

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

MICHAEL ANDRES ALVAREZ PUERTA

Petitioner,

v.

No. 1:25-cv-00108

MICHAEL NESSINGER, Warden, Donald W. Wyatt Detention Facility; PATRICIA HYDE, Director, Boston Field Office, U.S. Immigration and Customs Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security, *in their official capacities.*

Respondents.

**PETITIONER'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS**

**I. INTRODUCTION**

The Petitioner, through undersigned counsel, hereby submits a Reply to the Respondents' Motion to Dismiss and Opposition to Petition for Writ of Habeas Corpus. ECF No. 10. The Respondents claim that dismissal is appropriate for lack of subject matter jurisdiction and failure to state a claim. The main thrust of Respondents' argument is that Mr. Alvarez had a second bond hearing that occurred after his amended complaint was filed seeking a writ of habeas corpus, and the second bond hearing was constitutionally adequate. The Respondents ask that the Court find Mr. Alvarez's petition moot. As an alternative, the Respondents assert that Mr. Alvarez's claim is not administratively exhausted. Additionally, the Respondents argue that Mr. Alvarez's petition seeks judicial review of a discretionary determination and is therefore barred by the statutes at 8 U.S.C. § 1226(e) and 8 U.S.C. § 1252(a)(2)(B)(ii).

None of these arguments support the dismissal of the petition, as explained herein. Mr. Alvarez's second bond hearing amplified instead of remedying the legal errors of the first bond hearing. Under controlling First Circuit precedent, the legal standards employed in making bond decisions are judicially reviewable. Lastly, prudential exhaustion is not required for several reasons.

The bold outlines of the legal dispute in the instant case are the following: Mr. Alvarez entered the U.S. to seek asylum and related relief, which he was allowed to do while at liberty and while litigating his claim for protection in removal proceedings before the Executive Office for Immigration Review ("EOIR"). Immigration and Customs Enforcement ("ICE") took Mr. Alvarez into custody immediately after he was accused of violating Rhode Island state law. As Respondents' motion states, Mr. Alvarez was prohibited from "commit[ting] any crimes" and from "violat[ing] any local, State or Federal laws or ordinances." ECF No. 10, p3; ECF No. 8, Exh. 1. Mr. Alvarez was denied release from ICE custody on bond while the criminal charges were pending, and again, once they were dismissed by the state criminal court judge. ECF No. 10, Exh. B.

The questions raised in Mr. Alvarez's habeas petition concern the due process guarantees that adhere in bond hearings and the proper legal standards for bond decisions. He was twice denied bond based on the police reports alone; the second time after the criminal charges had been dismissed. Contrary to the Respondents' arguments, Mr. Alvarez's petition is judicially reviewable and is ripe for review. As explained below, the Court should deny the Respondents' Motion to Dismiss.

## II. SUMMARY OF ADDITIONAL FACTS

Petitioner filed the Amended Petition, ECF No. 7, on March 27, 2025. After filing the amended petition, undersigned counsel received an audio recording of the initial bond hearing from December 26, 2024 from the Chelmsford, Massachusetts immigration court. The Respondents provide a declaration from the Assistant Field Office Director for ICE from the Enforcement and Removal Operations (“ERO”) division, who supervises matters relating to removal, as an exhibit for the Motion to Dismiss. ECF No. 10, Chan Decl. The ICE AFOD summarized the IJ’s findings in the first bond hearing on December 26, 2024 in one sentence. *Id.*

¶ 8. The declaration from ICE AFOD Chan does not include a written transcript of the hearing.

