UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AYMAN SOLIMAN,

Petitioner,

v.

TODD M. LYONS, Acting Director, Immigration and Customs Enforcement,

JOSEPH B. EDLOW, Director, Immigration And Customs Enforcement

KRISTI NOEM, Secretary, United States Department of Homeland Security;

RICHARD K. JONES, Sheriff, Butler County Jail;

Respondents.

HEARING REQUESTED

Case No. 1:25-cv-556

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

INTRODUCTION

Petitioner Ayman Soliman ("Petitioner"), by and through undersigned counsel, respectfully submits this reply in support of his Amended Emergency Petition for Writ of Habeas Corpus and Request for Temporary Restraining Order (Doc. 7). Respondents' Return of Writ and Response (Doc. 30, hereinafter "Response") fails to rebut Petitioner's showing that his ongoing detention violates due process under the Fifth Amendment. While the petition seeks vacatur of the unlawful asylum termination and reinstatement of his asylum status as relief tied to the arbitrary basis for

detention, the core challenge here is the constitutionality of Petitioner's prolonged pre-removal detention without a meaningful opportunity for release on bond, where Respondents have relied on erroneous and refuted evidence to justify mandatory detention under 8 U.S.C. § 1226(c). While 8 U.S.C. § 1226(e) prohibits review of discretionary custody and bond decisions, it does not bar review of nondiscretionary decisions. Furthermore, it does not bar review of due process violations arising from the inappropriate application of mandatory detention. This Court has jurisdiction under 28 U.S.C. § 2241 to review such due process claims, as confirmed in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (habeas available for constitutional challenges to immigration detention), and *Demore v. Kim*, 538 U.S. 510, 531 (2003) (recognizing due process limits on pre-removal detention). For the reasons below, the Court should grant the petition and order Petitioner's release on bond pending resolution of his immigration proceedings, or at minimum, issue a temporary restraining order preventing his continued detention. In the alternative, the Court should order an immediate individualized bond hearing where the government bears the burden of proving danger or flight risk by clear and convincing evidence.

ARGUMENT

I. RESPONDENTS' RELIANCE ON ERRONEOUS EVIDENCE UNDERMINES ANY BASIS FOR MANDATORY DETENTION AND VIOLATES DUE PROCESS.

Respondents contend that Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) based on allegations of material support to a Tier III terrorist organization. (Doc. 31 at 10). However, Respondents' evidence for these allegations is fatally flawed, as it includes refuted articles and withdrawn claims, rendering the detention arbitrary and violative of due process. Due process requires that immigration detention be based on reliable evidence and afford a meaningful opportunity to contest removability grounds. *See Demore*, 538 U.S. at 531 (detention must not be "indefinite" or punitive); *see also Zadvydas*, 533 U.S. at 690 (statutes permitting indefinite detention raise "serious constitutional problem[s]" under the Due Process Clause).

First, Respondents' allegations rest in part on articles that have been explicitly refuted by their own authors. As detailed in Petitioner's supplement (Doc. 7-1, Ex. C, Brooke Letter; Ex. D, Vannetzel Letter), these sources were misinterpreted or taken out of context, and the authors have disavowed any implication of terrorist ties. Respondents do not address these refutations in their Response, instead they simply repeat the original claims without substantiation Doc. 31 at 10. This omission highlights the unreliability of the evidence, which cannot support mandatory detention without violating due process.

Second, Respondents' own filings admit errors in their evidence. In a subsequent immigration court filing opposing bond reconsideration, Respondents conceded that the information in footnote 6 of their initial bond opposition—alleging Iraq-related activities—was "an error" (attached as Exhibit A hereto, "DHS bond.pdf" at 3). This footnote was presented as a portion of the Respondents' portrayal of Petitioner as a security risk (*Id.* at 10). Yet, Respondents fail to acknowledge this withdrawal in their Response to this Court, perpetuating a flawed factual record. Such reliance on admittedly erroneous information deprives Petitioner of a fair process and renders his detention unconstitutional. *Cf. Demore*, 538 U.S. at 531 (due process requires detention to bear a reasonable relation to its purpose). This admission evidences a pattern of unsubstantiated claims by DHS, further violating due process under *Bridges v. Wixon*, 326 U.S. 135, 153 (1945) (immigration decisions must be based on reliable evidence, not conjecture).

