

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

MICHAEL ANDRES ALVAREZ PUERTA,

Petitioner,

v.

Civil Action No. 1:25-CV-00108

MICHAEL NESSINGER, Warden,  
Donald W. Wyatt Detention Facility,  
PATRICIA HYDE, Director, Boston Field  
Office, U.S. Immigration and Customs  
Enforcement, and KRISTI NOEM, U.S.  
Secretary of Homeland Security, *in their  
official capacities.*

Respondents.

**OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS  
AND MOTION TO DISMISS**

The United States of America, on behalf of Respondents,<sup>1</sup> moves the Court to dismiss Petitioner's habeas corpus petition under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The Petitioner, Michael Andres Alvarez Puerta, has brought a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, requesting that this Court issue a writ of habeas corpus mandating that Respondents immediately release Petitioner from custody or, in the alternative, order a new bond hearing.

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<sup>1</sup> The U.S. Attorney's Office does not represent the Warden of Wyatt Detention Facility.

Petitioner successfully moved the Immigration Court to grant a second bond hearing after filing his Amended Petition (ECF No. 7) with this Court—he obtained the relief he stated he was seeking in his Amended Petition. Accordingly, his Writ is moot and should be dismissed. Petitioner’s request for habeas relief from the federal court is also premature because an appeal of the Immigration Court’s denial of bond at the second hearing, on April 10, 2025, is still pending before the Board of Immigration Appeals (“BIA” or “Board”). Because Petitioner has not yet fully exhausted his administrative remedies, the Immigration Court’s decision to deny bond is not ripe for review by this Court and the Writ must be dismissed for failure to state a claim. Moreover, insofar as Petitioner is seeking review of the merits of the Immigration Court’s decision, this Court lacks jurisdiction to review such discretionary decision by the Immigration Court.

Petitioner’s request that this Court allow for his release must therefore be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) and failure to state a claim under Rule 12(b)(6). The United States and the Respondents incorporate by reference the Chan Declaration and documents referenced therein. The Immigration Court’s Orders of December 26, 2024 and April 10, 2025 and Petitioner’s Notice of Appeal to the BIA referenced in the Chan Declaration are kept by the Department of Justice’s Executive Office of Immigration Review (“EOIR”) and are attached hereto as Exhibits A through C for the Court’s convenience.

#### **BACKGROUND**

Petitioner is a Colombian national who entered the United States in June 2023, at which time he was placed into removal proceedings before the EOIR before

the Boston Immigration Court. ECF No. 7 at ¶ 5; ECF No. 8, Ex. 1. At that time, the U.S. Department of Homeland Security (“DHS”) issued Form I-220A releasing Petitioner on recognizance. ECF No. 8, Ex. 1. Among the conditions of release on recognizance was a requirement to “not violate any local, State, or Federal laws or ordinances” and that Petitioner “not commit any crimes while on this order of release.” *Id.*

In August 2023, Petitioner filed his application for protection from removal, which is still pending. ECF No. 7 at ¶ 12; Chan Decl. at ¶ 12.

On December 9, 2024, Petitioner was arrested by the Central Falls, Rhode Island Police Department and charged with domestic simple assault/battery and domestic disorderly conduct under R.I.G.L. §§ 11-5-3 and 11-45-1, subjecting the Petitioner to enforcement action by ICE. ECF No. 7 at ¶ 13; ECF No. 8, Ex. 2.

Petitioner was arraigned in the Sixth Division District Court of Providence on December 10, 2024 and released on his personal recognizance. ECF No. 7 at ¶ 14. After Petitioner was released, he was arrested by officers wearing ICE vests with ICE/Police markings on their outer garments. ECF No. 8, Ex. 2. Petitioner was issued Form I-286 Notice of Custody Determination and detained at the Donald W. Wyatt Detention Facility (“Wyatt”) in Central Falls, Rhode Island subject to discretionary detention pursuant to 8 U.S.C. § 1226(a). *Id.*; ECF No. 7 at ¶ 16. Petitioner requested a custody redetermination hearing (“bond hearing”) with the Immigration Court pursuant to 8 C.F.R. § 1236(d)(1) and 8 C.F.R. § 1003.19, which took place on December 26, 2024, at which he was represented by counsel. ECF No.

7 at ¶¶ 16, 17; Exhibit A (Dec. 26, 2024 Order of the Immigration Court) (hereinafter, “Ex. A”); Chan Decl. at ¶ 8. The Immigration Judge (“IJ”) considered police statements, the incident report, the no-contact order, the Form I-220A Order of Release on Recognizance, the docket sheet from the Sixth Division District Court of Providence, a letter from the complaining witness on behalf of Petitioner, Petitioner’s proof of filing taxes, and Petitioner’s proof of employment ECF No. 7 at ¶ 17; Chan Decl. at ¶ 8. After consideration of the evidence presented, the IJ denied Petitioner’s request for a change in custody status, finding that he was “a danger to the community.” ECF No. 8, Ex. 4.

