UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

JUAN FRANCISCO MENDEZ, Petitioner, v. Superintendent CHRISTOPHER BRACKETT, Warden, Strafford County Department of Corrections, et al., Respondents.	)	C.A. No. 25-00147-JL-AJ

MEMORANDUM IN SUPPORT OF PETITION
AND REQUEST FOR STATUS CONFERENCE ON FRIDAY, MAY 16, 2025

Mr. Mendez respectfully requests that this Court calendar a status conference for Friday, May 16, 2025. Last week, the government asserted in this Court that Mr. Mendez's continuing detention is his own fault because he never requested a bond hearing. That is not true. As shown below and in the accompanying declaration, Mr. Mendez filed a written request for a bond hearing on the Immigration Court docket on April 24. ICE has access to that docket.

The reality is this: Mr. Mendez has made every effort to move his immigration case forward and secure a bond hearing. However, even now—nearly a month after Mr. Mendez's arrest—ICE has only now filed any charging document. ICE has never offered any sworn testimony or other competent evidence to explain that failure to file the document earlier. Its prolonged inaction renders Mr. Mendez's continuing detention unlawful for multiple reasons, as described below.

Mr. Mendez may get a bond hearing this Thursday, May 15. However, if that bond hearing does not occur, he will renew his request for action by this Court.

SUMMARY OF FACTS

Petitioner Juan Francisco Mendez resides in New Bedford, Massachusetts, with his wife Marilu and their nine-year-old son. *See* Decl. of Ondine Galvez Sniffen, Esq. ("Sniffin Decl.") ¶ 6. Mr. Mendez has no criminal record anywhere in the world. *Id.* ¶ 5.

On February 6, 2024, the Immigration Court granted Mr. Mendez's wife and child lawful asylum status in the United States. *Id.* ¶ 7. As the spouse of a person with asylum, Mr. Mendez is eligible to reside in the United States. *See* 8 U.S.C. §1158(b)(3)(A) ("A spouse . . . of an alien who is granted asylum . . . may . . . be granted the same status as the alien if accompanying, or following to join, such alien."). At the time Marilu was granted asylum, Mr. Mendez was not himself in any proceedings before the Immigration Court. *See* Sniffin Decl. ¶ 8. Accordingly, a Form I-730 Refugee/Asylee Relative Petition was filed for him with U.S. Citizenship and Immigration Services ("USCIS") on October 25, 2024. *Id.* ¶ 9. USCIS ordered Mr. Mendez to appear in December 2024 to provide biometric information, which he did. *Id.* The petition is currently in processing at USCIS. *Id.*

On April 14, 2025, ICE violently arrested Mr. Mendez without a warrant in New Bedford. *Id.* ¶¶ 10-12. His wife, Marilu, video recorded a portion of the incident. *Id.* ¶ 11. The release of that video, and the related public statements by Marilu, by Mr. Mendez's immigration attorney, and by community members, have resulted in substantial press attention for ICE.[1] ICE has

[1] *See, e.g.*, Geraldo Beltran Salinas, *Federal agents smash car glass, detain Guatemalan immigrant in New Bedford*, BOSTON GLOBE (Apr. 15, 2025), https://www.bostonglobe.com/2025/04/15/metro/immigrant-arrest-new-bedford-light/; Esmy Jimenez, *'I feel sad and outraged': New Bedford Woman whose husband was detained by ICE fights for answers*, BOSTON GLOBE (Apr. 18, 2025), https://www.bostonglobe.com/2025/04/18/metro/new-bedford-ice-detained-husband/; Alysha Palumbo, *Mass. woman speaks out after video shows ICE agents smashing car window to get husband*, NBC BOSTON (Apr. 16, 2025), https://www.nbcnews.com/news/latino/ice-agents-smash-car-window-massachusetts-family-speaks-out-rcna201507.

apparently felt the need to defend itself in the press: an ICE spokesperson reportedly issued a statement that ICE "concurs with the actions" of its agents depicted in the video.[2] ICE's Acting Director Todd Lyons admitted that Mr. Mendez "wasn't" the person ICE had been looking for, yet claimed that Mr. Mendez "was still in the country illegally anyways."[3]

Following the arrest, ICE transferred Mr. Mendez to its detention facility at the Strafford County Department of Corrections in New Hampshire. *Id.* ¶ 13. This petition for writ of habeas corpus was filed in the District of New Hampshire on April 16, 2025. *See* Petition (D.E. 1).

