UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

MYKYTA REDKIN ,
Petitioner,

v.

KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General, TODD LYONS, Acting Director of Immigrations and Customs Enforcement; MIGUEL VERGARA, Harlingen Field Office Director for Detention and and Removal, U.S. Immigration and Customs Enforcement; and MARIO GARCIA, Warden, Webb County Detention Center;

Respondents.

§ Civil No.5:25-cv-00228

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS, AND, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Petitioner Mykyta Redkin files this his reply to the Federal Respondents' Response to the Petition for Writ of Habeas Corpus and Motion to Dismiss, and, in the alternative, for Summary Judgment. In support of his reply, Petitioner states as follows:

1. Mr. Redkin's petition for writ of habeas corpus challenges the procedures under which he was denied bond. There is no final order of removal so he is not challenging that. He is challenging the immigration judge's bond decision insofar as he contests the procedures under which such decision was made. More specifically, Petitioner argues that the immigration judge wrongly and unconstitutionally placed the burden of proof on Petitioner and applied the wrong standard of proof. Petitioner submits that the Due Process Clause of the Fifth Amendment to the

U.S. Constitution guarantees a noncitizen's right to freedom from imprisonment during removal proceedings by requiring the Federal Government to demonstrate by clear and convincing evidence that the noncitizen is a flight risk or a danger.

2. In its response, the Federal Respondents argue for dismissal of Petitioner's petition on two grounds: failure to exhaust administrative remedies and the lack of federal court jurisdiction over discretionary decisions. On both counts, Federal Respondents are wrong.

3. Exhaustion of administrative remedies before seeking recourse in federal court is either statutorily required or imposed for prudential reasons. See *Gonzalez v. Blue Cross Blue Shield Ass'n*, 62 F.4th 891, 900 (5th Cir. 2023) ("There are two types of exhaustion requirements: jurisdictional and jurisprudential."). Nothing in 28 U.S.C. § 2241 or the Immigration and Nationality Act (INA) requires noncitizens to appeal adverse bond decisions to the Board of Immigration Appeals (BIA). This Court has previously examined the issue of exhaustion of administrative remedies prior to filing § 2241 habeas petitions challenging the denial of bond hearings and detention generally. *Padron Covarrubias v. Vergara*, No. 5:25-CV112, 2025 WL 2950096 at *6 (S.D. Tex. Oct. 3, 2025); *Perdomo Flores v. Noem*, No. 5:25-CV-162, slip op. at 5 (S.D. Tex. Nov. 25, 2025); *Gonzalez Rodriguez v. Bondi*, No. 5:25-CV-191, slip op. at 6 (S.D. Tex Dec. 18, 2025). Congress required administrative exhaustion of remedies only for appeals of final orders of removal. 8 U.S.C. § 1252(d)(1) (a court may review a final order of removal only if all administrative remedies have been exhausted); *see also Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *6 (W.D. Tex. Sep. 22, 2025) (quoting *Garza-Garcia v. Moore*, 539 F.Supp.2d 899, 904 (S.D. Tex. 2007).

4. The Fifth Circuit generally requires inmates to exhaust administrative remedies before filing a § 2241 habeas petition. *See e.g., Gallegos-Hernandez v. United States*, 688 F.3d

190, 194 (5th Cir. 2012). But the requirement can be waived "where the attempt to exhaust such remedies would itself be a patently futile course of action." *Id.* (citation omitted).

5. For two reasons, Petitioner need not exhaust his administrative remedies because it is futile. First, soon after Congress amended the INA in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104- 208, 110 Stat. 3009-546, 3009-586 ("IIRIRA"), the BIA held that in immigration bond proceedings, noncitizens bear the burden of proof of demonstrating that they are not flight risk or danger. *See Matter of Adeniji,* 22 I&N Dec. 1102, 1112-13 (BIA 1999) ("to be eligible for bond, the respondent must demonstrate that his 'release would not pose a danger to property or persons, and that he is likely to appear for any future proceeding' "). The BIA re-affirmed its position this year in *Matter of Choc-Tu*t, 29 I&N Dec. 48, 49 (BIA 2025). "At a bond hearing conducted pursuant to section 236(a) of the Immigration and Nationality Act…, 8 U.S.C. § 1226(a) (2018), the burden of proof is on the respondent to demonstrate 'to the satisfaction' of the Immigration Judge and the Board that his 'release would not pose a danger to property or persons,' and that the respondent is likely to appear for any future proceeding.") (citing to 8 C.F.R. § 1236.1(c)(8)). Thus, the BIA has spoken on the issue and it makes no sense to require Petitioner to exhaust under these circumstances.

6. Second, exhaustion is futile because the BIA lacks jurisdiction to adjudicate constitutional issues. The BIA has stated "[i]t is well settled that we lack jurisdiction to rule on the constitutionality of the Act and the regulations we administer." Matter of Fuentes-Campos, 21 I&N Dec. 905, 912 (BIA 1997) (citing *Matter of C-*, 20 I&N Dec. 529 (BIA 1992)); *see also Falek v Gonzales*, 475 F3d 285, 291 n.4 (5th Cir 2007) (explaining "there is no dispute that the BIA has no power to adjudicate constitutional claims"). Petitioner therefore did not have to exhaust his administrative remedies.

7. Alternatively, the Federal Respondents argue that Petitioner's habeas petition should be dismissed because Congress stripped federal courts from reviewing discretionary decisions made by an immigration judge. The Federal Respondents rely upon Judge Saldaña's decision in *Fuentes v. Lyons*, No. 5:25-CV-00153, 2025 WL 3022478 (S.D. Tex. Oct. 29, 2025) to buttress their argument. But Respondents are wrong and *Fuentes v. Lyons* provides no support for their argument.

8. Petitioner does not deny that, in the main, discretionary decisions by immigration officers, including immigration judges, are not subject to judicial review. *See* 8 U.S.C. § 1252(a)(2)(B)(i) and (ii). But Petitioner is not challenging the immigration judge's weighing of the evidence or the reasonableness of his decision. He is challenging the procedures that govern bond proceedings and such challenge is not jurisdictionally barred.

9. As Judge Saldaña explained, the prohibition against reviewing discretionary decisions "does not extend to constitutional challenges to the statutory framework or extent of the Government's detention authority." *Fuentes v. Lyons*, 2025 WL 3022478 at *3. The right of noncitizens to mount constitutional challenges to the INA's detention scheme has affirmed and re-affirmed several times. *Demore v. Kim*, 538 U.S. 510, 517 (2003) (holding that section 1226(e) does not bar review of challenge to statute that denies bond hearings to noncitizens with certain criminal convictions); *Nielsen v. Preap*, 586 U.S. 392 (2019) (same); *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (same). Because his petition does not challenge the immigration judge's discretionary bond decision, this Court is not barred from reviewing Petitioner's constitutional claims.

10. Other district courts have addressed this issue and concluded that there are no jurisdictional bars to addressing Petitioner's claims and that Due Process requires that the

Department of Homeland Security bear the burden of demonstrating by clear and convincing evidence that a noncitizen is a flight risk or danger to the public. *J.C.G. v. Genalo*, 2025 U.S. Dist. LEXIS 8279 at *27-28, 2025 WL 88831 (S.D.N.Y. Jan. 14, 2025) (citing other district court cases).

11.

Date: December 19, 2025

Respectfully submitted,

/s/ Javier N. Maldonado

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CERTIFICATE OF SERVICE

On December 19, 2025, undersigned counsel electronically filed the instant pleading and all counsel of record will receive copies of the pleading.

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