

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

**RONALDO DA SILVA FERNANDEZ,  
PETITIONER,**

**V.**

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

**CASE NO. 3:25-CV-518-KC**

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

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**STATEMENT OF ISSUES**

1. Whether mandatory detention under 8 U.S.C. § 1225(b)(1) 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.



Respondents provide the following timely response to Petitioner's habeas petition. ECF No. 2. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, including attorney's fees under the Equal Access to Justice Act ("EAJA")<sup>1</sup>, and this Court should deny this habeas petition without the need for an evidentiary hearing.

### **I. Introduction**

Petitioner is lawfully detained on a mandatory basis as an applicant for admission pending removal proceedings before an immigration judge. This case is governed not only by the plain language of the statute, but also by Supreme Court precedent. There is no jurisdiction for this Court to review Petitioner's challenge to the Department of Homeland Security's ("DHS") initial decision to detain him for adjudication of his removal proceedings, because his claims directly arise from the decision to commence and/or adjudicate removal proceedings against him. 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. 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)(1)(A)(iii)(II) is unconstitutional as applied to her. His detention is neither indefinite, nor prolonged, as it will end upon the completion of his removal proceedings.

Should this Court ordered Petitioner's immediate release, which it should not, such release would not provide him any lawful status in the United States and would produce him no net gain. For these reasons and those that follow, this Court should deny this habeas petition without the need for an evidentiary hearing.

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<sup>1</sup> *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

## II. Relevant Facts and Procedural History

Petitioner is a citizen of Brazil who unlawfully entered the United States without inspection in December 2015 and was released on an order of recognizance. ECF No. 1 at 4; 1-2 at 1; 1-3. In 2018, Petitioner's brother filed a form I-130, Petition for Alien Relative on Petitioner's behalf. ECF No. 1-4. Petitioner concedes this petition has not yet been approved.<sup>2</sup> ECF No. 1 at 5. In October 2021, Petitioner filed a form I-589, Application for Asylum, with Citizenship and Immigration Services. ECF No. 1-5 at 1. On June 12, 2023, an immigration judge dismissed removal proceedings. ECF No. 1-6 at 1.

Petitioner claims ICE has not filed a motion to reopen the prior removal proceedings and furthermore, that ICE has not submitted any documents related to his detention. ECF No. 1 at 5. However, prior to the time of the filing of the habeas [ECF No. 1], ICE filed a Notice to Appear with the immigration judge, authorizing his detention. *Compare* Exh. A at 1 *with* ECF No. 1 (filed Nov. 4, 2025) *and* Automated Case Information System (last accessed Nov. 18, 2025). Petitioner's next court date is December 4, 2025. Exh. A at 1; *see* Automated Case Information System *supra*. Any applications for asylum previously filed will be heard before the immigration judge.<sup>3</sup> On November 6, 2025, Petitioner was denied bond because he is inadmissible to the United States. Exh. B. It's unknown whether Petitioner will seek review of the decision from the Board of Immigration Appeals or the Fifth Circuit Court of Appeals.

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<sup>2</sup> If the petition is approved, petitions approved prior to **January 8, 2008**, are current. It's speculative when Petitioner would be able to benefit from the petition filed a decade after the visas currently being adjudicated. *See* Dept. of State Visa Bulletin (last accessed Nov. 18, 2025).

<sup>3</sup> After the NTA was filed with the immigration court, USCIS was divested of authority to adjudicate the application. 8 C.F.R. § 208.2(b) ("Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served... [a] Notice to Appear...")

### III. Argument

As a threshold issue, the only relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020). Petitioner, however, has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release. 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. Ordering release in this circumstance produces no net gain to Petitioner, while mandating continued detention until at least the conclusion of removal proceedings furthers the government’s interests in enforcing the immigration laws. ICE will release Petitioner from custody, but only under a grant of relief from removal or an executed removal order.

#### A. Petitioner Is Detained under § 1225(b)(1), Not § 1225(b)(2).

Petitioner's 2015 Notice to Appear shows he entered unlawfully, was apprehended by Customs and Border Patrol Officers within one day, and issued a Notice to Appear. ECF No. 1-2. As an application for admission, intercepted at or near the port of entry shortly after unlawfully entering, he is properly described under § 1225(b)(1)(A)(iii)(II), and not under the “catchall” provision. *Compare* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) *with* § 1225(b)(2)(A).

