

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

I.G.S., Petitioner,

v.

Civil Action No. 1:25-cv-00339-MRD-PAS

MICHAEL NESSINGER, Warden,
Donald W. Wyatt Detention Facility;
PATRICIA HYDE, Director, ICE Boston
Field Office; and KRISTI NOEM, U.S.
Secretary of Homeland Security,
in their official capacities, Respondents.

**PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner respectfully submits this reply in further support of the pending petition for a writ of habeas corpus. The opposition filed by Respondents seeks to recast this matter as one of mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and to defeat jurisdiction by invoking a supposed failure to exhaust administrative remedies. Both arguments are squarely contradicted by the record and by controlling precedent.

The Immigration Judge who presided over Petitioner's July 10, 2025 bond hearing expressly proceeded under 8 U.S.C. § 1226(a), not § 1225(b). The hearing transcript shows that the Immigration Judge rejected DHS's "Notice of Ineligibility for Bond" under § 235, found that Petitioner was properly detained under § 1226(a), and addressed only the question whether the Government had met its burden to show either danger or flight risk. Exhibit #1, Transcript of bond hearing on July 10, 2025. The Immigration Judge found no dangerousness and denied bond solely on the ground of flight risk. That DHS now seeks to relabel the detention under § 1225(b)(2)(A)

cannot change the fact that it initiated and documented custody under § 1226(a) and that legal authority likewise upholds detention under § 1226(a).

The Government's exhaustion argument fares no better. Habeas corpus under 28 U.S.C. § 2241 remains a fundamental safeguard against unlawful detention, as the Supreme Court reaffirmed in *Boumediene v. Bush*, 553 U.S. 723, 739–46 (2008) (WL 2331740). No statute requires exhaustion of administrative remedies in the context of a pre-final-order challenge to a § 1226(a) bond decision, and the jurisdictional limitations of § 1226(e) do not bar constitutional claims. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (WL 3700164); *Alvarez Puerta v. Nessinger et al.*, No. 1:25-cv-108-JJM-AEM (D.R.I. June 27, 2025) (McConnell, C.J.) (finding no exhaustion required for habeas petition challenging legal standard employed during bond hearing and ordering immediate release). Common-law exhaustion is prudential and, under First Circuit precedent, excused when pursuing agency remedies would be futile or would cause irreparable harm. *Portela-Gonzalez v. Sec'y of Navy*, 109 F.3d 74, 77–80 (1st Cir. 1997) (WL 68443). Here, the BIA lacks authority to grant the relief sought—an Article III adjudication of due process violations—and any delay in obtaining judicial review would prolong unlawful detention, a harm the First Circuit recognized in *Reid v. Donelan*, 17 F.4th 1, 7–9 (1st Cir. 2021) (WL 5180204).

Respondents' auxiliary points do not alter the analysis. Their reference to *Reid's* discussion of "six-month reasonableness" addresses the length of detention, not the lawfulness of the bond hearing process. Where the defect lies in the hearing itself, judicial intervention is appropriate without regard to the duration of custody. See *Jimenez v. Cronen*, 317 F.Supp. 3d 626 (D. Mass. June 11, 2018) (WL 2899733) (stating that the presumption of reasonableness of six months of immigration detention is based on the assumption that ICE followed the regulations to ensure that

continued detention was justified). Nor does the Massachusetts “Dos Reis” decision they append aid them; that court stayed, rather than dismissed, a similar habeas petition and recognized its jurisdiction to address constitutional errors in bond hearings.

I. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(A), AND NOT SUBJECT TO MANDATORY DETENTION

Respondents claim that the Petitioner is ineligible for bond based on a flawed and refuted legal theory that §1225(b)(2)(A) creates its own mandatory detention scheme despite the statutory provisions at §1226. The Immigration Judge rejected this position and held that Petitioner is detained under §1226(a) at the bond hearing on July 10, 2025 in accordance with the law and based on the fact that ICE took the Petitioner into custody under § 236 on April 30, 2025 and previously in 2023. Furthermore, in arguing that the Petitioner is not entitled to a bond hearing, the Respondents cite to authority on expedited removal under Immigration and Nationality Act (INA) § 235, 8 U.S.C. § 1225, that bears no relevance to the facts or law of this instant petition.

