UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

MYKYTA REDKIN	§	
Petitioner,	§	
	§	
v.	§	**Civil Action No. 5:25-cv-228**
	§	
KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General; TODD LYONS, Acting Director of Immigration and Enforcement; MIGUEL VERGARA, Harlingen Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement; and MARIO GARCIA, Warden, Webb County Detention Center; in their official capacities;	§	
Respondents.	§	

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

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

Petitioner is detained under 8 U.S.C. § 1226, had a bond hearing on October 8, 2025, and had his second bond request denied because there was no material change in his circumstances. Order of Immigration Judge ("IJ") dated October 8, 2025, Respondents' Exhibit ("REX") 1; Order of IJ, dated November 4, 2025, REX 2. The IJ determined Petitioner was not subject to mandatory

[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.

detention and in his discretion found that Petitioner failed to meet his burden of establishing he is not a flight risk and denied Petitioner's request for release on bond. REX 1. Petitioner then requested a custody redetermination and the IJ found that the Petitioner "ha[d] not met his burden to show a material change in circumstances." REX 2. Petitioner did not file an appeal by December 4, 2025, with the Board of Immigration Appeals ("BIA") as required by 8 CFR § 1240.15. Deportation Officer Jorge Guzman Declaration, pg. 2, ¶. REX 3.

First, Petitioner failed to exhaust his administrative remedies. This is enough by itself to deny his § 2241 petition. Second, this Court lacks jurisdiction to review discretionary decisions made by an IJ regarding bond. 8 U.S.C. § 1226(e).

Accordingly, this Court should deny Petitioner's § 2241petition and grant summary judgment for the Government.

I. BACKGROUND

On September 22, 2025, Petitioner, Mykyta Redkin, was encountered by Border Patrol at the Laredo North Checkpoint near Laredo, Texas. Docket Entry ("DE") 1, I-213 Petitioner's Exhibit ("PEX") 4. At the time of encounter, Redkin admitted that he did not have a lawful right to remain in the United States. *Id*. Petitioner was originally given a Notice to Appear which advised that he was charged with being subject to removal pursuant to 212(a)(6)(i) of the Immigration and Nationality Act ("INA"). DE 1, Notice to Appear, PEX 5. Petitioner was subsequently issued a superseding NTA after ICE-ERO realized he was a visa overstay and charged him as a visa overstay in violation of 237(a)(1)(B) instead of the previously charged entry without inspection. Notice to Appear dated September 22, 2025, REX 4. Petitioner was denied a bond by an Immigration Judge ("IJ") on October 8, 2025, after the IJ found that Redkin "has not met his burden to show he would not be a flight risk if released from custody." REX 1. The IJ also found that Petitioner had

"presented insufficient information for the Court to assess any likelihood of success that [Petitioner] would have on any applications for relief from removal." *Id*. Petitioner was detained pursuant to 8 U.S.C. § 1226(a). DE 1.

II. LEGAL STANDARD

1. Summary Judgment

Generally, summary judgment is proper when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). If the moving party meets is burden of demonstrating the absence of a genuine factual dispute, the non-movant must then come forward with specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The non-movant must "go beyond the pleadings and by [the nonmovant's] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Nola Spice Designs, LLC v. Haydel Enters., Inc*., 783 F.3d 527, 536 (5th Cir. 2015). The non-movant's burden "will not be satisfied by 'some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence." *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (quoting *Little v. Liquid Air Corp*., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam)).

2. Writ of Habeas Corpus

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. *See*, *e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental

to the authority to deport, as "[d]etention is necessarly 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 has stated in no unmistakable terms, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

3. Discretionary Detention Under 8 U.S.C. § 1226

There is no question that Petitioner is being detained pursuant to 8 U.S.C. § 1226. Section 1226 provides that an alien may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

As stated by the IJ in his first order denying reconsideration for release and his subsequent order denying reconsideration for release Respondents bears to the burden of establishing that he is not a flight risk or that there has been a change in circumstances since his last bond hearing. REX 1; REX 2. The alien bears the burden of establishing to the satisfaction of the IJ 'that he or she does not present a danger to persons or property, is not a threat to national security, and does not pose a risk of flight.' *Matter of R-A-V-P*, 27 I & N Dec. 803, 804 (BIA 2020)(citing and quoting

Matter of Siniauskas, 27 I & N Dec. 207, 207 (BIA 2018); see also *Matter of Fatahi*, 26 I & N Dec. 791, 795 n. 3 (BIA 2016)("We have consistently held that aliens have the burden to establish eligibility for bond while proceedings are pending.")."

