UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

MICHAEL ANDRES ALVAREZ PUERTA v. MICHAEL NESSINGER, Warden of Wyatt Detention Facility; PATRICIA HYDE, Director ICE Boston Field Office; KRISTI NOEM, U.S. Secretary of Homeland Security; *in their official capacities.*	Civil Action No.: 1:25-cv-108 **AMENDED PETITION FOR A WRIT OF HABEAS CORPUS**

AMENDED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

1. Petitioner, Michael Andres Alvarez Puerta, by and through undersigned counsel, petitions this Honorable Court for a Writ of Habeas Corpus to remedy his unlawful detention. In support thereof, Mr. Alvarez Puerta states as follows:

I. CUSTODY

2. Mr. Alvarez Puerta is in the physical custody of the United States Immigration and Customs Enforcement ("ICE") detained at Wyatt Detention Facility ("WDF") in Central Falls, RI. ICE has contracted with the WDF to detain individuals pending the completion of removal proceedings. Mr. Alvarez Puerta is under the direct control of Respondents and their agents.

II. JURISDICTION AND VENUE

3. This case arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. §701 *et seq.* This Court has jurisdiction in this action under 28 U.S.C. §§ 2241(a) and (c)(1) and (3); U.S. CONST. art. I, §9, cl. 2 (the "Suspension Clause"); and 28 U.S.C. § 1331, as

Mr. Alvarez Puerta is presently in custody under the authority of the United States, and such custody is in violation of the Constitution and laws of the United States. The Court may grant relief pursuant to 28 U.S.C. §2241; the Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*; and the All Writs Act, 28 U.S.C. § 1651. Further, this Court has jurisdiction under 28 U.S.C. § 2241 to review constitutional as well as statutory issues. *See Hernandez Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021). The Writ of Habeas Corpus "is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286,290 (1969). The power of this Court's inquiry on federal habeas corpus review is plenary. *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001); *Townsend v. Sain*, 273 U.S. 293, 312 (1963).

4. Venue is proper as Mr. Alvarez Puerta is presently detained in Rhode Island at the WDF in Central Falls. 28 U.S.C. §2241(a); *Rumsfield v. Padilla*, 542 U.S. 426, 443 (2004).

III. PARTIES

5. Petitioner, Michael Andres Alvarez Puerta, is a native and citizen of Colombia, who entered the United States on approximately June 9, 2023 by an Entry Without Inspection ("EWI") and was placed into removal proceedings before the Executive Office of Immigration Review ("EOIR") before the Boston Immigration Court.

6. Respondent, Michael Nessinger, is the warden of Wyatt Detention Facility since August 2023. In his official capacity, he is the legal custodian of Petitioner.

7. Respondent, Patricia Hyde, is the Director of the ICE Boston Field Office. ICE is the component agency of the U.S. Department of Homeland Security ("DHS") responsible for detaining and deporting non-U.S. citizens. In her legal capacity, she is the legal custodian of Petitioner.

8. Respondent, Todd M. Lyons, is the Acting Director of Immigration and Customs Enforcement. In his official capacity, he is the legal custodian of Petitioner.

9. Respondent, Kristi Noem, is the U.S. Secretary of Homeland Security. In her official capacity, she is the legal custodian of Petitioner.

IV. EXHAUSTION

10. There is no statutory exhaustion requirement under 28 U.S.C. § 2241. Habeas protections have been recognized by the Court as fundamental to individual liberty. *See e.g., Boumediene v. Bush*, 553 U.S. 723, 740-46 (2008).

V. STATEMENT OF RELEVANT FACTS

11. Petitioner entered the United States without inspection on or about June 9, 2023 in order to seek asylum. After an arrest by the U.S. Customs and Border Protection ("CBP") officers, Petitioner was issued the Notice to Appear ("NTA"), DHS form I-862, with a future immigration court date. Petitioner was detained by CBP for approximately five days, but was then released with his partner and young daughter, with whom he had entered the U.S. Exhibit #1.

12. On August 18, 2023, Petitioner timely filed the application for Asylum, Withholding of Removal and deferral of removal under the Convention Against Torture. Petitioner filed the application while residing in Rhode Island and with the help of local immigration counsel. Petitioner received his Employment Authorization Document ("EAD") and was employed with permission of the U.S. government.