Petitioner filed a writ of habeas on March 23, 2025 with this Court, alleging that his due process rights had been violated because the IJ improperly placed the burden of proof on Petitioner instead of DHS to show that Petitioner was not a danger to the community. ECF No. 1 at ¶ 22. Petitioner sought a writ of habeas ordering Respondents to “immediately release” Petitioner from custody, or in the alternative, “order a constitutionally adequate bond hearing.” *Id.* at p.12.

On March 27, 2025, Petitioner filed an Amended Petition, stating that, on March 25, 2025, the Sixth Division District Court of Providence had dismissed the pending criminal charges for which he had been arraigned on December 10, 2024. ECF No. 7 at ¶ 20. Petitioner stated in his Amended Petition that he was eligible to request a new bond hearing based on materially changed circumstances upon motion to the IJ under 8 C.F.R. § 1003.19(e). *Id.* at ¶ 22. The Amended Petition recites the same allegations as the original Petition and again asks the Court to

immediately release Petitioner from custody or, in the alternative, order a new bond redetermination hearing. *See id.* at p.13.

On April 1, 2025, after filing his Amended Petition, Petitioner filed a motion for a second bond hearing, which the IJ granted. Chan Decl. at ¶ 11. On April 10, 2025, the IJ conducted a bond hearing, at which Petitioner was represented by counsel. Chan Decl. at ¶ 11. After considering all the evidence, the Immigration Court—presided over by a different IJ than the one who denied bond at the December 26, 2024 hearing—denied bond to the Petitioner. *Id.*; compare Ex. A with Exhibit B (April 11, 2025 Order of the Immigration Court<sup>2</sup>) (hereinafter, “Ex. B”). The IJ found that “DHS had demonstrated by clear and convincing evidence that the Respondent poses a danger to the community.” Ex. B. On April 15, 2025, Petitioner filed a Notice of Appeal of the IJ’s April 10, 2025 decision with the BIA, which is currently pending. *See* Chan Decl. at ¶ 11; Exhibit C (Notice of Appeal to the BIA, filed April 15, 2025) (hereinafter, “Ex. C”).

Petitioner has been in custody at Wyatt since December 2024. To date, there is no final order of removal to which Petitioner is subject. Chan Decl. at ¶ 12.

### **LEGAL STANDARDS**

#### **I. Lack of subject matter jurisdiction under Rule 12(b)(1)**

Federal Rule of Civil Procedure 12(b)(1) allows a defendant to challenge the Court’s subject matter jurisdiction over a particular claim or cause of action, the existence of which is “never presumed.” *Fafel v. DiPaola*, 399 F.3d 403, 410 (1st Cir.

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<sup>2</sup> While the IJ’s Order is dated April 11, 2025, Petitioner’s bond hearing took place on April 10, 2025. *See* Chan Decl. at ¶ 11.

2005); Fed. R. Civ. P. 12(b)(1). Under Rule 12(b)(1), the question is not whether the claimant “will ultimately prevail . . . but whether his complaint [is] sufficient to cross the federal court’s threshold.” *Skinner v. Switzer*, 562 U.S. 521, 529-30 (2011). The burden of establishing jurisdiction rests with the party asserting it. *Aversa v. United States*, 99 F.3d 1200, 1209 (1st Cir. 1996). Under Rule 12(b)(1), the Court is not restricted to the face of the pleadings but may consider extra-pleading materials to resolve factual disputes concerning the existence of jurisdiction. *See Land v. Dollar*, 330 U.S. 731, 735 (1947); *Media Duplication Servs., Ltd. v. HDG Software, Inc.*, 928 F.2d 1228, 1236 (1st Cir. 1991). A case is properly dismissed under Rule 12(b)(1) when the court lacks the statutory or constitutional power to adjudicate it.

## II. Failure to state a claim under Rule 12(b)(6) and Habeas Rule 4

The Federal Rules of Civil Procedure require that each claim in a complaint include “a short and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a). Rule 12(b)(6) provides for dismissal where the complaint fails to assert facts that give rise to legal liability of the defendant. Fed. R. Civ. P. 12(b)(6). To withstand a motion to dismiss under Rule 12(b)(6), “the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Cunningham v. Nat’l City Bank*, 588 F.3d 49, 52 (1st Cir. 2009). The claims must include enough factual allegations “to raise a right to relief above a speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

“Although dismissals under Rules 12(b)(1) and 12(b)(6) are conceptually distinct, the same basic principles apply in both situations.” *Harper v. Rettig*, 46

F.4th 1, 5 (1st Cir. 2022) (citing *Lyman v. Baker*, 954 F.3d 351, 359 (1st Cir. 2020)). All those principles apply here—the Court (a) must ignore allegations comprising only “legal labels or conclusions or merely rehash cause-of-action elements”; (b) must take allegations of “non-conclusory, non-speculative facts as true and draw all reasonable inferences in the plaintiff’s favor”; and (c) may “consider information attached to or incorporated into the complaint and facts susceptible to judicial notice.” *Id.*

