UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

KATY LORENA GRIMALDO-PRIETO	§	
	§	
Petitioner,	§	
	§	
VS.	§	**SA-25-CV-815-JKP (HJB)**
	§	
PAMELA JO BONDI,	§	
United States Attorney General,	§	
KRISTI LYNN NOEM,	§	
Secretary of the United States	§	
Department of Homeland Security	§	
TODD M. LYONS	§	
Acting Director of United States	§	
Immigration and Customs Enforcement	§	
SYLVESTER M. ORTEGA,	§	
Field Office Director for	§	
U.S. Immigration and Customs Enforcement	§	
WAYMON BARRY, Warden,	§	
Karnes County Detention Facility	§	
UNITED STATES DEPARTMENT	§	
OF HOMELAND SECURITY;	§	
	§	
Respondents.	§	

Petitioner's Reply to the Respondents' Response to Petitioner's Writ of Habeas Corpus

Contrary to the government's response, this case does not turn on any disputed fact. All parties agree on the timeline of events that occurred in this matter. On or about October 31, 2021, petitioner Grimaldo-Prieto entered the United States without inspection. The Department of Homeland Security ("DHS") then issued an arrest warrant under section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226. ECF No. 1-3 at 9. Thereafter, DHS issued her a Notice to Appear for removal proceedings. Id. at 6. DHS subsequently released Petitioner on her own recognizance under section 1226. *Id.* at 1. DHS never invoked 8 U.S.C. § 1225(b), issuing no Form I-867AB or I-860. Nearly four years later, in June 2025, DHS detained Petitioner when she

reported for a routine supervisory appointment. When Petitioner requested a bond hearing, the immigration judge relied on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), holding the immigration court lacked legal authority under § 1225(b) to conduct a custody redetermination hearing. The government does not dispute the preceding.

As there is no factual dispute, this matter requires this Court to make a purely legal determination: Which statutory scheme governs Petitioner's detention? Petitioner asserts the undisputed facts make the answer clear. From the outset, DHS proceeded under section 1226(a) and chose not to invoke section 1225(b)'s inspection process. Petitioner argues the following in support of thereof:

I. The Petition is not premature because it concerns the application of legal standards to undisputed facts.

The government's characterization of this case as presenting a "factual" determination is fundamentally incorrect under *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1067-68 (2020), which definitively establishes that applying law to undisputed facts constitutes a pure question of law subject to habeas review. The Supreme Court in *Guerrero-Lasprilla* made clear that the application of legal standards to established facts is not a mixed question of law and fact, but rather a pure question of law, stating "[a]fter we decided St. Cyr, numerous Courts of appeals held that habeas review included review of the application of law to undisputed facts." 140 S.Ct. at 1072. The Court then cited with approval multiple circuit court decisions establishing this principle:

> *See Cadet v. Bulger*, 377 F.3d 1173, 1184 (CA11 2004) ("[W]e hold that the scope of habeas review available in [28 U. S. C.] § 2241 petitions by aliens challenging removal orders ... includes ... errors of law, including both statutory interpretations and application of law to undisputed facts or adjudicated facts"); *Ogbudimkpa v. Ashcroft*, 342 F.3d 207, 222 (CA3 2003) (same); *Mu-Xing Wang v. Ashcroft*, 320 F.3d 130, 143 (CA2 2003) (same); *Singh v. Ashcroft*, 351 F.3d 435, 441–442 (CA9 2003) ("[O]ther courts have rejected the Government's argument that only 'purely legal questions of statutory interpretation' permit the exercise of habeas jurisdiction.... We agree with those rulings").

Id. at 1072. The Court further explained that Congress was aware of this well-established precedent when enacting jurisdictional limitations. *Id.* Because Congress intended "questions of law" to include the application of legal standards to established or undisputed facts, the government cannot now argue that such determinations are beyond the scope of habeas review.

Here, the parties agree on the underlying facts: Petitioner's initial arrest and subsequent release on recognizance pursuant to § 1226(a), service of an NTA, and the absence of a Form I-867AB or I-860. The only question is the legal consequence of these undisputed facts: whether they trigger detention under § 1226(a) or § 1225(b). This is precisely the type of pure legal question that *Guerrero-Lasprilla* confirms is appropriate for habeas review. The government's attempt to recharacterize this legal determination as a "factual" question about whether Petitioner "falls within the scope of *Matter of Q. Li*" cannot escape the Supreme Court's clear holding.

II. The Petitioner has a liberty interest in her freedom from detention and raises a colorable claim that her substantive and procedural due process rights were violated.

