

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

DANIEL ALEJANDRO PETRO-DORIA,

Petitioner,

v.

FIELD OFFICE DIRECTOR, EL PASO
FIELD OFFICE, U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT; and
KRISTI NOEM, SECRETARY, U.S.
DEPARTMENT OF HOMELAND
SECURITY,

Respondents.

No. 3:26-CV-00002-LS

PETITIONER'S TRAVERSE

The Petitioner hereby submits his Traverse in Response to the Respondent's Return [ECF No. 5], and in support of his Petition for Writ of Habeas Corpus [ECF No. 1]. In the response [ECF No. 5], the Respondent presents various arguments regarding this government's ever-changing statutory interpretation which depends on the current administration's policies [ECF No. 5, p. 5-6] and congressional intent in support of their reading that 8 U.S.C. § 1225(b)(1) controls the Petitioner's detention. [ECF No. 5, pp. 2-9]. The Petitioner responds in turn.

ARGUMENT

As a preliminary matter, Petitioner must address the Respondents contention that although the only relief available to Petitioner through habeas is release from custody, he "has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release." [ECF No. 5, p. 2]. The Respondent went as far as stating that even if Petitioner were released, he would be "subject to re-arrest." *Id.* This Court as well as a line of Supreme Court cases have found this argument without merit. *Campuzano v. Noem*, No. 1:25-CV-1715-DAE,

2026 WL 90062, at *9 (W.D. Tex. Jan. 6, 2026) (citing *Zadvydas v. Davis*, 533 U.S. 678, 701, 692–93 (2001) (providing for the release via a habeas corpus proceeding for deportable noncitizens who establish the unreasonableness of their continued detention and noting the protections that exist for noncitizens already in the country even when their presence is unlawful); *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021) (citing *Zadvydas*); see also *Osorio-Martinez v. Att’y Gen. United States*, 893 F.3d 153, 175 (CA3 2018) (“Nothing in our precedent suggests that the lack of lawful permanent resident status, potential inadmissibility, or the happenstance that visas are not currently available is dispositive in assessing an [noncitizen’s] entitlement to habeas review.”)). Petitioner’s detention is unlawful and habeas relief is proper in this case.

I. The Petitioner’s Mandatory Detention is Unlawful Because He Was Detained Pursuant to an I-200 Warrant for Arrest of Alien under § 1226, and Must Be Afforded a Custody Redetermination Hearing Under § 1226(a).

The Respondent’s argument hinges on an erroneous interpretation of 8 U.S.C. § 1225(b)(1), the expedited removal statute, which is wholly inapplicable in the case at hand. Although the Petitioner’s claim focused on contesting his mandatory detention under § 1225(b)(2), he will address why he is not subject to mandatory detention provisions of § 1225(b)(1).

A. Respondent’s argument that Petitioner is subject to mandatory detention under the expedited removal provisions of § 1225(b)(1), three years after his apprehension and release is a legal impossibility.

The Respondent contends that the Petitioner’s mandatory detention is lawful under 8 U.S.C. § 1225(b)(1) [INA § 235(b)(1)] because Petitioner was an applicant for admission when he was initially apprehended by Customs and Border Patrol agents in 2022. Specifically:

“Petitioner here was apprehended on or about the same day he unlawfully entered the United States, and rather than subject him to expedited removal, DHS issued him an NTA in the exercise of discretion . . . As such, he is detained under § 1225(b)(1)(A)(iii)(II).”

ECF No. 5, p. 3.

Aside from their proffered argument, the government provided zero evidence in support of their claim that the Petitioner is subject to mandatory detention under either § 1225(b)(1)(B)(ii) or § 1225(b)(1)(B)(iii)(IV), after the imposition of an expedited order of removal under § 1225(b)(1)(A)(i).¹ Despite being provided an additional time under 28 U.S.C. § 2243 to “review its records,” [ECF No. 4], the government has not included any evidence in its return that the Petitioner was processed for expedited removal under § 1225(b)(1)(A)(i), which would then subject him to mandatory detention under either § 1225(b)(1)(B)(ii) or § 1225(b)(1)(B)(iii)(IV).

