United States District Court
Western District of Texas
San Antonio Division

Gleiner Sosa-Mujica, Maryelli Sosa-Marquina, K.S-R., A.P-S., Petitioners, v. Sylvester M. Ortega, *et al.*, Respondents.	Case No. 5:25-CV-01722-XR

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] Respondents provide this response to Petitioners' habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioners are not entitled to the relief they seek, including attorney's fees under the Equal Access to Justice Act ("EAJA")[2], and this Court should deny this habeas petition without the need for an evidentiary hearing. Due to reasons outlines below Petitioners Gleiner Sosa-Mujica and minor K.S-R. will be argued together as applicants for admission and Maryelli Sosa-Marquina, and minor A.P-S. will be argued together as **arriving aliens. At this time it is unclear to Respondents of the relationship between the two adult petitioners and their accompanying minors as outlined below.**

I. Introduction

Petitioners Gleiner Sosa-Mujica and minor K.S-R. are lawfully detained on a mandatory basis as applicants 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.

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1 The Department of Justice represents only federal employees in this action.
2 *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

Petitioners Maryeli Sosa-Marquina and minor child, A.P-S. are, 'arriving aliens' who were ineligible for bond pre-*Hurtado*, 29 I&N Dec. 216 from an immigration judge. 8 C.F.R. 1003.19(h)(2)(i). The fact that Petitioners were paroled and released does not change the fact that they are arriving aliens. Arriving aliens remain arriving aliens throughout their proceedings. 8 C.F.R. 1001(q).

II. Relevant Facts and Procedural History

Petitioners all allege they are natives and citizens of Venezuela. ECF No. 1 at ¶ 20.

Petitioners Gleiner Sosa-Mujica and K.S-R. were apprehended upon their unlawful 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 at ¶ 25; *see also* ECF No. 1-1 at 17–28. When Petitioner Gleiner Sosa-Mujica was apprehended with his child K.S-R. in 2023, he stated his wife's name was Angelica Rivero. *See* Ex. A (Record of Deportable/Inadmissible Alien, I-213 dated September 23, 2023) at 3. When Petitioner Gleiner Sosa-Mujica was apprehended again in 2025, he stated his wife and three other children are currently in Columbia. *See* Ex. B (Record of Deportable/Inadmissible Alien, I-213 dated November 20, 2025) at 4. Petitioner Gleiner Sosa-Mujica was apprehended with two minors his child K.R-S. and another minor with the initials A.P-S. his nephew (Respondents can only speculate this is the same A.P-S. of this petition). *Id.* at 4. Petitioners Gleiner Sosa-Mujica and minor K.S-R. are scheduled for a hearing before the immigration judge on December 29, 2025. *See* Ex. C (Notice of Hearing). There does not appear to be mention of Petitioner Maryeli Sosa-Marquina in either I-213.

Petitioner Maryeli Sosa-Marquina and minor child, A.P-S. allege to have entered the

United States at a point of entry in February 2024 and paroled in.[3] ECF No. 1 at ¶ 2026. Alleged in the petition is that both adult petitioners filed for asylum while in removal proceedings in Detroit with the minor children as riders. *Id.* at ¶ 31. Petitioner Gleiner Sosa-Mujica and minor K. S-R's cases are together in immigration court. *See* Ex. C. However, there is nothing to indicate in this petition Maryeli Sosa-Marquina and minor child, A.P-S. are in consolidated proceedings with Gleiner Sosa-Mujica and minor K.S-R, and nothing to indicate Maryeli Sosa-Marquina A.P-S. would qualify as derivitives. A Notice of hearing, dated Dec 8, 2025 only lists Gleiner Sosa-Mujica and minor/rider K.S-R. *See* Ex. C.

III. Argument for Petitioners Gleiner Sosa-Mujica and K.S-R.

As a threshold issue, the only relief available to Petitioners 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 them to reside lawfully in the United States upon release. Even if this Court were to order their release from custody, they would be subject to re-arrest as an alien present within the United States without having been admitted.

A. Petitioners Are Detained under § 1225(b)(1), Not § 1225(b)(2).

Petitioners Gleiner Sosa-Mujica and minor K.S-R.'s NTAs show that they were initially arrested on the same day they unlawfully entered the United States without inspection in 2023. ECF No. 1 at ¶ 25; *see also* ECF No. 1-1 at 17–28. As applicants for admission, intercepted at or near the port of entry shortly after unlawfully entering, they are properly described under § 1225(b)(1)(A)(iii)(II), and not under the "catchall" provision. *Compare*

[3] When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. 8 CFR 212.5(e)(2)(i).

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). Petitioners Gleiner Sosa-Mujica and K.S-R. here were apprehended the same day they unlawfully entered the United States, and rather than subject them to expedited removal, DHS issued them an NTA in the exercise of discretion. *See* ECF No. 1-1. 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), Petitioners Gleiner Sosa-Mujica and K.S-R. cannot plausibly argue that they are not applicants for admission. Nor can they plausibly challenge a DHS's officer's determination they are "seeking admission" simply because they were 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 they were 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 they were applicants for admission at the time they were initially apprehended. It also does not change the fact they were 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.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. Petitioners Do Not Overcome Jurisdictional Hurdles.

