

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. _____

CARLOS MANZANAREZ MENDOZA, Petitioner/Applicant,

v.

MARK BOWEN, Acting Warden,
Aurora ICE Processing Center, and JOHN FABBRICATORE, Field Office
Director, United States Immigration & Customs Enforcement, Denver,
Colorado, Respondents.

APPLICATION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

I. INTRODUCTION

"[H]abeas is at its core a remedy for unlawful executive detention."
Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 119
(2020). Here the habeas applicant is a non-criminal Nicaraguan man
currently detained without bond by Immigration and Customs Enforcement
(ICE) in Aurora, Colorado. His ongoing detention violates 8 U.S.C. §

1226(a)(2)(A), 8 C.F.R. § 1003.19(e) and his right to Due Process under the Fifth Amendment to the Constitution of the United States. He seeks a writ¹ from the Court granting him release from immigration detention subject to reasonable bond and routine supervision.

II. JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 2241 and Article I, § 9, clause 2 of the U.S. Constitution (the Suspension Clause). Venue is proper in this Court under 28 U.S.C. § 1391(e) because Mr. Manzanarez is detained in Aurora, Colorado, within the jurisdiction of the U.S. District Court for the District of Colorado.

III. PARTIES

The Applicant is Carlos Manzanarez Mendoza. He is a non-criminal. He is a non-citizen of the United States. He was born in Nicaragua. He is currently detained without bond at the Aurora Contract Detention Facility also located in Aurora, Colorado. Based on information and belief, the first Respondent is Acting Warden Mark Bowen, employed by the private corporation GEO Group, which has contracted with the U.S. Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) to

¹ The authority of federal courts to issue the writ of habeas corpus ad subjiciendum was included in the first grant of federal-court jurisdiction, made by the Judiciary Act of 1789 with the limitation that the writ extend only to prisoners held in custody by the United States. *Stone v. Powell*, 428 U.S. 465, 473 (1976).

detain numerous non-citizens from all over the United States in Aurora, Colorado. Upon information and belief, Acting Warden Bowen is the person who has present custody of Mr. Manzanarez. The second Respondent is John Fabbriatore. He is the ICE Field Officer Director in Denver, Colorado.

IV. FACTUAL BACKGROUND

1. Mr. Manzanarez was arrested by ICE on February 11, 2025, due to an alleged domestic assault in Denver, but criminal charges were never filed, which ICE knew by February 14, 2025.

2. He has been held without bond since ICE arrested him.

3. He did not get a bond redetermination decision at the ICE jail until April 21, 2025, which was sixty-nine (69) days after his arrest by ICE.

4. Mr. Manzanarez explained to the Immigration Judge (IJ) that the criminal charges against him were never filed and the case was closed, and that is what the Denver criminal court docket demonstrated, and the ICE attorney agreed. Also the IJ learned Mr. Manzanarez had no criminal convictions and no pending criminal charges anywhere else in any other country, including the United States. Mr. Manzanarez also explained to the IJ that he never had a failure to appear (FTA) in any court, and the ICE attorney could produce no evidence of any FTA's, not even for a traffic ticket. Mr. Manzanarez also had a pending application for asylum; and this

application was already on the record at the Department of Homeland Security.

5. Mr. Manzanarez therefore requested release on bond under 8 U.S.C. § 1226(a)(2)(A) which allows a minimal bond of \$1500.

6. His bond request was denied in a written order that only provided a fragmented explanation: "Denied because did not establish not a flight risk."

7. On April 30, 2025, Mr. Manzanarez filed a new motion for a bond redetermination under 8 C.F.R. § 1003.19(e). He included a copy of his asylum application, numerous certificates memorializing his achievements while in ICE custody over the past seventy-eight (78) days, and extra proof from his sponsor, a United States citizen, who planned to marry him.

8. On May 12, 2025, this bond request was also "denied for the following reason(s): "respondent has not established that circumstances have changed materially since the prior bond redetermination hearing such that he does not pose a flight risk. 8 C.F.R. § 1003.19(e)."

9. This was a fact-free decision; there were never any facts or reasoning given by the IJ to support the finding of flight risk.

10. There was also no reasoning for why circumstances had not changed since the first bond redetermination, and no discussion of why the new evidence was not relevant to flight risk.

