IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CESAR M.-A.[1], **Petitioner – Plaintiff,**	§	
V.	§	**CIVIL ACTION NO. 1:25-CV-138**
PAMELA JO BONDI, Attorney General, et al.,	§	
Respondents – Defendants.	§	

RESPONDENTS' MOTION TO DISMISS

Respondents, by and through the United States Attorney for the Southern District of Texas, Nicholas G. Ganjei, move to dismiss this case for want of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Fed. R. Civ. Proc., Rules 12(b)(1) and (6) In support of this Motion, Respondents submit the following:

Background

1. Petitioner is not a citizen of the United States; he is a citizen of Honduras. *Am. Pet.*, ¶ 10

2. Petitioner entered the United States illegally in 1998, at or near Laredo, TX and was not inspected by an Immigration Officer. *Id.*, ¶16 Consequently, Petitioner is not admissible under INA § 212(a)(6)(A)(i)[2]. In addition, because Petitioner was not admitted, nor paroled, and was not inspected by an immigration official, he is subject to mandatory

[1] Petitioner's initials are used herein to be consistent with this Court's recognition of significant privacy concerns in immigration cases. See ECF 28, fn.1
[2] 8 U.S.C. § 1182(a)(6)(A)(i)

detention under 8 U.S.C. §1225(b).

3. Petitioner had his first contact with DHS officials on December 8, 2010. At this time Petitioner was served with a Notice to Appear ("NTA"). Exh. 1

4. On December 8, 2010, Petitioner was given a bond with regard to his first NTA; he posted a bond in January 2011 was released from detention. Exh. 2 and 3

5. On September 30, 2012, Petitioner was arrested a second time for Abuse of a Family member where he was encountered again by DHS. At this time, Petitioner was still engaged in immigration proceedings related to his first NTA. A-File[3], p. 97

6. On January 31, 2013, Petitioner was granted Temporary Protected Status (TPS) by U.S. Citizenship and Immigration Services ("USCIS"). A-File, p. 43

7. On or about February 27, 2013, Petitioner's 2010 NTA was terminated due to Petitioner receiving TPS status. A-File, p. 135

8. On November 18, 2014, DHS encountered Petitioner for a third time when he was arrested (and subsequently convicted) for driving while intoxicated (Petitioner was sentenced to 180 days. A-File, pp. 135, 144

9. On April 6, 2015, Petitioner was encountered a fourth time by DHS when he was once again arrested for Abuse of a family member (impeded breath circulation) for which he was subsequently convicted and sentenced to two years' probation. A-File, pp. 129-30, 138

10. On July 25, 2016, DHS encountered Petitioner yet again when he was arrested a second time for driving while intoxicated; this time receiving a sentence of 75 days. A-File, p.

[3] A copy of the Petitioner's A-File was filed, **under seal**, contemporaneously with this motion.

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11. On November 26, 2016, Petitioner's application for TPS renewal was denied and USCIS withdrew Petitioner's TPS status. A-File, pp. 46-47

12. On November 1, 2019, DHS detained Petitioner and served him with a second NTA. A-File, 41-45

13. November 2019 at which time he was served with a Notice to Appear ("NTA") in removal proceedings. *Am. Pet..*, ¶¶10 and 16; see also ECF 1-1 at pp.1-3; see also, A-File, pp. 41-45

14. On the same day, Petitioner was served with a "Warrant for Arrest of Alien" and was taken into custody. ECF 1-1, pp. 4-5

15. A "Record of Deportable/Inadmissible Alien" form (commonly referred to as an "I-213") was also completed at the time of his arrest. ECF 1-1, pp. 7-11 Petitioner's I-213 confirms: (1) that he was an "Alien present without admission or parole," (2) that he admitted to having been a member of the MS-13 gang at an earlier point in his life, and, (3) that he had a criminal history that included two convictions for driving while intoxicated and assault. *Id.*; See also, A-File, pp. 41-45

16. Petitioner asked that his custody determination be reviewed by an Immigration Judge ("IJ"). ECF 1-1, p. 5

17. On December 12, 2019, the IJ granted Petitioner's request for a $10,000.00 bond pending consideration of the merits of his immigration case; on December 19, 2025, he was released upon payment of the bond. *Id.*, p. 1 and ¶10; see also, A-File, pp. 74-82

