

United States District Court
Western District of Texas
San Antonio Division

Dharminder Singh,
Petitioner,

v.

Kristi Noem, Secretary, U.S. Department of
Homeland Security, *et al*,
Respondents.

No. 5:26-cv-00125-JKP

Federal Respondents' Response to Petitioner's Writ of Habeas Corpus

Federal Respondents timely submit this response per the Court's Order dated January 13, 2026, directing service and ordering a response no later than January 20, 2026. *See* ECF No. 2. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Singh ("Petitioner") seeks release from civil immigration detention, claiming that her immigration detention is unlawful. *See* ECF No. 1 at 1 ¶ 2.

Petitioner claims that his pre-removal-order detention is unlawful because he is not a danger or flight risk and it deprives him of an opportunity to prepare for his asylum claim on the non-detained docket. ECF No. 1 at ¶¶ 2,9,32. Petitioner further acknowledges that he is not barred from seeking custody redetermination in Immigration Court. ECF No. 1 at ¶ 2. Respondent is lawfully detained in removal proceedings as an alien present in the United States having been admitted to the United States, but removable for failing to maintain the nonimmigrant status in which Petitioner was admitted. *See* Ex. A (NTA); § 237 (a)(1)(C)(i).

I. Facts and Procedural History

Petitioner is a native and citizen of India. ECF No. 1 at 2 ¶ 6; *see also*, Exh. A (NTA). He entered the United States lawfully on May 29, 2025, as a B2 visitor. ECF No. 1 ¶¶ 6, 29; *see also*,

Exh. A (NTA). In December 2025, Petitioner unintentionally crossed into Canada and Canadian authorities transferred him to U.S. Immigration authorities. ECF No. 1 ¶¶7, 30. Petitioner is detained at the Karnes County Immigration Processing Center. ECF No. 4 at ¶ 17.

Petitioner further claims that his detention is unlawful because there is no showing that Petitioner is a danger or flight risk and his detention is materially impairing his ability to prepare and work with counsel to fairly litigate his affirmative asylum claim. ECF No. 1 at ¶¶ 2, 9, 32. However, Petitioner did not seek a custody redetermination before the Immigration Court to address this issue. *Id.*

II. This Claim is Barred Because Plaintiff Has Not Exhausted Administrative Remedies.

Whether Petitioner is subject to release under 28 U.S.C. § 2241, or whether Petitioner should seek relief before the Immigration Court first on his issue of detention is both a factual and a legal question that is not ripe for review. Petitioner was lawfully in the United States pursuant to a valid B2. See ECF No. 1 at 6 ¶ 29. Petitioner is removable pursuant to INA § 237 (a)(1)(C)(i). See Exh. A (NTA). Moreover, because Petitioner is subject to INA § 236, 8 U.S.C. § 1226(a), his detention is discretionary. See INA § 236, 8 U.S.C. § 1226(a).

Petitioner must exhaust administrative remedies prior to raising this issue in district court. *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018). Petitioner seeks release from ICE custody but has failed to request a custody redetermination hearing before the Immigration Court. ECF No. 1 at 2 ¶ 2. Requesting a custody redetermination hearing is not futile in this case, because the issue as a factual matter Petitioner, is whether Petitioner is a danger or flight risk. ECF No. 1 at ¶¶ 9, 32. See *Matter of R-A-V-P*, 27 I&N, Dec. 803 (BIA 2020). Should the Immigration Court find that Petitioner is not within the scope of *Matter of R-A-V-P*, he will be granted the requested relief of release from ICE custody so that he may prepare his asylum case on the non-detained docket. ECF

No. 1 at 2 ¶ 2. In other words, the Immigration Court can provide Petitioner the remedy he seeks, such that exhaustion of remedies is not futile in this case. *See Petgrave v. Aleman*, 529 F.Supp.3d 665, 672 n. 14 (S.D. Tex. 2021) (finding futility where the BIA could not remedy the constitutional claim and where the detention had already become prolonged). This habeas petition is premature and must be dismissed.

III. This Court Lacks Jurisdiction to Review This Custody Decision.

The government's detention decisions are not subject to review. 8 U.S.C. § 1226(e). No court, even in habeas review, may set aside any decision regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole. *Id.* § 1252(a)(5). Additionally, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The decision to arrest Petitioner is intertwined with the decision to commence removal proceedings against her. As such, Petitioner's attack on ICE's decision to revoke her release and re-detain her should be denied for lack of subject matter jurisdiction.

While "the Fifth Amendment entitles aliens to due process of law in deportation proceedings, ... this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in this habeas petition that Petitioner's

detention without bond is unconstitutional. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). Petitioner is being lawfully detained and charged with removability for unlawfully entering and remaining in the country without authorization. 8 U.S.C. § 1182(a)(6).

IV. Conclusion

The Court should deny this petition for failure to exhaust administrative remedies.

Respectfully submitted,

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