United States District Court
Western District of Texas
San Antonio Division

MARTHA PATRICIA MARISCAL-DUARTE, Petitioner, v. MARIA V. DE LEON, in her official capacity as Warden of the South Texas Family Residential Center, et al., Respondents.	No. 5:25-cv-01771-XR

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] 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 she seeks, 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.

I. Introduction

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

II. Relevant Facts and Procedural History

Petitioner is a native and citizen of Mexico who is alleged to have unlawfully entered the country without being admitted after inspection by an immigration officer. *See* ECF No. 1-2 at 3, 17. She states that she entered the U.S. approximately twenty-five years ago. ECF No. 1 at 11. She

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

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

does not possess any documents allowing her to enter or remain in the United States legally. *See* ECF No. 1-2 at 3.

In or about 2022, a Form I-130, Petition for Alien Relative, was submitted for Petitioner. *See* ECF No. 1-2 at 3.[3] The petition was approved in or about September 2023. *See id.* In or about January 2025, she submitted a Form I-485, Application to Register Permanent Residence or Adjust Status, and a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. *See* ECF No. 1-2 at 3, 26, 28. Her applications are pending. *See* ECF No. 1-2 at 3.[4]

Petitioner was encountered by federal immigration authorities at a county jail in Sarasota, Florida, after having been arrested, on or about August 8, 2025, for not having a driver's license. *See* ECF No. 1-2 at 3.

She concedes that she is currently in removal proceedings. ECF No. 1, ¶ 3. Her next immigration hearing is on January 12, 2026.[5]

[3] A Form I-130 seeks to establish a qualifying relationship between an individual and an eligible alien relative (the beneficiary), but the filing or approval of such a petition does not give the relative any immigration status. *See* U.S. Citizenship and Immigration Services, I-130, Petition for Alien Relative, https://www.uscis.gov/i-130.

[4] The I-360 petition was reviewed and found to establish a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act ("VAWA"). *See* ECF No. 1-2 at 28. However, establishing a prima facie case "does not necessarily mean that [the] petition will be approved." *See id.*

[5] *See* Executive Office for Immigration Review, Automated Case Information, https://acis.eoir.justice.gov/en/ (last visited December 23, 2025) (enter "221 252 549").

III. Response to the Court's Order dated December 17, 2025

This Court's Service Order dated December 17, 2025 requires Respondents to consider the Court's prior orders addressing whether 8 U.S.C. § 1225 authorizes Petitioner's detention, and to note any material factual differences between those cases and the pending case. ECF No. 2 at 2-3. The Court cited, as examples of prior decisions, *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025) and *Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025).

There are no material factual differences between this case and other cases in which the Court has previously addressed whether 8 U.S.C. § 1225(b)(2) applies to all noncitizens who, like Petitioner, are already in the country but entered without inspection. *See, e.g.*, *Lara v. Noem*, Case No. SA-25-CA-01581-XR, 2025 WL 3654263, at *2-5 (W.D. Tex. Dec. 16, 2025) (holding that petitioner cannot be detained under § 1225(b)(2) and granting habeas petition); *Perez v. Noem*, Case No. SA-25-CA-01534-XR, 2025 WL 3654262, at *2-8 (W.D. Tex. Dec. 5, 2025) (same). Like Lara and Perez, Petitioner is present in the United States without inspection, admission or parole, and she did not present herself for inspection at a designated port of entry. Respondents therefore maintain that she falls under the "catchall" provision at 8 U.S.C. § 1225(b)(2)(A). She (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[s] for admission" [§ 1225(a)(1)];[6] and (3) is subject to detention during "full" removal proceedings as an alien whom DHS has determined to be seeking "admission" and who is not clearly and beyond a doubt entitled to be "admitted"

[6] 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.

[§ 1225(b)(2)(A)]. Accordingly, no material differences exist between this case and other similar cases in which the Court has granted habeas relief.[7]

IV. 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).[8]

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).

---

[7] In *Pineda*, respondents argued detention authority under 8 U.S.C. § 1225(b)(1). *See* 2025 WL 3471418, at *1. Here, Respondents assert that Petitioner falls under the "catchall" provision at 8 U.S.C. § 1225(b)(2)(A).

[8] Petitioner did not pay the filing fee for any non-habeas claims. Thus, to the extent that the petition is construed as raising non-habeas claims, the Court should either sever those claims or dismiss them without prejudice. *See Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107, at *3 (W.D. Tex. June 18, 2020) ("When a filing contains both habeas and non-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. As a practical matter, this separation entails severing the non-habeas claims and permitting the petitioner/plaintiff to pursue them in a separate case.") (citations and internal quotation marks omitted).

