UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

BENITA BARRERA MARTINEZ, Petitioner, v. KRISTI NOEM, SECRETARY OF HOMELAND SECURITY., ET. AL. Respondents.	§ § § § § § § § § § § §	CIVIL NO. 5:25-cv-0164

GOVERNMENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

Federal Respondents[1] files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. No. 1) and pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1) moves to dismiss the Petition for lack of subject matter jurisdiction.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the South Texas Ice Processing Center in Pearsall, Texas. Dkt. No. 6. Petitioner brought this habeas corpus petition against the Government seeking release from immigration

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). That said, it is the originally named federal respondents, not the warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

detention. Plaintiff is detained under Section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(2), and is therefore subject to mandatory detention.

First, this Petition should be dismissed because the Petitioner has not requested a bond hearing with the Immigration Judge, thus she has failed to exhaust administrative remedies. Without presentment to an Immigration Judge ("IJ"), the Petitioner has failed to exhaust administrative remedies prior to seeking habeas relief under 28 U.S.C. § 2241.

Moving beyond the exhaustion issue, this Court should deny the habeas petition because Congress divested immigration courts of jurisdiction over the type of discretionary bond decision at issue in this case. In a recent Board of Immigration Appeals' ("BIA") decision, *In Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the BIA determined that the IJ lacked jurisdiction to issue bonds to individuals held under § 235(b). This decision is controlling on the immigration courts and the IJ presiding over Petitioner's removal proceedings. Accordingly, Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (hereafter "the Petition"), Dkt. 1, fails because Congress deemed persons in Petitioner's position ineligible for an immigration bond. For the reasons discussed below, the Court deny the petition for a writ of habeas corpus.

BACKGROUND AND PROCEDURAL HISTORY

1. On September 22, 2025, Petitioner, a noncitizen from Mexico, was detained following a traffic stop in San Antonio, Texas. Dkt. 1. ¶4. The Petitioner was issued a Notice to Appear the same day. Exh. 1, Notice to Appear. The Notice to Appear, which began removal proceedings, was issued on the grounds that Petitioner is an noncitizen present in the United States without being admitted or paroled, or who arrived in the United States at any

time or place as designated by the Attorney General in violation of Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1182(a)(6)(A)(i)). *Id.*

2. On October 3, 2025, Petitioner filed the instant habeas action, claiming: (1) the mandatory detention provision of 8 U.S.C. § 1225(b)(2) is inapplicable to Petitioner and her continued detention without issuance of bond is unlawful; (2) the denial of "required bond proceedings" in Petitioner's pending removal proceedings violated procedural and substantive due process under the Fifth Amendment and the Government's own regulations. Dkt. No. 1, ¶¶40-50. Per the Court's Order, the Government submits this response to the Petition. *See* Dkt. No. 3.

3. On October 9, 2025, the Immigration Judge entered into a scheduling order with regards to the removal proceedings. Exh 2, Scheduling Order of Immigration Judge dated October 9, 2025 ("Scheduling Order").

STANDARD OF REVIEW

1. Fed. R. Civ. P. 12(b)(1).

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court must dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also id.* 12(h)(3) ("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action."). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th Cir. 2005) (quotations omitted); Fed. R. Civ. P. 12(h)(3). The burden of establishing subject matter jurisdiction in federal court is on the party seeking to invoke it. *Hartford Ins. Group v.*

Lou–Con Inc., 293 F.3d 908, 910 (5th Cir. 2002). Accordingly, the party with the burden of proof must establish that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980). In ruling on a motion to dismiss for lack of subject matter jurisdiction, a court may rely on any of the following to decide the matter: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *St. Tammany Parish, ex. rel. Davis v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 315 (5th Cir. 2009) (quotations omitted). A court must accept all factual allegations in the plaintiff's complaint as true. *Saraw Partnership v. United States*, 67 F.3d 357, 569 (5th Cir. 1995). "In considering a challenge to subject matter jurisdiction, the district court is 'free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has the power to hear the case.'" *Krim*, 402 F.3d at 494.

ARGUMENT

At the onset, Federal Respondents acknowledge the prior ruling from this Court in *Fuentes v. Lyons*, dealing with similar issues. *Fuentes v. Lyons*, Civil Action 5:25-cv-00153 Dkt. 15 (S.D. Tex. Oct. 16, 2025). Federal Respondents with this Motion request a reconsideration of that prior ruling on these issues. *Camreta v. Greene*, 563 U.S. 692, 701 n. 7 (2011)("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.").

I. Habeas Relief under 28 U.S.C. § 2241 is Unavailable because Petitioner Failed to Exhaust Administrative Remedies under 8 C.F.R. § 1003.38.