As further discussed below, civil immigration detention cannot exist in a vacuum—it must support an actual immigration proceeding. For people arrested by ICE inside the United States, the charging document in an immigration proceeding is a Notice to Appear ("NTA"). *See* 8 C.F.R. § 1003.13. As a matter of law, the only way for ICE to initiate an immigration proceeding against Mr. Mendez in the Immigration Court is to file a Notice to Appear. *See* 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by [the U.S. Department of Homeland Security]."). Prior to the filing of an NTA, the Immigration Court is still authorized to hold a bond hearing for a person in custody, *see id.* ("[N]o charging document is required to be filed with the Immigration Court to commence bond proceedings . . . ."), but otherwise the proceeding is not commenced and cannot make any forward progress.

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[2] Jusolyn Flower & Kate Wilkinson, *ICE defends agents who smashed car window during New Bedford arrest*, WPRI (updated Apr. 17, 2025), https://www.wpri.com/news/local-news/se-mass/ice-defends-agents-who-smashed-car-window-during-new-bedford-arrest/.

[3] Ted Daniel, *'If you don't comply, you're going to get arrested': New ICE Chief warns in first TV interview*, BOSTON 25 NEWS (Apr. 30, 2025), https://www.boston25news.com/news/local/if-you-dont-comply-youre-going-get-arrested-new-ice-chief-talks-first-tv-interview/7QW5LXIXYJF2TCFPONTTC5R7FQ/.

Mr. Mendez has now been in civil immigration detention for more than four weeks. *See* Sniffin Decl. ¶¶ 10, 13, 27. It is only as of today, May 13, 2025, that any NTA was ever been docketed in the Immigration Court to initiate a removal proceeding against him. *Id.* ¶¶ 30. There has never been any obstacle to ICE filing the NTA before this time. *Id.* ¶ 32-33. The Immigration Court opened an electronic docket for Mr. Mendez, and ICE could have filed an NTA at any time. *Id.* ¶¶ 14-15. Mr. Mendez's immigration counsel has regularly monitored that docket and has repeatedly asked the Immigration Court for copies of any NTA or Form I-213 (essentially, the arrest report) that was filed by ICE, yet the Immigration Court said it had nothing to provide, until this date. *Id.* ¶¶ 16, 20, 29-30.

In its most recent filing (D.E. 6), and at the conference on May 9, the government repeatedly represented to the Court that Mr. Mendez never requested release from custody during the last month. *See* D.E. 6 at 4 ("Petitioner may seek release by requesting a bond hearing, *which he has not yet done*.") (emphasis added). The government's representations, communicated to the United States Attorney's Office by ICE, are not accurate. Mr. Mendez filed his request for a custody redetermination (colloquially referred to as a "bond hearing") on the Immigration Court's electronic docket on April 24, 2025. *See* Sniffin Decl. ¶ 18. The Immigration Court scheduled and noticed his bond hearing for May 8, 2025 (last Thursday). *Id.* ¶ 19. Mr. Mendez's counsel appeared on that date as ordered, and was fully prepared to proceed with the bond hearing. *Id.* ¶ 21.

When the hearing commenced, the Immigration Judge inquired whether there was any charging document. *Id.* ¶ 22. The clerk informed the Immigration Judge that there was not. *Id.* The government's counsel did not disagree. *Id.* Mr. Mendez's counsel explained that the case had been open for more than three weeks, that the bond motion had been filed more than two weeks

prior, and yet the government had filed nothing. *Id.* The government's counsel did not disagree with that either. *Id.* At that point, the Immigration Judge stated that the case was a "Failure to Prosecute" and was dismissed. *Id.* The government's counsel did not object or reserve appeal. *Id.*

Nevertheless, Mr. Mendez remains detained. *Id.* ¶ 27. The government agrees that Mr. Mendez has been held for a month in civil immigration detention, even though there was no civil immigration proceeding initiated against him until, apparently, today. *See* D.E. 6 at 3 (arguing Immigration Judge could not have dismissed the immigration case because "there was nothing to dismiss"). The government claims it created an NTA for Mr. Mendez at some prior point, but offers no affidavit or other evidence as to why it was not timely filed in the Immigration Court. *See id.* at 3 & n.3. A new NTA apparently issued on May 9, 2025, *see* D.E. 6-1, but it schedules Mr. Mendez's *initial appearance* for May 22, almost *six weeks* after his arrest and separation from his wife and child. *See* D.E. 6-1.