These evidentiary flaws demonstrate that Petitioner's detention is not justified under 8 U.S.C. § 1226(c), which mandates detention only for those "deportable by reason of having committed" specified offenses, including terrorism-related grounds under 8 U.S.C. § 1182(a)(3)(B). Where the evidence is unreliable or withdrawn, mandatory detention becomes punitive, violating due process. The Court should order release on bond to remedy this violation.

II. *THE IMMIGRATION COURT'S LIMITED BOND REVIEW, CONTROLLED BY RESPONDENTS, DENIED PETITIONER DUE PROCESS.*

Respondents argue that Petitioner received adequate process through his immigration bond hearing (Doc. 31 at 10-11). However, the hearing was constitutionally deficient because Respondents effectively controlled its scope, limiting the immigration judge's (IJ) authority under 8 C.F.R. § 1003.19(h)(2)(i)(C) and preventing a full review of the terrorism allegations. This overreach by the executive branch violates due process, as it deprives detainees of an impartial hearing on release. *See Demore*, 538 U.S. at 531 (due process requires "adequate procedural protections" in detention decisions).

Under 8 C.F.R. § 1003.19(e), IJs have authority to redetermine custody and grant bond where circumstances warrant, including in cases involving terrorism bars if the alien shows the charges are not substantially likely to be sustained. *See Matter of Joseph*, 22 I. & N. Dec. 799, 806 (BIA 1999) (detainee entitled to hearing to demonstrate "that he or she does not pose a danger to persons or property, is not a flight risk, and does not fall within a category making him or her ineligible for bond"). Yet, Respondents asserted in the bond proceedings—and reiterate here—that the IJ "lacked authority" to fully review the allegations due to the terrorism bar (Doc. 31 at 10; *see also* Exhibit A at 2). This position allowed Respondents to dictate the hearing's limits, excluding evidence challenging the merits of the allegations and relying on the same refuted and erroneous information discussed above.

Moreover, by amending the Notice to Appear (NTA) via Form I-261 to remove the material support allegations (Doc. 7-1, Ex. G), Respondents denied Petitioner a meaningful opportunity to contest those grounds in his removal proceedings, while simultaneously using them to impose mandatory detention. The original NTA included terrorism-related charges under 8 U.S.C. § 237(a)(1)(A) and § 212(a)(3)(B)(iv)(VI) (Doc. 7-1, Ex. F). However, the Form I-261 lodged only overstay charges under § 237(a)(1)(B) and present-in-violation-of-law charges, effectively

substituting or supplementing without the terrorism grounds, which are necessary for mandatory detention under § 1226(c) (applicable to deportability under § 1227(a)(4), security and terrorism). Following submission of the amended charges, detention should have been discretionary under § 1226(a), not mandatory under (c), as Petitioner is no longer charged on terrorism grounds. Yet, Respondents continue to claim that detention remains mandatory under § 1226(a) (Response at 7) despite conceding this change in the charges. Therefore, their continued reliance on uncharged terrorism allegations to deny bond violates due process, as bond decisions must be based on reliable, charged grounds. *See Bridges v. Wixon*, 326 U.S. at 153 (requiring reliable evidence); *see also Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013) (removability determinations tied to charged offenses); *Padilla v. ICE*, 953 F.3d 1134, 1143 (9th Cir. 2020) (due process requires fair bond hearings), vacated on other grounds sub nom. *Garland v. Gonzalez*, 596 U.S. 543 (2022).

Relying on uncharged allegations in bond proceedings circumvents the regulatory framework, where IJs consider "any information that is available," but in the context of charged deportability. 8 C.F.R. § 1003.19(d); *see also Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (bond factors include criminal history and removability, but tied to proceedings); *Calderon-Rodriguez v. Sessions*, 878 F.3d 1179, 1184 (10th Cir. 2018) (due process violation where bond denied based on erroneous legal conclusions); *Obregon v. Sessions*, 2017 WL 1408026, at *4 (N.D. Cal. Apr. 20, 2017) (using unproven allegations in bond violates due process). This manipulation of the process in immigration court prevents Petitioner from contesting the terrorism allegations on the merits in immigration court, as they are no longer charged; however, Respondents continue to invoke the allegations to bar bond review. Such manipulation renders the process illusory and violates due process, as *Demore* presumed detention is constitutional because it occurs during proceedings where the alien can "contest the basis of his deportation." *Demore*, 538 U.S. at 529 (emphasizing that detention is "of a much shorter duration" and tied to contesting removability); *see also id.* at 514 (noting detainee