In its return, the government did not include any evidence of an expedited order of removal under § 1225(b)(1)(A)(i), which is executed on the “Form I-860, Notice and Order of Expedited Removal.” See **Ex. A, p. 2** – *Sample* Form I-860 (redacted). It did not include any evidence that there exists a “Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act.” See **Ex. A, p. 3** – *Sample* Form I-867A (redacted). It did not provide any evidence that the petitioner was referred for “credible fear interview” with U.S. Citizenship and Immigration Services (USCIS) asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(A)(i).² See **Ex. A, p. 4** –

¹ The government fails to even cite the correct mandatory detention provisions within § 1225(b)(1). Section 1225(b)(1)(A)(iii)(II) merely describes the eligibility criteria as to which noncitizens ICE may issue an expedited order of removal under § 1225(b)(1)(A)(i). Meanwhile, the two (2) mandatory detention provisions for noncitizens subject to expedited removal orders are specific in their scope, pertaining to both *before* and *after* a credible fear interview under § 1225(b)(1)(B)(i), and in the case of a negative credible fear finding:

1. 8 U.S.C. § 1225(b)(1)(B)(ii) (“Referral of certain aliens – If the officer determines at the time of the interview that an alien has credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.”)
2. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (“Mandatory Detention – Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”)

² When an applicant for admission is issued an expedited order of removal under 8 U.S.C.

Sample Form I-870 (redacted). Additionally, the Petitioner's Notice to Appear (NTA) does not indicate any prior expedited removal proceedings under § 1225(b)(1). [ECF No. 1-3, pp. 6-7] (Box unchecked as to whether "this notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.").

Furthermore, the government's argument is based on a fallacy because there is **no** provision under § 1225(b)(1) that would allow a **discretionary** release under § 1226(a) of an alien subject to expedited removal. On the contrary, if the petitioner was subject to mandatory detention under either § 1225(b)(1)(B)(ii) or § 1225(b)(1)(B)(iii)(IV) after the imposition of an expedited order of removal under § 1225(b)(1)(A)(i), the only lawful mechanism to release the Petitioner in 2022 would have been a parole under § 1182(d)(5).³

To the contrary, here the Petitioner entered the United States without admission on July 17, 2022, and was apprehended by DHS agents shortly thereafter. [ECF No. 1-3, pp. 6-7]. On July 28, 2022, a Border Patrol agent prepared and **issued an I-220, Warrant for Arrest of Alien**,

§ 1225(b)(1)(A)(i), and they indicate a fear of return under § 1225(b)(1)(A)(ii), they must be referred for an interview by an asylum officer under § 1225(b)(1)(B)(i). While awaiting that interview, such persons are subject to mandatory detention. § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause **shall be detained** pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.") (emphasis added).

³ The only lawful mechanism to explain the release of a noncitizen who is subject to expedited removal proceedings and an order of expedited removal under § 1225(b)(1)(A)(i), is parole under 8 U.S.C. § 1182(d)(5). See *Matter of X-K-*, 23 I. & N. Dec. 731, 734 (BIA 2005), overruled on other grounds to expand mandatory detention, *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019) ("The Act provides for the mandatory detention of aliens who are being processed under section 235(b)(1) proceedings '*pending* a final determination of credible fear of persecution and, if found not to have such a fear, until removed.'") (emphasis in original) (quoting 8 U.S.C. § 1225(b)(1)(B)(iii)(IV)); *id.* ("The regulations also provide that pending the final credible fear determination, the DHS has the authority to grant parole under section 212(d)(5) of the Act, 8 U.S.C. § 1182(d)(5) (2000), in certain limited circumstances.") (citing 8 CFR §§ 1212.5(a), (b), 1235.3(b)(4)(ii) (2004)).

which states that: **“From evidence submitted to me, it appears that Daniel Alejandro Petro Doria, an alien who entered the United States at or near San Luis, Arizona, on July 17, 2022, is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the [INA] [8 U.S.C. § 1226].”** [ECF No. 1-3, p. 9] (Form I-200, Warrant for Arrest of Alien). On July 18, 2022, the same Border Patrol agent issued a Form I-286, Notice of Custody Determination [ECF No. 1-3, p. 8], a document that by its own language invokes § 1226:

“Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be: Released under other conditions.”

ECF No. 1-3, p. 8 (emphasis added) (Form I-286, Notice of Custody Determination).

The petitioner was then serviced a copy of his NTA on July 18, 2022, and on July 19, 2022, was released from custody pursuant to an I-220A Order of Release on Recognizance, “in accordance with section 236 of the [INA].” [ECF No. 1-3, p. 10] (emphasis added).

It is a legal fallacy to state that the Petitioner is subject to the mandatory detention under expedited removal provisions of the statute, either § 1225(b)(1)(B)(ii) or § 1225(b)(1)(B)(iii)(IV), after the imposition of an expedited order of removal under § 1225(b)(1)(A)(i). The government has crafted this argument out of thin air, it’s Return [ECF No. 5] does not include any evidence in support of this proposition. As the petitioner’s detention and release paperwork indicates, he was detained pursuant to § 1226, and is eligible for a custody redetermination hearing before the immigration judge under § 1226(a).

