

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

LORENZO C.P.<sup>1</sup>,  
*Petitioner,*

v.

KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security, *et al.*,  
*Respondents.*

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CIVIL ACTION NO. 1:25-cv-00181

**RESPONDENTS' MOTION TO DISMISS SECOND AMENDED PETITION FOR WRIT  
OF HABEAS CORPUS FOR LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(1), Respondents, Kristi Noem, Secretary of U.S. Department of Department of Homeland Security, *et al.*, move to dismiss Petitioner, Lorenzo C.P.'s Second Amended Petition for Writ of Habeas Corpus (hereafter "the Petition") (Dkt. No. 18) for lack of subject matter jurisdiction.

**INTRODUCTION AND SUMMARY OF THE ARGUMENT**

1. Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the Rio Grande Processing Center in Laredo, Webb County, Texas. Dkt. Nos. 18; 9-1. Petitioner brought this habeas corpus petition against the Government seeking release from immigration detention by seeking to enforce an Immigration Judge's bond decision. But Petitioner's claims lack merit. Plaintiff is detained under Section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(2), and is therefore subject to mandatory detention.

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<sup>1</sup> "Due to significant privacy concerns in immigration cases and noting that judicial opinions are not subject to Federal Rule of Civil Procedure 5.2, any opinion, order, judgment, or other disposition in this case will refer to the petitioner's last names using only their first initial." See Dkt. No. 19 at 1, n.1.

2. The Immigration Judge (“IJ”) lacked the authority to issue the bond in question. **Gov’t Ex. 1** (IJ’s Sept. 9, 2025 Bond Memorandum). Petitioner cannot dispute this issue in light of a recent Board of Immigration Appeals’ (“BIA”) decision: *In Matter of Yajure Hurtado*. **Gov’t Ex. 2** (*In Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)). This decision is controlling on the immigration courts and the IJ presiding over Petitioner’s removal proceedings has issued a Bond Memorandum on September 9, 2025, rescinding the prior order granting Petitioner a bond, and as a result, denied Petitioner’s request to be released on bond. *See Gov’t Ex. 1* at 1. Accordingly, the Second Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 fails because Congress divested the court of jurisdiction over the type of discretionary bond decision at issue in this case. For the reasons discussed below, the Court should dismiss the Petition for lack of subject matter jurisdiction under FRCP 12(b)(1).

### **BACKGROUND AND PROCEDURAL HISTORY**<sup>2</sup>

3. Petitioner, a citizen of Mexico, has remained in the United States without prior admission or parole for multiple years. Dkt. No. 18, ¶ 11. On August 2, 2025, Petitioner was taken into custody and served by DHS with a notice to appear, commencing removal proceedings, on grounds that Petitioner is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place as designated by the Attorney General in violation of Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) (8 U.S.C. § 1182(a)(6)(A)(i)). Dkt. No. 5-3 at 2-3.

4. On August 14, 2025, the IJ ordered Petitioner released from custody under a bond of \$4,000. Dkt. No. 5-4. DHS filed a Notice of Intent to Appeal Custody Determination, EOIR

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<sup>2</sup> Background and procedural history is taken from the Petition (Dkt. No. 18), Petitioner’s Exhibits (Dkt. Nos. 5-1, 5-2, 5-3, 5-4, & 9-1), and from Government Exhibit 1 and 2 attached herein.

Form 43, which automatically stayed the bond decision for the duration of any appeal. Dkt. No. 5-1; *see* 8 C.F.R. § 1003.19(i)(2).

5. On August 14, 2025, Petitioner filed the instant habeas action and requested a Temporary Restraining Order. Dkt. Nos. 1, 5, 8, & 18. On September 5, 2025, the BIA issued its decision in *In Matter of Yajure Hurtado*. *See Gov't Ex. 2*. The decision is controlling precedent for IJs and on September 9, 2025, the IJ presiding over Petitioner's removal proceeding issued a Bond Memorandum that rescinded his prior bond determination holding that the IJ lacked jurisdiction to issue a bond in this case. *Gov't Ex. 1* at 1.

