UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ERIC OMAR GARCIA v. PATRICIA HYDE, *et al.*	Civil Case No. 25-00585-JJM-PAS

RESPONDENTS' SUPPLEMENTAL OPPOSITION[1] TO PETITION FOR WRIT OF HABEAS CORPUS

By and through their attorney, Acting U.S. Attorney Sara M. Bloom, Respondents Patricia Hyde, Todd Lyons, Kristi Noem, and Pamela Bondi, in their official capacities, oppose Eric Omar Garcia's Petition for Writ of Habeas Corpus (Dkt. No. 1 ("Petition")). First, Petitioner argues that his detention will interfere with proceedings before U.S. Citizenship and Immigration Services ("USCIS"). (Petition at 6 ("Ground One"), 9-11 (memorandum)). Petitioner is mistaken, and the erroneous claim of interference does not provide a basis for release from detention. With the Court's permission, Petitioner will be transported as necessary for proceedings before USCIS. Second, Petitioner, who had a bond hearing before an immigration judge ("IJ"), argues that the IJ erred in finding Petitioner to be a risk of flight. (Petition at 6, 11-12). Petitioner is again mistake. There are grounds sufficient for finding him to be a risk of flight. Moreover, Petitioner did not appeal to the Board of Immigration Appeals ("BIA") or move for reconsideration of the IJ's decision and is here essentially asking this Court to make a determination different from the IJ. As explained below, this is something this Court cannot do. Petitioner's remedy is to move in writing for reconsideration before the IJ and to appeal to the Board of Immigration Appeals, if necessary.

[1] This briefing supplants the briefing submitted on November 13, 2025, which was filed prior to the Court's continuance of the response deadline to the habeas petition.

I. Background

The attached Declaration of Supervisory Detention and Deportation Officer Sarah Lapointe, with is attached as Exhibit 1 and incorporated herein, sets forth pertinent background information.

Petitioner, a native and citizen of Guatemala, and most recently entered the United States on May 29, 2014 on a visitor visa under which he was permitted to remain in the country until but not beyond November 28, 2014. (Ex. 1 at ¶¶ 6-8). Petitioner overstayed his visa and remained in the United States after November 28, 2014 without legal authorization. (*Id.* at ¶ 9).

On October 25, 2014, after Petitioner was already in the United States, the government of Guatemala issued a warrant for his arrest based on criminal charges of fraudulent alternation or concealment of civil status and false statements in official documents. (*Id.* at ¶ 10). That arrest warrant remains active in Guatemala. (*Id.* at ¶ 18.)

On July 20, 2022, a Form I-130 (Petition for Alien Relative) was submitted for Petitioner before USCIS, and presently that petition remains pending before USCIS. (*Id.* at ¶ 11). On August 14, 2025, USCIS received a Form I-485 (Application to Register Permanent Residence or Adjust Status) for Petitioner. (*Id.* at ¶ 12). Also on August 14, 2025, ICE officers encountered Petitioner, determined that he had overstayed his visa, and detained him under 8 U.S.C. § 1226(a) after finding that the pending charges in Guatemala made him a flight risk. (*Id.* at ¶ 13).

On August 28, 2025, Petition had a bond hearing before an IJ, and the IJ found that Petitioner posed a risk of flight that could not be mitigated by bond or release conditions. (*Id.* at ¶ 14). Although Petitioner reserved the right to appeal, no appeal was filed with the BIA. (*Id.*) Petitioner also has not moved for reconsideration of the bond determination. (*Id.*).

On September 6, 2025, Petitioner was served with notice that he had been charged as removable under 8 U.S.C. § 1227(a)(1)(B), namely as an alien present in the

United States subject to removal, and shortly thereafter, removal proceedings against Petitioner were initiated before the Immigration Court. (*Id.* at ¶¶ 15, 16, 17). Also pending before the Immigration Court are two separate applications for adjustment of Petitioners status, a Form I-485 and a Form EOIR-42B (Application for Cancellation of Removal and Adjustment of Status). (*Id.* at ¶ 17).

