UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 25-60673-CV-WILLIAMS

FILED BY LS D.C.

APR 29 2025

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. – W.P.B.

MARIA DOLORES NAVARRO MARTIN

Petitioner

v

UNITED STATES ATTORNEY GENERAL

Respondents

_______________________________________/

PETITIONER'S REPLY

TO DEFENDANT'S RESPONSE TO PETITIONER'S WRIT OF HABEAS COPRUS

COMES NOW, the petitioner Maria Dolores Navarro Martin, pro se, and respectfully reply to the Defendant's Response to Petitioner's Writ of habeas Corpus filed in this court on April 14, 2025, (See Doc # 8) and in support thereof states as follows:

I.- ARGUMENTS

The petitioner moves to dismiss the Defendant's Response to Petitioner's Writ of habeas Corpus on multiple grounds. First the Defendant failed to follow his own Policy Manual stating that the petitioner's failed to Name the proper Respondent. Second the Defendant erred stating that the Doctrine of Collateral Estoppel and Res Judicata apply here, in issues still in appeal and that have not been decide by the United Court of Appeal for the Eleventh Circuit. Third, The Defendant erred stating that the petition should be dismissed for lack of subject matter jurisdiction. And Four the Defendant erred stating that the Petitioner is subject to Mandatory Detention Under § 1226(c) and is not entitled to Release or a Bond Hearing, and in support the petitioner thereof states as follows:

A.- Defendant failed to follow his own Policy Manual stating that the petitioner's failed to Name the proper Respondent.

The Section 8 U.S.C.S. 1252(b)(3)(A),establish that:

> "The respondent is the Attorney General. The petition shall be served on the Attorney General".

The Supreme Court had established that: "the Fifth Amendment entitles aliens to due process of law in deportation proceedings," Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993), and that "When the Government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954). Under the Due Process Clause, The Defendant violated the petitioner's constitutional rights to the due process when it departed from a prior policy, since that a violation of the *Accardi* doctrine constitute "a violation of the Fifth Amendment's Due Process Clause, as follow:

1.- According to USCIS Policy Manual:

[iii] Attorney General/DHS Is the Proper Custodian

> Several courts continue to hold that the Attorney General or Secretary of Homeland Security is the proper custodian in immigration detention cases. 199 Some of these courts have reasoned that because the officials, in their official capacity, transact business within the courts territorial jurisdiction, they can be reached by service of process. 200 Furthermore, because habeas petitions generally challenge the imposition, rather than the execution, of particular policies, it is the actions of the Attorney General or Secretary, not those of the warden of any particular facility, that are being challenged. 201 Courts have also noted that the Attorney General or Secretary could direct his or her subordinates to carry out any order to produce or release the petitioner. 202 These courts also reason that if a habeas corpus petition could be heard only where the petitioner was detained, the Attorney General or Secretary could seriously undermine the remedy of habeas corpus by detaining illegally a large group of persons in one facility so that the resulting torrent of habeas corpus petitions would overwhelm the local court. 203. (See Exhibit B Attach - Part 9 Special Alert Adjudicators Field Manual Incorporated in USCIS Policy Manual, CHAPTER 104, Judicial Review *, 104.04 Habeas Corpus, [5] Jurisdiction, [b] Determining the Proper Custodian, [iii] Attorney General/DHS Is the Proper Custodian); which were described the No(s):

199. Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) (Attorney General and DHS Secretary are proper respondents (citing Rumsfeld v. Padilla, 542 U.S. 426, 436 n.8 (2004)); Somir v. United States, 354 F. Supp. 2d 215 (E.D.N.Y. 2005) (Attorney General remains proper custodian post-*Padilla*); Mandarino v. Ashcroft, 318 F. Supp. 2d 13 (D. Conn. 2003) (Attorney General is proper custodian).

200. So v. Reno, 251 F. Supp. 2d 1112, 1128 (E.D.N.Y. 2003) (There is personal jurisdiction over the Attorney General in New York, since he or she regularly transacts business in New York in an official capacity.); Small v. Ashcroft, 209 F. Supp. 2d 294 (S.D.N.Y. 2002); Cinquemani v. Aschcroft, 2001 U.S. Dist. LEXIS 12163 (E.D.N.Y. Aug. 16, 2001) (There is no question that the Attorney General is a legal custodian of [a habeas petitioner being held in DHS custody].); Mojica v. Reno, 970 F. Supp. 130, 16667 (E.D.N.Y. 1997) (the Attorney General is one of several custodians), *affd on other grounds sub nom.* Henderson v. INS, 157 F.3d 106, 12228 (2d Cir. 1998); Nwankwo v. Reno, 828 F. Supp. 171, 17374 (E.D.N.Y. 1993); *see also* Ali v. Ashcroft, 213 F.R.D. 390, 408 (W.D. Wash. 2003) (Attorney General and INS Commissioner were appropriately named as respondents for class action challenging Attorney Generals statutory authority to remove large numbers of unidentified Somalis located across the country), *affd*, 346 F.3d 873 (9th Cir. 2003), *vacated sub nom.* Ali v. Gonzales, 421 F.3d 795 (9th Cir. 2005).

