UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HECTOR MIGUEL HERRERA-MORENO,

Petitioner,

v.

Warden, North Lake Correctional Facility; Secretary of the U.S. Dept. of Homeland Security; U.S. Attorney General; Field Office Director, U.S. Immigration and Customs Enforcement, Detroit Field Office,

Respondents.
_____/

Case No. 1:25-cv-1411

Hon. Hala Y. Jarbou
Chief U.S. District Court Judge

Hon. Ray Kent
U.S. Magistrate Judge

FEDERAL RESPONDENTS'[1] MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Petitioner Hector Miguel Herrerra-Moreno is a noncitizen who is currently detained by the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) under 8 U.S.C. § 1226 because he is an alien who has been previously admitted to the United States but is removable because he overstayed his visa. On November 11, 2025, Petitioner filed a petition in federal court seeking a writ of habeas corpus requiring Federal Respondents to release him or to file a Notice to Appear (NTA) within 2 days and provide him with a bond hearing within 7 days.

[1] A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Except in extraordinary circumstances, the only proper respondent in a habeas corpus case is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). In the immigration context, that is the ICE Field Office Director. *Id.* Here, the Petition names additional Federal Respondents—the Secretary of the U.S. Department of Homeland Security and the U.S. Attorney General—but they are not proper respondents to this habeas action. *See Roman*, 340 F.3d at 322 (reasoning that "adopting a broader definition of 'custodian'" that encompasses any official with control over an alien's detention and release "would complicate and extend the duration of habeas corpus proceedings"); *Escobar-Ruiz v. Raycraft,* No. 1:25-CV-1232, 2025 WL 3039255, at *8 (W.D. Mich. Oct. 31, 2025) (dismissing the Attorney General as an improper respondent to a habeas petition).

On November 12, 2025, ICE filed an NTA with the Detroit immigration court, and Petitioner had a § 1226(a) bond hearing scheduled for November 19, 2025—the date of this filing—but he withdrew his request for bond at his hearing. As a result, the immigration judge made no bond determination. Regardless, ICE has already given Petitioner the relief he requests here—it filed an NTA with the Detroit immigration court and scheduled a bond hearing on November 19, 2025. Accordingly, his Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 is moot. The Court no longer retains jurisdiction over this matter due to the absence of a live case or controversy under Article III of the United States Constitution. In addition, Petitioner has failed to exhaust his administrative remedies because he withdrew his request for bond. Federal Respondents therefore request that the Court dismiss the Petition.

FACTUAL BACKGROUND

Petitioner is a citizen of Mexico who was admitted to the United States on or about July 9, 2004, as a nonimmigrant visitor for pleasure with authorization to remain in the United States for a temporary period not to exceed six months. (**Ex. A**, Hoppe Decl. ¶ 4.) Between 2007 and 2018, Petitioner was cited and/or charged with ten traffic offenses, including but not limited to repeatedly driving on a suspended license. (*Id.* ¶¶ 5-6, 8-15.) On January 28, 2009, Petitioner was convicted of Retail Theft in the Cook County Circuit Court in Chicago, Illinois and was sentenced to one year of supervision. (*Id.* ¶ 7.)

On October 27, 2025, ICE ERO encountered and arrested Petitioner under 8 U.S.C. § 1226(a) for being illegally present in the United States and placed him into removal proceedings by serving him with an NTA. (*Id.* ¶ 16.) He is currently detained at the North Lake Processing Center in Baldwin, Michigan. (*Id.* ¶ 3.)

On November 12, 2025, Petitioner filed a petition in federal court, asking the Court to issue a writ of habeas corpus requiring Federal Respondents to release him or to file a NTA within 2 days and provide him with a bond hearing within 7 days. (Am. Pet., ECF No. 4, PageID.38.)