4. BIA Review

The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(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 IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id*. § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

Petitioner did not avail himself of review afforded him by law through the BIA.

III. DISCUSSION

1. Petitioner Failed to Exhaust His Administrative Remedies Prior to Filing the Petition.

As a threshold matter, the Court should dismiss the habeas petitioner because Petitioner has not administratively exhausted his claims. 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 § 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).

In this case, Petitioner had a bond hearing, as requested, before an IJ. The IJ found Petitioner was not subject to mandatory detention but was eligible for release on bond pursuant to § 236 of INA. DE 1, ¶ 15. The IJ, after full consideration of the evidence presented by Petitioner in his bond hearing, found Petitioner did not meet his burden of establishing he was not a flight risk and denied Petitioner's request to be released on bond. REX 1. Petitioner did not file an appeal with BIA. REX 3, pg. 2, ¶¶ 10, 12.

The Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted). *Fuller* itself is illustrative, where the petitioner argued that administrative appeal was futile because the time for filing an appeal has already elapsed. *See id.* The Fifth Circuit disagreed, holding that "until he actually appeals and that appeal is acted on, we do not know what the appeals board will do with [petitioner]'s claim, and until the appeals board has been given an opportunity to act, [petitioner] has not exhausted his administrative remedies." *Id.*

Petitioner cannot and does not argue any extraordinary circumstance as an exception to the exhaustion requirement. Petiioner did not file an appeal with the BIA and thus did not exhaust his remedies. In sum, not only does the law require exhaustion, practical and intuitive considerations highlight why this result must follow here in the bond context.

2. <u>The Court Lacks Jurisdiction to Review Discretionary Decisions Made By an Immigration Judge</u>

As found in a similar factual scenario, pursuant to statute governing apprehension and detention of aliens, 8 U.S.C. § 1226(e), district courts do not have jurisdiction to review

discretionary decisions made by an IJ regarding bond. *Fuentes v. Lyons,* No. 5:25-CV-00153, 2025 WL 3022478 (S.D. Tex. Oct. 29, 2025) (holding that, pursuant to § 1226(e), "district courts do not have jurisdiction to review discretionary decisions made by an IJ regarding bond").

Statute governing apprehension and detention of aliens may strip court of jurisdiction to review judgments designated as discretionary under pertinent language of the statute, but it does not deprive court of all authority to review statutory and constitutional challenges, and courts retain jurisdiction to review a noncitizen's detention insofar as that detention presents constitutional issues. *Id*

In *Fuentes*, the court considered Petitioner's challenge to the constitutional adequacy of a bond hearing and analyzed whether there was a constitutional deficiency in the notice for bond hearing. Reviewing this decision would require the Court to assess the underlying discretionary bond determination, which it lacks jurisdiction to do. 8 U.S.C. § 1226(e).

Ignoring the essential findings of fact, Petitioner urges this Court to not only set aside the IJ's discretionary determination to deny bond, but order Petitioner released. Petitioner is therefore asking this Court to assess the discretionary bond determination, without a real showing of a constitutional or statutory deficiency. Therefore, the Court lacks jurisdiction to review the underlying decision of the IJ and her findings and determination to not issue a bond.

IV. CONCLUSION

For the foregoing reasons, the Government respectfully request that the Court deny Petitioner's request for habeas relief and grant the instant motion. As discussed above, Petitioner has not exhausted his administrative remedies and, even if he had exhausted, the Court does not have jurisdiction to review the underlying discretionary decision by the IJ to deny bond.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 11, 2025, a copy of the foregoing was filed and served on counsel for Petitioner, Javier N. Maldonado, via the Court's CM/ECF system.

/s/ Lance Duke
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