UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

GLADIS CHAVEZ-PINEDA — PETITIONER

v. — NO. 4:25-CV-49-RGJ

KRISTI NOEM, in her Official Capacity as Secretary, Department of Homeland Security;
SAMUEL OLSON, in his Official Capacity as Field Office Director for U.S. Immigration and Customs Enforcement;
JASON WOOSELY, in his Official Capacity as Grayson County Jailer — RESPONDENTS

RESPONDENTS' MOTION TO DISMISS AND RESPONSE TO SHOW CAUSE ORDER[1]

Petitioner was not detained because Immigration and Customs Enforcement (ICE) officials revoked an order of supervision. Rather, Petitioner was detained because her removal was administratively final under 8 U.S.C. § 1231(a), and ICE sought to execute the order of removal. After Petitioner was detained, she sought a stay of her removal order from the Seventh Circuit Court of Appeals. That stay has now been granted, meaning her detention is authorized by 8 U.S.C. § 1226(a) instead of 8 U.S.C. § 1231(a). That distinction is significant. An immigration judge now has the power to consider a bond request should Petitioner seek such relief. That is to say, Petitioner has

[1] This combined response to show cause and motion to dismiss is filed on behalf of Respondents Kristi Noem and Samuel Olson. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute, this filing attends to the United States' interests to the extent that the petition names Jason Woosely, the Grayson County Jailer, as a respondent.

not exhausted her administrative remedies. Consequently, the Court should dismiss her petition.

FACTUAL BACKGROUND

I. Petitioner crossed the Mexico/United States Border illegally, and she was apprehended and placed in removal proceedings.

Petitioner was first encountered by a Border Patrol agent on June 16, 2015, after she unlawfully entered the United States from Mexico. [**Exhibit 1**, Form I-213, Record of Deportable/Inadmissible Alien.] When she was detained, Petitioner admitted that she was a Honduran citizen who lacked any legal documents permitting her entry into the United States and that she was not inspected by an immigration officer at a port of entry. [*Id.* at 3-4.] Petitioner was then processed for expedited removal, and in July 2015, she was released from detention. [Complaint, ¶ 16.]

II. Petitioner's asylum petition was denied, and her appeals were denied too, so she was ordered to be removed.

Petitioner sought asylum in July 2015. In 2021, her asylum application was denied by an immigration judge, and she was ordered to be removed. [Complaint, ¶¶ 16-17.] Petitioner appealed that decision to the Board of Immigration Appeals (BIA), but it dismissed Petitioner's appeal, affirming the immigration judge's decision. [Complaint, ¶ 17.] Petitioner appealed the BIA decision affirming her order of removal and denying her petition for asylum to the Seventh Circuit Court of Appeals in 2024. *Chavez-Pineda v. Garland*, 24-2224 (7th Cir. July 17, 2024). That matter is still pending, but it has been consolidated with a second appeal of a BIA decision related to Petitioner's immigration status and its connection to her minor daughter, which Petitioner filed in

February 2025. [Complaint, ¶¶ 17-18]; *see also Chavez-Pineda v. Bondi*, 25-1278, DN 1 (7th Cir. Feb. 20, 2025)). In the consolidated action, on June 5, 2025, Petitioner filed a motion to stay her removal. *See Chavez-Pineda*, 25-1278, DN 11 (7th Cir. June 5, 2025). On that same day, the Seventh Circuit granted Petitioner a temporary stay until the motion to stay is resolved. *Id.*, DN 12 (7th Cir. June 5, 2025).

III. Petitioner was detained by ICE to execute the final order of removal.

On June 4, 2025—the day before Petitioner sought a stay of her removal from the Seventh Circuit—Petitioner was detained because her removal order was administratively final. [**Exhibit 2**, Carly Schilling Declaration, ¶ 10.] Petitioner was not under an order of supervision when she was detained. [*Id.*] Her detention was not due to a revocation of an order of supervision. [*See id.*] Petitioner was initially detained under the authority of 8 U.S.C. § 1231(a)(1)(B)(i). [*See id.*] However, after the Seventh Circuit granted Petitioner's motion to stay her removal, the authority for Petitioner's detention shifted to 8 U.S.C. § 1226(a). *See J.L. v. Decker*, 2024 WL 232115, 2024 U.S. Dist. LEXIS 10894, at *8-9 (S.D.N.Y. Jan. 22, 2024).

JURISDICTION AND LEGAL STANDARD

Petitioner asserts that the Court has subject matter jurisdiction over this action on several grounds, [Complaint, ¶ 12] but jurisdiction over this action rests only on 28 U.S.C. § 2241. To obtain habeas relief under that statute, Petitioner must not merely show that she is in custody, but instead, she must prove that she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner also bears the "burden of establishing [her] right to federal

habeas relief and of proving all facts necessary to show a constitutional violation." *Caver v. Straub*, 349 F.3d 340, 351 (6th Cir. 2003) (quotation omitted).

Contrary to Petitioner's claim, the All Writs Act does not provide jurisdiction: "The All Writs Act, 28 U.S.C. § 1651, is not an independent grant of jurisdiction to a court, but permits the issuance of writs in aid of the jurisdiction which a court independently possesses." *Yisra'EL v. U.S. Dep't of Justice*, 2011 U.S. Dist. LEXIS 107806, 2011 WL 4458772, at *3 (E.D. Ky. Sept. 23, 2011). Neither do the Administrative Procedure Act or the Immigration and Nationality Act provide for jurisdiction. The APA explicitly excludes any judicial review "to the extent that—(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(1)-(2). The INA, at 8 U.S.C. § 1226(e), states that the agency's decision to detain under § 1226(a) is committed to the agency's discretion and is not subject to review.

