UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

JOSE ESTEBAN MAYANCELA MAYANCELA *Petitioner*, v. **ANDREW ACKLEY,** Acting Warden, FCI Berlin; **PATRICIA H. HYDE** Boston Field Office Director Immigration and Customs Enforcement **TODD LYONS** Acting Director U.S. Immigration and Customs Enforcement **KRISTI NOEM** Secretary U.S. Department of Homeland Security **PAMELO JO BONDI** United States Attorney General *Respondents*.	Civ. No: 25-CV-348-LM-TSM

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents respectfully submit this response in opposition to Petitioner's Petition for Writ of Habeas Corpus. Petitioner argues that the Immigration Judge ("IJ") erred in determining that he was a flight risk and denying him bond under 8 U.S.C. § 1226(a). The Court must dismiss any claims in the Petition that are premised on the IJ's findings and conclusions under § 1226(a) because the IJ's decision to deny bond is not subject to review by

this Court. Fed. R. Civ. P. 12(b)(1); 8 U.S.C. § 1226(e). As to any other claims alleged in the Petition, Petitioner has failed to meet his burden of establishing that his detention is unlawful. The Petition must therefore be denied.

I. BACKGROUND

Petitioner is a native and citizen of Ecuador who entered the United States in 2014. Record of Proceedings, DN 1-1 at 4. He entered the United States at an unknown time and place without inspection, admission, or parole by an immigration official. *See* I-213, DN 1-1 at 53. In 2020, an Immigration Judge ("IJ") denied all of Petitioner's applications for relief from removal and ordered him removed. Pet. ¶ 1. Petitioner's appeal of the IJ's decision remains pending before the BIA. *Id.*

On March 27, 2025, immigration authorities in Rangely, Maine, encountered Petitioner and took him into immigration custody after determining that he lacked valid immigration documents. DN 1-1 at 53. In April 2025, Petitioner sought a custody redetermination before an IJ. *See* DN 1-1 at 5. The IJ conducted a bond hearing pursuant to 8 U.S.C. § 1226(a) but determined that Petitioner posed a flight risk and denied Petitioner's release on bond in a written order dated April 24, 2025. *Id.*; *see also* Memorandum Concerning the April 17, 2025, Decision of the Immigration Court, DN 1-1 at 30-33. Petitioner timely appealed the IJ's ruling to the BIA. Pet. ¶ 5.

II. STANDARD OF REVIEW

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." Exxon Mobil Corp. v. Allopath Servs., Inc., 545 U.S. 546, 552 (2005) (internal quotations omitted).

The Supreme Court has recognized that § 2241(c)(3) confers on the District Court jurisdiction to hear habeas corpus challenges to the legality of the detention of aliens. *Rasul v. Bush*, 542 U.S. 466, 483-84 (2004) ("[Alien] Petitioners contend that they are being held in federal custody in violation of the laws of the United States. . . . Section 2241, by its terms, requires nothing more."); Zadvydas v. Davis, 533 U.S. 678, 687 (2001) ("We note at the outset that the primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases." (citing 28 U.S.C. § 2241(c)(3))).

To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) ("The burden of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner.") (citing *Walker v. Johnston,* 312 U.S. 275, 286, 61 S.Ct. 574, 85 L.Ed. 830 (1941); *see also Waddington v. Sarausad,* --- U.S. ----, 129 S.Ct. 823, 831, 172 L.Ed.2d 532 (2009); *Smith v. Robbins,* 528 U.S. 259, 285-86, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000); *Bader v. Warden,* 488 F.3d 483, 488 (1st Cir. 2007)).

A district court should dismiss claims under Federal Rule of Civil Procedure 12(b)(1) when it lacks subject matter jurisdiction to decide them. "In ruling on a motion to dismiss for lack of jurisdiction, 'the district court must construe the complaint liberally, treating all well-pleaded facts as true and indulging all reasonable inferences in favor of plaintiff.'" *Excel Home Care, Inc. v. U.S. Dep't of Health & Human Servs.*, 316 B.R. 565, 568 (D. Mass. 2004) (quoting *Aversa v. United States*, 99 F.3d 1200, 1210 (1st Cir. 1996)). But "[t]hat is not to say that this leniency eliminates the plaintiff's burden of proving an appropriate jurisdictional basis." *Id.*

"The party asserting subject matter jurisdiction has the burden of establishing its existence." *Hamada v. Gillen*, 616 F.Supp.2d 177, 180 (D. Mass. 2009) (citing *McBee v. Delica Co., Ltd.*, 417 F.3d 107, 122 (1st Cir. 2005).

III. ARGUMENT

Although he has couched his Petition as challenging the legality of his detention, the substance of the Petition establishes that Petitioner disagrees with the Immigration Court's ruling on his motion for bond. Specifically, Petitioner challenges the IJ's finding that he was a flight risk. This Court must dismiss any claims in the Petition that are premised on the IJ's decision to deny Petitioner release on bond because that is a discretionary decision that is not reviewable by this Court. 8 U.S.C. § 1226(e). Any remaining claims have not been adequately pled or developed and must therefore be denied as Petitioner has failed to meet his burden of establishing that his detention is unlawful.

