

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

EMMANUELLA AGUH,

Petitioner,

v.

DEPARTMENT OF HOMELAND
SECURITY, et al.,

Respondents.

Civil Action No. 1:26-cv-00794-TDC

**RESPONDENTS' ANSWER TO THE PETITION FOR WRIT OF
HABEAS CORPUS AND MOTION TO VACATE AND RESET**

Respondents by and through their attorney, Kelly Hayes, United States Attorney for the District of Massachusetts, respectfully submit this answer/opposition to the Petition for Writ of Habeas Corpus filed by Petitioner Emmanuella Aguh ("Petitioner"). ECF 1 ("Petition"). Respondents respond to the Petition as contemplated by Rules 4 and 5 of the Federal Rules Governing Section 2254 cases. Additionally, Respondents oppose Petitioner's Motion to Vacate and Reset. ECF 9.

INTRODUCTION

This Court cannot extend the writ of habeas corpus unless an individual "is in custody in violation of the Constitution or laws or treaties of the United States". 28 U.S.C. § 2241(c)(3). Petitioner fails to carry her burden to demonstrate that her arrest and detention by U.S. Immigration and Customs Enforcement ("ICE") violate the Immigration and Nationality Act ("INA"), its implementing regulations, or the Constitution. As such, this Court must deny the Petition.

Petitioner's claim that her detention is unlawful is without merit as she provides no

argument as to what statute or regulation has been violated by her recent arrest by ICE. ICE's authority for her arrest and detention stems from 8 U.S.C. § 1226(a) which provides "authority for *anyone's* arrest or release under § 1226—and it gives [ICE] broad discretion as to both actions...." *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).

Her general Fifth Amendment substantive and procedural due process claims protesting her detention while in removal proceedings fails as the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Finally, her Fifth Amendment claim that she is being detained without access to a bond hearing, or a bond hearing at her desired location, must be rejected as Petitioner's immigration counsel has filed for a bond hearing and has a bond hearing scheduled for March 10, 2026. ECF 9-2. Petitioner remains eligible to seek a bond hearing in Immigration Court and therefore she has failed to exhaust her available remedy to obtain the relief she asks this Court to provide in the first instance. See *Quinonez Mercado as next friend of Abarca-Jovel v. Dep't of Homeland Sec.*, No. 1:25-CV-12066-JEK, 2025 WL 2430423, at *3 (D. Mass. Aug. 22, 2025) (Denying petition for failure to exhaust as petitioner was entitled to seek a bond hearing before an IJ and failed to do so).

BACKGROUND

A. Petitioner's Immigration History.

Petitioner is a 31-year-old citizen of Nigeria who was lawfully admitted to the United States on a F1 student visa on July 13, 2022. See, Notice to Appear, ECF 11-1. Petitioner was authorized to remain in the United States for a temporary period while attending school.

Petitioner was terminated from the F1 student visa program on April 26, 2025 because she failed to attend Trine University, Reston Virginia VA Regional Center. *Id.* Petitioner concedes

she did not attend due to not being able to afford tuition. ECF 9-1 at ¶ 5. Thus, she no longer had lawful status as of April 2025 and is removable.

On or about February 24, 2026, Petitioner was arrested by Immigration and Customs Enforcement (“ICE”). ECF 1 ¶ 1. That same day, Petitioner was issued an NTA charging her with being removable from the United States under 8 U.S.C. § 1227(a)(1)(C)(i) of the Immigration and Nationality Act (“INA”), as an alien who after admission as a nonimmigrant under Section 101(a)(15) of the INA, failed to maintain or comply with the conditions of the nonimmigrant status which he was admitted. Notice to Appear, ECF 11-1. Petitioner was served with the NTA the same day. *Id.* This is an appropriate charge for an individual who has overstayed his or her visa.

Currently, Petitioner is in removal proceedings. Her first master calendar hearing is scheduled for April 16, 2026. *Id.* Petitioner has filed a separate proceeding with the immigration court seeking a custody redetermination (bond hearing) which is currently scheduled for March 10 in Oakdale, Louisiana where Petitioner is detained.