There is some potential relief on the horizon for Mr. Mendez. This Court has requested that "the government facilitate the scheduling of any requested bond hearing on the earliest practicable date." *See* May 9, 2025 Electronic Order. At the hearing on May 8, the Immigration Court calendared a new bond hearing on May 15 in case any issues arose with Mr. Mendez's release, and a notice of that May 15 bond hearing was issued. *See* Sniffin Decl. ¶ 22. Accordingly, undersigned counsel have contacted opposing counsel to (a) confirm that that government acknowledges (contrary to its prior statements) that Mr. Mendez did request a bond hearing on April 24 and continues to request a bond hearing; and (b) confirm that the May 15 bond hearing will go forward as scheduled. *See* Decl. of Ryan Sullivan, Esq. The government has now been

able to confirm that Mr. Mendez did indeed request a bond hearing, and that the bond hearing is calendared for May 15. *Id.*

ARGUMENT

Mr. Mendez is requesting a status conference this Friday because his detention without charge or a bond hearing is unlawful and raises several grave constitutional concerns.

First, Mr. Mendez has a constitutional right to a bond hearing, and he has not yet received one. There is no dispute that Mr. Mendez has no criminal record and has never been involved in terrorism, and that he is therefore eligible for release. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19, 1236.1(d). Mr. Mendez is entitled to a bond hearing with strong procedural protections as a matter of constitutional due process. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (constitutional rule); *Brito v. Garland*, 22 F.4th 240, 245-46, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment of same rule for prospective class of all people detained within the jurisdiction of the Boston Immigration Court). Mr. Mendez requested a bond hearing on April 24. *See* Sniffin Decl. ¶ 18. He has now been detained for more than four weeks, and no hearing has been provided. *Id.* ¶¶ 10, 13, 27. The hearing scheduled for May 8 did not go forward because the government did not file an NTA, and the Immigration Court adjourned the matter for failure to prosecute. *Id.* ¶ 22. The government has continued to detain Mr. Mendez to this day, with an NTA only being filed after an emergency motion to alleviate his unlawful detention was made to this Court, yet still with no bond hearing. *Id.* ¶ 27. A bond hearing is now calendared for May 15. *Id.* ¶ 22. If it does not go forward, then Mr. Mendez will apparently not be back in Immigration Court until May 22 at the earliest—nearly *six weeks* after his arrest, and a full *four weeks* after he requested a bond hearing. *See* D.E. 6-1 (May 22 appearance date). The government has denied Mr. Mendez the bond hearing that is required by the Due Process Clause of the Fifth Amendment

to the United States Constitution, and his detention is unlawful. *See Hernandez-Lara*, 10 F.4th at 41; *Brito*, 22 F.4th at 245-46, 256-57. If the bond hearing is not provided on the scheduled May 15 date, Mr. Mendez's counsel will respectfully be asking this Court to take immediate action to prevent any further violations of Mr. Mendez's rights.

Second, Mr. Mendez was detained for nearly a month with no charges filed, and he has never been provided an initial appearance on any charges. If Mr. Mendez had been arrested on federal criminal charges, the government would be required to bring him promptly before a court. *See, e.g.*, Fed. R. Crim. P. 5(a) ("A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge . . . ."); *Culombe v. Connecticut*, 367 U.S. 568, 599-600 (1961) (prompt appearance before a magistrate "essential to the protection of personal liberty"); *United States v. Tejada*, 255 F.3d 1, 4 & n.6 (1st Cir. 2001) (recognizing delay in presenting arrestee to magistrate judge may "effect[] a constitutional deprivation"). Mr. Mendez is not charged with any crime; his proceedings are purely civil. Yet roughly a month after Mr. Mendez's arrest, ICE had not filed any charges with the Immigration Court, much less brought Mr. Mendez before an Immigration Judge for an initial appearance on such charges. *See* Sniffin Decl. ¶¶ 26-29. Even with ICE belatedly filing its most recent NTA in the Immigration Court, Mr. Mendez may not receive an initial appearance on the charges until nearly six weeks after arrest. *See* D.E. 6-1 (May 22 appearance date). ICE's unconscionable delay in providing Mr. Mendez with a prompt initial appearance after arrest is attributable solely to ICE and violates Mr. Mendez's rights under the Fourth and Fifth Amendments. *See Corley v. United States*, 556 U.S. 303, 306 (2009) (requirement of prompt initial appearance intended to prevent "secret detention" by the government); *Gerstein v. Pugh*, 420 U.S. 103, 113-14 (1975) (Fourth Amendment requires judicial determination of probable cause after warrantless arrest); *Armstrong v. Squadrito*, 152 F.3d 564,

