

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

Mirian Melida Azas-Poaquiza,

Petitioner,

v.

Joel D. Garcia, *et al.*,

Respondents.

Civil Action No. 26-cv-0228-LS

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Federal Respondents provide the following response to Petitioner's habeas petition.<sup>1</sup> Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought, including EAJA fees. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, at \*1 (5th Cir. Feb. 6, 2026). The *Buenrostro* decision is binding precedent and requires that the Court deny this habeas petition as it relates to the statutory authority to detain Petitioner during her removal proceedings.<sup>2</sup>

For the reasons that follow, Respondents also urge this Court to find that Petitioner has not

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<sup>1</sup> The Department of Justice represents only federal employees in this action.

<sup>2</sup> The *Buenrostro* decision is a published decision and precedential authority even though the mandate has yet to issue. *See, e.g., Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (explaining that even a stay in the issuance of a mandate does not impact the precedential value of published opinions); *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-CV-00217, 2020 WL 7640206, at \*13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is not controlling because "the mandate has yet to issue, and thus not properly relied upon as precedent."). For the sake of efficiency, but also to preserve the record, Respondents incorporate the arguments and reasoning of *Buenrostro* herein.

shown that this mandatory detention provision is unconstitutional as applied to her. She has also failed to show that her non-habeas claims are cognizable in habeas. The petition should be denied in its entirety without a hearing.

### **BACKGROUND**

Petitioner claims she is detained in ICE custody in El Paso, Texas. ECF No. 1 at ¶ 12. Petitioner claims she entered the United States “near the port of entry,” on or about August 7, 2021. *Id.* ¶ 41. Petitioner is in removal proceedings and has a pending defensive asylum application. *Id.* ¶¶ 43, 44. Her next removal hearing is scheduled on the detained docket for March 17, 2026. *See* <https://acis.eoir.justice.gov/en/caseInformation> (last accessed Feb. 19, 2026). Petitioner argues that her detention violates the relevant statutes and regulations, the Administrative Procedure Act (“APA”), and the Due Process Clause. *Id.* ¶¶ 51–68. Petitioner filed this habeas petition on or about January 29, 2026.

### **DUE PROCESS CLAIMS**

Petitioner is receiving or has received due process afforded through removal proceedings in immigration court. In upholding the facial constitutionality of § 1225(b) the Supreme Court in *Thuraissigiam* found that applicants for admission are entitled only to the protections set forth by statute in the INA. *Dep’t of Homeland Sec. v. Thuraissigiam*, 91 U.S. 103, 140 (2020) (finding aliens who arrive at ports of entry are ‘treated’ for due process purposes ‘as if stopped at the border’ and ‘only have rights regarding admission that Congress has provided by statute’). Mandatory detention of an applicant for admission during “full” removal proceedings does not violate due process, because constitutional protections are built into those proceedings. *See* 8 U.S.C. § 1229a. *See Demore v. Kim*, 538 U.S. 510, 526 (2003) (recognizing the constitutionality of detention during the limited period of removal proceedings).

In *Demore*, the Supreme Court distinguished the *Zadvydas v. Davis* analysis and its 8 U.S.C. §1231 post-order framework because petitioners in *Demore* were still pending removal proceedings. *Id.* at 527-528 (finding the potentially indefinite detention of a post-final-order case where petitioner cannot be removed from the United States materially distinguishable from continued detention tied to pending removal proceedings). The petitioner in *Demore* filed a habeas petition after being in immigration custody for approximately six months while removal proceedings were pending. *Id.* at 530. The District Court granted the petition, and the Ninth Circuit affirmed, finding that continued detention, “as applied” to him, violated substantive due process. *Id.* at 509. Reversing, the Supreme Court concluded that since removal proceedings were ongoing, detention was “a constitutionally permissible part” of the removal process. *Id.* at 530.

Consistent with the Supreme Court’s long-standing precedent, the Fifth Circuit in *Buenrostro* found that *Zadvydas v. Davis* did not apply to detained aliens who received or were receiving due process through removal proceedings. *Buenrostro*, at \*9. *Buenrostro* also dismissed claims of abuse of detention finding that those concerns were “wholly speculative” *Id.* 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.

Indeed, Petitioner concedes that she is in removal proceedings and that she has a pending application for relief. ECF No. 1 ¶¶ 42–44. Petitioner makes speculative and wholly unsupported allegations, based on “information and belief,” that Respondents intend to use detention as a means to punish individuals under the Refugee Act. *Id.* ¶ 49. She further alleges that her release was unlawfully revoked as a matter of arbitrary policy. *Id.* ¶¶ 62–63.

Apart from these baseless allegations, Petitioner makes no showing that her removal proceedings and her corresponding detention during those proceedings are unconstitutional as

applied to her. Indeed, she attaches as an exhibit a copy of the NTA that shows proper service on her by mail in January 2022 of the allegations and charges against her. ECF No. 1-3. The NTA also provided her notice of a hearing date, and Petitioner concedes that she has “complied with all legal obligations... including hearings and deadlines scheduled” by the court. *Id.*; ECF No. 1 ¶ 45. She does not claim to have experienced any issues with obtaining an interpreter for those proceedings, obtaining an attorney of her choosing to represent her in immigration court, or gathering information and evidence in support of her pending application for relief. As applied here to Petitioner, therefore, detention for the purpose of removal proceedings does not violate due process.