11. The bond process had become a guessing game because Mr. Manzanarez had no idea of the reasoning or evidence behind denying him any bond.

12. Mr. Manzanarez appealed to the Board of Immigration Appeals, but exhaustion at that level has become futile for the reasons explained below.

V. ADMINISTRATIVE EXHAUSTION DOES NOT APPLY WHERE
NO FURTHER EFFECTIVE REMEDY EXISTS.

Mr. Manzanarez is not challenging a discretionary bond decision. See 8 U.S.C. § 1226(e). The agency does not have discretion to violate his established right to procedural due process. And Mr. Manzanarez is not attempting to hide a challenge to a discretionary decision within a due process claim. The Immigration and Nationality Act does not require administrative exhaustion as a jurisdictional prerequisite to seeking habeas corpus relief under 8 U.S.C. § 2241. See *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Exhaustion is a rule of judicial administration and unless "Congress directs otherwise, it is rightfully subject to crafting by judges." *Id.*

Exhaustion should not be required when further agency review is hopelessly dilatory, would be futile, or where the agency lacks authority to grant relief or is otherwise abusing its discretionary authority as a cover for violating a person's fundamental right. See *L.G. v. Choate*, 744 F.Supp.3d 1172, 1181 (D. Colo. 2024) stating that "[w]hile petitioners are ordinarily required to exhaust their administrative remedies prior to seeking a writ under 28 U.S.C. § 2241, the government admits administrative exhaustion is not required by statute." *Id.*

Here the district court has discretion to decide if administrative exhaustion is required. Exhaustion should not be required where Mr. Manzanarez challenges the constitutionality of his underlying detention, not merely a discretionary denial of bond, albeit abusive. *Id.* Here, Mr. Manzanarez has exhausted all available remedies at the immigration court level: He requested bond; he presented relevant evidence; he moved to reconsider, and was finally denied reconsideration when the immigration court again refused bond in violation of its own regulation at 8 C.F.R. § 1003.19(e).

On May 16, 2025, Mr. Manzanarez *filed a timely, immediate appeal* to the Board of Immigration Appeals (BIA), which to date has not been accepted, but there is an email confirmation that the BIA is "evaluating"

whether to accept the bond appeal. This leaves Mr. Manzanarez in a legal limbo while he remains detained. Under these circumstances, there is no effective administrative remedy remaining to exhaust. The IJ has already ruled, the BIA is still evaluating whether to accept the appeal, and the administrative process has stalled. This satisfies any prudential exhaustion requirement and justifies habeas relief. Even if the BIA eventually accepts the bond appeal, it cannot rule on the constitutional claims presented by Mr. Manzanarez. See *L.G. v. Choate*, 744 F.Supp.3d at 1181.

A.. *Constitutional Claims Are Not Subject to Administrative Exhaustion*

Because the BIA Lacks Jurisdiction Over Them.

Even assuming the BIA were actively reviewing Mr. Manzanarez' case, constitutional due process claims are not within the BIA's jurisdiction to decide. "Courts have carved out an exception to the exhaustion requirement for constitutional challenges to the immigration laws, because the BIA has no jurisdiction to review such claims." *Soberanes v. Comfort*, 388 F.3d. 1305, 1309, 1310 (10th Cir. 2004). Mr. Manzanarez due process challenges are unaffected by his failure to appeal the IJ's bond denial (although he has tried to appeal). He raises issues that would fall outside the jurisdictional scope of a BIA appeal. See *I.N.S. v. Chadha*, 462 U.S. 919, 936 (1983) (A person threatened with deportation cannot be denied

the right to challenge the constitutional validity of the process which led to his status merely on the basis of speculation over the availability of other forms of relief). Here, Mr. Manzanarez' habeas petition raises a procedural due process challenge under the Fifth Amendment. Specifically, he asserts that the denial of bond without reasoned findings and refusal to reasonably evaluate critical evidence violated his due process rights as applied in this case; the agency violated its own regulation (8 C.F.R. § 1003.19(e)) as applied to Mr. Manzanarez in a way that triggered *Accardi*-based due process protections. None of these questions fall within the Board's competence or jurisdiction. As such, administrative exhaustion should not be required in this case.