On November 12, 2025, ICE filed the NTA with the Detroit immigration court. (**Ex. A**, Hoppe Decl. ¶ 17.) The same day, Petitioner filed a request for a bond hearing. (*Id.* ¶ 20.) Petitioner had a § 1226(a) bond hearing scheduled on November 19, 2025. (**Ex. B**, Notice of Bond Hearing.) However, when Petitioner appeared in the immigration court with his attorney, he withdrew his request to be released on bond. (**Ex. A**, Hoppe Decl. ¶ 21.)

ARGUMENT

I. Rule 12(b)(1) Motion Standards.

A federal court must dismiss a case under Rule 12(b)(1) if it lacks subject-matter jurisdiction to adjudicate a party's claim. Fed. R. Civ. P. 12(b)(1); *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). It must presume that a cause lies outside of its jurisdiction, and the party opposing a motion to dismiss for lack of jurisdiction under Rule 12(b)(1) bears the burden to establish jurisdiction. *Kokkonen*, 511 U.S. at 377. A challenge to subject-matter jurisdiction under Rule 12(b)(1) may be a facial attack, which challenges the sufficiency of the plaintiff's factual allegations, or a factual attack, which challenges the fact of subject-matter jurisdiction. *Kokkonen*, 511 U.S. at 377; *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). In considering a factual attack on subject-matter jurisdiction (i.e., failure to exhaust administrative remedies), the court can consider affidavits and other evidence outside the pleadings to resolve factual disputes regarding jurisdiction. *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 916 (6th Cir. 1986). Public records may also be considered without converting a motion to dismiss into a motion for summary judgment. *Universal Express, Inc. v. U.S. S.E.C.*, 177 F. App'x 52, 53 (11th Cir. 2006).

II. The Habeas Petition is Moot.

For a court to have subject-matter jurisdiction over a case, the litigation must present an actual case or controversy sufficient to satisfy Article III of the United States Constitution. U.S. Const. art. III, § 2; *Gottfried v. Med. Plan. Servs., Inc.,* 280 F.3d 684, 691 (6th Cir. 2002) (citing *Honig v. Doe*, 484 U.S. 305, 317 (1988)). The doctrine of mootness derives directly from the case or controversy limitation. *Friends of the Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000) ("The Constitution's case-or-controversy limitation on federal judicial authority, Art. III, § 2, underpins ... [the court's] mootness jurisprudence."). The mootness inquiry must be made at every stage of the case. When a case becomes moot, an Article III case or controversy no longer exists. *Id.*

Here, the Petition asks the Court to issue a writ of habeas corpus requiring Federal Respondents to release him or to file an NTA within 2 days and provide him with a bond hearing within 7 days. (Am. Pet., ECF No. 4, PageID.38.) But ICE has already given Petitioner the relief he requests—it filed an NTA with the Detroit immigration court and scheduled a bond hearing on November 19, 2025. (**Ex. A**, Hoppe Decl. ¶¶ 17, 20-21; **Ex. B**, Notice of Bond Hearing.) This renders this case moot. *See Whale and Dolphin Conservation v. National Marine Fisheries Service*, 573 F. Supp. 3d 175, 178-79 (D.D.C. 2021) ("a case becomes moot when 'the court can provide no effective remedy because a party has already obtained all the relief that it has sought.'" (*quoting Conservation Force, Inc. v. Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2013). And he does not seek relief from collateral consequences of removal. *See Zundel v. Berrong*, 106 F. App'x 331, 334–35 (6th Cir. 2004). Consequently, this case does not present an actual case or controversy, and this Court lacks subject-matter jurisdiction over the habeas petition. As a result, the Petition should be dismissed as moot.

II. Petitioner has not exhausted his administrative remedies.

The Court should also dismiss the Petition for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, protect[] the authority of administrative agencies, and otherwise conserve judicial resources by limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.) (internal quotation omitted).

