

United States District Court
Western District of Texas
San Antonio Division

Jose Eduardo Acosta Ortega,
Petitioner,

v.

Todd Lyons, Acting Director Immigration
Customs and Enforcement *et. al.*,
Respondents.

No. 5:25-CV-00632-XR-RBF

**Federal Respondents' Response to
Petitioner's Writ of Habeas Corpus**

Federal Respondents timely submit this response per this Court's Order dated June 12, 2025, directing service and ordering a response within 30 days. *See* ECF Nos. 3. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Garcia ("Petitioner") seeks release from civil immigration detention, claiming that his immigration detention is unlawful. *See* ECF No. 1. Petitioner, who remains in removal proceedings before the Immigration Court, filed this petition after less than two weeks in detention. *Id.*

Petitioner claims that his pre-removal-order detention is unlawful because he alleges that (1) he was taken back into custody without having violated any conditions of release, and (2) he is being held without bond. ECF No. 1, at 6-7. In his Prayer for Relief, Petitioner seeks an order for Respondents to: (1) release him from detention; (2) prohibit his transfer outside of the jurisdiction of the Court; and (3) grant, in the alternative, release upon payment of a \$1,500 bond. *Id.* at 8. This petition should be denied. Respondent is lawfully detained in removal proceedings as an alien present in the United States without inspection or parole. *See* Ex. A (Bond Order); INA § 212(a)(6); 8 U.S.C. § 1182(a)(6).

I. Facts and Procedural History

Petitioner is a native and citizen of Venezuela. Ex. A (Bond Order). He entered the United States unlawfully in November 2021 and was apprehended “immediately” after crossing the southern land border. *Id.* Shortly following his apprehension, Petitioner was released from custody. *Id.* On May 27, 2025, ICE took Petitioner into custody when he appeared for his routine check-in with ICE. ECF No. 1.

Petitioner requested and received a bond hearing by an Immigration Judge, and the Court denied bond, finding that his detention is mandated by statute under INA § 235; 8 U.S.C. § 1225. Ex. A (Bond Order) (finding bond ineligibility because alien is “an applicant for admission who was arrested and detained without warrant while arriving in the United States, and subsequently placed in removal proceedings and detained under [INA § 235].” *Id.* (citing *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)). The order indicates that Mr. Acosta reserved appeal of the Court’s decision. *Id.*

II. This Claim is Barred Because Plaintiff Has Not Exhausted Administrative Remedies.

Whether Petitioner is subject to release on bond under INA § 236, 8 U.S.C. § 1226(a), or whether the record shows that he is properly detained under § 1225(b), and, therefore, ineligible for release on bond, is a factual and a legal question that is not ripe for review. Petitioner reserved appeal, and assuming he timely filed a notice of appeal, the issue is pending before the Board of Immigration Appeals (BIA) on administrative review of Petitioner’s immigration judge bond denial.

Petitioner must exhaust administrative remedies prior to raising this issue in district court. *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018). Appealing to the BIA is not futile in this case, because the issue on appeal is whether, as a factual matter, Petitioner falls within the scope

of *Matter of Q. Li*, or whether the record shows that he should be considered detained under § 1226(a). In the event the BIA finds that he is not within the scope of *Matter of Q. Li*, he will be eligible for a bond hearing under § 1226(a), which is the relief he seeks in this petition. *See* ECF No. 1 at 8. In other words, the BIA can provide Petitioner the remedy he seeks, such that exhaustion of remedies is not futile in this case. *See Petgrave v. Aleman*, 529 F.Supp.3d 665, 672 n. 14 (S.D. Tex. 2021) (finding futility where the BIA could not remedy the constitutional claim and where the detention had already become prolonged). This habeas petition is premature and must be denied.

III. This Court Lacks Jurisdiction to Review This Custody Decision.

The government's detention decisions are not subject to review. 8 U.S.C. § 1226(e). No court, even in habeas review, may set aside any decision regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole. *Id.* § 1252(a)(5). Additionally, "no court shall have jurisdiction to hear 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). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The decision to arrest Petitioner is intertwined with the decision to commence removal proceedings against him. As such, Petitioner's attack on ICE's decision to revoke his release and re-detain him should be denied for lack of subject matter jurisdiction.

While "the Fifth Amendment entitles aliens to due process of law in deportation proceedings, ... this Court has recognized detention during deportation proceedings as a

constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in this habeas petition that Petitioner’s detention without bond is unconstitutional. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). Petitioner is being lawfully detained and charged with removability for unlawfully entering and remaining in the country without authorization. 8 U.S.C. § 1182(a)(6).

Still, Petitioner argues that his detention violates due process on the ground that he is entitled to a bond. But 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). The Supreme Court has held that applicants for admission such as Petitioner are entitled only to the protections set forth by statute and that “the Due Process Clause provides nothing more.” *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Petitioner has already argued his bond eligibility to an immigration judge, and the immigration judge found that he was subject to mandatory detention under § 1225. Ex. A (Bond Order). He reserved appeal of that decision, and the BIA has the authority to rule on whether he falls within the scope of *Matter of Q. Li* or whether he is entitled to a bond hearing under § 1226(a).

Moreover, administrative appeal is not futile in this case, because the parties dispute which statute applies to govern Petitioner’s detention during removal proceedings. The BIA will necessarily decide whether the applicable detention statute here is § 1226(a) or § 1225(b). Even if the BIA finds that the facts of this case render *Matter of Q. Li* applicable to Petitioner such that his bond denial was proper, the question for this Court would be whether the statute mandating detention without bond is constitutional as applied to Petitioner. In other words, the question for this Court is not whether § 1226(a) is the appropriate detention statute based on the facts of this

case. Instead, the question for this Court is whether detention under § 1225(b) is constitutional as applied to him. Aliens determined to be applicants for admission are granted only the constitutional protections afforded to them by statute. Even if the Board upholds the bond denial here under INA § 1225, this Court's review is limited under *Thuraissigiam* to whether ICE is providing due process of law to Petitioner within the scope of § 1225. Until that appeal is decided, the claim is not ripe for review in this Court.¹

IV. Conclusion

Petitioner is lawfully detained pending removal proceedings. He was already afforded a bond hearing, and his appeal of that decision is pending. Accordingly, the Court should deny this petition for failure to exhaust administrative remedies.

Respectfully submitted,

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¹ To the extent this Court rejects Respondents' exhaustion argument, Respondents respectfully request additional time to prepare and file a supplemental brief on the merits