201 . Chavez-Rivas v. Olsen, 194 F. Supp. 2d 368, 374 (D.N.J. 2002).

202. Lee v. Ashcroft, 216 F. Supp. 2d 51, 5455 (E.D.N.Y. 2002) (collecting cases and noting that: (1) the Attorney General had the power to produce, detain, and release petitioners and was the ultimate decision-maker on removal matters; (2) Congress had designated the Attorney General as legal custodian of noncitizens; and (3) there is a compelling practical interest in protecting local district courts from becoming overwhelmed with habeas petitions); Mojica v. Reno, 970 F. Supp. 130, 167 (E.D.N.Y. 1997) (quoting Nwankwo v. Reno, 828 F. Supp. 171, 175 (E.D.N.Y. 1993)), *affd on other grounds sub nom.* Henderson v. INS, 157 F.3d 106, 12224 (2d Cir. 1998).

203. Lee v. Ashcroft, 216 F. Supp. 2d 51, 5455 (E.D.N.Y. 2002).

204. Armentero v. INS, 340 F.3d 1058, 1073 (9th Cir. 2003) (emphasis in original), *vacated*, 382 F.3d 1153 (9th Cir. 2004) (discussing previous Supreme Court and circuit precedent).

2.- According to case law precedents:

"The proper respondent for habeas petition must be someone who has authority over the detention of the prisoner, and in the immigration context, this authority often lies with the U.S. Attorney General or the Secretary of the Department of Homeland Security" Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) (Attorney General and DHS Secretary are proper respondents (citing

Rumsfeld v. Padilla, 542 U.S. 426, 436 n.8 (2004)); Somir v. United States, 354 F. Supp. 2d 215 (E.D.N.Y. 2005) (Attorney General remains proper custodian post-*Padilla*); Mandarino v. Ashcroft, 318 F. Supp. 2d 13 (D. Conn. 2003) (Attorney General is proper custodian).

Here, the Defendant's violation of the *Accardi* doctrine by the statements gave in the "Defendant's Response to Petitioner's Writ of Habeas Corpus, when stated: "Petitioner Failed to Name the proper respondent....Because Petitioner is detained at the Broward Transitional Center...Respondent in the instant case is the Warden for that facility"; constitute "a violation of the Fifth Amendment's Due Process Clause" *United States v. Teers*, 591 F. App'x 824, 840 (11th Cir. 2014) (recognizing that an *Accardi* violation may be a due process violation,); *Jean v. Nelson*, 727 F.2d 957, 976 (11th Cir. 1984) ("Agency deviation from its own regulations and procedures may justify judicial relief"). A violation of the *Accardi* doctrine, constitute a violation of the Fifth Amendment's Due Process Clause. ("[I]t is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required."). " An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515, 129 S. Ct. 1800, 173 L. Ed. 2d 738 (2009).

Further, "[i]t is well established that an agency acts arbitrarily . . . when it does not follow its own procedures." Torres v. U.S. Dep't of Homeland Sec., No. 17-cv-01840, 2017 U.S. Dist. LEXIS 161406, (S.D. Cal. 2017)(holding that "[the] failure [of Defendants, DHS, USCIS, U.S. Immigration and Customs Enforcement, and CBP] to follow the termination procedures set forth ...is arbitrary, capricious, and an abuse of discretion" because ...a fundamental principle of federal law is that a federal agency must follow its own procedures" (citations omitted)); see also Andriasian v. INS, 180 F.3d 1033, 1046 (9th Cir. 1999). See also, *Damus v. Nielsen*, 313 F. Supp. 3d 317, 335-38 (D.D.C. 2018) (APA claim based on DHS failure to comply with an ICE...Directive).

The Defendant changed the policy, as established in the Part 9 Special Alert Adjudicators Field Manual Incorporated in USCIS Policy Manual, CHAPTER 104, Judicial Review *, 104.04 Habeas Corpus, [5] Jurisdiction, [b] Determining the Proper Custodian, [iii] Attorney General/DHS Is the Proper Custodian. This change in policy with regard to the Petitioner (1) was arbitrary and capricious; (2) was contrary to law and agency rules; and (3) unreasonably delayed or unlawfully withheld adjudication of Petitioner imprisonment, and "was arbitrary and capricious under the APA because the Acting Secretary offered no reason for terminating the forbearance policy, did not consider alternatives that were within the ambit of the existing forbearance policy …did not constitute a new and separately reviewable final agency action". *Department of Homeland Security* v. *Regents of Univ. of Cal.*, 591 U.S.140 S. Ct. 1891, 207 L. Ed. 2d 353.(2019). The Defendant changed the policy and violated the petitioner's constitutional rights as guarantee by the fifth Amendment of the United States Constitution, since that a fundamental principle of federal law is that a federal agency must follow its own procedures.

