

seeking immediate release from immigration detention or alternatively, another bond hearing. **Dkt. No. 1** at 15. Petitioner's request for custody redetermination under 8 U.S.C. § 1226 was denied on November 4, 2025, because the Immigration Judge found he is a danger to persons and property. (**Dkt. No. 1**, Attach. 1 at 1). Under 8 U.S.C. § 1226(e), the Court is stripped of jurisdiction to review the discretionary judgement of the Immigration Judge regarding the application of § 1226. Furthermore, the Petitioner had the opportunity to appeal the Immigration Judge's decision to the Board of Immigration Appeals, but Petitioner failed to do so. As such, the Petition for a Writ of Habeas Corpus should be denied and summary judgment entered in favor of the Government.

BACKGROUND

Petitioner entered the United States on February 16, 2014, on a B2 visitor visa for a period not to exceed August 15, 2024. **Gov't Ex. 1** at 1. On January 15, 2016, Petitioner filed an application to change his status from a B2 nonimmigrant visitor to an F2 Minor Child of an F1. *Id.* On May 10, 2021, Petitioner's F2 status was terminated. *Id.* at 4. Petitioner remained in the United States beyond May 10, 2021, without authorization from DHS. *Id.* On October 8, 2025, DHS served Petitioner with a Notice to Appear, charging him as removable from the United States under Section 237(a)(1)(B) of the Immigration and Nationality Act ("INA"), as an alien who remained in the United States for a time longer than permitted after admission as a nonimmigrant. *Id.* at 1.

On or about October 4, 2025, Petitioner was charged in the 9th Judicial District in the County of Montgomery and the State of Texas of possession of a controlled substance under Section 481.116(b) of Texas Health and Safety Code. (**Dkt. No. 1**, Attach. 3 at 2). This charge was dismissed "[i]n the interest of justice." *Id.* at 1. On November 4, 2025, Petitioner's request for custody redetermination was denied because the Immigration Judge found he is a

danger to persons and property. (Dkt. No. 1, Attach. 1 at 1). Petitioner did not appeal the decision of the Immigration Judge to the Board of Immigration Appeals (“BIA”).

STANDARD OF REVIEW

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

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.

Fed. R. Civ. P. 12(b)(6).

A court may dismiss a claim for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007) (brackets omitted)). “Threadbare recitals of the elements of a case of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. Nor must a court accept as true “legal conclusions” or “a legal conclusion couched as a factual allegation.” *Id.* at 678-79.

APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as “[d]etention is necessarily a part of th[e] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“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.”). As the Supreme Court has stated in no unmistakable terms, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003).

ARGUMENT

A. JUDICIAL REVIEW IS PRECLUDED UNDER 8 U.S.C. § 1226(e).

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. 8 U.S.C. § 1226(e). As such, district courts do not have jurisdiction to review the discretionary decisions of Immigration Judge’s regarding bond. *See Nielsen v. Preap*, 586 U.S. 392, 401 (2019) (“As we have held, this limitation applies only to ‘discretionary’ decisions about the ‘application’ of § 1226 to particular cases.”). To be clear, this provision does not strip courts of jurisdiction over constitutional questions. *Demore v. Kim*, 538 U.S. 510, 517 (2003). Petitioner has not clearly articulated a constitutional challenge.

What Petitioner is really challenging in this action is the Immigration Judge’s finding that he is a danger, and whether the Immigration Judge applied the correct standard of review. **Dkt. No. 1** at 12-14. This challenges a discretionary decision not subject to review pursuant to § 1226(e). *See Fuentes v. Lyons*, --- F. Supp. 3d ----, 2025 WL 3022478, *2 (S.D. Tex. 2025) (finding the Court does not have jurisdiction under § 1226(e) to a challenge that the Immigration Judge “considered inadmissible evidence during the hearing and ‘demonstrated prejudice’ toward [the petitioner] ... [because this] would require the Court to assess the underlying discretionary bond determination itself, not an alleged constitutional or statutory deficiency.”). Similarly, the Court does not have jurisdiction under § 1226(e) to entertain the Petitioner’s challenge to the Immigration Judge’s denial of his request for bond. As explained below, however, Petitioner was

not left without any recourse. Petitioner could have appealed the Immigration Judge's decision to the BIA, but Petitioner did not file an appeal.

B. PETITIONER FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING THE PETITION.

While the Court is stripped of jurisdiction to hear Petitioner's challenge, the Government further asserts that this Petitioner should be denied because Petitioner did not exhaust his administrative remedies. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a habeas petitioner must exhaust all administrative remedies prior to filing a federal habeas petition under § 2241. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012). The Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted).

By regulation, the Board of Immigration Appeals has appellate jurisdiction over determinations relating to bond, parole, or detention of an alien. 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3)(i). Petitioner therefore had a potential avenue available to him for an administrative remedy. Petitioner, however, has not demonstrated that he appealed the discretionary judgment of the Immigration Judge to the BIA. As such, he has not exhausted his administrative remedies. While his appeal might be untimely at this point in time, it is not the Government's fault that Petitioner failed to file a timely appeal to the BIA.

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 and for failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 12, 2026, the foregoing was filed and served through the Court's CM/ECF system.

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