The main difference between these two distinct groups of inadmissible aliens is that the (b)(1) group is apprehended within two years of unlawful entry, and DHS has the discretion to either place them into expedited removal proceedings or issue an NTA to place them into “full” removal proceedings. *See* § 1225(b)(1)(A)(iii)(I); *see also* 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). Aliens detained under the catchall provision, however, are not eligible to be placed into expedited removal proceedings and are subject only to “full” removal proceedings. *See, e.g., Garibay-Robledo v.*

*Noem*, No. 1:25–CV–177–H (N.D. Tex. Oct. 24, 2025). Petitioner here was first apprehended the same day he unlawfully entered the United States, and rather than subject him to expedited removal, DHS issued him a NTA in the exercise of discretion. *See* ECF No. 1-2. As such, he is detained under § 1225(b)(1)(A)(iii)(II).

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).

That DHS placed an “administrative warrant” in the alien’s file when the NTA was issued at the border does not alter the fact that DHS initially apprehended the alien at the border without a warrant. *See Florida*, 660 F.Supp.3d, 1239, 1276 (N.D. Fla. 2023); *see also* ECF No. 1-1. The *Florida* court acknowledged the logical problem with issuing § 1226(a) warrants to applicants for admission upon their release at the border:

The warrants required by § 1226(a) are *arrest* warrants, but by the time DHS puts the “administrative warrant” in the alien’s file (if is even doing so), the alien has already been arrested under § 1357 and the warrant is only being issued to [*sic*] the alien can be *released*.

*Id.* at 1277 (emphasis in original). Section 1225(b), the *Florida* court concluded in 2023, “requires detention of applicants for admission at the Southwest Border” and “DHS may not release” them

under § 1226(a). *Id.* In reaching that conclusion, the Florida court noted that if that policy “was ‘agency action’ subject to judicial review, the Court would find that it is unlawful insofar as it allows aliens arriving at the Southwest Border to be released under § 1226(a).” *Id.*

**B. Start with the Statutory Text: § 1225(a) 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 v. Rodriguez*, 583 U.S. 281, 288 (2018); *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). 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” simply because he was not processed for expedited removal. Indeed, on the same day he first unlawfully entered the United States, a DHS officer apprehended him, processed him, and in the exercise of discretion, served him with an NTA charging him as inadmissible to the United States as an alien who had not been admitted or paroled. ECF No. 1-2; 8 C.F.R. § 239.1 (allowing DHS to serve an NTA in the exercise of discretion at the port of entry). That he was subsequently released from custody under § 1226(a) for a brief period, either in error or in the exercise of discretion, does not change the fact that he was an applicant for admission at the time he was initially apprehended. It also does not change the fact that he was unable to show continuous presence in the United States for the two years preceding that 2015 apprehension. *See, e.g.*, § 1225(b)(1)(A)(iii)(II).

The Fifth Circuit explored certain nuances associated with the terms “admitted” and

“admission” 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). Section § 1182(h)(2)<sup>4</sup> statutorily bars certain aliens from a discretionary inadmissibility waiver if, for example, the alien was “admitted to the United States as an alien lawfully admitted for permanent residence” and was convicted of an aggravated felony since that “admission.” *Id.* The relevant question in *Martinez* was whether Congress intended to also statutorily bar those aliens who had adjusted their status to lawful permanent resident (“LPR”) within the interior of the United States, as opposed to only those who were initially admitted at the port of entry as LPRs. *Id.* at 541–42. *Martinez* argued that because he had adjusted his status to LPR while in the interior, as opposed to having been admitted as an LPR at the border, he was not statutorily barred from applying for the waiver under § 1182(h)(2), because he was never “admitted” after inspection by an immigration officer. *Id.* at 542. The government in that case, however, argued that because of the agency’s interpretation of the word “admission” in the INA’s aggravated felony removal provision, the Court should find that aliens who adjusted their status to LPR are also barred from seeking discretionary waivers under § 1182(h)(2), reasoning that adjusting status “accomplished admission” for purposes of the aggravated felony provision. *Id.* (citing 8 U.S.C. § 1227(a)(2)(A)(iii); *In re Rosas-Ramirez*, 22 I&N Dec. 616 (BIA 1999)). The Fifth Circuit, as a result, was left with the task of deciding which interpretation to use to determine whether an LPR who adjusted status within the United States had been “admitted,” for purposes of § 1182(h), statutorily barring him from seeking a discretionary waiver. *Id.* at 543.

