United States District Court
Western District of Texas
San Antonio Division

Katy Lorena Grimaldo-Prieto,
Petitioner,

v.

Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*,
Respondents.

No. 5:25-CV-00815-JKP-HJB

Federal[1] Respondents' Response to Petitioner's Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order dated July 18, 2025, ordering a response by July 28. *See* ECF Nos. 5. In her petition for writ of habeas corpus under 28 U.S.C. § 2241, Ms. Grimaldo-Prieto ("Petitioner") seeks release from civil immigration detention, claiming that her immigration detention is unlawful. *See* ECF No. 1. Petitioner, who remains in removal proceedings before the Immigration Court, filed this petition after less than a month in detention. *Id.*

Petitioner claims that her pre-removal-order detention is unlawful because she is being held without bond under INA § 235, 8 U.S.C. § 1225, contrary to INA § 236(a), 8 U.S.C. § 1226(a). ECF No. 1. Petitioner alleges only two violations stemming from her current immigration

[1] The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. The Federal Respondents, however, have detention authority over aliens detained under 8 U.S.C. § 1231(a).

detention that are cognizable[2] in habeas: (1) substantive due process; and (2) procedural due process. *Id.* In her Prayer for Relief, Petitioner seeks an order for Respondents to: (1) release her from detention; or (2) grant, in the alternative, a bond hearing with an Immigration Court. *Id.* at 11. This petition should be denied. Petitioner is lawfully detained in removal proceedings as an alien present in the United States without inspection or parole. Whether she is properly detained under INA § 235 or INA § 236 is a statutory interpretation issue that must be exhausted administratively before the Board of Immigration Appeals ("BIA") prior to this Court reviewing the constitutionality of the detention statute as applied to this alien.

[2] Petitioner further alleges that she is entitled to injunctive relief, but she did not file a motion for preliminary injunction. *See* ECF No. 1 at 8–9, ¶¶ 27–29. Even if she had properly lodged a motion under Rule 65, Federal Respondents deny that Petitioner is likely to succeed on the merits of her claim that her detention is unlawful, as she has been detained less than two months while she is pending removal proceedings. Her detention is not prolonged, and she has not shown that she is entitled to release from custody. At most, Petitioner claims she is entitled to a bond hearing, but she has already been given a bond hearing and denied bond. She reserved appeal, which must be exhausted before this Court can weigh in on whether the detention authority, as applied to her, is within the bounds of the Constitution. If the BIA finds the immigration judge erred in including Petitioner within the scope of *Matter of Q. Li,* for example, Petitioner will be given another bond hearing, and this issue will be moot. It is, therefore, premature for this Court to decide the issue, and Petitioner is unlikely to succeed.

Petitioner further claims that Federal Respondents' conduct violates the Administrative Procedure Act ("APA"), but she has not paid the filing fee associated with any claims outside of the scope of habeas relief. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). The $5 filing fee "relegates this action to habeas relief only," because one "cannot pay the minimal habeas fee and pursue non-habeas relief." *Id.* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3.

Finally, Petitioner claims entitlement to attorney fees under the Equal Access to Justice Act ("EAJA"), but the Fifth Circuit no longer recognizes EAJA fees in the habeas context. *See Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

I. Facts and Procedural History

Petitioner is a native and citizen of Venezuela. ECF No. 1-3 at 6 (NTA). She entered the United States unlawfully in October 2021 and was neither admitted nor paroled after inspection *Id.* Shortly following his apprehension, Petitioner was released from custody via an Order of Release on Recognizance. *Id.* at 1–3 (OREC).

In June 2025, ICE took Petitioner into custody when she appeared for a routine check-in with ICE. ECF No. 1 at 6 ¶ 15. Petitioner requested and received a custody review hearing with an immigration judge, and on June 20, 2025, the immigration judge found her to be subject to mandatory detention as "an applicant for admission," as defined by the BIA in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and therefore subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b). *Id.* ¶ 16; *see also* Exhibit A (Bond Order). The order indicates that Petitioner reserved appeal of the Court's decision. Ex. A (Bond Order). The Petition, however, is silent as to whether she is pursuing appeal. *See, e.g.,* ECF No. 1 at 7–8 ¶¶ 22–26 (arguing instead that any appeal would be futile).

II. This Claim is Premature 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 she 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 of the bond denial, and assuming she 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 she should be considered detained under § 1226(a). In the event the BIA disagrees with the immigration judge regarding the scope of *Matter of Q. Li* as applied to Petitioner, she will be eligible for a bond hearing under § 1226(a), which is the relief she seeks in this petition. In other words, the BIA can provide Petitioner the remedy she 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 her. As such, Petitioner's attack on ICE's decision to revoke her release on recognizance and detain her during removal proceedings 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 her detention violates due process on the ground that she 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 her bond eligibility to an immigration judge, and the immigration judge found that she was subject to mandatory detention under § 1225. Ex. A (Bond Order). She reserved appeal of that decision, and the BIA has the authority to rule on whether she falls within the scope of *Matter of Q. Li* or whether she is entitled to a bond hearing under § 1226(a). *Id.*

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 her 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 on a mandatory basis under § 1225(b) is constitutional as applied to Petitioner. 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 § 1225(b), this Court's review is limited under *Thuraissigiam* to whether ICE is providing due process of law to Petitioner within the scope of § 1225(b). Until that appeal is decided, the claim is not ripe for review in this Court.[3]

IV. Conclusion

Petitioner is lawfully detained pending removal proceedings, and she does not claim any immigration status that would entitle her to release from custody. She was already afforded a bond hearing, and she reserved her appeal of that decision. Accordingly, the Court should deny this petition for failure to exhaust administrative remedies.

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

Respectfully submitted,

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