

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SUKHJINDER SINGH KEWAL SIN)
JOHAL,)
Petitioner,)
)
v.)
)
PAMELA BONDI, ET AL.,)
Respondents.)

Case No. CIV-25-1408-J

**RESPONDENTS’ MOTION TO DISMISS PETITION,
WITH BRIEF IN SUPPORT OF MOTION TO DISMISS**

NOW COME Respondents Attorney General Pamela Bondi, Secretary of Homeland Security Kristi Noem, Acting Director of U.S. Immigration and Customs Enforcement (ICE) Todd M. Lyons, Acting Executive Associate Director for Enforcement and Removal Operations (ERO) Marcos Charles, ERO Field Office Director Mark Siegel, ICE, and the U.S. Department of Homeland Security (DHS) (collectively, the “Federal Respondents”), who, for response to the Court’s Order for Response and Notice (“Order”) [Doc. 9] respectfully submit that they deny each and every allegation of the Verified Petition for Writ of Habeas Corpus (“Petition”) [Doc. 1] except as may be specifically admitted herein, and that the Court should enter an order dismissing the Petition for lack of subject-matter jurisdiction and for failure to exhaust available administrative remedies. In support of this motion, the Federal Respondents respectfully submit the following:

Brief in Support of Dismissal

A. Introduction:

The Court notes that there may be “contested issues about jurisdiction” in this case.

Order [Doc. 9] at 4. Federal courts are courts of limited jurisdiction. There is a presumption against jurisdiction, and the party invoking federal jurisdiction bears the burden of proof. A court lacking jurisdiction cannot render judgment and must dismiss the cause at any stage of the proceedings in which it is apparent that jurisdiction is lacking. *Marcus v. Kansas Dep't of Revenue*, 170 F.3d 1305, 1309 (10th Cir. 1999).

Petitioner Sukhjinder Singh Kewal Sin Johal invokes habeas corpus jurisdiction under 28 U.S.C. § 2241. Petition [Doc. 1] at 3, ¶ 14; *id.* at 4, ¶¶ 16, 18; *id.* at 11, ¶ 45; *see also* Civil Cover Sheet [Doc. 1-2] at 1, Part IV (first citing 28 U.S.C. § 2241 as the civil statute under which the petition is filed; also citing 5 U.S.C. § 702 *et seq.*, and 28 U.S.C. §§ 1651 and 1657). The Court notes that “it does have jurisdiction over habeas petitions.” Order [Doc. 9] at 2 (citing 28 U.S.C. § 2241(a)). That is true, as a general proposition. Also, “it is familiar law that a federal court always has jurisdiction to determine its own jurisdiction.” *United States v. Ruiz*, 536 U.S. 622, 628 (2002).¹

Exercising the authority recognized in *Ruiz*, this Court should determine that it lacks jurisdiction in this case. Mr. Johal styles his action as one for habeas corpus relief and challenges his immigration custody at the Cimmaron Correctional Facility. Petition [Doc. 1] at 3, ¶ 10. An Immigration Judge (IJ) has denied bond, *id.* at 2, ¶ 6, and Petitioner claims

¹ *See also Chicot Cnty. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376 (1940) (“The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act.”); *Bush v. United States*, 717 F.3d 920, 928 (Fed. Cir. 2013) (“A court always has jurisdiction to determine whether it has jurisdiction.”).

that appealing the IJ's decision to the Board of Immigration Appeals (BIA) would be futile because of the length of time he believes the BIA would take to decide an appeal. *Id.*, ¶ 8. He asks this Court to “grant[] a writ of habeas corpus ordering the immigration judge to set a bond in whatever monetary amount” the IJ deems appropriate. *Id.* at 2-3, ¶ 9.

Petitioner claims that “requiring Johal to exhaust administrative remedies would be futile” but “[i]n any event, *Johal has indeed exhausted all remedies available to him.*” *Id.* at 8, ¶¶ 33-34 (emphasis added). That is false, and Mr. Johal is abusing the processes of this Court and the immigration court.

When the IJ denied bond, Mr. Johal indicated that he would appeal the IJ's decision. He was notified that his appeal to the BIA is due December 17, 2025. Att. 1 at 2.

