UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-01558-RMR

CARLOS MANZANAREZ MENDOZA,

Petitioner,

v.

MARK BOWEN, ET AL.

PETITIONER'S REPLY IN SUPPORT OF APPLICATION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner Carlos Manzanarez Mendoza has now been detained for over 140 days without constitutionally adequate bond procedures. When he finally appeared regarding bond he received two conclusory denials containing no factual findings (ECF 1-1 at 1) & (ECF 1-1 at 41). Only after perfecting his appeal to the Board of Immigration Appeals did the Immigration Judge issue a "supplemental" memorandum attempting to justify the prior decisions (ECF 7-1 at 15-17).

Mr. Manzanarez has never been convicted of any crime, and he has never failed to appear for any court hearing or appointment with the government, yet he remains detained with no bond under this defective process. This cumulative record demonstrates a deprivation of liberty without due process of law, in violation of the Fifth Amendment. Respondents' jurisdictional and procedural objections do not defeat this Court's review. For these reasons, the writ should issue.

II. THE COURT HAS JURISDICTION TO REVIEW PETITIONER'S CLAIMS

Section 1226(e) does not bar review of constitutional and legal challenges. Respondents argue that 8 U.S.C. § 1226(e) strips this Court of jurisdiction. This misreads the statute. Section 1226(e) precludes review of discretionary judgments but does not preclude review of constitutional claims and questions of law. *Demore v. Kim,* 538 U.S. 510, 517 (2003). District courts clearly have jurisdiction under 28 U.S.C. § 2241 to consider any error of law in agency proceedings, "including any claimed due process violation." *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1178, n. 12 (D. Colo. 2024) (quoting *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022)).

Mr. Manzanarez challenges the complete absence of contemporaneous findings at the time of two bond denials, and now the post hoc issuance of a written decision after jurisdiction had transferred to the BIA, depriving him of any opportunity to respond in immigration court. He challenges the continued placement

of the burden of proof on him, and the cumulative effect of these defects depriving him of fair process. These are precisely the types of constitutional and legal errors that remain reviewable. These types of claims cannot be exhausted at the Board of Immigration Appeals, but Mr. Manzanarez has tried in good faith to do so.

III. THERE WAS NO DISCRETION

The government tacitly concedes that the first two bond decisions were not discretionary at all (ECF 7 at 15). The April 21 and May 12 denials contained no explanation beyond conclusory assertions that Petitioner was a flight risk or lacked materially changed circumstances. This was not an exercise of discretion but a failure to exercise discretion. See 8 C.F.R. § 1003.19(f) (requiring contemporaneous reasoning): "The determination of an Immigration Judge with respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing of the reasons for the decision." *Id.* "An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to § 1003.38." *Id.* The government's response does not properly invoke 8 U.S.C. § 1226(e) nor 8 U.S.C. § 1252(a)(2)(B)(ii) because there was no discretion involved in the April 21 and May 12 decisions.

III. THE MANZANAREZ DUE PROCESS CLAIMS ARE NOT MOOT

The government must defend its actions based on the reasons it gave when it acted, and it is a foundational principle of administrative law that a court may uphold agency action only on the grounds that the agency invoked when it took the action. *Castaneda v. Garland*, 562 F. Supp. 3d 545, 560 (C.D. Cal. 2021) (citing *Michigan v. EPA*, 576 U.S. 743, 758 (2015) (quoting *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943))). "Defendants told Castaneda's counsel that the bond motion was rejected because ICE had not filed a Notice to Appear; that is the basis upon which this Court will review the agency decision." *Id.*

Respondents argue that the Manzanarez constitutional claims are moot because the IJ issued a post hoc memorandum on June 2, 2025, *after* Manzanarez appealed to the BIA. This "posture resembles that of an arsonist who calls 911 to report firefighters for violating a local noise ordinance."[1] Here respondents are the arsonists complaining that the Manzanarez due process claims are moot because they violated the bond procedure.

