

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**BESIK BUJIASHVILI,
PETITIONER,
V.**

CASE NO. 3:26-CV-00022-KC

**ICE FIELD OFFICE DIRECTOR
RESPONDENT.**

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

STATEMENT OF ISSUES

1. Whether Petitioner, who was apprehended at or near the border within two years of his unlawful entry, is properly designated by statute as an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225(b) while he pursues relief from removal in full removal proceedings before an immigration judge.
2. Whether this Court has jurisdiction to review DHS's decision to detain Petitioner while prosecuting him in full removal proceedings.
3. Whether mandatory detention of an applicant for admission during removal proceedings comports with due process.

Federal¹ Respondents provide the following abbreviated² response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, and this Court should deny this habeas petition without the need for an evidentiary hearing.

II. Relevant Facts and Procedural History

Petitioner last entered the United States without inspection on or about November 17, 2022. *See* Exhibit A (Form I-213 and NTA). Petitioner is a citizen of Georgia who was apprehended at or near the border within two years of his unlawful entry into the United States, served with a Notice to Appear (NTA) in immigration court based on a claim of credible fear, and released under an Order of Release on Recognizance ("OREC") to pursue relief from removal on the non-detained docket. *Id.* The immigration court docketed removal proceedings against Petitioner based on the NTA on or about January 24, 2023. *Id.*

In his habeas petition, Petitioner makes no mention of his unlawful 2022 entry or his contemporaneous apprehension at the border by immigration authorities. *See* ECF No. 1. Instead, Petitioner alleges he was first taken into immigration custody on September 19, 2025, and that an Immigration judge subsequently denied him bond. *Id.* at 2–4. Petitioner includes as an exhibit a copy of his bond motion, wherein he concedes through counsel his 2022 entry, but fails to mention

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

² Federal Respondents reserve all rights, including the right to appeal, while submitting this abbreviated response to preserve the legal issues and conserve judicial and party resources. As this Court's Order to Show Cause acknowledges (*see* ECF No. 2), this Court's prior decisions will likely control the result in this case if the Court follows the same reasoning. While Respondents respectfully disagree with those decisions, the factual and legal issues presented in this habeas petition do not differ materially from those previously presented. Federal Respondents, therefore, present this abbreviated response in good faith to highlight only new (or revised) arguments for this Court's review, including citations to recent persuasive decisions within the Fifth Circuit ruling in their favor on these issues.

that the entry was unlawful. *Id.* at 13. The bond motion further misstates that he was not detained or apprehended near the border but argues instead that he resided in the United States for “nearly three years” before being taken into custody. *Id.* Neither claim is accurate. *See* Ex. A.

Petitioner presents a copy of his unexpired employment authorization document, but he does not claim that such a document prevents his detention or otherwise bestows him any lawful status, because it does not. ECF No. 1 at 93. The IJ denied bond on January 5, 2026, based on lack of jurisdiction. *See* Exhibit B (IJ Bond Order). Petitioner is scheduled on the detained docket to appear before the IJ in removal proceedings on February 26, 2026.³

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, however, has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release.

A. Petitioner Is an Applicant for Admission Who Was Apprehended Within Two Years of Unlawful Entry and Placed into Full Removal Proceedings In lieu of Expedited Removal.

Government records show that Petitioner was initially arrested within days of his unlawful entry into the United States. Ex. A. Applicants for admission who are apprehended within two years of unlawful entry may be, in the exercise of discretion, processed under expedited removal or placed in full removal proceedings under 8 U.S.C. § 1229a. As an applicant for admission who was intercepted at or near the port of entry within weeks of his unlawful entry, Petitioner is properly designated as an applicant for admission under § 1225(b)(1)(A)(iii)(II). Although DHS could have initiated expedited removal proceedings against him under section (b)(1), the agency

³ *See* EOIR Automated Case Information (last accessed Jan. 16, 2026).

in its discretion chose to place Petitioner into full removal proceedings under § 1229a. *Compare* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) *with* § 1225(b)(2)(A); *see also* *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (clarifying that § 1225(b)(1) encompasses aliens designated by the Attorney General in her discretion under (b)(1)(A)(iii)). *See Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 521, 523 (BIA 2011); 8 C.F.R. § 239.1 (DHS has the discretion to issue an NTA at the port of entry in lieu of expedited removal proceedings). Given these circumstances, there should be no dispute that Petitioner is seeking admission to the United States as an applicant for admission, despite how long he was non-detained during his removal proceedings prior to this apprehension.

Once placed into § 1229a proceedings in the exercise of discretion, the (b)(1) alien is no longer subject to expedited removal, and his detention is governed instead by the “catchall” provision in (b)(2). 8 U.S.C. § 1225(b)(2)(A). The catchall provision further encompasses any applicant for admission not otherwise covered in § 1225(b)(1), including those who were never subject to expedited removal proceedings in the first place because they were first encountered two or more years *after* unlawful entry. *See, e.g., Jennings*, 583 U.S. at 287; *see also Garibay-Robledo v. Noem*, --- F.Supp.3d ---, No. 1:25-CV-177-H, 2026 WL 81679 at *4 (N.D. Tex. Jan. 9, 2026).