B. Section 1225(b)(1) cannot apply as the basis for Petitioner’s detention because he was not an actively seeking admission at the time of his second apprehension by ICE.

The Respondent’s assertion that the Petitioner was an alien seeking admission at the time

of his second detention—even though he was previously released under § 1226 and placed in full § 1229 removal proceedings— is an incorrect definition of what “seeking admission” encompasses. To begin with, this interpretation outright ignores the key “seeking admission” portion of the statute which requires **current** action. *Campuzano*, No. 1:25-CV-1715-DAE, 2026 WL 90062, at *6 (W.D. Tex. Jan. 6, 2026). Specifically, this Court has found that:

“Respondents’ interpretation would narrow § 1226 so drastically that it would rarely, if ever, apply. Respondents insist that under their interpretation, § 1226(a) would still apply to noncitizens ‘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).’ For example, it would apply to noncitizens who were initially lawfully admitted but were then placed in removal proceedings after overstaying a visa. This argument is unconvincing, though, in part because § 1226(a) is broadly worded. . . . This reading is bolstered by the Supreme Court’s analysis in *Jennings*. Although the Supreme Court ultimately answered a different question than the one at bar here, they explained in that case that ‘U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).’ *Jennings*, 583 U.S. at 289 (emphasis added). This discussion highlights that people like Petitioner are subject to detention under § 1226(a), not § 1225(b)(2).”

Id. at *7 (cleaned up and internal citations omitted). Clearly, Respondents are misinterpreting the scope of § 1225 given that:

“District courts across the country have been weighing this new interpretation. Repeatedly, they have found that DHS and BIA’s construction of the INA is incorrect and that petitioners who have long resided in the United States but are being held under § 1225 are entitled to relief.”

Cervantes-Garcia v. Bondi, No. 1:26-CV-98-RP, 2026 WL 196519, at *7 (W.D. Tex. Jan. 23, 2026).

Case law has also held that the two provisions may be reconciled **only** if they apply to different classes of aliens.” *Matter of M-S-*, 27 I&N Dec. 509, 516 (Att’y Gen. 2019) (emphasis added). Federal immigration regulations delineate this clear distinction. For instance:

“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without

inspection) will be eligible for bond and bond redetermination.”

Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Similarly, section 1225 contemplates that all aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). Under applicable regulations, these officers conduct such inspections at designated **ports of entry**. 8 CFR § 234.1(a) (emphasis added) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry . . .”). Thus, the plain language of the statute, which requires a noncitizen to actively pursue admission into the United States, is clear and direct in that only section 1226 could govern the Petitioner’s detention in this case.

Overall, the Respondent’s argument that **all** applicants for admission who are present without being admitted or paroled are subject to mandatory detention under § 1225(b), regardless of where or when they were apprehended, and irrespective of whether they were actively seeking admission into the United States at the time, cannot be sustained. *Chang v. Noem*, No. SA-25-CV-1259-FB (HJB), 2025 WL 3657324, at *2 (W.D. Tex. Dec. 8, 2025), report and recommendation adopted, No. SA-25-CV-1259-FB, 2025 WL 3670503 (W.D. Tex. Dec. 17, 2025).

Similar to the Petitioners in the above referenced cases, the Petitioner here entered in 2022 and, after inspection and release, has been continuously present in the United States since that time. [ECF No. 1-3, p. 6]. It cannot be said that Petitioner was actively seeking admission on July 21, 2025, at the time of his arrest given that he had already been residing in the country of three years. *Campuzano*, No. 1:25-CV-1715-DAE, 2026 WL 90062, at *8 (W.D. Tex. Jan. 6, 2026).

C. The Respondent’s reading does not comport with Congressional intent

The Respondent pointedly argued that their reading of section 1225 is aligned with congressional intent, in part, due to the passing of the Illegal Immigration Reform and Immigration

Responsibility Act (IRIRA), Pub. L. 104-208, 110 Stat. 3009 (Sep. 30, 1996), which it claims the government intended to “remedy the ‘unintended and undesirable consequences’ of having created a statutory scheme that rewarded aliens who entered without inspection.” [ECF No. 5, p. 5]. First, the overhaul of our immigration code through the passing of IRIRA, which included countless changes to our nation’s immigration laws and to the agencies that enforced them, was motivated by a number of factors including the political climate in place over thirty-six years ago.⁴ It would be impossible to boil down the sentiment of such a change, which also benefitted many groups of noncitizens, to such a narrative.