13. On December 9, 2024, Petitioner was arrested by the Central Falls Police Department and charged with two misdemeanors: R.I.G.L. § 11-5-3 Domestic simple assault and battery; and RI.G.L. § 11-45-1 Domestic Disorderly Conduct. The Central Falls Police Department submitted

Petitioner's fingerprints to another federal database, which identified the Petitioner as an individual in removal proceedings and produced an "Immigration Alien Response" or IAR, thereby lodging the immigration detainer. Exh. #2.

14. The Petitioner was held in the custody of the Central Falls Police Department until the time of his arraignment in the Sixth Division District Court on December 10, 2024. The District Court judge ordered Petitioner released on his personal recognizance, modified the order of protection, and referred the Petitioner to the RI Public Defender. Exh. #3.

15. Three ICE agents arrested the Petitioner immediately after the conclusion of the arraignment in the area of the holding cells of the district court building. Exh. #2. The Petitioner was unable to pursue the intake process at the RI Public Defender's office and was not assigned a public defender.

16. The Petitioner was held at WDF under 8 U.S.C. § 1226(a) – the discretionary detention provision (as opposed to 8 U.S.C. § 1226(c) the mandatory detention statute). Petitioner requested a hearing with the Immigration Judge ("IJ") to review the initial custody decision pursuant to 8 C.F.R. § 1236(d)(1) and 8 C.F.R. § 1003.19.

17. The initial custody redetermination hearing ("bond hearing") took place on December 26, 2024 before the Immigration Judge ("IJ"). The ICE attorney submitted two narratives by police officers containing statements made to them by the complaining witness, the Petitioner's partner, after the incident occurred. The ICE attorney also submitted the judge's order releasing Petitioner on his own recognizance, the district court docket sheet, the incident report containing the two misdemeanor charges, and the no contact order. Petitioner, the respondent in proceedings before the immigration court, was represented by counsel and submitted a letter from the complaining witness asking for the Petitioner to be released, proof of filing taxes, proof of employment and six

letters of support. The IJ denied bond finding that the Petitioner was a danger to the community. Exh. #4.

18. At Petitioner's next pretrial conference at Sixth Division District Court on January 7, 2025, the criminal court judge issued a warrant based on Petitioner's failure to appear. Exh. #3

19. Petitioner's prior immigration counsel withdrew and the Petitioner found new immigration counsel. Upon request by new immigration counsel to a supervisor at the RI Public Defenders office, Petitioner was appointed criminal defense counsel and the criminal court judge subsequently cancelled the bench warrant on February 11, 2025. Exh. #3.

20. At a pretrial conference hearing date on March 25, 2025 at the District Court, Sixth Division, in Providence, RI, the criminal court judge dismissed the charges against Petitioner after the Central Falls solicitor withdrew the criminal charges. Exh. #3.

21. Immigration counsel has requested the audio recording of the bond hearing from December 26, 2024 since February 19, 2025 through approximately five phone calls and three emails. Counsel is not in receipt of the Digital Audio Recording ("DAR") from the Immigration Court as of the present date.

22. Petitioner may now request a new hearing through a written motion to the IJ asking for a new bond hearing due to materially changed circumstances. *See* 8 C.F.R. § 1003.19(e).

VI. LEGAL FRAMEWORK

23. Immigration detention under 8 U.S.C. § 1226(a) is not mandatory detention. After the initial arrest by the Department of Homeland Security, operating through ICE, anyone initially detained pursuant to § 1226(a) may face continued detention, may be released on a bond of at least $1,500, or may be released on conditional parole. 8 U.S.C. §§ 1226(a)(1)-(2). Detention under § 1226(c), on the other hand, is mandatory detention without an initial bond hearing and is triggered

by the specific statutory grounds identified in the statute. 8 U.S.C. § 1226(c). An individual held in detention pursuant to § 1226(a) may seek review by an IJ at a custody redetermination, or bond, hearing. 8 C.F.R. § 1236.1(d)(1). At such a hearing, the government (DHS/ICE) bears the burden to show by clear and convincing evidence that detention should continue because the detained person is a danger to the community. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 40 (1st Cir. 2021). The Court of Appeals for the First Circuit, and others, decided that DHS/ICE should bear the burden of proof in a bond hearing by applying the three-part balancing test articulated in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Hernandez-Lara*, 10 F.4th 40; *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020). Prior to *Hernandez-Lara*, the burden had fallen to the detainee to show that he/she was not a danger to the community, according to a regulation that the Board of Immigration Appeals had imposed on bond hearings in contravention of its prior precedent. *Hernandez-Lara*, 10 F.4th at 27.

