

United States District Court
Western District of Texas
San Antonio Division

Armando Becerra Vargas,
Petitioner,

v.

Kristi Noem, Secretary of United States
Department of Homeland Security et. al.,
Respondents.

No. 5:25-CV-01023-FB-HJB

**Response in Opposition to
Petitioner's Emergency Motion for
Temporary Restraining Order and Preliminary Injunction**

Petitioner, through counsel, filed a habeas petition with this Court on or about August 19, 2025. ECF No. 1. The Court ordered service on Respondents and a response within 7 days of that service. ECF No. 3. On September 11, 2025, Respondents filed a response to the petition. ECF No. 8. Petitioner subsequently filed an emergency motion for temporary restraining order and preliminary injunction ("TRO motion"). ECF No. 10. The Court held a status conference on October 1 and set a briefing schedule. ECF No. 13. For the reasons Respondents stated in their Response to the habeas petition and for the reasons timely submitted herein, this Motion and the petition itself should be denied.

The TRO Motion requests that the Court order a variety of actions related to his removal proceedings and his detention status during those proceedings. *See* ECF No. 10 at 5. Petitioner challenges the lawfulness of his pre-removal-order detention but concedes that he (1) entered the United States without being admitted or paroled; (2) is currently without lawful status and in removal proceedings; and (3) has been detained in pre-removal-order ICE custody since June 10, 2025. *See* ECF No. 10 at ¶¶ 10–11.

While the parties disagree on the governing detention statute in this case, which is a mixed

question of law and fact that should be decided only by the circuit court of appeals upon review of a final order of removal, this Court need not resolve that issue to dispose of this TRO motion or even the underlying habeas petition. *See* 8 U.S.C. §§ 1252(b)(9); 1225(b). Regardless of which statute controls here, Petitioner is not entitled to release. *See id.* Petitioner's detention is not in violation of the Constitution as applied to him, because the statute under which ICE is detaining him does not even provide him with a bond hearing. Nonetheless, he was given ample procedural due process protections through a bond hearing and a bond appeal.

The statute does, however, entitle him to full removal proceedings, where he is already represented by counsel and will be afforded access to judicial review through the BIA and the circuit court of any adverse decision. *See* 8 U.S.C. § 1225(b)(2). His detention does not violate substantive due process, because Petitioner makes no showing that he has any lawful status entitling him to release, nor has he shown his pre-removal-order detention is unreasonably prolonged, indefinite, or otherwise unconstitutional as applied to him. As such, Petitioner is not likely to succeed on the merits of these claims, and this TRO should be denied.

Specifically, Petitioner is not likely to succeed for several reasons: (1) his pre-removal detention is authorized by statute, whether mandatory under § 1225(b) or in the exercise of ICE's discretion under § 1226(a); (2) while this Court may review an as-applied constitutional challenge in certain circumstances, Petitioner cannot show that his continued detention violates procedural due process where the statute does not even provide for a bond hearing in his circumstances; even still, Petitioner was given a bond hearing followed by a full administrative review; (3) Petitioner is currently pursuing relief from removal in "full" removal proceedings, including the right to counsel and the right to judicial review; (4) his detention is not unconstitutionally prolonged (or indefinite) in violation of his substantive due process rights, because he has been detained less than

90 days in pre-removal-order detention, and those proceedings will eventually conclude. This TRO should be denied, and the habeas petition should be denied in its entirety.

I. Relevant Background

Petitioner is a native and citizen of Mexico. ECF No. 1 ¶ 14. He entered the United States unlawfully in July 2002 and was neither admitted nor paroled after inspection. *Id.* Following a criminal arrest, ICE encountered Petitioner and commenced removal proceedings against him. *See* ECF No. 1 ¶ 4. Shortly thereafter, Petitioner was released from custody via an Order of Release on Recognizance (“OREC”). *Id.*

In June 2025, ICE took Petitioner into custody when he appeared for a routine check-in with ICE. *Id.* Petitioner requested and received a custody review hearing with an immigration judge, and on August 11, 2025, the immigration judge found him to be subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b) as “an applicant for admission.” *See* ECF NO. 8-1. On or about August 19, 2025, Petitioner timely filed a Notice of Appeal (NOA) of the Bond Decision with the BIA. ECF No. 10 ¶ 12. Petitioner was represented by counsel before the Immigration Judge and on appeal. *Id.*

Petitioner has never had lawful status in the United States, because after unlawfully entering the country, he successfully evaded immigration authorities for almost ten years until he was stopped in 2012 for speeding. ECF No. 10 at ¶ 10. At the time, ICE did not consider Petitioner to be an enforcement priority, so ICE processed him, issued him a Notice to Appear in immigration court, and released him pending his removal proceedings. *Id.* ¶ 11. Given the enforcement priorities of the current administration, ICE took Petitioner back into custody in June 2025 to continue his removal proceedings on the detained docket. *Id.* He remains detained on a mandatory basis pending his removal proceedings.

