UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

I.G.S. v. MICHAEL NESSINGER, Warden of Wyatt Detention Facility; PATRICIA HYDE, Director ICE Boston Field Office; KRISTI NOEM, U.S. Secretary of Homeland Security; *in their official capacities.*	Civil Action No.: **PETITION FOR A WRIT OF HABEAS CORPUS**

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

Petitioner, I.G.S., by and through undersigned counsel, petitions this Honorable Court for a Writ of Habeas Corpus to remedy his unlawful detention. In support thereof, I.G.S. states as follows:

I. CUSTODY

1. I.G.S. is in the physical custody of the United States Immigration and Customs Enforcement ("ICE") detained at Wyatt Detention Facility ("WDF") in Central Falls, RI. ICE has contracted with WDF to detain individuals pending the completion of their removal proceedings. I.G.S. is under the direct control of the Respondents and their agents.

II. JURISDICTION AND VENUE

2. This case arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedures Act ("APA"),

5 U.S.C. §701 *et seq.* This Court has jurisdiction in this action under 28 U.S.C. §§ 2241(a) and (c)(1) and (3); U.S. CONST. art. I, §9, cl. 2 (the "Suspension Clause"); and 28 U.S.C. § 1331, as I.G.S. is presently in custody under the authority of the United States, and such custody is in violation of the Constitution and laws of the United States. The Court may grant relief pursuant to 28 U.S.C. §2241; the Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*; and the All Writs Act, 28 U.S.C. § 1651. Further, this Court has jurisdiction under 28 U.S.C. § 2241 to review constitutional as well as statutory issues. *See Hernandez Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021). The Writ of Habeas Corpus "is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286,290 (1969). The power of this Court's inquiry on federal habeas corpus review is plenary. *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001); *Townsend v. Sain*, 273 U.S. 293, 312 (1963). "District courts retain jurisdiction over challenges to the legality of detention in the immigration context." *Aguilar v. U.S. Immigration and Customs Enforcement Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007); *see also Pensamiento v. McDonald*, 315 F. Supp 3d 684, 68-89 (D. Mass. 2018) ("What § 1226(e) does not bar, however, are constitutional challenges to the immigration bail system." (*citing Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018)).

3. Venue is proper as I.G.S. is presently detained in Rhode Island at the WDF in Central Falls, RI. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); 28 U.S.C. § 2241(a).

III. PARTIES

4. Petitioner, I.G.S., is a native and citizen of El Salvador, who entered the United States on approximately May 28, 2022. He was placed into removal proceedings on February 16, 2023 before the Executive Office for Immigration Review ("EOIR") before the Boston Immigration court. His case was subsequently transferred to the Chelmsford Immigration Court.

5. Respondent, Michael Nessinger, is the warden of Wyatt Detention Facility since August 2023. In his official capacity, he is the legal custodian of Petitioner.

6. Respondent, Patricia Hyde, is the Director of the ICE Boston Field Office. ICE is the component agency of the U.S. Department of Homeland Security ("DHS") responsible for detaining and deporting non-U.S. citizens. In her legal capacity, she is the legal custodian of Petitioner.

7. Respondent, Todd M. Lyons, is the Acting Director of Immigration and Customs Enforcement. In his official capacity, he is the legal custodian of Petitioner.

8. Respondent, Kristi Noem, is the U.S. Secretary of Homeland Security. In her official capacity, she is the legal custodian of Petitioner.

IV. EXHAUSTION

9. There is no statutory exhaustion requirement under 28 U.S.C. § 2241. Habeas protections have been recognized by the Court as fundamental to individual liberty. *See e.g., Boumediene v. Bush*, 553 U.S. 723, 740-46 (2008).

V. STATEMENT OF RELEVANT FACTS

10. Petitioner is a twenty-seven year-old native of El Salvador, who entered the United States around May 28, 2022 without inspection. Petitioner settled in Rhode Island upon entry to the United States.

11. On February 16, 2023, ICE officers arrested I.G.S. in Central Falls, Rhode Island. The arrest occurred while I.G.S. was a passenger in a van on the way to work in the early morning. In the form I-213, ICE alleged that I.G.S. was a member of the transnational criminal organization "MS-13" based on ICE assertion that I.G.S. so admitted after arrest by ICE officers that day. *See* Form I-213 attached hereto as exhibit 1, pages 5 to 6.