24. The burden allocated to DHS/ICE to show dangerousness by clear and convincing evidence ensures that the liberty interest of due process is sufficiently protected. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). In *Hernandez-Lara*, the First Circuit cited to Supreme Court precedent repeatedly finding that "liberty is the norm, and detention ... without trial is the carefully limited exception." *Hernandez-Lara*, 10 F.4th at 28 (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418 (1979). Immigration detention is civil, but its conditions closely mirror the conditions of criminal incarceration facilities where immigration detainees are often held. *See Velasco Lopez*, 978 F.3d at 850 ("[Petitioner] was not 'detained'; he was, in fact, incarcerated under conditions

indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes."). The First Circuit additionally took notice of the length of immigration detention among various petitioners and found that individuals detained under § 1226(a) could be detained for two years or longer. *Hernandez-Lara,* 10 F.4th at 30 (citing to *Pereira-Brito v. Barr*, 415 F.Supp. 3d 258, 264-65 (D.Mass. 2019).

25. Dangerousness cannot be used as a basis for indefinite civil immigration detention, *id.* at 38, and constitutional limits on discretionary detention under § 1226(a) require that dangerousness be supported by clear and convincing evidence. *Id.* at 40. An individual's status as someone who is removable form the U.S., "bears no relation to [his or her] dangerousness." *Zadvydas*, 533 U.S. at 691-2. In *Salerno*, the Supreme Court upheld pre-trial detention pursuant to the Bail Reform Act for individuals considered to be a danger to the community, but only because of specific procedural safeguards, including proving dangerousness by clear and convincing evidence. 481 U.S. at 751. The Court explained that the Bail Reform Act was tailored to a specific group of arrestees for certain crimes as part of its justification and was otherwise permissible given the following:

> "The Act operates only on individuals who have been arrested for a specific category of extremely serious offenses. 18 U.S.C. § 3142(f). Congress specifically found that these individuals are far more likely to be responsible for dangerous acts in the community after arrest. *See* S.Rep. No. 98-225, at 6-7. Nor is the Act by any means a scattershot attempt to incapacitate those who are merely suspected of these serious crimes. The Government must first of all demonstrate probable cause to believe that the charged crime has been committed by the arrestee, but that is not enough. In a full-blown adversary hearing, the Government must convince a neutral decisionmaker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person. 18 U.S.C. § 3142(f)." *Salerno*, 481 U.S. at 750.

Evidence of a §1226(a) detainee's pending criminal charges does not override the holdings in *Salerno* and in *Hernandez-Lara* that the finding of dangerousness rest upon clear and convincing evidence. Clear and convincing evidence must show that "an arrestee presents an identified and

articulable threat to an individual or the community." *Salerno*, 481 U.S. at 751. Congress recently expanded the grounds of mandatory detention under § 1226(c) through passage of the Laken Riley Act to include individuals merely arrested for certain crimes, like theft, burglary, and others. Pub. L. 119-1, §2, Jan. 29, 2025, 139 Stat. 3; 8 U.S.C. § 1226(c)(1)(E) (2025). Pending criminal charges for other crimes outside of the statutory list do not trigger mandatory detention under the recently amended statute. Therefore, evidence of pending criminal charges not listed in the newly amended statute do not justify detention without an 'identified and articulable threat' shown through clear and convincing evidence.