LEGAL FRAMEWORK FOR REMOVAL AND REMOVAL DETENTION

8 U.S.C. § 1231, part of the INA, governs the detention of aliens who are subject to orders of removal. Section 1231(a)(2) states that the government "shall detain the alien" once the "removal period" commences, which, in this case, occurred when Petitioner's order of removal became administratively final. § 1231(a)(1)(B)(i). If an individual files a motion to stay removal while she seeks judicial review of the administrative decision, the removal period ceases. *Id.* "Prior to this *final* order, the noncitizen remains 'detained pending a decision' on removal and is held under § 1226(a), not § 1231." *Decker*, 2024 U.S. Dist. LEXIS 10894, at *9. When that situation arises, "a detainee may enter the removal period more than once—when the BIA

affirms and then later when the Circuit affirms—with the statutory authority governing detention likewise shifting." *Id.* In this case, the shifting authority for detention is significant. Now that Petitioner's motion to stay has been granted, and the authority for her detention falls under § 1226(a), she is permitted to seek a bond hearing before an immigration judge. *Martinez v. Larose*, 968 F.3d 555, 557 (6th Cir. 2020) ("aliens detained under § 1226(a) are entitled to bond hearings before an immigration judge (IJ) under the federal regulations, while aliens detained under § 1231(a) do not have a right to a bond hearing.").

ARGUMENT

I. Petitioner has not exhausted her administrative remedies, so her petition should be dismissed.

Petitioner was not detained on June 4, 2025, due to revocation of an order of supervision, as she alleges. Petitioner was released from custody in 2015 without an order of supervision. [**Ex. 2**, ¶ 10.] She was detained in June 2025 under 8 U.S.C. § 1231 because her order of removal was "administratively final." [*Id.*] On the next day, Petitioner filed a motion to stay with the Seventh Circuit, which was promptly granted. *Chavez-Pineda*, 25-1278, DN 12 (7th Cir. June 5, 2025). The Seventh Circuit's grant of a stay shifted the custodial authority from ICE to an immigration judge and shifted the statutory authority for detention from § 1231 to § 1226(a). *See* 8 U.S.C. § 1226; *see also Martinez*, 968 F.3d at 559-61; *Stone v. Dep't of Homeland Sec.*, 2006 U.S. Dist. LEXIS 27329, at *5 (D.N.J. May 9, 2006) (explaining that because the petitioner obtained a stay of removal, the "post-order removal period does not begin until the Court decides the

petition for review"); *see also Njai v. Gonzales*, 2007 U.S. Dist. LEXIS 54440, at *9 (D. Ariz. July 26, 2007) (explaining that the authority to detain under § 1231(a) [did] not apply to Petitioner because his 90-day removal period began only after the Ninth Circuit issues its 'final order' on his petition for review).

"An alien detained pursuant to § 1226(a) is entitled to an individualized hearing before an [immigration judge] to determine whether detention is necessary during the course of his immigration proceedings." *Martinez*, 968 F.3d at 560 (citing 8 C.F.R. § 236.1(d)(1)). "An alien detained under § 1226(a) may be released on bond if he "demonstrates that such release would not pose a danger to property or persons, and that he is likely to appear for any future proceeding." *M.T.B. v. Byers*, 2024 WL 3881843, 2024 U.S. Dist. LEXIS 148118, at *12 (E.D. Ky. Aug. 20, 2024) (citing 8 C.F.R. § 236.1(c)(8)).

Courts have held that in situations like this one a petitioner must exhaust her administrative claims as a prudential matter before detention may be challenged in federal court by a habeas petition. In a case decided last week, a court elaborated. First, the court explained that even though 28 U.S.C. § 2241 does not include an exhaustion requirement, "[a] habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. *Lachapel v. Joyce*, 2025 WL 1685576, 2025 U.S. Dist. LEXIS 115808, at *7 (S.D.N.Y. June 16, 2025) (quoting *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y. 2018)); *see also Mukhamadiev v. U.S. Dep't of Homeland Sec.*, 2025 WL 1208913, 2025 U.S. Dist. LEXIS 79308, at *7-8 (S.D. Cal. Apr. 25, 2025); *Jones v.*

Boynton, 2008 WL 4682577, 2008 U.S. Dist. LEXIS 105902, at *2 (W.D. Mich. Oct. 22, 2008) (citations omitted). The *Lachapel* court explained:

> If the immigration judge releases Petitioner on bond, his petition would be moot. And even if the immigration judge denies bond, Petitioner's petition could be mooted if the Board of Immigration Appeals reverses that determination. Because Petitioner's potential bond hearing may provide him with the relief that he seeks—*i.e.*, his release—this Court concludes in the exercise of its discretion that Petitioner must exhaust these avenues before seeking judicial relief.

Lachapel, 2025 U.S. Dist. LEXIS 115808, at *8 (quoting *Michalski*, 279 F. Supp. 3d at 496) (cleaned up).

This Court should deny Petitioner's request for habeas relief. An immigration judge will review ICE's custody decision if Petitioner makes her case in that forum. The Court should order Petitioner to exhaust her administrative remedies with the agency before seeking judicial intervention.

CONCLUSION

For the foregoing reasons, Petitioner's habeas petition should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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