Individuals detained pursuant to § 1226(a) are entitled to custody redetermination hearings, or bond hearings. 8 U.S.C. § 1226(a) (2025); 8 C.F.R. § 236(d)(1); *see also Oliveira Gomes v. Hyde et al.*, No. 1:25-cv-11571 (D. Mass. July 7, 2025). The DHS/ICE bears the burden of proof at the bond hearing to show dangerousness or flight risk. *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021).

The Respondents cite to *Jennings v. Rodriguez* for the proposition that the Petitioner is an applicant for admission under § 1225(b), and is therefore not bond eligible, but *Jennings* did not so hold. *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In *Jennings*, the Supreme Court considered and rejected a lower court’s holding that individuals detained under mandatory detention had a constitutional guarantee to periodic bond hearings every six months. *Id.* The Court did not hold

that detention under § 1226(a) could revert to mandatory detention under a different statute. The statutory scheme for custody and detention under the statutory rubric of §§ 1225(b), 1226(a), and 1226(c) was not altered by *Jennings*. *Id.* at 829, 303.¹ The Supreme Court instead recognized the difference between the mandatory and discretionary detention statutes.² The issue before the Supreme Court was whether the doctrine of constitutional avoidance could be used to read a requirement for periodic bond hearings every six months into the detention statutes and it found that it could not. *Id.* at 286. Therefore, *Jennings* does not provide any authority for a finding that someone taken into custody and detained pursuant to § 1226(a) reverts to mandatory detention under § 1252(b)(2) on the cusp of his bond request.

The Massachusetts district court's holding in *Oliveira Gomes* similarly considered the statutory scheme as a whole and found that § 1226(a) contains an exception to discretionary detention only in § 1226(c), which mandates detention without bond for certain criminal convictions or arrests. *Oliveira Gomes v. Hyde et al.*, No. 1:25-cv-11571 at *2-3 (D. Mass. July 7, 2025) ("The government's interpretation contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c), which mandates the detention of certain noncitizen and is the sole exception to Section 1226(a)'s discretionary framework."). Like the Petitioner here, *Oliveira Gomes* was arrested by ICE and detained pursuant to § 1226(a), until his bond hearing when the government asserted for the first time that he was detained under 8 U.S.C. § 1225(b)(2).

¹ "While the language of §§ 1225(b)(1) and (b)(2) is quite clear, § 1226(c) is even clearer. As noted, § 1226 applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, "[e]xcept as provided in subsection (c) of this section." *Jennings*, 583 U.S. at 303.

² "Finally, as noted, § 1226(a) authorizes the Attorney General to arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States." As long as the detained alien is not covered by § 1226(c), the Attorney General "may release" the alien on "bond . . . or conditional parole." § 1226(a). Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. See 8 CFR §§ 236.1(d)(1), 1236.1(d)(1)." *Jennings*, 583 U.S. at 306.

In asserting that the Petitioner is detained under § 1225(b)(2), the declaration from AFOD Chan, included as an exhibit to the Respondents' opposition, states that ICE detained the Petitioner under § 1252(b)(2) on April 30, 2025. ECF 17, exh. #7 ¶16 (Chan Decl.). The assertion that Petitioner is detained under § 1252(b) was first raised at the bond hearing on July 10, 2025, not on the day of his arrest by ICE. The AFOD Chan's own agency (ICE ERO) issued a notice of custody determination to the Petitioner both times that he was detained in 2023 and 2025, stating that Petitioner was being taken into custody under Section 236 of the Immigration and Nationality Act. *Id.*; Notice of Custody Determination, DHS Form 286, attached hereto as Exhibit #2. Counsel for Petitioner submitted the DHS Form 286 Notice of Custody Determination to the immigration judge during the bond hearing on July 10, 2025. Exh. #1, page 5. Although the DHS/ICE attorney argued that the Petitioner was detained pursuant to § 1252(b), she did not provide either of the Notices of Custody Determination to the court. Exh. #1, pages 2-5. During both of the ICE arrests and detentions of Petitioner in 2023 and 2025, DHS/ICE issued a Notice of Custody Determination pursuant to INA § 236 (corresponding to 8 U.S.C. §1226).

