

United States District Court
Western District of Texas
San Antonio Division

Felipe Vasquez Avila,
Petitioner,

v.

5:25-CV-01363-FB-ESC

Kristi Noem, Secretary of United States
Department of Homeland Security,
et. al.,
Respondents.

**Response in Opposition to
Petitioner's Motion for Temporary Restraining Order
and/or Preliminary Injunctive Relief**

Petitioner, through counsel, filed a habeas petition with this Court on or about October 24, 2025, and a Motion for Temporary Restraining Order ("TRO") or Preliminary Injunction ("PI") on October 31, 2025. ECF Nos. 1, 4. The Court ordered Respondents to respond to the motion by November 7 at 12pm CT. ECF No. 6. Federal¹ Respondents submit that Petitioner's motion and the habeas petition in its entirety should be denied without a hearing for the following reasons:

I. Relevant Background

Petitioner is a native and citizen of Mexico. ECF No. 1 at ¶ 1. Petitioner concedes he entered without inspection around 2004. *Id.* at 5 ¶ 2. He is currently detained in ICE custody pending his removal proceedings. *Id.* at 1 ¶¶ 1–2; ECF No. 1-3 (Notice to Appear). Petitioner concedes that he was placed into removal proceedings after his criminal arrest. ECF No. 1 ¶ 9, 6 ¶ 4. Petitioner is currently set for an individual hearing on his application for relief on November

¹ The Department of Justice represents only federal employees in this action, not the warden. *See* ECF No. 1 ¶ 13.

12, 2025.²

II. Legal Standards

A preliminary injunction is an “extraordinary and drastic remedy.” *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is “not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion.” *Black Fire Fighters Ass’n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). Importantly, temporary restraining orders are ordinarily aimed at temporarily preserving the status quo. *Foreman v. Dallas Cty.*, 193 F.3d 314, 323 (5th Cir. 1999), *abrogated on other grounds by Davis v. Abbott*, 781 F.3d 207 (5th Cir. 2015). “The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has “clearly” carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

III. 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 seeks in this TRO Motion an injunction granting him the same ultimate relief he seeks on the merits of this already-expedited habeas proceeding. *See Garcia-Aleman v. Thompson, et al*, 5:25–CV–886–OLG–HJB, ECF No. 20 (W.D. Tex. Oct. 30, 2025) (collecting cases and denying TRO motion). The purpose of a TRO is to preserve the status quo and prevent irreparable injury until the court

² See Automated Case Information (last accessed Nov. 7, 2025).

renders a decision on the merits. *Sambrano v. United Airlines, Inc.*, No. 21–11159, 2022 WL 486610 at *4 (5th Cir. Feb. 17, 2022) (citing *Canal Auth.*, 489 F.2d at 576). Here, the current status quo is that Petitioner is detained in ICE custody during his removal proceedings and is set for a final hearing on November 12, 2025. Petitioner’s request for an order implementing “pre-status quo” is unsupported by law and logic. *See* ECF No. 1 at 18 ¶ 56. This motion should be denied.

A. Plaintiff Is Unlikely to Succeed on the Merits.

Petitioner’s interpretation of the relevant statutes is unsupported by the plain language of the statute. 8 U.S.C. § 1225(b)(2)(A). Notably, Petitioner wholly ignores the actual language of the relevant statute in his petition and in his motion, which explains his misunderstanding of the statute’s scope. Section 1225(b)(2)(A), in proper context, plainly reads that “an alien who is an applicant for admission” [as defined earlier in the statute at § 1225(a) as “an alien present in the United States that has not been admitted”], “*shall be detained* for a proceeding under [8 U.S.C. § 1229a],” “*if the examining immigration officer determines that*” (1) “an alien seeking admission”; (2) “is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Importantly, Congress did not leave this determination—whether an alien is seeking admission—to the alien, or even to the Court. Instead, consistent with the Executive’s broad powers under the immigration laws, Congress delegated that authority to the inspecting immigration officer to determine whether an alien is “seeking admission” under this statute.

Applying the facts of this case to the statute, there is no reading of this statute that would render Petitioner to not be “seeking admission.” First, Petitioner is “an applicant for admission,” because he concedes that at the time of his apprehension in 2025, he was “an alien present in the United States that has not been admitted.” *See* ECF No. 1 at 5 ¶ 2; 10 ¶ 18 (conceding that he entered without inspection). Nowhere in his petition does he claim to have any lawful status in the

United States, nor does he claim to have ever been inspected and admitted by an immigration officer. Petitioner is, therefore, by statutory definition, an applicant for admission.