A. Count One

This Court lacks jurisdiction to review the IJ's decision to deny Petitioner 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)). Specifically, § 1226(e) provides:

> The Attorney General's discretionary judgment regarding the application of § 1226 shall not be subject to review. No 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. § 1226(e).

Though the IJ determined that Petitioner was eligible for a bond hearing under § 1226(a), the IJ ultimately denied bond on the basis of her finding that Petitioner was a flight risk. Pet. ¶ 4. This is precisely the type of discretionary judgment that is precluded from judicial review under

§ 1226(e). *See Hamada v. Gillen*, 616 F.Supp.2d 177, 181 (D. Mass. 2009) (holding that Section 1226(e) barred the district court from reviewing the Immigration Judge and the BIA's decision to detain the petitioner, where the petitioner challenged the decision as "minimizing significant equitable factors in Petitioner's favor."). The Petition does not challenge the statutory framework governing immigration detention generally, but rather challenges the IJ's reasoning and analysis and essentially argues that the evidence presented to the IJ was insufficient to establish flight risk by a preponderance of evidence. *Id.* This argument ignores the clear mandate of § 1226(e) that "[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)(emphasis added). Because this Court lacks jurisdiction to review the IJ's ruling that Petitioner is a flight risk, Count One must be dismissed. Fed. R. Civ. P. 12(b)(1).

B. Count Two

Count Two alleges that Petitioner's detention has been unreasonably prolonged and is thus unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001). This claim is untenable for several reasons. Petitioner appears to suggest that immigration detention exceeding six months is presumptively unconstitutional pursuant to *Zadvydas*. Pet. ¶ 29. But that is a grossly inaccurate characterization of *Zadvydas'* holding.

Zadvydas arose in the context of aliens who were subject to a final removal order and who nevertheless remained detained beyond the statutory removal period without an individualized bond hearing. *Zadvydas*, 533 U.S. at 682, 697. The government found itself unable to remove the aliens in *Zadvydas* because it could not find a country willing to accept

them. *Id.* at 685-86. Thus, their detention had become potentially indefinite, which the Court found to raise serious constitutional questions in the absence of a sufficiently strong justification. *Id.* at 690.

Petitioner, by contrast, is still in removal proceedings, which have a definite termination point. Therefore, his detention still bears a rational relation to its purpose—that is, ensuring his presence throughout his removal proceedings and at the moment of his removal. More importantly, unlike the aliens in *Zadvydas*, Petitioner *has had an individualized bond hearing* at which the IJ concluded that he could not be released because he posed a flight risk. Accordingly, Petitioner's circumstances are easily distinguishable from *Zadvydas*.[1] Count Two must be denied.

C. Count Three

Count Three challenges the constitutionality of the BIA's "[c]ategorical denial of bond" to all aliens who entered the United States without inspection. Pet. ¶¶ 30-32. But Petitioner here *had an individualized bond hearing*. That he disagrees with the IJ's weighing of evidence and conclusion that he is a flight risk does not give rise to a constitutional claim. Count Three is without merit and must be denied.

D. Count Four

Finally, Count Four purports to allege a due process violation, but is unclear as to what process Petitioner claims he was denied. Pet. ¶¶ 33-37. Petitioner acknowledges he received

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1 Another important distinction that bears mentioning: unlike the aliens in *Zadvydas*, Petitioner has never been admitted to the United States. 533 U.S. at 682 ("We deal here with aliens who were admitted to the United States but subsequently ordered removed. Aliens who have not yet gained initial admission to this country *would present a vastly different question*.") (emphasis added).

a bond hearing under § 1226(a) and merely disagrees with the IJ's ruling that he posed a flight risk. Pet. ¶ 37 ("Because Respondents cannot demonstrate that Petitioner is a danger or a flight risk under the standards set forth in *Hernandez-Lara*, Petitioner is entitled to immediate release under reasonable conditions of supervision pursuant to 8 U.S.C. § 1226(a)."). Here, again, Petitioner asks this Court to substitute its own judgment and view of the evidence for that of the IJ. But § 1226(e) precludes this Court from doing so. Accordingly, Count Four must be denied.

IV. CONCLUSION

For these reasons, the Court must dismiss Counts One and Four[2] for lack of subject matter jurisdiction. All remaining Counts must be denied because Petitioner has failed to meet his burden of proving that his detention is unlawful under any grounds asserted in the Petition.

Respectfully submitted,

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Dated: October 16, 2025

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2 To the extent that Count Four, as pled, is simply a re-casting of Petitioner's challenge to the IJ's denial of bond based on a finding of flight risk, it should be dismissed pursuant to 1226(e) for lack of subject matter jurisdiction. Otherwise, Petitioner has failed to meet his burden of establishing a due process violation and Count Four must be denied on the merits.