could seek a Joseph hearing to contest inclusion in a mandatory detention category). Furthermore, it is the government's burden to show that Petitioner is a risk to the community or a flight risk, and the IJ shifted this burden to the Petitioner. (Exhibit B, IJ's Corrected Bond Order). "To satisfy due process demands, the government must prove by clear and convincing evidence that a non-citizen is a flight risk or danger to the community to justify continued detention." *See Vargas v. Wolf*, 2020 U.S. Dist. LEXIS 69511, *23. Without reasoning or explanation, the IJ summarily concluded, "Respondent did not meet his burden to establish that he does not pose a threat to the community and a risk of flight from proceedings." That is not the standard. *See Vargas v. Wolf*, 2020 U.S. Dist. LEXIS 69511, *24. Thus, like the court found in *Vargas*, Petitioner's "bond determinations were legally incorrect and constitutionally deficient."

Lower courts applying *Demore* have recognized similar due process violations where detention is prolonged or procedures are inadequate. For example, in *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005), the Ninth Circuit held that detention of over two years without a meaningful bond opportunity violated due process, requiring an individualized hearing, as *Demore's* holding is "limited to detentions of brief duration." Similarly, in *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 951 (9th Cir. 2008), the court applied *Demore* to require bond hearings for prolonged detention, shifting the burden to the government to prove danger or flight risk by clear and convincing evidence, to avoid constitutional issues. In *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011), the court extended this, holding that detention becomes prolonged after six months, necessitating a hearing, as "Demore's holding is limited to detentions of brief duration." These cases underscore that where, as here, evidentiary flaws and procedural manipulations deny a fair contest, due process demands relief.

Respondents' control over the bond process is evident in their opposition to reconsideration, where they argued no "full Joseph hearing" was warranted because Petitioner did not show changed

circumstances (Exhibit A at 2). This circular logic—imposing mandatory detention based on untested allegations while blocking review of those allegations—renders the process illusory. Due process demands more: a neutral decisionmaker must have the authority to weigh evidence independently, without executive interference. *See Zadvydas*, 533 U.S. at 690 (executive detention schemes must avoid constitutional conflicts). Courts have recognized that as-applied challenges to detention under § 1226(c) are viable where proceedings are prolonged or unfair. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (leaving open due process claims despite no statutory right to periodic hearings); *See Vargas v. Wolf*, 2020 U.S. Dist. LEXIS 69511, *23 (due process challenges support habeas petition).

While Respondents note Petitioner had not perfected an appeal of the IJ's July 28, 2025, (Doc. 31 at 11), that is no longer true. Petitioner filed a bond appeal on August 26, 2025, and the BIA initially erroneously rejected the filing. Upon motion and clarification of the error, the BIA accepted the notice of appeal, and an appeal of the IJ's bond decision is now pending before the BIA. This exhaustion is thus satisfied, but even if not, habeas corpus due process claims do not strictly require it where futile. *See Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011) (exhaustion excused where futile).

Here, Petitioner's detention since July 9, 2025, has been prolonged without a meaningful bond opportunity, exacerbated by Respondents' evidentiary errors and delays. The timeline in Petitioner's TRO memorandum (Doc. 29) shows delays attributable to Respondents, including: (1) NTA issued June 3, 2025, with a self-report scheduled for July 3; (2) NTA filed June 5; (3) July 3 appearance canceled on June 26; (4) scheduling order for written pleadings issued on July 1; (5) detention began on July 9 following an ICE check-in; (6) Form I-830 filed on July 11 notifying the immigration court of Petitioner's detention; (7) new detained docket appearance set on July 12 for July 22; and (8) Form I-261 filed on July 22 revising the charges against Respondent. These DHS-caused delays

(e.g., late I-261 amendment resetting proceedings) extended detention unnecessarily, amounting to punitive detention and warranting habeas relief. *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003) (detention unreasonably long after certain point).

III. THE ASYLUM TERMINATION WAS ARBITRARY AND CAPRICIOUS UNDER THE APA, RENDERING DETENTION UNLAWFUL.

The asylum termination, which triggered detention, was arbitrary and capricious under 5 U.S.C. § 706(2)(A), as it relied on the same unreliable evidence discussed above, without sufficient grounds under 8 C.F.R. § 208.24(a). This distinguishes cases like *Qureshi v. Holder*, 663 F.3d 778 (5th Cir. 2011), as they involved standalone APA challenges, not habeas where termination directly causes unlawful detention. *See Pucha-Gamboa v. Garland*, 70 F.4th 1193, 1198 (9th Cir. 2023) (termination reviewable if tied to detention). The termination thus lacks a lawful basis, requiring release.

