IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

WUANERGE ALBERTO-ALVARENGA,	)	CASE NO.: 3:25CV2644
	)	
Petitioner,	)	JUDGE JAMES R. KNEPP II
	)	
v.	)	MAG. JUDGE GREENBERG
	)	
RICHARD A. AUMILLE, et al.,	)	RETURN OF WRIT / RESPONSE IN
	)	OPPOSITION TO PETITION AND
Defendants.	)	MOTION TO DISMISS

INTRODUCTION

Petitioner Wuanerge Alberto-Alvarenga entered the United States unlawfully and is currently lawfully detained under a valid order of removal, with rights to file an appeal before the Board of Immigration Appeals ("BIA"). First, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*, precludes district courts from reviewing orders of removal, therefore this Court lacks subject-matter jurisdiction over the Petition. 8 U.S.C. § 1252(g). Next, the only proper respondent in this case is the Director of the U.S. Immigration and Customs Enforcement ("ICE") field office located in the district where Petitioner is being detained, here, the ICE Detroit

Field Office.[1] There is no "Ohio Field Office." Therefore, this Court lacks personal jurisdiction over the proper Respondent.

Finally, Petitioner does not present plausible due process claims because he has been afforded due process at all stages of the removal proceeding. Petitioner failed to exhaust his administrative remedies by withdrawing his request for bond and has not filed an appeal of the Immigration Court's order of removal to the BIA. The facts surrounding Petitioner's arrest by local authorities are not relevant to the issue of his removal and do not affect the legality of his detention. *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.").

Therefore, this Court should deny the Petition and dismiss the case for lack of personal and subject-matter jurisdiction and failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(1), (2) and (6).

FACTUAL BACKGROUND

On November 4, 2025, Petitioner was arrested by state law enforcement for a complaint of domestic violence, and was later detained by ICE. (Pet., ECF No. 1, PageID #2-4.) Prior to the arrest, Petitioner filed an asylum application, or UAC I-589, alleging that he "fled Honduras in 2016 after being violently attacked and threatened with death by armed gang members following his refusal to join them." (TRO, ECF No. 5, PageID 98.) On December 29, 2025, an immigration

[1] This response in opposition is filed on behalf of Respondents Pamela Bondi, Attorney General of the United States, Kristi Noem, Secretary of the Department of Homeland Security, and Rodney S. Scott, Commissioner of U.S. Customs and Border Protection, who are automatically substituted as parties pursuant to Fed. R. Civ. P. 25(d). The Office of the United States Attorney may make appearances in court to attend to the United States' interests, pursuant to 28 U.S.C. § 517, and consistent with that statute, this response attends to the United States' interests to the extent that the Petition names Richard A. Aumille, the Seneca County Jailer, as a respondent.

judge granted a motion of the U.S. Dept. of Homeland Security ("DHS"), to pretermit and deny without hearing the Petitioner's asylum application due to Petitioner's failure to establish *prima facie* eligibility for relief. (*See* Ex. A, Motion to Pretermit Asylum Application and Order Granting Motion.[2]) The immigration judge's order granting the motion to pretermit noted that DHS's motion was unopposed and summarized the material facts as stated by Petitioner. (*Id.*) An order of removal was issued the same day. (*See* Ex. B, Order removing petitioner to Honduras dated Dec. 29, 2025.) On January 2, 2026, the immigration judge reissued the order of removal to indicate that the respondent reserved his right to appeal. (*See* Ex. C, Order of removal dated January 2, 2026). As noted on the order of removal, the appeal deadline is February 2, 2026. (*Id.*) On that same day, Petitioner filed a motion to reconsider. (*See* Ex. D, Petitioner's Emergency Motion to Reconsider and Vacate Summary Order of Deportation and for Administrative Stay). On January 9, 2026, the immigration judge denied the motion to reconsider. (*See* Ex. E, Order denying motion to reconsider.)