Provided permission from the Court, ICE will transport Petitioner to and from the Wyatt for his I-130 interview with USCIS. (*Id.* ¶ 19).[2]

II. Argument

1. Petitioner's Detention does not interfere with his proceedings before USCIS.

Petitioner argues that his detention interferes with the processing of his Form I-130 (Petition for Alien Relative) by USCIS and thereby undermines his effort to adjust his status. (Petition at 9-11). The I-130 petition seeks to establish the requisite relationship between Petitioner and a U.S. citizen (here presumably his wife), and this I-130 Petition is a prerequisite to the Petitioner's application for adjustment of status. Because ICE will facilitate Petitioner's transportation to and from his scheduled interview with USCIS, Petitioner's detention is not interfering with his effort to adjust his status.

Petitioner erroneously characterizes himself as an arriving alien. Based on that erroneous characterization, Petitioner discounts the role of the Immigration Court in adjustment process. *See* Petition at 9-11. "Arriving alien," as relevant for the present circumstances, means "an applicant for admission coming or attempting to come into the United States at a port-of-entry[.]" 8 C.F.R. § 1001.1(q). Petitioner was admitted to the United States based on a valid visa. Because he was admitted to the Untied States,

[2] Under the Court's August 29, 2025 Order (Dkt. No. 2), Petitioner may not be moved from the Wyatt without 72 hour notice to the Court. ICE seeks amendment of the Order to permit it to transport Petitioner to and from the Wyatt to attend his I-130 interview at USCIS's offices in Hartford, Connecticut.

he is not currently seeking admission, and he is not an arriving alien. Rather, he has illegally remained in the United States without authorization. Put another way, he overstayed his visa, and he is a type of nonimmigrant who failed to comply with the terms under which he was admitted, *see* 8 U.S.C. § 1227(a)(1)(C)(i), and is subject to removal proceedings, *see* 8 U.S.C. § 1227(a). He has been placed in removal proceedings; therefore, the Immigrant Court has "exclusive jurisdiction to adjudicate" his applications for adjustment of status.[3] 4 C.F.R. § 1245.2(a). Accordingly, after USCIS has completed processing of Petitioner's I-130 application, the determination of adjustment of status will be made by the Immigration Court, regardless of the Petitioner's detention status.

2. Petitioner sets forth no basis for setting aside the IJ's bond determination.

A. Standard of Review

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). The Supreme Court has recognized that § 2241(c)(3) confers on the District Court jurisdiction to hear habeas corpus challenges to the legality of the detention of aliens. *See Rasul v. Bush*, 542 U.S. 466, 483-84 (2004) ("[Alien] Petitioners contend that they are being held in federal custody in violation of the laws of the United States. . . . Section 2241, by its terms, requires nothing more."); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("We note at the outset that the primary federal habeas corpus

[3] Notably, Petitioner's application for cancellation of removal for certain nonpermanent residents is only available before the Immigration Court, and is not a type of relief adjudicated by USCIS. *See* 8 U.S.C. § 1229b(b) (permitting only the Attorney General, and by extension the Immigration Court, to cancel the removal of certain nonpermanent residents and adjust their status to a lawfully admitted permanent resident).

statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases." (citing 28 U.S.C. § 2241(c)(3))).

To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) ("The burden of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner.") (citing *Walker v. Johnston*, 312 U.S. 275, 286, 61 S.Ct. 574, 85 L.Ed. 830 (1941); *see also Waddington v. Sarausad*, --- U.S. ----, 129 S.Ct. 823, 831, 172 L.Ed.2d 532 (2009); *Smith v. Robbins*, 528 U.S. 259, 285-86, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000); *Bader v. Warden*, 488 F.3d 483, 488 (1st Cir. 2007)).

A district court should dismiss claims under Federal Rule of Civil Procedure 12(b)(1) when it lacks subject matter jurisdiction to decide them. "In ruling on a motion to dismiss for lack of jurisdiction, 'the district court must construe the complaint liberally, treating all well-pleaded facts as true and indulging all reasonable inferences in favor of plaintiff.'" *Excel Home Care, Inc. v. U.S. Dep't of Health & Human Servs.*, 316 B.R. 565, 568 (D. Mass. 2004) (quoting *Aversa v. United States*, 99 F.3d 1200, 1210 (1st Cir. 1996)). But "[t]hat is not to say that this leniency eliminates the plaintiff's burden of proving an appropriate jurisdictional basis." *Id.* "The party asserting subject matter jurisdiction has the burden of establishing its existence." *Hamada v. Gillen*, 616 F.Supp.2d 177, 180 (D. Mass. 2009) (citing *McBee v. Delica Co., Ltd.*, 417 F.3d 107, 122 (1st Cir. 2005).

