United States District Court
Western District of Texas
San Antonio Division

Leidys Damaris Lahera Lopez, Petitioner, v. Kristi Noem, Secretary, *et al*, Respondents.	Case No. 5:26-CV-00099-JKP

Response to Petition for Writ of Habeas Corpus and Opposition to Motion for Temporary Restraining Order

Federal[1] Respondents provide the following timely response[2] to Petitioner's habeas petition and her accompanying motion for temporary restraining order (TRO). 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 and the TRO motion without the need for an evidentiary hearing.

II. Relevant Facts and Procedural History

Petitioner is a citizen of Cuba who was apprehended within two years of unlawful entry into the United States, served with a Notice to Appear (NTA) in immigration court in the exercise of discretion, and released. *See, e.g.*, ECF No. 1 ¶¶ 2–3; ECF No. 1-1 at 2–3. Petitioner last entered the United States without inspection in or about October 11, 2022. *Id.* Petitioner alleges she was

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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. This Court's prior decisions on these issues 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 in similar cases. Federal Respondents, therefore, present this abbreviated response in good faith, highlighting certain arguments and providing updated citations to recent persuasive decisions within the Fifth Circuit ruling in their favor on these issues.

taken back into immigration custody on September 9, 2025. *Id.* She challenges her mandatory detention during removal proceedings, claiming that her detention should be governed by 8 U.S.C. § 1226(a), not § 1225(b). *Id.* ¶ 5. Petitioner challenges not only her detention, but her re-arrest. *Id.* ¶¶ 100–102. Petitioner brings her claims not only in habeas, but also under the Administrative Procedure Act (APA), the Fifth Amendment, the Suspension Clause, and the *Accardi* Doctrine. Petitioner, however, did not pay the filing fee for any claims other than her habeas claim.

An Immigration Judge (IJ) denied Petitioner's bond motion on January 2, 2026, and she reserved appeal of that decision, which is due at the Board of Immigration Appeals (BIA) on or before February 2, 2026. ECF No. 1-1. The IJ ordered Petitioner's removal on or about January 7, 2026, and she reserved appeal of that decision. *See* ECF No. 1 ¶ 7. Her appeal is due at the BIA on or before February 6, 2026, and her removal proceedings, therefore, remain pending.[3]

On January 12, 2026, this Court stayed any anticipated removal or transfer of this Petitioner until further Court order, an order which necessarily grants one of the two substantive requests for relief in the TRO motion. *See* ECF Nos. 2, 3. The remaining substantive request for relief is the ultimate relief sought in the habeas petition itself: a bond hearing with an inverted burden and heightened standard of proof. ECF No. 2 at 6. The TRO motion should be denied.

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 her to reside lawfully in the United States upon release. Any claims outside of habeas should be dismissed or severed upon the payment of the appropriate filing fee. *See Nudzi v. Castro*, No. SA–20–CV–

[3] *See* EOIR Automated Case Information (last accessed Jan. 20, 2026).

0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020). To the extent Petitioner seeks relief in her TRO motion that mirrors the ultimate relief she seeks, Petitioner is not entitled to that relief, as the TRO motion is intended only to preserve the status quo, not provide ultimate relief. *See, e.g., Ramos v. de Anda-Ybarra*, No. 3–CV–00503–LS, 2025 WL 3220100 at *1 (W.D. Tex. Nov. 7, 2025).

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.

Petitioner concedes, and government records confirm, that Petitioner was initially arrested near the border, contemporaneously with her unlawful entry into the United States. 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 contemporaneously with an 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 under section (b)(1), the agency 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, regardless of how long she was non-detained during 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 she – an applicant apprehended and processed for removal proceedings within a day of her unlawful entry – 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 she is "seeking admission," *see* § 1225(b)(2), simply because DHS exercised its discretion by not processing her for expedited removal. Indeed, within days of entering the United States unlawfully, a DHS officer apprehended, processed, and served an NTA charging her as inadmissible to the United States as an alien who had not been admitted or paroled. ECF No. 1-1; 8 C.F.R. § 239.1 (allowing DHS to serve an NTA in the exercise of discretion at the port of entry). That she 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 she was an applicant for admission at the time she was initially

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[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.).

apprehended and remains as such; indeed, Petitioner is unable to show continuous presence in the United States for the two years preceding her initial (2022) apprehension. *See, e.g.*, § 1225(b)(1)(A)(iii)(II).

This Court should examine the unambiguous language of the controlling INA provisions in this case to analyze their meaning in the proper context. *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 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 she 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.

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,

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[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 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).

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.3d1092, 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 her while seeking a removal order, or if an alien challenges any part of the process by which 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 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 she 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 she has been detained for only a brief period pending full removal proceedings. She was given a bond hearing wherein she had an opportunity to be heard on her categorization as an applicant for admission subject to mandatory detention, and she 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 and the TRO motion.

Respectfully submitted,

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