UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROSY FERNANDES,	§	
	§	
Petitioner,	§	
	§	
v.	§	CIVIL NO. 4:25-cv-5598
	§	
WARDEN RANDALL TATE, *et al.*,	§	
	§	
Respondents.	§	
	§	

RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS AND, ALTERNATIVELY, FOR SUMMARY JUDGMENT

The Government[1] responds to Petitioner's habeas petition and respectfully requests that this Court dismiss her petition under 28 U.S.C. § 2241 and grant summary judgment for the Government under Federal Rule of Civil Procedure 56.

I. NATURE OF THE PROCEEDING

Petitioner is a native and citizen of India. (Dkt. No. 1 at ¶ 20). After illegally entering the United States, and after an inspection by an immigration officer, Petitioner was not admitted or paroled. (Ex. 1, Notice to Appear, at p. 1). In November 2023, she was charged as being subject to removal pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and released from detention pending her removal proceeding. (Ex. 1, Notice to Appear, at pp. 1-2). She was subsequently

[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 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

re-detained and is awaiting the conclusion of her removal proceeding at Montgomery Processing Center in Conroe, TX. (Dkt. No. 1 at ¶ 14).

On November 20, 2025, Petitioner sought a writ of habeas corpus, challenging the legality of her detention. (Dkt. No. 1). She specifically alleges that because she was released from detention, she is entitled to notice and a detention hearing before being re-detained. (*See generally* Dkt. No. 1).

II. SUMMARY OF ARGUMENT

A writ of habeas corpus petitioner must allege the exhaustion of administrative remedies. Petitioner fails to do so. Accordingly, the petition should be dismissed.

Alternatively, Petitioner fails to meet her burden to show her detention is unlawful. She is an alien seeking admission into the United States and, consequently, her detention is not only lawful, but mandated. Thus, Petitioner's relief requested should be denied, and the Government's motion should be granted.

III. ARGUMENT

A. PETITIONER FAILED TO SHOW EXHAUSTION OF HER ADMINISTRATIVE REMEDIES PRIOR TO FILING THE PETITION.

As a threshold matter, the Court should dismiss the habeas petition because it fails to allege the exhaustion of administrative remedies. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a habeas petitioner must exhaust all administrative remedies prior to filing a federal habeas petition under 28 U.S.C. § 2241. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*,

896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same).

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 alleges that she was re-detained without due process but fails to allege the exhaustion of administrative remedies. Whether she sought relief from the agency, allowing the agency to correct the alleged grievance, is unsupported by the record. Consequently, Petitioner fails to demonstrate she exhausted all available administrative remedies. The petition should be dismissed.

B. ALTERNATIVELY, PETITIONER IS SUBJECT TO MANDATORY DETENTION.

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-understood that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarily a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not

be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As the Supreme Court stated, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

Based on the plain language of 8 U.S.C. 1225(b)(2), Petitioner fails to show her detention is unlawful. "As usual, we start with the statutory text." *Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 177 (5th Cir. 2024). Section 1225(b)(2) provides that unless an "alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings]." Although "seeking admission" is not defined, a synonymous phrase is.[2] *See* 8 U.S.C. § 1225(a)(1). An "applicant for admission" is broadly defined as "an alien present in the United States who has not been admitted." *Id.*; *see Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, *4 (S.D. Tex. Nov. 13, 2025) (J. Eskridge) (providing "[t]he statutory definition of *applicant for admission* is broad") (emphasis in original). This includes aliens that arrive "whether or not at a designated port of arrival." 8 U.S.C. § 1225(a)(1).

Here, Petitioner is an alien present in the United States. As she concedes, she has not been admitted. Additionally, Petitioner is not clearly and beyond a reasonable doubt entitled

[2] Congress synonymously linked "seeking admission" and "applying for admission." In 8 U.S.C. § 1225(a)(3), Congress provided that all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

to be admitted. Thus, based on the statutory text of 8 U.S.C. § 1225(a)(1),(b)(2) and its clear meaning, Petitioner "shall" be detained until her removal proceeding concludes.

While seemingly conceding the applicability of the mandatory detention provision, (Dkt. No. 1 at ¶ 29), Petitioner attempts to read-in a procedural requirement to the detention mandate. She argues she is entitled to a "hearing before a neutral decisionmaker" and written notice before she can be re-detained, citing 8 C.R.F. § 212.5(e)(2) as support. (Dkt. No. 1 at ¶¶ 27-28). Although the regulation does not mention any right to a hearing, it does provide that "parole" terminates upon written notice. 8 C.R.F. § 212.5(e)(2).

The regulation is inapplicable and, regardless, it was complied with. First, Petitioner's position conflicts with the law. 8 U.S.C. § 1225(b)(2) mandates detention. It does not mandate detention, *but only if an alien is provided written notice*; or mandate detention, *but only after a hearing.* Detention is simply mandatory. 8 U.S.C. § 1225(b)(2) (using shall).

Second, even assuming Petitioner's initial release from custody to be "parole" and that the regulation provides a right to an alien to receive written notice before parole is terminated, the regulation was complied with. A "charging document . . . constitute[s] written notice of termination of parole." 8 C.R.F. § 212.5(e)(2)(i). And Petitioner received service of her charging document, the Notice to Appear. (Ex. 1, Notice to Appear, at p. 1); *Membreno-Rodriguez v. Garland*, 95 F.4th 219, 220 (5th Cir. 2024) (showing parole terminated when an alien was served with a Notice to Appear).

Petitioner is subject to 8 U.S.C. § 1225(b)(2), mandatory detention. Even assuming arguendo that she was paroled and entitled to written notice before the termination of parole,

such written notice was provided. The Government lawfully re-detained Petitioner, and the petition lacks merit.

IV. CONCLUSION

For the foregoing reasons, the Government respectfully request that this Court dismiss the petition for habeas relief and grant the instant motion. Alternatively, this Court should enter judgment as a matter of law, finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

Dated: December 9, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney

/s/ Colin W. Hotard
Colin W. Hotard
Assistant United States Attorney
Southern District of Texas
SDTX No. 3897860
1000 Louisiana, Suite 2300
Houston, Texas 77002
Tel: (713) 567-9167

Counsel for Federal Respondents

CERTIFICATE OF SERVICE

I certify that, on December 9, 2025, the foregoing was filed and served on all attorneys of record via the District's ECF system.

/s/ Colin W. Hotard
Colin W. Hotard
Assistant United States Attorney