B. Argument

This Court lacks jurisdiction to review the IJ's decision to deny Petitioner bond because "Congress has eliminated judicial review of discretionary custody determinations." *Pensamiento v. McDonald*, 315 F.Supp.3d 684 , 688 (D. Mass. 2018) (citing 8 U.S.C. § 1226(e)). Specifically, § 1226(e) provides:

> The Attorney General's discretionary judgment regarding the application of § 1226 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. § 1226(e).

Though the IJ determined that Petitioner was eligible for a bond hearing under § 1226(a), the IJ ultimately denied bond on the basis of finding that Petitioner was a flight risk. This is precisely the type of discretionary judgment that is precluded from judicial review under § 1226(e). *See Hamada v. Gillen*, 616 F.Supp.2d 177, 181 (D. Mass. 2009) (holding that Section 1226(e) barred the district court from reviewing the Immigration Judge and the BIA's decision to detain the petitioner, where the petitioner challenged the decision as "minimizing significant equitable factors in Petitioner's favor.").

The Petition does not challenge the statutory framework governing immigration detention, but rather challenges the IJ's reasoning and analysis and essentially argues that the evidence presented to the IJ was insufficient to establish flight risk by a preponderance of evidence. *Id.* This argument ignores the terms of § 1226(e) that "[n]o 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." 8 U.S.C. § 1226(e)(emphasis added). Because this Court lacks jurisdiction to review the IJ's ruling that Petitioner is a flight risk, the petition should be dismissed. *See* Fed. R. Civ. P. 12(b)(1).

Petitioner's remedy for contesting the IJ's reasoning is to move in writing for reconsideration and, if necessary, appeal to the BIA. *See* 8 C.F.R. § 1003.19(e)-(f). Petitioner's failure to pursue these remedies constitutes a failure to exhaust administrative remedies. Generally, a failure to exhaust administrative remedies "precludes [one] from obtaining federal review of claims that would have properly been raised before the agency in the first instance." *Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021). "Exhaustion allows an agency the first opportunity to apply [its] expertise and obviates the need for judicial review in cases in which the agency provides appropriate redress." *Id.* at 256 (internal quotations and citations omitted). Exhaustion applies to habeas petitions. *See Sayyah v. Farquaharson*, 382 F.3d 20, 26 (1st Cir. 2004) (finding statutory exhaustion barred review where petitioner failed to appeal to BIA).

To the extent that statutory exhaustion does not apply, common law exhaustion doctrine should be applied. Review absent exhaustion is appropriate in "circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion." *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 176 (1st Cir. 2016). Here, the availability of further review, either through reconsideration or appeal suggest that Petitioner's interests are adequately protected by the administrative process. For example, were USCIS to approve the I-130 after Petitioner's interview, Petitioner could move in writing for reconsideration of his detention before the Immigration Court, and any denial of bond could be appealed to the BIA.[4]

[4] The Petition should be denied for the procedural reasons set forth above. However, it is worth noting that Petitioner sets forth no basis for finding the IJ's bond decision inappropriate, much less violative of constitution or law. Petitioner, who overstayed his visa over a decade ago, if removed and returned to his home country faces criminal charges. In other words, he faces hardship if removed to his home country, and this hardship, in his removal proceedings, creates a risk of flight. This reasoning does not improperly assume a criminal history or rely on hearsay, as suggested at pages 11-12 of the Petition.

III. Conclusion

For the reasons set forth above, the Petition should be denied and an order should be entered permitting ICE to transport Petitioner to and from the Wyatt as necessary to attend I-130 proceedings before USCIS in Hartford, Connecticut.

Respectfully Submitted,

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By its Attorney,

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CERTIFICATION OF SERVICE

On this 17th day of November 2025, I caused the within supplemental opposition to be filed electronically and it is available for viewing and downloading from the ECF system.

/s/ Milind Shah
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Assistant U.S. Attorney