The case cited by the respondents, *Alvarenga Pena v. Hyde*, No. 25-cv-11983-NMG (D. Mass. Jul. 28, 2025) rejects that petitioner's claim that he should be released from ICE custody based on an approved I-130 Petition for Alien Relative, but does not otherwise contain any facts concerning the authority for his detention, such as why he is detained pursuant to 8 U.S.C. § 1225. ECF 17, page 12. In the same vein, the Respondents discussion of *Thuraissigiam* does not support their position since *Thuraissigiam* decided that the writ of habeas corpus could not be invoked to seek federal judicial review of a credible fear denial for asylum seekers in the expedited removal process, and upheld limited due process for an individual "at the threshold of initial entry [into this country]." *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 105 (2020).

Nor can *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), strip the Petitioner of eligibility for a bond hearing. *Q. Li* held that someone was returned to her original posture of an applicant for admission after her period of parole was terminated and the BIA drew a distinction between those people apprehended while seeking admission and those for whom a warrant of arrest was issued. *Id.* (“An applicant for admission, who is arrested and detained *without a warrant while arriving in the United States*, ... and subsequently placed in removal proceedings is detained under Section 235(b) of the Immigration and Nationality Act... and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. §1226(a) (2018).” (emphasis added)). Therefore, *Q. Li*’s holding cannot extend to someone *not* arrested while arriving in the United States and arrested *with* a warrant, which are exactly the facts in Petitioner’s immigration history. ECF 17, exh #7 ¶¶ 7, 16; Exh. 1, pages 2-4. ECF Applying *Q. Li* to such a person would also put the BIA’s decision at odds with *Jennings* and other federal decisions like *Oliveira Gomes*.

II. NO REQUIREMENT FOR EXHAUSTION

There is no statutory exhaustion requirement to which Petitioner must adhere, and the court has latitude to relax exhaustion requirements. *See Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021); *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (finding that the district court could hear the habeas petition where petitioner had not appealed to the B.I.A.) (*citing Portela-Gonzalez v. Secretary of the Navy*, 109 F.3d 74,77 (1st Cir. 1997)). Courts may hear unexhausted claims where petitioner would suffer irreparable harm, where substantial doubt exists that the agency can provide meaningful redress, or where the agency review would be futile. *See McCarthy v. Madigan*, 503 U.S. 140, 145-48 (1992). The instant petition may be heard by the Court because administrative exhaustion may be waived for two reasons.

A. Irreparable Harm

The deprivation of Petitioner's liberty through detention is an irreparable harm. *See Brito v. Garland*, 22 F.4th 240, 252 (1st Cir. 2021) ("Detention is the quintessential liberty deprivation."); *see Roberts v. State of Me.*, 48 F.3d 1287, 1292-93 (1st Cir. 1995) ("[The petitioner's] interest in freedom from incarceration is certainly worthy of due process protections") (citing *United States v. Salerno*, 481 U.S. 739, 750 (1987); *Addington v. Texas*, 441 U.S. 418, 425 (1979)) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."). In *Hernandez-Lara*, the petitioner's claim was heard by the courts where neither she nor DHS had appealed the two bond decisions to the agency. 10 F.4th 19.