B. Exhaustion Would Be Futile or Cause Irreparable Harm

Even if exhaustion were considered applicable, it should be excused under established exceptions. Courts have repeatedly recognized that exhaustion is not required where it would be futile or would cause irreparable harm. See: *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992). Mr. Manzanarez has now been detained for over three months without bond, based on allegations that have been factually disproven and legally nullified, and ICE has never produced any evidence of flight risk. Continued detention under these circumstances constitutes an ongoing deprivation of

liberty without process. "Even where the administrative decision-making schedule is otherwise reasonable and definite, a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *Id.* ICE has not come forward in immigration court or otherwise to produce any evidence of flight risk. Meanwhile, Mr. Manzanarez remains in detention without bond, suffering irreparable harm to his liberty. Exhaustion should not be required where, as here in the case of Mr. Manzanarez, irreparable harm is ongoing.

VI. ARGUMENT: THE "FLIGHT RISK" RULING
VIOLATED MR. MANZANAREZ' RIGHT TO PROCEDURAL DUE
PROCESS.

A. *The constitution requires a meaningful opportunity to be heard
and a reasoned decision.*

A fundamental right has been violated. Applied to Mr. Manzanarez, the fundamental right of liberty has been jettisoned by the agency. The Fifth Amendment guarantees that noncitizens in immigration detention are entitled to procedural due process, which includes the right to a full and fair bond hearing. The Fifth Amendment's Due Process Clause forbids the Government to deprive any person of liberty without due process of law. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "Freedom from

imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.*, quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). "Detention violates Due Process unless the detention is ordered in a criminal proceeding with adequate procedural protections." *Id.*, quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987); or, in certain special and "narrow" nonpunitive circumstances," where a special justification, such as harm-threatening mental illness, outweighs the "individual's constitutionally protected interest in avoiding physical restraint". *Id.*, quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997). Due process includes the right to be heard, to present evidence, and to receive a decision supported by the record. The Tenth Circuit has consistently affirmed this principle. See, e.g., *N-A-M v. Holder*, 587 F.3d 1052, 1057 (10th Cir. 2009) (the process must be conducted in a "meaningful manner").

These powerful decisions reflect the settled principle that immigration detention—though civil in form—implicates a fundamental liberty interest protected by the Constitution. Accordingly, a noncitizen is entitled to a fundamentally fair bond hearing, including a reasoned decision and meaningful opportunity to contest continued detention. But a final decision consisting solely of a few words about flight risk with no facts and non

reasoning mocks Due Process. It provides no basis for judicial or administrative review and no explanation of the legal or factual findings, if any.

B. Immigration Judges Must Provide a Rationale for Denying Bond.

Immigration bond hearings must comply with *In re Guerra*, 24 I&N Dec. 37, 39 (BIA 2006), which requires the judge to consider a range of discretionary factors, including criminal history, rehabilitation, family ties, employment, and community support. A bond denial must reflect consideration of these factors. But a brusque decision that offers no indication that the judge considered any of these mandatory factors renders administrative review impossible and fails to meet the minimum requirements of due process.

C. Mr. Manzanarez' Detention Violates the Due Process Clause

Under *Mathews v. Eldridge*

The Due Process Clause of the Fifth Amendment applies to all persons within the United States, including noncitizens, and protects against arbitrary deprivations of liberty by the government. While immigration detention is civil in form, it implicates a fundamental liberty interest. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), courts must

weigh three factors to determine whether the government has afforded constitutionally sufficient procedural protections.²

Factor 1: The Private Interest Affected.

The private interest at stake is Mr. Manzanarez' physical liberty—his freedom from immigration detention. This is “the most fundamental of all interests under the Constitution.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Mr. Manzanarez has been detained since February 11, 2025, based on an allegation of flight risk that is fact-free, with no evidence and no reasoning. Mr. Manzanarez has zero criminal convictions. He has zero pending charges, and he has zero history of any failures to appear. He also has a local citizen sponsor who wants to marry him and his asylum application is still pending with the agency, and it is meritorious. Despite this, he remains incarcerated, without a meaningful opportunity to secure release. His deprivation is both prolonged and unsupported, weighing heavily in favor of constitutional procedural protection being applied now to his case.

² “[T]he truism” that due process “unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances Due process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (internal punctuation and citations omitted).

