

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MARTHA BEATRIZ ZAMORA HUERTA

PETITIONER,

V.

MARY DE ANDA-YBARRA, *ET AL.*,

RESPONDENTS.

CIVIL ACTION NO. EP-26-CV-223-KC

**ABBREVIATED RESPONSE TO HABEAS PETITION AND REQUEST TO PROCEED
WITHOUT ORAL ARGUMENT**

STATEMENT OF ISSUES

1. Whether mandatory detention under 8 U.S.C. § 1225(b) is unconstitutional as applied to petitioner.
2. Whether the writ of habeas corpus under 28 U.S.C. § 2241 provides any relief other than release.
3. Whether the Court has jurisdiction to enter a stay of removal.

Federal Respondents provide the following timely response to Petitioner's habeas petition.¹ Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought, including attorney's fees under the Equal Access to Justice Act ("EAJA").² The legal issues presented in this Petition for Writ of Habeas Corpus ("Petition") concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner, whether Petitioner is entitled to a bond hearing. While reserving all rights, including the right to appeal, Respondents submit this abbreviated response to preserve the legal issues and to conserve judicial and party resources.

Respondents acknowledge that prior rulings within this District concerning similar challenges to the government policy or practice at issue in this case, and the common question of law between this case and those rulings, would control the result in this case should this Court follow the same legal reasoning in those prior decisions. The instant petition primarily concerns whether an alien who is present in the United States without admission is properly subject to mandatory detention (*i.e.*, detention without the prospect of release on bond) during the pendency of her administrative removal proceedings pursuant to 8 U.S.C. § 1225(b). Should the Court prefer to receive a more exhaustive opposition brief, Respondents respectfully request leave to file such a brief upon the Court's request.

Discussion

Petitioner principally seeks an order from this Court directing ICE to immediately release Petitioner from ICE detention. Petitioner argues that Petitioner's detention is governed by INA § 236, 8 U.S.C. § 1226, that Petitioner is being unlawfully detained and deprived of a bond hearing,

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

and that the detention violates the Fifth Amendment to the United States Constitution, 8 U.S.C. § 1226, and the Administrative Procedures Act (“APA”)³.

Respondents contend that Petitioner’s detention is governed by INA § 235, 8 U.S.C. § 1225, because as an alien who entered without inspection or parole was and remains an applicant for admission. As such, Petitioner is subject to mandatory detention and not entitled to a bond hearing before the immigration judge. Respondents further contend Petitioner should be required to exhaust their administrative remedies before bringing a habeas challenge in federal court.

Respondents further rely upon *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). There, the BIA examined the plain language of § 1225, the INA’s statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub L. No. 104-208, and the DHS’s prior practices. After doing so, the BIA held that “under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission.” 29 I&N Dec. at 225. Respondents contend this Court should rule the same.

Additionally, this Court has ordered a stay of removal which prevents ICE from executing any removal order, should one be issued during the pendency of these proceedings. ECF No. 3 at 2. Respondents argue this stay of removal should be immediately dissolved as this Court lacks

³ Petitioner did not pay the filing fee for non-habeas claims. *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)). “When a filing contains both habeas and non-habeas claims, ‘the district court should separate the claims and decide the [non-habeas] claims’ separately from the habeas ones given the differences between the two types of claims. *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.

jurisdiction to grant a stay of removal. *Imran v. Harper*, No. 25-30370 (5th Cir. 2026) (finding the district court lacked jurisdiction to grant a stay of removal as a stay of removal *is* a challenge to a removal order and federal courts lack jurisdiction over claims directly and immediately with a decision or action by the Attorney General to... execute removal orders (emphasis added); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (citing 8 U.S.C. § 1252(g)).

In its current posture and based upon the Court's prior rulings, the Court can decide this matter without delay. If, however, the Court prefers a full opposition brief in this matter, Respondents will provide a brief upon the Court's request. Should this Court order release of Petitioner, Respondents request that the release order specify a date for release expressed by a calendar day instead of hours. Respondents further request that a time for release not be set. Releases from detention facilities carry unique security considerations for each person being released. It requires coordination within the detention facility and with the Petitioner, their family and/or their counsel. Setting an exact time for release beyond the calendar date can unduly burden the already complicated process.

Conclusion

Respondents appreciate the Court's consideration of this abbreviated response and respectfully request that the Court deny this Petition, and dissolve the stay of removal.

Dated: February 5, 2026

Respectfully submitted,

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