B. Petitioner’s Habeas Petition.

Petitioner filed this action on February 25, 2026 asserting that her detention is “unlawful.” ECF 1. Additionally, Petitioner claims that detention without a bond hearing violates her Fifth Amendment substantive and procedural due process rights. *Id.*, Counts II-III. For relief, Petitioner requests that the Petitioner be permitted to file for and receive a bond hearing before the appropriate immigration court in Maryland. ECF 1-1. Notably, Petitioner does not address whether she is required to exhaust administrative remedies to seek release from custody but nonetheless acknowledges that she is scheduled for a bond hearing in Immigration Court in Louisiana on March 10, 2026. ECF 9-2.

C. Relevant Statutory and Regulatory Framework.

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

For aliens who have been admitted but have stayed beyond the period of admission (as Petitioner claims applies to her), 8 U.S.C. § 1226 “generally governs the process of arresting and detaining . . . [noncitizens] pending their removal.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). 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.” *Id.* § 1226(a). As the Supreme Court has explained, this provision “creates authority for *anyone’s* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions....”. *Nielsen*, 586 U.S. at 409 (emphasis in the original).

As explained by the U.S. Court of Appeals for the First Circuit, “[t]he text of the INA confers broad authority upon ICE to conduct civil arrests.” *Ryan v. U.S. Immigr. & Customs Enf’t*, 974 F.3d 9, 19 (1st Cir. 2020). Pursuant to 8 U.S.C. § 1226(a), immigration authorities can arrest an alien with an administrative warrant and then either continue detention for removal proceedings or to release the alien on “bond . . . or conditional parole.” *Id.* § 1226(a)(1)-(2). § 287.3(d). If the immigration officer opts for continued detention, the alien can seek review of that decision at a bond hearing before an Immigration Judge (“IJ”). 8 C.F.R. § 236.1(d)(1). An IJ’s decision to continue detaining an alien may be appealed to the Board of Immigration Appeals (“BIA”). 8 C.F.R. § 236.1(d)(3).

ICE initiates removal proceedings with the issuance of an NTA with the Immigration Court that has jurisdiction over the location of the individual. *See* 8 U.S.C. § 1229; 8 C.F.R. §§

239.1, 1003.14. Once an NTA is filed with the Immigration Court, the IJ “shall conduct proceedings for deciding the inadmissibility or deportability of an alien.” 8 U.S.C. § 1229a(a)(1). Such proceeding “shall be the sole and exclusive procedure for determining whether an alien may be ... removed from the United States.” *Id.* § 1229a(a)(3).

An alien can apply for whatever forms of relief from removal he may be eligible. *Id.* § 1229a(c)(4). If the IJ grants relief from removal and the government does not appeal to the BIA or is unsuccessful in such appeal, then the individual obtains lawful status and is not subject to removal from the United States. If, however, the IJ orders an alien removed, such alien can appeal to the BIA and is not subject to removal until the BIA issues a decision on the appeal. *Id.* § 1229a(c)(5); 8 C.F.R. § 1241.1(a). If the BIA affirms the IJ’s denial of an application for relief from removal, an alien can file a petition for review (“PFR”) with the circuit court and can seek a stay of removal while the PFR is pending. 8 U.S.C. § 1252(a)(5) (“a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter...”).

STANDARD OF REVIEW

It is axiomatic that “[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress had separately stripped the court of jurisdiction to hear the claim. To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) (“The burden of proof of showing deprivation of rights

leading to an unlawful detention is on the petitioner.”).

ARGUMENT

Petitioner fails to explain how her arrest and detention violate statute or regulation, and therefore there is no basis for this Court to find her detention is unlawful under the INA. Further, her claim that her detention violates the Constitution is without merit. Finally, based on Petitioner’s admission on a student visa, Petitioner is eligible for a bond hearing in Immigration Court, and this Court should require Petitioner to exhaust her administrative remedy to seek release from custody before awarding any habeas relief.

