United States District Court
Western District of Texas
San Antonio Division

Phalita Pun, Petitioner, v. Kristi Noem, *et. al.*, Respondents.	No. 5:26-CV-0534-JKP

Federal Respondents' Supplemental Response to Petition for Writ of Habeas Corpus

Federal[1] Respondents provide the following timely supplement response to Petitioner's habeas petition. ECF No. 1. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief she seeks, and this Court should deny this habeas petition as moot without the need for an evidentiary hearing.

Moreover, Federal Respondents respectfully submit that the instant case is not at all similar or governed by the same analysis that this Court and other Courts within the Western District have applied regarding habeas petition grounded in issues stemming from *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner in this case is detained pursuant to 8 U.S.C. § 1226 and not 8 U.S.C. § 1225. This detention decision is unreviewable by the district court. 8 U.S.C. § 1226(e)

Therefore, the petition should be denied on jurisdictional grounds.

I. Introduction

Petitioner primarily seeks release from custody. However, Petitioner has already received a bond hearing under 8 U.S.C. § 1226 and the immigration judge determined she is a flight risk and denied bond. *See* Exh. A (IJ Order). This Court is divested of jurisdiction to review such a

[1] The Department of Justice represents only federal employees in this action.

challenge to her detention as it is a discretionary judgment related to the Attorney General's decision on whether to release Petitioner. 8 U.S.C. § 1226(e); *see Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)

II. Relevant Facts and Procedural History

Petitioner is a native and citizen of Nepal. ECF No. 1 at 5. Petitioner entered the United States unlawfully through San Diego, California. *Id.* On December 30, 2025, Petitioner was provided a bond hearing pursuant to the detention authority found in 8 U.S.C. § 1226. *See* Exh. A. Petitioner was found to be "such a high flight risk such that no amount of money would insure Respondent's presence in court" and bond was denied. *Id.* Petitioner reserved appeal. *Id.* Petitioner's next hearing before an immigration judge is presently scheduled for February 23, 2026.

III. Argument

A. Petitioner Does Not Overcome Jurisdictional Hurdles.

Petitioner was provided with a bond hearing pursuant to 8 U.S.C. § 1226. Petitioner cannot now use this petition as a vehicle to dispute the immigration judge's discretionary findings. 8 U.S.C. § 1226(e). 8 U.S.C. § 1226 strips this Court of jurisdiction to hear such a challenge. Section 1226(e) states:

"(e) Judicial review

"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 or release of any alien or the grant, revocation, or denial of bond or parole**. [emphasis added]"

The bar to judicial review was discussed and analyzed by the Supreme Court and also

found that 8 U.S.C.§ 1226(e) barred challenges to discretionary decisions. *See Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (explaining that 8 U.S.C. § 1226(e) bars an alien's challenge to "a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release" (internal quotation marks omitted)); Pensamiento, 315 F. Supp. 3d at 688 ("Congress has eliminated judicial review of discretionary custody determinations); *See Blandon v. Barr*, 434 F. Supp. 3d 30, 36 (W.D.N.Y. 2020) (while the Court may consider whether the IJ complied with the Court-ordered procedural protections, it does not reweigh the evidence nor consider whether it would have made the same determination as the IJ).

Petitioner's detention is governed by 8 U.S.C. 1226 and the immigration judge's decision to detain is discretionary. The immigration judge did not base her finding on any statutory or jurisdictional issues regarding *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). To the extent that Petitioner asks the Court to second-guess the IJ's weighing of the evidence, that claim is directed solely to the IJ's discretion and is unreviewable.

B. Petitioner's Detention Comports with Due Process.

Section 1226 provides for a bond hearing, and Petitioner was given said bond hearing. The Supreme Court's reasoning in *Department of Homeland Security v. Thuraissigiam*, 59 U.S. 103 (2020) further supports this notion. Petitioner is not entitled to more process than what Congress provided her by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *Id.; see also Jennings*, 583 U.S. at 297–303. She has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5). Petitioner is taking full advantage of the due process provided by Congress, and this Court does not have jurisdiction to provide more.

Furthermore, she cannot use any appeal to the BIA and this due process as both a shield and a sword. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

IV. Conclusion

The Court is stripped of jurisdiction to review the discretionary determination of the immigration judge and may not consider whether it would have made the same finding. 8 U.S.C. § 1226(e). As such, the Court no longer has jurisdiction on the matter, and there is no longer a live controversy regarding the procedural protections provided to the Petitioner. Due process has been provided.

Respectfully submitted,

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