II. Legal Standards

A preliminary injunction is an “extraordinary and drastic remedy.” *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is “not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion.” *Black Fire Fighters Ass’n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). “The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has “clearly” carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

III. Argument

A. Petitioner Is Unlikely to Succeed on the Merits.

Petitioner is lawfully detained on a mandatory basis as an applicant for admission pending removal proceedings before an immigration judge. 8 U.S.C. § 1225(a)(1). This case is governed not only by the plain language of the statute, but also by Supreme Court precedent. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). There is no jurisdiction for this Court to review Petitioner’s challenge to DHS’s decision to detain him for removal proceedings, because his claims directly arise from the decision to commence and/or adjudicate removal proceedings against him. 8 U.S.C. § 1252(g). To the extent that Petitioner challenges the interpretation or the constitutionality of the statute under which his removal proceedings are brought, he must raise that challenge in the court of appeals

upon review of a final order of removal. 8 U.S.C. §§ 1225(b)(4); 1252(b)(9). While as applied constitutional challenges may be brought in district court under certain circumstances, Petitioner has not raised any colorable claim that his mandatory detention under § 1225(b) is unconstitutional as applied to him. His detention is neither indefinite, nor prolonged, as it will end upon the completion of his removal proceedings.

Finally, this Court lacks jurisdiction to order an immigration judge to hold a bond hearing. The only remedy available through habeas is release from custody, but even if this Court ordered Petitioner's immediate release, such release would not provide him any lawful status in the United States. Petitioner is unlikely to succeed on the merits of his claims.

1. Petitioner's Detention Is Governed By § 1225(b)(2)(A) Because He Is an Applicant for Admission, As Defined By § 1225(a)(1).

Petitioner is an "applicant for admission" because he is present in the United States without having been admitted. 8 U.S.C. § 1225(a)(1). Even though DHS encountered him within the interior of the United States, Petitioner is nonetheless an applicant for admission who the Department of Homeland Security (DHS) has determined through the issuance of a Notice to Appear (NTA) is an alien seeking admission who is not clearly and beyond a doubt entitled to be admitted to the United States. 8 U.S.C. §§ 1225(b)(2)(A); 1229a. As such, the INA mandates that he "shall be detained for a proceeding under section 1229a ["full" removal proceedings]...." 8 U.S.C. § 1225(b)(2)(A).

That does not leave § 1226(a) meaningless. Section 1226(a) applies to aliens within the interior of the United States who were once lawfully admitted but are now subject to removal from the United States under 8 U.S.C. § 1227(a). *See Jennings*, 583 U.S. at 287–88. There are two types of aliens living unlawfully within the United States who are subject to "full" removal proceedings under 8 U.S.C. § 1229a and not expedited removal: (1) those who have never been admitted but

have lived in the United States for longer than two years (*i.e.*, inadmissible under § 1182); and (2) those who were once admitted but no longer have permission to remain (*i.e.*, removable under § 1227). The inadmissible aliens in this context are detained on a mandatory basis under § 1225(b)(2)(A), while the removable aliens are detained under § 1226(a) and eligible to seek bond. *See Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 8:25-cv-00526-BCB-RCC, 2025 WL 2780351 at *7–10 (D. Neb. Sept. 30, 2025).

Section 1226(a) allows DHS to arrest and detain an alien during removal proceedings and release them on bond, but it does not mandate that all aliens found within the interior of the United States be processed in this manner. 8 U.S.C. § 1226(a). Nothing in the plain language of § 1226(a) entitles an applicant for admission to a bond hearing, especially not one that requires DHS to bear the burden of proof by clear and convincing evidence.

Even if the alien claims he is not appropriately categorized as an applicant for admission subject to § 1225(b), such a challenge must be raised before an immigration judge in removal proceedings. 8 U.S.C. § 1225(b)(4). In other words, if an alien contests that he is an applicant for admission subject to removal under § 1225(b), any claim challenging his continued detention under § 1225(b) is inextricably intertwined with the removal proceedings themselves, meaning that judicial review is available only through the court of appeals upon following a final administrative order of removal. *See* 8 U.S.C. § 1225(b)(4)¹. This is consistent with the channeling provision at 8 U.S.C. § 1252(b)(9), which mandates that judicial review of all questions of law and

¹ While bond proceedings under § 1226(a) are separate and apart from removal proceedings under § 1229a, challenges to decisions under § 1225(b), including the mandatory detention provision found within that statute, are to be raised in the same § 1229a proceedings. *See* 8 U.S.C. § 1225(b)(4).

fact, including interpretation and application of constitutional and statutory provisions, arising from any action or proceeding brought to remove an alien from the United States must be reviewed by the court of appeals upon review of a final order of removal. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL2617973 (D. Minn. Sept. 9, 2025).

