UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

JOSE PADRON COVARRUBIAS, Petitioner, v. MIGUEL VERGARA, ICE Field Office Director, ET AL., Respondents.	§ § § § § § § § § § § §	CIVIL ACTION NO. 5:25-CV-112

RESPONDENTS' MOTION TO DISMISS
PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW the Respondents, Miguel Vergara, ICE Field Office Director, San Antonio ICE Detention and Removal, Kristi Noem, Secretary of the U.S. Department of Homeland Security, Pamela Jo Bondi, Attorney General of the United States, Juan S. Diaz, Warden, Laredo Processing Center, Corrections Corporation of America, and Susan Aikman, Assistant Chief Counsel, Office of ICE Chief Counsel, in their official capacities, by and through the United States Attorney for the Southern District of Texas, and hereby file their Motion to Dismiss Petitioner Jose Padron Covarrubias's Petition for Writ of Habeas Corpus (Petition) pursuant to Rules 12(b)(1) & 12(b)(6) of the Federal Rules of Civil Procedure.

FACTUAL & PROCEDURAL BACKGROUND

Petitioner Jose Padron Covarrubias (Padron) is a native and citizen of Mexico who entered the United States without inspection near Laredo, Texas on or about September 16, 2001. See Exhibit A – Form I-213 Record of Deportable/Inadmissible Alien; Petition at page 9, paragraph

12. On May 29, 2025, he was apprehended by ICE in Tallahassee, Florida. See Exhibit A; Petition at pages 11 - 12, paragraph 25. On June 6, 2025, ICE served Padron with a Notice to Appear (NTA) in removal proceedings under section 240 of the Immigration and Nationality Act (INA) charging him with being subject to removal pursuant to Section 212(a)(6)(A)(i) of the INA as an alien present in the United States without admission or parole or who arrived in the United States at any time or place other than as designated by the Attorney General. See Exhibit B – Notice to Appear; Petition at page 9, paragraph 13. Currently, Padron remains in ICE custody at the Rio Grande Processing Center in Laredo, Texas. Petition at page 9, paragraph 14.

On June 25, 2025, Padron sought a redetermination of his custody status with the Immigration Court in Laredo, but the Immigration Judge (IJ) denied his request and found him ineligible for bond as an applicant for admission arrested and detained without a warrant under INA Section 235(b). See Exhibit C – Order of the Immigration Judge; Petition at pages 9 - 10, paragraph 15. Padron reserved appeal at the conclusion of the hearing, and on July 3, 2025, he filed an appeal with the Board of Immigration Appeals (BIA). See Exhibit C; Exhibit D – Notice of Appeal from a Decision of an Immigration Judge; Petition at page 10, paragraphs 15 & 16. Padron also applied for Cancellation of Removal, and his final removal hearing is scheduled for October 24, 2025. Petition at page 10, paragraph 17.

On July 8, 2025, Padron filed his Petition in this Court seeking his release from ICE custody at the Laredo Processing Center in Laredo, Texas, where he was detained pending his removal proceedings. On July 10, 2025, the Court issued an Order directing the District Clerk to serve copies of the Petition on Respondents and ordered Respondents to submit a response to the Petition by no later than August 11, 2025. On August 11, 2025, Respondents filed their Opposed Motion

for Extension of Time to Respond to Petitioner's Petition for Writ of Habeas Corpus (motion for extension) from August 11, 2025, to August 25, 2025. On August 13, 2025, the Court ordered Petitioner to file a response to Respondents' motion for extension by August 20, 2025. Petitioner failed to respond to the motion for extension, and on August 21, 2025, the Court issued a subsequent Order ordering the Petitioner to file a response to the motion for extension by August 25, 2025, at 12:00 p.m. On August 22, 2025, at 4:30 p.m., Petitioner filed a response to the motion for extension.

STANDARD OF REVIEW

Rule 12(b)(1), Federal Rules of Civil Procedure, permits dismissal of an action when the court lacks subject matter jurisdiction. A motion under Rule 12(b)(1) may be decided on any of three bases: (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. *Barrera-Montenegro v. United States*, 74 F.3d 657,659 (5th Cir. 1996); *Fletcher v. United States Dept. of Veterans Affairs*, 955 F.Supp. 731, 733-34 (S.D. Tex. 1997).[1]

A motion under Rule 12(b)(1) should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief. *Home Builders Association of Miss., Et Al. v. City of Madison, Miss., Et Al.*, 113 F.3d 1006,1009 (5th Cir. 1998); *Benton v. United States*, 960 F.2d 19,21 (5th Cir. 1992). A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to

[1] Because this motion is based on Rule 12(b)(1) of the Federal Rules of Civil Procedure, evidence of undisputed facts that bear on the Court's subject matter jurisdiction may be introduced without converting the motion into a motion for summary judgment. *Williamson*, 645 F.2d at 414.

adjudicate the case. *Home Builders Association of Miss.*, 113 F.3d at 1009; *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182,1187 (2d Cir 1996). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting subject matter jurisdiction. *St. Paul Reinsurance Company, LTD. v. Greenburg*, 134 F.3d 1250,1253 (5th Cir. 1998). The question of subject matter jurisdiction is an issue for the court to decide. *Williamson v. Tucker*, 645 F.2d 404,413 (5th Cir. 1981).

