UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

GERMAN ANTONIO LOPEZ-SANTOS (A[redacted])	**CIVIL NO: 3:25-CV-01193**
VERSUS	**CHIEF JUDGE DOUGHTY**
KRISTI NOEM, ET AL	**MAGISTRATE JUDGE McCLUSKY**

FEDERAL DEFENDANTS' RESPONSE TO PETITIONER'S WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Federal Defendants, Kristi Noem, Pamela Bondi, Todd M. Lyons, and Stanley Crockett, in their official capacities, provide the following response to Petitioner's Petition for Writ of Habeas Corpus:

I. INTRODUCTION

On August 20, 2025, German Antonio Lopez-Santos, Petitioner, filed an amended petition with this Court through which he seeks issuance of a writ of *habeas corpus* directing his release from the institutional detention maintained by the United States Immigration and Customs Enforcement ("ICE"). Rec. Doc. 5. According to Petitioner, his continued detention within the institutional custody of ICE is unlawful. For the following reasons, the petition filed by Petitioner should be denied and this action dismissed.

II. THE FACTUAL AND PROCEDURAL BACKGROUND

On February 17, 2005, the U.S. Border Patrol ("USBP") encountered Petitioner at or near Loredo, Texas. USBP determined that Petitioner had unlawfully entered the United States from Honduras and allowed him to voluntarily return to Mexico.

Rec. Doc. 5-5, p. 25. Petitioner re-entered the United States on an unknown date and at an unknown location without inspection, admission or parole by an Immigration Officer. *Id.* Enforcement and Removal Operations Criminal Alien Program placed Petitioner under arrest on March 31, 2025, "after confirming that he had no valid immigration documents and admitted entering the United States without inspection." *Id.* at p. 24.

Immigration and Customs Enforcement issued Petitioner a Notice to Appear and show why he should not be removed from the United States due to his status as an alien present in the United States who has not been admitted or paroled. Govmt. Exhibit 1, Declaration of Justin Williams. Petitioner filed a Motion for Bond Redetermination, claiming that he did not pose a "flight risk or danger to the community," and that "his continued detention caused severe hardship to his family." Rec. Doc. 5-3, p. 4.

During Petitioner's bond hearing in Immigration Court on July 17, 2025, the Immigration Court determined that it had no jurisdiction regarding custody redetermination for Petitioner based upon 8 U.S.C. § 1225 (Immigration and Nationality Act § 235(b)(2)(A)). Govmt. Exhibit 1. The Immigration Court specifically referenced INA § 235(a)(1), which states:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

The Immigration Court found that Petitioner is an applicant for admission that must be detained for a proceeding, and cited *Jennings v. Rodriguez*, 583 U.S. 281, 138 S.Ct. 830 (2018) to support its finding that "Aliens seeking admission to the United States who are placed in full removal proceedings are subject to detention 'until removal proceedings have concluded.'" Govmt. Exhibit 1.

Petitioner now files his Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. For the reasons set forth below, the Court should deny Petitioner's Writ of Habeas Corpus.

III. LAW AND ARGUMENT

A. This Court lacks jurisdiction[1] over this matter, as Petitioner has failed to exhaust his administrative remedies.

Section 1252(G) of Title 8 of the United States Code deprives courts of habeas corpus jurisdiction to review "any cause or claim by or on behalf of an alien arising form the decision or action by the Attorney General to [1] *commence proceedings,* [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." (Emphasis added). Section 1252(g) specifically deprives courts of jurisdiction in hearing challenges to the decisions to detain an alien pending removal. *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016). "[A]n alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and

[1] Though Petitioner's pleading is styled as a Petition for Habeas Corpus, he also invokes this Court's jurisdiction under 28 U.S.C. § 1346 (a)(2), known as the Little Tucker Act; the Tucker Act under 28 § 1491(a)(1); the All Writs Act under 28 U.S.C. § 1651; and a declaratory relief action under 28 U.S.C. § 1331. However, none of these statutes operate to waive the United States' sovereign immunity in this case, thus they cannot provide an independent basis for jurisdiction.

review of claims arising from such detention is barred under § 1252(g). *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007). Thus, this Court should dismiss such a claim for lack of jurisdiction, as a judicial review of a bond denial claim is barred by § 1252(g).

Section 1252(b)(9) of Title 8 provides that "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" are proper only before the "appropriate federal court of appeals in the form of a petition for review of a final removal order." 8 U.S.C § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999).

In the present matter, Petitioner challenges the government's decision to detain him, which is considered an "action taken . . . to remove [him] from the United States" pursuant to 8 U.S.C § 1252(b)(9). *See Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S.Ct. 830, 841 (2018). Petitioner is in active removal proceedings, with his next hearing date scheduled for October 14, 2025.

The Board of Immigration Appeals ("BIA") is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including the Immigration Court's custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. Petitioner has failed to exhaust his underlying bond denial to the "BIA" yet argues that it was "unclear whether [he] can even seek further review of this jurisdictional

holding to the [BIA]" and that government deemed an administrative appeal "futile." Rec. Doc. 5, p.3.

"When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). The Fifth Circuit has held that "a petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists." *Lee v. Gonzalez*, 410 F.3d 778, 786 (5th Cir. 2005).

