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

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| FERNANDO VELAZQUEZ ARREDONDO,<br><br>*Petitioner,*<br><br>v.<br><br>KRISTI NOEM, Secretary, U.S. Department of Homeland Security; CARLOS CISNEROS, Harlingen Field Office Director, Immigration and Customs Enforcement,<br><br>*Respondents.* | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | CIVIL ACTION NO. 1:25-CV-226 |

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS**

Respondents, Kriti Noem, the Secretary of Homeland Security, *et al.*, file this opposition to Petitioner, Fernando Velazquez Arredondo's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (hereafter "the Petition") (Dkt. No. 1). Pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1), Respondents move to dismiss this Petition. Any allegations that are not specifically admitted herein are denied. 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 available to Petitioner in his ongoing removal proceedings prior to seeking habeas relief under 28 U.S.C. § 2241. Petitioner is not entitled to the relief he seeks, including attorney's fees, and this Court should deny this habeas petition.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

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 Port Isabel Detention Center in Los Fresnos, Cameron County, Texas. **Gov't Ex. 1**, ¶¶4(a)-(c) (Declaration of DHS/ICE Deportation Officer Jason L. Feliciano). Petitioner brought this habeas corpus petition against Respondents, seeking release from immigration detention or a bond hearing pursuant to Section 236(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a). However, Petitioner's claims lack merit and the Court should dismiss the Petition for three significant reasons.

First, Petitioner is lawfully detained on a mandatory basis as an applicant for admission pending removal proceedings before an immigration judge. This case is governed not only by the plain language of Section 235(b) of the INA, 8 U.S.C. § 1225(b), but also by Supreme Court precedent. There is no jurisdiction for this Court to review Petitioner's challenge to DHS's initial decision to detain him for adjudication of his removal proceedings, because his claims directly arise from the decision to commence or adjudicate removal proceedings against him. To the extent that Petitioner challenges the interpretation or the constitutionality of the statute under which his removal proceedings are brought, he must raise that challenge in the Fifth Circuit Court of Appeals upon review of a final order of removal. While as applied constitutional challenges may be brought in district court under certain circumstances, Petitioner has not raised any colorable claim that his mandatory detention under § 1225(b) is unconstitutional as applied to him. His detention is neither indefinite, nor prolonged, as it will end upon the completion of his removal proceedings.

Second, this Court lacks jurisdiction under habeas to order an immigration judge to hold a bond hearing. The only remedy available through habeas is release from custody, but even if this

Court ordered Petitioner's immediate release, which it should not, such release would not provide him any lawful status in the United States and produce him no net gain.

Third, and in the alternative, the Court lacks jurisdiction under habeas because Petitioner failed to exhaust administrative remedies available to him in ongoing removal proceedings. For these reasons and those that follow, this Court should dismiss the Petition for lack of subject matter jurisdiction or alternatively, deny the Petition without the need for an evidentiary hearing.

## BACKGROUND AND PROCEDURAL HISTORY[1]

On or about September 21, 2025, DHS encountered Petitioner, a native and citizen of Mexico, as an undocumented alien present in the United States without prior admission or parole, during a traffic stop in Chicago, Illinois. **Gov't Ex. 1**, ¶¶4(a)-(c). Petitioner admitted to DHS that he illegally entered the United Sates on an unknown date, at an unknown time, by wading across the Rio Grande River near an unknown location. **Gov't Ex. 1**, ¶4(b); **Bates 0010**. Accordingly, Petitioner was taken into custody of DHS and served with a Notice to Appear ("NTA") on September 23, 2025, 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 other than as designated by the Attorney General in violation of INA Section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). **Bates 0001**; **Gov't Ex. 1**, ¶ 4(e).

On that same date, DHS issued a warrant for arrest of Petitioner, who was taken into custody and detained by DHS at the Port Isabel Service Detention Center and determined Petitioner ineligible for release under a bond. Dkt. No. 1, ¶ 23; **Gov't Ex. 1**, ¶4(d)-(e); **Bates 004-006**.