12. On March 13, 2023, the immigration judge ("IJ") held a custody redetermination hearing pursuant to 8 C.F.R. § 1236(d)(1) and 8 C.F.R. § 1003.19 to review the initial decision to detain I.G.S. without bond. Undersigned counsel represented I.G.S. at this hearing. The ICE attorney at this hearing questioned I.G.S. on his alleged gang membership and [redacted] in order to sustain its burden, over counsel's objection. At this custody redetermination, or bond hearing, the IJ found that the evidence of alleged gang membership and [redacted] did not constitute clear and convincing evidence of dangerousness or risk of flight by a preponderance of the evidence.[1] The IJ set a bond of $5,000, which I.G.S. paid and he was released from ICE custody.

13. I.G.S. submitted a timely application for asylum, withholding of removal and deferral of removal under the Convention Against Torture to the immigration court on April 18, 2023. I.G.S. subsequently married a United States citizen and filed the petition for classification as an alien relative, form I-130, on March 13, 2024 through a private attorney. I.G.S. filed the application for a work authorization document, known as the work permit, also through a private attorney on February 21, 2025. Based on evidence of the pending I-130, the immigration court administratively closed the removal proceeding on March 14, 2025 in order to wait for a decision from the United States Immigration and Citizenship Service ("USCIS") on the I-130. During this time after release from ICE custody, I.G.S. complied with the ICE supervision requirements including weekly telephone appointments, and in-person appointments a few times per year.

14. On April 30, 2025, I.G.S. was arrested in West Warwick, RI at the police station where he appeared of his own accord accompanied by his friend and landlord. I.G.S. intended to ask the

[1] Undersigned counsel obtained the audio recording of the hearing on March 13, 2023 from the immigration court. The majority of the audio is not intelligible. The portions that are audible will be transcribed and provided to this Court by undersigned counsel as an Exhibit.

police for help. [redacted] § 12-29-5. [redacted] Exh. 2, page 10.

I.G.S. was arrested by ICE [redacted]

15. On May 21, 2025, [redacted]

16. In June 2025, counsel filed two additional applications under the Violence Against Women Act ("VAWA") 8 U.S.C. § 1154, which provides for a path to immigration status for individuals who suffer battery or extreme cruelty at the hands of a U.S. citizen spouse: one application was filed with USCIS and one with the immigration court.

17. I.G.S. had a second bond hearing on July 10, 2025 before the Chelmsford, MA immigration court. The attorney for ICE introduced the same I-213 from 2023 alleging that I.G.S. is a member of MS-13. Exh. #2. Additionally, ICE submitted a FBI criminal history summary ("rap sheet") with heavily redacted information showing citations to a law in El Salvador with no other identifying information under a section titled "Non Criminal Information." Exh. 2, page 25. Additional submission included the case summary from the [redacted] Exh. 2, page 21. I.G.S. submitted three letters from friends and coworkers attesting to his good character, the circumstances of his wife's abusive behavior, and a letter from a therapist. Counsel for I.G.S. objected to the submission of the 2023 evidence of

alleged gang membership because that issue had already been fully litigated and decided in the prior bond hearing.

18. At this second bond hearing, the IJ concluded that the evidence of alleged gang membership already ruled on by the first IJ, together with the RITT adjudication and the fact of [redacted] that I.G.S. had no respect for the law and, therefore, presented a risk of flight that no conditions could ameliorate. The immigration judge found that flight risk was established by a preponderance of the evidence. She specifically noted that information in the databases and government records on gang membership were a basis for her decision. The IJ did not mention any of the evidence that diminished risk of flight. She did not find that I.G.S. posed a danger to the community.