Rule 4 of the Habeas Corpus Rules governing 28 U.S.C. § 2254 cases (involving individuals in custody pursuant to the judgment of a State court), meanwhile, requires a *sua sponte* review of habeas petitions. “If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief . . . the judge must dismiss the petition.” Habeas Corpus Rule 4. District courts have the discretion to apply this rule in habeas corpus cases brought under 28 U.S.C. § 2241. Habeas Corpus Rule 1; *see also Dep’t of Children, Youth, & Families v. Vilbon*, No. 21-cv-00272-MSM-LDA, 2021 WL 4169817, at \*1 (D.R.I. Aug. 18, 2021) (applying Habeas Corpus Rule 4 standard to habeas corpus case filed pursuant to 28 U.S.C. § 2241), *aff’d in relevant part*, No. 21-1658 (1st Cir. Aug. 22, 2022); *Baynard v. Wall*, No. 13-cv-00578-ML-PAS, 2013 WL 5347445, at \*2 n. 5 (D.R.I. Sept. 23, 2013) (“Rule 4 may apply to habeas petitions brought under § 2241 in addition to § 2254.”) (citing *Bramson v. Winn*, 136 F. App’x 380, 382 (1st Cir. 2005)).

The standards set forth in Federal Rule of Civil Procedure 12(b)(6) are instructive when screening a petition under Habeas Corpus Rule 4. *See Paters v. United States*, 159 F.3d 1043, 1059 (7th Cir. 1998) (“Rule 4, like Fed. R. Civ. P. 12(b)(6), acts as a screening device to weed out meritless claims from the federal court system.”); *Rivas v. Fischer*, 687 F.3d 514, 535 (2d Cir. 2012) (“The facts vital to a habeas claim are those without which the claim would necessarily be dismissed under Rule 4 . . . or Rule 12(b)(6) of the Federal Rules of Civil Procedure.”).

### III. Standard for a motion for summary judgment under Rule 56

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Mulvihill v. Top-Flite Golf Co.*, 335 F.3d 15, 19 (1st Cir. 2003) (quoting Fed. R. Civ. P. 56(c)).<sup>3</sup>

### IV. Discretionary detention under 8 U.S.C. § 1226(a)

The relevant provision of the Immigration and Nationality Act (“INA”) in this case is 8 U.S.C. § 1226(a), which allows the government to arrest and detain certain noncitizens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226(a) establishes the “default rule,” giving the Attorney General “broad discretion” over detention matters. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *Nielsen v. Preap*, 586 U.S. 392, 409-10 (2019).

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<sup>3</sup> The government frames this motion under Rule 56 in the alternative, given the submission of extrinsic evidence regarding the IJ’s April 10, 2025 decision and Petitioner’s pending appeal to the BIA.

For these individuals, the Attorney General can either “continue to detain the arrested alien,” or “may release the alien on (A) bond of at least \$1,500 . . . or (B) conditional parole.” 8 U.S.C. § 1226(a)(1)–(2). When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination. 8 C.F.R. § 236.1(c)(8). The alien will be released if he “demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” *Id.*

Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final. *See id.* §§ 236.1(d)(1), 1003.19. The detainee can also appeal an adverse decision to the BIA. *See id.* § 236.1(d)(3). On top of this, an individual detained pursuant to § 1226(a) may request an additional bond hearing whenever they experience a material change in circumstances. *See id.* § 1003.19(e). The outcome of this new hearing is also appealable to the BIA. *See id.* § 1003.19(f).

### **ARGUMENT**

#### **I. The Amended Petition must be dismissed as moot as Petitioner has already received a new custody redetermination hearing.**

The relief Petitioner requests is “immediate[] release” or, “*in the alternative*, [] a constitutionally adequate bond hearing,” on the grounds that his December 26, 2024 custody redetermination hearing was allegedly constitutionally inadequate. ECF No. 7 at p.13 (emphasis added). But since filing his Amended Petition, Petitioner has obtained the relief he sought—a new bond hearing. Following the March 25, 2025 dismissal of his criminal charges, Petitioner successfully moved the

IJ to hold a second custody redetermination hearing—*after* filing the Amended Petition at issue. Ex. B; Chan Decl. at ¶ 11. The Writ is thus now moot and should be dismissed. That Petitioner is unhappy with the outcome of the alternative remedy he specifically sought does not provide a legal basis for keeping his claim alive.

At the second bond hearing, a second IJ, “[a]fter full consideration of the evidence presented,” denied Petitioner’s request for a change in custody status because “DHS has demonstrated by clear and convincing evidence that the Respondent poses a danger to the community.” Ex. B. The IJ thus invoked the correct legal standard under the First Circuit’s decision in *Hernandez-Lara v. Lyons*, which held that, in order to continue detaining an alien during the pendency of her removal proceedings under 8 U.S.C. § 1226(a), “due process requires the government to either (1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk.” 10 F.4th 19, 41 (1st Cir. 2021).

