United States District Court
Western District of Texas
El Paso Division

Denis Duran Aguila,
Petitioner,

v.

Warden, ERO El Paso Camp East Montana, *et al.*,
Respondents.

Case No. 3:26-CV-00241-KC

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] 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 he 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 was issued 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 the application for asylum.' 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii).

Petitioner asserts that he was never subject to expedited removal. *See* ECF No. 1 at ¶ 17. This is not accurate, as reflected in the NTA issued on December 6, 2025, which states that Petitioner demonstrated a credible fear to the asylum officer. *See* Exh. A, NTA at 1 (redacted). 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 Cuba who was apprehended upon his unlawful entry into the United States in 2022 and was released on his own recognizance. ECF Nos. 1 at ¶¶ 1, 7; 1-2 at Exh. 1. Petitioner was later detained on or about July 9, 2025. ECF No. 1 at ¶ 3. On or about December 6, 2025, he was issued a Notice to Appear after an asylum officer determined that Petitioner demonstrated a credible fear of persecution or torture. *See* Exh. A, at 1; 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii). Petitioner was subject and placed in expedited removal proceedings under INA § 235, 8 U.S.C. § 1225(b)(1). *See* Exh. A.

**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 2025 NTA shows he 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. *See* Exh. A. As an applicant for admission, 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 he is not an applicant for admission, as when he unlawfully entered the United States, he was placed in expedited removal. 8 U.S.C. § 1225(b)(1). That he was subsequently released from custody, does not change the fact that he was an applicant for admission at the time he 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 him in the first place or to 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, 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 after encountering him upon unlawful entry at the border. *See id.*

Even if the alien claims he 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 he is an applicant for admission subject to removal under § 1225(b), any claim challenging his 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 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

[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. § 1225(b)(4).

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 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). 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).

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 he has been detained for only a brief period pending his 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.

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

**IV. Conclusion**

Petitioner is lawfully detained under statue because he 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. The Court should deny the Petition.

Respectfully submitted,

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