

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

YULIETH GOMEZ MEJIA

PETITIONER

v.

NO. 4:25-CV-82-RGJ

KRISTI NOEM, in her Official Capacity as
Secretary, Department of Homeland Security;
TODD LYONS, in his Official Capacity as
Acting Director, U.S. Immigration and
Customs Enforcement;
PAM BONDI, in her Official Capacity as
Attorney General of the United States; and
JASON WOOSLEY, in his Official Capacity as
Grayson County Jailer

RESPONDENTS

**RESPONDENTS' OPPOSITION TO
PETITIONER'S EMERGENCY MOTION [Doc. 14]¹**

Petitioner's "emergency motion to stay removal of the respondent and any further action by the government" is bereft of citation to any authority and seeks relief the Court lacks jurisdiction to provide. Moreover, the motion is untethered from the relevant events in Petitioner's removal proceeding. Petitioner's motion should be denied.

I. Petitioner's removal proceedings are ongoing, and she will not be removed unless her asylum claim is denied and she enters 8 U.S.C. 1231(a)(1)'s "removal period."

Petitioner is not on the precipice of being removed. She filed an application for asylum, and that application is being adjudicated. Petitioner has a hearing before an immigration judge on September 9. At that hearing, the immigration judge is expected

¹ Respondents will respond to Petitioner's other two recently filed motions [Doc. 15; Doc. 16] by or on September 11.

to schedule Petitioner's asylum hearing. That hearing will be adversarial, and Petitioner can be represented by counsel and present evidence and cross-examine witnesses. If Petitioner's asylum claim is denied by the immigration judge, she then has the right to appeal that decision to the Board of Immigration Appeals (BIA). And if the BIA denies Petitioner's claim, she can then seek review of that decision from the applicable circuit court. Petitioner is being provided the process she is due for filing an asylum application.

It is undisputed that Petitioner is an "applicant for admission" under 8 U.S.C. § 1225(a)(1). That is to say, Petitioner snuck across the border not at a port of entry and lacking any documents that authorized her entry into the United States. It is also undisputed that Petitioner has an asylum application pending. Petitioner disputes that she is properly in expedited removal proceedings, but that dispute does not change whether she is properly detained. Petitioner must be detained whether she is in expedited or full removal proceedings. "DHS may place aliens arriving in the United States in either expedited removal proceedings under § 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), or full removal proceedings under § 240 of the INA, 8 U.S.C. § 1229a." *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025). If Petitioner is in expedited proceedings, "8 U.S.C. § 1225(b)(1)(B)(ii) requires detention until the final adjudication of the asylum application." *Matter of Q. Li*, 29 I&N at 68. If Petitioner is in full removal proceedings under 8 U.S.C. § 1229a, then "8 U.S.C. § 1225(b)(2)(A) mandates detention 'until removal proceedings have concluded.'" *Matter of Q. Li*, 29 I&N at 68 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)); see also *Dep't of Homeland Sec. v. Thuraissigiam*, 591

U.S. 103, 111 (2020) (“Whether an applicant who raises an asylum claim receives full or only expedited review, the applicant is not entitled to immediate release.”).

Petitioner’s removal proceedings are ongoing. Petitioner’s credible fear claim could have been heard by an asylum officer, and if credible fear had been found, Petitioner would have pled her asylum claim to an immigration judge. *Matter of M-S-*, 27 I&N Dec. 509, 511-12 (A.G. 2019). But DHS opted to move Petitioner forward in the asylum process and served upon her a notice to appear (NTA) before an immigration judge, which Petitioner refused to sign. [Doc. 13-3, PageID. 156-58]; *see also Matter of Q. Li*, 29 I&N at 68 (explaining that DHS has discretion about how asylum claims are processed); *Matter of E-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (“DHS has discretion to put aliens in section 240 [8 U.S.C. § 1229a] removal proceedings even though they may also be subject to expedited removal”). Petitioner will soon have the opportunity to present her case to an immigration judge. But Petitioner must be detained while her removal proceedings play out.

II. Petitioner’s request to stay Petitioner’s removal and “any further action by the Government” is improper and should be denied.

Petitioner asks this Court to stay “any [and] all actions in the processing” of Petitioner, including the determination of Petitioner’s application for asylum. Petitioner’s motion should be denied because she asks the Court to exceed its subject matter jurisdiction.

Mejia previously contended that the expedited removal statute, 8 U.S.C. § 1225(b)(1)(A)(i), did not apply to her, but she conceded that her pending asylum

application does not preclude her from being the subject of removal proceedings under 8 U.S.C. § 1229. [Doc. 10, PageID. 46 n.28.] Now, Petitioner argues proceedings under § 1229 are an “abuse of the immigration system” and “bad faith.” [Doc. 14, PageID. 163.] Quite to the contrary: Petitioner’s asylum claim is now being adjudicated. She’s receiving the process provided to asylum seekers.

Furthermore, this Court lacks jurisdiction to grant Petitioner’s motion. 8 U.S.C. § 1252(g) strips the Court of 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 Act.” ““Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion.” *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 485 (1999)). Although the relief Petitioner seeks in this motion is vague³ and unsupported by citation to any statute, regulation, or case, to the extent Petitioner is asking the Court to review and intervene in DHS’s decision to commence removal proceedings or order DHS to adjudicate Petitioner’s removal

² The Form I-797C, Notice of Action that Petitioner received after filing her asylum petition notified her: “Having a pending asylum application with USCIS does not preclude U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) from placing you into removal proceedings.” Petitioner’s argument that the Form I-797C limits the type of removal proceedings that can be commenced against her to “removal proceedings” and not “expedited removal proceedings” is baseless. Expedited removal proceedings and full (or standard) removal proceedings are both subsets of “removal proceedings.”

³ Were the Court to order DHS to “stay . . . any further action by the Department of Homeland Security,” [Doc. 14, PageID. 163] Petitioner would remain detained indefinitely. *Jennings*, 583 U.S. at 297-303.

proceeding in a particular fashion, 8 U.S.C. § 1252(g) explicitly bars such relief. *See, e.g., J.M.O. v. United States*, 2020 U.S. Dist. LEXIS 115833, at *6 (D. Minn. July 2, 2020).

CONCLUSION

Mejia has not denied her unlawful entry, her unresolved application for asylum, or the fact that she may be removed should her application for asylum be unsuccessful. Nevertheless, she asks the Court to order DHS not proceed with adjudicating her asylum claim and determining whether she is removable. The current motion lacks any citation that would provide a basis for relief. Petitioner's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

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