The Respondent’s statement also implies that the Petitioner is attempting to seek some sort of immigration benefit or privilege to which he is not entitled to because he didn’t enter lawfully. [ECF No. 5, p. 5]. However, the Petitioner has not made any such request in his petition. [ECF No. 1]. The Petitioner’s request before this Court is limited to a declaratory judgment ordering that a bond hearing be scheduled with an immigration judge in bond-only proceedings. Notwithstanding, the Respondent cites to a Ninth Circuit case, *Hing Sum v. Holder*, 602 F.3d 1092 (CA9 2010) which deals with a Chinese national contesting an application for waiver of inadmissibility. Such a case has nothing to do with the relief the Petitioner is seeking before this Court or even before an Immigration Court.

By the Respondent’s own admission, it agrees that their interpretation “differs from the interpretation that the agency has taken previously” while the statute itself “has not changed.” ECF. No. 5, p. 6. While the statute has not changed, the arbitrary and purposeful

⁴ H.R. Rep. No. 104-828 (1996) (Conf. Rep) available at <https://www.congress.gov/committee-report/104th-congress/house-report/828/1#:~:text=Hyde%2C%20from%20the%20committee%20of,insert%20the%20following:%20SECTION%201.>

mischaracterization of the statutory language to potentially subject millions more undocumented migrants to mandatory detention is unlawful and there is no indication that Congress intended such an outcome. *Cardona-Lozano*, No. 1:25-CV-1784-RP, 2025 WL 3218244, *FN 4 (W.D. Tex. Nov. 14, 2025).

Further, if the Court adopts the Respondent's interpretation, Congress' 2025 amendment to § 12226(c) in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), would be rendered superfluous. Statutes "should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]" *Corley v. United States*, 556 U.S. 303, 314 (2009) (citation omitted). If the Respondent's interpretation is correct and section 1225(b)(2) mandates detention of any alien present in the country and who has not been admitted, section 1226(c)(1)(E) would be meaningless as all aliens who are present in the country, and have not been admitted, would be subject to mandatory detention under section 1225(b)(2). The Court should decline to interpret section 1225(b)(2) in such an expansive manner as it would render 1226(c)(1)(E) superfluous. See *Campuzano*, No. 1:25-CV-1715-DAE, 2026 WL 90062, at *7 (W.D. Tex. Jan. 6, 2026).

D. The Petitioner's claims are not barred by § 1252(b)(9) or § 1252(g) as he is not contesting the commencement of his removal proceedings or seeking review of a removal order.

Respondents argue that 8 U.S.C. §§ 1259(b)(9) and 1252(g) deprive the Court of jurisdiction. Neither provision strips this Court of jurisdiction to hear and redress the Petitioner's claims.

First, because Petitioner is not seeking review of an order of removal or even challenging his removal proceedings, the channeling provisions of § 1252(b)(9) are inapplicable. *Campuzano*, No. 1:25-CV-1715-DAE, 2026 WL 90062, at *4 (citing to *Nielsen v. Preap*, 586 U.S. 392, 402 (2019)). The Petitioner is only seeking review of his detention and requesting a declaratory

judgement ordering he be given a bond hearing under § 1226. The Petitioner's claim of unlawful detention does not "aris[e] from any action taken or proceeding brought to remove an alien from the United States." § 1252(b)(9). The Petitioner's claim is solely focused on his continued detention without bond during the pendency of his removal proceedings. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) ("§ 1252(b)(9) does not present a jurisdictional bar" where those bringing suit "are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.").

Second, section 1252(g) applies to "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). But the Supreme Court has "not interpret[ed] this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves." *Jennings*, 583 U.S. at 294, (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83 (1999)). Section 1252(g) lists just three "discrete actions": actions to "commence proceedings, adjudicate cases, or execute removal orders." *Camarena v. Dir., Immigr. & Customs Enft.*, 988 F.3d 1268, 1272 (CA11 2021) (citing *Reno*, 525 U.S. at 482). Here, the Petitioner is not challenging the initial discretionary decision to detain him, but rather his continued detention without a custody determination hearing. ECF No. 1. Contrary to the Respondent's claims, this falls outside the types of challenges § 1252(g) is explicitly limited to. *Jennings*, 583 U.S. at 294.

CONCLUSION

For these reasons, the Court should find that the Petitioner is not subject to mandatory detention under either 8 U.S.C. §§ 1225(b)(1) or 1225(b)(2). The Court should find the Petitioner's

detention is governed by 8 U.S.C. § 1226, find that the immigration judge (IJ) properly exercised jurisdiction over his custody redetermination request on August 21, 2025, and order the IJ's bond order in the amount of \$5,000.00 to be reinstated. [ECF No. 1, pp. 1, 7, 17].

Dated: February 2, 2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 2, 2026, I electronically filed the forgoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing

Dated: February 2, 2026

Respectfully submitted,

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