18. On February 20, 2025, the United States Secretary of State, in conformance with Executive Order 13224 (and INA §219), designated the Mara Salvatrucha (MS-13) gang as a Foreign Terrorist Organization ("FTO")[4]. As a consequence of that designation, Petitioner, as a purported member of MS-13, was no longer entitled to release on bond. See INA §212(a)(3)(B) and §236(c)[5]

19. On April 15, 2025, Petitioner's bond was cancelled, and he was arrested by DHS in Austin, Texas, and placed in detention pending removal proceedings. *Id.*, ¶21; see also, Exh. 4

20. On April 21, 2025, Petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court for the Western District of Texas. [ECF 1] When it was determined that -- at the time of filing -- Petitioner was being held in the custody of DHS officials located within the Southern District of Texas, venue was transferred to this Court located within the Southern District of Texas. [ECF 12]

21. On July 21, 2025, the IJ held a merits hearing on Petitioner's immigration case and issued an oral decision denying Petitioner's applications for Asylum, withholding of removal, withholding of removal under the Convention Against Torture ("CAT") and deferral of removal under the CAT. Exh. 5 and 6 The IJ Order also denied Petitioner's request for cancellation of removal under INA § 240(A)(b)(1)[6] and ordered him to be removed to Honduras. *Id.*

22. On August 18, 2025, Petitioner filed a timely Notice of Appeal of the IJ Decision to the Board of Immigration Appeals ("BIA"). That appeal is pending.

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[4] https://www.state.gov/foreign-terrorist-organizations

[5] 8 U.S.C. § 1182(a)(3)(B) and §1226(c)

[6] 8 U.S.C. § 1229b(b)(1)

Overview of Current Status and Argument Summary

23. On September 10, 2025, Petitioner filed an Amended Petition alleging that in the context of this litigation, "[h]is challenge is related solely to the collateral issue of the legality of his arrest and detention after posting bond in 2019, without cause and without notice or opportunity for hearing." *Am. Pet.*, ¶8

24. However, this Amended Petition does not address how Petitioner's continued detention[7] is unlawful in light of (a) Petitioner's current immigration status (an alien present without admission or parole) is subject to mandatory detention, under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), (b) Petitioner being subject to an order of removal, and (c) the Secretary of State's designation of MS-13 as a Foreign Terrorist Organization.

25. Respondents view this failure as evidence that Petitioner did not state (or no longer has) a claim upon which relief can be granted. Respondents believe that this Court lacks subject matter jurisdiction over any remaining claims Petitioner may assert given his current immigration status. Respondents assert that Petitioner's constitutional rights were not violated, and agency protocols were followed when his bond was cancelled following the FTO designation of MS-13 by the Secretary of State in February 2025. Petitioner's subsequent arrest and detention were lawful; therefore, this action should be dismissed.

Issues

26. Whether this Court has subject matter jurisdiction (and/or whether there is a claim for which relief can be granted) concerning Petitioner's claims related to his April 2025 arrest

[7] Respondents acknowledge that Petitioner cannot be removed while his appeal of the IJ Order is pending. Respondents, however, maintain that Petitioner is subject to mandatory detention while this appeal is pending. Respondents further acknowledge that Petitioner was removed, in error, to Honduras on September 18, 2025. See ECF 30 Petitioner's counsel and ICE officials have been working together to arrange for Petitioner's travel back to the United States; upon his arrival, he will be returned to ICE custody during the pendency of his appeal.

and detention given Petitioner's current immigration status and the issuance of a final order of removal.

27. Whether Petitioner has stated a claim upon which relief can be granted regarding his detention given the Secretary of State's February 20, 2025, designation of the MS-13 gangs as a Foreign Terrorist Organization.