[1] A Bates-stamped copy of Petitioner's A-File (Bates **0001-0013**) is filed under seal contemporaneously with Respondents' Opposition to Petition for Writ of Habeas Corpus and Motion to Dismiss.

On October 6, 2025, the Petitioner filed a Petition for Writ of Habeas Corpus and Complaint for Emergency Injunctive Relief, requesting that the Court declare that Petitioner's detention violates the Due Process Clause and the INA and order Respondents to schedule a bond hearing for Petitioner's removal proceedings. Dkt. No. 1 at 16.

On October 8, 2025, the Petitioner appeared for a master calendar hearing in Immigration Court where he requested time to find legal representation. **Gov't Ex. 1**, ¶4(f). The hearing was reset to October 15, 2025. *Id.*

On October 15, 2025, the Petitioner appeared with his counsel for a master calendar hearing. **Gov't Ex. 1**, ¶4(g). The Immigration Judge reset the Petitioner's case to November 4, 2025, to allow time for Petitioner's attorney to prepare his case. *Id.*

On October 21, 2025, the Petitioner was served Form I-261, Additional Charges of Inadmissibility/Deportability, charging the Petitioner as inadmissible under section 212(a)(7)(A)(i)(1) of the INA. **Gov't Ex. 1**, ¶4(h); **Bates 0012-0013.**

As of October 23, 2025, the Petitioner has not requested a bond custody redetermination hearing from the Immigration Judge. **Gov't Ex. 1**, ¶4(i).

## 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.

## ARGUMENT

As a preliminary matter, the sole relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118-19 (2020). Petitioner, however, has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release. Even if this Court were to order his release from custody, Petitioner would be subject to re-arrest as an alien present within the United States without having been admitted or paroled. Ordering his release in this circumstance produces no net gain to Petitioner, while mandating continued detention until at least the conclusion of removal proceedings furthers DHS's interests in enforcing the immigration laws.

**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 redetermination is beyond this Court's authority.**

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. There are two types of aliens living unlawfully within the United States who are subject to "full" removal proceedings under 8 U.S.C. § 1229a and not expedited removal: (1) those who have never been admitted but have lived in the United States for longer than two years (*i.e.*, inadmissible under § 1182); and (2) those who were once admitted but no longer have permission to remain (*i.e.*, removable under § 1227). 8 U.S.C. § 1229a(e)(2). As outlined in more detail below, Congress intended for the inadmissible aliens in this context to be detained on a mandatory basis under § 1225(b)(2)(A), while the removable aliens are detained under § 1226(a) and eligible to seek bond. This interpretation is consistent with the allocation of the burden of proof during removal proceedings. If the NTA charges the alien under 1182 as inadmissible, the burden lies on the alien to prove admissibility or prior lawful admission. 8 U.S.C. § 1229a(c)(2). On the other hand, the burden is on the government to establish deportability for aliens charged under § 1227. *Id.* § 1229a(c)(3).

A. <u>8 U.S.C. § 1225(b) unambiguously defines an "applicant for admission" as an alien present in the United States without having been admitted or paroled</u>.

Petitioner is properly subject to mandatory detention, ineligible to be released on bond, as he is an applicant for admission as defined in 8 U.S.C. § 1225. The statutory language is unambiguous: "An alien present in the United States who has not been admitted … shall be deemed … an applicant for admission." 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109; *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025). Even though DHS encountered Petitioner within the interior of the United States on September 21, 2025, he is nonetheless an applicant for admission who DHS has determined through the issuance of an NTA (**Bates 0001-0003**) is an alien seeking admission who is not clearly and beyond a doubt entitled to be admitted to the United States. *See* 8 U.S.C. §§ 1225(b)(2)(A); 1229a; **Gov't Ex. 1,** ¶4(c)-(e). In other words, the INA mandates that Petitioner "shall be detained for a proceeding under section 1229a ["full" removal proceedings]…" 8 U.S.C. § 1225(b)(2)(A).