B.- Defendant erred stating that the Doctrine of Collateral Estoppel and Res Judicata apply here, since that the Doctrine of res judicata does not apply to applications for habeas corpus.

The Defendant erred stating that "The doctrine of Collateral Estoppel of Res Judicata Collaterally Estops the petitioner from attempting to Re-litigate this Matter", since that "The Doctrine of res judicata does not apply to applications for habeas corpus" FAY v NOIA, 372 US 391, 83 SCT 822, 9 LED2D 837 (1963). (Hence, the familiar principle that res judicata is inapplicable in habeas proceedings, see, e.g., Darr v Burford, 339 US 200, 214, 94 L ed 761, 772, 70 S Ct 587; Salinger v Loisel, 265 US 224, 230, 68 L ed 989, 995, 44 S Ct 519; Frank v Mangum, 237 US 309, 334, 59 L ed 969, 983, 35 S Ct 582; Church, Habeas Corpus (1884), 386, is really but an instance of the larger principle that void judgments may be collaterally impeached).

Moreover, an appeal process on the case: Navarro Martin v. U.S. Attorney General, of the U.S. District Court Southern District of Florida, Case No.: 0:25-CV-60355-RS, rendered on March 10, 2025, is pending of review in the Eleventh Circuit Court of Appeal, according the Notice of Appeal filed in this cause, since that the cause was "Dismissed by Lack of Jurisdiction". (See Doc # 8, Exhibit J), and because was a "[D]ismissal ... without prejudice" is a dismissal that does not "operat[e] as an adjudication upon the merits,"… and thus does not have a res judicata effect" Cooter & Gell v. Hartmarx Corp. 110 SCT 2447, 110 LED2D 359, 496 US 384 (1990).

It is a "familiar principle that res judicata is inapplicable in habeas proceedings." Fay v. Noia, 1963, 372 U.S. 391, 423, 83 S. Ct. 822, 840, 9 L. Ed. 2d 837. In Sanders v. United States, 1963, 373 U.S. 1, 15, 83 S. Ct. 1068, 10 L. Ed. 2d 148, (the prisoner was entitled to a hearing on his second motion because the second motion made factual allegations which might entitle the prisoner to relief and which were neither decided adversely to him on the merits on the first motion nor conclusively shown by the files and records of the case not to entitle the prisoner to relief), the Supreme Court formulated the basic rules to guide the lower federal courts in handling successive applications for federal habeas corpus. The application may be denied without a hearing "where the second or successive application is shown, on the basis of the application, files and records of the case alone, conclusively to be without merit. 28 U.S.C. 2243, 2255." (373 U.S. at 15, 83 S. Ct. at 1077.) The rules formulated in *Sanders* make it clear that the district court should err in summarily denying the present application without a hearing. See also Labat v. Bennett, 5 Cir. 1966, 365 F.2d 698, 710.

Whether respondents are entitled to *Joseph* hearings is before this Court, which Defendant erred when stated that: "The doctrine of Collateral Estoppel of Res Judicata Collaterally Estops the petitioner from attempting to Re-litigate this Matter", since that a *Joseph* hearings was not requested in the Case No.: 0:25-CV-60355-RS, and moreover, "The Doctrine of res judicata does not apply to applications for habeas corpus" Fay v. Noia, 372 U.S. 391, 423, 9 L. Ed. 2d 837, 83 S. Ct. 822 (1963). *See, e.g.*, Salinger v. Loisel, 265 U.S. 224, 230, 68 L. Ed. 989, 44 S. Ct. 519 (1924); Darr v. Burford, 339 U.S. 200, 214, 94 L. Ed. 761, 70 S. Ct. 587 (1950).

C.- Defendant erred stating that the petition should be dismissed for lack of subject matter jurisdiction.

The Administrative Procedure Act creates a "basic presumption of judicial review [for] one suffering legal wrong because of agency action." *Weyerhaeuser Co. v. U.S. Fish and Wildlife Serv.*, 139 S. Ct. 361, 370, 202 L. Ed. 2d 269 (2018).

The legislative history indicates that Congress intended to create an exception for claims "independent" of removal. H.R.Rep. No. 109-72, at 175, *as reprinted in* 2005 U.S.C.C.A.N. at 300. Thus, when it passed the REAL ID Act, Congress stated unequivocally that the channeling provisions of section 1252(b)(9) should not be read to preclude "habeas review over challenges to detention." *Id.* (indicating that detention claims are "independent of challenges to removal orders"). In line with this prescription, we have held that the district courts retain jurisdiction over challenges to the legality of detention in the immigration context. *See Hernandez v. Gonzales*, 424 F.3d 42, 42 (1st Cir. 2005)(holding that detention claims are independent of removal proceedings and, thus, not barred by section 1252(b)(9)). This carve-out seemingly encompasses constitutional challenges regarding the availability of bail.