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<sup>4</sup> The relevant portion of the statute reads as follows:

“No waiver shall be granted under this subsection in the case of an alien who has previously been **admitted to the United States as an alien lawfully admitted for permanent residence** if either **since the date of such admission** the alien has been convicted of an aggravated felony...” (emphasis added).

Upon reviewing the plain language of the statute as a whole and in the proper context, the Fifth Circuit rejected the government's interpretation that the word "admission" in that clause applied to an alien who was never inspected or admitted at the border, finding the INA to be unambiguous as to the definition of "admitted" and "admission":

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. The Court further noted that unlike the stand-alone terms "admitted" or "admission," as used in 1182(h), the phrase "lawfully admitted for permanent residence" is an entirely separate term of art defined in § 1101(a)(20), which *does* encompass both admission to the United States as an LPR and post-entry adjustment of status. *Id.* at 546. Section 1182(h), however, expressly incorporates that term of art, as defined by § 1101(a)(20), separate and apart from its use of the stand-alone word "admitted," as defined by § 1101(a)(13). This interpretation, the Court reasoned, denies a waiver to only those aliens who have been "admitted" [§ 1101(a)(13)] to the United States after inspection as "an alien lawfully admitted for permanent residence" [§ 1101(a)(20)]. In other words, the Fifth Circuit found that an alien who was never inspected at the border had never been "admitted" (as defined under § 1101(a)(13)) or granted "admission;" he had only legalized his status within the United States through adjustment of status [§ 1101(a)(20)]. Martinez, as an alien who had eventually adjusted status but who had never been inspected or admitted at the border, was therefore not statutorily barred from applying for the § 1182(h) waiver. Although he was "lawfully admitted for permanent residence," he was never "admitted" after inspection, meaning that he necessarily did not meet the definition of an alien convicted of an aggravated felony "after

admission” under § 1182(h).

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)];<sup>5</sup> and (3) is subject to mandatory detention while he applies for relief from removal [ § 1225(b)(1)(A)(iii)(II)]. As an applicant for admission encountered within two years of his unlawful entry, ICE is now properly detaining Petitioner on a mandatory basis under § 1225(b)(1)(A)(iii)(II) while allowing him to pursue “full” removal proceedings in the exercise of the agency’s discretion. Indeed, to the extent Petitioner challenges an officer’s findings regarding his admissibility under § 1225(b)(1), that challenge must be raised in removal proceedings and reviewed only by the circuit court of appeals. 8 U.S.C. §§ 1225(b)(4); 1252(b)(9).

**C. 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

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<sup>5</sup> 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.

seek bond. *Id.* Petitioner’s interpretation, however, would repeal the statutory fix that Congress made in IIRIRA. *Id.* IIRIRA, among other things, substituted the term “admission” for “entry,” and replaced deportation and exclusion proceeding with removal proceedings. *See, e.g., Tula Rubio v. Lynch*, 787 F.3d 288, 292 n.2, n.8 (5th Cir. 2015) (collecting cases). In other words, in amending the INA, Congress acted in part to remedy the “unintended and undesirable consequence” of having created a statutory scheme that rewarded aliens who entered without inspection with greater procedural and substantive rights (including bond eligibility) while aliens who had “actually presented themselves to authorities for inspection were restrained by ‘more summary exclusion proceedings’” and subjected to mandatory detention. *Martinez v. Att’y Gen.*, 693 F.3d 408, 414 (3d Cir. 2012) (*quoting Hing Sum v. Holder*, 602 F.3d1092, 1100 (9th Cir. 2010)).

This administration’s interpretation of mandatory detention of applicants for admission only advances Congressional intent to equalize the playing field between those who follow the law and those who do not. The plain language of the statute in this case is clear, regardless of whether the agency interpreted it differently in the past than it interprets it today. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024); *Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (no amount of policy talk can overcome a plain statutory command). ICE 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.

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); *see also Vargas v. Lopez*, 2025 WL 2780351 at \*4–9; *Chavez v. Noem*, 2025 WL 2730228 at \*4–5. Nothing in the plain language of § 1226(a) entitles an applicant for admission to a bond hearing, much less release.