IV. DHS VIOLATED THE ACCARDI DOCTRINE BY FAILING TO ADHERE TO ITS REGULATIONS.

DHS violated the Accardi doctrine, *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), by failing to follow its own regulations in terminating asylum and denying bond. For termination, DHS did not establish grounds by a preponderance of evidence as required under 8 C.F.R. § 208.24(a)(1) (fraud in application) and (a)(2) (terrorism bar), relying instead on refuted and erroneous evidence. The procedure for immigration proceedings does not provide for an impartial review. DHS initiates the termination process. Then, DHS determines that it has met the preponderance standard and terminates asylum. DHS places the person into immigration court proceedings, with mandatory detention for 90 days or more, causing loss of employment, work authorization, and family separation. DHS can count on a percentage of applicants giving up and going home, so even if it loses 99% of cases at trial, DHS will still have a net positive in total number removed. These tactics are completely shielded from any court review. *See Matter of V-X-*

, 26 I. & N. Dec. 147, 151 (BIA 2013) (DHS bears burden to prove termination grounds by preponderance); *Nijjar v. Holder*, 689 F.3d 1077, 1082 (9th Cir. 2012) (termination requires substantial evidence of changed circumstances or fraud); *Bultasa v. Mukasey*, 524 F.3d 889, 892 (8th Cir. 2008) (termination vacated for lack of clear evidence supporting grounds). For bond, by invoking uncharged terrorism allegations to argue no jurisdiction, DHS circumvented 8 C.F.R. § 1003.19(d), which limits considerations to available information relevant to current custody status and charged deportability. *See Calderon-Rodriguez v. Sessions*, 878 F.3d 1179, 1184 (10th Cir. 2018) (due process and regulatory violation where bond based on erroneous assumptions).. Agencies must adhere to their regulations, even if non-binding. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Vitarelli v. Seaton*, 359 U.S. 535, 539 (1959); Service v. Dulles, 354 U.S. 363, 372 (1957) (strict compliance required); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 323 (D.D.C. 2018) (Accardi violation in immigration context for deviating from procedures). This regulatory violation independently renders detention unlawful.

IV. DETENTION VIOLATES EQUAL PROTECTION THROUGH SELECTIVE ENFORCEMENT.

Petitioner's detention stems from selective enforcement based on his Egyptian nationality and Muslim faith, as alleged in the petition (Doc. 7 at 7-9). The termination's reliance on refuted political motivations (e.g., Egypt alignment) violates equal protection rights under the Fifth Amendment. *See Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Farm Labor Org. Comm. v. Ohio State Highway Patrol*, 308 F.3d 523 (6th Cir. 2002) (selective enforcement based on nationality actionable). DHS appears to be targeting Petitioner as retribution for a pending civil suit. Additionally, new DHS policies seem to target Muslims and pro-Palestinian advocates. *See Kariye v. Mayorkas*, 650 F. Supp 3d 865, 909. These policies and selective enforcement violate equal protection.

VI. RELEASE ON BOND IS NECESSARY TO PREVENT IRREPARABLE HARM

Respondents downplay the harm from detention (Response at Page ID 975-76), but prolonged incarceration without due process causes irreparable injury, including loss of liberty and family separation. *See Zadvydas*, 533 U.S. at 690. Petitioner, a former asylee with deep U.S. ties, poses no flight risk or danger, as evidenced by his voluntary compliance pre-detention (Response at PageID 958). A temporary restraining order or bond release is the appropriate remedy to restore due process.

CONCLUSION

For the foregoing reasons, the Court should grant the petition and order Petitioner's release on bond or issue a temporary restraining order pending further proceedings. If the Court finds any defect, Petitioner requests leave to amend to address the deficiency. Fed. R. Civ. P. 15(a).

