United States District Court
Western District of Texas
El Paso Division

Osmani Ramirez-Morales, Petitioner, v. Todd M. Lyons, *et. al.*, Respondents.	No. 3:25-CV-00476-DCG-RFC

Response in Opposition to
Petitioner's Motion for Preliminary Injunctive Relief

Petitioner, through counsel, filed a habeas petition with this Court on or about October 16, 2025. ECF No. 1. On November 3, 2025, Respondents filed their response to the petition. ECF No. 6. On November 16, 2025, through counsel, Petitioner filed a Temporary Restraining Order and Preliminary Injunction. ECF No. 8, 11. In his TRO motion, Petitioner, requests the Court, *inter alia*, order his immediate release from custody and prohibit his transfer outside of El Paso, Texas. ECF No. 11 at ¶ 1. Petitioner challenges the lawfulness of his pre-removal-order detention but concedes he (1) entered the United States without being admitted or paroled; (2) is in removal proceedings; (3) has been detained in pre-removal-order ICE custody since June 27, 2025; (4) was provided a bond hearing under 8 U.S.C. § 1226(a); and (5) bond was denied. ECF No. 1 at ¶¶ 1-3.

While the parties disagree on the governing detention statute in this case, this Court need not resolve that issue to dispose of this TRO motion or the underlying habeas petition. Regardless of the correct detention authority, Petitioner is not entitled to release from pre-removal-order custody at this time. Moreover, Petitioner's detention is not in violation of the constitution as applied to him, because he is being given sufficient procedural due process pursuant to "full" removal proceedings where he is represented by counsel, can and has applied for relief from

removal, and can and has sought review of adverse decisions to the BIA and, if he wishes, the Fifth Circuit. His detention is also not in violation of substantive due process, because it is neither unreasonably prolonged nor indefinite. 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 in the exercise of ICE's discretion, regardless of whether the appropriate detention authority is § 1226(a) or § 1225(b); (2) while this Court may review an as-applied constitutional challenge, Petitioner cannot show that his continued detention violates procedural due process where he has been placed in "full" removal proceedings under § 1225(b)(2)(A) and has access to the full due process infrastructure therein; (3) his detention is not unconstitutionally prolonged (or indefinite) in violation of his substantive due process rights, because he is currently in the process of completing his final hearing in pre-removal-order detention, and those proceedings, including any appeal, will eventually conclude; and (4) he has not shown good cause that he has any other relief[1] immediately available to him that would mandate his release from custody. This TRO should be denied.

I. Relevant Background

Petitioner is a native and citizen of Cuba, and lawful permanent resident, who entered the United States without inspection. Exh. A at 1; ECF No. 1 at 8. Petitioner was issued a Notice to Appear[2] alleging inadmissibility under INA § 212(a)(6)(A)(i). Exh. A at 1; 8 U.S.C. § 1182(a)(6)(A)(i).

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[1] Petitioner claims to have three United States citizen daughters. Petitioner also claims his mother and sister are United States citizens. *See, e.g.*, ECF No. 11 ¶ 2.

[2] As a lawful permanent resident, Petitioner was not amenable to expedited removal (INA § 235). 8 C.F.R. § 235.3(b)(5)(ii).

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)). Importantly, temporary restraining orders are ordinarily aimed at temporarily preserving the status quo. *Foreman v. Dallas Cty.*, 193 F.3d 314, 323 (5th Cir. 1999), *abrogated on other grounds by Davis v. Abbott*, 781 F.3d 207 (5th Cir. 2015). "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. Importantly, Petitioner seeks release from custody in his TRO, which is not preserving the status quo.

III. Argument

A. Plaintiff Is Unlikely to Succeed on the Merits.

There is no disagreement that Petitioner is in "full" removal proceedings under § 1229a. In "full" removal proceedings, there are two groups of aliens: (1) those charged with never having been admitted to the United States (*i.e.*, inadmissible under § 1182); and (2) those who were once admitted but no longer have permission to remain (*i.e.*, removable under § 1227). 8 U.S.C. § 1229a(e)(2). As outlined in more detail below, Congress intended for the inadmissible aliens in this context to be detained on a mandatory basis under § 1225(b), while the deportable/removable

aliens are detained under § 1226(a) and eligible to seek bond. This interpretation is consistent with the allocation of the burden of proof during removal proceedings. If the NTA charges the alien under § 1182 as inadmissible, the burden lies on the alien to prove admissibility or prior lawful admission. 8 U.S.C. § 1229a(c)(2). On the other hand, the burden is on the government to establish deportability for aliens charged under § 1227. *Id.* § 1229a(c)(3).