Petitioner not only reserved his right to appeal the IJ's decision to the BIA, but also on November 25, 2025, he submitted a motion to the IJ, asking the IJ to reconsider the order denying bond. Att. 2. Mr. Johal's next hearing before an IJ, a master hearing, is set for December 22, 2025. Att. 3.

Petitioner has *not* exhausted all remedies available to him. Meanwhile, as he continues to present his case for bond to the IJ and to the BIA, he seeks relief in this Court in the form of a “writ of habeas corpus ordering the immigration judge to set a bond[.]” Petition [Doc. 1] at 2-3, ¶ 9. The Court may have jurisdiction over habeas corpus petitions generally, but it does not have jurisdiction in this case.

B. Law and Argument:

1. Judicial review of a decision to grant or deny bond is barred.

Petitioner asserts that he is “in immigration custody pursuant to 8 U.S.C. § 1226(a).”

Petition [Doc. 1] at 1, ¶ 2. Section 1226(a) provides that an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Pending that decision, the Attorney General may continue to detain the alien, may release the alien on bond, or may release the alien on conditional parole. 8 U.S.C. § 1226(a)(1)-(2). Furthermore, the statute provides:

The Attorney General's discretionary judgment regarding the application of this section 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 of any alien or the revocation or denial of bond or parole.

8 U.S.C. § 1226(e).

Another provision of the Immigration and Nationality Act provides in pertinent part:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision ... no court shall have jurisdiction to review ... (ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security

8 U.S.C. § 1252(a)(2)(B)(ii).

The bond decision that Petitioner contests is not subject to judicial review. *See Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (Section 1226(e) “precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release.”) (cleaned up); *Pelletier v. United States*, 653 F. App'x 618, 622 (10th Cir. 2016) (“To the extent that Mr. Pelletier seeks modification of or release from the conditions of his bond, 8 U.S.C. § 1226(e) expressly bars judicial review of “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.”); *Villaescusa-Rios v. Choate*, No. 20-CV-03187-CMA, 2021 WL 269766, at *5 (D. Colo. Jan. 27, 2021) (“The Supreme Court and the Tenth Circuit have held that Section 1226(e), therefore, precludes judicial review of the Executive Branch’s decisions of whether to grant bond and under what conditions.”).

2. Tenth Circuit jurisprudence further establishes the lack of jurisdiction.

Petitioner invokes this Court’s habeas corpus jurisdiction under 28 U.S.C. § 2241. Petition [Doc. 1] at 3, ¶ 14; *id.* at 4, ¶¶ 16, 18; *id.* at 11, ¶ 45. He alleges that he is detained in immigration custody pursuant to 8 U.S.C. § 1226(a). *Id.* at 1, ¶ 2. He does not allege that he is the subject of mandatory detention as a criminal alien under 8 U.S.C. § 1226(c).

Petitioner emphasizes that his removal proceedings are pending. *See* Petition [Doc. 1] at 1, ¶ 3 (“his removal proceedings remain pending”); *id.* at 4-5, ¶ 19 (“Petitioner Johal is...in removal proceedings[.]”); *id.* at 12, ¶¶ 49 (8 U.S.C. § 1126(a) and 8 C.F.R. § 1003.19 “governs [sic] the detention and release of noncitizens who are pending removal proceedings....Respondents have failed to comply with these provisions....”).

A Tenth Circuit Court of Appeals panel addressed these circumstances in *Mwangi v. Terry*, 465 F. App’x 784 (10th Cir. 2012). A magistrate judge found, and the Tenth Circuit panel agreed, that the district court lacked jurisdiction over an immigration detainee’s § 2241 habeas petition where the detainee was not the subject of mandatory detention as a criminal alien and was not subject to a final order of removal. Instead, the petitioner in *Mwangi* had been detained for more than three years during the pendency of his removal proceedings, and “Congress has eliminated judicial review over these types of discretionary decisions ‘regardless of whether the judgment, decision, or action is made in

removal proceedings.” 465 F. App’x at 787 (quoting 8 U.S.C. § 1252(a)(2)(B)(ii)). To the extent the petitioner in *Mwangi* challenged “the agency’s discretionary bond decision, the magistrate judge was correct that the court lacked jurisdiction.” *Id.*