Mr. Alvarez did receive a second bond hearing after the dismissal of the pending criminal charges. ECF No. 10, Exh. B. The second bond hearing took place on April 10, 2025 at the Chelmsford, Massachusetts immigration court. ECF No. 10, Exh B. The attorney representing ICE/DHS again submitted the identical evidence packet as the first bond hearing, attached hereto as exhibit #1, consisting of the ICE form I-213, and the incident report, arrest report, police officer narratives, the no contact order, and the order from the state court judge releasing Mr. Alvarez on his own recognizance. The submission from the ICE attorney does not include the other documents referenced in the incident report, such as the statement written by the complaining witness or pictures of alleged injuries. Exh. #1. Mr. Alvarez submitted the docket sheet showing a modification of the no contact order and the dismissal of the criminal charges in his motion for a second bond hearing, attached hereto as exhibit #2. Mr. Alvarez also submitted additional information, including a letter from his partner, the complaining witness in the dismissed criminal case attached hereto as exhibit #3. Mr. Alvarez also submitted five additional letters, proof of employment, payment of taxes, and additional evidence of ties to the community. Undersigned counsel has not received the audio recording of the second bond hearing and the ICE AFOD does

not provide any description of the hearing in his declaration or provide a written transcript. Despite finding that the dismissal of the criminal charges was a materially changed circumstance justifying a new bond hearing, the immigration judge (“IJ”) again denied bond finding that Mr. Alvarez is a danger to the community based on clear and convincing evidence provided by ICE/DHS. ECF No. 10, Exh B.

Petitioner filed an appeal of the IJ bond decision on April 10, 2025 to the Board of Immigration Appeals (“B.I.A.”). That appeal is pending. The B.I.A. set a deadline of June 2, 2025 to receive legal briefing.

Mr. Alvarez’s individual hearing to present his applications for relief commenced on May 13, 2025 at 1pm before EOIR. It was adjourned at 4:45 pm and continued until September 9, 2025 for continued cross-examination and redirect.

### III. ARGUMENT

#### A. Habeas Petition Should Not Be Dismissed for Mootness

Respondents argue that the Petitioner received a second bond hearing after the dismissal of his criminal charges and, therefore, the habeas petition is moot. Respondents in their motion to dismiss do not address how the second bond hearing cured the legal errors from the first. Rather, the Respondents contend that as long as the petitioner receives bond hearings, due process is satisfied. Two wrongs do not make a right. The second bond hearing resulted in a second finding that the uncorroborated police and incident reports without any other evidence substantiating their allegations constituted clear and convincing evidence of dangerousness, despite the additional dismissal of the criminal charges.

The use of uncorroborated police and arrest reports in immigration proceedings is not without guidelines. Binding legal precedent from the EOIR, which includes the BIA, and this Circuit have ruled on the use of police reports in immigration proceedings. Under *Matter of Arreguin*, uncorroborated arrest reports should receive minimal weight. 21 I. & N. Dec. 38, 42 (B.I.A. 1995) (“Just as we will not go behind a record of conviction to determine the guilt or innocence of an alien, so we are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein.... Considering that prosecution was declined and that there is no corroboration, from the applicant or otherwise, we give the apprehension report little weight.”). 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). Whether the immigration agency permissibly considered a police report is a legal question. *Arias-Minaya v Holder*, 779 F.3d 49, 54 (1st Cir. 2015). The reliability of a police report and whether its use in the immigration proceeding is fundamentally fair is a threshold question that is judicially reviewable. *See Rosa v. Garland*, 114 F.4th 1 (1st Cir. 2024); *Lee v. Barr*, 975 F.3d 69 (1st Cir. 2020). Most relevant to the issue raised in the instant petition is the issue considered by the First Circuit in *Rosa v. Garland*, which is whether the “agency may rely *solely* on a police report and pending indictment, without corroborating evidence or additional negative factors, to deny discretionary relief,” which the Court recognized that it had not previously considered. *Rosa*, 114 F.4th at 17 (emphasis added). *Rosa* considers the use of an uncorroborated police report to deny discretionary relief, whereas the instant petition challenges the use of an uncorroborated police report to deny release from ICE custody, where the due process right to liberty is implicated. *See Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). Even in the context of discretionary relief, *Rosa* still “find[s] that *Arreguin* stands for the firm principle that when exercising its discretion,

the agency may not give ‘substantial weight’ to a police report in the absence of ‘a conviction or corroborating evidence of the allegations contained’ in the report.” *Rosa*, 114 F.4th at 19 (citing to additional First Circuit authority). Therefore, the Respondents’ assertion that a second bond hearing denying bond solely on the basis of an uncorroborated police report where the criminal charges were dismissed does not resolve the allegations of denial of due process raised in the Amended Complaint.