Rule 12(b)(1) and (6) Standard

28. Under Federal Rule of Civil Procedure 12(b)(1), a party may challenge the subject matter jurisdiction of the district court to hear a case. *See Fed.R.Civ.P. 12(b)(1).*

29. In ruling on a motion to dismiss for lack of subject matter jurisdiction, courts may evaluate: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *See Den Norske Stats Oljeselskap As v. HeereMac Vof, 241 F.3d 420, 424 (5th Cir.2001) (citing Barrera–Montenegro v. United States, 74 F.3d 657, 659 (5th Cir.1996)).*

30. A court must accept all factual allegations in the plaintiff's complaint as true. *Id.* The burden of establishing subject matter jurisdiction in federal court is on the party seeking to invoke it. *Hartford Ins. Group v. Lou–Con Inc., 293 F.3d 908, 910 (5th Cir.2002).* Accordingly, Plaintiff must prove that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir.1980).*

31. A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case. *Krim v. PCOrder.com, Inc., 402 F.3d 489, 494 (5th Cir.2005) (citations omitted).* In considering a challenge to subject

matter jurisdiction, the district court is "free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has the power to hear the case." *Id.*

32. Rule 12(b)(6) allows dismissal if a plaintiff fails to state a claim upon which relief may be granted." *Fed. R. Civ. P. 12(b)(6).* In *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007),* the Supreme Court confirmed that Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires a short and plain statement of the claim showing that the pleader is entitled to relief." *Fed. R. Civ. P. 8(a)(2). Twombly* overruled the Supreme Court's prior statement in *Conley v. Gibson, 355 U.S. 41, 45-46 (1957)*, that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *See Twombly, 550 U.S. at 562-63* ("Conley's 'no set of facts' language ... is best forgotten as an incomplete, negative gloss on an accepted pleading standard ...."). To withstand a Rule 12(b)(6) motion, a complaint must contain enough facts to state a claim to relief that is plausible on its face." *Twombly, 550 U.S. at 570.*

33. In *Ashcroft v. Iqbal, --- U.S. ----, 129 S.Ct. 1937 (2009)*, the Supreme Court elaborated on the pleading standards discussed in Twombly. The Court set out the following procedure for evaluating whether a complaint should be dismissed: (1) identify allegations that are conclusory, and disregard them for purposes of determining whether the complaint states a claim for relief; and (2) determine whether the remaining allegations, accepted as true, plausibly suggest an entitlement to relief. *Iqbal*, 129 S.Ct. at 1949-50.

34. With respect to the "plausibility" prong of the dismissal analysis, *Iqbal* explained that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

Id. (citing Twombly, 550 U.S. at 556). The *Iqbal* Court further noted that "[t]he plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id. (citing Twombly, 550 U.S. at 556).* Finally, the Supreme Court has made clear that "'when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, 'this basic deficiency should ... be exposed at the point of minimum expenditure of time and money by the parties and the court.'" *Cuvillier v. Taylor, 503 F.3d 397, 401 (5th Cir. 2007)(quoting Twombly, 550 U.S. 544).*

Argument

This Court lacks subject matter jurisdiction (and Petitioner fails to state a claim upon which relief can be granted) concerning Petitioner's claims related to his April 2025 arrest and detention given Petitioner's current immigration status and the issuance of a final order of removal.

35. To succeed on a due process claim, Petitioner must identify a constitutionally protected interest and demonstrate that the government has deprived him of the interest without due process of law. *See Matthews v. Eldridge*, 424 U.S. 319, 332-35 (1976). Where a party has identified such an interest, the relevant inquiry is whether the existing procedures present an unreasonable risk of an erroneous deprivation, with due consideration to the governmental interest. *See Matthews*, 424 U.S. at 335.
36. Here, Petitioner has been afforded his due process. He received a hearing on the merits regarding his claims for relief from removal, his claim for asylum, and his claim for relief under CAT. He continues to avail himself of the appeals process made available to him

under current law and regulation and is awaiting a final decision (i.e., an exhaustion of his administrative remedies).

37. Article III of the Constitution restricts federal courts to adjudicating actual "cases" and "controversies." *United Transp. Union v. Foster*, 205 F.3d 851, 857 (5th Cir. 2000).

38. "Ripeness separates those matters that are premature because the injury is speculative and may never occur from those that are appropriate for judicial review." *Id.*

39. Federal courts are limited to hearing "cases" or "controversies." U.S. CONST. art. III, § 2. An actual case or controversy must exist at every stage in the judicial process. *Motient Corp. v. Dondero*, 529 F.3d 532, 537 (5th Cir. 2008).