573 (7th Cir. 1998) ("The first appearance [on civil body attachment warrant] has such great value in protecting numerous rights that its denial presumptively disrupts those rights. Therefore, as a matter of constitutional prophylaxis, the denial of a first appearance offends the Due Process Clause."); *Cancino Castellar v. McAleenan*, 388 F. Supp. 3d 1218 (S.D. Cal. 2019) (substantive and procedural due process require prompt presentment in immigration context). And ICE knows that this extraordinary delay is unlawful: it recently settled a similar claim in the Southern District of California by agreeing that, for detainees in that district, ICE must file the NTA within 72 hours after arrest and must provide detainees in that district with initial hearings within 11 days after arrest. *See* Settlement Agreement and Release (D.E. 242-2), *Cancino Castellar v. Mayorkas*, C.A. 17-491 (S.D. Cal.).[4] Clearly, ICE is aware that it cannot lawfully hold an arrestee without any filed charges for a month, or for a month and a half without an initial appearance on the charges, yet that is exactly what it is doing to Mr. Mendez.

Third, there is strong evidence that ICE is gaming the Immigration Court and detention systems to unlawfully punish Mr. Mendez by needlessly prolonging his detention. "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, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Accordingly, "government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 746 (1987))

[4] Available at https://www.aclu-sdic.org/sites/default/files/field_documents/2024_01_18_242-2_bv_decl_ex_a_-_settlement_agreement.pdf.

(cleaned up); *Foucha*, 504 U.S. at 80; *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997). It is therefore well-recognized that civil immigration detention cannot be used to punish, but rather must be shown to promote at least one of its two regulatory goals: ensuring appearance at future immigration proceedings and preventing danger to the community during such proceedings. *See Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) ("Were there to be unreasonable delay by [the immigration authorities] in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons."); Memorandum and Order (D.E. 35), *Ercelik v. Hyde*, No. 25-11007 (D. Mass. May 8, 2025) at 25-26 ("[C]ivil detention cannot be punitive."); *Ozturk v. Trump*, No. 25-374, 2025 WL 1145250, at *20 (D. Vt. Apr. 18, 2025) ("Rather than punishment, immigration detention must be motivated by the two valid regulatory goals that the government has previously argued motivate the statute: ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.") (internal quotation marks omitted). Here, ICE has offered no declaration or other evidence as to why it did not timely file an NTA to initiate Mr. Mendez's removal proceeding. ICE's unexplained failure to file the NTA is preventing his immigration case from moving forward—indeed, the government admits that for the last month, Mr. Mendez has been detained even though there was *no immigration proceeding at all*. D.E. 6 at 3. Clearly, ICE was not detaining Mr. Mendez to promote the completion of an immigration proceeding that ICE had declined to initiate. And clearly ICE does not actually contend that Mr. Mendez—who has no criminal record, who voluntarily disclosed his presence to the immigration authorities long before his arrest, and who has a clear pathway to permanent status—is dangerous or a risk of flight. In the absence of any sworn explanation for the delay by an ICE official with personal knowledge,

the natural inference is that ICE is angry about the bad press arising from Mr. Mendez's arrest, and delayed the immigration proceedings and prolonged Mr. Mendez's detention in order to punish him for causing ICE embarrassment in the media. This inference is strengthened by the fact that ICE tried to cover its tracks by falsely informing this Court and (apparently) its own counsel that Mr. Mendez had never requested a bond hearing.[5] *See* D.E. 6 at 4. Immigration proceedings and immigration detention may not be used to punish, and ICE's misuse of these tools is flatly illegal. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J. concurring); Memorandum and Order (D.E. 35), *Ercelik v. Hyde*, C.A. No. 25-11007 (D. Mass. May 8, 2025) at 25-26; *Ozturk*, 2025 WL 1145250, at *20.

Fourth, and relatedly, this same lack of a sworn explanation for the delay is strong evidence that ICE has been delaying Mr. Mendez's case and prolonging his detention in retaliation for speech protected by the First Amendment. As explained above, the articles critical of ICE's arrest conduct included quotations by multiple people closely associated with Mr. Mendez, including his wife and attorney. Given the lack of sworn evidence of any other explanation, it is reasonable to conclude that ICE is unlawfully punishing Mr. Mendez, at least in part, because of this protected speech. *See* Memorandum and Order (D.E. 35), *Ercelik v. Hyde*, C.A. No. 25-11007 (D. Mass. May 8, 2025) at 21-23 (finding protected First Amendment expression was likely a motivating factor for prolonging Petitioner's detention in part because "[i]t rises to the level of near absurdity that Respondents are working to deport many people quickly and at minimal expense to the American taxpayer, but absent an improper purpose, intend to extend Petitioner's detention");

[5] Mr. Mendez's counsel believes the AUSA in this case was merely relying on representations from her client when she made these misstatements to the Court. There is no allegation that the AUSA made any willful misstatement, and to her credit she has recognized the incorrect information she was provided.