A. Petitioner’s Detention is Authorized by Statute and Regulation.

Petitioner was admitted to the United States in July 2022 on a F1 student visa. As such, ICE’s detention of Petitioner is pursuant to 8 U.S.C. § 1226(a) and its associated regulations which allows for the detention of aliens for the purpose of removal proceedings. NTA, ECF 11-1. This authority provides that ICE may detain an alien “pending a decision on whether [she] is to be removed from the United States.” 8 U.S.C. § 1226(a). This provision “creates authority for *anyone’s* arrest or release under § 1226—and it gives [ICE] broad discretion as to both actions....” *Nielsen*, 586 U.S. at 409 (emphasis in the original). Here, Petitioner sets forth no statute, regulation, or case law that supports her claim that ICE’s detention and arrest of her after her F1 student visa was terminated for non-enrollment at Trine University was unlawful. For these reasons, there is no basis for this Court to find her detention unlawful under the INA.

B. Petitioner’s Statutorily Authorized Arrest and Detention is Constitutional.

Petitioner’s claim that her detention violates the Fifth Amendment’s Substantive and Procedural Due Process Clauses is without merit. Petitioner seems to contend that her detention violates the Fifth Amendment because it is not related to any legitimate purpose and because she has not received a bond hearing yet. Both contentions must be soundly rejected. As recognized

by the Supreme Court, “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523; *Wong Wing v. U.S.* 163 U.S. 288, 235 (1896) (holding deportation proceedings “would be vain if those accused could not be held in custody pending the inquiry into their true character.”).

Here, ICE arrested Petitioner on account of her terminated F1 student visa. Additionally, Petitioner can apply for all forms of relief from removal that she is eligible for, whether she is detained or not. She provides no support to a claim that detention during removal proceedings violates the Fifth Amendment, and this is because per Supreme Court precedent such detention does not violate the Constitution. *See Wong Wing*, 163 U.S. at 235 (“We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid”).

To ensure an alien’s detention under Section 1226(a) comported with the Fifth Amendment’s Due Process Clause, the First Circuit in *Hernandez-Lara v. Lyons* held that the government must bear the burden of proof at a bond hearing before an IJ. 10 F.4th 19, 39-41 (1st Cir. 2021). But the First Circuit cast no aspersion as to the constitutionality of detention of aliens under § 1226(a) by ICE generally and instead recognized that the “prompt execution of removal orders is a legitimate governmental interest which detention may facilitate.” *Id.* at 32. (cleaned up). *See also Aguilar v. U.S. Immigr. & Customs Enft Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 22 (1st Cir. 2007). (Recognizing the government’s “legitimate interest in effectuating detentions pending the removal of persons illegally in the country.”).

Indeed, stated recently by District of Massachusetts, “[s]ome period of detention prior to deportation is constitutionally valid”. *Thai v. Hyde*, No. CV 25-11499-NMG, 2025 WL 1655489, at *2 (D. Mass. June 11, 2025). *See also Dambrosio v. McDonald, Jr.*, No. 25-CV-10782-FDS, 2025 WL 1070058, at *2 (D. Mass. Apr. 9, 2025) (Recognizing that detention “for

a period of less than three months' time ... does not amount to an unconstitutional duration.”).

For these reasons, Petitioner's Fifth Amendment claim that her detention for purpose of removal proceedings is unconstitutional fails.

C. Petitioner has Failed to Exhaust his Administrative Remedies.

Petitioner's claim that her detention violates the Fifth Amendment because she has not received a bond hearing yet also fails as Petitioner is eligible for such hearing and has in fact moved for a bond hearing. That hearing is scheduled for March 10, 2026. ECF 9-2. Any grant of habeas relief at this point is premature.