"The REAL ID Act does not divest the district court of jurisdiction over any habeas corpus petition merely because it is filed by an alien who is the subject of parallel proceedings in the Immigration Court. The REAL ID Act does not provide for transfer of that part of a habeas petition that simply challenges current detention by immigration authorities. It is appropriate for the district court to deal with that issue. The U.S. Court of Appeals for the Second Circuit has held that federal district courts retain jurisdiction under 28 U.S.C.S. 2241 to grant writs of habeas corpus to aliens when those aliens are in custody in violation of the Constitution or laws or treaties of the United States. Issues that are purely legal in nature, raised by aliens detained under the immigration laws, are encompassed by a district court's 2241 habeas jurisdiction" Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) Which Defendant erred stating that the petition should be dismissed for lack of subject matter jurisdiction.

The District Court(s) may review a question that is independent of removal or cannot effectively be handled through the available administrative process. *See id.; Hernandez*, 424 F.3d at 42 (holding challenge to length of detention was independent of challenge to removal order and therefore within the District Court's habeas jurisdiction); *Karim v. Cabral*, C.A. No. 07-10139, 2007 U.S. Dist. LEXIS 69377, 2007 WL 2746797, at *1 (D. Mass. Sept. 12, 2007)(stating that habeas jurisdiction remains in the District Court "if the detention challenge is merely ancillary to removal proceedings" and is directed towards "some essentially legal issue"); *see also* H.R. Rep. No. 109-72, at 175, *as reprinted in* 2005 U.S.C.C.A.N. 240, 300 (stating that the REAL ID Act "will not preclude habeas review over challenges to detention that are independent of challenges to removal orders"), and "challenging her continued detention" under *Clark v. Martinez*, 543 U.S. 371, 160 L. Ed. 2d 734, 125 S. Ct. 716 (2005).

"[T]he general rule is that even post-REAL ID Act, aliens may continue to bring collateral legal challenges to the Attorney General's detention authority through a petition for habeas corpus." *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (internal alterations, quotation marks, and citation omitted); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759 (9th Cir. 2020) ("[D]istrict courts retain jurisdiction under 28 U.S.C. 2241 to consider habeas challenges to immigration detention that are sufficiently independent of the merits of the removal order."). Petitioner's challenge to confinement does not involve a final order of removal. Accordingly, this Court has jurisdiction under 28 U.S.C. 2241.

D.- Defendant erred stating that the Petitioner is subject to Mandatory Detention Under § 1226(c) and is not entitled to Release or a Bond Hearing.

In a Joseph hearing, the respondent bears the burden of establishing that DHS would be substantially unlikely to prevail on a charge of removability under the provisions of section 236(c) of the INA, 8 U.S.C. 1226(c). Here, the petitioner should states that:

(1) "The Attorney General has no authority to demand compliance with Section…, hereby deemed unconstitutional… "Attorney General did not have authority to impose immigration notice, access, and compliance reporting conditions" City of Chicago v. Barr, 961 F.3d 882, 2020 U.S. App. LEXIS 13882 (7th Cir. Ill., Apr. 30, 2020).

(2) "An indictment is defective if it alleges a violation of an unconstitutional statute."). See also, United States v. Hilton-Thomas, 2009 U.S. Dist. LEXIS 1929 (S.D. Fla., 2009) and an "indictment premised on a statute that is unconstitutional must be dismissed. *See United States v. Brown*, 715 F.Supp.2d 688, 689-90 (E.D. Va. 2010) (citing *United States v. Stanley*, 109 U.S. 3, 8-9, 3 S. Ct. 18, 27 L. Ed. 835 (1883)). ("It is obvious that the primary and important question in all the cases is the constitutionality of the law; for if the law is unconstitutional none of the prosecutions can stand").

(3) "District courts examining this issue have conducted the bail hearing or some equivalent proceeding without the involvement of the Immigration Judge. *See, e.g., Madrane v. Hogan*, 520 F. Supp. 2d 654, 667-70 (M.D. Pa. 2007) (The court also rejected respondents' contention that the court lacked jurisdiction to consider the alien's claim and to convene a hearing to consider the alien's claim. The court was not reviewing a decision of the immigration judge regarding the alien's initial custody determination; rather, the court was considering the constitutionality of the alien's extended deprivation of liberty while he remained subject to ongoing removal proceedings). *Hyppolite v. Enzer*, No. 3:07cv729, 2007 U.S. Dist. LEXIS 44205, 2007 WL 1794096, at *1 (D. Conn. June 19, 2007); *Diomande v. Wrona*, No. 05-73290, 2005 U.S. Dist. LEXIS 33795, 2005 WL 3369498, at *3 (E.D.