Factor 2: The Risk of Erroneous Deprivation and the Probable Value of
Additional Safeguards.

The risk of an erroneous deprivation of liberty under the current procedures as applied in the case of Mr. Manzanarez is unacceptably high, and the record shows no factual findings were offered. The lack of explanation or engagement with the evidence is emblematic of arbitrary adjudication. Due process requires that the immigration court consider evidence and provide a reasoned decision. See *Wiransane v. Ashcroft*, 366 F.3d 889, 898 (10th Cir. 2004). Mr. Manzanarez sought reconsideration of the skeletal "flight risk" decision. But he had no reason to anticipate the flight-risk ruling in the first place, especially given that ICE could produce no evidence concerning flight risk, and his documents showed his clean history, his close ties to the community, and his pending relief of asylum. This procedural posture—detention based on nonexistent evidence of flight risk, and the summary dismissal of new documents regarding flight risk—shows a profound risk of error. Additional safeguards, such as requiring reasoned written findings based on facts, and permitting supplemental evidence for reconsideration, would materially reduce that risk of erroneous deprivation of liberty as applied to this case. But serious errors regarding Mr. Manzanarez' liberty interest is unimportant to this

agency -- probably because he is not only a person from an impoverished, violence-ridden country located in Central America, but also because he is a vulnerable person of color. These classic factors of racism and ethnocentrism should be made part of the equation when adjudicating the erroneous deprivation of his liberty. Consider that the only refugees admitted to the United States under the Trump administration have been white South Africans: "The red carpet is being rolled out for them, showily and deliberately. . . as a political signal. Consider it a statement of allegiance to whiteness; a full-throated declaration of where, and with whom, this administration's priorities lie."³

Factor 3: The Government's Interest.

The government does have an interest in ensuring that noncitizens who pose a genuine flight-risk are not released. But that interest does not extend to detaining individuals based on demonstrably zero information and in the absence of any articulable reason. See *Zadvydas*, 533 U.S. at 690–91. The government's interest here is eviscerated by its failure to produce any supporting evidence of flight-risk, or any explanation for associating Mr. Manzanarez' bond requests with the idea of flight-risk. He has filed an application for asylum and withholding of removal; he has

³ <https://www.thenation.com/article/politics/white-south-african-refugees-trump/>

strong community ties; he has no history of flight. Requiring a reasoned decision from the immigration court about his bond denial and a meaningful opportunity to respond with relevant evidence does not unduly burden the government. On the contrary, it safeguards the legitimacy of its proceedings and serves the government's interest in due process for all persons in the United States.

Procedural Due Process Was Violated.

Applying the *Mathews* test, the balance of interests decisively favors Mr. Manzanarez. His liberty interest is fundamental, the risk of erroneous deprivation is realized and ongoing as applied to his case, and the government's interests are not harmed—indeed, they are served—by requiring a constitutionally adequate bond process for him. Holding him with no evidence of flight risk is not due process of law.

VII. THE LACK OF EVIDENCE REGARDING FLIGHT RISK VIOLATED
DUE PROCESS UNDER THE ACCARDI DOCTRINE.

A. *Under the Accardi Doctrine, Immigration Judges Must Follow Binding
Agency Regulations.*

An immigration detainee who has been denied release on bond can seek a subsequent bond hearing upon a showing that his or her “circumstances have changed materially since the prior bond

redetermination.” 8 C.F.R. § 1003.19(e). This option provides an “additional safeguard”. See *Lopez v. Barr*, 458 F.Supp.3d 171, 178 (W.D. NY 2020). Under the *Accardi* doctrine, derived from *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954), an administrative agency violates due process when it fails to follow its own binding regulations. “In short, as long as the regulations remain operative, the Attorney General denies himself the right to sidestep. . . .” *Id.* As the Supreme Court explained “[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.” *U. S. v. Caceres*, 440 U.S. 741, 751 n. 14 (1979). The Tenth Circuit recognizes the continuing vitality of this doctrine. “*Accardi* stands for the proposition that an agency must adhere to its own rules and regulations when an individual’s due process interests are implicated.... [T]he *Accardi* holding applies to regulations that exist to protect the rights of those regulated by the agency.” *KLC farm v. Perdue*, 426 F.Supp.3d 837, 850 (D. Kansas 2019) citing *Jagers v. Fed. Crop Ins. Corp.*, 758 F.3d 1179, 1186 (10th Cir. 2014) and *United States v. Thompson*, 579 F.2d 1184, 1191 (10th Cir. 1978). Thus, when an immigration judge defrocks the governing regulatory standard—as in this case of a motion to reconsider bond under 8 C.F.R. §

1003.19(e)—the resulting decision is not merely legal error but a violation of procedural due process under the *Accardi* doctrine.