Application of § 1225(b)'s mandatory detention provisions under the circumstances of the instant case violates the Petitioner's substantive and procedural due process rights because it precludes her from receiving an individualized bond hearing pursuant to § 1226(a) as to whether she should be released on bond. As noted by the Supreme Court:

> The Fifth Amendment's Due Process Clause forbids the Government to "depriv[e]" any "person . . . of . . . liberty . . . without due process of law." Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects. *See Foucha v. Louisiana*, 504 U. S. 71, 80 (1992).

Zadvydas, 533 U.S. at 690. The Petitioner does not challenge a discretionary decision made by the government pursuant to § 1226(a) regarding her detention or release. The Supreme Court has made clear that the limitation of § 1226(e) "applies only to 'discretionary' decisions about the

'application' of § 1226 to particular cases." *Nielsen v. Preap*, 139 S.Ct. 954, 962 (2019). Instead, she challenges the statutory framework relied upon by the government to detain her mandatorily, and such a challenge is not precluded by 8 U.S.C. § 1226(e). *Demore v. Kim*, 538 U.S. 510, 517 (2003). Section 1226(e) does not block challenges to "the extent of the Government's detention authority under the 'statutory framework' as a whole." *Jennings v. Rodriguez*, 138 S.Ct. 830, 841 (2018). Additionally, "[s]ection 1226(e) contains no explicit provision barring habeas review." *Demore*, 538 U.S. at 517. Therefore, contrary to the government's response, the Petitioner raises a colorable claim that the government's erroneous conclusion that she is subject to mandatory detention violates her substantive and procedural due process rights.

Furthermore, pursuant to 28 U.S.C. § 2241(c), this Court has jurisdiction over a petition for habeas relief when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). As acknowledged by the government's response, the Petitioner raises substantive and procedural due process claims that are cognizable in habeas review. ECF No. 6 at 2. Insofar as Petitioner is in custody within the Court's jurisdiction and asserts her continued detention violates due process, the Court has jurisdiction over her claims. *See Zadvydas v. Davis*, 533 U.S. 678, 699 (2001); *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

Similarly, the government's argument that section 1252(g) precludes review also fails. Without support, the government contends "[t]he decision to arrest Petitioner is intertwined with the decision to commence removal proceedings against her." ECF No. 6 at 4. The Petitioner does not contest, however, DHS's decision to initiate removal proceedings against her. Instead, she challenges the government's errant legal determination that she is subject to mandatory detention under § 1225(b). The government cites to no legal authority to support its contention that its decision to arrest is intertwined with the decision to commence removal proceedings, nor can they.

The government also misreads § 1252(a)(5) in arguing that no court, even in habeas review, may set aside any decision regarding the detention or release of a noncitizen. ECF No. 6 at 4. Section 1252(a)(5) provides that "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review **of an order of removal.**" (emphasis added). The Petitioner has not been ordered removed. Her habeas petition addresses the deprivation of due process that has resulted in her continued unlawful detention; it does challenge an order of removal. Section 1252(a)(5) is therefore inapplicable.

The government attempts to rely on *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983), but that case involved whether an inmate has a due process right to remain in a particular prison, even if transferred across state lines. The *Olim* decision does not directly address the Petitioner's claim that the government's misapplication of § 1225(b)'s mandatory detention provision violates her rights to due process. The government's reliance on Olim is therefore misplaced.

Moreover, the Supreme Court's decision in *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959 (2020) does not limit this Court's review to whether the government provided adequate due process within the scope of § 1225(b). ECF No. 6 at 6. In this regard, the government's response erroneously presumes that the threshold question of whether § 1225(b) or 1226(a) applies will be resolved in the government's favor. Under the circumstances of the instant case, however, where the government elected to process the Petitioner pursuant to § 1226(a), its more recent application of the mandatory detention provisions of § 1225(b) violate the Petitioner's right to due process as guaranteed by the Constitution.

This is what makes the Petitioner's case distinct from *Thuraissigiam*. In that case, it was clear that "the Department detained [Thuraissigiam] for expedited removal." 140 S.Ct. at 1967. Unlike *Thuraissigiam*, however, DHS did not invoke the expedited removal provisions of §

1225(b) and instead processed the Petitioner pursuant to its § 1226(a) authority in placing her into standard removal proceedings. ECF No. 1-3. By comparison, in *Thuraissigiam* the Court specifically noted that the government's processing of Thuraissigiam's case complied with the expedited removal process of § 1225(b). *Id.* 1967-68. In the instant case, however, DHS did not elect to pursue any of § 1225(b)'s procedures and instead repeatedly invoked its authority pursuant to § 1226(a) in processing the Petitioner.