ICE custody commonly occurs in criminal incarceration settings. *Id.* at 28; *see Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020). Here, the Petitioner is, indeed, detained in a maximum-security facility for individuals in the custody of the U.S. Federal Marshalls.³ Inmate deaths have occurred at Wyatt in 2019 and in 2008.⁴

"A loss of liberty may be an irreparable harm." *Flores-Powell*, 677 F. Supp.2d at 463 (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986)). Additional delay necessary to perfect exhaustion may sway the Court against requiring continued detention for exhaustion. *Id.* at 464 ("[T]he additional delay attendant to exhaustion 'would just contribute to the troubling delay [Petitioner] has already experienced in attempting to resolve [his] immigration status.'"). There is no limit on length of detention under § 1226(a) and statistics from several years ago cited by the First Circuit show that one in four immigration detainees was held for two years or longer.

³ <https://www.centralfallsri.gov/bc-wdf>

⁴ <https://turnto10.com/news/local/inmate-at-wyatt-detention-facility-dies>; <https://www.aclu.org/press-releases/aclu-settles-lawsuit-behalf-family-wyatt-center-detainee-who-died-custody-suit>

Hernandez-Lara, 10 F.4th at 30 (citing *Pereira-Brito v. Barr*, 415 F. Supp. 3d 258, 264-65 (D. Mass. 2019)). Petitioner has been in ICE custody at a maximum-security facility since April 30, 2025. His next hearing before the Chelmsford immigration court will occur over video on September 30, 2025. EOIR hearing notice attached here as Exhibit #4.

This Court has held detention does cause an irreparable harm. *Alvarez Puerta*, No. 25-cv-108-JJM-AEM. In addition to the harsh carceral conditions that the Petitioner will continue to experience in continued detention, a letter was submitted for his bond hearing from a psychotherapist documenting ongoing symptoms of post-traumatic stress disorder (PTSD), depression and anxiety. Letter from Jennifer Torres Perez, LICSW, attached as Exhibit #3. These symptoms relate to “spousal abuse, including emotional, psychological and physical harm.” Exh. #3, page 2. Petitioner is seeking asylum in the United States pursuant to 8 U.S.C. § 1158, in addition to an application for immigration status under the Violence Against Women Act (VAWA), which allows individuals who have suffered physical battery or extreme cruelty from abusive U.S. citizen spouses to petition for immigration status. 8 U.S.C. § 1154(a)(1)(A)(iii). Asylum seekers have a high rate of PTSD and detention worsens trauma related symptoms.⁵ The irreparable harm for the Petitioner is clear here where detention in a criminal carceral setting is leading to worsening psychological symptoms. Exh. #3 at page 1.

⁵ Jowett S, Argyriou A, Scherrer O, Karatzias T, Katona C. *Complex post-traumatic stress disorder in asylum seekers and victims of trafficking: treatment considerations*. BJPsych Open. 2021 Oct 1. (“In fact, refugees and asylum seekers have been shown to be ten times more likely to develop PTSD than the general population of their settled country.”) <https://pmc.ncbi.nlm.nih.gov/articles/PMC8503916/>; Robjant K, Hassan R, Katona C. *Mental health implications of detaining asylum seekers: systematic review*. British Journal of Psychiatry. 2009; 194(4): 306-312. (“Research suggests that asylum seekers and displaced persons worldwide report high rates of pre-migration trauma, and therefore of trauma-related mental health problems... Asylum seekers who are detained in the host country experience a further and more specific set of stressors, reflecting the detention process itself and the detention centre environment, which may adversely affect their mental health status. These include loss of liberty, uncertainty regarding return to country of origin, social isolation, abuse from staff, riots, forceful removal, hunger strikes and self-harm.”). <https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/mental-health-implications-of-detaining-asylum-seekers-systematic-review/D5BE178EDE1219503F263C15BF5B57CE>

B. Unavailability of Meaningful Redress Through the Agency

Respondents argue that the petition should be denied because the B.I.A. should first decide the factual issues and further develop the record. By regulation, the B.I.A. does not develop a factual record. 8 C.F.R. §§ 1003.1(d)(3)(i), (iv) (“[T]he Board will not engage in factfinding in the course of deciding cases.”). The petition raises legal questions that are properly before this Court and may be decided by this Court now. *See e.g. Hernandez-Lara*, 10 F.4th 19. Should the claims need to be heard first at the B.I.A., then the DHS/ICE would have filed an appeal of the immigration judge’s finding on bond eligibility, which they did not. However, Respondents raise this issue anyway in their opposition regardless of the need for exhaustion that they propose.