To begin, the Court should dismiss Petitioner's habeas action for failure to exhaust administrative remedies. It is well settled that before a detainee can bring a habeas petition

under 28 U.S.C. § 2241, administrative remedies must be exhausted. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (A federal prisoner must "exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241."); *see* 8 C.F.R. § 1003.38 (federal regulation controlling appeals to BIA of IJ bond determinations). If the petitioner does not exhaust available remedies, the petition should be dismissed. *Fuller*, 11 F.3d at 62.

For purposes of 28 U.S.C. § 2241 relief, exhaustion of administrative remedies is jurisdictional. *See Swain v. Pressley*, 430 U.S. 372, 383 (1977). As thoroughly explained in *McCarthy v. Madigan*: "Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency…[t]he exhaustion doctrine also acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is hauled into federal court." 503 U.S. 140, 144-45 (1992).

Here, Petitioner claims that she has a clear right to a bond hearing by an Immigration Judge, but nowhere in her Petition does she indicate that she requested a bond hearing. Rather, Petitioner claims that she requested a "bond redetermination request" and that ICE issued a custody determination "without an opportunity to post bond or be released on other conditions." Dkt. 1 ¶36, 39. Of note, Petitioner's removal proceeding began on September 25, 2025, and her master calendar hearing is not until October 29, 2025. Exh. 2. Scheduling Order. Based on the Petition, Petitioner has not requested a bond hearing with an Immigration Judge. Without presentment, Petitioner has not exhausted her administrative remedies.

To evade the administrative exhaustion requirement, petitioner states that a request would be "futile" given the Board of Immigration Appeals ("BIA") decision in *Yajure Hurtado.*

Dkt. 1. ¶. 39. However, exhaustion is a prerequisite to habeas relief, and thus the Petition should be denied. *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018)("Exhaustion has long been a prerequisite for habeas relief[.]"). Because Petitioner has failed to exhaust administrative remedies available to him prior to filing suit, habeas relief under 28 U.S.C. § 2241 is unavailable to Petitioner. Therefore, the Court should dismiss this action for lack of subject matter jurisdiction.

II. The Petition should be dismissed because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and review of a bond determination is beyond this Court's authority.

Even assuming that Petitioner does not need to exhaust her administrative remedies, her statutory argument fails on the merits because the plain text of the INA provides that she falls under the mandatory detention provisions of 8 U.S.C. § 1225 as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than designated by the Attorney General. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

The INA authorizes civil detention of aliens during removal proceedings and "[d]etention is necessarily part of this deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). Section 1225 authorizes the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (2); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The Supreme Court has recognized that §1225(b)(2) "applies to all applicants for admission not covered by § 1225(b)(1). Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a

doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see also Fla. v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). While § 1225 does not provide for aliens to be released on bond, DHS has the sole discretion to temporarily release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). Under the plain language of INA § 235, 8 U.S.C. § 1225, Petitioner—who is present in the United States without being admitted—is subject to detention under § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded.").

A. The Immigration Judge Lacks Authority to Issue a Bond.

At this time, there has been no decision by the Immigration Judge as it relates to whether the petitioner is entitled to a bond. Regardless, the Immigration Judge lacks authority to grant a bond in Petitioner's ongoing removal proceedings. As noted above, Petitioner is subject to mandatory detention under § 235(b) of the INA, 8 U.S.C. § 1225(b). *See* Ex. 1.[2] The BIA recently held that immigration judges lack the jurisdiction to hear bond requests from persons held under § 235(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Specifically, the BIA affirmed "the Immigration Judge's determination that he did not have

[2] Numerous courts, in this district, have concluded that petitioners like Ms. Barrera Martinez should be classified as being detained under § 1226 as opposed to § 1225(b). *See Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S. Dist. LEXIS 201967, at *5 (S.D. Tex. Oct. 7, 2025)(Rosenthal, J.); *see also Nery Ortiz-Ortiz v. Bondi*, Civil Action 5:25-cv-132 Dkt. 17 (S.D. Tex. Oct. 15, 2025)(Kazen, J.); *see also Baltazar v. Vasquez*, 5:25-cv-160 Dkt. 10 (S.D. Tex. Oct. 14, 2025)(Marmolejo, J.). None of these opinions are binding upon the Court. *See Woods v. Harris Cnty*, No. 22-20482, 2024 U.S. App. LEXIS 6684, at *8(citing *Camreta v. Greene*, 563 U.S. 692, 709 n. 7 (2011)).

authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220. The BIA performed a comprehensive review of the applicable statutory provisions and concluded that the plain language of the INA is "clear and explicit" in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States. *Id.* at 226.