LAW AND ARGUMENT

Petitioner requests relief in the form of immediate release from detention, a bond hearing, and ultimately seeks to avoid his pending removal from the United States. (Pet., ECF No. 1, PageID #8.) Despite having a valid order of removal, Petitioner argues the detention is unlawful because the complaint of domestic violence was later recanted by the victim. (*Id.*, PageID #5.)

---

[2] Attaching documents from Petitioner's removal proceedings does not convert the instant Response in Opposition into a motion for summary judgment, since the removal proceedings are described and referenced in Petitioner's filings and are central to his claims. (*See* Pet., ECF No. 1, PageID #6-8; *see also* TRO, ECF No. 5, PageID #98-99); *Shoemake v. Mansfield City Sch. Dist. Bd. of Educ.*, 61 F.Supp.3d 704, 711 (N.D. Ohio 2014)(court may consider exhibits attached to a motion to dismiss, as long as they are referred to in the complaint and are central to the plaintiff's claims), (citing *Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir. 2001)).

However, whether the state criminal arrest ultimately resulted in conviction is irrelevant here. The fact remains that Petitioner entered the United States without legal documentation to be admitted, applied for asylum, which was legally denied by an immigration judge, and has not appealed that decision to the BIA. There is no subject-matter jurisdiction for this Court to release Petitioner and prevent his removal, therefore, the Petition should be denied.

I. STANDARD OF REVIEW

A. SUBJECT-MATTER JURISDICTION

The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts are courts with limited jurisdiction and may only hear cases that are "authorized by Constitution and statute." *Id.* If at any time, the court determines that it lacks subject-matter jurisdiction, that court must dismiss the action in front of them. *Mich. Emp't Sec. Comm'n v. Wolverine Radio Co.*, 930 F.2d 1132 (6th Cir. 1991).

The requirement that a plaintiff establish subject-matter jurisdiction "as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) (some internal quotation marks omitted). A motion to dismiss under Fed. R. Civ. P. 12(b)(1), for lack of subject-matter jurisdiction, can raise facial or factual attacks. *W6 Rest. Grp., Ltd v. Loeffler*, 140 F.4th 344, 349 (6th Cir. 2025). Where there is a facial attack, the Court will accept all material allegations of the complaint as true, but it will be confined to the four corners of the complaint. *Parsons, v. U.S. Dep't of Just.*, 801 F.3d 701, 706-10 (6th Cir. 2015) (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)). Where there is a factual attack, the court will consider evidence that is outside the pleadings and "weigh evidence to confirm the existence of factual predicates for subject-matter jurisdiction." *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 440 (6th Cir. 2012). Regardless of which attack is used, the plaintiff bears the burden of persuading the Court that

subject-matter jurisdiction exists. *Dismas Charities, Inc. v. U.S. Dep't of Justice*, 401 F.3d 666, 671 (6th Cir. 2005). If Petitioner fails to meet that burden, then the Petition should be dismissed for lack of subject-matter jurisdiction, pursuant to Rule 12(b)(1).

B. PERSONAL JURISDICTION

Congress has defined the federal courts' habeas corpus power over inmates in federal custody through statute, 28 U.S.C. § 2241. A writ of habeas corpus does not act upon a petitioner who seeks relief, but on the person who holds the petitioner in custody. 28 U.S.C. §§ 2241(a), 2242, and 2243. Therefore, a court has jurisdiction over a habeas petition if it has personal jurisdiction over the petitioner's custodian. *Roman v. Ashcroft*, 162 F. Supp. 2d 755, 758 (N.D. Ohio, 2001), (citing *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 495 (1973)). If personal jurisdiction does not exist, a petition may be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