The second bond hearing thereby provided Petitioner with all the relief to which he is currently entitled under 8 C.F.R. § 236.1(d). *See Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 278-79 (3d Cir. 2018) (petitioner was not entitled to a writ of habeas corpus because the process he was afforded pursuant to § 1226(a) satisfied the Due Process Clause); *see also Jennings*, 583 U.S. at 306 (“Nothing in § 1226(a)’s text—which says only that the Attorney General ‘may release’ the alien ‘on . . . bond’—even remotely supports the imposition [of periodic

bond hearings every six months]”) (cleaned up); *Yagman v. Garcetti*, 852 F.3d 859, 865 (9th Cir. 2017) (upholding a scheme that offered “an opportunity to present evidence and arguments” that would be “considered by the reviewer”); *Martinez v. Holder*, No. 11-cv-00402-IEG-JMA, 2011 WL 6292913, at \*5 (S.D. Cal. Dec. 13, 2011) (denying as moot and dismissing habeas petition because bond hearing provided petitioner being detained under § 1226(a) “all the relief that he is currently entitled to”).

*Borbot* is instructive here. *See* 906 F.3d at 275-76. In that case, the petitioner was detained pursuant to § 1226(a) and was twice denied bond by the IJ. *Id.* The IJ, after holding a hearing, had denied his initial application for release on bond pursuant to 8 C.F.R. § 236.1(c)(8). *Id.* at 276. After appealing the denial to the BIA, which upheld the IJ’s decision, the petitioner requested bond redetermination pursuant to 8 C.F.R. § 236.1(d)(1). *Id.* The IJ denied the request without a hearing. *Id.* The petitioner then filed a petition for a writ of habeas corpus pursuant to § 2241 alleging that his detention violated the Due Process Clause and requesting a bond hearing at which the government would bear the burden of proof. *Id.* The district court dismissed the petition. *Id.*

The Third Circuit affirmed the dismissal, stressing that individuals detained pursuant to § 1226(a) are statutorily entitled to a prompt bond hearing and can request bond redeterminations by showing that their circumstances have materially changed—which is precisely what the petitioner received. *Id.* at 278-79. The court held that the petitioner was not entitled to a writ of habeas corpus because he had

already been afforded all due process required by § 1226(a) and its implementing regulations, including an initial bond hearing pursuant to 8 C.F.R. § 236.1(c)(8) and the opportunity to request bond redetermination pursuant to 8 C.F.R. § 236.1(d)(1). *Id.*; see also *Coto-Henriquez v. Dep't of Homeland Sec.*, No. 23-cv-00271-CCC-LT, 2023 WL 2333309, at \*1-2 (M.D. Pa. Mar. 2, 2023) (dismissing habeas petition pursuant to Habeas Corpus Rule 4 where the petitioner who was detained pursuant to § 1226(a) was provided an initial bond hearing and was given the opportunity to seek bond redetermination).

Because Petitioner here has received a new bond hearing, his Amended Petition is moot and should be dismissed for lack of jurisdiction. See *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 (9th Cir. 2008) (dismissing as moot part of habeas petition challenging detention without an individualized bond hearing after IJ held a bond hearing).

**II. Petitioner has not exhausted administrative remedies available to him as of right.**

Though nothing more need be determined to deny Petitioner's Writ, the Writ should be denied for the independent reason that Petitioner failed to exhaust his administrative remedies before filing it.

After filing his Amended Petition, Petitioner decided to avail himself of the due process available to him by—appropriately—pursuing an appeal of the Immigration Court's second denial of bond to the BIA pursuant to 8 C.F.R. § 1003.19. See 8 C.F.R. §§ 236.1(d)(3), 1003.19(a), (f); Ex. C. The Board has yet to rule on the matter. Chan Decl. at ¶ 11. Because Petitioner has not yet exhausted all

available remedies at the administrative level, his habeas petition before this Court is premature and not subject to judicial review.

Generally, a plaintiff's failure to exhaust his administrative remedies "precludes [him] from obtaining federal review of claims that would have properly been raised before the agency in the first instance." *Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021). Exhaustion must be "proper," which requires "compliance with an agency's deadlines and other critical procedural rules," as well as using "all steps that the agency holds out." *Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (internal quotations omitted); see also *Rodriguez-Rosa v. Spaulding*, No. 19-cv-11984-MBB, 2020 WL 2543239, at \*7-11 (D. Mass. May. 19, 2020). As the First Circuit has noted, "[e]xhaustion allows 'an agency the first opportunity to apply [its] expertise' and 'obviat[es] the need for [judicial] review in cases in which the agency provides appropriate redress.'" *Brito*, 22 F.4th at 256 (quoting *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 174-76 (1st Cir. 2016)). It "gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court, and it discourages disregard of [the agency's] procedures." *Woodford*, 548 U.S. at 89 (cleaned up). Moreover, administrative exhaustion often results in the creation of a developed administrative record that is useful to the court in the event of subsequent judicial review. See *id.* at 94-95.