Additionally, the B.I.A.’s appellate jurisdiction, 8 C.F.R. § 1003.1(b), does not extend beyond the limits of review of agency decisions under the Immigration and Nationality Act. 8 C.F.R. § 1003.1(d)(1). B.I.A. members are attorneys named by the U.S. Attorney General and are not Article III judges. 8 C.F.R. § 1003.1(a)(1). The B.I.A. does not decide constitutional issues. *Arango-Aradondo v. Immigration and Naturalization Serv.*, 13 F.3d 610, 614 (2nd Cir.1994); *Castaneda-Suarez v. I.N.S.*, 993 F.2d 142, 144 (7th Cir. 1993); *Vargas v. U.S. Dept. of Immigration and Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987); *Bagues-Valles v. I.N.S.*, 779 F.2d 483, 484 (9th Cir. 1985). In exercising appellate jurisdiction, the B.I.A. must follow its own precedent. *Aburto-Rocha v. Mukasey*, 535 F.3d 500, 503 (6th Cir. 2008) (“The BIA’s regulations themselves ... require the agency to follow its own precedent except to the extent they are modified or overruled by the BIA or the Attorney General.” (citing 8 C.F.R. § 1003.1(g)).

Here, the petition raises legal questions that extend beyond the B.I.A.’s zone of appellate jurisdiction. Therefore, substantial doubt exists that the B.I.A. can provide meaningful redress because it does not consider constitutional issues.

The Court may review the habeas petition without requiring administrative exhaustion based on the two reasons of preventing irreparable injury and the substantial doubt in the agency's ability to provide meaningful redress. *See Brito*, 22 F.4th 240.

III. ISSUE PRECLUSION APPLIES IN THE FIRST CIRCUIT WHEN THE SAME ISSUE HAS BEEN LITIGATED AND DECIDED PREVIOUSLY

Respondents contend that immigration bond proceedings are not bound by "strict" principles of res judicata or collateral estoppel, and that the Government was free to re-present in 2025 the same gang-affiliation allegations, foreign "rap sheet," and dismissed domestic violence complaint that the Immigration Court considered and rejected in 2023 when it granted Petitioner a \$5,000 bond. They rely on the general principle, reflected in 8 C.F.R. § 1003.19(e), that custody status is subject to redetermination upon a showing of changed circumstances, and on BIA precedent permitting IJs to consider all relevant evidence at a new bond hearing. This position ignores controlling principles of preclusion and due process as recognized in this Circuit.

The First Circuit applies the doctrine of issue preclusion where: (1) the issue in the subsequent proceeding is identical to that in the prior adjudication; (2) the issue was actually litigated; (3) the issue was determined by a valid and final judgment; and (4) the determination was essential to the prior judgment. *Aunyx Corp. v. Canon U.S.A., Inc.*, 978 F.2d 3, 7–8 (1st Cir. 1992) (WL 549022); *Gonzalez v. Justs. of Mun. Ct. of Bos.*, 382 F.3d 1 (1st Cir. 2004), *cert. granted, judgment vacated*, (on other grounds) 544 U.S. 918 (2005), *and adhered to*, 420 F.3d 5 (1st Cir. 2005).

The United States Supreme Court has long recognized that "the determination of a question directly involved in one action is conclusive as to that question in a second suit." *Cromwell v. County of Sac*, 94 U.S. 351, 354 (1877). The idea is straightforward: Once a court has decided an