C. FAILURE TO STATE A CLAIM

A Rule 12(b)(6) motion to dismiss for failure to state a claim should be granted if the petition fails to provide facts that are "sufficient 'to raise a right to relief above the speculative level,' and to 'state a claim to relief that is plausible on its face.'" *Hensley Mfg. v. ProPride, Inc.*, 579 F.3d 603, 609 (6th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). It is generally accepted that "…'a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.'" *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 WL 2444114, at *8 (N.D. Ohio Aug. 25, 2025) (citing *Howell v. INS*, 72 F.3d 288, 291 (2nd Cir. 1995)). In the context of a habeas petition, "…prudential principles of exhaustion counsel that Petitioner pursue his administrative remedies before seeking a writ of habeas corpus." *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528, 530 (N.D. Ohio 2025), (citing *Leonardo v. Crawford*, 646 F.3d 1157,

1160 (9th Cir. 2011)); *see also Laguna Espinoza v. Dir. of Detroit Field Off., U.S. Immigr. & Customs Enf't,* No. 4:25-CV-02107, 2025 WL 2878173, at *2 (N.D. Ohio Oct. 9, 2025) (dismissing § 2241 petition for failure to exhaust). Therefore, a petitioner who fails to exhaust fails to state a claim, and the habeas petition should be dismissed pursuant to Rule 12(b)(6).

II. THIS COURT LACKS PERSONAL AND SUBJECT MATTER JURISDICITON

A. NO PERSONAL JURISDICTION OVER THE PROPER RESPONDENT

Federal courts have an independent obligation to examine their own jurisdiction and may not entertain a § 2241 petition in which jurisdiction is lacking. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990). When a petitioner contends that he "is in custody in violation of the Constitution or laws or treaties of the United States," § 2241 confers a general grant of habeas jurisdiction. 28 USC § 2241(a) and (c)(3). A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. "[I]n habeas challenges to present physical confinement the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The habeas statute "straightforwardly provides that the proper respondent to a habeas petition is 'the person who has custody over [the petitioner].'" *Id.* at 434 (quoting 28 U.S.C. § 2242); *see also* 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained.")

The Sixth Circuit has held that although the warden of each detention facility "technically has day-to-day control over alien detainees, the [ICE] District Director for the district where a detention facility is located 'has power over' alien habeas corpus petitioners" and is therefore an appropriate respondent. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). The ICE Detroit Field Office is responsible for the state of Ohio and Petitioner alleges he is being held in Seneca County, Ohio. (ECF #1, PageID 2.) Therefore, the only proper Respondent in this case is the

current Director of the ICE Detroit Field Office, Kevin Raycraft. Petitioner failed to name the proper respondent, and instead named "Sean G. Smith, Ohio Field Office Director." Therefore, there is no personal jurisdiction over Kevin Raycraft, the proper Respondent, and accordingly the Petition should be dismissed for lack of personal jurisdiction pursuant to Fed. R. Civ. Pro. 12(b)(2). *Purley v. Toledo Federal Court*, Case No. 3:24-CV-01211, 2025 WL 240737, *5 (N.D. Ohio January 17, 2025).

B. NO SUBJECT-MATTER JURISDICTION OVER ORDER OF REMOVAL

Through the REAL ID Act, Congress has limited the jurisdiction of federal courts as follows:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), *including section 2241 of title 28,* or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added). "In the REAL ID Act, Congress decided that, as a matter of public policy, [federal courts] do not have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order." *Rranxburgaj v. Wolf,* 825 F. App'x 278, 283 (6th Cir. 2020). This holds true "whether or not [federal courts] agree with ICE's decision to execute [a petitioner's] removal order." *Id.* Federal law therefore limits jurisdiction as it relates to claims arising from the execution of removal orders—even if federal question jurisdiction would otherwise be proper. 8 U.S.C. § 1252(g); *See Elgharib v. Napolitano,* 600 F.3d 597, 607 (6th Cir. 2010)("Congress has repeatedly sought to restrict an alien's ability to obtain judicial review of a final order of removal …".) By its terms, this statutory limitation applies to habeas relief under 28 U.S.C. § 2241, and this Court lacks subject-matter jurisdiction over Petitioner's claims for relief.