The panel was not persuaded by the petitioner’s claim that he was “not challenging the discretionary aspects of his detention, but rather its constitutionality.” *Id.* If his removal proceedings were continuing, it was not because the government could not remove him. There was no indication that he could not be removed, whether it be for a lack of a repatriation agreement or because his designated country would not accept him. *Id.*

Like the detainee in *Mwangi*, Mr. Johal seeks to recast his claim as a constitutional challenge, artfully pleading, “Because Johal seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.” Petition [Doc. 1] at 4, ¶ 15. Mr. Johal is a native and citizen of India. Petition [Doc. 1] at 1, ¶ 2, and at 4, ¶ 19. He does not allege any institutional barriers to his removal, such as a lack of a repatriation agreement with India,² nor does he allege that there are barriers

² Cf. Hannah Ellis-Petersen, *Modi’s government planning to repatriate 18,000 Indians living in US illegally*, *The Guardian* (Jan. 21, 2025) (<https://www.theguardian.com/us-news/2025/jan/21/modi-government-planning-to-repatriate-18000-indians-living-in-us-illegally>) (“The Indian government has identified 18,000 emigrants living in the US illegally that it intends to repatriate in a bid to ease pressures under Donald Trump, according to reports. [¶] Sources who spoke to Bloomberg said the Indian government was collaborating with the US authorities to identify undocumented Indian immigrants for deportation in order to demonstrate a willingness to work closely with the new Trump administration and protect legal immigration visas for Indian citizens.”); Press Release, Department of Homeland Security, *DHS Conducts Removal Flight to the Republic of India* (Oct. 25, 2024) (<https://www.dhs.gov/archive/news/2024/10/25/dhs-conducts-removal-flight-republic-india>) (“On October 22, the U.S. Department of Homeland Security (DHS), through U.S. Immigration and Customs Enforcement (ICE), conducted a large-frame charter removal flight to the Republic of India of Indian nationals who did not establish

unique to him. *See Mwangi*, 465 F. App'x at 787 (discussing *Zadvydas v. Davis*, 533 U.S. 678 (2001)). If there were such barriers, it was Petitioner's burden to plead them.

3. Petitioner improperly asserts that he has exhausted all available administrative remedies.

Petitioner claims that “requiring Johal to exhaust administrative remedies would be futile” but “[i]n any event, *Johal has indeed exhausted all remedies available to him.*” *Id.* at 8, ¶¶ 33-34 (emphasis added).

The doctrine of exhaustion of administrative remedies is well established and provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. *Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006). Administrative exhaustion serves two primary purposes.

First, exhaustion protects agency authority. Exhaustion gives an agency an opportunity to correct its own mistakes with respect to the programs the agency administers before it is haled into federal court. Furthermore, administrative exhaustion discourages the disregard of established agency procedures. *Id.* at 89.

Second, administrative exhaustion promotes efficiency. As the Supreme Court observed in *Woodford*, “Claims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court.” *Id.* In some cases, claims are resolved at the administrative level. In others, proceedings before

legal basis to remain in the United States. This week's flight demonstrates the Department's continued commitment to pursuing sustained cooperation with the Indian government and other international partners to reduce and deter irregular migration and jointly work to counter human smuggling.”).

the agency convince the losing party not to pursue the matter in court. And even where a controversy remains after the administrative proceedings have ended, exhaustion of the administrative procedure may produce a useful record for subsequent judicial consideration. *Id.*

“Proper exhaustion demands compliance with an agency’s deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.” *Id.* at 90-91. *Woodford* was a habeas corpus suit in which the Supreme Court concluded, “In practical terms, the law of habeas, like administrative law, requires proper exhaustion[.]” *Id.* at 92.