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.

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, she is nonetheless an applicant for admission whom 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. 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 she is not an applicant for admission. Nor can Petitioner plausibly challenge a DHS officer's determination that she is "seeking admission" simply because she is not currently at the border requesting to come into the United States. Evasion from detection did not bestow her with the benefit of additional process beyond what the statute already affords her: "full" removal proceedings.

The detention statute pertaining to Petitioner plainly refers to "*an applicant for admission*" whom *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) (emphasis added). If Petitioner, who has never been "admitted" after inspection by an immigration officer, is not "seeking admission," then the logical assumption is that she must be seeking her immediate release *via removal from the United States*. Removal, however, is clearly not what Petitioner requests in this habeas petition. She requests release from custody so that she can seek to remain in the United States; in other words, she 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)]; and (3) is subject to detention during "full" removal proceedings as an alien whom 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 981, 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*, 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 (B.I.A. 2025).

D. Petitioner Does Not Overcome Jurisdictional Hurdles.

1. Initial Decision to Commence Removal Proceedings

Where an alien challenges ICE's decision to detain her and 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, however, 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. *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 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).

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-Arevelo v. Ripa*, No. EP-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 her 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 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).

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 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. 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.

F. Ex Post Facto Clause Does Not Apply.

Even if Petitioner relied on the prior interpretation of the INA, there is no indication that the new interpretation punishes as a crime Petitioner's prior "innocent" actions. The Supreme Court's decisions in *INS v. St. Cyr*, 533 U.S. 289, 325 (2001) and *Vartelas v. Holder*, 566 U.S. 257, 66 (2012) are both distinguishable, as the alien in those cases had relied on prior versions of the law when considering criminal charges. The Fifth Circuit's decision in *Monteon-Camargo v. Barr* is distinguishable for the same reasons – a new agency interpretation retroactively affected the immigration consequences of prior criminal conduct. 918 F.3d 423 (5th Cir. 2019).

Petitioner's entry in this case was unlawful at the time she entered the United States and

remains unlawful today for the same reasons. The current interpretation of the controlling detention statute is not punitive, nor does it deprive her of any defense to removal charges that were available to her under the prior interpretation. The statute itself, however, has not changed since Petitioner's entry.

The federal Constitution prohibits both Congress and the States from enacting any "ex post facto law." U.S. Const. art. I, § 9, cl. 3; U.S. Const. art. I, § 10, cl. 1. "Retroactive application of a law violates the Ex Post Facto Clause only if it: (1) 'punish[es] as a crime an act previously committed, which was innocent when done;' (2) 'make[s] more burdensome the punishment for a crime, after its commission;' or (3) 'deprive[s] one charged with crime of any defense available according to law at the time when the act was committed.'" *Jackson v. Vannoy*, 981 F.3d 408, 417 (5th Cir. 2020) (quoting *Collins v. Youngblood*, 497 U.S. 37, 52 (1990)). "A statute can violate the Ex Post Facto Clause . . . only if the statute is punitive." *Does 1-7 v. Abbott*, 945 F.3d 307, 313 (5th Cir. 2019) (per curiam) (citation omitted).

The Supreme Court and the Fifth Circuit have long recognized that removal proceedings are nonpunitive. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984); *Gonzalez Reyes v. Holder*, 313 F. App'x 690, 695 (5th Cir. 2009). With IIRIRA in 1996, Congress intended to enact a civil, nonpunitive regulatory scheme to fix a statutory inequity between those aliens who present themselves for inspection and those who do not. 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)). Therefore, application of the IIRIRA to Petitioner does not violate the Ex Post Facto Clause.

This administration's interpretation of mandatory detention of applicants for admission 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). DHS does not dispute that this interpretation differs from the interpretation that the agency has taken previously. The statute itself, however, has not changed.

V. Conclusion

The Court should deny the Petition in its entirety.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: */s/ Anna E. Arreola*

Anna E. Arreola
Assistant United States Attorney
New York Registration No. 4151775
700 E. San Antonio, Ste. 200
El Paso, Texas 79901
(915) 534-6555
(915) 534-3490 (fax)
Anna.Arreola@usdoj.gov

/s/ Anne Marie Cordova

Anne Marie Cordova
Assistant United States Attorney
Texas Bar No. 24073789
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100 (phone)
(210) 384-7118 (fax)
anne.marie.cordova@usdoj.gov

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant: Brian S. Green, *Attorney for Petitioner.*

/s/ Anna E. Arreola
ANNA E. ARREOLA
Assistant United States Attorney