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). Even Justice Scalia acknowledged in *Reading Law* that “Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012), 176–77 (emphasis added). Moreover, as the BIA explains, the statutes at issue in this case were:

... implemented at different times and intended to address different issues. The INA is a complex set of legal provisions created at different times and modified over a series of years. Where these provisions impact one another, they cannot be read in a vacuum.

*Matter of Yajure Hurtado*, 29 I&N Dec. 216, \*227 (BIA 2025). This explanation tracks the Fifth Circuit’s approach and reasoning in *Martinez*, 519 F. 3d at 541–42.

#### **D. Petitioner Does Not Overcome Jurisdictional Hurdles.**

Where an alien, like this Petitioner, challenges the decision to detain him in the first place or to seek a removal order against her, 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 after encountering him upon unlawful entry at the border. *See id.*

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).<sup>6</sup> 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 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).

**E. 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

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<sup>6</sup> 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).

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. The close proximity between Petitioner’s unlawful entry into the United States and his apprehension by immigration authorities is similar to the alien in *Thuraissigiam*. Just like Petitioner, the alien in *Thuraissigiam* was on “the threshold of entry” as an applicant for admission detained under § 1225(b)(1)(A). Although Petitioner was issued an NTA and the alien in *Thuraissigiam* was not, both are nonetheless applicants for admission as defined by § 1225(a)(1), and *Thuraissigiam* remains binding. In any event, Petitioner is not entitled to more process than what Congress provided him by statute, regardless of the applicable statute. *Id.*; *see also Jennings*, 583 U.S. at 297–303.

Mandatory detention of an applicant for admission during “full” removal proceedings does not violate due process, because the constitutional protections are built into those proceedings, regardless of whether the alien is detained. 8 U.S.C. § 1229a. The alien is served with a charging document (NTA) outlining the factual allegations and the charge(s) of removability against her. *Id.* § 1229a(a)(2). He has an opportunity to be heard by an immigration judge and represented by counsel of his choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). He can seek reasonable continuances to prepare any applications for relief from

removal, or he can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should he receive any adverse decision, he has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5). Moreover, relief applications are heard more expeditiously on the detained docket than the non-detained docket. *See* Section 9.1(e), Executive Office for Immigration Review | 9.1 - Detention | United States Department of Justice (last accessed Oct. 18, 2025). Some relief applications are subject to an annual cap, requiring immigration judges to “reserve” decisions to grant the application. *See* 8 C.F.R. § 1240.21(c); OPPM 17-04 (last accessed Oct. 18, 2025). Judges are not required to reserve decisions in detained cases, however. *Id.*

While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioner cannot raise such a claim where he has been detained for only a brief period pending his removal proceedings. 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. As applied here to Petitioner, § 1225(b)(1)(A)(iii)(II) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

**F. Allegations Regarding Conditions of Confinement Do Not Provide a Basis for Release.**

To the extent Petitioner contests the conditions of confinement, these claims are not grounds for release in habeas. ECF No. 1 at 6. *See Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021) (rejecting a habeas petitioner’s argument that alleged deficiencies in the conditions of confinement would entitle him to release, with the explanation that “[s]imply stated, habeas is not available to review questions unrelated to the cause of detention,” and its “sole function is to grant

relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose” (internal quotation marks and citation omitted)); *Ahmed v. Warden*, No. 1:24-CV-1110, 2024 WL 5104545, at \*1 (W.D. La. Sept. 25, 2024) (applying this rule to an immigration detainee’s claims of religions discrimination in custody as well as other alleged deficiencies in the conditions of confinement). These claims should be rejected.

#### IV. Conclusion

Petitioner is not left without a remedy. Though sparsely granted in only the most extenuating circumstances, Petitioner nonetheless may seek a humanitarian parole, which is granted in the exercise of DHS’s discretion. 8 U.S.C. § 1182(d)(5). Petitioner is already in “full” removal proceedings before an immigration judge, which includes the right to counsel at no expense to the government and the right to seek judicial review administratively and through the circuit court. 8 U.S.C. § 1229a. Finally, detention is not indefinite, because removal proceedings will end, either with a grant of relief or with an order of removal. The Court should deny the Petition.

Respectfully submitted,

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