Despite now pursuing administrative relief, Petitioner nonetheless contends that there is no statutory exhaustion requirement under 28 U.S.C. § 2241 because habeas protections are "fundamental to individual liberty." ECF No. 7 at ¶ 10.

Petitioner's end-run around the administrative exhaustion requirement is unavailing. See *Portela-Gonzalez v. Sec'y of Navy*, 109 F.3d 74, 80 (1st Cir. 1997) ("The short of it is that [the plaintiff] lacked a legally sufficient reason for leaping prematurely to a judicial venue."); see also *Randall v. Wall*, No. 10-cv-00052-ML-LDA, 2010 WL 1141410, at \*2 (D.R.I. Feb. 18, 2010) (dismissing habeas petition as "unexhausted" and thus failing to survive Rule 4 scrutiny where appeal to the Rhode Island Supreme Court was still pending). As this Court recently held, "[t]here is no question that before filing a habeas petition a petitioner must exhaust all administrative remedies." See Order at 2, *Perevoznikov v. Nessinger et al.*, No. 25-cv-00085-JJM-LDA, ECF No. 10 (D.R.I. May 2, 2025) (denying a petitioner's habeas petition requesting immediate release, or in the alternative, a new bond hearing before an IJ because the issue was still pending before the BIA).

Petitioner's assertion that he is exempt from any administrative exhaustion requirement also fails to take into account that the First Circuit has recognized "two species of exhaustion: statutory and common-law. The former deprives a federal court of jurisdiction, while the latter cedes discretion to a [federal] court to decline the exercise of jurisdiction." *Brito*, 22 F.4th at 255 (cleaned up). "Although exhaustion of administrative remedies is absolutely required if explicitly mandated by Congress, courts have more latitude in dealing with exhaustion questions when Congress has remained silent." *Portela-Gonzalez*, 109 F.3d at 77 (internal citations omitted). Both species apply here, calling for exhaustion of administrative relief before this Court can review Petitioner's claims.

A. Statutory exhaustion applies to habeas petitions.

The First Circuit has held that exhaustion generally applies to habeas corpus petitions. *See Sayyah v. Farquharson*, 382 F.3d 20, 26 (1st Cir. 2004) (statutory exhaustion barred review where petitioner failed to appeal removal order to BIA). This Court has repeatedly reiterated that holding, finding that “the First Circuit has clearly held that [8 U.S.C.] § 1252(d)’s exhaustion requirement is jurisdictional and ‘applies broadly to all forms of court review of final orders of removal, including habeas corpus.’” *Martinez v. Gonzales*, No. 05-cv-00112-WES, 2005 WL 2219078, at \*2 (D.R.I. Sept. 13, 2005) (citing *Sayyah*, 382 F.3d at 26); *see also Ferrell v. Wall*, 862 F. Supp. 2d 88, 99 (D.R.I. 2012) (requirement of exhaustion under 28 U.S.C. § 2254(b)(1)(A)); *see also Boyce v. Roden*, No. 12-cv-10499-DPW, 2012 WL 1073386, at \*2 (D. Mass. Mar. 27, 2012) (summarily dismissing a habeas petition and holding that “[e]very claim in a petition must be exhausted”).

In *Martinez*, this Court dismissed a habeas petition where the petitioner had not yet received a final decision from the IJ or BIA, and there were no circumstances indicating that the petitioner would be “deprived of the opportunity to appeal any adverse decision by the IJ to the BIA, and then bring his [] claim to the United States Courts.” 2005 WL 2219078, at \*2. This Court further held that “§ 1252(d)’s exhaustion requirement applies even when there is no final order of removal and the underlying challenge is to detention,” and that the petitioner was “required to exhaust his administrative remedies pursuant to 8 U.S.C. § 1252(d)(1) prior to seeking federal court relief.” *Id.* at \*3.

Here, Petitioner has begun, but not yet exhausted, the administrative process by filing an appeal with the BIA. Unless and until Petitioner has received a final administrative decision from the BIA, his habeas corpus action before this Court is premature and, accordingly, barred.

**B. The Court should exercise its discretion to mandate exhaustion of administrative remedies.**

Application of the common law doctrine of exhaustion mandates the same result. Review of unexhausted claims is appropriate in “circumstances in which the interests of the individual *weigh heavily* against requiring administrative exhaustion.” *Anversa*, 835 F.3d at 176 (emphasis added). Consideration of individual concerns may require courts not to strictly enforce exhaustion if: (1) the requirement subjects an individual to an unreasonable or indefinite time frame for administrative action; (2) the administrative agency lacks the competence to resolve the particular issues presented; or (3) the requirement would be futile because the administrative body is shown to be biased or has predetermined the issue before it. *Martinez*, 2005 WL 2219078, at \*3 (citing *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)). Countervailing institutional interests include protecting administrative agency authority and promoting judicial efficiency. *Woodford*, 548 U.S. at 89.