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.

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.

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).

RELIEF REQUESTED IN HABEAS PETITION

Through his Petition, Padron challenges his continuing civil immigration detention pending his removal proceedings. Initially, Padron concedes that he is an applicant for admission as an alien present in the United States without being admitted or paroled. See Petition at page 5. Padron contends that as an alien apprehended after 23 years of continuous, although illegal, presence in the United States, he is not subject to mandatory detention under INA Section 235 (8 U.S.C. § 1225) but rather is eligible for release on bond pending his removal proceedings pursuant to INA Section 236 (8 U.S.C. § 1226). Id. at page 4. Moreover, Padron asserts that the IJ misapplied the law by relying on *Matter of Q. Li*, 29 I. & N. Dec. 66, 70 (BIA 2025) in determining

that he did not have authority to set a bond for Padron pending his removal proceedings. Id. at pages 2 – 5.

Padron raises six causes of action in his petition: Fifth Amendment Due Process regarding his immigration detention, Fifth Amendment Due Process regarding the denial of an opportunity to contest his being placed in a mandatory category of detention, Administrative Procedure Act [2] (APA) regarding his denial of bond, a stay of removal claim, a Suspension Clause Claim should 8 U.S.C. § 1252 strip the Court of jurisdiction over this matter, and a request for injunctive relief. Id. at pages 14 – 19. Through his Petition, Padron requests that the Court assume jurisdiction over this matter, issue an order directing the Respondents to show cause why the writ of habeas corpus should not be granted, order the Respondents to file a complete copy of the administrative file in this case, enjoin ICE from transferring him outside the Southern District of Texas while this matter is pending, grant the writ ordering Respondents to release him on his own recognizance, parole, or reasonable conditions of supervision, or order Respondents to conduct a bond hearing which correctly applies the law and no longer misclassifies him as subject to mandatory detention, or in the alternative, order a hearing under *Matter of Joseph*, and award him reasonable costs and attorney's fees. [3] Id. at page 19, Fn. 1, page 16.

LEGAL ANALYSIS

I. Habeas Corpus.

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[2] Padron has not paid the filing fee associated with any claims outside of the scope of habeas relief. See *Ndudzi v. Castro*, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). The $5 filing fee "relegates this action to habeas relief only", because one "cannot pay the minimal habeas fee and pursue non-habeas relief." *Id.* (collecting cases and further noting the "vast procedural differences between the two types of actions").

[3] The Fifth Circuit no longer recognizes Equal Access to Justice Act (EAJA) fees in the habeas context. See *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

The only function of habeas corpus is to inquire into the legality of the detention of one in detention. *Heflin v. United States*, 358 U.S. 415, 421 (1959). Habeas exists "to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him. Indeed, it has no other power; it can only act on the body of the petitioner." *Fay v. Noia*, 372 U.S. 391, 430-31(1963). "This means that, unlike direct review where the correctness of a court or agency order is comprehensively and directly before the court, a habeas court reviews the correctness of such an order only insofar as it related to 'detention simpliciter.' Moreover, habeas is not shorthand for direct review, and unlike direct review where courts have 'broad authority' to grant relief, habeas is not 'a generally available federal remedy for every violation of federal rights,' nor can it 'be utilized to review a refusal to grant collateral administrative relief, unrelated to the legality of custody.'" *Zalawadia v. Ashcroft*, 371 F.3d 292, 299-300 (5th Cir. 2004).

II. Padron's Petition is Premature because he has not exhausted his Administrative Remedies.

Whether Padron is subject to release on bond under 8 U.S.C. § 1226(a) as he contends, or whether he is properly detained under 8 U.S.C. § 1225(b), and therefore ineligible for release on bond, is a mixed factual and legal question of statutory interpretation that is not ripe for review by this Court. The BIA will decide whether the applicable detention statute here is § 1226(a) or § 1225(b), since Padron reserved appeal of the denial of his request for bond in Immigration Court, and the issue is now pending before the BIA on administrative review. See Exhibits C & D.

Padron must exhaust administrative remedies prior to raising this issue in district court. *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). Contrary to Padron's contentions, appealing to the BIA is not futile in this case, because the issue on appeal is whether, as a factual matter, Padron falls within the scope of *Matter of Q. Li*, such that he is subject to mandatory detention, or

whether the record shows that he should be detained under § 1226(a) such that he is eligible for a discretionary bond. In the event the BIA disagrees with the IJ regarding the scope of *Matter of Q. Li* as applied to Padron, he will be eligible for a bond hearing under § 1226(a), which is the relief he seeks through his Petition. Therefore, the BIA can provide Padron with the exact remedy he seeks, such that exhaustion of remedies is not futile. See *Petgrave v. Aleman*, 529 F.Supp.3d 665, 672 n.14 (S.D. Tex. 2021) (finding futility where the BIA could not remedy the constitutional claim and where the detention had already become prolonged).