The government bears the burden to show by clear and convincing evidence that detention should continue based on danger to the community. *Hernandez-Lara*, 10 F.4th at 40. 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). The clear and convincing standard is a higher standard than a preponderance of the evidence. Clear and convincing means that the evidence is highly and substantially more likely to be true than untrue. *Colorado v. New Mexico*, 467 U.S. 310 (1984). While the Respondents motion to dismiss does recite the burden of proof that applies to bond hearings in the First Circuit, it does not elaborate on how the uncorroborated police and arrest report, which is accorded minimal weight under BIA precedent and this circuit’s decisions, could constitute clear and convincing evidence. Nor does it explain how the IJ at the second bond hearing correctly applied the legal standard for uncorroborated police reports where the prosecution has been later dismissed.

Furthermore, the opportunity to present evidence to rebut the contents of a police report will tend to make the use of the police or arrest report fundamentally fair. *Rosa*, 114 F.4th at 12. Fundamental fairness and reliability of a police report is a threshold question. *Id.* at 9. Whether the

agency made this threshold determination is therefore a legal question. *Id.* Legal standards must be correctly applied not merely recited. *Akinsanya v. Garland*, No. 24-1412 \*at 16. (1st Cir. Jan. 10, 2025). Therefore, the opportunity to present rebuttal evidence and to have it considered are required for an application of the correct legal standard, the application of which is itself a requirement.

Respondents do not argue that the IJ correctly applied the legal standard in the second bond hearing. Respondents cite the language of the bond order reciting the legal standard without further reasoning or finding: “DHS has demonstrated by clear and convincing evidence that the Respondent [Mr. Alvarez] poses a danger to the community.” ECF No. 10, p 10.

The habeas petition filed by Mr. Alvarez is, therefore, not moot because he received a second bond hearing where the agency again departed from its own precedent and from the authority of the First Circuit.

**B. Mr. Alvarez’s Petition Is Not Jurisdictionally Barred**

*i. Habeas petition can proceed under 8 U.S.C. § 1252(a)(2)(D)*

The instant petition is not barred from judicial review by 8 U.S.C. § 1252(a)(2)(B)(ii). Mixed questions of law and fact are subject to judicial review. *Wilkinson v. Garland*, 601 U.S. 209, 216-222 (2024) (holding that “mixed questions of law and fact” are subject to judicial review under 8 U.S.C. § 1252(a)(2)(D), and that a mixed question “may ‘require courts to expound on the law ... by amplifying or elaborating on a broad legal standard’”) (quoting *U. S. Bank N. A. v. Village at Lakeridge, LLC*, 583 U.S. 387, 396 (2018)); *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 222 (2020) (holding that ‘mixed questions of law and fact,’ such as the application of a legal standard to undisputed or established facts, fall under the term ‘questions of law’ and are thus reviewable). 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 the bond proceedings pursuant to § 1226(c) was a non-reviewable discretionary finding. *Martinez v. Clark*, 144 S. Ct. 1339 (2024).

The cases cited by Respondents in their motion to dismiss do not deprive this Court of jurisdiction. The First Circuit found jurisdiction to review the IJ's denial of a continuance in *Alsamhour v. Gonzalez*, 484 F.3d 117 (1st Cir. 2007). The decision from the District of Massachusetts in *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 455 (D. Mass. 2010), predates the First Circuit's decision in *Hernandez-Lara* and only referred to review of § 1226(a) hearings in dicta. *Hernandez-Lara* held that the government bears the burden of proof and clarifies that 8 U.S.C. § 1226(e) does not deter judicial review of claims involving the constitutional limits of the government's detention authority under the 'statutory framework' as a whole", thereby constituting controlling authority not affected by District of Massachusetts dicta from an earlier decision. 10 F.4th at 33. Similar to *Hernandez-Lara*, the reviewable question here concerns the legal standards that apply to a determination of dangerousness during a bond hearing under 8 C.F.R. § 1003.19 not the "ultimate exercise of discretion." *Id.*

