**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**BROWNSVILLE DIVISION**

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| JORGE RIVERA SANCHEZ,<br>*Petitioner,* | § | |
| v. | § | CIVIL ACTION NO. 1:25-cv-00186 |
| FRANCISCO VENEGAS, Warden of El Valle Detention Facility,<br>*Respondent.* | § | |

**GOVERNMENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS**

The Government[1] files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. No. 1) and pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1) moves to dismiss the Petition for lack of subject matter jurisdiction. As explained below, the Court lacks jurisdiction to review the Government's exercise of discretion to detain Petitioner, an alien subject to removal proceedings, and even to the extent this Court found it did have authority to do so, it lacks jurisdiction as this action is premature because Petitioner has failed to exhaust administrative remedies prior to seeking habeas relief under 28 U.S.C. § 2241.

**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 El Valle Detention Center in Raymondville, Willacy County, Texas. Dkt. No. 1, ¶¶ 2, 7, 12.

[1] As the Court previously noted, the proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). Since the filing of this Petition, Petitioner has remained in the U.S. Immigration and Customs Enforcement ("ICE") federal facility in Raymondville, Willacy County, Texas. Dkt. No. 1, ¶¶ 2, 7, 12; *see also* Dkt. No. 6 at 2-3. The warden of that facility is Francisco Venegas. That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

Petitioner brought this habeas corpus petition against the Government seeking release from immigration detention by seeking judicial review of 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.

2. The Immigration Judge ("IJ") correctly determined that he lacked the authority to issue the bond in question (Dkt. No. 1-3 at 2-5), and Petitioner cannot dispute this issue in light of a recent Board of Immigration Appeals' ("BIA") decision: *In Matter of Yajure Hurtado*. **Gov't Ex. 1** (*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. Accordingly, Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (hereafter "the Petition") (Dkt. No. 1) fails because Congress divested the court of jurisdiction over the type of discretionary bond decision at issue in this case. In the alternative, the Petition should be dismissed as premature as Petitioner failed to exhaust administrative remedies prior to seeking habeas relief under 28 U.S.C. § 2241. 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[2]

3. On or about November 12, 2023, Petitioner, a citizen of Mexico, was taken into custody by DHS after finding Petitioner within the United States without prior admission or parole since approximately 2006. Dkt. No. 1, ¶¶ 1, 20; **Gov't Ex. 2** at 1-3 (Petitioner's Record of Deportable/Inadmissible Alien). Petitioner admitted to DHS of "illegally crossing the international boundary without being inspected by an immigration officer at a designated Port of Entry." **Gov't Ex. 2** at 2-3. DHS further found that Petitioner had been convicted of a September 29, 2008,

[2] Background and procedural history is taken from the Petition (Dkt. No. 1), Petitioner's Exhibits (Dkt. Nos. 1-1, 1-2, & 1-3), and from Government Exhibit 1 and 2 attached herein.

criminal charge of driving while intoxicated, for which he received a fine and probation of one (1) year. *Id.* at 2. Accordingly, DHS served Petitioner with a Notice to Appear on November 13, 2023, 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)). *Id.* at 3; Dkt. No. 1-2 at 2-3.

4. On November 15, 2023, DHS issued Petitioner an Order of Release on Recognizance, with the directive, among others, that Petitioner "*must surrender for removal from the United States if so ordered*[,]" which Petitioner acknowledged and signed on said date. Dkt. No. 1-1 at 2 (emphasis added). Consistent with this acknowledgment, in or around August 2025, Petitioner was taken into custody by DHS and placed in El Valle Detention Facility pending an issuance of a final removal order. *See* Dkt. No. 1, ¶¶ 2, 12, 23.

5. On August 20, 2025, the IJ presiding over Petitioner's removal proceedings denied Petitioner a redetermination of DHS's denial of issuance of a bond to Petitioner on the following jurisdictional grounds:

> No jurisdiction pursuant to INA Section 235(b)(2)(A). Respondent has no constitutional right to release on bond while removal proceedings are pending. Carlson v. Landon, 342 U.S. 524, 534 (1952). Moreover, "An alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." INA § 235(a)(1). "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [INA § 240] of this title." INA § 235(b)(2)(A). A plain reading of these two provisions demonstrates that under the applicable statutes, Respondent must be detained during his removal proceedings. Respondent was never admitted to the United States, thus making him an applicant for admission. And because no immigration officer has determined that Respondent is "clearly and beyond a doubt entitled to be admitted," he "shall be detained" until removal proceedings have concluded. See Jennings v. Rodriguez, 583 U.S. 281, 299, 302 (2018).

