

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Dairy Benavides Reyes,

Petitioner,

v.

Kristi Noem, *et al.*,

Respondents.

Civil Action No. 26-cv-0382-KC

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents provide the following 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 EAJA fees. **Petitioner is an 'arriving alien' who is ineligible (and was ineligible even pre-*Hurtado*), for bond from an immigration judge.** See ECF No. 1 at ¶ 1 (admitting that Petitioner entered the United States with prior authorization and was paroled—not admitted—into the United States); 8 C.F.R. 1003.19(h)(2)(i); *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).

Arriving aliens are applicants for admission, and Fifth Circuit precedent now confirms that an applicant for admission is subject to mandatory detention. *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

¹ The Department of Justice represents only federal employees in this action.

to detain Petitioner during her removal proceedings.² Because Petitioner has not shown that her statutorily mandated detention during removal proceedings is unconstitutional as applied to her, Respondents urge this Court to deny this petition in its entirety.

BACKGROUND

Petitioner claims she is detained in ICE custody in this district. ECF No. 1 at ¶ 10. Petitioner concedes that she presented herself for inspection at a port of entry and was then paroled into the United States. *Id.* ¶ 1. Petitioner argues that her continued detention violates the Fifth Amendment, the Administrative Procedure Act (APA), the Immigration and Nationality Act (INA), and the Fourth Amendment. *Id.* at ¶¶ 24–42. Petitioner filed this habeas petition on February 9, 2026, after the Fifth Circuit issued the *Buenrostro* decision, requesting either immediate release from custody or a bond hearing on her terms.³ *Id.*

FAILURE TO CITE OR DISTINGUISH BINDING PRECEDENT

Buenrostro is binding authority in this district. Petitioner has not cited *Buenrostro* or attempted to distinguish it or explain why *Buenrostro* does not control the outcome of this case, leaving the Court to do that work for her. The petition relies upon the same arguments made before

² 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.”). As such, each pre-*Buenrostro* district court decision cited in this Court’s Order to Show Cause is no longer good law as it relates to ICE’s statutory authority to detain certain aliens on a mandatory basis under 8 U.S.C. § 1225(b). To the extent this Court relies on those decisions to decide whether there is a viable due process claim here, that argument will be addressed *infra*.

³ The undersigned AUSA conferred with Petitioner’s counsel by email on February 17, 2026, to determine whether she intends to file an amended petition in light of *Buenrostro*. Petitioner’s counsel promptly responded that she would not be amending the petition. As such, Respondents would oppose any future motion to amend.

Buenrostro was decided without properly addressing this binding precedent. The Court could deny the petition on that basis alone. Given that counsel conferred on these issues ahead of filing, and Petitioner declined to file any amended petition, Respondents urge the Court to deny the petition outright rather than permitting any amendments on the basis of *Buenrostro*. See FN 4, *supra*.

ARGUMENT

A. Petitioner Is an Arriving Alien Subject to Mandatory Detention under § 1225(b) As an Applicant for Admission.

On the merits, this petition differs from those frequently filed before the Court because this Petitioner is an arriving alien who presented himself to immigration authorities at a port of entry. See ECF No. 1 ¶ 1. The term “arriving alien” means an applicant for admission coming or attempting to come into the United 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 presented herself for inspection 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 him 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). Even if released on parole, once the parole expires, the alien reverts to the status she was in at the time she was paroled. Petitioner, therefore, is properly 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. *See also Buenrostro*, 2026 WL 323330 at *1 (applying more widely to all applicants for admission, which necessarily includes arriving aliens).

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 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 alien 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.*

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 removal proceedings and is no longer subject to expedited removal. Importantly, the question is not whether detention was unlawful in the past, but whether the current detention is lawful. *See Walker v. Wainwright*, 390 U.S. 335, 336 (1968). Courts should not review all possible previous errors, but only whether the current confinement is justified. *See Lane v. Williams*, 455 U.S. 624, 631 (1982). In other words, relief in habeas does not compensate for past wrongful incarceration.

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 filed an appeal of the immigration judge’s order terminating her first removal proceedings, exercising her due process right to seek judicial review. Pursuing an administrative appeal necessarily prolongs the removal proceedings and her corresponding detention, but not unconstitutionally. Indeed, Petitioner was eventually issued and served with a

new NTA, halting the expedited removal process altogether and allowing her to pursue relief in full removal proceedings once again. Petitioner does not claim that her removal proceedings are unreasonably prolonged or that she is otherwise being deprived of her due process rights in those proceedings. Release on discretionary parole does not bar the agency from re-detaining an alien once that parole expires – there is no flight risk analysis – it is wholly within the agency’s discretion whether to detain or parole an arriving alien. It is not accurate that Petitioner is entitled to a bond hearing while in full removal proceedings. Any claims related to ICE’s prior efforts to order Petitioner removed via expedited removal are moot.

As applied here to Petitioner, her current detention, which is mandated by statute while she is in full removal proceedings, does not violate due process.

C. Claims under the APA and the Fourth Amendment Are Not Cognizable in Habeas, And Petitioner’s APA Claim Fails on the Merits.

Petitioner raises additional arguments under the APA and the Fourth Amendment, 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 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).

D. Any Stay of Removal Should Be Lifted

Any orders staying removal in this case should be vacated. *See Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

CONCLUSION

Petitioner is lawfully detained as an arriving alien in removal proceedings. The Fifth Circuit has 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 he is owed during removal proceedings, and his continued detention during that process is not unconstitutional. The Court should deny the Petition in its entirety.

Respectfully submitted,

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