

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

Karina Ramirez Vera,	§	
	§	
Petitioner,	§	
	§	
v.	§	CIVIL NO. 5:26-cv-331
	§	
Miguel Vergara, Field Office Director of	§	
Enforcement and Removal Operations, San	§	
Antonito Field Office, Immigration and	§	
Customs Enforcement;	§	
Kristi Noem, Secretary, U.S. Department	§	
of Homeland Security ¹ ;	§	
Pamela Bondi, U.S. Attorney General ² ;	§	
Executive Office for Immigration Review;	§	
Warden, Laredo Processing Center,	§	
	§	
Respondents.	§	

**RESPONDENTS' MOTION TO DISMISS PETITION FOR WRIT OF HABEAS
CORPUS FOR LACK OF SUBJECT MATTER JURISDICTION**

The Government³ hereby responds to Petitioner, Karina Ramirez Vera's, habeas petition and respectfully requests that this Court dismiss Petitioner's Petitioner for Writ of Habeas Corpus pursuant to Federal Rule of Civil Procedure Rule 12(b)(1).⁴

¹ 1 Pursuant to the Federal Rule of Civil Procedure 25(d), former U.S Secretary for the Department of Homeland Security, Kristi Noem, is substituted by Markwayne Mullin as the proper party Defendant.

² 1 Pursuant to the Federal Rule of Civil Procedure 25(d), former U.S Attorney General, Pamela Bondi, is substituted by Todd Blanche as the proper party Defendant.

³ The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code. The undersigned does not represent the warden.

⁴ Respondents have filed this Rule 12 motion in lieu of their answer and preserve all affirmative defenses for inclusion in their answer in the event that the instant motion is denied.

Petitioner is detained pursuant to 8 USC § 1226(a). However, as Petitioner has failed to exhaust her administrative remedies prior to filing her Petition, the Court lacks subject matter jurisdiction.

I. STATEMENT OF JURISDICTION

The Court has jurisdiction to review this habeas petition as it challenges the lawfulness of the Petitioner's detention. *See* 28 U.S.C. § 2241.

II. BACKGROUND

Petitioner is a native and citizen of Mexico. Ex. 1; Notice to Appear (NTA) dated December 31, 2025. Petitioner was admitted to the United States on or about March 19, 2004 as a nonimmigrant BCC (border crossing card) with authorization to remain in the United States for a temporary period not to exceed August 18, 2004. *Id.* Petitioner remained in the United States beyond her permitted time without authorization from the Department of Homeland Security. *Id.*

On December 15, 2025, Petitioner was encountered at a Border Patrol checkpoint near Sarita, Texas, and was determined to be in the United States illegally after overstaying her time permitted with the BCC. Ex. 2; I213 dated December 16, 2025. Petitioner was taken into custody. *Id.* Petitioner was also found to have a criminal conviction for DWI stemming from a 2023 arrest. *Id.* On December 16, 2026, Petitioner was served with a Form I-200 Warrant of Arrest of Alien. Ex. 3; I-200. Petitioner was also served with a Notice to Appear (NTA) and charged pursuant to Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, Petitioner remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States. Ex. 1.

On January 6, 2026, Petitioner had a custody redetermination hearing before an Immigration Judge, who denied bond. Ex. 4; Order of the Immigration Judge dated January 6, 2026. The Immigration Judge dictated their ruling as follows:

[The] court finds that respondent is a danger to the community, based on the recency of her DWI conviction and fact that she is still on probation. The BAC in the recent 2023 arrest and 2024 conviction was greater than or equal to .015 almost twice the legal limit.

On March 3, 2026, Petitioner had another custody redetermination hearing before an Immigration Judge, who denied bond. Ex. 5; Order of the Immigration Judge dated March 3, 2026. The Immigration Judge dictated their ruling as follows:

[The] respondent has not changed a material change in circumstances since the last bond hearing held on January 6, 2026. First, respondent did not note in her bond request that she had had a prior bond hearing. Furthermore, despite having completed probation, the Court finds respondent still has not met her burden to show she would not be a danger to the community if released from custody, as she was recently convicted for DWI in 2024 and had a blood alcohol level of greater than 0.15.