Dkt. No. 1-3 at 4. Petitioner, identified as "Respondent" in his removal proceedings, reserved his right to appeal the August 20, 2025, Order of the IJ. *Id.* at 5. It appears that Petitioner failed to appeal the August 20, 2025, Order of the IJ by the deadline to do so: "09-22-2025." *Id.*

6. Instead, Petitioner filed the instant habeas action, claiming: (1) the mandatory detention provision of 8 U.S.C. § 1225(b)(2) is inapplicable to Petitioner and his continued detention at El Valle Detention Center without issuance of bond is unlawful; and (2) the denial of "required bond proceedings" in Petitioner's pending removal proceedings violated procedural and substantive due process under the Fifth Amendment. Dkt. No. 1, ¶¶ 41-46. Petitioner further conceded that he did not have to exhaust administrative remedies. *Id.*, ¶¶ 39-40. Per the Court's Order, the Government submits this motion to dismiss in response to the Petition. *See* Dkt. No. 6.

## 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* Dkt. No. 1-3 at 4-5. 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 correctly found he 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). *See* **Gov't Ex. 2** at 2-3 (Petitioner admitted to DHS of "illegally crossing the international boundary without being inspected by an immigration officer at a designated Port of Entry."). 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." **Gov't Ex. 1** at 5. 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 11.

10. Here, Petitioner is detained under § 235(b)(2) of the INA. *See* Dkt. No. 1-3 at 4-5. He is therefore subject to mandatory detention. *See id.*; **Gov't Ex. 1** 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. 1**), which was issued after the August 20, 2025, Order of the IJ, is binding precedent on immigration judges and accordingly, affirmed that the IJ unquestionably lacked the authority to issue Petitioner a bond pending his removal from the United States. *See* Dkt. No. 1-3.

**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. 1, ¶¶ 44-46. 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)).[3] In this case,

[3] 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).

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 through § 1226(e).

12. In summary, the BIA decision in *Yajure Hurtado* and August 20, 2025, Order of the IJ 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. Furthermore, 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, ¶¶ 41-43), 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.

## III. Habeas Relief under 28 U.S.C. § 2241 is Unavailable because Petitioner Failed to Exhaust Administrative Remedies under 8 C.F.R. § 1003.38.

18. In the alternative, the Court should dismiss Petitioner's habeas action for failure to exhaust administrative remedies. It is well settled that before a prisoner can bring a habeas petition under 28 U.S.C. § 2241, administrative remedies must be exhausted. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (A federal prisoner must "exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241."); *see* 8 C.F.R. § 1003.38 (federal regulation controlling appeals to BIA of IJ bond determinations). If the petitioner does not exhaust available remedies, the petition should be dismissed. *Fuller*, 11 F.3d at 62.

19. For purposes of 28 U.S.C. § 2241 relief, exhaustion of administrative remedies is jurisdictional. *See Swain v. Pressley*, 430 U.S. 372, 383 (1977). As thoroughly explained in *McCarthy v. Madigan*: "Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency…[t]he exhaustion doctrine also acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is hauled into federal court." 503 U.S. 140, 144-45 (1992).

20. Here, Petitioner did not allege or show there has been any exhaustion of administrative remedies. *See* Dkt. No. 1, ¶¶ 39-40. Notably, in the August 20, 2025, Order of the IJ finding it lacked jurisdiction to issue Petitioner a bond, Petitioner had until "09-22-2025" to appeal the jurisdictional determination to BIA. Dkt. No. 1-3 at 4-5; 8 C.F.R. § 1003.38(a)-(b). Petitioner failed to appeal the Order of the IJ (Dkt. No. 1-3) to BIA in accordance with his obligation to exhaust administrative remedies available to him in his removal proceedings.

Because Petitioner has failed to exhaust administrative remedies available to him prior to filing suit, habeas relief under 28 U.S.C. § 2241 is unavailable to Petitioner. Therefore, the Court should dismiss this action for lack of subject matter jurisdiction.

## CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court dismiss Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1) 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 29th 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**
Assistant United States Attorney