Dated: September 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 18th day of September 2025, I have caused to be served via email and first class, United States Mail a copy of this pleading with all exhibits to the United States Attorney's office for the Southern District of Ohio on behalf of the following Respondents, and separately to the Office of the Butler County Sheriff:

DHS Office of Chief Counsel
925 Keynote Road, Room 201
Brooklyn Heights, OH 44131

DHS-ICE, Blue Ash Field Office
9875 Redhill Dr.
Blue Ash, OH 45242

Butler Country Sheriff's Office
705 Hanover Street
Hamilton, OH 45011

Signed: _____

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EXHIBIT A

Office of Chief Counsel
U.S. Immigration & Customs Enforcement
Department of Homeland Security
925 Keynote Circle Room 201
Brooklyn Heights, Ohio 44131

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CLEVELAND, OHIO

In the Matter of:	
Ayman SOLIMAN	**File No.:** A [redacted]
In bond proceedings	

Immigration Judge Riedthaler-Williams **Next Hearing: n/a**

DEPARTMENT OF HOMELAND SECURITY
SUPPLEMENTAL AUTHORITIES

The Department of Homeland Security (Department) respectfully submits the following legal and factual authorities in addition to arguments made during the previous custody hearing on July 22, 2024. The Department respectfully urges the immigration judge to issue an order finding that the court lacks authority to redetermine custody of the respondent.

An immigration judge does not have authority to redetermine bond in circumstances where there is a reason to believe the respondent is "described in" section 237(a)(4)(B) of the Immigration and Nationality Act ("Act" or "INA"), and the regulations expressly do not extend authority to redetermine bond for such aliens. 8 C.F.R. § 1003.19(h)(2)(i)(C). In bond proceedings, an immigration judge may ordinarily redetermine a bond set by the Department. *See* 8 C.F.R. § 1003.19(a). The immigration judge, however, has no such authority in certain circumstances, including when an alien is "described in" section 237(a)(4)(B) of the Act.[1] 8 C.F.R. § 1003.19(h)(2)(i)(C) ("[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to . . . [a]liens *described* in section 237(a)(4) of the Act.") (emphasis added). An alien is properly included in the class of aliens defined in 8 C.F.R. § 1003.19(h)(2)(i)(C) if there is *a reason to believe* that the alien is described in section 237(a)(4) of the Act. *See Matter of Joseph*, 22 I&N Dec. 660, 668-69 (BIA 1999) (pertaining to the requirements of a hearing under 8 C.F.R. § 1003.19(h)(2)(ii)). The respondent has the burden of proof to show that he is not properly included within a mandatory custody provision. 8 C.F.R. § 1003.19(h)(2)(ii).[2]

[1] Section 237(a)(4)(B) of the Act states that "any alien who is described in subparagraph (B) or (F) of section 212(a)(3) [8 USCS § 1182(a)(3)] is deportable." Section 212(a)(3)(B)(i)(I) of the Act states that "any alien who has engaged in a terrorist activity is inadmissible." The term "engaged in terrorist activity" is defined in section 212(a)(3)(B)(iv) of the Act, which includes the commission of a "terrorist activity" as defined in section 212(a)(3)(B)(iii) of the Act and the provision of material support to a terrorist organization.

[2] One regulation directs that immigration judges have no authority to redetermine bond for aliens in removal proceedings who are subject to section 236(c)(1) of the Act, the so-called mandatory detention provisions of the Act. 8 C.F.R. §1003.19(h)(2)(i)(D). A separate regulation divests immigration judges of authority to redetermine bond

In *Matter of Kotliar*, the Board held that the "is deportable" language in the current mandatory custody statute does not require that the alien be charged with or found deportable on the particular ground on which detention is based." *Matter of Kotliar*, 24 I&N Dec. 124, 126 (BIA 2007). Mandatory detention provisions apply where there is a "reason to believe" that the respondent falls within one of the categories barred from release under the law. *Matter of Joseph*, 22 I&N Dec. at 668, clarified by *Matter of Joseph II*, 22 I&N Dec. 799, 803-05 (BIA 1999).

The Department need only show that the "evidence indicates" that a national security bar to the respondent's applications for relief "may apply." *Matter of S-K-*, 23 I&N Dec. 936, 939 (BIA 2006). Once this minimal burden is met, "under the regulation, the burden of proof . . . shift[s] to the respondent to show by a preponderance of the evidence that the bar is inapplicable." *Id.* "The record evidence must raise *the inference* that each element of the terrorist bar *could be met* before the applicant's burden of proof arises." *Budiono v. Lynch*, 837 F.3d 1042, 1049 (9th Cir. 2016) (emphases added).