6. On September 11, 2025, the Court ordered its existing temporary restraining order terminated and Petitioner's request for injunctive relief denied because the IJ's September 9, 2025 order rescinded the prior bond determination (*Gov't Ex. 1*). Dkt. No. 16. Per the Court's Order, Respondents submit this motion to dismiss in response to the Petition. *Id.*

### **STANDARD OF REVIEW**

#### **Fed. R. Civ. P. 12(b)(1).**

7. Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court must dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also id.* 12(h)(3) ("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action."). "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) (quotations omitted); Fed. R. Civ. P. 12(h)(3). 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, the party with the burden of proof must

establish that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980). In ruling on a motion to dismiss for lack of subject matter jurisdiction, a court may rely on any of the following to decide the matter: “(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.” *St. Tammany Parish, ex. rel. Davis v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 315 (5th Cir. 2009) (quotations omitted). A court must accept all factual allegations in the plaintiff’s complaint as true. *Saraw Partnership v. United States*, 67 F.3d 357, 569 (5th Cir. 1995). “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.’” *Krim*, 402 F.3d at 494.

### ARGUMENT

**I. The Petition should be dismissed because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and review of a bond determination is beyond this Court’s authority.**

8. The Court should dismiss the Petition for lack subject matter jurisdiction because judicial review is unavailable of pending removal proceedings under INA § 235(b), 8 U.S.C. § 1225(b)(2), which subjects Petitioner to mandatory detention. *See Gov’t Ex. 1* at 1. The INA authorizes civil detention of aliens during removal proceedings and “[d]etention is necessarily part of this deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). Section 1225 authorizes the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (2); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The Supreme Court has recognized that 1225(b)(2) “applies to all applicants for admission not covered by § 1225(b)(1). Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be



admitted.” 8 U.S.C. § 1225(b)(2)(A); *see also Fla. v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). While § 1225 does not provide for aliens to be released on bond, DHS has the sole discretion to temporarily release any applicant for admission on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). Under the plain language of INA § 235, 8 U.S.C. § 1225, Petitioner—who is present in the United States without being admitted—is subject to detention under § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded.”).

**A. The Immigration Judge lacked authority to issue Petitioner a bond.**

9. The IJ lacked the authority to grant a bond in Petitioner’s ongoing removal proceedings. As noted above, Petitioner is subject to mandatory detention under § 235(b) of the INA, 8 U.S.C. § 1225(b). The BIA recently held that immigration judges lack the jurisdiction to hear bond requests from persons held under § 235(b). Specifically, *In Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2005), the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” The BIA performed a comprehensive review of the applicable statutory provisions and concluded that the plain language of the INA is “clear and explicit” in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States. *Id.* at 226.

10. Here, Petitioner is detained under § 235(b)(2) of the INA. He is therefore subject

to mandatory detention. *See Gov't Ex. 1* at 1; *Gov't Ex. 2* at 14 (BIA dismissing *Yajure Hurtado* appeal because the IJ “lacked authority to hear the respondent’s request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and the regulation at 8 C.F.R. § 235.3(b)(1)(ii)”). The *Yajure Hurtado* decision (*Gov't Ex. 2*) is binding precedent on immigration judges. The IJ therefore unquestionably lacked the authority to issue a bond and rescinded its prior bond determination based on *Yajure Hurtado*. *See Gov't Ex. 1* at 1.

**B. Petitioner’s claims also fail because this Court lacks jurisdiction over the habeas petition.**

11. 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-vires 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). And Petitioner has asserted a Due Process claim here. Dkt. No. 18, ¶¶ 50-53. But what Petitioner is really challenging in this action is DHS’s refusal to accept the bond. This challenges a discretionary decision not subject to review pursuant to § 1226(e). *See e.g., Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 875 (E.D. Wis. 2007) (holding that the decision to disregard the IJ’s order and refuse to accept the bond was subject to § 1226(e)).<sup>3</sup> In this case, DHS had a legitimate justification for delaying its compliance with the bond determination: an intervening change in law. This is the type of discretion that Congress decided to afford DHS

<sup>3</sup> On appeal, the Seventh Circuit held that the petitioner in *Al-Siddiqi* had pled a Due Process claim which overcame § 1226(e). *Al-Siddiqi v. Achim*, 531 F.3d 490, 493 (7th Cir. 2008).

through § 1226(e).