This Court, in determining whether to exercise its discretion to address Petitioner’s challenge to the Immigration Court’s detention order, must decide whether the “twin purposes of protecting administrative agency authority and promoting judicial efficiency” are outweighed by the Petitioner’s interest in immediate adjudication of his claim by this Court. *Flores-Powell v. Chadbourne*, 677

F. Supp. 2d 455, 464 (D. Mass. 2010) (citing *Portela-Gonzalez*, 109 F.3d at 77).

Petitioner does not allege any circumstances that heavily outweigh the exhaustion requirement.

1. *Petitioner's detention has not been "unreasonably prolonged" to give rise to irreparable harm or a due process violation.*

In the First Circuit, courts "adhere to the notion that the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention under section 1226(c)." *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (cleaned up); see also *Zadvydus v. Davis*, 533 U.S. 678, 701 (2001); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1062-63 (9th Cir. 2008) (extending the reasonableness limitation to detentions under § 1226(a)). But, under those limits, six months of detention is presumptively reasonable, and even detention beyond six months does not trigger an automatic constitutional right to a reasonableness hearing or bond hearing for a person detained pursuant to § 1226(c). *Reid*, 17 F.4th at 9; *Hernandez-Lara*, 10 F.4th at 30 n.4 (finding "the potential length of detention under section 1226(a) relevant to the weight of the liberty interest at stake").<sup>4</sup> Petitioner

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<sup>4</sup> Courts within the First Circuit have repeatedly rejected claims of unreasonably prolonged detention brought by noncitizens who have been detained for much longer than Petitioner. See, e.g., *Melo v. Ashcroft*, 364 F. Supp. 2d 183, 197-98 (D.R.I. 2005) (denying habeas petition and holding that detention exceeding 6 months did not violate substantive due process, absent evidence demonstrating there was no significant likelihood of removal in reasonably foreseeable future); *Podoprigora v. Chadbourne*, No. 03-cv-00420-T, 2004 WL 725057, at \*3-4 (D.R.I. Mar. 2, 2004) (same); *Alphonse v. Moniz*, No. 21-cv-11844-FDS, 2022 WL 279638 at \*9 (D. Mass. Jan. 31, 2022) (habeas relief denied despite detention lasting nearly 14 months); *Dos Santos v. Moniz*, No. 21-cv-10611-PBS, 2021 WL 3361882, at \*4 (D. Mass. May 18, 2021) ("mandatory detention [exceeding 16 months] . . . has not been unreasonably prolonged"); *Martinez Lopez v. Moniz*, No. 21-cv-11540-FDS, 2021 WL

has been detained for five months, and thus his detention remains presumptively reasonable.

*2. The circumstances and procedural background of this case favor mandating exhaustion of administrative remedies.*

Petitioner's appeal to the BIA is based on an allegation that DHS did not demonstrate by clear and convincing evidence that Petitioner is a danger to the community. Ex. C. Because this concerns questions of fact, "the agency has a strong interest in making its own factual record, a factor that in some cases may outweigh the litigant's need for judicial resolution." *Martinez*, 2005 WL 2219078, at \*4 (cleaned up). The Petitioner has not alleged that the BIA is not empowered to grant meaningful redress—on the contrary, the BIA, which is the body with the expertise and authority in this area, has the power to reverse (or affirm) the detention decision of the Immigration Court. *See Portela-Gonzalez*, 109 F.3d at 80 ("[L]ong-recognized concerns regarding agency autonomy and judicial efficiency weigh heavily in favor of requiring complete exhaustion of administrative remedies."). Finally, Petitioner does not suggest that the BIA is biased or has predetermined this issue.

While the administrative appeal process may take some time to conclude, individual concerns do not significantly outweigh the policy of allowing the BIA the

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6066440, at \*5 (D. Mass. Dec. 22, 2021) (detention **over 13 months** did not independently warrant a bond hearing); *Silva v. Moniz*, No. 20-cv-12255-DJC, ECF No. 26 (D. Mass. Oct. 28, 2021) (denying *Reid* claim brought by petitioner detained for **27 months**); *Lafortune v. Mayorkas*, No. 22-cv-11624-DJC, ECF No. 16 (D. Mass. Apr. 20, 2023) (habeas relief denied despite detention for over 19 months at time of decision)