> Mich. Dec. 12, 2005). In both *Vongsa* and *Bourguignon*, the courts ordered the Immigration Judge to conduct the bail hearing but shifted the burden of proof to the government and retained supervisory authority over the proceeding. *See Vongsa*, 2009 U.S. Dist. LEXIS 109899, 2009 WL 4049143, at *12; *Bourguignon*, 2009 U.S. Dist. LEXIS 102298, 2009 WL 3600379, at *8-9; *see also Wilks v. U.S. Dep't of Homeland Security*, C.A. No. 07-2171, 2008 U.S. Dist. LEXIS 88587, 2008 WL 4820654, at *3 (M.D. Pa. Nov. 3, 2008)....Thus, a criminal alien who becomes eligible for a discretionary habeas remedy has paid the heavy price of many months of potentially unjustified incarceration. Moreover, the court can take into account any unjustified disparities between (petitioner)'s treatment and that afforded non-criminal aliens in fashioning standards and procedures for the bail hearing... In view of the foregoing, the court concludes that detention authority has not shifted to 1226(a). Rather, the court finds that detention prior to the removal period must continue, if at all, under 1226(c).... in the exercise of its equitable discretion, has concluded that a bail hearing before this court is the proper remedy" FLORES-POWELL v. CHADBOURNE, 677 F. Supp. 2d 455 (D.C.Mass. 2010).

Mandatory detention under 8 U.S.C.S. 1226(c) may be challenged in a Joseph hearing. An adverse decision in the Joseph hearing may be appealed to the Board of Immigration Appeals. 8 C.F.R. 1236.1(d)(3). Furthermore, the court has jurisdiction to address whether the length of petitioner's detention comports with due process. If respondents were correct that detention authority reverts to 1226(a), habeas relief in this case essentially would be limited to a declaration that Petitioner is eligible for release at the discretion of the Attorney General. *See Lonchar v. Thomas*, 517 U.S. 314, 323, 116 S. Ct. 1293, 134 L. Ed. 2d 440 (1996)("[T]he fact that the writ has been called an equitable remedy does not authorize a court to ignore . . . statutes, rules, and precedents." (internal citations and quotation marks omitted)).), which The Immigration Judges legal reasoning is in error. Whether the respondent is properly included in the mandatory custody category of section 236(c)(1)(A) of the INA, 8 U.S.C. 1226(c)(1)(A) requires the decision-maker to look at the record to determine whether it establishes that she has committed an offense under an "Unconstitutionally Vague" State Statute of Conviction s. 914.22(1)(a) Fla. Stat. under State v. Cohen, 5685 So.2d 49 (Fl. 1990), that would never be a predicate for removal, since that the "Attorney General did not have authority to impose immigration notice, and whether the offense would give rise to a charge of removability included in that provision.

Moreover, "The immigration judge ("IJ") presiding over the deportation proceeding would be "without jurisdiction to hear plaintiff's constitutional challenge". *See Thunder Basin Coal Co. v. Reich,* U.S.127 L. Ed. 2d 29, 114 S. Ct. 771, 780 (1994).

Defendant, appear to have interpreted the instant proceedings as the equivalent of appellate review of a discretionary agency decision regarding Petitioner's custody. To the extent Defendant have characterized the proceedings in this way, they are mistaken. This action, brought for habeas corpus relief, does not challenge the initial determination that Petitioner's State convictions subjected her to mandatory detention under 236(c) of the INA; Petitioner has made clear that Petitioner does not dispute that her conviction initially placed her within the ambit of 236(c). What Petitioner has challenged in this action is the constitutionality of her extended and continuous custody during her removal proceedings, which Petitioner contends violates her constitutional right to due process under the Fifth Amendment. The Court is thus not reviewing a decision of the IJ regarding Petitioner's initial custody determination; rather, the Court is considering the constitutionality of Petitioner's extended deprivation of liberty while she remains subject to ongoing removal proceedings. For these reasons, the Court will rejects Defendant's contention that the Court lacks jurisdiction to consider Petitioner's claim and to convene a hearing to consider factors that bear upon Petitioner's claim for release, and in the exercise of its equitable discretion, will concluded that a bail hearing before this court is the proper remedy.

E. Petitioner has Demonstrated Due Process Violations

The Fifth Amendment's Due Process Clause forbids the Government to "deprive" any "person . . . of . . . liberty . . . without due process of law." Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that Clause protects. See *Foucha* v. *Louisiana*, 504 U.S. 71, 80, 118 L. Ed. 2d 437, 112 S. Ct. 1780 (1992). And this Court has said that government detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, see *United States* v. *Salerno*, 481 U.S. 739, 746, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987).

1. Evidence of Dangerousness:

Petitioner contends that her due process rights were violated because the IJ and BIA applied the wrong legal standards in her Motion to Terminate the proceedings. She argues the IJ's determination that she is a danger to the community because commit an "aggravated felony" erroneously relies on unsubstantiated and charges that still are in review under the Sixth District Court of Appeal of Florida upon the case No.6D24-2218 (see Exhibit A Attach), and where the State did not responded to the "unconstitutionality of the Statute" claim, which will be closed the criminal case since that the underlying judgment is Void. And "if the underlying judgment is void, the judgment based upon it is also void" *Austin v. Smith*, 114 U.S. App. D.C. 97, 312 F.2d 337, 343 (D.C. Cir. 1962). Which Petitioner was entitled to receive a bail hearing in which a judge would determine his flight risk and threat to the community, while detained pending judicial proceedings" Welch v. Reno, 101 F. Supp. 2d 347, 353-55 (D. Md. 2000) (citing United States v. Salerno, supra, at 747).