On March 6, 2026, Petitioner had an individual merits hearing before an Immigration Judge, who denied all relief from removal, and ordered her removed to Mexico. Ex. 6; Order of the Immigration Judge dated March 6, 2026. Petitioner has timely filed an appeal with the Board of Immigration Appeals (BIA), and thus is not subject to a final order of removal. Ex. 7; BIA Filing Receipt.

III. LEGAL STANDARD

A. RULE 12(B)(1)

A party may move to dismiss under Federal Rule of Civil Procedure 12(b)(1) for “lack of subject-matter jurisdiction.” Fed. R. Civ. P. 12(b)(1). Federal courts “are courts of limited jurisdiction and possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005). When

subject-matter jurisdiction is lacking, “[i]t is incumbent on all federal courts to dismiss” the action. *Stockman v. Fed. Election Comm’n*, 138 F.3d 144, 151 (5th Cir. 1998). The party asserting jurisdiction bears the burden of proof that jurisdiction does in fact exist. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should first consider the Rule 12(b)(1) jurisdictional attack. *Id.* In a facial attack to subject-matter jurisdiction, no evidence is considered and the allegations in the complaint are taken as true. *E.g., Diaz v. Castro*, 122 F.Supp.3d 603, 607 (S.D. Tex. 2014). In a factual attack to subject-matter jurisdiction, a court may consider supporting affidavits, testimony, or other evidence relevant to the issue. *Id.* at 608 (citing *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981)).

IV. APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as “[d]etention is a necessarily part of th[e] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 238 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”). As Supreme Court has stated in no unmistakable terms, “Detention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003).

The BIA is an appellate body within the Executive Office for Immigration Review (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the Immigration Judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

V. ARGUMENT

A. PETITIONER FAILED TO EXHAUST HER ADMINISTRATIVE REMEDIES PRIOR TO FILING THE PETITION.

The Court does not have jurisdiction to entertain the Petitioner’s Petition because she has not administratively exhausted her claims. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a federal prisoner must exhaust all administrative remedies prior to filing a federal habeas petition under § 2241. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same).

Here, Petitioner was twice denied bond by an Immigration Judge (“IJ”). Ex. 4,5. After full consideration of the evidence presented, the IJ(s) found Petitioner to be a danger to the community if released from custody. *Id.* If Petitioner disagreed with the two denials, the proper avenue would

have been appeals to the BIA. As explained by the Fifth Circuit, exceptions to exhaustion “apply only in extraordinary circumstances,” including when exhaustion would be “patently futile.” *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted). *Fuller* itself is illustrative, where the petitioner argued that administrative appeal was futile because the time for filing an appeal had already elapsed. *See id.* The Fifth Circuit disagreed, holding that “until he actually appeals and that appeal is acted on, we do not know what the appeals board will do with [petitioner]’s claim, and until the appeals board has been given an opportunity to act, [petitioner] has not exhausted his administrative remedies.” *Id.* Petitioner’s pending appeal is for her denial of relief and subsequent removal order, not the two denials for bond.

While it is unknown if the administrative body will or will not rule in Petitioner’s favor, this does not mean that the “extraordinary circumstances” apply where exhaustion is futile. Petitioner must seek a bond, and if denied, she must appeal to (and receive a decision from) the BIA for the matter to be administratively exhausted.

Petitioner has circumvented the appellate process set forth by the BIA, in pursuing this extraordinary measure prior to exhausting her right to appeal the Immigration Judge’s decision. This logic would turn Federal District Courts into Immigration Courts. It would flood Federal District Courts and saddle them with determining bond eligibility as a matter of first impression, where a request has never been exhausted at the administrative level. The exhaustion doctrine was precisely designed to prevent such a result. *See, e.g., Woodford v. Ngo*, 548 U.S. 81, 89, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006) (explaining that exhaustion of administrative remedies serves two main purposes: protecting administrative agency authority and promoting judicial efficiency).

It is the BIA who has the delegated authority to review the decisions of Immigration Judges. In a custody redetermination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C.