26. Furthermore, additional authority holds that a finding of dangerousness in a bond hearing is not a purely discretionary determination. *Martinez v. Clark*, 21-35023 (9th Cir. Dec 27, 2024). Immigration agency decisions that apply a statutory standard to an established set of facts are mixed questions of law and fact. *See Wilkinson v. Garland*, 601 U.S. 209, 212 (2024): *see also Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 227 (2020) (upholding judicial review in immigration cases of "questions of law" that include mixed questions of law and fact). Based on its holding in *Wilkinson*, the Supreme Court vacated the judgment of the Ninth Circuit Court of Appeals, which had held that a finding of dangerousness made during bond proceedings pursuant to § 1226(c) was a non-reviewable discretionary finding. *Martinez v. Clark*, 144 S. Ct. 1339 (2024).

27. Criminal charges are not *per se* grounds for dangerousness that would prohibit release from ICE detention under § 1226(a). Accusations of criminal conduct do not indicate guilt or innocence, which is why an "identified and articulable threat to an individual or the community" must underlie a decision to continue civil detention based on dangerousness. *Salerno*, 481 at 751. Where the Court has upheld mandatory detention under § 1226(c) based on criminal convictions, it has done so because the convictions "were obtained following the full procedural protections our criminal

justice systems offers." *Demore v. Kim*, 538 U.S. 510, 513 (2003). Arrests cannot be equated with convictions without testimony and cross-examination, among other due process protections, that allow a fact finder to determine guilt beyond a reasonable doubt, or innocence based on lack thereof. The clear and convincing standard does not match the heightened standard of beyond a reasonable doubt, but it is a standard higher than a preponderance of the evidence, *Addington v. Texas*, 441. U.S. 418, 425 (1979), and requires reasoned fact finding. Although the Supreme Court held in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), that courts no longer need to defer to agency interpretation of ambiguous or silent statutory schemes, and *Hernandez-Lara* clearly imposes an evidentiary standard for a bond proceeding, it is worth noting that even the BIA's agency rulings provided a list of factors for evaluating whether criminal history constituted a danger to the community. *Hernandez-Lara*, 10 F.4th at 27. The First Circuit found that an Interpol red notice did not in and of itself constitute clear and convincing evidence of dangerousness because, in part, it lacked specificity as to any charged conduct. *Id.* at 24-5.

28. "Merely stating the proper standard does not discharge the obligation to correctly apply the standard." *Akinsanya v. Garland*, 24-1412 (1st Cir. Jan. 10, 2025) *16. The reliability of a police report and the fundamental fairness of its use in an immigration court proceeding is a threshold question which an IJ must decide before the contents of the police report are considered. *Rosa v. Garland*, 114 F.4th 1 (1st Cir. 2024); *Lee v. Barr*, 975 F.3d 69 (1st Cir. 2020); *Arias-Minaya v. Holder*, 779 F.3d 49, 54 (1st Cir. 2015). This threshold question applies in cases where the police report is considered for discretionary determinations, such as whether to grant or deny adjustment of status as in *Rosa*, 114 F.4th 1, or in determining the respondent's credibility during testimony, *Diaz Ortiz v. Garland*, 23 F.4th 1 (1st Cir. 2022) (en banc). As held in *Arias-Minaya*, whether an agency adjudicator permissibly considered a police report is a legal question. 779, F.3d at 54. BIA

precedent on what amount of weight different factors carry held that an uncorroborated arrest report should receive minimal weight. *See Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995). The proper weight given arrest records will be diminished by the lack of corroborating evidence. *Henry v. INS*, 74 F.3d 1, 6 (1st Cir. 1995) (opining on the BIA's holding in *Matter of Arreguin*, 21 I&N Dec. 38). As the Supreme Court has made clear, whether the correct legal standard is applied to fact-finding is a legal issue. *Wilkinson v. Garland*, 601 U.S. 209. With respect to bond hearings, which involve a due process liberty interest, *Hernandez-Lara*, 10 F.4th 40, that discretionary grants of relief do not, *Adeyanju v. Garland*, 27 F.4th 25 (1st Cir. 2022), the question of reliability and fairness is central to the legal standard of clear and convincing evidence, not a corollary to it. The Court found that the government has more access to databases and other law enforcement records than a detained respondent and this access justifies the burden it carries in bond hearings; however, the Court did not hold that any piece of evidence the government procures will be sufficient to carry its burden. *Hernandez-Lara*, 10 F.4th 19.