issue, it is “forever settled as between the parties,” *Baldwin v. Iowa State Traveling Men's Assn.*, 283 U.S. 522, 525 (1931), thereby “protect[ing]” against “the expense and vexation attending multiple lawsuits, conserv[ing] judicial resources, and foster[ing] reliance on judicial action by minimizing the possibility of inconsistent verdicts,” *Montana v. United States*, 440 U.S. 147, 153–154 (1979). In short, “a losing litigant deserves no rematch after a defeat fairly suffered.” *Astoria Fed. Sav. & Loan Assn. v. Solimino*, 501 U.S. 104, 107, (1991). Although the idea of issue preclusion is straightforward, it can be challenging to implement. The Court, therefore, regularly turns to the Restatement (Second) of Judgments for a statement of the ordinary elements of issue preclusion. See, e.g., *Bobby v. Bies*, 556 U.S. 825, 834, (2009); *New Hampshire v. Maine*, 532 U.S. 742, 748–749 (2001); *Baker v. General Motors Corp.*, 522 U.S. 222, 233, n. 5 (1998). “The Restatement explains that subject to certain well-known exceptions, the general rule is that “[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” Restatement (Second) of Judgments § 27, p. 250 (1980); see also *id.*, § 28, at 273 (listing exceptions such as whether appellate review was available or whether there were “differences in the quality or extensiveness of the procedures followed”).”

The Court stated: “Both this Court’s cases and the Restatement make clear that issue preclusion is not limited to those situations in which the same issue is before two *courts*. Rather, where a single issue is before a court and an administrative agency, preclusion also often applies. Indeed, this Court has explained that because the principle of issue preclusion was so “well established” at common law, in those situations in which Congress has authorized agencies to resolve disputes, “courts may take it as given that Congress has legislated with the expectation that

the principle [of issue preclusion] will apply except when a statutory purpose to the contrary is evident.” *Astoria, supra*, at 108. This reflects the Court’s longstanding view that “ ‘[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.’ ” *University of Tenn. v. Elliott*, 478 U.S. 788, 797–798 (1986) (quoting *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)); see also *Hayfield Northern R. Co. v. Chicago & North Western Transp. Co.*, 467 U.S. 622, 636, n. 15 (1984) (noting *Utah Construction*); *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 484–485, n. 26 (1982) (characterizing *Utah Construction*’s discussion of administrative preclusion as a holding); Restatement (Second) of Judgments § 83(1), at 266 (explaining that, with some limits, “a valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court”).” *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 147–49 (2015).

In the instant matter each element requiring issue preclusion is satisfied here. The 2023 IJ squarely addressed the gang-affiliation allegations in the I-213, [REDACTED] and the same asserted prior conduct that DHS relied on in 2025. Those issues were actually litigated at the 2023 bond hearing, determined adversely to the Government, and were essential to the IJ’s decision to grant bond. DHS then waived appeal (ECF 17 Exh. 7 at 3), rendering the decision final. At the second bond hearing in July, 2025, the same evidence of alleged gang membership and [REDACTED] were considered as a preponderance of evidence of flight risk. Without this evidence, the only indicia of flight risk would be the RIIT adjudication and the fact of [REDACTED]; [REDACTED] which clearly do not constitute a preponderance of evidence of flight risk.

A. Immigration Context Does Not Displace Preclusion Principles When No Material Change Exists

It is true that *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), allows bond redetermination when there are **materially changed circumstances**. But where no such change exists, the First Circuit's general preclusion doctrine remains applicable. The Government identifies no evidence in 2025 that was not available in 2023, and thus § 1003.19(e) does not authorize re-litigation. Re-use of identical evidence without new corroboration is not a "changed circumstance"; it is precisely what issue preclusion forbids. See *United States v. Stauffer Chem. Co.*, 464 U.S. 165, 170-74 (1984) (WL 161160) (same Government agency bound by prior loss on identical issue).

