

United States District Court
Western District of Texas
San Antonio Division

Agnes Mbonjo Meliki,
Petitioner,

v.

Case No. 5:26-CV-000140-JKP

Todd M. Lyons, Acting Director of US ICE, et
al, *et al.*,
Respondents.

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal¹ Respondents provide the following timely response to Petitioner's habeas petition [ECF No. 1]. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief she seeks, and this Court should deny this habeas petition without the need for an evidentiary hearing. Petitioner entered the United States unlawfully and was placed in expedited removal under 8 U.S.C. § 1225(b)(1) and issued her a Notice to Appear (NTA) after Petitioner established a credible fear of persecution. Under clear statutory authority, Petitioner 'shall be detained for further consideration of [her] application for asylum.' 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii).

Petitioner incorrectly argues ICE is attempting to subject her to mandatory detention based on similar reasoning found in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2-25). *See* ECF No. 1 at ¶24. This is not accurate, and Petitioner does not even acknowledge the Board of Immigration Appeals opinion in *Matter of M-S-*, 27 I&N Dec. 509 (2019), mandating Petitioner's detention.

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

Judge Rodriguez, of the Western District of Texas, in December 2025, issued an opinion denying a petition for writ of habeas corpus for a factually similar alien to this case. *Canales-Melgar v. Noem*, SA-25-CV-01571-XR *7 (W.D. Tex. Dec. 23, 2025) (determining detention without a bond hearing is authorized and required by statute).

I. Relevant Facts and Procedural History

Petitioner is a citizen of Cameroon who was apprehended upon her unlawful entry into the United States and was placed in expedited removal proceedings under INA § 235, 8 U.S.C. § 1225(b)(1). Exh A (NTA). Petitioner was issued a Notice to Appear after an asylum officer determined that Petitioner demonstrated a credible fear of persecution or torture. ECF No. 1 at ¶15; 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii); Exh. A (NTA). ICE released Petitioner on humanitarian parole under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5). Exh. B (Interim Notice). As noted on the document, the interim parole was only valid for one year, and there is no indication it was ever extended. *Id.* On October 31, 2025, Petitioner was detained at a check-in. ECF No. 1 at ¶ 17. This was more than year after the notice of parole, and thus parole had expired. Exh. B (Interim notice).

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).

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. § 1229. ECF No. 1-1 at 7. 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, Petitioner “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. 1-1 at 7; 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.

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 authorizes detention and the petition should be denied. *See also Canales-Melgar*, SA-25-CV-01571-XR *6 (W.D. Tex. Dec. 23, 2025) (citing *Rincon v. Hyde*, No. CV-25-12633-BEM, 2025 WL 3122784, at *3 (D. Mass. Nov. 7, 2025)).

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).² This is consistent with the channeling provision at

² 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.

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.

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

§ 1225(b)(4).

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)(B)(ii) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

F. Petitioner’s Parole Was Expired Upon Detention.

Petitioner alleges her INA § 212(d)(5); 8 U.S.C. § 1182(d)(5) parole was wrongfully revoked, violated her due process rights, and therefore she should be released. *See* ECF No. 1 at ¶ 17. Parole by that point had already expired. Exh. B (Interim Notice).

Additionally, it's a discretionary decision for the Department of Homeland Security (DHS) to grant release on humanitarian parole, INA § 212(d)(5); 8 U.S.C. § 1182(d)(5)(A), and DHS can revoke it. Allowing Petitioner to live and work does not create a due process right to not be redetained without warning. *See Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 (W.D. Tex. 2018).

Furthermore, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *See e.g., Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

For these reasons, Petitioner's petition should be denied.

IV. Conclusion

Petitioner is lawfully detained under statute because she is an applicant for admission who was issued a Notice to Appear after receiving a positive credible fear determination from an asylum officer. Detention is not indefinite, because removal proceedings will end, either with a grant of relief or with an order of removal. Additionally, parole had been expired when Petitioner was

redetained, there was no due process violation. The Court should deny the Petition.

Respectfully submitted,

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