

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

YULY ANDREA GONZALEZ
GUTIERREZ,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Civil Action No. 1:26-CV-020-H

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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I. Introduction

Pursuant to 28 U.S.C. § 2241, Petitioner seeks a writ of habeas corpus requesting release from immigration detention. Petitioner alleges that she cannot be subject to mandatory immigration detention but, rather, is entitled to a bond hearing in immigration court (or even immediate release by order of this Court). But as explained herein, Petitioner is not entitled to any relief.

Petitioner is lawfully detained as an arriving alien under the Immigration and Nationality Act (INA). *See* 8 U.S.C. § 1225(b)(2); (App. at 002, ¶ 4). On September 3, 2022, Border Patrol agents apprehended Petitioner after she illegally crossed into the United States from Mexico. (App. at 002, ¶ 4). Due to detention capacity issues, Petitioner was paroled into the country as an arriving alien pursuant to 8 U.S.C. § 1182(d)(5). (App. at 002, ¶ 4).

Federal regulations define an “arriving alien” as an “applicant for admission,” irrespective of parole status. 8 C.F.R. § 1.2. And applicants for admission are subject to mandatory detention under § 1225(b) unless paroled; however, Petitioner’s parole status terminated prior to her detention. (App. at 003). Petitioner therefore has no viable claim for habeas relief insofar as the government has the authority to detain her on a mandatory basis under that statute. Moreover, to the extent Petitioner complains of alleged due process violations, Petitioner is in full removal proceedings in immigration court, as opposed to expedited removal proceedings, and as such, is being provided with robust due process protections (including available judicial review upon the completion of administrative proceedings). Release on bond is not one of the protections guaranteed by

statute, but that does not offend the Constitution. The petition should be denied.

II. Background

Petitioner is a native and citizen of Colombia who, contrary to the Petition, illegally entered the United States from Mexico; however, due to limited capacity at the detention center, she was released and paroled into the country as an arriving alien. (App. at 002, ¶ 4). Her parole term either was terminated or expired by operation of law, but thereafter, DHS issued a Notice to Appear charging her with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (no valid entry document). (App. at 003). DHS has the discretionary authority to parole arriving aliens. *See* 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212.5. After Petitioner's parole expired or was terminated, she was detained by ICE, where she remains during removal proceedings. (App. at 002, ¶ 5). Since October 17, 2025, Petitioner has been in the custody of ICE under the authority of INA § 235 (i.e., 8 U.S.C. § 1225), which provides for the mandatory detention (subject only to the possibility of discretionary parole, which as noted above DHS granted, but on a time-limited basis) for any alien who is an "applicant for admission" and who has not been formally admitted to the country. (App. at 002, ¶10).

Petitioner has since filed this habeas action, in which she argues that the government's detention authority under § 1225 is unlawful, and instead, Petitioner should be detained under § 1226(a). (Dkt. No. 1, ¶¶ 41-101). For relief, Petitioner seeks an order from this Court releasing Petitioner from custody or a bond hearing in immigration court. (Dkt. No. 1 at 23 (Prayer for Relief)).

III. Argument and Authorities

A. As an “applicant for admission,” Petitioner is subject to mandatory detention without bond under § 1225(b)(2)(A).

The Court’s analysis should “begin with the statutory text, and end there as well if the text is unambiguous.” *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (cleaned up). The statutory text requires that the Petitioner must be held in mandatory detention under § 1225, unless DHS uses its discretion to grant parole and release her. In pertinent part, § 1225 defines “applicant for admission” as “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival).” 8 U.S.C. § 1225(a)(1). Moreover, an “arriving alien means an applicant for admission.” 8 C.F.R. § 1.2.

Despite her initial illegal entry, Petitioner was paroled into the United States as an “arriving alien.” (App. at 002, ¶ 4). In addition, Petitioner was never “admitted” to the United States, for purposes of § 1225(a)(2), because “admission” and “admitted” are defined as excluding “an alien who is paroled under section 1182(d)(5).” *See* 8 U.S.C. § 1101(13)(B). Therefore, as an “applicant for admission” who “is not clearly and beyond a doubt entitled to be admitted,” Petitioner “shall be detained” under § 1225(b)(2)(A), and as such, is not entitled to a bond hearing.

Petitioner incorrectly asserts that she is subject to detention under 8 U.S.C. § 1226(a) and entitled to a bond hearing. (Dkt. No. 1, ¶ 4). However, as explained above, Petitioner is detained pursuant to § 1225(b)(2)(A) as she was “seeking entry into the United States at the nation’s border” where she was denied formal admission to the

country by immigration officials, and subsequently issued a Notice to Appear, because she is inadmissible. The fact that she was permitted to enter the United States under discretionary parole did not transform her status from something other than an “arriving alien.” Petitioner is therefore subject to detention without the right to a bond hearing until conclusion of her removal proceedings.

Even if Petitioner is not (or is no longer) an “arriving alien,” the statutory text is unambiguous: “[A]n alien present in the United States who has not been admitted” is also an “applicant for admission.” 8 U.S.C. § 1225(a)(1). And if an “applicant for admission” is “not clearly and beyond a doubt entitled to be admitted,” she “shall be detained” pending her removal proceedings. *Id.* § 1225(b)(2)(A). As this Court has previously noted when discussing § 1225’s mandatory detention provision, “[w]hen a statute is this clear, it must be applied according to its terms.” *Zuniga v. Lyons*, ___ F. Supp. 3d ___, 2025 WL 3755126, at *5 (N.D. Tex. 2025) (citing *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009)).