Petitioner has not demonstrated any grounds for excusing the exhaustion requirement. Further, his claims are not properly before this Court in a habeas petition, as they are reviewable by the BIA, and the Fifth Circuit thereafter. *Id.* As such, this Court should dismiss his petition without prejudice.

B. There was no violation of Petitioner's Fourth Amendment Rights.

Petitioner argues that the authority for ICE officer to make warrantless arrests under 8 U.S.C. § 1357(a) is limited to exigent circumstances and constrained by Fourth Amendment principles. Rec. Doc. 5 p. 6. According to Petitioner, the officers violated the Fourth Amendment when the stopped him while he was drivng, as the government fails to articulate any reasonable suspicion that he was unlawfully in the United States. Further, he alleges that any reasonable person in his position would believe that he was not free to leave.

Pursuant to 8 U.S.C. § 1357(a)(2), immigration officers and employees may, without a warrant,

> "arrest any alien . . . if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States [.]"

The phrase "reason to believe" has been equated with the constitutional requirement of probable cause. *United States v. Varkonyi*, 645 F.2d 453, 458 (5th Cir. 1981). An alien may voluntarily provide officers with sufficient information for them to have probable cause to arrest him. In *U.S. v. Moya-Matute*, 735 F.Supp.2d 1306, 1346 (D.N.M. 2008), the petitioner furnished the agents with probable cause once he admitted he did not have any immigration documents on his person. "The agents . . . are not required to have conclusive proof that Moya-Matute was undocumented – they only needed a fair probability that he was undocumented." *Id.*

In this matter, Petitioner encountered officers during an arrest operation in Randallstown, Maryland. Govmt. Exhibit 1. He was not placed under arrest until he confirmed that he had no valid immigration documents and admitted entering the United States without inspection. *Id.* Since "reason to believe" in the context of 8 U.S.C. § 1357(a)(2) has been equated with the requirement of probable cause, a warrantless arrest under these circumstances does "not violate the warrant clause of the Fourth Amendment." *See Varkonyi*, 645 F.2d at 458. With Petitioner's admissions to the officers about his lack of documentation and entry into the United States without inspection, there is sufficient basis for the warrantless arrest.

It is the government's position that the "likelihood of escape before a warrant can be obtained" is met under 8 U.S.C. § 1357(a)(2) with the underlying facts of this case. Petitioner was traveling when he stopped, and his destination was not entirely predictable. *See U.S. v. Cantu*, 519 F.2d 494, 497 (7th Cir. 1975). Petitioner's petition should be dismissed, as his arrest and detainment do not violate the Fourth Amendment.

C. There was no denial of procedural or substantive due process when the immigration judge denied bond under 8 U.S.C. § 1226(a).

Petitioner alleges that he was denied his procedural and substantive due process rights when he was detained without an opportunity to seek release on bond before an immigration judge. To support his allegation, he erroneously cites *Zadvydas v. Davis* and *Ashcroft v. Ma*, 533 U.S. 678, 121 S.Ct. 2491, 150 L. Ed.2d 653 (2001) while arguing that the substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings. Rec. Doc. 5, pp. 14, 15. In order to state a claim for relief under the *Zadvydas* decision, an alien must: 1) establish post-removal order detention in excess of six months; and, 2) establish good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Akinwale v. Ashcroft*, 287 F.3d 1050,1052 (11th Cir. 2002). In this matter, Petitioner has not received a final removal order.

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides

whether to release the alien. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS]."). Section 1226(a) does not provide an alien with an absolute right to release on bond. *See Carlson v. Landon*, 342 U.S. 524, 534, 72 S.Ct. 525, 539 (1952). Furthermore, the Constitution does not provide an alien with an absolute right to release on bond. *See Velasco Lopez v. Decker*, 978 F.3d 842,848 (2nd Cir. 2020). As such, the denial of Petitioner's bond does not violate due process or the INA.

D. INA § 235 provides the authority for Petitioner's mandatory detention.

Section 235 of the Immigration and Nationality Act ("INA") provides the authority for Petitioner's mandatory detention due to his status as an applicant for admission. He is an alien present in the United States and has not been admitted, which is the definition of an applicant for admission. INA § 235(b)(2) states that

> [I]n the case of an alien who is an application for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229(a) of this title.

Petitioner was charged in his Notice of Appearance ("NTA") for being present without admission or parole. Govmt. Exhibit 1. At no time has Petitioner contested his status of being present without permission or parole. In his Motion for Bond Redetermination, Petitioner pleads for his release or the setting of reasonable bond

and does not assert at any point that he is present in the United States with admission or parole. Rec. Doc. 5-3.

Though Petitioner emphasized how long he has been present in the United States in his Motion for Bond Redetermination, INA § 235 does not make a distinction between whether or not an applicant for admission has been in the United States for a specific period of time prior to detention. Further, the Supreme Court held in *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) that INA § 235(b)(2) applies to all applicants for admission. The Petitioner's status as an applicant for admission warrants detention under INA § 235.

CONCLUSION

For these reasons, the Court should deny Petitioner's Petition for Writ of Habeas Corpus Pursuant to 20 U.S.C. § 2241.

Respectfully submitted,

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