IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LUCCA HENRIQUE GUEDES,

Petitioner,

v. No. 1:25-cv-00912-KWR-KRS

PAMELA BONDI, in her official capacity as Attorney General of the United States; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; COREY A. PRICE, Field Office Director, ICE Albuquerque Field Office; and Warden of Torrance County Detention Center,

Respondents.

MOTION TO DISMISS PETITIONER'S WRIT OF HABEAS CORPUS (DOC. 1)

INTRODUCTION

Respondents, Immigration and Customs Enforcement ("ICE"), the Department of Homeland Security ("DHS"), and Pamela Bondi in her official capacity as Attorney General of the United States (collectively "Respondents"), hereby submit this Motion to Dismiss Petitioner's Writ of Habeas Corpus (Doc. 1).

Petitioner alleges Respondents have detained him without a bond review hearing pursuant to mandatory detention under Immigration and Nationality Act ("INA") § 235(b)(1). *See generally* Doc. 1 at ¶ ¶ 2, 9, 17, 20, 22-23, 32-33, 46, 52, 60-62; *see also* 8 U.S.C. 1225(b). Petitioner misstates Respondents' position and the procedural history before the U.S. Immigration Court. Petitioner remains eligible for bond review (commonly referred to as a custody redetermination hearing) pending compliance with requests from the Immigration Judge ("IJ") for additional records from Petitioner. Respondents do not otherwise contest Petitioner's eligibility for a bond review before the U.S. Immigration Court.

Therefore, the Court does not have subject matter jurisdiction as the petition is not ripe and there is no active case or controversy between the parties. Additionally, judicial review is precluded pursuant to 8 U.S.C. 1226(e). Finally, Petitioner has failed to exhaust readily available administrative remedies. For these reasons the Court should deny or dismiss Petitioner's Writ of Habeas Corpus (Doc. 1).

FACTUAL SUMMARY

Petitioner is a citizen of Brazil without legal status in the United States. *See* Doc. 1 at ¶ 7-8. On or about July 31, 2025, Petitioner was arrested on charges of credit card fraud and organized scheme to defraud[1]. *Id.* at ¶ 9. On August 1, 2025, due to Petitioner's unlawful presence in the United States, an immigration detainer was issued. ICE subsequently took custody of Petitioner and initiated removal proceedings. Petitioner remains lawfully detained pending INA § 240 removal proceedings[2]. *See* 8 U.S.C. 1229a.

On October 14, 2025, and October 21, 2025, Petitioner requested and was provided a bond review hearing before the U.S. Immigration Court. On both occasions, the IJ took "no action". *See* Exhibit A, Order of the Immigration Judge dated October 14, 2025; *see also* Exhibit B, Order of the Immigration Judge dated October 21, 2025. On October 14, 2025, no action was taken due to Petitioner's own failure to provide documents pertaining to his criminal history[3]. On October 21, 2025, no action was taken due to Petitioner's own request for postponement[4].

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[1] Petitioner has had prior contacts with the criminal justice system including a October 20, 2024, arrest for Grand Theft (upon information and belief, charges were dropped) and a November 5, 2024, arrest for Petit Theft (upon information and belief, charges remain pending).

[2] Petitioner references expedited removal proceedings pursuant to INA § 235(b)(1). *See, e.g.,* Doc. 1 at ¶ 2. However, Respondents contend Petitioner was placed in general removal proceedings pursuant to INA § 240.

[3] Respondents submit this upon information and belief and following review of audio recordings from the U.S. Immigration Court. Respondents will submit the reviewed digital audio recordings ("DAR"), which are U.S. Immigration Court audio files, from this hearing as a supplemental Exhibit C. A notice of lodging will be filed contemporaneously with this motion.

[4] Respondents submit this upon information and belief and following review of audio recordings from the U.S. Immigration Court. Respondents will submit the reviewed DAR audio files from this hearing as a supplemental exhibit D. A notice of lodging will be filed contemporaneously with this motion.

Petitioner remains eligible for a bond review hearing before the U.S. Immigration Court pending Petitioner's compliance with the IJ's request for additional records.

LEGAL BACKGROUND[5]

I. Limitations on Judicial Review

Judicial review of immigration matters, including of detention issues, is limited. *See generally I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)

[5] Respondents do not contend that mandatory detention pursuant to INA § 235 (b)(1) applies to this Petitioner. Respondents therefore reserve comment, without admission, on Petitioner's legal analysis on § 1225 v. § 1226 and associated case law cited on that subject. *See generally* Doc. 1 at ¶ 13-64.

("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.")

Additionally, and specific to cases arising under INA § 236, judicial review of actions and decisions made by the Attorney General under 8 U.S.C. § 1226 is barred:

> The Attorney General's discretionary judgment regarding the application of this section 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 of any alien or the revocation or denial of bond or parole.

8 U.S.C. § 1226(e). As the Supreme Court explained in *Demore v. Kim*, 538 U.S. 510, 516–17 (2003), this provision applies to strip jurisdiction of judicial review to decisions to arrest and detain aliens subject to 8 U.S.C. § 1226.

II. Burden of Proof in Immigration Proceedings

In an immigration context, under both §1225 and §1226, it is generally the petitioner's burden to show that he or she is eligible for release or bond. *See, e.g.*, 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding."); *See also Matter of Adeniji*, 22 I. & N. Dec. 1102, 1102 (BIA 1999). This principle is well established in immigration law, even in cases where additional due process and individualized procedures are applicable. *See, e.g., Demore v. Kim*, 538 U.S. 510, 532, (2003) (Justice Kennedy concurring and citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("the permissibility of continued detention pending deportation proceedings turns solely upon the *alien's ability to satisfy the ordinary bond procedures* – namely, whether if released the alien

would pose a risk of flight or danger to the community)) (emphasis added).