IV. RELIANCE ON UNVERIFIED INFORMATION CANNOT CONSTITUTE EVIDENCE OF FLIGHT RISK

On the merits, the July 10, 2025 hearing record does not support a finding of flight risk by a preponderance of the evidence, as required by *Hernandez-Lara*, 10 F.4th at 40. Reliance on recycled and unverified gang-database references is inconsistent with the First Circuit's decision in *Diaz-Ortiz v. Garland*, 23 F.4th 1, 16-18 (1st Cir. 2022) (WL 167071), which requires that such evidence be objectively verifiable and reliable before it may be given weight in immigration proceedings. In *Hernandez-Lara*, the First Circuit noted that an Interpol red notice did not in and of itself constitute clear and convincing evidence of dangerousness because, in part, it lacked specificity as to any charged conduct. 10 F.4th at 24-25. The First Circuit pointed out the failings of the INTERPOL notice identifying Hernandez, describing the activities of the Mara 18 criminal gang, and "simply stat[ing] that Hernandez is subject to an arrest warrant in El Salvador under El Salvadoran 'Article 13 of the Special Law Against Acts of Terrorism.'" *Id.* Hernandez denied

belonging to the criminal gang and the INTERPOL red notice did not “specify any criminal or dangerous act that Hernandez allegedly committed.” *Id.*

Here, the Government’s case rested on three elements: [REDACTED]

[REDACTED] and an uncorroborated police report, which the Immigration Judge found inadequate to prove dangerousness; a minor traffic infraction before the Rhode Island Traffic Tribunal (RITT); and allegations from the same 2023 I-213 that were presented and found insufficient to meet either burden of proof in the 2023 bond proceeding. During the prior 2023 bond hearing, the DHS/ICE attorney questioned the Petitioner about the gang membership allegations over the objection of Petitioner’s attorney; however, even with this questioning under oath, the government could not establish danger or flight risk. ECF 17 exh. #2, page 3; exh. #5 attorney affirmation. The Petitioner stated under oath that he is not a gang member in El Salvador and never has been part of the MS-13. *Id.* During both the 2023 and the 2025 bond hearings, DHS/ICE *only* presented unverified and recycled information in its own forms and databases. The 2025 hearing saw the addition of a [REDACTED]

[REDACTED] ECF 10 at 28.

Such information cannot meet the standards of *Diaz-Ortiz* or *Hernandez-Lara*. Alleged statements made by the Petitioner and recorded as notations in ICE databases do not constitute reliable information; especially not when the Petitioner has denied gang membership under oath, has no tattoos, has no gang related criminal history, and, most importantly, whatever information was received from El Salvador has not been provided. The immigration judge based her finding of flight risk on “information that the prior judge had that you made statements saying that you used to be an MS-13 member, and certain database information that you had been [REDACTED]

[REDACTED] back in your home country” despite clear precedent that such

information derived from unverified sources cannot establish dangerousness, as per *Hernandez-Lara*, or defeat credibility, per *Diaz-Ortiz*. Exh. #1 at 10.

Nor does the police report meet the preponderance of evidence standard for flight risk as the immigration judge found. For starters, [REDACTED]

[REDACTED]. Secondly, [REDACTED]. Thirdly, the immigration judge acknowledged that there was "other context" [REDACTED] presented through counsel, namely that I.G.S. was the victim of abuse, not the other way around. Exh. #1 at 10. The immigration judge also wholly ignored [REDACTED]

[REDACTED] could establish flight risk, although it is unclear from her analysis. For instance, she did not acknowledge that the complainant did not want [REDACTED]

[REDACTED]

In the 2025 hearing, Petitioner presented uncontroverted evidence of sustained compliance with ICE reporting requirements, appearance for in-person ICE appointments, appearance at an immigration court hearing, several immigration applications filed, and strong community ties supported by letters. Exh. #1 at 9. The government argued that the Petitioner was a risk of flight for a notation of unpaid fines on the RITT adjudication though the fines were fully paid one month later. The immigration judge found that the Petitioner has no respect for the law partly based on [REDACTED]

[REDACTED] The immigration judge must not, under First Circuit precedent, make determinations based on unreliable, incomplete, and unverified assertions. Minor administrative infractions are not predictive of absconding, and under *Hernandez-Lara* the Government must present concrete, persuasive evidence of likely non-appearance, not speculation. Furthermore, all evidence must be considered in determining flight

risk by a preponderance of evidence; lip service only to legal standards will not pass judicial review. *Akinsanya v. Garland*, No. 24-1412 at *6 (1st Cir. Jan. 10, 2025) (“Merely stating the proper standard does not discharge the obligation to correctly apply the standard.”).

