UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Juan Carlos Trejo Romero,
Petitioner,

v.

Markwayne Mullin, et al,
Respondents.

Civil Action No. 3:26-CV-2182-LS

RESPONSE TO PETITION
PETITIONER WAS PROVIDED A BOND HEARING

On July 8, 2026, Petitioner received a substantive bond hearing where Immigration Judge Dean Tuckman determined the Petitioner was a danger to the community denied bond. Exh. A (Bond Order). Petitioner is using this Habeas petition to dispute the immigration judge's discretionary findings while claiming no further process exists that would allow Petitioner to meaningfully challenge the legality of his continued detention. ECF No.1. However, Petitioner has an adequate remedy to redress his claims, that would be to file an appeal with the Board of Immigration Appeals and if necessary, he can seek petition for review from the Fifth Circuit Court of Appeals. This Court does not have jurisdiction to review immigration judge's decisions or reweigh the evidence and find this Court would have ruled differently. 8 U.S.C. § 1226(e); *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (explaining that 8 U.S.C. §1226(e) bars an alien's challenge to "a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release" (internal quotation marks omitted)). Other Courts in this District have agreed that there is no judicial review of IJ bond determinations. *See, e.g., Leon-Gonzalez v. Anda-Ybarra*, et al., 3-26-cv-00026-KC (W.D. Tex. February 10, 2026) (ECF No. 12) ("This Court lacks jurisdiction to sit in review of an IJ's discretionary finding that an alien is a flight risk and therefore should be denied

bond."); *Gonzalez Cambar v. Bondi*, 5:26-CV-210-OLG (W.D. Tex. Dec. February 20, 2026) (ECF No 11) ("While petitioner may be frustrated with the result of that hearing, this Court lacks jurisdiction to review the discretionary judgment of the immigration judge."). As such, Respondents respectfully request that the Court deny this petition.

BACKGROUND

Petitioner is a citizen and native of Honduras. Exh. B (I213). Petitioner entered the United States without inspection in September of 2002. *Id.* According to ICE and USCIS, Petitioner has never applied for legal status nor relief from removal. Further information from ICE states that Petitioner was arrested in August of 2018 for the offense of Driving While Intoxicated in Ector County, Texas. There, he judicially confessed to the offense and entered a pre-trial diversion court. Petitioner was given a bond and released from immigration detention. On April 13, 2026, Petitioner was again arrested for the offense of Driving While Intoxicated in Ector County, Texas. *Id.* He was convicted of that offense and on May 20, 2026, Petitioner was detained by immigration authorities to begin removal operations. *Id.* Petitioner was given an NTA and stands removable under INA § 212(a)(6)(A)(i). On July 8, 2026, Petitioner was denied a bond by the immigration court and did not appeal that decision. Exh. A. Rather, Petitioner is using his Habeas Petition to challenge the immigration judge's discretion. ECF No. 1.

ARGUMENT

A. The Court Lacks Jurisdiction to Review a Discretionary Decision regarding Detention.

We start, as always, with jurisdiction." *Texas v. Biden*, 20 F.4th 928, 947 (5th Cir. 2021), as revised (Dec. 21, 2021), rev'd and remanded, 597 U.S. 785, (2022). Before addressing any other

matters before the Court, jurisdiction must first be established. Petitioner cannot now use habeas proceedings as a vehicle to dispute discretionary findings by an immigration judge. *Saint Fort v Ashcroft*, 329 F.3d 191, 200 (1st Cir. 2003) (noting that the Supreme Court has "read the jurisdiction-limiting provision in § 1226(e) as applying only to review of the Attorney General's discretionary judgment") (citing *Demore v. Kim*, 538 U.S. 510,516–517(2003)); *see also Loa–Herrera v. Trominski*, 231 F.3d 984, 991–992 (5th Cir. 2000); 8U.S.C. § 1226(e).

8 U.S.C. § 1226(e) strips this Court of jurisdiction to hear such a challenge. Section 1226(e) states:

> "(e) Judicial review
>
> "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 decisionby the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole"

The bar to judicial review was discussed and analyzed by the Supreme Court and found that 8 U.S.C.§ 1226(e) barred challenges to discretionary decisions. *See Demore v. Kim*, 538 U.S. 510, 516 (2003) (explaining that 8 U.S.C. § 1226(e) bars an alien's challenge to "a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release" (internal quotation marks omitted)); *Pensamiento*, 315 F. Supp. 3d at 688 ("Congress has eliminated judicial review of discretionary custody determinations [emphasis added]); *See Blandon v. Barr*, 434 F. Supp. 3d 30, 36 (W.D.N.Y. 2020) (while the Court may consider whether the IJ complied with the Court-ordered procedural protections, it does not reweigh the evidence nor consider whether it would have made the same determination as the IJ).