DHS does not dispute that this interpretation differs from the interpretation that the agency has taken previously, nor does it dispute that the agency’s own regulations necessarily support the prior interpretation. The statute itself, however, has not changed. Nothing prevents the agency from implementing policy decisions and interpretations that differ from those of prior administrations. The plain language of the statute is clear, regardless of whether the agency interpreted it differently in the past than it interprets it today.

2. Petitioner’s Detention Comports with Due Process.

To establish a due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit finds no due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Petitioner is receiving due process protections, both substantively and procedurally, and his detention is both statutorily permissible and constitutional as applied to him.

While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated here that Petitioner’s detention without bond is unconstitutional. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). This Court’s review is limited to whether ICE is providing due process of law to Petitioner within the scope of § 1225(b). *Id.*; *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Indeed, Petitioner has been placed “full” removal proceedings, which entitles him to robust

due process protections, including representation by counsel of his choice at no expense to the government and appellate review of any adverse decision. Petitioner is not entitled to anything beyond what § 1225(b) provides him. *See Jennings*, 583 U.S. at 312; *see also Thuraissigiam*, 591 U.S. at 140.

Moreover, Petitioner's pre-removal custody is neither prolonged, nor indefinite. Petitioner has been detained for approximately four months while pending removal proceedings. Pre-removal-order detention "has a definite termination point: *the conclusion of removal proceedings*." *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024) (emphasis in original) (paraphrasing *Jennings*, 583 U.S. at 304). Petitioner is scheduled for a master calendar removal hearing on with the immigration judge on October 21, 2025.² At said hearing Petitioner, can apply for any relief available to him. Petitioner's detention is not delayed beyond anything other than ordinary litigation processes. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *See Jennings*, 583 U.S. at 297–303; *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983).

Petitioner is not entitled to a bond, even under the statute he claims applies to his detention.

² *See Automated Case Information* (last accessed Oct. 10, 2025).

See 8 U.S.C. § 1226(a). He is not likely to succeed on his claim that he is entitled to release from custody as a matter of due process, because he has been detained in pre-removal-order custody only four months, was provided a bond hearing and was denied. Petitioner has appealed said decision through counsel. Petitioner is currently represented by counsel during his pending removal proceedings and can file applications for relief from removal with the immigration court. That he must pursue this robust process from detention is not the fault of the government; his detention is a direct result of his unlawful status as an alien who was found to be present within the United States without ever having been admitted or paroled. 8 U.S.C. § 1225(b)(2).

B. Petitioner's Pre-Removal-Order Detention Does Not Subject Him to Irreparable Harm.

Moreover, Petitioner has provided no basis for this Court to determine that his continued detention pending removal proceedings will cause him irreparable harm. Petitioner has no claim to any lawful status in the United States. Even if this Court were to order his release from custody, he would be subject to re-arrest as an alien present within the United States without having been admitted. If Petitioner has a valid claim for relief from removal, it is far more likely to be adjudicated on an expedited basis while he is detained, as opposed to being processed on the non-detained docket

Indeed, Petitioner is represented by counsel in this habeas and in removal proceedings before the immigration judge, and BIA. Additionally, Petitioner has stated that he intends to seek relief from removal in the form of cancellation of removal. Remaining in detention benefits Petitioner, because the annual visa cap associated with the relief he is seeking before the immigration judge does not apply to those in detention. Moreover, the built-in procedural safeguards in the ICE regulations further weaken his claim that he is likely to suffer irreparable harm without this Court's intervention. Petitioner has applied for relief from removal while in

custody, like thousands of other similarly situated individuals, and is currently set for a final hearing on said relief where he will be given a full opportunity to be heard through counsel. If he receives an adverse decision, he can seek judicial review through the BIA and the circuit court.

C. Remaining Factors Do Not Favor Relief.

With respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is in removal proceedings, which entitles the government to detain him by statute, either on a mandatory basis, or at the very least, in the exercise of discretion; and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws.

D. Transfer and Discovery Requests

On October 1, 2025, the Court ordered the parties to meet and confer regarding the following two requests by Petitioner: (1) an order enjoining relocation outside the Western District of Texas; (2) providing documents from the administrative file. The parties have conferred, and DHS has agreed to not relocate Petitioner during the pendency of this litigation. Respondents are gathering the specific documents that Petitioner is requesting from his administrative file and will provide them to Petitioner no later than October 15, 2025.

IV. Conclusion

This motion should be denied, and the Court should deny the Petition.

Respectfully submitted,

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