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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PRABHJOT KAUR, Plaintiff, v. CHRISTOPHER CHESTNUT, *et al.*, Respondents.	CASE NO. 1:26-CV-05349-DC-CSK MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Thus, the only relief she should be granted is a custody redetermination hearing pursuant to 8 U.S.C. §1226(a) and its implementing regulations where she bears the burden of establishing that she does not constitute a flight risk or a danger. The Ninth Circuit has held that section 1226(a) provides facially constitutional procedures.

BACKGROUND

Petitioner is a native and citizen of India. Exhibit A (Form I-213).[1] Petitioner was admitted to the United States on or about August 18, 2022, on a student visa. Exhibit B (NTA). The visa required Petitioner to maintain her student status under which she was admitted. *Id.* Petitioner failed to maintain her status as required. *Id.* Petitioner was lawfully re-detained by ICE on or about July 7, 2026. Exhibit C (I-200). Petitioner is in removal proceedings and is detained under 8 U.S.C. § 1226(a).

[1] Undersigned counsel has provided the relevant documents that are available within the timeframe to respond to the petition.

LEGAL STANDARD

I. Detention Under 8 U.S.C. §1226

Section 1226, of Title 8 of the United States Code governs the detention of aliens who have been lawfully admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a) provides for the arrest and detention of these aliens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain an alien during his removal proceedings, release her on bond, or release her on conditional parole.[2] An alien can request a custody redetermination (*i.e.*, a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1003.19. Application for a bond redetermination hearing may be made by a respondent (here, the Petitioner) orally, in writing, or, at the discretion of the immigration judge, by telephone. 8 C.F.R. § 1003.19(b). At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *See In re Guerra*, 24 I&N Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider); *Matter of Siniauskas*, 27 I&N Dec. 207, 207–208 (discussing Respondent's burden) (BIA 2018) ("An alien in a custody determination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2012), must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight."). A custody redetermination decision may be appealed to the Board of Immigration Appeals.

ARGUMENT

Here, Respondents do not dispute that Petitioner is entitled to receive a custody re-determination hearing under section 1226(a) and it is implementing regulations. Under section 1226(a), it is the detainee who must request the bond hearing. Here, the petition for writ of habeas corpus may be construed as Petitioner's request for a hearing.

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[2] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

A bond hearing in lieu of release is particularly appropriate when, as here, Petitioner failed to comply with the terms of her visa and her noncompliance suggests she may not comply with a future order of removal. *See Mansoor v. Figueroa*, No. 3:17-cv-01695-GPC (NLS), 2018 WL 840253, at *4 (S.D. Cal. Feb. 13, 2018) (Immigration Judges are well suited to assess eligibility for release, while a district court "lacks the factual support to make a determination about Petitioner's risk of flight or dangerousness to the community"); *Arshakyam v. Warden of Cal. City Det.*, No. 1:25-cv-01780-DAD-AC (HC), 2026 WL 143143 at *5 (E.D. Cal. Jan. 20, 2026) (granting a bond hearing not immediate release).

The Ninth Circuit has found section 1226(a)'s procedures to be constitutionally sufficient while acknowledging that not all as-applied challenges are foreclosed. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022) (finding § 1226(a)'s procedures satisfied due process both facially and as applied to Rodriguez Diaz); *id.* at 1197–98 (describing procedures and discussing their adequacy). There is nothing unique however about this case that would make section 1226(a)'s procedures constitutionally deficient as applied to Petitioner.

Moreover, both the Ninth Circuit in *Rodriguez Diaz* and the Supreme Court in *Jennings* found section 1226(a) does not require the government to bear the burden. *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (noting in section 1226(a) "'even remotely supports the imposition' of 'periodic bond hearings every six months in which the Attorney General must prove by clear and convincing evidence that the alien's continued detention is necessary.'"). In addition, the Ninth Circuit questioned how the burden-shifting and standard of proof that Petitioner demands could be constitutionally required:

> Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases. There is no reason to believe that, as a general proposition, the government will invariably have more evidence than the alien on most issues bearing on alleged lack of future dangerousness or flight risk.

Rodriguez Diaz, 53 F.4th at 1212. Accordingly, if the Court grants Petitioner a bond hearing, she should bear the burden of proof at the hearing.

Finally, Petitioner should be required to exhaust her administrative remedy before filing a habeas petition. When, as here, the Petitioner is prudentially required to exhaust administrative remedies but has failed to do so, the district court may dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted administrative remedies. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). The Court should dismiss this petition or, alternatively, stay these proceedings. Requiring Petitioner to exhaust her administrative remedy under section 1226(a) through the immigration court which would allow the agency to address the detention issue in the first instance and may "preclude the need for judicial review." *Okoth v. Kaiser*, No. 1:25-cv-01936-KES-SAB, 2026 WL 45199, at *4 (E.D. Cal. Jan. 7, 2026).

CONCLUSION

For the foregoing reasons, the petition for a writ of habeas corpus should be denied, or at a minimum stayed until Petitioner exhausts her administrative remedy.

Respectfully submitted,

Dated: July 22, 2026

ERIC GRANT
United States Attorney

By: /s/ ELISA M. RODRIGUEZ
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