Further, this Court lacks subject-matter jurisdiction over the immigration judge's

determination that Petitioner's asylum claim did not establish a credible fear of persecution. *See DHS v. Thuraissigiam*, 591 U.S. 103, 114, 139–40 (2020)(holding courts may not review the determination that an applicant lacks a credible fear of persecution) (citing *Reno v. American-Arab Anti-Discrimination Comm., et al.*, 525 U.S. 471, 486 (1999)("AAADC")). Furthermore, Petitioner cannot prove a due process violation because he is being provided due process through the removal proceedings, has taken advantage of his due process rights through that proceeding, and has not been denied any right to bond nor appeal.

1. ICE lawfully detained petitioner upon his arrest by local authorities.

Petitioner's claims of "prolonged and unlawful detention" are without merit. Petitioner was lawfully detained by ICE after his arrest by local law enforcement and placed into removal proceedings, pursuant to 8 U.S.C. § 1225(b)(2)(A). The decision to commence removal proceedings against a foreign national includes the lawful detention of that foreign national pending the removal determination. *See* 8 U.S.C. § 1226(a). "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings," and review of claims arising from that choice is barred under § 1252(g). *AAADC*, 525 U.S. at 474, 485 n.9 (decisions to commence proceedings, adjudicate cases, and execute removal orders are discretionary and not subject to review.) Petitioner states he was arrested less than ninety days ago, on November 4, 2025, therefore his detention has not been prolonged. (Pet., ECF No. 1, PageID #3.) Any delay by state prosecutors to arrest or convict Petitioner is irrelevant to the issue of his detention and holds no bearing on this Court's lack of subject-matter jurisdiction; therefore the Petition should be dismissed.

2. Petitioner withdrew his bond request.

Petitioner requests this Court order a bond hearing, yet Petitioner withdrew his request for bond and waived appeal. (*See* Ex. F, Order withdrawing bond request.) Had Petitioner reserved

appeal, the appeal would have been due to the BIA on December 4, 2025. (*Id.*) Petitioner has not resubmitted a bond request with the Immigration Court and cannot now argue that a failure to hold a bond hearing is a violation of his due process rights.

3. Petitioner may appeal the order of removal.

Petitioner's asylum application was denied without further review ("pretermit"), because he failed to meet his *prima facie* burden proving a credible fear of persecution under the INA. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)("Removal without further review if no credible fear of persecution.")(*See also* Ex. A.) This denial is not evidence of a due process violation. First, the pretermit process is legally authorized and recognized by federal law, BIA precedent, and the Sixth Circuit. *See* 8 U.S.C. § 1225(b)(1)(B)(iii); *Matter of H-A-A-V-*, 29 I & N Dec. 233, 238 (BIA 2025); *Almuhtaseb v. Gonzales*, 453 F.3d 743 (6th Cir. 2006); *Osabas-Rivera v. Bondi*, 161 F.4th 446 (6th Cir. 2025). The INA states: "if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review." *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(I).

Next, the immigration judge's determination is not subject to review by this Court. Here, the immigration judge determined Petitioner failed to meet his *prima facie* burden, therefore a hearing was unnecessary; the order documents the judge's reasons for denying Petitioner's asylum application, making a record of his determination as required by statute. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(II)(officer shall prepare a written record including a summary of the material facts as stated by the applicant and analysis of why no credible fear of persecution);(*see also* Ex. A.) Petitioner's right to a determination does not include a right to a hearing, therefore, the immigration judge's order does not violate due process. *See Thuraissigiam*, 591 U.S. at 140 (Holding Congress only provided the right to a determination of eligibility for asylum. "Because the Due Process Clause provides nothing more, it does not require review of that determination or

how it was made.")