To that end, the Petitioner merely seeks the due process protections afforded her by statute. *Thuraissigiam*, 140 S.Ct. at 1964 (recognizing that a noncitizen is entitled to the procedural rights afforded her by statute). Here, the statute that governs, the one that DHS elected to invoke when it encountered the Petitioner and initiated removal proceedings against her, is section 1226(a). Pursuant to that statute and its implementing regulations, the Petitioner is entitled to discretionary review by an immigration judge as to whether she may be released on bond or conditional parole. 8 U.S.C. § 1226(a)(2)(A)-(B); 8 C.F.R. §§ 1236.1(d)(1) (allowing a noncitizen to apply to an immigration judge for amelioration of the conditions of her release and authorizing immigration judges to exercise the authority in § 1226(a)); and 1003.19 (providing the procedural framework for custody and bond determination hearings before an immigration judge). Consistent with *Thuraissigiam*, this Court should order the government to provide her with a meaningful custody redetermination hearing as provided by § 1226(a).

III. The Petitioner should not be required to exhaust administrative remedies.

Forcing Grimaldo-Prieto to await resolution from the Board of Immigration Appeals ("Board") would be an exercise in futility. In *Matter of Q. Li*, the Board has already decided its answer to Grimaldo-Prieto's question. The Board's decision dictates that any noncitizen encountered shortly after arrival is an applicant for admission who is subject to mandatory

detention. 29 I&N Dec. at 70. To the extent the Board's decision in *Matter of Q. Li* is held to govern, those conclusions demonstrate that any administrative appeal would be futile. Indeed, the decision's key footnote and concurring opinion confirm that according to the Board, the arrest of noncitizen applicants for admission—even if memorialized on § 1226(a) forms—are treated as § 1225(b) detentions and thus categorically bond-ineligible.[1] Accordingly, Grimaldo-Prieto should not be required to exhaust administrative remedies as the Board has foreclosed relief by its own precedent.

Thus, the Board is both incapable and precluded from reconsidering that finding and is therefore unable to provide Petitioner with the relief she seeks. Moreover, the Petitioner raises constitutional due process claims that "neither [an] Immigration Judge nor th[e] Board may rule on." *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1035 (BIA 1999). Any attempt to exhaust through administrative remedies would not change the result, and is therefore futile. *See INS v. St. Cyr*, 533 U.S. 289, 314-15 (2001) (finding that federal court retain habeas power to decide pure questions of statutory interpretation when the agency lacks authority to grant the relief sought); *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992) (prudential exhaustion excused where administrative body is shown to have predetermined the legal issue). Furthermore, each additional day of detention under the wrong statutory regime inflicts irreparable harm to the Petitioner's liberty interests. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Although the Petitioner has appealed the errant decision of the immigration judge, briefs are not due until August 19, 2025, and a decision is not expected for several months. Exhibit A at 1. Forcing the Petitioner to await a

[1] According to the Board, "DHS cannot convert the statutory authority governing her detention from section [1225(b)] to section [1226(a)] through the post-hoc issuance of a warrant." 29 I&N Dec. at 69, n.4. The Petitioner disagrees with the Board's conclusion but it demonstrates that the Board is unable to provide Petitioner with the relief she seeks. Even under the circumstances of the Petitioner's case, where DHS clearly elected to arrest and subsequently release her pursuant to the agency's authority under § 1226(a), the Board would errantly find that her re-detention years later would be governed by section 1225(b).

decision from the Board while she remains in custody exacerbates her injury from being unlawfully detained.[2] Grimaldo-Prieto should therefore not be required to exhaust administrative remedies.

Despite the government's attempt to reframe the issue, the Petitioner did not receive meaningful consideration of her request to be released on bond. In determining that the Petitioner was subject to mandatory detention pursuant to § 1225(b), the immigration judge refused to consider whether petitioner was entitled to release on bond pursuant to § 1226(a). This misapplication of the statutory basis for detention infringed upon the Petitioner's due process rights and deprived her of a statutorily mandated bond hearing under § 1226(a).

IV. CONCLUSION

Because DHS elected to process the Petitioner pursuant to § 1226(a), the immigration judge's errant invocation of the mandatory detention provisions of § 1225(b) deprived her of due process. The Petitioner was deprived of a meaningful consideration of her request for release on bond. Insofar as she raises a colorable claim that her substantive and procedural due process rights were violated, this Court has jurisdiction over her habeas petition. The Petitioner should not be forced to exhaust administrative remedies because any appeal to the Board would be futile and continuing her detention will only exacerbate the injury she suffers from being unlawfully detained.

Respectfully submitted,

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[2] Even the decision relied upon by the government to support its exhaustion argument acknowledges that "because the [bond] appeal timeline exacerbates that alleged injury . . . administrative exhaustion is unnecessary . . . ." *Petgrave v. Aleman*, 529 F.Supp.3d 665, 672 n.14 (S.D. Tex. 2021).

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2025, a copy of the foregoing "Petitioner's Reply to the Respondents' Response to Petitioner's Writ of Habeas Corpus," has been delivered to the Respondents' counsel of record via ECF electronic filing.

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