UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-CV-61632-RAR

EVELYN VASQUEZ VEGA,

Petitioner,

v.

U.S. ATTORNEY GENERAL and WARDEN BROWARD TRANSITIONAL CENTER,

Respondents.
_____/

RESPONDENT'S RESPONSE TO COURT ORDER TO SHOW CAUSE WHY PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 SHOULD NOT BE GRANTED

Respondent Pamela Bondi, United States Attorney General, in her official capacity, through the undersigned Assistant United States Attorney,[1] respectfully submits this Response to this Court's Order to "show cause why the requested relief should not be granted" and to "address whether Petitioner's post-removal detention falls within the presumptively reasonable statutory 90-day period" (ECF No. 4 at 1 & n.1). This Court lacks jurisdiction to hear the Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (ECF No. 1 ("the Petition")) because (1) Petitioner failed to exhaust her administrative remedies in that both her appeal of the removal order and her appeal of her bond determination are pending before

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[1] Petitioner Evelyn Vasquez Vega also named as respondent the "Warden of Broward Transitional Center." That institution is privately owned and operated. *See, generally,* https://www.geogroup.com/facilities/broward-transitional-center/

The appropriate respondent is AFOD Juan Gonzalez for Broward Transitional Center. *See Rumsfeld v. Padilla*, 542 U.S. 426, 432 (2004) ("The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is "the person who has custody over [the petitioner]."") (quoting 28 U. S. C. § 2242).

the Board of Immigration Appeals ("BIA"), and (2) "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 . . . execute removal," 8 U.S.C. § 1252(g). Should this Court disagree and find that it has jurisdiction, this Court should deny the Petitioner because her claims lack merit. (*Compare* ECF No. 1-1 at 16 (alleging use of "secret evidence") with Exhibit G, Bond Memorandum, dated June 30, 2025 (describing how the "Court printed a copy of a [Form] I-213 and presented a copy of it to Respondent" and how Petitioner admitted "I was arrested for theft").)

I. BACKGROUND

Petitioner is a native and citizen of Colombia, who was admitted to the United States at Miami, Florida on or about April 5, 2021, as a B2 visitor for pleasure, with authorization to remain in the United States only until October 4, 2021. (Exhibit A, Form I-862, Notice to Appear ("NTA"), dated June 4, 2024; ECF No. 1-1 at 1.)

A. Petitioner's Arrest and Removal Proceedings

On or about December 2, 2024, Petitioner was arrested in Orange County, Florida for Larceny, (*see* Exhibit B, Form I-213, Record of Deportable/Inadmissible Alien ("I-213")), years after the date up to which she was authorized to remain in the United States (Exhibit A). On the date of her arrest, Petitioner was encountered by U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), at the Orange County Main Facility Jail located in Orlando, Florida. (*See* Exhibit B, ECF No 1-1 at 1.) Petitioner was placed in removal proceedings upon service and filing of a Notice to Appear ("NTA"), dated June 4, 2024, with the Executive Office for Immigration Review ("EOIR"). (Exhibit A, NTA.) The NTA charged Petitioner with removability pursuant to Section

237(a)(1)(B) of the Immigration and Nationality of Act, as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, Petitioner remained in the United States for a time longer than permitted, in violation of the Act or any other law of the United States. (*Id.*) Petitioner was taken into ICE ERO custody, pursuant to a Warrant for Arrest. (*See* Exhibit C, Form I-200, Warrant for Arrest of Alien, dated December 4, 2024.)

B. Petitioner's Request for Custody Redetermination by and Immigration Judge

On May 1, 2025, the Immigration Judge denied Petitioner's request for bond, finding that Petitioner "has not met her burden in establishing that she is not a DTC [Danger to the Community]/Public Safety Risk; and has not met her burden of establishing that she is a suitable bail risk." (Exhibit D, Custody Redetermination Order, dated May 1, 2025.) After Petitioner filed a Motion for Reconsideration on Bond Determination Request on May 12, 2025, the Immigration Judge denied the Motion to Reconsider on May 13, 2025. (Exhibit E, Order Denying Motion to Reconsider, dated May 13, 2025.) On June 16, 2025, Petitioner filed a Bond Appeal, which is still pending before the BIA. (Exhibit F, Filing Receipt for Bond Appeal, dated June 23, 2025.) The Immigration Judge filed a Bond Memorandum on June 30, 2025, further explaining the denial of Petitioner's request for bond determination. (Exhibit G, Bond Memorandum, dated June 30, 2025.)