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 in more detail 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 detained under § 1226(a) and eligible 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).

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*, 583 U.S. at 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 he is not an applicant for admission, even under the (b)(2) “catchall” provision. Many district courts within the Fifth Circuit agree.⁴

Nor can Petitioner plausibly challenge a DHS’s officer’s determination that he is “seeking admission,” *see* § 1225(b)(2), simply because DHS exercised its discretion by not processing him

⁴ *See e.g.*, *Garabay-Robledo*, 2026 WL 81679 at *4; *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, -- F.Supp.3d --, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.); *De Leon Lopez, et al. v. Ladwig, et al.*, No. 6:25-CV-01884, 2026 WL 19095, W.D. La. Jan. 2, 2026) (Joseph, J.); *Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447 (S.D. Tex. Dec. 31, 2025); *Zuniga v. Lyons*, No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (Hendrix, J.); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.); *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O’Connor, J.); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025) (Truncale, J.); *Rodriguez v. Noem*, No. 9:25-CV-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) (Truncale, J.); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.); *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), (Whitehurst, M.J.), *report and recommendation adopted*, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) (Joseph, J.); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.).

for expedited removal. Indeed, within days of entering the United States unlawfully, a DHS officer apprehended him, processed him, and served him with an NTA charging him as inadmissible to the United States as an alien who had not been admitted or paroled. Ex. A; 8 C.F.R. § 239.1 (allowing DHS to serve an NTA in the exercise of discretion at the port of entry). That he was subsequently released from custody under § 1226(a) for a brief period, either in error or in the exercise of discretion, does not change the fact that he was an applicant for admission at the time he was initially apprehended and remains as such. Petitioner is nonetheless unable to show continuous presence in the United States for the two years preceding his initial apprehension. *See, e.g.*, § 1225(b)(1)(A)(iii)(II).

This Court should navigate these nuanced issues by examining the unambiguous language of the controlling INA provisions in this case. *See Martinez v. Mukasey*, 519 F.3d 532, 541–42 (5th Cir. 2008). The plain language of 8 U.S.C. § 1225 and associated provisions 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)] who could have been subjected to expedited removal [§ 1225(b)(1)(A)(ii)] but for the exercise of DHS’s discretion;⁵ and who, as a result, (3) is subject to mandatory detention while he applies for relief from removal in § 1229a proceedings [§ 1225(b)(2)].⁶

C. Congress Intended to Mandate Detention of All Applicants for Admission, Not Just Those Who Presented for Inspection at a Designated Port of Entry.

⁵ 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.

⁶ To the extent Petitioner challenges an officer’s findings regarding his admissibility under § 1225(b)(1), that challenge must be raised in removal proceedings and reviewed only by the circuit court of appeals. 8 U.S.C. §§ 1225(b)(4); 1252(b)(9).

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.* Petitioner’s interpretation, however, would repeal the statutory fix that Congress made in IIRIRA. *Id.* 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)).

This administration’s interpretation of mandatory detention of all applicants for admission only 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). ICE 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.

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. 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); *see also Vargas v. Lopez*, 2025 WL 2780351 at *4–9; *Chavez v. Noem*, 2025 WL 2730228 at *4–5. Nothing in the plain language of § 1226(a) entitles an applicant for admission to a bond hearing, much less release.

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.

D. Petitioner Does Not Overcome Jurisdictional Hurdles.

Where an alien, like this Petitioner, challenges the decision to detain him while seeking 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, Petitioner is challenging the decision to detain him for removal proceedings in the first place. *See id.*

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. Just like Petitioner, the alien in *Thuraissigiam* was on “the threshold of entry” as an applicant for admission detained under § 1225(b)(1)(A). Although Petitioner was issued an NTA and the alien in *Thuraissigiam* was not, both are nonetheless

applicants for admission as defined by § 1225(a)(1), and *Thuraissigiam* remains binding. In any event, Petitioner is not entitled to more process than what Congress provided by statute, regardless of the applicable statute. *Id.*; *see also Jennings*, 583 U.S. at 297–303.

Most importantly for this discussion, Petitioner’s detention is not unreasonably prolonged or indefinite, as he remains in removal proceedings which have a definite ending point. While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioner has not articulated such a claim where he has been detained for only a brief period pending his full removal proceedings. He was given a bond hearing wherein he had an opportunity to be heard on his categorization as an applicant for admission subject to mandatory detention, and he enjoys robust constitutional protections in full removal proceedings that the Supreme Court has repeatedly found constitutional for detained aliens. As applied here to Petitioner, mandatory detention under § 1225(b)(2) during full removal proceedings does not violate due process.

III. Conclusion

The Court should deny the Petition.

Respectfully submitted,

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