Petitioner further asserts that her lone conviction for Witness Tampering cannot support a finding that she is a danger to the community. As such, the IJ's bond decisions were legally incorrect and constitutionally deficient. Petitioner did not received a full and individualized bond hearing on her bond request, since that the IJ Court refuse file the petitioner's request (See Exhibit Attach). By depriving her of a full and fair hearing under the correct legal standards.

Although an IJ generally may consider arrests and pending criminal charges, Petitioner asserts that the IJ erred in considering her initial criminal charges because there is no evidence to support a finding that she committed the charges, no stated in the Notice to Appear (NTA). She contends that the government proffered no evidence or testimony suggesting that she committed Medicaid Fraud or Witness Tampering under the section 914.22(1)(a) Fla Stat. on the Notice to Appear or any of the other charges stated in the original indictment. Additionally, Petitioner claims she suffered prejudice because the only probative evidence of her dangerousness was the conviction, which is a not a crime of violence or moral turpitude under the INA and is "extremely minor" under USCIS Policy Manual, as stated:

"Offenses found ***not*** **to involve moral turpitude** include...***witness tampering***".

This change in policy with regard to the Petitioner (1) was arbitrary and capricious; (2) was contrary to law and agency rules; and (3) unreasonably delayed or unlawfully withheld adjudication of Petitioner imprisonment, and "was arbitrary and capricious under the APA because the Acting Secretary offered no reason for terminating the forbearance policy, did not consider alternatives that were within the ambit of the existing forbearance policy ...did not constitute a new and separately reviewable final agency action". *Department of Homeland Security* v. *Regents of Univ. of Cal.*, 591 U.S.140 S. Ct. 1891, 207 L. Ed. 2d 353.(2019).

2. Jurisdiction is Satisfied:

As a threshold matter, the Court should not be persuaded by Defendant' argument that the Petition seeks direct review of the IJ's discretionary weighing of evidence. Petitioner alleges constitutional and legal error based on the IJ's failure to apply the correct legal standards, which resulted in the IJ's erroneous finding of dangerousness finding the State unconstitutional statute of conviction as an "Aggravated Felony". These allegations do not claim the IJ "simply came to an unwise, yet lawful, conclusion" when the IJ exercised discretion by denying bond under an "unconstitutionally vague state statute of conviction" *Gutierrez-Chavez v. INS*, 298 F.3d 824, 828 (9th Cir. 2002) ("Habeas is available to claim that [an IJ] somehow failed to exercise discretion in accordance with federal law or did so in an unconstitutional manner."). Because Petitioner's allegations focus on constitutional and legal flaws in the bond hearing, her due process claim is cognizable on federal habeas review. *See Singh*, 638 F.3d at 1202. Having reviewed the record under the standards articulated herein, the Court will finds that the record did not contain clear and convincing evidence to support the IJ's finding of dangerousness as an "aggravated felony". Thus, the IJ Decision violated Petitioner's due process rights.

3. Prejudice to Petitioner:

Having identified constitutional and legal error, the Court will examines whether the error was prejudicial. *See Singh*, 638 F.3d at 1205. Based on Petitioner's single arrest and conviction for witness tampering and the IJ's erroneous reliance on Petitioner's charges no stated in the Notice to Appear, the Court will finds that such error caused her prejudice, being the sole evidence of dangerousness and which is insufficient to support the denial of bond as a matter of law.

In addition to the arguments addressed above, Petitioner contends that her due process rights were violated because (1) she was denied a *Joseph* hearing, (2) the IJ erroneously denied her request for a new bond hearing based on changed circumstances and the IJ improperly refused to let Petitioner or two other witnesses testify in support of her changed circumstances, (4) the IJ ignored applicable factors regarding Petitioner's risk of flight, and (5) her prolonged detention contravenes 8 U.S.C. 1226(a) and 8 C.F.R. 1003.6(a)(2)(i). Because the Court will finds that Petitioner is entitled to a new bond hearing under the appropriate legal standards, it need not consider Defendant's remaining arguments.

WHEREFORE, this honorable court decision will identifies two due process violations with respect to Petitioner's bond proceedings. She will succeeded in showing that the IJ Decision was legally incorrect and constitutionally deficient because the IJ erroneously relied on an unconstitutionally vague state statute of conviction s.914.22(1)(a) Fla. Stat.; which was no stated in the Notice to appear, and which violated the petitioner's constitutional rights as guarantee by the XIV amendment of U.S. Constitution, according to the Fla. Supreme Court decision on under State v. Cohen, 5685 So.2d 49 (Fl. 1990), which "The Attorney General has no authority to demand compliance with Section..., hereby deemed unconstitutional... "Attorney General did not have authority to impose immigration notice, access, and compliance reporting conditions" City of Chicago v. Barr, 961 F.3d 882, 2020 U.S. App. LEXIS 13882 (7th Cir. Ill., Apr. 30, 2020).