Finally, Petitioner is exercising his due process rights before the Immigration Court, because he filed a motion to reconsider and reserved his appeal, which he has not yet filed. (*See* Exs. C, D and E.) Therefore, Petitioner can prove no due process violation. Without a constitutional violation, this Court lacks subject-matter jurisdiction over the Petition and it should be denied and dismissed for lack of subject-matter jurisdiction pursuant to Fed. R. Civ. Pro. 12(b)(1).

III. PETITIONER FAILS TO STATE A CLAIM DUE TO FAILURE TO EXHAUST

Petitioner has failed to exhaust his administrative remedies provided through the removal process, as discussed above, therefore, he fails to state a claim. Although in the case at hand exhaustion is discretionary, "[w]hen 'Congress has not clearly required exhaustion, sound judicial discretion governs whether or not exhaustion should be required.'" *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013)(quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992), citing *McGee v. United States*, 402 U.S. 479, 483 n.6 (1971)). Judges in the Northern District of Ohio have dismissed similar habeas petitions for failure to exhaust administrative remedies. *See e.g. Hernandez Torrealba*, 2025 WL 2444114, at *8 (N.D. Ohio Aug. 25, 2025); *Monroy Villalta,* 794 F. Supp. 3d at 530; *Laguna Espinoza*, 2025 WL 2878173, at *2 (N.D. Ohio Oct. 9, 2025).

The purpose of the exhaustion requirement is two-fold. First, it protects administrative agency authority: "Exhaustion gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). Second, it promotes efficiency: "Claims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court." *Id.* "The exhaustion doctrine both allows agencies to 'apply [their] special expertise in interpreting relevant statutes' and promotes judicial efficiency." *Shearson*, 725 F.3d at 593.

The Ninth Circuit case of *Leonardo v. Crawford* is instructive. *Leonardo*, 646 F.3d 1157. There, the petitioner pursued habeas review of an Immigration Court's adverse bond determination before appealing to the BIA. *Id.* at 1160. The Ninth Circuit determined that filing a habeas petition in district court was "improper" because the petitioner "should have exhausted administrative remedies by appealing to the BIA…" before filing in district court. *Id.* (citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)). The same holds true in this district and in the Sixth Circuit. *See e.g. Laguna Espinoza*, 2025 WL 2878173, at *2 (N.D. Ohio Oct. 9, 2025) (citing *Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018)); *Monroy Villalta,* 794 F. Supp. 3d at 530; and *Hernandez Torrealba*, 2025 WL 2444114, at *8 (N.D. Ohio Aug. 25, 2025).

Here, Petitioner failed to exhaust his administrative remedies on bond when he withdrew his request for bond. (*See* Ex. F.) Also, the Immigration Judge's decision ordering removal indicated that Petitioner still has appeal rights until February 2, 2026. (Govt. Ex. C.) As in *Leonardo*, principles of exhaustion require that Petitioner pursue his administrative remedies before filing a habeas petition in federal district court. Congress provided a robust administrative hearing and appeal process during removal proceedings. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). Petitioner should be required to avail himself of that process, therefore, his Petition should be dismissed.

CONCLUSION

For all of these reasons, Respondents respectfully request the Court dismiss the Petition for lack of subject-matter jurisdiction, lack of personal jurisdiction, and failure to state a claim, pursuant to Rules 12(b)(1), (2), and (6).

Respectfully submitted,

DAVID M. TOEPFER

United States Attorney

By: */s/ Angelita Cruz Bridges*

Angelita Cruz Bridges (0072688)
Assistant U.S. Attorney
Four Seagate, Suite 308
Voice: (419) 259-6376
Fax: (419) 259-6471
Angelita.Bridges@usdoj.gov
Attorney for Federal Defendants

CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

I certify that this Response in Opposition and Memorandum in Support of Motion to Dismiss comports with the page limitations identified in Local Rule 7.1(f). This case is unassigned, and the Memorandum in Support of Respondents' Motion to Dismiss is under twenty pages in length.

/s/ Angelita Cruz Bridges
Angelita Cruz Bridges
Assistant U.S. Attorney