Here, Petitioner has not availed himself of the administrative remedies available to him. Petitioner had a bond hearing before the immigration court scheduled for November 19, 2025. (**Ex. B**, Notice of Bond Hearing.) But Petitioner withdrew his request for bond at the hearing. (**Ex. A**, Hoppe Decl. ¶ 21.) Accordingly, Petitioner has yet to exhaust his administrative remedies within the immigration courts before seeking a writ of habeas corpus from this Court.

"When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted). The Sixth Circuit has endorsed this procedure for challenging bond determinations. *See Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (citing *Leonardo*, 646 F.3d at 1160) (unpublished order). Additionally, some lower courts in this circuit have applied a three-factor test for determining whether prudential exhaustion applies. *See, e.g., Hernandez Torrealba v. U.S. Dep't of Homeland*

Sec., No. 1:25-CV-01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25, 2025). The test considers whether:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Id. (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

Here, the three-factor test weighs in favor of requiring Petitioner to exhaust his administrative remedies. First, "any determination regarding detention here turns on interpretation and application of the governing removal regime," a review that in the first instance should proceed before the immigration courts "to 'apply [their] experience and expertise without judicial interference.'" *Monroy Villalta v. Greene*, --- F. Supp. 3d ---, 2025 WL 2472886, at *2 (N.D. Ohio Aug. 5, 2025) (quoting *Khalili v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009) (abrogated on other grounds)); *see also Hernandez*, 2025 WL 2444114, at *10 (applying *Monroy Villalta* to find that the first factor weighs in favor of requiring exhaustion of claims premised on the statutory interpretation of the INA); *Ba v. Dir. of Detroit Field Office, U.S. Immigr. and Customs Enf't*, No. 4:25-CV-02208, 2025 WL 2977712, at *2-3 (N.D. Ohio Oct. 22, 2025) ("Because of the expertise the Board of Immigration Appeals and the immigration courts more generally have in the statutory and administrative regimes governing the admission and removal of foreigners, many of the purposes for requiring exhaustion may be served by permitting agency review in the first instance." (quotation omitted)).

Second, "relaxing the exhaustion requirement would encourage the deliberate bypass of the administrative scheme in favor of what may be perceived as a potentially more favorable and/or timely reviewing body, i.e., federal court." *Hernandez*, 2025 WL 2444114, at *10. Petitioner has

deliberately opted out of relief through the administrative process provided by the immigration courts by withdrawing his request for bond, yet seeks the Court's "interference in agency affairs." *Id.* Waiving administrative exhaustion in this context would undermine the authority of the agency and the "important purposes served by exhaustion" in the immigration context, *id.*, including "protecting the authority of administrative agencies" and "developing the factual record to make judicial review more efficient," *Ba*, 2025 WL 2977712, at *3 (quoting *Beharry*, 329 F.3d at 62).

Third, allowing the immigration court and, if necessary, the BIA to evaluate Petitioner's bond motion "would permit the agency to correct its own mistakes, if any, and preclude the need for judicial review if Petitioner is successful." *Hernandez*, 2025 WL 2444114, at *10. If Petitioner requests another bond hearing and the immigration court grants Petitioner bond, there will be no need for judicial review of his claims. Likewise, if the immigration court denies his motion, Petitioner may appeal the decision to the BIA, where he may seek a new bond hearing and request release.

Thus, Petitioner should pursue his claims before the immigration court and, if necessary, the Board of Immigration Appeals before seeking relief from this Court.

CONCLUSION

For these reasons, Federal Respondents respectfully request that the Court dismiss Hector Miguel Herrera-Moreno's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 as moot. Alternatively, the Court should dismiss the Petition because he has not exhausted his administrative remedies.

Respectfully submitted,

TIMOTHY VERHEY
United States Attorney

Dated: November 19, 2025

/s/ *Laura Babinsky*
LAURA BABINSKY
Assistant United States Attorney
Post Office Box 208
Grand Rapids, MI 49501-0208
(616) 456-2404
Laura.Babinsky@usdoj.gov
Attorney for Federal Respondents