initial opportunity to review Petitioner's claims. *See Oliveira dos Reis v. Vitello et al.*, No. 25-cv-10497-RGS, ECF No. 15 at 5 (D. Mass. Apr. 8, 2025) ("Given the extraordinary case load of the BIA, the result may not be as expeditious as one might wish, but neither is it so 'prolonged' as to rise to a violation of due process.") (citing *Reid*, 17 F.4th at 9). Requiring exhaustion in this case will also promote judicial efficiency and avoid piecemeal litigation by giving the BIA an opportunity to develop and review the factual record and, if necessary, correct any mistakes. *See Vilbon*, 2021 WL 4169817, at \*1 (mere presentment to the agency of "the same factual allegations" as those made to the federal court not sufficient to satisfy exhaustion requirement; rather, the agency "must be given the first opportunity to consider 'the substance of (the) federal habeas corpus claim.'") (quoting *Picard v. Connor*, 404 U.S. 270, 276 (1971)). If Petitioner successfully persuades the Board to reverse the IJ's denial of bond, he will no longer be subject to detention under § 1226(a), and the Writ will be moot. If the Board denies the relief Petitioner is seeking, then Petitioner's Writ will become ripe for judicial review.

There is no reason why dismissing this case and letting Petitioner first fully exhaust administrative remedies would cause undue prejudice, irreparable harm, or unusual hardship of any sort.<sup>5</sup> Accordingly, this Court should deny the Petition for failure to fully exhaust administrative remedies.

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<sup>5</sup> Petitioner, who is represented by counsel in this matter, did not delay in amending his Writ with an update on his criminal charges or in appealing the second bond hearing to the BIA. There is no indication why Petitioner should not now be incapable of withdrawing his Writ and refile in the event of an adverse ruling by the BIA. *See Martinez*, 2005 WL 2219078, at \*1 n.5 ("Petitioner's pro se status at

**III. Petitioner is seeking review of the IJ's discretionary judgment, over which this Court lacks jurisdiction.**

As yet another independent reason to deny Petitioner's Writ, this Court is without jurisdiction to review the IJ's discretionary decision. While Petitioner continues to dress up his claims as a due process violation, it has become apparent that his Writ is based on his frustration with the merits of the IJ's decision, which is not subject to judicial review. A federal court only has jurisdiction under 28 U.S.C. § 2241 to consider any error of law in the Petitioner's agency proceedings, such as any claimed due process violations; it does not have jurisdiction over the IJ's discretionary bond decision. 8 U.S.C. 1226(e); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022).

Under § 1226(e), “[n]o 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.” 8 U.S.C. § 1226(e). This provision 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.” *Demore v. Kim*, 538 U.S. 510, 516 (2003); *see also Hamada v. Gillen*, 616 F. Supp. 2d 177, 181 (D. Mass. 2009) (section 1226(e) barred the district court from reviewing the IJ's and the BIA's decision to detain the petitioner, where petitioner

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the time he initiated this litigation, coupled with the fact that he is currently in United States custody at [Wyatt], explain the [] deficiencies pleaded by Respondents. These deficiencies would be easily cured by the filing of a new petition . . . .”) (dismissing habeas petition nonetheless).

had challenged the decision as “minimizing significant equitable factors in [his] favor.”).

Petitioner was detained under 8 U.S.C. § 1226(a), which provides the Attorney General the discretion to detain an alien pending a decision on whether the alien is to be removed from the United States. This Court lacks jurisdiction to review the IJ’s decision to detain the Petitioner without bond because “Congress has eliminated judicial review of discretionary custody determinations.” *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 688 (D. Mass. 2018) (citing 8 U.S.C. § 1226(e)).

Another independent ground for this Court’s lack of jurisdiction over the IJ’s bond decision is 8 U.S.C. § 1252(a)(2)(B)(ii), which provides:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision . . . and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, ***no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security***, other than the granting of relief under section 1158(a) of this title [asylum-related claims].

8 U.S.C. § 1252(a)(2)(B)(ii) (emphasis added).

The First Circuit has recognized that § 1252(a)(2)(B)(ii)’s bar on review of discretionary immigration decisions applies to discretionary bail determinations under 8 U.S.C. § 1226(a). *Alsamhoury v. Gonzalez*, 484 F.3d 117, 122 (1st Cir. 2007); *see also Saint Fort v. Ashcroft*, 329 F.3d 191, 2032 (1st Cir. 2003) (habeas review may consider whether an alien is eligible for discretionary determination, but may not consider the “agency’s decision to exercise or not exercise its discretion to grant

relief.”); *see also Flores-Powell*, 677 F. Supp. 2d at 475 (federal court would “lack jurisdiction to review a discretionary bail determination made pursuant to § 1226(a)”).