If, on the other hand, the BIA finds that the facts of this case render *Matter of Q. Li* applicable to Padron such that his bond denial was proper, the issue for this Court would be whether the statute mandating detention without bond is constitutional *as applied to Padron*, not whether § 1226(a) is the appropriate detention statute based on the facts of this case which is a question is for the IJ and the BIA. The Court cannot reach that analysis until the BIA makes a final decision as to which statute is controlling in this case. If the BIA upholds the bond denial under § 1225(b), this Court's review would be limited under *Dept. of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959 (2020) as to whether ICE is providing due process of law to Padron within the scope of that statute.

III. This Court is deprived of Jurisdiction to review Padron's Custody Decision.

The government's detention decisions are not subject to review. 8 U.S.C. § 1226(e). No court, even in habeas review, may set aside any decision regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole. 8 U.S.C. § 1252(a)(5). Additionally, "no court shall have jurisdiction to hear any cause or claim by or on behalf or any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases,

or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). ICE's decision to arrest Padron is intertwined with the decision to commence removal proceedings against him. See, e.g. 8 U.S.C. § 1252(b)(9); see also *El Gamal v. Noem*, 2025 WL 1857593 at *5 (W.D. Tex. July 2, 2025) (collecting cases and finding that any challenge to ICE's initial decision to detain the alien during removal proceedings is protected from judicial review in district court, because the alien must appeal any order of removal to the BIA and ultimately petition for judicial review of any relevant constitutional claims by the court of appeals). As such, Padron's attack on ICE's decision to detain him during removal proceedings should be dismissed for lack of subject matter jurisdiction.

Moreover, while "the Fifth Amendment entitles aliens to due process of law in deportation proceedings ... this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Denmore v. Kim*, 538 U.S. 510, 523 (2003). While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in Padron's Petition that his detention without bond is unconstitutional. See e.g. *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). Padron is being lawfully detained and charged with removability for unlawfully entering and remaining in the United States without authorization. 8 U.S.C. § 1182(a)(6). See Exhibit B. Nothing in his Petition provides a legal basis that obligates the government to set a bond for Padron's release.

IV. Padron's Pre-Removal Detention is not Unconstitutionally Prolonged nor Indefinite.

Pre-removal-order detention "has a definite termination point: *the conclusion of removal proceedings*." *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024) (emphasis in original) (paraphrasing *Jennings*, 583 U.S. at 304). Padron's final removal hearing is scheduled for October 24, 2025. On August 5, 2025, the U.S. Department of Homeland Security (DHS) filed a Motion to Advance the removal hearing in Immigration Court. See Exhibit E – Respondent's Opposition to DHS' Motion to Advance. On that date, Padron filed his opposition to DHS' Motion to Advance, claiming that advancing the hearing would prejudice his ability to adequately prepare his defense, gather necessary evidence, secure witness testimony, and consult with counsel. Id. Consequently, Padron has not shown that any delay in his detention is due to anything other than the ordinary litigation process. 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 prolonged detention is caused by their own plight, because delay attributable to their own litigation activity does not render detention indefinite or potentially permanent).

Padron contends that he is entitled to a bond hearing, but he has already been given a bond hearing where he was represented by counsel, and he has taken the opportunity through counsel to pursue administrative review of the adverse bond decision. See Exhibits C & D. He is not entitled to more process than what Congress has provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). See *Jennings v. Rodriguez*, 583 U.S. 281, 297 – 303 (2018); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (finding that

applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more").

To the extent that Padron alleges that his detention violates due process because he is entitled to be released on bond, an "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983). Padron's bond appeal is pending, and the BIA has the authority to rule on whether he is subject to mandatory detention, as described in *Matter of Q. Li*, or whether he is entitled to a bond hearing under § 1226(a). Under either statute, however, pre-removal-order detention is both statutorily permissible and constitutional, as it is neither indefinite nor prolonged.

CONCLUSION

Padron's Petition should be dismissed. Padron is lawfully detained pending removal proceedings, as an alien present in the United States without inspection or parole. Whether he is properly detained under INA 235 (8 U.S.C. § 1225) or INA 236 (8 U.S.C. § 1226) is a statutory interpretation issue and mixed question of fact and law that must be exhausted administratively before the BIA prior to this Court reviewing the constitutionality of the applicable detention statute, as applied to this alien. Moreover, this Court lacks jurisdiction to review ICE's decision to detain Padron pending completion of his removal proceedings and his pre-removal-order detention is not unconstitutionally prolonged nor indefinite.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENTS' MOTION TO DISMISS PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS** in the case of JOSE PADRON COVARRUBIAS v. MIGUEL VERGARA, ET AL, Civil Action Number 5:25-CV-112, was sent to Stephen O'Connor, O'Connor & Associates, 7703 N. Lamar Blvd, Suite 300, Austin, Texas 78752, by electronic mail through the District Clerk's electronic case filing system, on this the 25th day of August, 2025.

"S/" Hector C. Ramirez
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