B. The Due Process Clause does not require that Petitioner receive a bond hearing in immigration court.

Petitioner also claims that the unavailability of a bond hearing in immigration court violates the Due Process Clause of the Fifth Amendment. (Dkt. No. 1, ¶¶ 55-65). But no theory of due process—whether “substantive” or “procedural” in nature—supports Petitioner’s case. This Court explained why in *Zuniga*, 2025 WL 3755126, at *8, and its analysis is equally applicable here:

First, consider substantive due process. That doctrine protects “only those

fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition.” *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). While still recognizing due-process rights for aliens present in the United States, *see, e.g., Trump v. J.G.G.*, 604 U.S. 670, 673 (2025), the Supreme Court has long affirmed the constitutionality of executive immigration procedures. The “through line of history,” the Supreme Court recently explained, is “recognition of the Government’s sovereign authority to set the terms governing the admission and exclusion of noncitizens.” *Muñoz*, 602 U.S. at 911–12. To that end, “Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 80 (1976).

The principle is no less true for immigration detention. In fact, the Supreme Court has endorsed the constitutionality of detaining aliens without bond during the pendency of removal proceedings. In *Demore v. Kim*, the Supreme Court acknowledged that “the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). But it clarified that “detention during deportation proceedings” is nevertheless a “constitutionally valid aspect of the deportation process.” *Id.* Indeed, “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. It follows that “the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 526. Against that backdrop, the notion that substantive due process requires a bond hearing is untenable.

A procedural due process claim fares no better. As an “applicant for admission,” Petitioner has “only those rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140; *see Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.”). With § 1225, Congress set the procedural rights afforded to aliens who are present in the United States without admission. “Read most naturally,” § 1225(b)(2)(A) “mandate[s] detention of applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297. No part of the statute “says anything whatsoever about bond hearings.” *Id.* Accordingly, Petitioner is not entitled to a bond hearing as a matter of procedural due process.

C. *Zadvydas* does not apply to aliens held in detention prior to a final order of removal.

At several places in the petition, Petitioner cites *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), which holds that unless there is significant likelihood of removal in the reasonably foreseeable future, the government may not detain aliens more than six months *after they become subject to a final order of removal*. But here, Petitioner has not yet been finally ordered removed, and therefore *Zadvydas* is applicable and any detention lasting more than six months during removal proceedings does not violate the law. *See Demore*, 538 U.S. at 527-28 (holding that mandatory detention for aliens during removal proceedings is constitutional).

D. An APA claim is not available.

Petitioner's attempt to proceed under the APA also fails. (Dkt. No. 1, ¶¶ 66-75). By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where immigration detainees' claims "necessarily imply the invalidity of [] confinement," those claims "must be brought in habeas." 604 U.S. 670, 672 (2025) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in a concurrence, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge any future denial of a bond hearing (even if the end result is that she is not entitled to a bond hearing). Thus, even if her APA claim had merit, which it does not, the result would be the same as that in habeas—the government would presumably be required to hold a bond hearing to assess whether detention can continue. For this reason, Petitioner is not entitled to any relief on his APA claim.

E. Petitioner fails to show any Equal Protection violation.

Petitioner also alleges a Fifth Amendment Equal Protection violation by alleging she is being treated differently than other aliens who are entitled to a bond hearing under § 1226(a). (Dkt. No. 1, ¶¶ 76-87). Rational basis generally governs review in

immigration-related cases. *See Madriz-Alvarado v. Ashcroft*, 383 F.3d 321, 332 (5th Cir. 2004) (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)). “[I]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 510 U.S. at 552 (citation and internal quotation marks omitted). Aliens illegally present inside the country are not a suspect class, “because their presence in the country in violation of federal law is not a constitutional irrelevancy.” *Plyler v. Doe*, 457 U.S. 202 (1982) (internal quotations omitted). Under rational basis review, differential treatment “must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *FCC v. Beach Commc’ns*, 508 U.S. 307, 313 (1993).

Petitioner’s status as an “applicant for admission,” whose parole terminated or expired, places her within the statutory scheme Congress enacted. The government’s decision to detain her under § 1225(b)(2)(A), rather than § 1226(a), is rationally related to Congress’s legitimate objectives in controlling admitted noncitizens and excluding others deemed inadmissible, such as the Petitioner. Accordingly, Petitioner’s equal protection claim under the Fifth Amendment fails for the same reasons articulated above.

F. Petitioner cannot show an *Accardi* violation.

Petitioner also challenges the manner in which immigration officers detained her, because immigration officers “must have reason to believe that an individual committed an offense against the United States or was present illegally.” (Dkt. No. 1, ¶ 100-101; 8 C.F.R. § 287.8(c)(2)). Even if the *Accardi* doctrine applies to this case, Petitioner’s parole

status terminated expired prior to her detention. (App. at 003). When her parole status expired, she was illegally present in the United States. 8 C.F.R. § 212.5(e). And even assuming that she was unaware that her parole expired or that termination was not for a set time, service of the NTA “shall serve as written notice of termination of parole.” 8 C.F.R. § 212.5(e)(2)(i). On October 7, 2025, Petitioner was served with the NTA via regular mail. (App. at 003). On October 17, 2025, Petitioner was detained by ICE officers. (App. at 002, ¶ 6). Therefore, DHS complied with its regulations, and as such, there is no *Accardi* violation—nor does Petitioner show that habeas relief would be the appropriate remedy even if some regulatory violation had occurred. *See Ladak v. Noem*, ___ F. Supp. ___, 2025 WL 3764016, at *5 (N.D. Tex. 2025) (explaining why habeas relief would not be appropriate even if procedural requirements in regulations were not followed in connection with an alien’s re-detention).

IV. Conclusion

For the reasons articulated herein, the petition should be denied.

Respectfully submitted,

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Certificate of Service

On February 2, 2026, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Omar J. Famada
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