Where an alien, like Petitioners Gleiner Sosa-Mujica and K.S-R., challenge the decision to detain them in the first place or to seek a removal order against them, or if an alien challenges any part of the process by which their 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 Petitioners 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 them in the first place, which arises directly from the decision to commence and/or adjudicate removal proceedings against them after encountering them upon unlawful entry at the border. *See id.*

Even if the aliens claim they are 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 Petitioners Gleiner Sosa-Mujica and K.S-R., § 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). They have 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). They can seek reasonable continuances to prepare any applications for relief from removal, or they can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should they receive any adverse decision, they have 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, Petitioners cannot raise such a claim where they have been detained for only a brief period pending their 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 Petitioners, § 1225(b)(1)(A)(iii)(II) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

IV. Argument for Petitioners Maryeli Sosa-Marquina and, A.P-S.

A. Petitioners are Arriving Aliens

This petition differs from those frequently filed before the Court because these Petitioners are arriving aliens who presented themselves to a port of entry and did not enter the United States unlawfully within the ports of entry (based on the information provided in the petition).

The term "arriving alien" means an applicant for admission coming or attempting to come into the United States at a port-of-entry ...." 8 C.F.R. § 1001.1(q). Arriving aliens are inspected immediately upon arrival in the United States and, unless " ' clearly and beyond a doubt entitled

to be admitted,' " are placed in "removal proceedings to determine admissibility." *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (quoting 8 U.S.C. § 1225(b)(2)(A)). Additionally, "an arriving alien remains an arriving alien even after paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked."8 C.F.R. § 1001.1(q).

Since Petitioners here applied for admission at the port of entry, they are arriving alien. *See* ECF No. 1 at ¶ 27; 8 C.F.R. § 1001.1(q). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by ICE on a discretionary parole. 8 C.F.R. § 1235.3(c); *Clark*, 543 U.S. at 373 (explaining that detention of an a "alien arriving in the United States" is "subject to the Secretary's discretionary authority to parole him into the United States "for urgent humanitarian reasons or significant public benefit," "to meet a medical emergency[,] or … for a legitimate law enforcement objective."); 8 U.S.C. § 1182(d)(5)(A). Whether the government decides to parole an arriving alien or keep them detained, the regulations state that an immigration judge does not have authority to review the custody determination. 8 C.F.R. § 1003.19(h)(2)(i)(B). Here, Petitioners was paroled. *Id.* However, service of an NTA and placement in removal proceedings automatically terminated said parole. 8 C.F.R. §212.5 (e)(2)(i). The termination of the parole then reverted Petitioners back to their previous status as arriving aliens, thus subject to mandatory detention. 8 C.F.R. § 1001.1(q); *see also* 8 U.S.C. § 1225(b)(2)(A).

Here, as Petitioners are arriving aliens, irrespective of the Board's decision in *Hurtado*, 29 I&N Dec. 216, Petitioner would be ineligible to seek bond from an immigration judge. *See also Maldonado v. Macias*, 150 F.Supp.3d 788, 797–98 (W.D.T.X. Dec. 15, 2015) (the parties agree [Maldonado] is an arriving alien, and the Court finds this to be accurate, as [Maldonado] applied for admission to the United States at a port-of-entry… As such, Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(2)(A)).

B. On Its Face, and As Applied to Petitioners Maryeli Sosa-Marquina and A.P-S., § 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. 103, 139 (2020). Aliens who arrive at ports of entry–even those paroled elsewhere in the country for years pending removal–are "treated" for due process purposes "as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139.

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. The aliens were served with a charging document (an NTA) outlining the factual allegations and the charge(s) of removability against them.[4] Based on this, they have an opportunity to be heard by an immigration judge and represented by counsel of their choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). They can seek reasonable continuances to prepare any applications for relief from removal, or they can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should they receive any adverse decision, they have 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, Petitioners here raise no such claim where they have 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 Petitioners, their detention does not violate due process.

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[4] This is based of the information provided in the petition by petitioner they were in removal proceedings and files applications for Asylum. ECF No. 1 at ¶¶ 20, 29.

C. Claims Related to Conditions of Confinement are not Subject to Review

Petitioner bears the burden of establishing this Court's jurisdiction to hear their claims for relief. *See, e.g.,* 8 U.S.C. §§ 1252(g); 1252(a)(2)(B); 1226(e). Conditions of confinement claims are not cognizable in habeas. *See Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021) (habeas is not available to review questions unrelated to the cause for detention, nor can it be used for any purpose other than granting relief from unlawful imprisonment); *Ahmed v. Warden*, No. 1:24-cv-1110, 2024 WL 5104545, at *1 (W.D. La. Sept. 25, 2024) (conditions of confinement not cognizable under habeas). "A demand for release does not convert a conditions-of-confinement claim into a proper habeas request." *Nogales v. Dep't of Homeland Security*, 524 F.Supp.3d 538, 543 (N.D. Tex. 2021).

V. Conclusion

The Court should deny the Petition.

Respectfully submitted,

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