12. In summary, the BIA decision in *Yajure Hurtado* and IJ's Bond Memorandum have made clear that Petitioner is not subject to be released on bond as he is subject to "mandatory" custody until his removal proceedings have concluded. Because this Court lacks authority to preside over this issue raised in the Petition, the Court should dismiss the Petition for lack of subject matter jurisdiction.

**II. Judicial Review of Petitioner's Removal Proceeding is Unavailable under 28 U.S.C. § 2241.**

13. Alternatively, to the extent the Petitioner seeks judicial review of removal proceeding determinations, such claims should be dismissed. In the present action under 28 U.S.C. § 2241, there is no jurisdictional basis for this Court to review Petitioner's challenges to his removal proceeding. The "sole function" of habeas relief is to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose," which means that it "is not available to review questions unrelated to the cause of detention." *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976).

14. In 2005, Congress enacted the REAL ID Act, which relied on explicit language demanded by *Demore v. Kim* to strip district courts of jurisdiction over habeas petitions challenging the Attorney General's discretionary decisions. *See Nolos v. Mukasey*, No. EP-08-CV-287-DB, 2008 WL 5351894, at \*2 (W.D. Tex. Sept. 25, 2008) ("Congress enacted the REAL ID Act on May 11, 2005, which stripped district courts of jurisdiction over 28 U.S.C. § 2241 petitions attacking removal orders."). *See also* 8 U.S.C. § 1252(B)(ii) (supplying the language needed to strip habeas jurisdiction from district courts reviewing discretionary decisions of the Attorney General). *See Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917 (W.D. Tex. 2018).

15. According to the Petition, since Petitioner is challenging the mandatory detention

charge of removability as part of the substantive portion of his removal proceeding (Dkt. No. 18, ¶¶ 45-49), the issue regarding his detention is not independent of challenges to Petitioner's ongoing removal proceeding. *See* Conference Report, H.R. Rep. No. 109-72, at 122, 175, reprinted at 2005 U.S.C.C.A.N. 240; *Baez v. ICE*, 150 Fed. App'x 311 (5th Cir. 2005); *Hernandez v. Gonzales*, 424 F.3d 42, 42 (1st Cir. 2005); *Ighaban v. Manuel*, No. 4:11-cv-1763, 2011 WL 1806428 (S.D. Tex. May 11, 2011); *De Los Santos v. Holder*, No. 4:10-cv-252, 2010 WL 334905 (S.D. Tex. Jan. 28, 2010). Specifically, challenges to both the basis for his detention and a charge of removability are identical. Therefore, there is no jurisdiction under the REAL ID Act to entertain the instant habeas petition.

16. In *Hernandez-Castillo v. Moore*, 436 F.3d 516, 519 (5th Cir. 2006), the Fifth Circuit held that the REAL ID eliminates habeas corpus review of final removal orders and removal-related claims except those entered under expedited removal provision at 8 U.S.C. § 1225(b)(1). However, this Court still has jurisdiction under 28 U.S.C. § 2241 to review statutory and constitutional challenges to immigration detention under (*Zadvydas v. Davis* 533 U.S. 678 (2001)), *provided that administrative remedies have been exhausted*, and, pursuant to 8 U.S.C. § 1252, as amended REAL ID Act, that the basis is: (a) not a matter solely reviewable by the court of appeals in a petition for review; (b) independent of challenges to Petitioner's removal proceeding; and (c) does not arise from the decision or action to commence proceedings, adjudicate cases or execute removal orders against an alien under the INA.

17. Because the habeas corpus action before the Court is not one involving the expedited removal provision of 8 U.S.C. § 1225(b)(1) or involve an issue under *Zadvydas*, the Court lacks subject matter jurisdiction over the Petition seeking habeas relief under 28 U.S.C. § 2241.



**CONCLUSION**

For the foregoing reasons, Respondents respectfully request that the Court dismiss Petitioner's Second Amended Petition for Writ of Habeas Corpus (Dkt. No. 18) for lack of subject-matter jurisdiction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Baltazar Salazar, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 15<sup>th</sup> day of September 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: s/ Baltazar Salazar  
**BALTAZAR SALAZAR**  
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