United States District Court
Western District of Texas
San Antonio Division

Juan Covarrubias-Rodriguez, Petitioner, v. Kristi Lynn Noem, *et al* Respondents.	No. 5:26-CV-0594-JKP

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] Respondents provide this response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, including relief pursuant to the Administrative Procedure Act[2], *Maldonado Bautista*, and attorney's fees under the Equal Access to Justice Act ("EAJA")[3].

Importantly, Petitioner seeks relief in the form of a court order vacating a discretionary decision to deny immigration bond under **8 U.S.C. 1226**; ECF No. 1 at 2-3. This is **not** a decision stemming from *Matter of Hurtado*. In effect, Petitioner is seeking an order overturning and vacating a discretionary decision by the immigration court. *Id.* Furthermore, such order would also dismiss the authority vested in ICE to revoke said bond in the first place. *See* 8 U.S.C. 1226(b).

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

2 Petitioner did not pay the filing fee for non-habeas claims. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). "When a filing contains both habeas and on-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3.

3 *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

This Court does not have jurisdiction to review ICE's decision to revoke bond or the immigration judge's decision nor to reweigh the evidence and find this Court would have ruled differently. 8 U.S.C. § 1226(e); 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)).

Additionally, this Court has entered a stay of removal in this case, and said stay should be dissolved. ECF No. 3 at 3. The Fifth Circuit has just recently held district courts lack jurisdiction to enter *Imran v. Harper*, No. 25-30370 (5th Cir. 2026) stays of removal.

As such, this Court should deny this habeas petition without the need for an evidentiary hearing and dissolve the stay of removal.

I. Introduction

Discretionary decisions by the immigration court regarding detention are not subject to review by this Court. This is cemented in statutes created by Congress and reaffirmed via precedent at the Board of Immigration Appeals, the Fifth Circuit, and the Supreme Court. Petitioner must follow the process set forth by congress.

II. Relevant Facts and Procedural History

Petitioner is a native and citizen of Mexico. ECF No. 1 at ¶5. On or about September 30, 2006, Petitioner was admitted to the United States via a B-1/B-2 visa. ECF No. 1 at ¶ 11. On July 15, 2025, petitioner was detained. *Id* at ¶13. On or about September 15, 2025, an immigration judge denied bond after finding Petitioner to be a flight risk. ECF No. 1 at ¶14; *See also* Petitioner's Exh. 4. Petitioner then requested a subsequent bond hearing, and it was denied because Petitioner could not show a change in circumstances as is required. *See* Petitioner's Exh. 5; *see also* 8 C.F.R.

§ 1003.19(e).

III. Argument

This Court lacks jurisdiction to overturn a discretionary decision by the immigration court. To grant this petition, would in vacate a discretionary decisions by the immigration court and violate the statutes, regulations, and Supreme Court Precedent.

A. The Court Lacks Jurisdiction to Review a Discretionary Decision regarding Detention and Revocation of Bond.

We start, as always, with jurisdiction." *Texas v. Biden*, 20 F.4th 928, 947 (5th Cir. 2021), as revised (Dec. 21, 2021), rev'd and remanded, 597 U.S. 785, (2022). Before addressing any other matters before the Court, jurisdiction must first be established.

Petitioner cannot now use this petition as a vehicle to dispute ICE or the immigration judge's alternative discretionary findings. *Saint Fort v Ashcroft,* 329 F.3d 191, 200 (1st Cir. 2003)(noting that the Supreme Court has "read the jurisdiction-limiting provision in § 1226(e) as applying only to review of the Attorney General's discretionary judgment") (citing *Demore v. Kim,* 538 U.S. 510, 516–517(2003)); *see also Loa–Herrera v. Trominski,* 231 F.3d 984, 991–992 (5th Cir.2000); 8 U.S.C. § 1226(e).

8 U.S.C. § 1226(e) 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."

The bar to judicial review was discussed and analyzed by the Supreme Court. The Supreme Court 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 [emphasis added]**).

Petitioner is not entitled to judicial review of his most recent bond decision. Even if this Court were to find that Petitioner is only subject to detention pursuant to 8 U.S.C § 1226, the immigration court's alternative finding establishes that Petitioner is also subject to detention pursuant to §1226 as a danger. 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. APA Challenges May Not Be Asserted As Habeas Petitions.

Although Petitioner in this case failed to pay the proper fee, and as such the APA claims should be denied, Respondents provide a brief response.

The APA provides that "[a] person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. The APA defines "agency action" to include "failure to act." 5 U.S.C. § 551(13). Where agency action is "unlawfully withheld or unreasonably delayed," the court "shall compel agency action." 5 U.S.C. § 706(1). **However, to the extent that "agency**

action is committed to agency discretion by law," the APA does not apply. 5 U.S.C.§ 701(a)(2). Petitioners claim stem from a discretionary decision by the immigration court and therefore, pursuant to 5 U.S.C.§ 701(a)(2), any APA claims fail.

Additionally, Petitioners expressly challenge their civil detention. *See, e.g.*, ECF 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his **sole federal remedy is a writ of habeas corpus**"); *see also Trump v. J. G. G.*, 604 U.S. 670, 672 (2025)("[r]egardless of whether the detainees formally request release from confinement, because their claims for relief " 'necessarily imply the invalidity' " of their confinement and removal under the AEA, their claims fall within the "core" of the writ of habeas corpus and thus **must be brought in habeas.**"[emphasis added]); *see also, e.g.*, *Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ of habeas corpus[.]" (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, "release from ICE custody . . . is a remedy that is *only* available through a habeas petition." *Armando C. G. v. Tsoukaris*, No. 20-5652, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added).

Petitioner purports to assert a claim under the Administrative Procedure Act ("APA")—a civil claim. ECF No. at 17-19. This he may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim").

III. Conclusion

The Court should deny the Petition in its entirety. The Court (1) is stripped of jurisdiction to review the discretionary determinations of the immigration judge [§ 1226(e)];(2) Petitioner failed to pay the fee for the APA claims; (3) APA claims are not proper when brought to contest discretionary agency decisions; and (4) *habeas* is the sole remedy for confinement contests.

This court may be concerned how §1226(e) effects the remedying of harms from illegal detention, but the Third Circuit's reasoning regarding another jurisdictional stripping statute ,8 U.S.C. 1252(b)(9), rings true here. "Congress has the power to balance the orderly adjudication of claims with concerns about remedying harms from illegal detention." *Khalil v. President, United States of Am.*, No. 25-2162, 2026 WL 111933, at *10 (3d Cir. Jan. 15, 2026). The balance that Congress struck in § 1226(e), removed jurisdiction from this Court to review these discretionary determinations.

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.

Respectfully submitted,

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