C. Removal Proceedings before the Immigration Judge

On June 9, 2025, the Immigration Judge denied Petitioner's application for relief and ordered Petitioner removed to Colombia. (Exhibit H, Removal Order, dated June 9, 2025.) On June 24, 2025, Petitioner filed an appeal from the Immigration Judge's order, which is still pending before the BIA. (*See* Exhibit I, Filing Receipt for Appeal, dated June 25, 2025.)

D. The Instant Petition

On August 12, 2025, Petitioner filed this *pro se* habeas petition. In that Petition, she makes a variety of claims (many of which are difficult to discern). She claims that "the Immigration Court erred by placing the burden of proof [on her] after the introduction of 'secret evidence'," (ECF No. 1 at 2), and that the "Immigration Court erred [in] ordering the Respondent's removal" (*id.* at 5). Petitioner asks this Court to order her "release [o]n a conditional bond" or to remand this matter for "a new decision" (ECF No. 1 at 7).

Petitioner remains in ICE custody, pending the conclusion of her removal proceedings. (Exhibit J, Detention History; ECF No 1 at 8 (describing detention at Broward Transitional Center).)

ARGUMENT

I. This Court Lack Jurisdiction to Review the Immigration Judge's Custody Redetermination, as well as the Removal Order, While the Board of Immigration Appeals Entertains Administrative Appeals over Those Decisions.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted). *See also Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999) ("A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises."). For these reasons, before this Court can proceed, it must determine whether it has jurisdiction over this action. *See Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1323 (11th Cir. 2012) ("Prior to making an adjudication on the merits, we must assure ourselves that we have jurisdiction to hear the case before us.").

In this case, Petitioner's appeal of the Immigration Judge's Removal Order and her appeal of the Immigration Judge's denial of her bond request are currently before the Board

of Immigration Appeals, (*see, e.g.* Exhibit F, Filing Receipt for Bond Appeal, dated June 23, 2025,) meaning Petitioner failed to exhaust fully the administrative remedies available to her, and this Court, therefore, lacks jurisdiction. As the Supreme Court recently explained, "[u]nder the plain language of [8 U.S.C.] § 1252(d)(1), a noncitizen must "exhaus[t] all administrative remedies available to the alien as of right." *Santos-Zacaria v. Garland*, 1116, 598 U.S. 411, 424 (2023). Doing so "promotes efficiency, including by encouraging parties to resolve their disputes without litigation," *id.* at 418 (citing authority), and "[a]dministrative review of removal orders exists precisely so noncitizens can challenge the substance of immigration judges' decisions." *United States v. Palomar-Santiago*, 593 U.S. 321, 328 (2021). Because Petitioner filed her Petition without fully exhausting the administrative remedies available to her (in that the issues that she asks this Court to adjudicate are currently pending before the BIA), this Court lacks jurisdiction to hear her claims.

Despite both issues being before the BIA, Respondent asks this Court to short circuit the administrative process and grant her relief because, according to Petitioner, no administrative relief is available to her. (ECF No. 1 at 7 (asking this Court to release her or remand the matter for a "new decision").) Respondent is unclear as to whether Petitioner is arguing that no administrative relief exists as to her Order of Removal, or whether no administrative relief exists as to her release from detention pending her appeal of her Order of Removal to the BIA. Regardless, Petitioner is incorrect under either reading. There is no dispute that Petitioner has administrative remedies available to her insofar as her denial of bond and her Order of Removal. *See* 8 C.F.R. § 1003.38(a) ("Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by 8 C.F.R. 3.1(b)"). In fact, Petitioner is in the middle of the process of exhausting these very administrative remedies

as she pursues her appeal of the Immigration Judge's Order of Removal and the bond determination before the BIA, and Petitioner has not offered any valid basis for the Court to circumvent Petitioner's administrative remedies while she is actively in the process of exhausting them, especially to justify her immediate release from custody. Respondent submit that no such valid basis exists. *Contrast Hernandez v. Sessions*, 872 F.3d 976, 989 (9th Cir. 2017) (no need for exhaustion where "BIA's position is set and that exhaustion would be futile.").