Given the plain language of § 1225(a)(1), Petitioner cannot plausibly argue that he is not an applicant for admission. Nor can Petitioner plausibly challenge a DHS's officer's determination that he is "seeking admission" simply because he is not currently at the border requesting to come in. The Fifth Circuit explored these nuances in detail while analyzing a different INA provision *that is not at issue here* (8 U.S.C. § 1182(h)). *See Martinez v. Mukasey*, 519 F. 3d 532, 541–42 (5th Cir. 2008).

In *Martinez*, the Court reviewed § 1182(h)(2), which statutorily bars certain aliens from eligibility for a discretionary inadmissibility waiver if, for example, the alien was "admitted to the United States as an alien lawfully admitted for permanent residence" and convicted of an aggravated felony since that "admission." *Id.* The relevant question in *Martinez* was whether Congress intended to also statutorily bar those aliens who had adjusted their status to lawful permanent resident ("LPR") within the interior of the United States, as opposed to only those who were initially admitted at the port of entry as LPRs. *Id.* at 541–42. Martinez argued that because he had adjusted his status to LPR while in the interior, as opposed to having been admitted as an LPR at the border, he was not statutorily barred from applying for the waiver under § 1182(h)(2). *Id.* at 542. The government, however, argued that because of the agency's interpretation of the word "admission" in the INA's aggravated felony removal provision, the Court should find that aliens who adjusted their status to LPR are also barred from seeking discretionary waivers under § 1182(h)(2), reasoning that adjusting status "accomplished admission" for purposes of the aggravated felony provision. *Id.* (citing 8 U.S.C. § 1227(a)(2)(A)(iii); *In re Rosas-Ramirez*, 22 I&N Dec. 616 (BIA 1999)). As a result, the Fifth Circuit was tasked with deciding which interpretation to use to determine whether an LPR who adjusted status within the United States was statutorily barred from seeking a discretionary waiver. *Id.* at 543.

The Fifth Circuit rejected *Chevron* deference, because the Court found the language of the INA to be unambiguous:

> For determining ambiguity... if this statutory text stood alone, we would define "admitted" by its ordinary, contemporary, and common meaning...Congress has relieved us from this task, however, by providing the following definition: "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of that alien into the United States *after inspection and authorization* by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Under this statutory definition, "admission" is the lawful entry of an alien after inspection, something quite different ... from post-entry adjustment...

*Id.* at 544. The Court further noted that the phrase "lawfully admitted for permanent residence" is an entirely separate term of art defined in § 1101(a)(20), which does encompass both admission to the United States as an LPR and post-entry adjustment of status. *Id.* at 546. Section 1182(h), however, expressly incorporates that term of art, as defined by § 1101(a)(20), separate and apart from its use of "admitted," as defined by § 1101(a)(13). In other words, waivers are denied only to those aliens who have been admitted [§ 1101(a)(13)] to the United States as an alien lawfully admitted for permanent residence [§ 1101(a)(20)].

Similar to the Fifth Circuit's analysis in *Martinez*, this Court should navigate these nuanced issues by examining the unambiguous language of the controlling INA provisions in this case, which clearly define these various terms in proper context, to determine the following:

Petitioner (1) has not been "admitted" to the United States after inspection by an immigration officer [§§ 1182(a)(6), 1101(a)(13)]; (2) is an "applicant for admission" [§ 1225(a)(1)];[2] and (3) is subject to detention during "full" removal proceedings as an alien who DHS has determined to be seeking admission and who is not clearly and beyond a doubt entitled to be admitted [§ 1225(b)(2)(A)]. DHS is properly detaining Petitioner on a mandatory basis during his removal proceedings.

B. Congress intended to mandate detention of all applicants for admission, not just those who presented for inspection at a designated port of entry.