40. If a claim is moot, it "presents no Article III case or controversy, and a court has no constitutional jurisdiction to resolve the issues it presents." *Nat'l Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338, 344 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 1365 (2014).

41. "In general, a matter is moot for Article III purposes if the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *John Doe #1 v. Veneman*, 380 F.3d 807, 814 (5th Cir. 2004).

42. Under Article III, a federal court has neither the power to render advisory opinions nor "to decide questions that cannot affect the rights of litigants in the case before them." *Veneman*, 380 F.3d at 814.

43. Under the facts of this case, there is no longer a case in controversy for Article III purposes as the IJ has issued a final order of removal that triggers mandatory detention provisions while Petitioner awaits the outcome of his appeal.

44. Here, Petitioner is lawfully detained on a mandatory basis as an applicant for admission pending removal proceedings before an immigration judge. This case is governed not only

by the plain language of Section 235(b) of the INA, 8 U.S.C. § 1225(b), but also by Supreme Court precedent. There is no jurisdiction for this Court to review Petitioner's challenge to DHS's initial decision to detain him for adjudication of his removal proceedings, because his claims directly arise from the decision to commence or adjudicate removal proceedings against him. To the extent that Petitioner challenges the interpretation or the constitutionality of the statute under which his removal proceedings are brought, he must raise that challenge in the Fifth Circuit Court of Appeals upon review of a final order of removal. While as applied constitutional challenges may be brought in district court under certain circumstances, Petitioner has not raised any colorable claim that his mandatory detention under § 1225(b) is unconstitutional as applied to him. His detention is neither indefinite, nor prolonged, as it will end upon the completion of his removal proceedings. Petitioner's claims fail because DHS's discretionary decision to not accept the bond is not subject to judicial review under 8 U.S.C. § 1226(e). Congress has stripped district courts of jurisdiction to hear challenges to decisions to issue a bond or not, decisions to revoke a bond, or the decision to delay compliance with an ultra-virus bond. The detention of an alien prior to a final order of removal is generally governed by INA § 236, 8 U.S.C. § 1226. According to 8 U.S.C. § 1226(e), DHS's "discretionary judgment" regarding bond determinations "shall not be subject to judicial review." To be clear, this provision does not strip courts of jurisdiction over constitutional questions. *Demore v. Kim*, 538 U.S. 510, 517 (2003).

45. Moreover, the revocation of Petitioner's bond in April 2025 and his subsequent arrest and detention was premised on a change in circumstance once the Secretary of State designated MS-13 a gang that Petitioner admitted as having past belonged.

46. Under 8 U.S.C §1252(e)(2) judicial review by way of habeas is limited to:

> *(A) Whether the petitioner is an alien;*
> *(B) Whether the petitioner was ordered removed under such section, and*
> *(C) Whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.*

47. Here, Petitioner is an alien, who has been ordered removed, and lacks evidence to show he fulfils any of the requisite exceptions delineated at 8 U.S.C. § 1252(e)(2)(C).

48. Thus, Petitioner having been provided due process, and not falling under any other exception, Petitioner's claims should be dismissed for want of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. Fed. R. Civ. Proc., Rules 12(b)(1) and (6)

Conclusion

The sole relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118-19 (2020). Petitioner, however, has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release. Even if this Court were to order his release from custody, Petitioner would be subject to re-arrest as an alien present within the United States without having been admitted or paroled. Ordering his release in this circumstance produces no net gain to Petitioner, while mandating continued detention until at least the conclusion of removal proceedings furthers DHS's interests in enforcing the immigration laws. Therefore, this Petition should be dismissed for want of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

Prayer

WHEREFORE, PREMISES CONSIDERED, Respondent prays that this Court enter an Order dismissing this action on the ground that this Court lacks subject matter jurisdiction, and Petitioner has failed to state a claim upon which relief can be granted pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sends notice of electronic filing to Plaintiff's counsel of record.

By: ***s/Nancy L. Masso***
NANCY L. MASSO
Assistant United States Attorney