Second, there is no dispute that Petitioner is detained for a proceeding under § 1229a. *See id.* at 1 ¶¶ 9, 6 ¶ 4, ECF No. 1-3 (NTA) (confirming his detention and confirming that DHS commenced removal proceedings against him). Indeed, he is scheduled for a final hearing with an immigration judge on November 12, 2025.

Third, the NTA in this case shows that an immigration officer determined that Petitioner is an alien seeking admission who is not clearly and beyond a doubt entitled to be admitted. *See* ECF No. 1 at 2 ¶ 2, 6 ¶ 5, 7 ¶ 9; *see also* ECF No. 1-3 (NTA). In other words, the officer charged Petitioner on the NTA as inadmissible for being present in the United States without being admitted (*i.e.*, an applicant for admission). *Id.* While Petitioner may challenge these allegations and charges against him when he appears before the immigration judge, the allegations and charges are nonetheless determinations by an immigration officer that he is an alien who is seeking admission who is not entitled to be admitted, consistent with the requirements of § 1225(b)(2)(A).

Under the plain language of the statute, therefore, Petitioner is an alien described in § 1225(b)(2)(A). Any alien detained under § 1225(b)(2)(A) “shall be detained” during removal proceedings. Nowhere in that statute does it allow for a bond hearing. *See Thuraissigiam*, 591 U.S. at 109; *Jennings*, 583 U.S. at 288. Courts that have done a close review of the plain language of this statute agree. *See Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250-CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025); *Garibay-Robledo v. Noem, et al*, No. 1:25–CV–177–H (N.D. Tex. Oct. 24, 2025); *Barrios Sandoval v. Acuna, et al*, No. 6:25–CV–01467, 2025 WL 3048926 at *3 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson, et al*, No. 25–CV–01463 (W.D. La. Nov. 4, 2025).

Petitioner spends most of his briefing arguing that he is detained under § 1226(a), as opposed to § 1225(b), but he does that by wholly ignoring the text of § 1225. As explained above, a plain reading of § 1225(a) leaves no room for alternate interpretations; Petitioner is an applicant for admission because he has never been inspected or admitted by an immigration officer. 8 U.S.C. § 1225(a). Stated otherwise, if he is not “seeking admission” to the United States, what is he seeking? Petitioner seeks release from custody, but not for the purpose of departing the United States; he very much intends to remain in the United States, which is apparent throughout his briefing. But if there is no lawful basis for him to remain in the United States once he is released from custody, then he is necessarily “seeking admission” to remain in the United States lawfully. There is no other plausible interpretation.

The Fifth Circuit explored these nuances in detail while analyzing a different INA provision that is not at issue here (8 U.S.C. § 1182(h)). *See Martinez v. Mukasey*, 519 F. 3d 532, 541–42 (5th Cir. 2008). The Fifth Circuit found the language of the INA to be unambiguous:

For determining ambiguity... if this statutory text stood alone, we would define “admitted” by its ordinary, contemporary, and common meaning. ... Congress has relieved us from this task, however, by providing the following definition: “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of that alien into the United States *after inspection and authorization* by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Under this statutory definition, “admission” is the lawful entry of an alien after inspection, something quite different ... from post-entry adjustment....

Id. at 544. Like the Fifth Circuit in *Martinez*, this Court should navigate these issues by examining the unambiguous language of the controlling INA provisions in this case, which clearly define these various terms in proper context, to determine the following: 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)];³ and (3) is subject to detention during “full” removal proceedings as an alien who DHS, through the issuance of an NTA, has determined to be seeking admission and who is not clearly and beyond a doubt entitled to be admitted [§ 1225(b)(2)(A)]. DHS is properly detaining Petitioner on a mandatory basis during his removal proceedings.

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

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

³ 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.

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).

Notably, Petitioner does not claim he is removable under § 1227(a); indeed, his NTA shows he is charged as “inadmissible” under § 1182(a). As such, it is his burden—not the Government’s—to prove he is admissible to the United States. He does not and cannot make such a showing. By statutory definition, therefore, he is an applicant for admission who is seeking admission to the United States.