Turning to the question of remedy, this Court will finds that a new bond hearing conducted in accordance with the legal standards articulated in this order, on an expedited basis, is the appropriate remedy. *E.g., Lopez Reyes*, 362 F. Supp. 3d at 778; *Calderon-Rodriguez*, 374 F. Supp. 3d at 1037. The Court therefore will grants Petitioner's Petition with respect to her request for an expedited, new bond hearing. If the government is unable to justify Petitioner's continued detention at the new bond hearing, she should be released on appropriate conditions, and should find as a matter of law and of rights that all the defendant's allegations gave in the Defendant's Response to Petitioner's Writ of Habeas Corpus, should be dismissed.

OATH

UNDER PENALTIES OF PERJURY, I, Maria Dolores Navarro Martin, declare that I have read the foregoing document , and I Understand its content; this document is filed in good faith and is timely filed, I understand its content in English, has potential merit, and that facts contained in the documents are true and correct.,

Date: April 22, 2025

Maria Navarro Martin
Pro se Petitioner
A#: [redacted]
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct original of the foregoing document has been furnished by U.S. Mail-postage prepaid to The Clerk of the District Court Southern District. I Further Certify that the clerk can e-serve a copy of this document to The Clerk of the Immigration Court and Office of the Board of Immigration appeals to the U.S. Dpt. of Justice, 950 Pennsylvania Av. NW. Office of the Attorney General, Room 5114, Washington DC. 20530-0001, to Nelson Perez, Chief Counsel. Carlos Lopez, Deputy Chief Counsel. Michael J. Gross, Esq., Assistant Chief Counsel. Office of the principal Legal Advisor. Immigration and Custom Enforcement. Department of Homeland Security. Broward Transitional Center.3900 N. Powerline Road, Pompano Beach, Fl 33073, and all the lawyer on record via e-filing court system, on this day April 22, 2025.

Respectfully Submitted:

Maria Navarro Martin
Pro se Petitioner
A#: 204984846
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

EXHIBIT A

Filing # 220935626 E-Filed 04/14/2025 12:03:11 PM

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SIXTH DISTRICT

MARIA NAVARRO MARTIN,

Appellant,

v.

Case No. 6D2024-2218

STATE OF FLORIDA,

Appellee.

______________________/

RESPONSE TO APPELLANT'S BRIEF FILED ON APPEAL FROM SUMMARY DENIAL OF COLLATERAL MOTION

Appellee, the State of Florida, pursuant to Florida Rule of Appellate Procedure 9.141(b), files this response to Appellant's initial brief and states:

Appellant appeals from the summary denial of a Florida Rule of Criminal Procedure 3.800(a), 3.801 or 3.850 motion. The State declines to file an answer brief in this cause unless this Court so requests. See Ketion v. State, 548 So. 2d 778 (Fla. 1st DCA 1989); Toler v. State, 493 So. 2d 489 (Fla. 1st DCA 1986).

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL

/s/ Douglas T. Squire
DOUGLAS T. SQUIRE
ASSISTANT ATTORNEY GENERAL
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COUNSEL FOR APPELLEE

DESIGNATION OF E-MAIL ADDRESS

The State designates crimappdab@myfloridalegal.com as its primary email address and douglas.squire@myfloridalegal.com as its secondary address.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing is being sent via U.S. mail to pro-se Appellant, Maria Navarro Martin, A: #[redacted] Broward Transitional Center, 3900 N. Powerline Road, Pompano Beach, FL 33073 on this 14th day of April 2025.

/s/ Douglas T. Squire
DOUGLAS T. SQUIRE
Counsel for Appellee

EXHIBIT B

Part 9 Special Alert Adjudicators Field Manual Incorporated in USCIS Policy Manual

With the May 21, 2020 Technical Update, https://www.uscis.gov/policy-manual/updates, USCIS moved any remaining Adjudicators Field Manual (AFM) content to its corresponding USCIS Policy Manual Part, in PDF format, until the relevant AFM content can be properly incorporated into its corresponding USCIS Policy Manual Part. This transition will be reflected in the Treatise as USCIS curates and finalizes the content.

The Treatise will continue to include the publicly available redacted AFM content in Volumes 1516. When the AFM is fully incorporated in the USCIS PM, it will be moved to the Publishers Archived Version.

To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, **the updated information in the Policy Manual prevails.** If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

To find remaining AFM content in the publicly available online version of the USCIS Policy Manual found at https://www.uscis.gov/policy-manual, refer to the crosswalk between the AFM and the Policy Manual, as provided by USCIS. The crosswalk is reproduced below.