First, at the time the habeas was filed on May 16, 2025, Mr. Manzanarez had received two final, conclusory bond denials with no findings. The due process violations were complete.

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[1] *Department of Homeland Security, et al v. D.V.D., et al.,* No. 25A1153, slip op. at 13 (U.S. June 23, 2025) (Sotomayor, J., dissenting).

Second, the June 2 memorandum was issued after Mr. Manzanarez perfected his BIA appeal on May 29, 2025, at which point the IJ no longer had jurisdiction over the record. Carlos Manzanarez never had a meaningful opportunity to respond or supplement the record in the trial forum.

Third, the IJ repeatedly placed the burden of proving no flight risk on Mr. Manzanarez, indefinitely.

Fourth, Mr. Manzanarez remains detained under that defective process, and faces a final removal hearing in September, further compounding the prejudice.[2]

The Supreme Court has made clear that such procedural errors cannot be cured retroactively. The agency action must be measured by what the agency did, not by what "it might have done". *Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 93–94 (1943). The IJ's post hoc memorandum does not moot the Manzanarez habeas claim because of *when* it was made. The government relies on the DOJ practice manual (ECF 7-1 at 5, n. 1) to excuse the IJ's timing: "Usually, the Immigration Judge's decision is rendered orally. Because bond hearings are generally not recorded, the decision is not transcribed. If either party appeals, the Immigration Judge prepares a written decision based on notes from the hearing" (ECF 7-1 at 5)

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[2] See TRAC Immigration, "Asylum Decisions," available at https://trac.syr.edu/immigration/reports/, showing that between FY2017 and FY2023, detained asylum applicants had an average grant rate between 15% and 20%, while non-detained applicants had rates between 35% and 45%.

(quoting DOJ's Immigration Court Practice Manual, Chapter 9.3(e)(7)). But the Manual does not condone prior conclusory decision-making in violation of 8 C.F.R. § 1003.19(f). In the case of Mr. Manzanarez what "[u]sually" happens did not happen---because the manual presumes the IJ would have explained his reasoning and fact-finding under § 1003.19(f) *before* an appeal was perfected, not after.

There is also a practical consideration. The April 21 bond decision was conclusory; therefore Mr. Manzanarez was forced to request bond reconsideration under 8 C.F.R. § 1003.19(e). But given the complete lack of fact-finding and reasoning in the April 21 decision, Mr. Manzanarez was forced to wonder what the IJ meant. This process eviscerated the meaning of § 1003.19(e) which presumes there was a prior reasoned decision under § 1003.19(f) to reconsider. On the other hand, had the IJ complied with his duty to the parties under 8 C.F.R. § 1003.19(f), he would have contemporaneously informed them orally or in writing of the reasons for the April 21 decision. This double violation of §1003.19 invokes the *Accardi* doctrine (ECF 1 at 16).

Moreover, the IJ repeatedly placed the burden of proving no flight risk on Mr. Manzanarez. This compounded the due process violations because detention exceeding a brief period requires the government to justify continued detention by clear and convincing evidence. *L.G. v. Choate*, 744 F. Supp. 3d at 1186.

The Manzanarez habeas claim remains a live controversy involving his ongoing detention under an invalid process. The combination of the two conclusory denials without findings, the issuance of a post hoc memorandum, the prolonged detention now exceeding 140 days, the failure to place the burden of proof on the government to show by clear and convincing evidence that Mr. Manzanarez was a flight risk, and the upcoming September removal hearing while detained — creates an arbitrary and fundamentally unfair process inconsistent with the Fifth Amendment.

IV. REMEDY

Petitioner respectfully requests: Immediate release from custody on a bond of $1500; or, alternatively, a remand for a prompt bond hearing with the government bearing the burden of justifying detention by clear and convincing evidence and with a contemporaneous record of findings.

V. CONCLUSION

For the reasons stated, Carlos Manzanarez Mendoza respectfully requests that this Court grant the writ.

Dated June 30, 2025

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