The exception to the jurisdictional bars of both § 1226(e) and § 1252(a)(2) is where a party brings constitutional challenges to the immigration bail system. *See Pensamiento*, 315 F. Supp. 3d at 688; 8 U.S.C. § 1252(a)(2)(D). But here, Petitioner has not raised in his Amended Petition any constitutional challenges to the IJ’s second order denying bond. Even if he had, his successful motion for a new bond hearing and his appeal thereof to the BIA undercuts any argument that his continued request for habeas relief is based on a due process violation by the IJ. *See Ex. C.*

In his own words, Petitioner states in the Notice of Appeal that the IJ at the second hearing “did not consider the additional evidence that was submitted by the Respondent” and “improperly found that Respondent was a danger to the community.” *Id.* Petitioner’s argument is thus not that he has been denied due process but that he has not received enough of it with the outcome he believes he is entitled to. This case is thus distinguishable from *Hernandez-Lara*, in which the First Circuit underscored that the petitioner was not challenging the IJ’s “ultimate exercise of discretion, but rather “the extent of the Government’s detention authority under the statutory framework as a whole.” 10 F.4th at 33 (cleaned up); *c.f. Demore*, 528 U.S. at 516-17 (where respondent’s challenge to the statutory scheme that permitted his detention without bail was not an attack on a

discretionary judgment by the Attorney General or on a decision made by the Attorney General regarding detention, that habeas review was not barred under § 1226(e)).

At most, Petitioner is arguing that the IJ's finding of dangerousness was based on an incorrect weighing and analysis of the evidence. As one court in this circuit recently held, "[t]his is precisely the type of alleged error committed to review by the BIA (and in most circumstances ultimately by the Federal Circuit Court of Appeals)." See *Oliveira dos Reis*, No. 25-cv-10497-RGS, ECF No. 15 at 4-5 (declining to intervene and reverse the IJ's bail determination); *Patel v. Garland*, 596 U.S. 328, 341 (2022) (Congress' intent to limit the jurisdictional bar of § 1226(e) to "discretionary judgments" was clearly reflected in the language of the statute); *Benbow v. Weeden*, No. 13-cv-00334-ML-PAS, 2013 WL 4008698, at \*7 (D.R.I. Aug. 5, 2013) (no due process violation when the hearing officer simply accepted the evidence presented to him at a disciplinary hearing); *Borbot*, 906 F.3d at 279 (seeking to "compel a second bond hearing despite alleging no constitutional defect in the one [petitioner] received . . . comes close to asking this Court to directly review the IJ's bond decision, a task Congress has expressly forbidden us from undertaking.").

At bottom, Petitioner takes issue with the IJ's discretionary decision of detention without bond.<sup>6</sup> Because the Immigration Court detained the Petitioner

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<sup>6</sup> Even if a constitutional claim had been adequately pled, such a claim would properly be before the First Circuit Court of Appeals, and not this Court for purposes of 8 U.S.C. § 1252(a)(2)(B)(ii). 8 U.S.C. § 1252(a)(2)(D).

under Section 1226(a), this Court is precluded from reviewing that discretionary bail determination under both 8 U.S.C. § 1226(e) and 8 U.S.C. § 1252(a)(2)(B)(ii). The Writ should thus be denied not only under Rule 12(b)(6) for failure to state a due process claim, but also Rule 12(b)(1) for lack of jurisdiction.

**IV. Even if habeas relief were available, another bond hearing would be the only appropriate relief.**

Petitioner is not without procedural protections on the merits of his applications for release. Petitioner has already been granted due process during his detention through two prompt custody redetermination hearings before the Immigration Court, consistent with federal regulations, after which ICE continued his detention. If this Court disagrees and finds that Petitioner has demonstrated that his continued detention constitutes a due process violation and merits habeas relief, the remedy is for the Court to issue an order directing the Immigration Court to conduct a bond hearing. *See Zavala v. Martin*, No. 21-cv-00500-WES-PAS, 2022 WL 684147, at \*6 (D.R.I. Mar. 8, 2022) (the remedy for prolonged detention is a bond hearing before an IJ); *Alphonse v. Moniz*, 635 F. Supp. 3d 28, 39 (D. Mass. 2022) (“To be clear, the Court is not determining that he must be released from custody; rather, it is concluding that he is entitled to a bond hearing . . .”); *see also Flores-Powell*, 677 F. Supp. 2d at 475 (where detention authority falls under § 1226(a), “habeas relief in this case essentially would be limited to a declaration that [petitioner] is eligible for release at the discretion of the Attorney General”).

**CONCLUSION**

The Petitioner's request for this Court to issue a writ of habeas corpus mandating a new bond hearing is moot, as Petitioner has already received the opportunity to be heard at a second bond hearing before a different IJ. Furthermore, given that the appeal of the Immigration Court's detention order is still pending before the BIA, the Writ must be denied for failure to exhaust his administrative remedies. Petitioner has failed to state a claim for a due process violation, and the Immigration Court's bond decision under 8 U.S.C. § 1226(a) constitutes a denial of discretionary relief that is not reviewable by this Court, under 8 U.S.C. § 1252(a)(2)(B)(ii).

For these reasons, the Petition should be denied for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6).

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 19, 2025, I caused the foregoing Opposition to be filed by means of this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Fed. R. Civ. P. 5(b)(2)(E) and Local Rules Gen 304.

/s/ Rachna Vyas  
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