United States District Court
Western District of Texas
San Antonio Division

Ana Mora Perez, Petitioner, v. Pam Bondi, United States Attorney General, *et al.*, Respondents.	Case No. 5:25-CV-01556-OLG

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] Respondents provide this response to Petitioner's habeas petition and concurrently filed motion for temporary restraining order ("TRO"). Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief she seeks, including relief pursuant to the Administrative Procedure Act[2], attorney's fees under the Equal Access to Justice Act ("EAJA")[3]. **Additionally, Respondent's note for the Court that Petitioners immigration case has concluded. Petitioner was offered and accepted pre-conclusion voluntary departure. *See* Exh. A (IJ order).** this Court should deny this habeas petition without the need for an evidentiary hearing.

I. Introduction

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

[2] Petitioner did not pay the filing fee for non-habeas claims. *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.

[3] *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

Petitioner is lawfully detained on a mandatory basis as an applicant for admission pending removal proceedings before an immigration judge. This case is governed by the plain language of the statute, but also by Supreme Court precedent.

II. Relevant Facts and Procedural History

Petitioner alleges that she is a citizen of Venezuela who was apprehended upon her lawful entry into the United States, served with a Notice to Appear (NTA) in immigration court, and released under an Order of Release on Recognizance. *See* ECF No. 1 ¶¶ 11-14. Petitioner claims she last entered the United States without inspection on or about October 12, 2021. *Id.* ¶ 11. **Petitioner was offered and accepted pre-conclusion voluntary departure pursuant to 8 U.S.C. 1229(c)(a).** *See* Exh. A (IJ Order).

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 her to reside lawfully in the United States upon release. Even if this Court were to order her release from custody, she would be subject to re-arrest as an alien present within the United States without having been admitted.

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

Petitioner's NTA shows that she was initially arrested on the same day she unlawfully entered the United States without inspection in 2023. ECF No. 1 at ¶¶ 13-14. As an application for admission, intercepted at or near the port of entry shortly after unlawfully entering, she 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). In other words, she was apprehended upon entry,

processed, placed into removal proceedings, and released from custody to pursue removal proceedings on the non-detained docket, an exercise of prosecutorial discretion. *See, e.g., Florida v. United States*, 660 F.Supp.3d 1239, 1270–77 (N.D. Fla. 2023) (finding, *inter alia*, that § 1225(b) detention is mandatory and that § 1226(a) does not apply to applicants for admission apprehended at the Southwest Border).

The main difference between those described under § 1225(b)(1)(A)(iii)(II), and not under the "catchall" provision (1225(b)(2)) 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 apprehended the same day she unlawfully entered the United States, and rather than subject her to expedited removal, DHS issued her an NTA in the exercise of discretion. *See* ECF No. 1 at ¶¶ 13-14. As such, she 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).

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 she is not an applicant for admission. Nor can Petitioner plausibly challenge a DHS's officer's determination that she is "seeking admission" simply because she was not processed for expedited removal. 8 C.F.R. § 239.1 (allowing DHS to serve an NTA in the exercise of discretion at the port of entry). That she 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 she was an applicant for admission at the time she was initially apprehended. It also does not change the fact that she was unable to show continuous presence in the United States for the two years preceding that apprehension. *See, e.g.*, § 1225(b)(1)(A)(iii)(II).

To the extent Petitioner challenges an officer's findings regarding her 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 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.3d 1092, 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 her in the first place or to seek a removal order against her, or if an alien challenges any part of the process by which her 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 her in the first place, which arises directly from the decision to commence and/or adjudicate removal proceedings against her after encountering her upon unlawful entry at the border. *See id.*

Even if the alien claims she 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). 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).

Additionally, the Court cannot order a stay of Petitioner's removal pending consideration of any claim with respect to voluntary departure. *See* 8 U.S.C. 1229c (f); *See also* Exh. A. (IJ Order).

E. On Its Face, and As Applied to Petitioner, § 1225(b) 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. 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 her 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 her 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). She has an opportunity to be heard by an immigration judge and

represented by counsel of her choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). She can seek reasonable continuances to prepare any applications for relief from removal, or she can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should she receive any adverse decision, she 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).

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 she has been detained for only a brief period pending her 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.

Petitioner has been given the full realm of due process that is provided in Removal Proceedings. Petitioner has taken advantage of the full process and was even granted a form of discretionary relief in the form of pre-conclusion voluntary departure. *See* Exh. A (IJ Order). Petitioner's detention is currently pending her ability to follow through with the relief she willing accepted. *Id.*

F. Petitioner's Motion for TRO Should Be Denied.

As outlined above, Petitioner does not and should not prevail on the merits of her claims. Even the remaining factors to determine whether the extraordinary grant of a temporary restraining order should be granted weigh in the government's favor here. With respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is in removal proceedings, which mandates her detention under § 1225(b)(1) until removal; and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws, especially when it comes to maintaining border security. Moreover, Petitioner has provided no basis for this Court to determine that her continued detention pending the conclusion of her removal proceedings will cause her irreparable harm. The Court should therefore deny the TRO and dismiss this case in its entirety. As discussed above, Petitioner's removal proceedings are complete, and she has accepted pre-conclusion voluntary departure. *See* Exh. A (IJ Order). Any prolonged detention at this point is because of Petitioner's ability to follow through with her responsibilities pursuant to the relief she accepted.

IV. Conclusion

The Court should deny the Petition.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: */s/ Fidel Esparza III*
Fidel Esparza III
Assistant United States Attorney
Texas Bar No. 24073776
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7026 (phone)
(210) 384-7312 (fax)
Fidel.Esparza@usdoj.gov

Attorneys for Federal Respondents