19. Counsel requested the audio recording of the bond hearing but has not received it yet.

20. Petitioner is detained pursuant to 8 U.S.C. § 1226(a).

VI. LEGAL FRAMEWORK

21. Immigration detention under 8 U.S.C. § 1226(a) is not mandatory detention. After the initial arrest by the Department of Homeland Security, operating through ICE, anyone initially detained pursuant to § 1226(a) may face continued detention, may be released on a bond of at least $1,500, or may be released on conditional parole. 8 U.S.C. §§ 1226(a)(1)-(2). An individual held in detention pursuant to § 1226(a) may seek review by an IJ at a custody redetermination, or bond, hearing. 8 C.F.R. § 1236.1(d)(1). At such a hearing, the government (DHS/ICE) bears the burden to show by clear and convincing evidence that detention should continue because the detained person is a danger to the community. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 40 (1st Cir. 2021). And if not a danger to the community, the government must show risk of flight by a preponderance of the evidence. *Id.* at 40. The Court of Appeals for the First Circuit, and others, decided that

DHS/ICE should bear the burden of proof in a bond hearing by applying the three-part balancing test articulated in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Hernandez-Lara*, 10 F.4th 40; *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020). Prior to *Hernandez-Lara*, the burden had fallen to the detainee to show that he/she was not a danger to the community or a risk of flight, according to a regulation that the Board of Immigration Appeals had imposed on bond hearings in contravention of its prior precedent. *Hernandez-Lara*, 10 F.4th at 27.

22. The First Circuit allocated the burden in bond hearings to DHS/ICE because of the protected liberty interest that applies to civil immigration 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, 695 (2001). In *Hernandez-Lara*, the First Circuit cited to Supreme Court precedent repeatedly finding that "liberty is the norm, and detention ... without trial is the carefully limited exception." *Hernandez-Lara*, 10 F.4th at 28 (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418 (1979). Immigration detention is civil, but its conditions closely mirror the conditions of criminal incarceration facilities where immigration detainees are often held. *See Velasco Lopez*, 978 F.3d at 850 ("[Petitioner] was not 'detained'; he was, in fact, incarcerated under conditions indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes."). The First Circuit additionally took notice of the length of immigration detention among various petitioners and found that individuals detained under § 1226(a) could be detained for two years or longer. *Hernandez-Lara,* 10 F.4th at 30 (citing to *Pereira-Brito v. Barr*, 415 F. Supp. 3d 258, 264-65 (D. Mass. 2019).

23. Preponderance of the evidence is a legal standard. *See U.S. v. Malouf*, 466 F.3d 21 (1st Cir. 2006). The First Circuit has clearly stated that legal standards must be meaningfully applied, not merely recited during immigration agency proceedings. *Akinsanya v. Garland*, 24-1412 at *16 (1st Cir. Jan. 10, 2025) ("Merely stating the proper standard does not discharge the obligation to correctly apply the standard."). Full consideration of evidence in the record is another requirement apart from application of the correct legal standard. *Garcia v. Bondi*, 24-1296 at *18 (1st Cir. April, 24, 2025) (explaining that all relevant evidence and the particular facts presented must be considered by the immigration agency).

24. The doctrine of collateral estoppel applies in deportation proceedings where there has been a prior and final decision between the parties after a full and fair opportunity to be heard and the use of collateral estoppel is not unfair. *Matter of Fedorenko*, 19 I. & N. Dec. 57 (BIA 1987). The judicial "doctrine of collateral estoppel generally applies to preclude relitigation of both issues of law and issues of fact if those issues were conclusively determined in a prior action involving the same parties." *United States v. Stauffer Chemical Company*, 464 U.S. 165 (1984). The relitigation of I.G.S.'s alleged gang membership in 2025 based only on the evidence from 2023 would be barred under collateral estoppel because the issue was fully litigated during the bond hearing in 2023, the IJ's decision was final and ICE counsel did not file an appeal within the appropriate deadline. The relitigation of I.G.S.'s alleged gang membership in 2025 based only on the evidence from 2023 would be barred by the doctrine of Res Judicata because the issue was fully litigated during the bond hearing in 2023, the IJ's decision was final and ICE counsel did not file an appeal within the appropriate deadline. The relitigation of I.G.S.'s alleged gang membership in 2025 based only on the evidence from 2023 would be barred under the doctrine of Law of the Case because the issue was fully litigated during the bond hearing in 2023, the IJ's decision was final