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.

2. Petitioner Does Not Overcome Jurisdictional Hurdles.

Section 1252(e)(3) deprives this court of jurisdiction, including habeas corpus jurisdiction,

over Petitioner’s challenge to detention under § 1225(b)(2)(A). Section 1252(e)(3) limits judicial review of “determinations under section 1225(b) of this title and its implementation” to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)–(ii); *see also* *M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Unlike other provisions within § 1252(e), § 1252(e)(3) applies broadly to judicial review of § 1225(b) as a whole, not just to determinations under subsection (b)(1). *Compare* 8 U.S.C. § 1252(e)(1)(A), (e)(2), *with* 8 U.S.C. § 1252(e)(3)(A). *See* *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.’ ... We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.”). Here, Petitioner challenges the determination, set forth in writing by both the Department of Justice and DHS, that aliens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). Petitioner thus seeks judicial review of a written policy or guideline implementing § 1225(b), an action that can be sought only in the District of D.C. under § 1252(e)(3)(A)(ii). *See also* 8 U.S.C. § 1225(b)(4).

Moreover, 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.*

Finally, there is a channeling provision § 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). Petitioner argues that because he challenges his detention, the channeling provision does not apply. *See* ECF No. 1 ¶ 3. But mandatory detention is required by the plain language of the applicable statute where the alien is an applicant for admission detained during removal proceedings under § 1229a. Therefore, any challenge to detention is necessarily tied to a challenge to the statute of removability. He cannot challenge one without challenging the other.

3. 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, 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. 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).

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). Some relief applications are subject to an annual cap, requiring immigration judges to “reserve” decisions to grant the application. *See* 8 C.F.R. § 1240.21(c); OPPM 17-04 (last accessed Oct. 18, 2025). Judges are not required to reserve decisions in detained cases, however. *Id.* Petitioner claims he is applying for this exact form of relief. *See* ECF No. 1 at 7¶ 9. As a detained alien, Petitioner would be more likely to benefit sooner from a granted application on the detained docket than he would on the non-detained docket, as detained aliens are specifically exempt from the annual cap for cancellation of removal.

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. He has been detained approximately four months pending his removal proceedings, and his final removal hearing is set a week from today. 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. On November 12, 2025, Petitioner is scheduled for a final hearing in removal proceedings before an immigration judge on the detained docket due to his presence without admission. *See also* Automated Case Information (last accessed Nov. 7, 2025).

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 only advances Congressional intent to equalize the playing field between those who follow the law and those who do not. Nothing prevents the agency from implementing policy decisions and interpretations that differ from those of prior administrations. 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, nor does it dispute that the agency’s own regulations necessarily support the prior interpretation. The statute itself, however, has not changed.

Petitioner’s entry in this case was unlawful at the time he 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 him of any defense to removal charges that were available to him under the prior interpretation. The only thing that has changed is the agency's interpretation as to whether Petitioner can seek release on bond while he is in removal proceedings. The statute itself, however, has not changed since Petitioner's entry and has always mandated the detention of an applicant for admission during removal proceedings. As applied here to Petitioner, § 1225(b)(2)(A) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

B. Remaining Factors Do Not Favor Relief.

With respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is in removal proceedings, which entitles the government to detain him, either on a mandatory basis under § 1225(b) or in the exercise of discretion; and (2) both the government and the public at large have a strong interest in the timely enforcement of the immigration laws. Moreover, Petitioner has provided no basis for this Court to determine that his continued detention (the status quo) pending the conclusion of his removal proceedings will cause him irreparable harm. Indeed, Petitioner can apply for relief before an immigration judge, and because of his detention, his removal proceedings will advance more quickly than they would on the non-detained docket. The Court should therefore deny the TRO motion and dismiss this case in its entirety without the need for further review.

IV. Conclusion

This TRO motion should be denied, because Petitioner has not clearly shown that his circumstances merit such an extraordinary remedy. Indeed, Petitioner seeks affirmative relief that would alter the status quo, rather than preserve it. Petitioner is in the United States unlawfully and has no immediate claim to lawful status. He is seeking admission, under the plain language of the

statute. As such, the status quo is his continued detention during his removal proceedings. The Court should deny the Petition.

Respectfully submitted,

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