§ 1226(a) (2000), where an alien must establish to the satisfaction of the Immigration Judge that he or she does not present a danger to others, a threat to the national security, or a flight risk, the Immigration Judge has wide discretion in deciding the factors that may be considered. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Another Court in this District has previously found in a similar factual scenario, pursuant to statute governing apprehension and detention of aliens, 8 U.S.C. § 1226(e), district courts do not have jurisdiction to review discretionary decisions made by an IJ regarding bond. *Fuentes v. Lyons*, No. 5:25-CV-00153, 2025 WL 3022478 (S.D. Tex. Oct. 29, 2025) (holding that, pursuant to § 1226(e), “district courts do not have jurisdiction to review discretionary decisions made by an IJ regarding bond”).

In sum, not only does the law require exhaustion, practical and intuitive considerations highlight why this result must follow here in the bond context.

B. PETITIONER’S CUSTODY DOES NOT CONSTITUTE A DUE PROCESS VIOLATION.

Failing to show unlawful detention, the Petition also fails to demonstrate any due process violation. Petitioners argue that her detention violates the Constitution. Dkt. 1 at ¶ 21. Substantive due process protects “only ‘those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.’” *Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997)). To be sure, individuals unlawfully present in the United States do possess due process rights but those rights exist within the bounds set by rule and statute, as “the through line of history is recognition of the Government’s sovereign authority to set the terms governing the admission and exclusion of noncitizens.” *Dep’t of State v. Muñoz*, 602 U.S. 899, 911-12, 144 S. Ct. 1812, 1823 (2024). Regarding the authority to detain individuals during the pendency of removal proceedings, the Supreme Court has spoken directly on this issue and stated that detention for the limited period of removal proceedings does

not violate substantive due process. *Demore v. Hyung Joon Kim*, 538 U.S. 510, 523, (2003) (acknowledging “this Court’s longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings”). Accordingly, any substantive due process claim challenging Petitioner’s detention pending removal proceedings fails.

Similarly, any procedural due process claim fails. Procedural due process protects an individual’s right to be heard prior to deprivation of life, liberty or property. *See Matthews v. Eldridge*, 424 U.S. 319, 332-333 (1976). In the instant case, an examining Immigration Official explained the basis for charging Petitioner with being subject to removal, and ordered Petitioner to appear in immigration court. Ex. 1. Petitioner was then given two bond redetermination hearings, where Immigration Judges weighed her claims for relief and denied bond as a danger to the community. Ex. 4, 5. Petitioner has now been ordered removed, and is pursuing an appeal of the Immigration Judge’s decision. Ex. 6, 7. Petitioner has had due process at every turn of her removal proceedings; just because Petitioner does not like the outcome of the due process afforded to her does not mean that the Government has violated her Fifth Amendment rights.

C. PETITIONER HAS MISSTATED SEVERAL ASPECTS OF UNITED STATES IMMIGRATION LAW IN THEIR SUPPLEMENTAL BRIEFING AT DKT. 6.

Petitioner states that “Respondents argue that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).” Dkt. 6 at 3. Respondents have not argued this, and Petitioner is subject to 8 USC § 1226(a) as an overstay. Petitioner further states that “she was subject to relief as a member of the bond eligible class defined in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS- BFM, ---F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025)” *Id.* at ¶ 3-4. Regardless of the current status of the litigation in *Maldonado Bautista*, Petitioner was never a member of the certified class, as she was admitted into the United States. *Maldonado Bautista*

deals with aliens who entered without inspection, and were not arrested in close proximity in time to their entrance.

D. PETITIONER IS NOT ENTITLED TO ATTORNEY'S FEES AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT.

The Equal Access to Justice Act does not authorize attorney's fees for successful 28 U.S.C. § 2241 motions. *Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023). Petitioner is not entitled to such relief.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's request for habeas relief and grant the instant motion.

Dated: April 29, 2026

Respectfully submitted,

JOHN G.E. MARCK
Acting United States Attorney
Southern District of Texas

By: /s/ Christopher Bastian
CHRISTOPHER BASTIAN
Assistant United States Attorney
Southern District TX No. 3952774
Maryland Bar No. 2405231007
800 N. Shoreline Blvd., Ste. 500
Corpus Christi, Texas 78401
Tel: (361) 888-3111
Fax: (361) 888-3200
Email: christopher.bastian@usdoj.gov

CERTIFICATE OF SERVICE

I certify that, on April 29, 2026, the foregoing was filed and served on all attorneys of record via the District's ECF system.

/s/ Christopher Bastian
CHRISTOPHER BASTIAN
Assistant United States Attorney