Petitioner is not entitled to judicial review of any bond decision before this Court. To the extent that Petitioner asks the Court to second-guess the IJ's weighing of the evidence, that claim

is directed solely to the IJ's discretion and is unreviewable. Petitioner must seek review from the Board of Immigration Appeals. That is the proper avenue for Petitioner's complaints, and Petitioner should not be allowed to treat this Court like the BIA.

B. Petitioner Has Not Exhausted His Administrative Remedies

"A person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018) (per curiam) (citing *United States v. Cleto*,956 F.2d 83, 84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.*

There are approximately 3.74 million cases pending in immigration court. *See*, https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones (Sept.4, 2025). Federal district courts are not intended nor equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 U.S.C. § 1226(e) (district courts do not have jurisdiction to review discretionary decisions made by immigration judges regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole). "Challenges to removal proceedings, the government's evidence, and the merits of asylum claims are properly addressed to the immigration court and should be administratively exhausted before presenting in district court. *Hinojosa*, 896 F. 3d at 314; *see Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) (McFarland, J.) (declining to review Petitioner's detention-based claims due to his failure to exhaust administrative remedies); *Tecum Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D.Ohio Dec. 24, 2025) (Calabrese, J.) (holding that Petitioner must first pursue challenge before BIA for exhaustion and that such exhaustion is not futile); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) (McFarland, J.) (holding that Petitioner's failure to exhaust claims with BIA precluded judicial review of habeas claims); *Garibay-Robledo*

v. Noem, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025), *reconsideration denied*, No.1:25-CV-177-H, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.) (holding that Petitioner does not demonstrate grounds for excusing exhaustion and must first advance his request for relief to BIA). Petitioner is not allowed by statute to circumvent the immigration court or the BIA and utilize this Court's resources to make an expedited determination.

C. Separation of Powers

Petitioner further argues that his detention violates the principle of separation of powers ECF No. 1 at 267.Petitioner's argument "disregards the reason for our century-old rule regarding the due process rights of an alien seeking initial entry." *Thuraissigiam*, 591 U.S. at 139. Indeed, the "Constitution gives 'the political department of the government'"—Congress and the Executive Branch—"plenary authority to decide which aliens to admit," which includes "the power to set the procedures to be followed in determining whether an alien should be admitted." *Id.* (internal citations and quotations omitted). Thus, contrary to Petitioner's argument, the Constitution envisions that the Legislative and Executive Branches would have the complete authority to determine the procedures for determining whether an alien may be admitted, such as mandating detention pending a removal proceeding. Because Congress mandated detention for aliens who have not been admitted or paroled, and the Executive Branch is implementing this statutory mandate, the "political department of the government" is using its authority precisely as the Constitution envisioned. *Id.*

CONCLUSION

The Court should dismiss this petition, or in the alternative, deny it on the merits. The Court is stripped of jurisdiction to review discretionary determinations of the immigration judge and may not consider whether it would have made the same finding. 8 U.S.C § 1226(e). This Court may be concerned how §1226(e) effects the remedying of harms from illegal detention, but the Third

Circuit's reasoning regarding another jurisdictional stripping statute, 8 U.S.C. 1252(b)(9), rings true here. "Congress has the power to balance the orderly adjudication of claims with concerns about remedying harms from illegal detention." *Khalil v. President, United States of Am.*, No. 25-2162, 2026 WL 111933, at *10 (3d Cir. Jan. 15, 2026). The balance that Congress struck in § 1226(e), removed jurisdiction from this Court to review these discretionary determinations. Additionally, other decisions within the Western District of Texas support this finding. *See, e.g., Leon-Gonzalez v. Anda-Ybarra*, et al., 3-26-cv-00026-KC (W.D. Tex. February 10, 2026) (ECF No. 12) ("This Court lacks jurisdiction to sit in review of an IJ's discretionary finding that an alien is a flight risk and therefore should be denied bond."); *Gonzalez Cambar v. Bondi*, 5:26-CV-210-OLG (W.D. Tex. Dec. February 20, 2026) (ECF No 11) ("While petitioner may be frustrated with the result of that hearing, this Court lacks jurisdiction to review the discretionary judgment of the immigration judge.").

This petition should be dismissed or denied.

Dated: August 31, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kyle J Russo, certify that a true and correct copy of the forgoing document was mailed to the Petitioner at the following address:

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/s/ Kyle J Russo
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