Inadmissible aliens are further categorized as follows: (1) arriving alien; (2) present without admission and subject to either expedited or full removal proceedings; and (3) present without admission and subject only to full removal proceedings. *See* 8 U.S.C. § 1225(b). The third category listed here is referred to as the "catchall" provision. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); 8 U.S.C. § 1225(b)(2)(A). Petitioner here is detained under the catchall provision.

1. Start with the Statutory Text: § 1225(b) Unambiguously Defines an Applicant for Admission as an Alien Present in the United States Without Having Been Admitted.

The statutory language is unambiguous: "An alien present in the United States who has not been admitted … shall be deemed … an applicant for admission." 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109; *Jennings*, 583 U.S. 288; *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025). Even though DHS encountered Petitioner within the interior of the United States, he is nonetheless an applicant for admission who DHS has determined through the issuance of a Notice to Appear ("NTA") is an alien seeking admission[3] who is not clearly and beyond a doubt entitled to be admitted to the United States. *See* 8 U.S.C. §§ 1225(b)(2)(A); 1229a. In other words, the Immigration and Nationality Act ("INA") mandates

[3] Petitioner is 'seeking admission' because he, "attempt[ed] to enter at a time or place other than as designated by immigration officers." INA § 101(a)(13)(C)(iv); 8 U.S.C. § 1101(a)(13)(C)(vi).

that he "shall be detained for a proceeding under section 1229a ["full" removal proceedings]...." 8 U.S.C. § 1225(b)(2)(A).

Given the plain language of § 1225(a)(1), Petitioner cannot plausibly argue that he is not an applicant for admission. Nor can Petitioner plausibly challenge a DHS's officer's determination that he is "seeking admission"[4] when he entered the United States at a time or place other than the port of entry. INA § 101(a)(13)(C)(vi); 8 U.S.C. § 1101(a)(13)(C)(vi). That he must pursue that ample process while detained is consistent with the plain language of the statute and is facially constitutional. The Fifth Circuit explored these nuances in detail while analyzing a different INA provision that is not at issue here (8 U.S.C. § 1182(h)). *See Martinez v. Mukasey*, 519 F. 3d 532, 541–42 (5th Cir. 2008). The Fifth Circuit found the language of the INA to be unambiguous:

> For determining ambiguity... if this statutory text stood alone, we would define "admitted" by its ordinary, contemporary, and common meaning. ... Congress has relieved us from this task, however, by providing the following definition: "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of that alien into the United States *after inspection and authorization* by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Under this statutory definition, "admission" is the lawful entry of an alien after inspection, something quite different ... from post-entry adjustment....

Id. at 544. Like the Fifth Circuit in *Martinez*, this Court should navigate these nuanced issues by examining the unambiguous language of the controlling INA provisions in this case, which clearly define these various terms in proper context, to determine the following: Petitioner (1) has not been "admitted" to the United States after inspection by an immigration officer [§§ 1182(a)(6), 1101(a)(13)]; (2) is an "applicant for admission" [§ 1225(a)(1)];[5] and (3) is subject to detention

[4] *Id.*

[5] Nothing in § 1101(a)(4) contradicts this definition. Section 1101(a)(4) simply differentiates between an alien seeking admission to the United States at entry (with DHS) versus an alien by applying for a visa (with the State Department) with which to eventually seek admission at entry into the United States.

during "full" removal proceedings as an alien who DHS has determined to be seeking admission and who is not clearly and beyond a doubt entitled to be admitted [§ 1225(b)(2)(A)]. DHS is properly detaining Petitioner on a mandatory basis during his removal proceedings.

2. Congress Intended to Mandate Detention of All Applicants for Admission, Not Just Those Who Presented for Inspection at a Designated Port of Entry.

Congress, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), corrected an inequity in the prior law by substituting the term "admission" for "entry." *See Chavez*, 2025 WL 2730228, at *4 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *United States v. Gambino-Ruiz*, 91 F.4th 918, 990 (9th Cir. 2024)). Under the prior version of the INA, aliens who lawfully presented themselves for inspection were not entitled to seek bond, whereas aliens who "entered" the country after successfully evading inspection were entitled to seek bond. *Id.* DHS's current interpretation of the mandatory nature of detention for aliens subjected to the "catchall" provision of § 1225 furthers that Congressional intent. *Id.* Petitioner's interpretation, however, would repeal the statutory fix that Congress made in IIRIRA. *Id.*

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. 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. Nor does this interpretation render the Laken Riley Act superfluous simply because it appears redundant. Indeed, "redundancies are common in statutory drafting … redundancy in one portion of a statute is not a license to rewrite or eviscerate another

portion of the statute…" *Barton v. Barr*, 590 U.S. 222, 229 (2020).