Davignon v. Hodgson, 524 F.3d 91, 107 (1st Cir. 2008) (timing of adverse action, evidence of pretext reflecting a "desire to punish," and deviation from standard procedures among the factors relevant to causation element of First Amendment retaliation claim).[6]

For all these reasons, Mr. Mendez continues to challenge his unlawful detention, and respectfully requests a status conference be scheduled for Friday, May 16. By that time, it will be clear whether the bond hearing noticed for May 15 actually went forward. If not, Mr. Mendez will request that this Court order his release, or set its own bond hearing to remedy the violation of his rights, or order such other relief as it deems just and proper. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 780-81 (2008) (explaining that historically "common-law habeas corpus was, above all, an adaptable remedy" in which the "court's role was most extensive in cases of pretrial and noncriminal detention"); *Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy."); *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 455, 474-78 & n.18 (D. Mass. 2010) (considering remedial issues and conducting bond hearing). Additionally, to the extent the Court may need additional time to consider the issues raised herein, and in light of the extraordinary circumstances of this case, the Court could also consider granting bail pending resolution of the habeas petition. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001); *Savino v. Souza*, 453 F. Supp. 3d 441, 453 (D. Mass. 2020). Petitioner also reserves the right, and may request, to seek discovery in support of the petition. *See* Rules Governing Section 2254 Cases 1(b), 6 (Rules may also be applied to non-2254 habeas cases, and court may authorize discovery for good cause); *Gomes v. DHS*, 559 F. Supp. 3d 8, 11 (D.N.H. 2021) (authorizing discovery for § 2241 petition under 2254 Rule 6 for good cause).

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[6] Here, although the speech at issue is from Mr. Mendez's wife and his lawyer, Mr. Mendez may challenge any retaliation being inflicted upon him. *See Playboy Enters., Inc. v. Pub. Serv. Comm'n of P.R.*, 906 F.2d 25, 37 (1st Cir. 1990).

Respectfully submitted,

/s/ Ryan P. Sullivan

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Dated: May 13, 2025

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Juan Francisco Mendez, Petitioner, v. Strafford County Department of Corrections, Superintendent, et al., Respondents.	)	No. 1:25-cv-00147-JL-AJ

FEDERAL RESPONDENTS' OBJECTION TO PETITIONER'S REQUEST FOR STATUS CONFERENCE ON FRIDAY, MAY 16, 2025

Federal Respondents, Patricia H. Hyde, Acting Director of Boston Field Office, U.S. Immigration and Customs Enforcement ("ICE"), Enforcement Removal Operations ("ERO"); Kristi Noem, Secretary of the Department of Homeland Security ("DHS"), and Pamela Bondi, Attorney General, hereby object to Petitioner's request for a status conference on May 16, 2025.

Earlier today, Petitioner, Juan Francisco Mendez, appeared before an immigration judge, who conducted a custody redetermination (often called a "bond hearing") and ordered him released on $1,500 bond. A copy of that order is attached to undersigned counsel's declaration appended to this objection as Exhibit A.

Because Petitioner has received the bond hearing he sought, his request for a status conference to be held on May 16, 2025, is moot.[1]

[1] Federal Respondents also contend that Petitioner's release on bond moots his habeas petition in full; a motion to dismiss the petition will be filed separately.

Therefore, Federal Respondents ask that Petitioner's request for a status conference be denied.[2]

No separate memorandum of law is attached given the nature of the relief requested.

Respectfully submitted,
JANE E. YOUNG
United States Attorney

Dated: May 15, 2025

By: */s/Anna Dronzek*

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[2] Because the relief that Petitioner seeks is no longer necessary, Federal Respondents decline to address the merits of the allegations raised in his motion, beyond noting that they were clearly unfounded because Petitioner's bond hearing was held as scheduled. In declining to address the merits, Federal Respondents do not admit or concede the allegations in the motion, and they reserve the right to respond further should such a response become appropriate as the litigation proceeds.