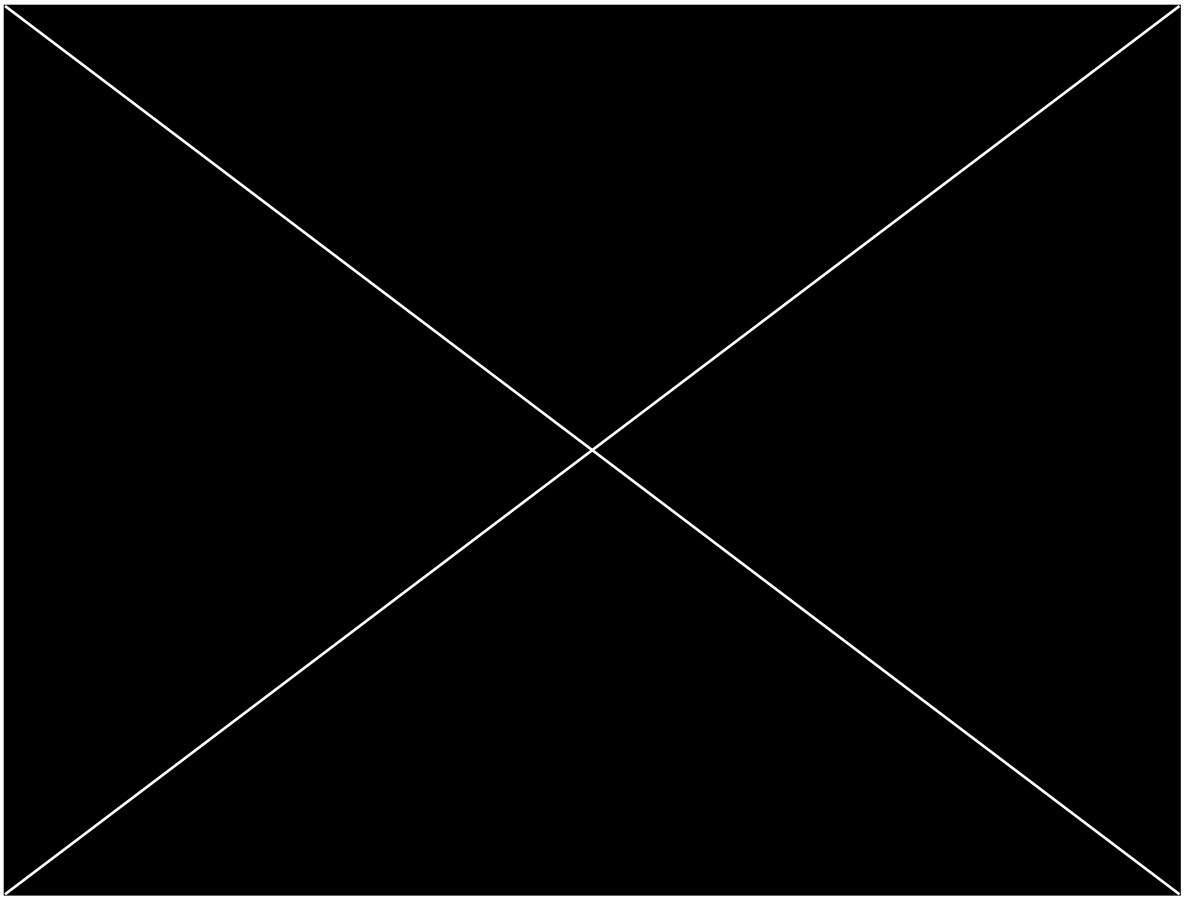
An alien is described in INA § 212(a)(3)(B) or INA § 237(a)(4)(B) if the alien, *inter alia*, "has engaged in a terrorist activity." INA § 212(a)(3)(B)(i)(I). Pursuant to the INA, engaging in a terrorist activity includes, in relevant part, "in an individual capacity *or as a member of an organization* . . . commit[ting] an act that the actor knows, or reasonably should know, affords material support . . . to a terrorist organization described in [INA § 212(a)(3)(B)(vi)(I)–(III)]." INA § 212(a)(3)(B)(iv)(VI) (emphasis added). The INA defines three types of terrorist organizations: (1) designated terrorist organizations pursuant to INA § 219; (2) otherwise

for aliens "described in" section 237(a)(4) of the Act. 8 C.F.R. § 1003.19(h)(2)(i)(C). Because these two are separate regulatory requirements, whether the respondent is subject to mandatory detention under section 236(c)(1) of the Act is irrelevant to the application of 8 C.F.R. § 1003.19(h)(2)(i)(C).

designated terrorist organizations; and (3) undesignated terrorist organizations. INA § 212(a)(3)(B)(vi)(I)–(III).

An undesignated terrorist organization is "a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the [terrorist] activities described in subclauses (I) through (VI) of [INA §212(a)(3)(B)(iv)]." INA § 212(a)(3)(B)(vi)(III).