CHAPTER 104
Judicial Review *

104.04 Habeas Corpus
[5] Jurisdiction
[b] Determining the Proper Custodian
[iii] Attorney General/DHS Is the Proper Custodian

Several courts continue to hold that the Attorney General or Secretary of Homeland Security is the proper custodian in immigration detention cases. 199 Some of these courts have reasoned that because the officials, in their official capacity, transact business within the courts territorial jurisdiction, they can be reached by service of process. 200 Furthermore, because habeas petitions generally challenge the imposition, rather than the execution, of particular policies, it is the actions of the Attorney General or Secretary, not those of the warden of any particular facility, that are being challenged. 201 Courts have also noted that the Attorney General or Secretary could direct his or her subordinates to carry out any order to produce or release the petitioner. 202 These courts also reason that if a habeas corpus petition could be heard only where the petitioner was detained, the Attorney General or Secretary could seriously undermine the remedy of habeas corpus by detaining illegally a large group of persons in one facility so that the resulting torrent of habeas corpus petitions would overwhelm the local court. 203

The reorganization of immigration enforcement duties under the DHS has made the proper custodian even less clear. The Ninth Circuit has ruled that [u]ntil the exact parameters of the Attorney Generals power to detain aliens under the new Homeland Security scheme are decisively delineated, we believe it makes sense for immigration habeas petitioners to name the Attorney General *in addition* to naming the DHS Secretary as respondents in their habeas petitions. 204

199

Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) (Attorney General and DHS Secretary are proper respondents (citing Rumsfeld v. Padilla, 542 U.S. 426, 436 n.8 (2004)); Somir v. United States, 354 F. Supp. 2d 215 (E.D.N.Y. 2005) (Attorney General remains proper custodian post-*Padilla*); Mandarino v. Ashcroft, 318 F. Supp. 2d 13 (D. Conn. 2003) (Attorney General is proper custodian).

200

So v. Reno, 251 F. Supp. 2d 1112, 1128 (E.D.N.Y. 2003) (There is personal jurisdiction over the Attorney General in New York, since he or she regularly transacts business in New York in an official capacity.); Small v. Ashcroft, 209 F. Supp. 2d 294 (S.D.N.Y. 2002); Cinquemani v. Aschcroft, 2001 U.S. Dist. LEXIS 12163 (E.D.N.Y. Aug. 16, 2001) (There is no question that the Attorney General is a legal custodian of [a habeas petitioner being held in DHS custody].); Mojica v. Reno, 970 F. Supp. 130, 16667 (E.D.N.Y. 1997) (the Attorney General is one of several custodians), *affd on other grounds sub nom.* Henderson v. INS, 157 F.3d 106, 12228 (2d Cir. 1998); Nwankwo v. Reno, 828 F. Supp. 171, 17374 (E.D.N.Y. 1993); *see also* Ali v. Ashcroft, 213 F.R.D. 390, 408 (W.D. Wash. 2003) (Attorney General and INS Commissioner were appropriately named as respondents for class action challenging Attorney Generals statutory authority to remove large numbers of unidentified Somalis located across the country), *affd*, 346 F.3d 873 (9th Cir. 2003), *vacated sub nom.* Ali v. Gonzales, 421 F.3d 795 (9th Cir. 2005).

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Chavez-Rivas v. Olsen, 194 F. Supp. 2d 368, 374 (D.N.J. 2002).

202

Lee v. Ashcroft, 216 F. Supp. 2d 51, 5455 (E.D.N.Y. 2002) (collecting cases and noting that: (1) the Attorney General had the power to produce, detain, and release petitioners and was the ultimate decision-maker on removal matters; (2) Congress had designated the Attorney General as legal custodian of noncitizens; and (3) there is a compelling practical interest in protecting local district courts from becoming overwhelmed with habeas petitions); Mojica v. Reno, 970 F. Supp. 130, 167 (E.D.N.Y. 1997) (quoting Nwankwo v. Reno, 828 F. Supp. 171, 175 (E.D.N.Y. 1993)), *affd on other grounds sub nom.* Henderson v. INS, 157 F.3d 106, 12224 (2d Cir. 1998).

203

Lee v. Ashcroft, 216 F. Supp. 2d 51, 5455 (E.D.N.Y. 2002).

204

Armentero v. INS, 340 F.3d 1058, 1073 (9th Cir. 2003) (emphasis in original), *vacated*, 382 F.3d 1153 (9th Cir. 2004) (discussing previous Supreme Court and circuit precedent).

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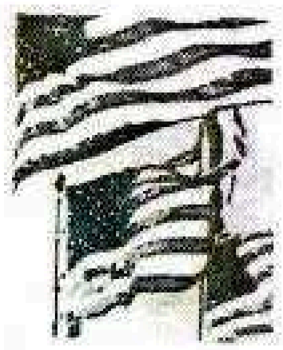

U.S. DISTRICT COURT SOUTHERN DISTRICT
- Clerk of Court.
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West Palm Beach, Florida
33401

INSPECTED