II. The INA Precludes District Court Review of Petitioner's Removal Order, As Well As the Bond Order Under 8 U.S.C. § 1252 and 8 U.S.C § 1226(e).

Even if this Court were to excuse Petitioner's failure to exhaust the administrative remedies available to her, this Court would still lack jurisdiction to hear her challenges to the removal order and her detention. As a general principle, the decision to institute removal proceedings is not subject to judicial review. INA § 242, codified in 8 U.S.C. § 1252, includes explicit provisions to limit the judicial review of immigration decisions for a variety of deportation-related functions. The most basic provision is provided in INA § 242(b)(1), which only allows for judicial review after a *final* order of removal. The so-called "zipper clause" contained in INA § 242(b)(9) states: "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available *only in judicial review of a final order under this section.*" (emphasis added). As just discussed, Petitioner's Order of Removal is not yet final in that it is under review by the BIA, making *any* judicial review of it premature at this stage. For this reason alone, this Court lacks jurisdiction to hear that claim.

The INA is also quite clear that any petition for review of a final order of removal "shall be filed with the *court of appeals* for the judicial circuit in which the immigration judge

completed the proceedings." INA § 242(b)(2) (emphasis added). Consequently, it is the Eleventh Circuit that may sit in judgment of Petitioner's final order of removal by means of a timely filed petition for review, not a district court by means of a petition for writ of habeas corpus or the APA. So, even assuming *arguendo* that Petitioner's Order of Removal is administratively final, which it is not, the Court still would not have jurisdiction to review it based on the instructions in the INA.

Finally, this Court lacks jurisdiction to review the bond determination. In *Jennings v. Rodriguez*, the Supreme Court explained that 8 U.S.C. § 1226(e) precludes Petitioner from "challeng[ing] a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding his detention or release". *Jennings*, 583 U.S. at 295 (*citing Demore v. Kim*, 538 U.S. 510, 516, (2003)). The plain language of 8 U.S.C. § 1226(e), INA § 236(e) states: "The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." Petitioner asks this Court to do exactly what the plain language of 8 U.S.C. § 1226(e), INA § 236(e), precludes it from doing, namely set aside the Immigration Judge's denial of bond and immediately terminate her detention (ECF No. 1 at 7 (requesting that this Court order that "Petitioner shall be released [o]n a conditional bond").)

For all these reasons, this Court should dismiss the Petition for lack of jurisdiction.

III. THIS COURT SHOULD DENY THE PETITION BECAUSE PETITIONER'S CLAIMS LACK MERIT.

Assuming *arguendo* that this Court finds that it has jurisdiction, it should nonetheless deny the Petition because it lacks merit. Section 2241 authorizes a district court to grant a

petition for writ of habeas corpus whenever a petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 18 U.S.C. § 2241(c)(3). "In a § 2241 habeas corpus case, '[the] petitioner has the burden of establishing [her] right to federal habeas relief.'" *United States v. Nickson*, 553 F. App'x 866, 869 (11th Cir. 2014) (quoting *Coloma v. Holder*, 445 F.3d 1282, 1284 (11th Cir. 2006)).

In this case, Petitioner's discretionary detention pursuant to 8 U.S.C. § 1226(a), INA § 236(a), prior to the issuance of a final removal order is lawful. Section 236(a) of the INA provides, in pertinent part:

> (a) Arrest, Detention and Release
>
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General---
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on---
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole; but
>
> (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

See 8 U.S.C. § 1226(a); INA § 236(a). By the very language of the statute, Petitioner's continued detention is lawful and within the discretion of Respondent pending a final decision on whether Petitioner is to be removed from the United States. *See* 8 U.S.C. § 1226(a)(1); INA

§ 236(a)(1). In this case, there is no dispute that Petitioner is not a United States citizen or national; there is also no dispute that Petitioner has been ordered to be removed from the United States, a decision which she is currently appealing; and "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 511, 523 (2003). For these reasons, Petitioner's detention is lawful.