3. Petitioner Does Not Overcome Jurisdictional Hurdles.

a. Initial Decision to Commence Removal Proceedings

Where an alien, like this Petitioner, challenges the decision to detain him in the first place or to seek a removal order against him, or if an alien challenges any part of the process by which his removability will be determined, the court lacks jurisdiction to review that challenge. 8 U.S.C. § 1252(g); *see also Jennings*, 583 U.S. at 294–95. In *Jennings*, the Court did not find that the claims were barred, because unlike Petitioner here, the aliens in that case were challenging their continued and allegedly prolonged detention during removal proceedings. *Id.* Here, Petitioner is challenging the decision to detain him in the first place, which arises directly from the decision to commence and/or adjudicate removal proceedings against him. *See id.*

b. Review of Any Decision Regarding the Admission of an Alien, Including Questions of Law and Fact, or Interpretation and Application of Constitutional and Statutory Provisions, Must Be Raised Before an Immigration Judge in Removal Proceedings, Reviewable Only by the Circuit Court After a Final Order of Removal.

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 following a final administrative order of removal. *See* 8 U.S.C. § 1225(b)(4).[6] This is consistent with the channeling provision at

[6] 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.

8 U.S.C. § 1252(b)(9), which mandates that judicial review of all questions of law and 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).

4. On Its Face, and As Applied to Petitioner, § 1225(b) Comports with Due Process.

Section 1225 does not provide for a bond hearing, regardless of whether the applicant for admission is placed into full removal proceedings. The Supreme Court upheld the facial constitutionality of § 1225(b) in *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).

That the alien in *Thuraissigiam* failed to request his own release in his prayer for relief does not make the holding any less binding here. *But see Lopez-Arevelo v. Ripa*, No. 25–CV–337–KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025). The alien in *Thuraissigiam* undisputedly brought his claim in habeas, and the Court noted that even if he had requested release, his claim would have failed. *Thuraissigiam*, 591 U.S. at 118–19. Regardless of whether the alien in *Thuraissigiam* was on "the threshold of entry" as an applicant for admission detained under § 1225(b)(1), as opposed to an applicant for admission found within the interior and detained under § 1225(b)(2), the reasoning of *Thuraissigiam* extends to all applicants for admission. Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether

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§ 1225(b)(4).

the applicable statute is § 1225(b) or § 1226(a). *Id.; see also Jennings*, 583 U.S. at 297–303.

Petitioner is unlikely to succeed on the merits of his as-applied constitutional claims. 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.

Unlike others detained under different subsections of § 1225, Petitioner is in "full" removal proceedings. *See* 8 U.S.C. § 1229a. As such, Petitioner is privy to the full gambit of due process that Congress has provided for him by statute. This includes: (1) the right to counsel, at his own expense [*Id.* § 1229a(b)(1), (b)(4)(A)]; (2) the ability to apply for any and all relief from removal Petitioner feels he is eligible for, to include voluntary departure. [*Id.* § 1229a(b)(4)(B), (c)(4)]; and (3) the ability to appeal any adverse decision to the BIA, and if necessary, the Fifth Circuit [*Id.* § 1229a(b)(4)(C), (c)(5)]. In fact, the record is currently filled with evidence of Petitioner taking full advantage of the due process that has been provided to him. Petitioner **had** a full bond hearing before an immigration judge. ECF No. 1-2 (Order of Immigration Judge). This hearing took place prior to the BIA's decision in *Matter of Yajure Hurtado*.

Petitioner is not likely to succeed on an-applied constitutional claim under these circumstances where he has been detained only five months, is pending removal proceedings, and has avenues for relief. The "catchall" provision at § 1225(b)(2)(A) requires two things: (1) a DHS determination that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted; and (2) detention during "full" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). As

applied here to Petitioner, § 1225(b)(2)(A) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

B. 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, either on a mandatory basis under § 1225(b) or 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. Moreover, Petitioner has provided no basis for this Court to determine that his continued detention pending the conclusion of his removal proceedings will cause him irreparable harm. Indeed, Petitioner can apply for relief before an immigration judge, and because of his detention, his removal proceedings will advance more quickly than they would on the non-detained docket. The Court should therefore deny the TRO and dismiss this case in its entirety.

IV. Conclusion

This TRO motion should be denied, because Petitioner has not clearly shown that his circumstances merit such an extraordinary remedy. Indeed, Petitioner seeks affirmative relief that would alter the status quo, rather than preserve it. He is seeking admission because he is a permanent resident who entered the United States unlawfully, under the plain language of the statute.

As such, the status quo is continued detention during his removal proceedings. The Court should deny the Petition.

Respectfully submitted,

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