Furthermore, through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Congress corrected an inequity in the prior law by substituting the term "admission" for "entry." *See Chavez*, 2025 WL 2730228, at *4 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *United States v. Gambino-Ruiz*, 91 F.4th 918, 990 (9th Cir. 2024)). Under the prior version of the INA, aliens who lawfully presented themselves for inspection were not entitled to seek bond, whereas aliens who "entered" the country after successfully evading inspection were entitled to seek bond. *Id.* DHS's current interpretation of the mandatory nature of detention for aliens subjected to the "catchall" provision of § 1225 furthers that Congressional intent. *Id.* Petitioner's interpretation, however, would repeal the statutory fix that Congress made in IIRIRA. *Chavez*, 2025 WL 2730228, at *4.

Contrary to Petitioner's interpretation, 8 U.S.C. § 1226(a) applies to aliens within the interior of the United States who were once lawfully admitted but are now subject to removal from the United States under 8 U.S.C. § 1227(a). *See Jennings,* 583 U.S. at 287–88. § 1226(a) allows DHS to arrest and detain an alien during removal proceedings and release them on bond, but it

[2] Nothing in § 1101(a)(4) contradicts this definition. Section 1101(a)(4) simply differentiates between an alien seeking admission to the United States at entry (with DHS) versus an alien by applying for a visa (with the State Department) with which to eventually seek admission at entry into the United States.

does not mandate that all aliens found within the interior of the United States be processed in this manner. 8 U.S.C. § 1226(a). Nothing in the plain language of § 1226(a) entitles an applicant for admission to a bond hearing, especially not one that requires DHS to bear the burden of proof by clear and convincing evidence.

Nor does this interpretation render the Laken Riley Act superfluous simply because it appears redundant. Indeed, "redundancies are common in statutory drafting…redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute…" *Barton v. Barr*, 590 U.S. 222, 229 (2020). In summary, Congress intended to mandate the detention of Petitioner as correctly interpreted by DHS.

C. <u>Petitioner fails to overcome the jurisdictional hurdles under the INA.</u>

1. INA § 242 (8 U.S.C. § 1252).

Petitioner fails to overcome the jurisdictional hurdles under INA § 242, 8 U.S.C. § 1252. Where an alien, like this Petitioner, challenges any part of the process by which his removability will be determined, the court lacks jurisdiction to review that challenge. 8 U.S.C. § 1252(g); *see also Jennings*, 583 U.S. at 294–95. In *Jennings*, the Court did not find that the claims were barred, because unlike Petitioner here, the aliens in that case were challenging their continued and allegedly prolonged detention during removal proceedings. *Id.* Here, Petitioner is challenging the decision to remain subject to mandatory detention, without release from custody on bond, which arises directly from the decision to commence and/or adjudicate removal proceedings against him. *See id.*

2. Review of Any Decision Regarding the Admission of an Alien, Including Questions of Law and Fact, or Interpretation and Application of Constitutional and Statutory Provisions, Must Be Raised Before an Immigration Judge in Removal Proceedings, Reviewable Only by the Circuit Court After a Final Order of Removal.

Even if Petitioner claims he is not appropriately categorized as an applicant for admission subject to § 1225(b), such a challenge must be raised before an Immigration Judge in removal proceedings. 8 U.S.C. § 1225(b)(4). In other words, if an alien contests that he is an applicant for admission subject to removal under § 1225(b), any claim challenging his continued detention under § 1225(b) is inextricably intertwined with the removal proceedings themselves, meaning that judicial review is available only through the court of appeals following a final administrative order of removal. *See* 8 U.S.C. § 1225(b)(4).[3] This is consistent with the channeling provision at 8 U.S.C. § 1252(b)(9), which mandates that judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action or proceeding brought to remove an alien from the United States must be reviewed by the court of appeals upon review of a final order of removal. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL2617973 (D. Minn. Sept. 9, 2025). Accordingly, Petitioner fails to overcome the jurisdictional hurdles under 8 U.S.C. § 1252.