District courts around the country have also dismissed due process concerns in similar contexts. *See Lopez Jaimes v. Lyons, et al*, No. 26–CV–686–MA (W. D. Tex. Feb. 17, 2026) (Alvarez, J.) (finding no due process violation where applicant for admission with expired parole was taken back into custody on a mandatory basis during removal proceedings); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026) (Wyrick, J.) (holding that petitioner is unambiguously governed by § 1225 and his due process claim coming three months after arrest is denied as premature); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J) (holding that petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *A.M. v. Joyce*, No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (Walker, J.) (holding that petitioner's approximately one-month detention without a prompt bond hearing is consistent with

the INA and the Due Process Clause); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.) (holding that because petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings are unavailable as a matter of statute and due process); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (holding that petitioner, as an applicant for admission, is properly detained without a bond hearing under § 1225, which does not violate Due Process Clause); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.) (rejecting petitioner's argument that mandatory detention without bond hearing violates substantive due process); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that petitioner is an applicant for admission despite his prior bond and that his detention does not violate due process because it is limited to the conclusion of his removal proceedings).

#### APA CLAIMS

Petitioner raises additional arguments under the APA, none of which are cognizable in habeas, and none of which are covered under the \$5 habeas filing fee. As such, those claims should be dismissed. *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 on-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; *see also Montoya v. Noem*, SA–CV–1410–FB (W.D. Tex. Jan. 26, 2026) (dismissing all non-habeas claims without prejudice under Rules 12(b)(1) and (6)).

Even if the APA claim were cognizable, there is no final action for this Court to review. When review of an agency action is sought “under the general review provisions of the APA, the ‘agency action’ in question must be ‘final agency action.’” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 882 (1990) (quoting 5 U.S.C. § 704) (“Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review”) (emphasis added). “Agency action must meet two conditions to be final: (1) ‘the action must mark the ‘consummation’ of the agency’s decisionmaking process’ and (2) ‘the action must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Patterson v. Def. POW/MIA Acct. Agency*, 343 F. Supp. 3d 637, 651 (W.D. Tex. 2018) (citing *Am. Airlines, Inc. v. Herman*, 176 F.3d 283, 287 (5th Cir. 1999)). If, as in this case, there is no final agency action, federal courts lack subject matter jurisdiction. *Qureshi v. Holder*, 663 F.3d 778, 781 (5th Cir. 2011).

*Qureshi* is relevant and binding precedent on this Court. *Qureshi* affirmed dismissal of an APA challenge to USCIS’s termination of asylum, finding that termination of asylum is not a final agency action because it is “only an intermediate step in a multi-stage administrative process, succeeded (or accompanied) by removal proceedings.” 663 F.3d at 781. The Court noted that “the IJ and BIA lack jurisdiction to review asylum terminations, they both retain the power to halt

removal proceedings altogether, either by an alien's successful contest to removability . . . or by a successful new asylum application . . ." *Id.*

Petitioner concedes that she is in removal proceedings, and thus the immigration court and the BIA retain authority to grant relief or order removal in this case, thereby demonstrating that "further administrative relief" is available, and detention for the purpose of securing a final order of removal is not the final decision in ICE or EOIR's decision making process. *See* 8 U.S.C. § 1229a; *see also* 8 C.F.R. § 1003.1. This Court and at least one other district court within the Fifth Circuit have applied *Qureshi's* reasoning regarding agency decisions in the immigration detention context. *See Santiago Santiago v Noem*, 3:25-CV-361-KC, 2025 WL 2792588 at \*5-6 (W.D. Tex. Oct. 2, 2025) (finding no jurisdiction to rule on an APA claim due to lack of final agency decision); *Bhatia v. United States*, No. 16-cv-11, 2016 WL 6127799, at \*2 (S.D. Miss. Sept. 19, 2016), *report and recommendation adopted*, 2016 WL 6126666 (Oct. 20, 2016) (citing *Qureshi*, 663 F.3d at 781); *see also Gamez Lira v. Noem*, No. 25-cv-855, 2025 WL 2581710, at \*4 (D.N.M. Sept. 5, 2025).

### CONCLUSION

This case fits squarely within the Fifth Circuit's reasoning in *Buenrostro*, which held that applicants for admission are properly detained on a mandatory basis under § 1225(b)(2). *Buenrostro*, 2026 WL 323330 at \*1. Petitioner is receiving the process she is owed during removal proceedings, and her continued detention during that process is not unconstitutional. In any event, the orderly legal administration of this issue is now properly before the federal appellate courts and is being given the urgency that questions of detention deserve. Respondents respectfully request that the Court deny this petition.

Respectfully submitted,

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