

United States District Court  
Western District of Texas  
El Paso Division

Fredy Eduardo Martinez-Santos,  
Petitioner,

v.

Kristi Noem, in her official capacity as  
Secretary, U.S. Department of Homeland *et al.*,  
Respondents.

Case No. 3:25-cv-00655-DCG

**Federal Respondents' Response to  
Petition for Writ of Habeas Corpus**

Federal<sup>1</sup> Respondents provide this response to Petitioner's habeas petition. 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>2</sup>, and this Court should deny this habeas petition without the need for an evidentiary hearing.

**I. Introduction**

ICE has lawful authority to detain Petitioner on a mandatory basis as an applicant for admission (also known as "seeking admission") pending his "full" removal proceedings before an immigration judge under 8 U.S.C. § 1229a.

**II. Relevant Facts and Procedural History**

Petitioner is a twenty-year-old native and citizen of Honduras. ECF No. 1 at ¶¶ 1, 15, 22; *see also* Exh. A (Notice to Appear dated June 12, 2023). Petitioner concedes that he entered without inspection as a minor in 2022. ECF No. 1 at ¶¶ 15, 22. Petitioner was detained by ICE on September 14, 2025. ECF No. 1 at ¶ 15. Petitioner is currently scheduled for a final individual

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<sup>1</sup> The Department of Justice represents only federal employees in this action.

<sup>2</sup> *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

hearing on January 7, 2026, at 10:30 A.M.<sup>3</sup>

### III. Argument

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).

#### A. Mandatory Detention and the “Catchall” Provision

There is no disagreement Petitioner is in “full” removal proceedings under 8 U.S.C. § 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 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 to be detained under § 1226(a), which allows them 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: (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 described under the catchall provision.

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

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<sup>3</sup> *See* [Automated Case Information](#) (last accessed Dec. 18, 2025).

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 an NTA is an alien *seeking admission* 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 (emphasis added). In other words, the INA mandates that such aliens “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” simply because he is not currently at the border requesting to come into the United States. Evasion from detection did not bestow him with the benefit of additional process beyond what the statute already affords him: “full” removal proceedings.

The detention statute pertaining to Petitioner plainly refers to “**an applicant for admission**” ... who *DHS determines* is “an alien **seeking admission**” who “is not clearly and beyond a doubt **entitled to be admitted**....” 8 U.S.C. § 1225(b)(2)(A). If Petitioner, who has never been “admitted” after inspection by an immigration officer, is not “seeking admission,” then the logical assumption is that he must be seeking his immediate release *via removal from the United States*. Removal, however, is clearly not what Petitioner requests in this habeas petition. He requests release from custody so that he can seek to remain in the United States; in other words, he is “seeking admission.”

Under the plain language of this statute, 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>4</sup> and (3) is subject to detention 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)].

**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.* 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 would repeal the statutory fix that Congress made in IIRIRA. *Id.*

**1. Section 1226(a) Is Not Superfluous, Nor Does It Entitle Release or Mandate a Bond Hearing.**

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. As described, *supra*,

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<sup>4</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.

aliens can be charged in removal proceedings as removable under § 1227(a) in certain circumstances, such as, for example, overstaying a visa or committing specific criminal offenses after having been lawfully admitted. 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).

## **2. The Laken Riley Act Is Not Superfluous.**

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).

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

### **1. Initial Decision to Commence Removal Proceedings**

Where an alien challenges ICE’s decision to detain him and 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, however, 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.* This is exactly the type of challenge *Jennings* referenced as unreviewable. *Id.*

**2. 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.**

As briefly argued above, 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). 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)(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. 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-Arevalo 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 the applicable statute is § 1225(b) or § 1226(a). *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 (an NTA) outlining the factual allegations and the charge(s) of removability against him. *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).

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 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. 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). The NTA in this case provides both. As applied here to Petitioner, § 1225(b)(2)(A) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

#### IV. Conclusion

The Court should deny the Petition in its entirety.

Respectfully submitted,

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