Here, Petitioner is detained under § 235(b)(2) of the INA. *See* Exh. 1. She is therefore subject to mandatory detention. The *Yajure Hurtado* decision is binding precedent on immigration judges, and the decision affirmed that the IJ lacks authority to issue Petitioner a bond pending his removal from the United States. *See generally Matter of Yajure Hurtado*, 29 I. & N. at 225.

B. Judicial Review of Petitioner's Removal Proceeding is Unavailable under 28 U.S.C. § 2241.

Next, to the extent the Petitioner seeks judicial review of removal proceeding determinations, such claims should be dismissed. In the present action under 28 U.S.C. § 2241, there is no jurisdictional basis for this Court to review Petitioner's challenges to her removal proceeding. The "sole function" of habeas relief is to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose," which means that it "is not available to review questions unrelated to the cause of detention." *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976).

In 2005, Congress enacted the REAL ID Act, which relied on explicit language demanded by *Demore v. Kim* to strip district courts of jurisdiction over habeas petitions

challenging the Attorney General's discretionary decisions. *See Nolos v. Mukasey*, No. EP-08-CV-287-DB, 2008 WL 5351894, at *2 (W.D. Tex. Sept. 25, 2008) ("Congress enacted the REAL ID Act on May 11, 2005, which stripped district courts of jurisdiction over 28 U.S.C. § 2241 petitions attacking removal orders."). *See also* 8 U.S.C. § 1252(B)(ii) (supplying the language needed to strip habeas jurisdiction from district courts reviewing discretionary decisions of the Attorney General). *See Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917 (W.D. Tex. 2018).

Petitioner is challenging the mandatory detention charge of removability as part of the substantive portion of his removal proceeding. Dkt. No. 1, ¶¶ 40-43. However, the issue regarding her detention is not independent of challenges to Petitioner's ongoing removal proceeding. *See* Conference Report, H.R. Rep. No. 109-72, at 122, 175, reprinted at 2005 U.S.C.C.A.N. 240; *Baez v. ICE*, 150 Fed. App'x. 311 (5th Cir. 2005); *Hernandez v. Gonzales*, 424 F.3d 42, 42 (1st Cir. 2005); *Igbaban v. Manuel*, No. 4:11-cv-1763, 2011 WL 1806428 (S.D. Tex. May 11, 2011); *De Los Santos v. Holder*, No. 4:10-cv-252, 2010 WL 334905 (S.D. Tex. Jan. 28, 2010). Specifically, challenges to both the basis for his detention and a charge of removability are identical. Therefore, there is no jurisdiction under the REAL ID Act to entertain the instant habeas petition.

In *Hernandez-Castillo v. Moore*, 436 F.3d 516, 519 (5th Cir. 2006), the Fifth Circuit held that the REAL ID eliminates habeas corpus review of final removal orders and removal-related claims except those entered under expedited removal provision at 8 U.S.C. § 1225(b)(1). However, this Court still has jurisdiction under 28 U.S.C. § 2241 to review statutory and constitutional challenges to immigration detention under *Zadvydas* (*Zadvydas v. Davis* 533

U.S. 678 (2001)), *provided that administrative remedies have been exhausted,* and, pursuant to 8 U.S.C. § 1252, as amended REAL ID Act, that the basis is: (a) not a matter solely reviewable by the court of appeals in a petition for review; (b) independent of challenges to Petitioner's removal proceeding; and (c) does not arise from the decision or action to commence proceedings, adjudicate cases or execute removal orders against an alien under the INA.

Because the habeas corpus action before the Court is not one involving the expedited removal provision of 8 U.S.C. § 1225(b)(1) or involve an issue under *Zadvydas*, the Court lacks subject matter jurisdiction over the Petition to the extent it asks the Court to enjoin removal under 28 U.S.C. § 2241.

III. Plaintiff's Due Process Claim Fails.

Last, the Petition fails to show any Due Process violation. Procedural due process protects an individual's right to be heard prior to deprivation of life, liberty or property. *See Matthews v. Eldridge*, 424 U.S. 319, 332-333 (1976). In the instant case, Ms. Barrera Martinez is being detained after being issued a Notice to Appear, Exh. 1., and is in removal proceedings. There is no showing that her procedural due process rights have been violated. Further, the threshold question in assessing substantive due process is "whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8 (1998). The Petition does not suggest that any immigration officer involved in Ms. Barrera Martinez's case acted in a manner that could be characterized as egregious or that would shock the conscience. Thus, the Due Process claim fails to show a material fact issue.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court dismiss or otherwise deny the Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on October 20, 2025, the foregoing was the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

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