The respondent contends that [redacted] is not an undesignated terrorist organization. However, the immigration court is in possession of sufficient information about [redacted] to conclude that the respondent is substantially unlikely to prevail on this argument. Specifically relevant to the instant case, [redacted] itself fits the definition of an undesignated terrorist organization for its own engagement in terrorist activities. Only four months after [redacted] formerly a leader of [redacted] who subsequently resigned his position with [redacted] resulting in violence. Tab C. (explaining that "[s]tones, bottles and gasoline bombs were hurled and two buses caught fire in the most intense hostilities between [redacted] in months."). Tab C at 17. This, and other protests, ultimately led to two days of hostilities between protestors and [redacted] which resulted in the deaths of at least five protestors and hundreds injured. Tab A, B. Stones, Molotov cocktails, rubber pellet rifles, and handguns were used by both protestors and [redacted] as the violence escalated. Tab B at 5. With the purpose of suppressing strife in the form of the now-violent protests in mind, [redacted] members went on to seize and detain [redacted] at a



protests. This continued in [redacted] and onward, and thus, establishes the group is an undesignated terrorist organization.

Additionally, [redacted] is also an undesignated terrorist organization pursuant to INA § 213(a)(3)(B)(vi)(III) due to its provision of material support [redacted] Per the INA, a group of two or more individuals constitute an undesignated terrorist organization if they "commit an act that the actor knows, or reasonably should know, affords material support . . . to a terrorist organization defined in subclause (I) or (II) of clause (vi). An example of a terrorist organization defined in INA § 212(a)(3)(B)(vi)(I) is Hamas, which was designated as a Foreign Terrorist Organization by the United States Department of State pursuant to section

219 of the Act on October 8, 1997[3]. Therefore, any group of two or more individuals who provides material support to Hamas constitutes an undesignated terrorist organization. There is sufficient evidence in the record to conclude that [redacted] in Egypt is an undesignated terrorist organization by virtue of their material support [redacted] Based on the attached documentation, [redacted] affiliate of [redacted] Tabs F, H, I. Additionally, and relevant to the time period in this case, [redacted] Tab F. This occurred after [redacted] *Id.* In statements made in support of efforts to officially designate [redacted] as a terrorist organization, many leaders of the United States note that [redacted] supports localized branches, including [redacted] which engage in violent acts destabilizing the Middle East. Tabs H, I. As noted above, providing material support to an undesignated terrorist organization constitutes "engaging in terrorist activity" under INA § 212(a)(3)(B)(iv)(VI)(dd). The term material support is construed broadly and includes, but is not limited to, providing "a safe house, transportation, communications, funds . . . [or] weapons". INA § 212(a)(3)(B)(iv)(VI); *Matter of A-C-M-*, 27 I&N Dec. 303, 310 (BIA 2018) ("The term is broadly defined and is not limited to the enumerated examples in the statute under [INA §] 212(a)(3)(B)(iv)(VI).") (citations omitted); *Matter of S-K-*, 23 I&N Dec. 936, 943 (BIA 2006) ("[W]e are unaware of any legislative history which indicates a limitation on the definition of the term 'material support.'"). "[M]aterial support is a term of art that relates to the type of aid provided, that is, aid of a material and normally tangible nature, and it is not quantitative." *Matter of A-C-M-*, 27 I&N Dec. at 307 (citations omitted) (internal quotation

[3] The list of designated Foreign Terrorist Organizations pursuant to section 219 of the Act is located at: https://www.state.gov/foreign-terrorist-organizations.

marks omitted). Neither an alien's intent in providing material support, nor the intended use by the recipient, is considered in assessing whether the support provided is material. *Matter of S-K-*, 23 I&N Dec. at 943–44 (citation omitted). An alien or organization "provides 'material support' to a terrorist organization, regardless of whether it was intended to aid the organization, if the act has a logical and reasonably foreseeable tendency to promote, sustain, or maintain the organization, even if only to a de minimis degree." *Matter of A-C-M-*, 27 I&N Dec. at 308.[4] Further, the BIA has not recognized de minimis, duress, or legitimate political violence exceptions to the INA's material support provision. *Id.*; *Matter of M-H-Z-*, 26 I&N Dec. 757, 764 (BIA 2016); *Matter of S-K-*, 23 I&N Dec.936, 941 (BIA 2006).