As to the first purpose of administrative exhaustion, “the exhaustion doctrine recognizes the notion, grounded in deference to Congress’ delegation of authority to coordinate branches of Government, that agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer.” *Gilmore v. Weatherford*, 694 F.3d 1160, 1167 (10th Cir. 2012) (citations omitted). Here, Congress has established a program within the Executive Branch for immigration bond determinations. Petitioner expects this Court to interfere in the system that Congress devised. He asks this Court to issue “a writ of habeas corpus ordering the immigration judge to set a bond in whatever monetary amount they deem appropriate[.]” Petition [Doc. 1] at 2-3, ¶ 9. He prays for an order directing “the immigration judge to set a reasonable bond for Johal within 24 hours.” *Id.* at 14, ¶ 3.

Seeking to avoid the exhaustion doctrine, Petitioner claims that exhaustion would be futile. “The futility exception, however, is a narrow one; to fit within the futility

exception, a plaintiff must show that resort to the administrative process would be ‘clearly useless.’” *Gilmore*, 694 F.3d at 1169. (10th Cir. 2012).

The process in the immigration court system is decidedly not “clearly useless” because, while Mr. Johal is seeking habeas corpus relief in this Court, he is availing himself of the processes of the immigration court system. He has moved the IJ to reconsider her decision denying bond. He has reserved the right to appeal the IJ’s decision to the BIA.

The Tenth Circuit has expressly rejected the position that the futility exception applies simply because the administrative body has precedent which contradicts the party’s position. *Id.* (citing *Tinker AFB v. FLRA*, 321 F.3d 1242, 1248 (10th Cir. 2002)). An individual should seek relief from an agency even when the agency is unlikely to grant the relief requested, because exhaustion of such claims allows agencies to consider the specific facts of each matter and to change course, if appropriate. *Id.*

Mr. Johal does not convincingly allege futility. He claims that appealing the IJ’s order to the BIA “is futile *because that appeal will take a minimum of four months to be decided,*” but in the meantime he will be “forced to present a case for relief before the immigration judge[.]” Petition [Doc. 1] at 2, ¶ 8 (emphasis added). He does not explain how he arrived at his claim that it will take at least four months for the BIA to decide an appeal. Delay may occur within the administrative process, but the Tenth Circuit will not consider hypotheticals premised on possible delay when the petitioner did not attempt to complete the available administrative process. *Gilmore*, 694 F.3d at 1170.

Mr. Johal claims that he has been denied due process and that the immigration court has not followed its established procedures. Petition [Doc. 1] at 12-14. However, he has

received (and is receiving) due process. He is dissatisfied with the IJ's decision to deny bond, but he is contesting that decision with the IJ, and he has reserved the right to appeal to the BIA. There has been no deprivation of due process, and he is not entitled to habeas corpus relief.

Prayer for Relief

WHEREFORE, the Federal Respondents respectfully pray for an order of this Honorable Court dismissing Petitioner's Verified Petition for Writ of Habeas Corpus [Doc. 1]. If the Court declines to dismiss the Petition, the Federal Respondents pray in the alternative for an order directing them to respond further to the causes of action alleged in the Petition [Doc. 1].

Respectfully submitted this 8th day of December, 2025.

ROBERT J. TROESTER
United States Attorney

/s/ R. D. Evans, Jr.
R. D. EVANS, JR.
Louisiana Bar No. 20805
Assistant United States Attorney
Office of the United States Attorney
for the Western District of Oklahoma
210 Park Ave., Suite 400
Oklahoma City, OK 73102
(405) 553-8700
(405) 553-8885 (fax)
Email: Don.Evans@usdoj.gov

Counsel for Respondents Pamela
Bondi, Kristi Noem, Todd M. Lyons,
Marcos Charles, Mark Siegel, U.S.
Immigration & Customs
Enforcement, and U.S. Department
of Homeland Security

Index of Attachments

<u>No.</u>	<u>Description</u>
1	<i>In the matter of Johal, Sukhjinder Singh Kewal Sin</i> , Order of the Immigration Judge (November 18, 2025)
2	<i>In the matter of Sukhjinder Johal</i> , Respondent's Motion to Reconsider and/or Reopen Bond Denial (November 25, 2025)
3	<i>In re Johal, Sukhjinder Singh Kewal Sin</i> , Notice of Internet-Based Hearing (November 24, 2025)