

United States District Court
Western District of Texas
San Antonio Division

Rosa Dubraska Lopez-Diaz,
Petitioner,

v.

Todd M. Lyons, *et al*,
Respondents.

Case No. 5:26-CV-00023-OLG

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal¹ Respondents provide the following timely 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. Petitioner incorrectly alleges that the Board of Immigration Appeals (Board) opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025), applies. ECF No. 1 at 3. This case is squarely covered by a different Board opinion, *Matter of M-S-*, 27 I&N Dec. 509 (2019), mandating Petitioner's detention.

****Pursuant to the Court's Order** [ECF No. 3], Respondents notify the Court this case is materially different from the cases attached to the Court's Order because in this case, Petitioner was placed in expedited removal under INA § 235, 8 U.S.C. § 1225 and she was issued a Notice to Appear after an asylum officer determined she had a credible fear of persecution. *See* Exh. A. *See also Canales-Melgar v. Noem*, SA-25-CV-01571-XR *7 (W.D. Tex. Dec. 23, 2025)

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

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

(determining detention without a bond hearing is authorized and required by statute).

I. Relevant Facts and Procedural History

Petitioner is a citizen of Venezuela who was apprehended upon her unlawful entry into the United States. *See* Exh. A at 1. Upon her unlawful entry, she was placed in expedited removal proceedings under 8 U.S.C. 1225(b)(1), received a positive credible fear determination, and issued a Notice to Appear (NTA) after an asylum officer determined he demonstrated a credible fear of persecution or torture. ECF No. 1-2 at 4; Exh. A at 1; Exh. B (expedited removal order); Exh. C³ (Credible Fear Determination “Positive”).

II. 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 released 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 2023 NTA shows she was first placed in expedited removal, under INA § 235(b)(1), 8 U.S.C. § 1225, and then in “full” removal proceedings, under INA § 240, 8 U.S.C. §

³ Respondents advise the Court only the positive credible fear determination is included, rather than the full question/answer interview. Respondents can file the full interview and asylum officer notes if the Court or Petitioner’s counsel requests.

1229. ECF No. 1-2 at 1. As an application for admission, intercepted at or near the port of entry shortly after unlawfully entering, who indicates a fear of persecution, and whom an asylum officer determines has a credible fear of persecution or torture, “shall be detained for further consideration of the application for asylum,” properly described under § 1225(b)(1)(A)(ii), and not under the “catchall” provision. *Compare* 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii) *with* § 1225(b)(2)(A).

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, as when she unlawfully entered the United States, she was placed in expedited removal. ECF No. 1-2 at 1; Exhs. A–C; 8 U.S.C. § 1225(b)(1). That she was subsequently released from custody, does not change the fact that she was an applicant for admission at the time she was initially apprehended and based on clear reading of the statute, she “**shall** be detained for further consideration of the application for asylum.” *Matter of M-S-*, 27 I&N Dec. 509, 510 (2019) (emphasis added).

C. Congress Intended to Mandate Detention of Applicants for Admission who were Placed in Full Removal Proceedings after Receiving a Positive Credible Fear Determination.

Section 235 expressly provides for the detention of aliens originally placed in expedited removal. *See M-S-*, 27 I&N Dec. at 3. Such aliens “shall be detained pending a final determination

of credible fear.” *Id.*; INA § 235(b)(1)(B)(iii)(IV). The Text of the Act mandates Petitioner’s detention. Section 235(b)(1)(B)(ii) provides that, “if an alien in expedited proceedings establishes a credible fear, he “shall be detained for further consideration of the application for asylum.” *Id.* “The word ‘shall’ generally imposes a nondiscretionary duty.” *Id.*; *see also SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1354 (2018). The Statute’s plain language requires detention, and the petition should be denied.

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). In other words, if an alien contests that she is an applicant for admission subject to removal under § 1225(b), any claim challenging her 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).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) 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 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. 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.

⁴ 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).

Thuraissigiam also applies here because of the “entry fiction,” that is because Petitioner was apprehended shortly after her unlawful entry, she is treated for due process purposes as if she is stopped at the border. *Thuraissigiam*, 591 U.S. 103, 140 (2020) (citing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), *Leng May Ma v. Barber*, 357 U.S. 185 (1958), *Kaplan v. Tod*, 267 U.S. 228 (1925)).

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).

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.

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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