Petitioner's primary objection to her detention is that "ICE never presented any evidence of her criminal charge in open court" (ECF No. 1-1 at 2) and the Immigration Judge relied on that criminal charge when finding that Petitioner was not entitled to bond. (*See* ECF No. 1 at 2 (describing how bond was denied because Petitioner had "not met her burden in establishing that she is not a DTC/Public Safety Risk, and has not met her burden of establishing that she is suitable bail risk"). In essence, Petitioner argues that her "false arrest" led to her continued detention (ECF No. 1-1 at 3).

This argument lacks merit. Petitioner was found in the United States after overstaying her B2 visa (Exhibit A, Form I-862, Notice to Appear ("NTA"), dated June 4, 2024; ECF No. 1-1 at 1), after Petitioner was arrested for committing larceny (*see* Exhibit B, Form I-213, Record of Deportable/Inadmissible Alien ("I-213")). Petitioner was detained and, at a bond hearing, the Immigration Judge reviewed a Form I-213 that described how Petitioner was arrested for larceny, the "Court printed a copy of a [Form] I-213 and presented a copy of it to Respondent," and Petitioner admitted "I was arrested for theft". (Exhibit G.) After Petitioner's arrest for larceny was conclusively established (notwithstanding Petitioner's claim that the arrest lacked any basis), the Immigration Judge denied Petitioner's request for bond, finding that Petitioner "has not met her burden in establishing that she is not a DTC [Danger

to the Community]/Public Safety Risk; and has not met her burden of establishing that she is a suitable bail risk." (Exhibit D, Custody Redetermination Order, dated May 1, 2025.)

In summary, there was no use of "secret evidence." The Form I-213 upon which the Immigration Judge relied detailed how Petitioner was arrested for larceny, a fact that Petitioner personally admitted at the hearing, and the Court provided Petitioner with a copy of that Form I-213.

IV. COMPLIANCE WITH ORDER TO "ADDRESS WHETHER PETITIONER'S POST-REMOVAL DETENTION FALLS WITHIN THE PRESUMPTIVELY REASONABLE STATUTORY 90-DAY PERIOD."

This Court ordered Respondents to "address whether Petitioner's post-removal detention falls within the presumptively reasonable statutory 90-day period" (ECF No. 4 at 1, n.1). Petitioner is not subject to the *post*-order detention statute pursuant to INA § 241, 8 U.S.C. 1231; rather, she is subject to the *pre*-order detention authority under INA § 236(a), 8 U.S.C. 1226(a). When this Court reviewed the status of Petitioner's appeal, the Executive Office for Immigration Review's (EOIR) docket reflected that Petitioner appealed *only* her bond determination, and that Petitioner had failed to perfect an appeal from the immigration judge's removal order. As such, the docket at the time reflected that Petitioner's detention was "post-removal" (*id.*). The EOIR docket has since been corrected to reflect, as stated above, that there are two separate appeals before the BIA: (1) an appeal of the removal order and (2) an appeal of the bond order.

V. CONCLUSION

For all these reasons, the Petition lacks merit. This Court lacks jurisdiction to grant relief because Petitioner failed to exhaust her administrative remedies in that the issues before this Court are currently pending before the BIA, and this Court does not have jurisdiction to

review the Attorney General's removal orders or discretionary bond determinations pending removal. Moreover, Petitioner's claims of "secret evidence" lack merit in that it is undisputed that she overstayed her visa and was found in the United States after an arrest for larceny.

Dated: August 20, 2025

Respectfully submitted,

JASON A. READING QUIÑONES
UNITED STATES ATTORNEY

H. Ron Davidson
H. RON DAVIDSON
Assistant United States Attorney
Court ID A5501144
Email: H.Ron.Davidson@usdoj.gov
Office of the United States Attorney
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Telephone: (305) 961-9405

Counsel for Respondent, Pamela Bondi,
U. S. Attorney General, in her official capacity

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed on the Court's CM/ECF System on August 20, 2025. In addition, a copy was sent via U.S. Mail to:

Evelyn Vasquez Vega
A# [redacted]
3900 N Powerline Road
Pompano Beach, FL 33073

By: *H. Ron Davidson*
H. RON DAVIDSON
Assistant United States Attorney