

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)

Gladis Eugenia Alvarez De Leon De Xec,	*	
	*	
Petitioner,	*	Case No. 1:26-cv-00277-DLB
v.	*	
Warden, Baltimore Ice Detention, et al.,	*	
	*	
Respondents.	*	
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**RESPONDENTS' RESPONSE TO PETITIONER'S STATUS REPORT**

Respondents, by and through undersigned counsel, Kelly O. Hayes, United States Attorney for the District of Maryland, Beatrice C. Thomas, Assistant United States Attorney, and Kristy A. Burkhardt, Special United States Attorney for said district, pursuant to the Court's February 12, 2026 Order, hereby submit the following Response to Petitioner's February 10, 2026 Status Report and in support thereof, state the following:

1. On February 5, 2026, the Immigration Judge (“IJ”) found that Petitioner is not a danger to the community and not a flight risk, indicating it would have set a bond in the amount of \$10,000.00.
2. However, the IJ denied bond on the ground that the Immigration Court lacked jurisdiction because the Petitioner was initially placed in *expedited* removal proceedings under Immigration and Nationality Act (“INA”) § 235 (8 U.S.C. § 1225) after being encountered at a port of entry. After Petitioner established a credible fear, she was referred to removal proceedings under § 235(b)(1)(B)(ii) (8 U.S.C. § 1225(b)(1)(B)(ii)),<sup>1</sup> which states that “if the

<sup>1</sup> To be clear, the cited subsection of 1225 is not (b)(2), which includes the language “applicant for admission” who is “seeking admission;” the application of which this District Court has categorically rejected as inapplicable for

officer determines at the time of the interview that an alien has a credible fear of persecution ... the alien shall be detained for further consideration of the application for asylum.” ECF No. 10-1, p. 1

3. The IJ applied the Supreme Court’s holding in *Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018), which held that INA § 235(b)(1) mandates detention throughout the completion of proceedings when a Petitioner has made a claim for asylum. *Id.* at p. 2.
4. The IJ relied on *Matter of M-S*, 27 I&N Dec. 509, 509 (A.G. 2019), which held that “an alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond.” *Id.*
5. Further, the IJ cited *Matter of Q Li*, 29 I&N Dec. 66, 69 (BIA 2025), which held “An applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. Sec. 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 USC Sec. 1226(a).” *Id.*
6. Here, the IJ independently analyzed the applicable detention statutes and identified separate controlling authority—not previously examined by this Court—based on the unique circumstances of Petitioner’s encounter at the port of entry, *i.e.*, being placed in expedited removal proceedings and her claim of fear of persecution; these distinctions were not previously raised in this matter.<sup>2</sup>

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individuals who are detained after being in the country for some period of time. Rather, the subsection cited by the IJ, (b)(1), deals with an “applicant for admission” who made a claim of fear when placed into expedited removal proceedings after being encountered at a port of entry.

<sup>2</sup> The undersigned, and possibly Petitioner’s Counsel, was not aware that Petitioner had been placed in *expedited* removal proceedings when she was encountered at a port of entry, under § 235, rather than normal removal proceedings under § 236(a). This fact was neither noted in the Petition for Writ of Habeas Corpus, ECF No. 1, nor was it indicated in the documentation the undersigned received and reviewed before entering into the Joint Notice with Petitioner. ECF No. 6.

7. But no matter how Petitioner frames it, her new request, at its core, challenges and seeks to set aside the Immigration Judge's decision regarding the denial of bond for a lack of jurisdiction. *Id.* at ¶ 5 (The IJ cited INA § 235(b)(1)(B)(ii), as well as *Jennings v. Rodriguez*, *Matter of M-S-*, and *Matter of Q Li*, in support of the conclusion that an individual in this procedural posture is detained under § 235 and is not eligible for bond under INA § 236(a)).
8. The plain language of 8 U.S.C. § 1226(e) 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) (emphases added). As the Supreme Court explained in *Demore v. Kim*, this provision blocks judicial review of discretionary judgments and decisions by immigration officials regarding the arrest, detention, and bond of aliens subject to 8 U.S.C. § 1226. 538 U.S. 510, 516–17 (2003); *see also, e.g., Jennings*, 583 U.S. at 295–96 (8 U.S.C. "§ 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."); *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 453 (D.N.J. 2004) ("Under Sections 1226(a) and (b), the Attorney General has the discretionary authority to arrest and detain, or release, or revoke the bond or parole status of an alien. Under Section 1226(e), no court has jurisdiction to set aside these discretionary determinations by the Attorney General. Therefore, to the extent the Petitioner's complaint seeks relief from [ ] ICE's determination to detain him upon the reopening of his removal proceedings or to revoke his prior custody status as determined in 1996, this Court must dismiss this request for relief for lack of jurisdiction."); *Ginori v. Holder*, No. 13-cv-03099-

MSK, 2014 WL 420444, at \*3–4 (D. Colo. Feb. 4, 2014) (finding that the Court lacked jurisdiction over any challenge to an Immigration Judge’s discretionary decision to deny bond per 8 U.S.C. § 1226(e)).

9. In addition, 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, and 1236.1(d)(3) provide that the appropriate path for review of an Immigration Judge’s bond and custody determination is through an appeal to the BIA. *See* 8 C.F.R. § 236.1(d)(3) (“An appeal relating to bond and custody determinations may be filed to the [BIA] in the following circumstances: (i) In accordance with [8 C.F.R.] § 1003.38 . . . the alien or [DHS] may appeal the decision of an immigration judge . . . .”); 8 C.F.R. § 1003.19(f) (“An appeal from the determination of an Immigration Judge [with respect to custody status or bond redetermination] may be taken to the [BIA] pursuant to [8 C.F.R.] § 1003.38.”); 8 C.F.R. § 1003.38 (authorizing appeals of decisions by Immigration Judges to the BIA).
10. These statutes and regulations resolve this dispute. Here, Petitioner challenges the Immigration Judge’s decision to deny her bond. *See* ECF No. 10 at ¶¶ 5-6. Petitioner can, and indeed, *must* challenge that decision through an appeal to the BIA, not by way of a habeas action filed with this Court. Notably, Petitioner could have—and in fact did—reserved appeal of the Immigration Judge’s decision, but Petitioner’s attempt to seek immediate release through this habeas action is an attempt to bypass the BIA that this Court should reject.
11. Alternatively, if this Court holds that it does have jurisdiction to review an IJ’s decision and also determines that it disagrees with the IJ’s statutory interpretation of INA § 235 concerning expedited removals and the case law that interprets § 235, immediate release is not the proper remedy. Rather, Petitioner should be permitted to pay the bond amount that the IJ indicated it would apply, but for the unique circumstances that the IJ held divests it of jurisdiction.

Dated: February 18, 2026

Respectfully submitted,

Kelly O. Hayes  
United States Attorney

By: /s/ Beatrice C. Thomas  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18th day of February, 2026, a copy of the foregoing *Response* was served via CM/ECF on all parties and counsel receiving electronic notice in this case.

/s/ Beatrice C. Thomas  
Beatrice C. Thomas (Bar No. 21969)  
Assistant United States Attorney