ii. *Judicial review of constitutional claims under 8 U.S.C. § 1226(e)*

A court may review the constitutional and legal questions that arise from a challenge to unlawful immigration detention. *See Hernandez-Lara*, 10 F.4th 19, 33-34. Having considered the jurisdictional bar to judicial review under 8 U.S.C. § 1226(e), the First Circuit ruled that a court may hear claims raising constitutional limits and legal questions. *Id.* Here, the habeas petition seeks review of legal and constitutional questions of detention authority; broadly stated as whether the agency must follow its own precedent and controlling authority when it makes a finding of dangerousness prohibiting release.

Regarding the scope of 8 U.S.C. § 1226(e), the Respondents make arguments for dismissal that rely on legal precedent predating the REAL ID Act of 2005 that barred judicial review of removal orders brought in a habeas petition to a district court. However, “district courts retain jurisdiction over challenges to the legality of detention in the immigration context.” *Aguilar v. U.S. Immigration and Customs Enforcement Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007); see also *Pensamiento v. McDonald*, 315 F. Supp 3d 684, 68-89 (D. Mass. 2018) (“What § 1226(e) does not bar, however, are constitutional challenges to the immigration bail system.” (citing *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018))).

C. Petitioner’s Claim Need Not Be Administratively Exhausted

There is no statutory exhaustion requirement to which Mr. Alvarez must adhere, and the court has latitude to relax exhaustion requirements. See *Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021); *Flores-Powell*, 677 F. Supp. 2d at 463 (finding that the district court could hear the habeas petition where petitioner had not appealed to the B.I.A.). No statutory requirement for exhaustion exists for a habeas petitioner challenging immigration detention and courts may waive administrative exhaustion. *Id.* (citing *Portela-Gonzalez v. Secretary of the Navy*, 109 F.3d 74,77 (1st Cir. 1997)). Courts may hear unexhausted claims where petitioner would suffer irreparable harm, where substantial doubt exists that the agency can provide meaningful redress, or where the agency review would be futile. See *McCarthy v. Madigan*, 503 U.S. 140, 145-48 (1992). Mr. Alvarez’s petition may be heard by the Court because administrative exhaustion may be waived for two reasons.

i. *Irreparable harm*

The deprivation of Petitioner's liberty through detention is an irreparable harm. *See Brito v. Garland*, 22 F.4th 240, 252 (1st Cir. 2021) ("Detention is the quintessential liberty deprivation."); *see Roberts v. State of Me.*, 48 F.3d 1287, 1292-93 (1st Cir. 1995) ("[The petitioner's] interest in freedom from incarceration is certainly worthy of due process protections" (citing *United States v. Salerno*, 481 U.S. 739, 750 (1987); *Addington v. Texas*, 441 U.S. 418, 425 (1979)) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."). In *Hernandez-Lara*, the petitioner's claim was heard by the courts where she had not appealed the two bond hearings before the IJ to the agency. 10 F.4th 19.

ICE custody commonly occurs in criminal incarceration settings. *Id.* at 28; *see Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020). Mr. Alvarez is, indeed, detained in a maximum-security facility for individuals in the custody of the U.S. Federal Marshalls.<sup>1</sup> Inmate deaths have occurred at Wyatt in 2019 and in 2008.<sup>2</sup> The exhibit submitted here under a motion to seal contains information about health concerns that directly bear on the issue of irreparable injury, attached hereto as exhibit #4. *See* Exh. #4 at 9 (describing specific concerns for Mr. Alvarez not recited here out to protect confidentiality).

