionality of § 1225(b) in *Thuraissigiam*, 591 U.S. 103, 139 (2020). 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." *Thuraissigiam*, 591 U.S. at 139.

Mandatory detention of an applicant for admission during "full" removal proceedings does not violate due process, because the constitutional protections are built into those proceedings. The alien was served with a charging document (an NTA) outlining the factual allegations and the charge(s) of removability against him. *See* ECF No. 1-2; 8 U.S.C. § 1229a(a)(2). She has an opportunity to be heard by an immigration judge and represented by counsel of her choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). She can seek reasonable continuances to prepare any applications for relief from removal, or she can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should she receive any adverse decision, she has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5).

While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioner here raises no such claim where she has been detained for only a brief period pending her removal proceedings. For aliens, like Petitioner, who are detained during removal proceedings as applicants for admission, what Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. As applied here to Petitioner, her detention does not violate due process.

III. Conclusion

Petitioner is lawfully detained as an arriving alien in removal proceedings. The Board's decision in *Hurtado* has no bearing on an arriving alien, like Petitioner, who was already ineligible for bond before *Hurtado*'s issuance. The Court should deny the Petition in its entirety.

Respectfully submitted,

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