B. 8 C.F.R. § 1003.19(e) Creates a Mandatory Framework for Considering Material Changes in Circumstance

The regulation at 8 C.F.R. § 1003.19(e) provides that after an initial bond determination, an immigration judge may conduct a subsequent bond redetermination upon a showing of a material change in circumstances. The regulation is not discretionary in the sense of permitting the IJ to ignore relevant evidence altogether; it creates a binding procedural obligation to evaluate such changes when properly presented. In Mr. Manzanarez' case, he moved to reconsider bond pursuant to the regulation. This new evidence was directly material to the Immigration Judge's prior unexplained finding of flight risk. Under § 1003.19(e), the immigration court was obligated to review and evaluate this additional evidence. Failure to do so violated the *Accardi* doctrine. But there is no indication that the IJ considered any evidence or used any factual basis for denying bond.

C. Prejudice Resulted from the IJ's Failure to Follow the Regulation.

Mr. Manzanarez remains in prolonged immigration detention under 8 U.S.C. § 1226(a), a statute that authorizes bonds for as low as \$1500. The IJ's refusal to explain or provide any facts in support of the flight-risk finding

stripped the bond process of fairness, reliability and meaning. The IJ violated the process for challenging detention.

VIII. CONCLUSION

Mr. Manzanarez is being unconstitutionally detained under 8 U.S.C. § 1226(a) based on allegations of flight risk that have no foundation in fact or reason, in clear violation of the statute and 8 C.F.R. § 1003.19(e). This refusal not only contravenes the plain language and purpose of the regulation but also violates the Due Process Clause under *Mathews v. Eldridge* and the *Accardi* doctrine. The agency's failure to follow its own binding procedures and its continued detention of Mr. Manzanarez has now invited judicial intervention. Administrative exhaustion is not required in this case because Mr. Manzanarez has no effective remedy left at the agency level, and his constitutional claims fall outside the agency's jurisdiction. Mr. Manzanarez' fundamental liberty interest cannot be lawfully overridden by vague, arbitrary, or conclusory government action that culminates in a baseless decision and denies recognition of vital evidence. Judicial intervention will protect the vulnerable and restore the procedural integrity that due process requires when applied to the case of Mr. Manzanarez.

IX. REQUEST FOR RELIEF

WHEREFORE, the Applicant, Carlos Manzanarez Mendoza respectfully requests that this Court:

1. Issue a writ of habeas corpus under 28 U.S.C. § 2241 directing Respondents to immediately release him from immigration detention subject to a reasonable bond of \$1500 and regular, routine conditions of release.

2. In the alternative, Mr. Manzanarez respectfully requests that this Court order a constitutionally adequate bond hearing where all material evidence must be considered without arbitrary exclusion and the immigration court must issue written findings supported by the evidentiary record.

3. It is further requested that this Court excuse any requirement of administrative exhaustion as either satisfied or inapplicable, in light of the constitutional nature of Mr. Manzanarez' claims and the agency's lack of jurisdiction to resolve constitutional questions; and the futility of asking the agency to perform a task outside of its jurisdiction; and the irreparable harm to the Applicant while the agency remains dilatory and tardy, rendering further administrative appeals futile.

4. It is also requested that this Court award attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), on the grounds that: Mr. Manzanarez is the prevailing party; the position of the United States was not substantially justified; and no special circumstances make such an award unjust.

5. Mr. Manzanarez also requests to reserve the right to file a timely application for fees and costs within thirty (30) days of final judgment in this action in compliance with 28 U.S.C. § 2412(d)(1)(B);

6. It is lastly requested that this Court grant any other and further relief that it deems just and proper.

Respectfully submitted,

s/Jim Salvator

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