Similarly, it is also the petitioner's burden to show entitlement to relief from removal on the merits. *See, e.g.*, 8 U.S.C. § 1229a(c)(2) (outlining the burden of proof in removal proceedings: "the alien has the burden of establishing . . . that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible . . . or by clear and convincing evidence that the alien is lawfully present); *see also* 8 U.S.C. § 1229a(c)(4)(B) (when considering applications for relief from removal "the immigration judge will determine whether or not . . . the applicant has satisfied the applicant's burden of proof"); *Matter of Gabriel Almanza-Arenas*, 24 I. & N. Dec. 771, 774-776 (BIA 2009) (in determination of whether the immigration judge improperly applied the REAL ID Act to petitioner's case, the BIA found that "respondent is seeking discretionary relief from removal, so he bears the burden of proof").

III. Administrative Exhaustion

Petitioners may seek habeas relief to challenge his detention as unconstitutional or unauthorized by statute. *See, e.g., Demore*, 538 U.S. at 517 (2003). However, "[a] habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention." *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y. 2018). "The exhaustion requirement is prudential, rather than jurisdictional, for habeas claims." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Administrative exhaustion may be waived if petitioner can demonstrate that exhausting administrative remedies is "futile". *See e.g. Garza v. Davis,* 596 F.3d 1198, 1203 (10th Cir. 2010).

IV. FRCP 12(b)(1) Dismissal for Lack of Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction, they are empowered to hear only those cases authorized and defined in the Constitution which have been entrusted to them under a jurisdictional grant by Congress. *Henry v. Off. of Thrift Supervision*, 43 F.3d 507, 511 (10th Cir.

1994). The party invoking federal jurisdiction, generally the plaintiff, bears the burden of establishing its existence. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998). Rule 12(b)(1) allows defendants to raise the defense of lack of subject matter jurisdiction by motion. *See* Fed. R. Civ. P. 12(b)(1).

Ripeness is a justiciability doctrine derived from the case or controversy clause of Article III. *Auto-Owners Ins. Co. v. Bolt Factory Lofts Owners Ass'n,* 823 F. App'x 686, 690 (10th Cir. 2020). Whether a claim is ripe for review bears on a court's subject matter jurisdiction. *Id*. The Tenth Circuit has "distilled Article III's ripeness requirement into a two-factor analysis, examining (1) 'the fitness of the issue for review,' and (2) 'the hardship to the parties' of withholding judicial review." *Travelers Cas. Ins. Co. of Am. v. A-Quality Auto Sales, Inc*., 98 F.4th 1307, 1314 (10th Cir. 2024). As to the first factor, for an action to be ripe for review it cannot be dependent on "contingent future events that may not occur as anticipated or indeed may not occur at all." *Id*. The second factor considers whether the challenged action creates "a direct and immediate dilemma" for the parties. *Id*.

ARGUMENT

I. §1226(e) Bars Judicial Review of §1226 Detention

8 U.S.C. § 1226(e) strips the Court of jurisdiction, as Congress has made clear that ICE's "discretionary judgment regarding the application of [§1226] shall not be subject to review." 8 U.S.C. § 1226(e). Section 1226(e) further directs that "[n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the revocation or

denial of bond or parole." *Id.* As such, this provision blocks judicial review of ICE's decisions to arrest and detain aliens subject to 8 U.S.C. § 1226.

Petitioner's Writ of Habeas Corpus (Doc. 1) should therefore be dismissed for lack of subject matter jurisdiction.

II. Petition is Not Ripe for Review

Respondents do not dispute Petitioner's eligibility for bond review. The only issue preventing adjudication of Petitioner's bond request is Petitioner's own failure to comply with the IJ's request for additional records and Petitioner's own request for continuance of the bond review hearing. *See* Exhibit A and B; *See also supra* n. 4-5.

The specific designation of "no action" is significant: had the IJ found INA § 235(b) applied, the IJ would have had no jurisdiction to review bond and therefore denied the request outright. *See, e.g., Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Instead, the IJ retained jurisdiction under INA § 236, took no action and bond review remains available pending compliance with the IJ's request.

The Court should not allow Petitioner to ignore the IJ's request and proceed in federal court via habeas, essentially circumventing the U.S. Immigration Court entirely, while bond review remains available before that administrative body. As bond review remains available the petition is not ripe, and as Respondents do not dispute Petitioner's eligibility for bond review there is no active case or controversy before the Court.

The Court therefore does not have subject matter jurisdiction and Petitioner's Writ of Habeas Corpus (Doc. 1) should be dismissed.

III. Petitioner has Failed to Exhaust Administrative Remedies

Similarly, Petitioner has failed to exhaust readily available administrative remedies. Petitioner is currently eligible for bond review and there is no evidence that such a proceeding would be "futile". Petitioner's own failure to comply with the IJ's request should not provide a basis for waiver of the prudential requirements of administrative exhaustion. Similarly, Petitioner's own request for a continuance does not negate the availability of bond review before the U.S. Immigration Court.

The Court should therefore deny or dismiss the petition due to Petitioner's failure to exhaust administrative remedies.

CONCLUSION

The Court should deny or dismiss Petitioner's Writ of Habeas Corpus (Doc. 1) as the petition is not ripe, does not involve an active case or controversy and judicial review is statutorily precluded. Additionally, Petitioner has failed to exhaust readily available administrative remedies. For all these reasons, individually or collectively, denial or dismissal is appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 5, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey
RYAN M. POSEY
Assistant United States Attorney