and ICE counsel did not file an appeal within the appropriate deadline. Allegations of gang membership must be substantiated. The First Circuit's *en banc* opinion in *Diaz Ortiz v. Garland* found that the allegations of gang membership presented by ICE in order to challenge Diaz Ortiz's credibility were not reliable and that "[i]f the IJ and the BIA had performed even a cursory assessment of reliability, they would have discovered a lack of evidence to substantiate the gang package's classification of Diaz Ortiz as a member of MS-13." *Diaz Ortiz v. Garland,* 23 F.4th 1, 17 (1st Cir. 2022). The government had asserted that Diaz Ortiz was a verified MS-13 member based on a gang assessment database that relied on a collection of local law enforcement field reports. *Id.* at 6. These reports assigned points for non-criminal conduct like association with individuals believed to be gang members. *Id.* at 9. The First Circuit noted that objective and verified criteria is required to substantiate allegations of gang affiliation. *Id.* at 17 (citing *Vasquez v. Rackauckas*, 734 F.3d 1025, 1046 (9th Cir. 2013) (noting that "lack of objective criteria" for assessing whether an individual is an active gang member, inter alia, "presents a considerable risk of error" and requires "careful factfinding")). The First Circuit collected a list of scholarly critiques of gang databases in this country using overly inclusive criteria that cast too wide a net. *Id.* at 17-18. The critiques include that "the criteria for inclusion in gang databases are almost entirely unrelated to criminal conduct or even to active participation in gang activities." *Id.* at 18 (citing K. Babe Howell, *Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention*, 23 St. Thomas L. Rev. 620, 649 (2011)). Like I.G.S., Diaz Ortiz had no arrests for gang activity in the U.S. and expressed a fear of return to El Salvador based on gang violence. Since the opinion in *Diaz Ortiz*, the veracity behind allegations of gang membership used to deport individuals has come into question more broadly. *See, e.g., J.G.G. et al. v. Trump*, No. 25-766 (D.D.C. March 15, 2025) (case filed).

25. Release on bond is not release to liberty, but release under conditions of supervision. *Hernandez-Lara*, 10 F.4th at 29. A court may set bail in order to provide a remedy for a habeas petition. *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). Courts may fashion a remedy to habeas petitions challenging unlawful detention. *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 455, 474 (D. Mass. 2010) ("When the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority... to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner' release." (quoting Boumediene v. Bush, 553 U.S. 723, 787 (2008)); *see e.g. L.G.M. v. Larocco*, No. 2:25-cv-02631, (June 25, 2025 E.D.N.Y.) (discussing due process and practical considerations for granting a bail hearing before the district court).

VII. CAUSE OF ACTION

Count One – Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

26. Petitioner realleges and incorporates by reference each and every allegation contained above.

27. Under the Due Process Clause, the government must show that Petitioner is a flight risk by a preponderance of the evidence and the immigration judge must consider all available evidence in concluding that there is a risk of flight which no condition or combination of conditions can ameliorate. Therefore, Petitioner is entitled to immediate release, and in the alternative, a constitutionally adequate bond hearing where the proper legal standards are meaningfully applied.

Count Two – Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

28. Petition realleges and incorporates by reference each and every allegation contained above.

29. Under the Due Process Clause, the Petitioner may not be found to be a flight risk based on the same evidence for which he was previously found to not be a flight risk in a prior bond proceeding where the government made the same allegations and the immigration judge made a final determination. Furthermore, under First Circuit precedent, such allegations of gang membership demand at least a cursory assessment of reliability, which the immigration court deprived the Petitioner of here. Therefore, the Petitioner is entitled to immediate release, and in the alternative, a constitutionally adequate bond hearing where the proper legal standards are meaningfully applied..

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over the matter;
2. Order Respondents to show cause why the Writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution;
4. Grant a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody, and in the alternative, order a constitutionally adequate bond hearing where the correct legal standards are applied;
5. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
6. Grant such further relief as this Court deems just and proper.

Dated: July 17, 2025

Respectfully submitted,

I.G.S, by counsel

/s/ George J. West

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Application for Pro Hac Vice Pending