29. The IJ must find that a police report and whatever other evidence the DHS/ICE presents in a bond hearing satisfies the burden of proof of clear and convincing evidence. *Hernandez-Lara*, 10 F.4th at 40. The standard of clear and convincing is a higher evidentiary standard than mere reliability. *See e.g.*, *Ohio v. Roberts*, 448 U.S. 56, 66 (1980) (indicia of reliability rests on whether out of court statements fall within a hearsay exception). The overall reliability of police reports may be diluted by the purpose they serve. *See Prudencio v. Holder*, 669 F.3d 472, 484 (4th Cir. 2012) ("[P]olice reports and warrant applications often contain little more than unsworn witness statements and initial impressions. Indeed, these materials are designed only to permit a determination of probable cause. Further, because these submissions are generated early in an investigation, they do not account for later events, such as witness recantations, amendments, or

corrections. To confer upon such materials the imprimatur of fact ... accords these documents unwarranted validity."). Police reports are not admissible in criminal court because of double and triple hearsay statements that may be contained in them and because "[P]olice reports may be demonstrably reliable evidence of the fact that an arrest was made [but] they are significantly less reliable evidence of whether the allegations of criminal conduct they contain are true." *United States v. Johnson*, 710 F.3d 784, 789 (8th Cir. 2013). They do serve as guides for further investigation, potential witness information, and record an officer's observations. *See Olivas-Motta v. Holder*, 746 F.3d 907, 918-19 (9th Cir. 2013) (Kleinfeld, J., concurring).

30. Petitioner's right to request a new bond hearing under the federal regulations based on materially changed circumstances is not guaranteed to result in a new bond hearing. See 8 C.F.R. § 1003.19(e) (2006) ("[A]n alien's request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination."). The federal regulation does not require that the IJ grant the motion for a new bond hearing based on the dismissal of the criminal charges; the federal regulation requires the IJ to "consider" the written motion and to decide if the dismissal of the criminal charges constitute materially changed circumstances. *Id.* This Court's ruling on the instant petition remains proper under either ruling on the written motion for a new bond hearing by the IJ. The Petitioner is due the right of a constitutionally adequate bond hearing with the correct legal standards applied. Should the IJ hold a new bond hearing, the correct proper burden of proof and legal standard must be applied. Should the IJ refuse a new bond hearing, the Court should look to the adequacy of the first bond hearing (in addition to any other potential arguments that Petitioner may wish to raise. Furthermore, absent a statutory administrative exhaustion requirement, courts have latitude to relax exhaustion requirements. *Brito v. Garland*, 22 F.4th 240,

256 (1st Cir. 2021) (citing *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997)). A court may hear unexhausted claims in "circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion." *McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992). The liberty interest is one such individual interest that may excuase the requirement of administrative exhaustion. *See Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455 (D. Mass 2010).

31. Release on bond is not release to liberty, but release under conditions of supervision. *Hernandez-Lara*, 10 F.4th at 29. A court may set bail in order to provide a remedy for a habeas petition. *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001).

VII. CAUSE OF ACTION

Count One – Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

32. Petitioner realleges and incorporates by reference each and every allegation contained above.

33. Under the Due Process Clause, the government must prove dangerousness by clear and convincing evidence. Petitioner is not included among the class of individuals subject to mandatory detention by virtue of arrest charges and, therefore, he is entitled to a bond hearing where the proper burden of proof and the correct legal standard are applied meaningfully. These constitutional protections are even more important now that Petitioner's criminal charges have been dismissed in criminal court.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over the matter;
2. Order Respondents to show cause why the Writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution;
4. Grant a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody, and in the alternative, order a constitutionally adequate bond hearing where the correct burden of proof and correct legal standard are applied;
5. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
6. Grant such further relief as this Court deems just and proper.

Dated: March 27, 2025

Respectfully submitted,

Ann Elise McCaffrey, Esq.
PO Box 4204
Middletown RI 02842
(347) 881-3032
eliselaw@protonmail.com
Pro Hac Vice

/s/Deborah S. Gonzalez
Deborah S. Gonzalez, Esq.
#7931
Roger Williams University
1 Empire Street, Suite 435
Providence, RI 02903
(401) 276-4880
dgonzalez@rwu.edu

COUNSELS FOR PETITIONER