V. DUE PROCESS LIMITS RE-USE OF PREVIOUSLY REJECTED EVIDENCE

The Government’s use of the same I-213 gang allegations already litigated in 2023, without any new evidence, raises a further due process concern. In 2023, the Immigration Judge granted bond after rejecting those allegations, and DHS did not appeal. That final ruling has preclusive effect on the identical issue of whether those allegations establish dangerousness or flight risk. *United States v. Stauffer Chem. Co.*, 464 U.S. 165, 170–74 (1984). (WL 161160). At a minimum, due process required the 2025 Immigration Judge to give those recycled allegations minimal weight absent new, reliable evidence. This is particularly true where the only “new” material—a police report from a dismissed case—was deemed inadequate to establish dangerousness.

VI. THE GOVERNMENT’S POSITION UNDERMINES FINALITY AND JUDICIAL ECONOMY

The First Circuit has repeatedly recognized that repetitive litigation on decided issues wastes judicial resources and erodes fairness. *Kelley v. Town of Plymouth*, 98 F.3d 664, 668 (1st Cir. 1996) (WL 560042). Allowing DHS to re-litigate the same factual issues without any new, reliable evidence would subject noncitizens to serial detention hearings based on stale allegations, effectively nullifying the protections recognized in *Hernandez-Lara* and *Diaz-Ortiz*. If the DHS/ICE disagreed with the determination of the first immigration judge in 2023, they could have filed an appeal of that decision. The approach adopted by DHS/ICE here – to rearrest the Petitioner

based on [REDACTED]

[REDACTED] does waste judicial resources and is clearly prejudicial.

This is especially so given the broad discretion that ICE has to make arrests – differing from the criminal context where an arrest generally requires probable cause. § 1226 (“On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.”) The administrative warrant issued under this statute is the administrative warrant on form I-200 and is served by an immigration officer. 8 C.F.R. § 236.1(b). Recent litigation highlights the prevalence of immigration enforcement detentions without a basis of reasonable suspicion, let alone probable cause. *See Vasquez Perdomo v. Noem*, No. 25-4312 (9th Cir. Aug. 1, 2025) (order denying motion to stay temporary restraining order of defendants’ authorized detentive stops without reasonable suspicion). With the broad discretion allocated to ICE and other federal agents to make arrests for immigration violations, avoiding repetitive litigation in the form of bond hearings containing substantially similar or identical evidence is imperative.

VII. CONCLUSION

Accordingly, the Court should reject Respondents’ attempt to re-litigate factual determinations from the 2023 bond proceeding absent any material change in the evidence. The doctrines of issue preclusion and due process, as applied in this Circuit, require exclusion or minimal weight for the recycled gang-affiliation evidence, [REDACTED]

[REDACTED]

For these reasons, and for those set forth in the petition, the Court should grant the writ and order Petitioner’s immediate release on such reasonable conditions as the Court deems appropriate. *See Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (WL 127721) (recognizing habeas courts’

authority to order release). Courts may fashion a remedy to habeas petitions challenging unlawful detention. *Flores-Powell*, 677 F. Supp. 2d at 474 (“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 *Boumedienne v. Bush*, 553 U.S. 723, 787 (2008)); see e.g. *L.G.M. v. Larocco*, No. 2:25-cv-02631, (E.D.N.Y. June 25, 2025) (discussing due process and practical considerations for granting a bail hearing before the district court).

In the alternative, the Court should direct that Petitioner receive a new bond hearing before a different Immigration Judge within seven days, with explicit instructions that the hearing proceed under § 1226(a), that the burdens set forth in *Hernandez-Lara* apply, that any gang-affiliation evidence meet the reliability standards of *Diaz-Ortiz*, and that all favorable evidence of compliance and community support be given meaningful consideration.

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Respectfully submitted,

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