D. <u>8 U.S.C. § 1225(b) on its face, and as applied to Petitioner, comports with Due Process.</u>

Lastly, 8 U.S.C. § 1225 does not provide for a bond hearing or release from custody on bond, regardless of whether the applicant for admission is placed into full removal proceedings. The Supreme Court upheld the facial constitutionality of § 1225(b) in *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n.12 (1983).

[3] While bond proceedings under § 1226(a) are separate and apart from removal proceedings under § 1229a, challenges to decisions under § 1225(b), including the mandatory detention provision found within that statute, are to be raised in the same § 1229a proceedings. *See* 8 U.S.C. § 1225(b)(4).

That the alien in *Thuraissigiam* failed to request his own release in his prayer for relief does not make the holding any less binding here. *But see Lopez-Arevelo v. Ripa*, No. 25–CV–337–KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025). The alien in *Thuraissigiam* undisputedly brought his claim in habeas, and the Court noted that even if he had requested release, his claim would have failed. *Thuraissigiam*, 591 U.S. at 118–19. Regardless of whether the alien in *Thuraissigiam* was on "the threshold of entry" as an applicant for admission detained under § 1225(b)(1), as opposed to an applicant for admission found within the interior and detained under § 1225(b)(2), the reasoning of *Thuraissigiam* extends to all applicants for admission. Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *Id.; see also Jennings*, 583 U.S. at 297–303.

Mandatory detention of an applicant for admission during "full" removal proceedings does not violate due process, because the constitutional protections are built into those proceedings, regardless of whether the alien is detained. 8 U.S.C. § 1229a. The alien is served with a charging document (NTA) outlining the factual allegations and the charge(s) of removability against him. *Id.* § 1229a(a)(2); *see* **Bates 0001-0003; Bates 0012-0013; Gov't Ex. 1, ¶¶** 4(e)(h). Petitioner has an opportunity to be heard by an immigration judge and represented by counsel of his choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). Petitioner can seek reasonable continuances to prepare any applications for relief from removal, or he can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should Petitioner receive any adverse decision, he has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5). As of October 23, 2025, Petitioner has yet to exercise his right to request a bond custody redetermination hearing in his ongoing removal proceedings before an Immigration

Judge. **Gov't Ex. 1,** ¶ 4(i).

While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioner here raises no such claim where he has been detained for only a brief period pending his removal proceedings. For aliens, like Petitioner, who are detained during removal proceedings as applicants for admission, what Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. The "catch all" provision at § 1225(b)(2)(A) requires two things: (1) a DHS determination that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted; and (2) detention during "full" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner is scheduled for a hearing in removal proceedings before an Immigration Judge on the detained docket due to his presence without admission. *See* **Gov't Ex. 1,** ¶ 4(g). As applied here to Petitioner, § 1225(b)(2)(A) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

**II. Habeas relief under 28 U.S.C. § 2241 is unavailable because Petitioner failed to exhaust administrative remedies under 8 C.F.R. § 1003.38.**

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.

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).

Here, Petitioner did not allege or show there has been any exhaustion of administrative remedies. Significantly, Petitioner has yet to request a bond custody redetermination hearing before the Immigration Judge. *See* **Gov't Ex. 1,** ¶ 4(i). 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

In conclusion, Petitioner is not left without a remedy as Petitioner is already in "full" removal proceedings before an Immigration Judge, which includes the right to counsel at no expense to the government, and the right to seek judicial review administratively and through the circuit court. 8 U.S.C. § 1229a. Finally, detention is not indefinite, because removal proceedings will end, either with a grant of relief or with an order of removal. For the foregoing reasons, Respondents respectfully request that the Court dismiss Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1) in its entirety.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Ancy Thomas, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 24th day of October 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: **s/ Ancy Thomas**
**ANCY THOMAS**
Assistant United States Attorney