Petitioner asks this Court to order that the bond hearing be relocated to the Hyattsville Maryland Immigration Court without citation to any authority under 28 U.S.C. § 2241 that permits such relief. As the First Circuit has explained, “it is Congress—not the judiciary—that has the responsibility of prescribing a framework for the vindication of those rights.” *Aguilar*, 510 F.3d at 24. Here, Congress has established a statutory framework in which Petitioner can seek release from detention while pursuing relief from removal. Explained further by the First Circuit, “[w]hen Congress speaks clearly and formulates a regime that satisfies constitutional imperatives, the courts must follow Congress's lead.” *Id.* This remains the case “whether a court approves or disapproves of an agency's *modus operandi*.” *Id.*

To the extent Petitioner is claiming that her detention is unwarranted because she is not a danger to the community or a flight risk, such claim must be presented to an IJ in a bond hearing, not to the district court via a Habeas Petition. This failure to exhaust provides an additional basis for dismissal of this Petition. As the First Circuit has explained, “[g]enerally speaking, a plaintiff's failure to exhaust “her administrative remedies precludes her from obtaining federal review of claims that would have properly been raised before the agency in the first instance.”

Brito v. Garland, 22 F.4th 240, 255 (1st Cir. 2021). While there is no statutory mandate to exhaust a claim for release that could be made to an IJ prior to presenting such claim to the district court, “the court’s discretion governs whether a petitioner must exhaust his administrative remedies before applying for relief in federal court.” *Gillen*, 588 F. Supp. 2d at 125.

Common-law exhaustion “allows an agency the first opportunity to apply its expertise and obviates the need for judicial review in cases in which the agency provides appropriate redress.” *Brito*, 22 F.4th at 256 (cleaned up) (quoting *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 175–76 (1st Cir. 2016)). Here, exhaustion is not futile because Petitioner has already requested and received a scheduled bond hearing. No one knows the result of that hearing because it has not taken place yet. Additionally, Petitioner’s ineligibility for bond is not predetermined. There is no dispute in this case that Petitioner is eligible for a bond hearing, and in fact has one scheduled for March 10. Therefore, a denial of bond has not been predetermined no matter where the bond hearing takes place.

Courts around the country have denied habeas petitions filed by individuals who are eligible to seek bond in Immigration Court. *See e.g., Quinonez Mercado*, 2025 WL 2430423, at *3 (Denying petition as petitioner was eligible for a bond hearing and failed to pursue that remedy); *Bernal Garcia v. Francis*, No. 1:25-CV-07715 (JLR), 2025 WL 2773234, at *8 (S.D.N.Y. Sept. 29, 2025) (“Given the availability of adequate administrative remedies to address Bernal Garcia’s detention status, he must exhaust those remedies before seeking habeas relief.”); *El Gamal v. Noem*, No. SA-25-CV-00664-OLG, 2025 WL 1857593, at *5 (W.D. Tex. July 2, 2025) (“The Court hastens to remind Petitioners that they still have an avenue for seeking their release from detention while their removal proceedings continue.”); *Guzman v. Joyce*, No. 25-CV-4777 (RA), 2025 WL 1696891, at *2 (S.D.N.Y. June 17, 2025)

(Explaining that “with respect to Petitioner's detention, the INA and its implementing regulations permit him to file a request for bond in immigration court” and denying petition because “[h]e has not done so.”).

As such, Petitioner can seek release from detention through a bond hearing in Immigration Court which is scheduled for March 10. She can appeal a bond decision to the BIA if necessary. Petitioner therefore has access to the relief she requests through this Court order and this weighs in favor of requiring exhaustion and denying this Petition on this additional basis.

CONCLUSION

For the above reasons, Petitioner's assertion of unlawful detention fails. Additionally, this Court should deny this Petition as Petitioner has failed to exhaust her administrative remedies which allow her access to a bond hearing before the Immigration Court to seek release, the relief requested by Petitioner.

Dated: March 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 3, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all parties.

/s/ Thomas F. Corcoran
Thomas F. Corcoran
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