"A loss of liberty may be an irreparable harm." *Flores-Powell*, 677 F. Supp.2d at 463 (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986)). Additional delay necessary to perfect exhaustion may sway the Court against requiring continued detention for exhaustion. *Id.* at 464 ("[T]he additional delay attendant to exhaustion 'would just contribute to the troubling delay [Petitioner] has already experienced in attempting to resolve [his] immigration status.'"). There is

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<sup>1</sup> <https://www.centraalfallsri.gov/bc-wdf>

<sup>2</sup> <https://turnto10.com/news/local/inmate-at-wyatt-detention-facility-dies>; <https://www.aclu.org/press-releases/aclu-settles-lawsuit-behalf-family-wyatt-center-detainee-who-died-custody-suit>

no limit on length of detention under § 1226(a) and statistics cited by the First Circuit show that one in four immigration detainees were held for two years or longer. *Hernandez-Lara*, 10 F.4th at 30 (citing *Pereira-Brito v. Barr*, 415 F. Supp. 3d 258, 264-65 (D. Mass. 2019)).

Mr. Alvarez has been in ICE custody at a maximum-security facility since December 10, 2024. There is no end in sight for the length of his detention and he is now waiting until September 2025 for the continuation of his individual hearing before the immigration judge. The uncertainty of how long he will be detained exacerbates the symptoms he is experiencing. Exh. #4 at 9.

Furthermore, prior timelines for agency appeals for those in ICE custody were close to four months. See e.g. *Cruz-Zavala v. Garland*, No. 20-CV-06972-LHK, 2021 U.S. Dist. LEXIS 63592, at \*11 (N.D. Cal. Mar. 29, 2021) (noting that the petitioner's B.I.A. appeal process for custody redetermination took around five months); *De Paz Sales v. Barr*, No. 19-cv-04148-KAW, 2019 U.S. Dist. LEXIS 169552, at \*11 (N.D. Cal. Sep. 30, 2019) (“[T]here was no dispute that the BIA often took four months or more to decide an appeal.”); *Arellano v. Sessions*, No. 6:18-cv-06625-MAT, 2019 U.S. Dist. LEXIS 125057, at \*5, 10 (W.D.N.Y. July 26, 2019) (six month period between the petitioner's appeal to the BIA and the BIA's decision). Additionally, while the Supreme Court in *Demore v. Hyung Joon Kim* mentioned statistics from the government about the average length of the B.I.A. appeals (around four months), those statistics were later discovered to be wrong, and the average length of appeal was longer. See *Jennings v. Rodriguez*, 583 U.S. 281, 343 (2018) (Breyer, J., dissenting) (“The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did.”); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 529 (2003). These wait times will be prolonged given the recent reduction in the number of B.I.A. members by half. Reducing the Size of the

Board of Immigration Appeals, 90 Fed. Reg. 15525 (Apr. 14, 2025) (reducing the number of B.I.A. members from 28 to 15).

The irreparable harm that Mr. Alvarez will continue to experience in continued detention due to the four month or longer timeline of the B.I.A. appeal and his ongoing removal case justifies the Court in relaxing the exhaustion requirements.

ii. *Unavailability of meaningful redress through the agency*

The Respondents state in their motion that the petition should be dismissed in order for the B.I.A. to first decide the factual issues and further develop the record. By regulation, the B.I.A. does not develop a factual record. 8 C.F.R. §§ 1003.1(d)(3)(i), (iv) (“[T]he Board will not engage in factfinding in the course of deciding cases.”). The petition raises legal questions relating to the application of legal standards and the agency’s adherence to controlling precedent. If issues of factfinding were in dispute, the B.I.A. would remand to the IJ for further factfinding to occur. However, the legal questions that this petition raises are properly before this Court and may be decided by this Court now. *See e.g. Hernandez-Lara*, 10 F.4th 19.

Additionally, the B.I.A.’s appellate jurisdiction, 8 C.F.R. § 1003.1(b), does not extend beyond the limits of review of agency decisions under the Immigration and Nationality Act. 8 C.F.R. § 1003.1(d)(1). B.I.A. members are attorneys named by the U.S. Attorney General and are not Article III judges. 8 C.F.R. § 1003.1(a)(1). The B.I.A. does not decide constitutional issues. *Arango-Aradondo v. Immigration and Naturalization Serv.*, 13 F.3d 610, 614 (2nd Cir.1994); *Castaneda-Suarez v. I.N.S.*, 993 F.2d 142, 144 (7th Cir. 1993); *Vargas v. U.S. Dept. of Immigration and Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987); *Bagues-Valles v. I.N.S.*, 779 F.2d 483, 484 (9th Cir. 1985). In exercising appellate jurisdiction, the B.I.A. must follow its own precedent.

*Aburto-Rocha v. Mukasey*, 535 F.3d 500, 503 (6th Cir. 2008) (“The BIA’s regulations themselves ... require the agency to follow its own precedent except to the extent they are modified or overruled by the BIA or the Attorney General.” (citing 8 C.F.R. § 1003.1(g)).

Here, the petition raises legal questions that extend beyond the B.I.A.’s zone of appellate jurisdiction. Although the due process deprivations arose during an agency hearing before an IJ, and the B.I.A. maintains appellate jurisdiction over IJ decisions, the legal questions concern legal standards for bond hearings that the First Circuit has put in place. *See Hernandez-Lara*, 10 F.4th 19 (requiring the government to bear the burden in a bond hearing); *see also Rosa*, 114 F.4th 1 (stating the agency cannot rely solely on an uncorroborated police report); *Arias-Minaya*, 779 F.3d 49; *Henry*, 74 F.3d 1. The B.I.A. recently ruled that bond is a discretionary decision. *Matter of Choc-Tut*, 29 I. & N. Dec. 48, 49 (BIA 2025). The B.I.A. decision conflicts with the Supreme’s Court holding in *Wilkinson*, its remand in *Martinez v. Clark*, and with *Hernandez-Lara* and the Second Circuit’s decision in *Lopez v. Decker*. Therefore, substantial doubt exists that the B.I.A. can provide meaningful redress because it does not consider constitutional issues, its appellate jurisdiction considers is narrower than the legal questions presented here, and its recent precedent conflicts with federal court decisions that bear directly on the Mr. Alvarez’s claims.

The Court may review the habeas petition without requiring administrative exhaustion based on the two reasons of preventing irreparable injury and the substantial doubt in the agency’s ability to provide meaningful redress. *See Brito*, 22 F.4th 240.

#### D. Release Is Appropriate Remedy

Courts can fashion a remedy to habeas petitions challenging unlawful detention. *Flores-Powell*, 677 F. Supp.2d at 474 (“When the judicial power to issue habeas corpus properly is

invoked the judicial officer must have adequate authority... to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." (*quoting Boumediene v. Bush*, 553 U.S. 723, 128 S.Ct. 2229, 2271 (2008)). "[T]he remedy should be tailored to the injury suffered... and should not unnecessarily infringe on competing interests." *Id.* (*quoting United States v. Gordon*, 156 F.3d 379, 381 (2d Cir. 1998)). In *Flores-Powell*, the district court thoroughly analyzed case law on what remedies the court can provide. The issue in *Flores-Powell* was what remedy to provide when the court found that the petitioner was no longer subject to mandatory detention pursuant to § 1226(c). The court cited other district court decisions finding that habeas petitioners whose detention under § 1226(c) was found to be unlawful reverted to detention under § 1226(a), and decided that the agency should therefore provide a bond hearing. The issue in the instant petition differs from the authority discussed in *Flores-Powell* in that Petitioner here has already had two bond hearings before the agency while in custody under § 1226(a) and does not challenge detention pursuant to § 1226(c). However, the district court in *Flores-Powell* saw that the more adequate remedy was to provide a bond hearing before the court itself instead of sending the case for an agency determination first. *Flores-Powell* instructs that this Court may provide a bond hearing itself or order release. Therefore, the same concerns for providing the agency the first opportunity to rule on bond do not exist here. The Petitioner requests release in the first instance and a bond hearing before the Court as an alternative.

#### IV. CONCLUSION

Based on the foregoing, Mr. Alvarez, requests that this Court deny the motion to dismiss, order release and in the alternative grant him a bond hearing before the Court.

Respectfully submitted,

\_\_\_/s/ Ann Elise McCaffrey\_\_\_\_\_  
Ann Elise McCaffrey, Esq.  
*Pro hac vice*  
PO Box 4204  
Middletown RI 02842  
(347) 881-3032  
eliselaw@protonmail.com

/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