The Department's July 22, 2025 submission makes clear that the respondent served as an officer and donated money to an organization that collaborated with [redacted] in Egypt. DHS Exhibit of July 22, 2025, at 10. Documentary evidence establishes [redacted] based on links to [redacted] *Id.* [redacted] also played an important role in [redacted] reestablishment, Id. at 70. During the 1990s, and again beginning in 2011,, [redacted] cooperated to provide social services. *Id.* at 20-21.The

[4] *See, e.g., id.* at 304 (alien who provided domestic services for terrorist organization such as cooking, cleaning, and laundry, provided material support); *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 296–301 (3d Cir. 2004) (alien who provided food and set up tents for members of a terrorist organization provided material support); *Barahona v. Holder*, 691 F.3d 349, 351, 356 (4th Cir. 2012) (alien who provided occasional use of kitchen and temporary accommodations to members of a terrorist organization provided material support); *Haile v. Holder*, 658 F.3d 1122, 1124–1130 (9th Cir. 2011) (alien who recruited members and collected funds for, and supplied secret documents and other provisions to, members of a terrorist organization provided material support).

nature of the collaboration relates to public services such as medical treatment, which plainly serve to promote the organizations participating in the provision of the services.

In sum, the evidence produced by the Department provides sufficient reason to believe that the respondent, in his organizational capacity with [redacted] provided support and promotion of [redacted] through cooperation and collaboration. Accordingly, the immigration judge does not have the authority to redetermine the respondent's custody status. 8 C.F.R. § 1003.19(h)(2)(i)(C).

Assuming that the respondent is not subject to the mandatory custody provisions under section 236(c)(1)(D) of the Act or the provisions under the Code of Federal Regulations, the respondent bears the burden to show that he does not present a threat to the community and a risk of flight from further proceedings. *Matter of Adeniji*, 22 I&N Dec. 1102, 1111-13 (BIA 1999). In interpreting whether an alien has met this burden, the Board has found that unless an alien demonstrates that he is not a danger to the community, he should be detained in the custody of the Department. *See Matter of Drysdale*, 20 I&N Dec. 815, 817 (BIA 1994); *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006) ("An alien who presents a danger to persons or property should not be released during the pendency of removal proceedings" (internal citations omitted)). Only where a respondent has proven that he is not a danger to the community does the likelihood that he will abscond become relevant. *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009) (internal citations omitted). Potentially dangerous respondents may be held in the custody of the Department without bond during the pendency of removal proceedings. *See Carlson v. Landon*, 342 U.S. 524, 537-42 (1952). Immigration judges are not limited to considering only criminal convictions in assessing whether a non-citizen is a danger to the community. *Matter of Guerra*, 24 I&N Dec. at 40; *see also Matter of Fatahi*, 26 I&N Dec. 791, 795 (BIA 2016) ("The question

whether an alien poses a danger to the community is broader than determining if the record contains proof of specific acts of past violence or direct evidence of an inclination towards violence."). National security concerns provide a reasonable basis to deny release on bond under section 236(a) of the Act. *Matter of D-J-*, 26 I&N Dec. 572, 579 (A.G. 2003).

Even if the immigration judge had authority to conduct a custody redetermination hearing, the burden is unequivocally on the respondent to show that he is not a danger to the community or a risk of flight.[5] 8 C.F.R. § 1003.19(h)(3); *Matter of Guerra*, 24 I&N Dec. at 40. Assuming that this Court determined that authority existed to evaluate custody, the immigration judge should deny the request for release on bond. The presence of national security concerns render the respondent unequivocally a danger to the community. *Matter of Fatahi*, 26 I&N Dec. 791, 795 (BIA 2016) ("[T]he circumstantial evidence and the respondent's misrepresentations raise significant safety and security concerns that justify his continued detention while removal proceedings are pending

Second, the respondent's request for bond should be denied because he is a risk of flight. The respondent is removable as charged, as Citizenship and Immigration Services has revoked his asylum status, and the immigration court lacks jurisdiction to review that finding. *Matter of A-S-J-*, 25 I&N Dec. 893 (BIA 2012). The respondent's means of obtaining status appears tenuous, at best. This is because the evidence indicates that the respondent engaged in terrorist activities described in section 212(a)(3)(B)(i)(I) of the Act, he is not eligible for any relief or protection from removal other than deferral of removal under the regulations implementing

[5] Immigration judges may "exercise the powers and duties delegated to them by the [INA] and by the Attorney General through regulation," and "shall be governed by the provisions and limitations prescribed by the [INA]" and relevant regulations and Board decisions. 8 C.F.R. §§ 1003.10(b), (d); *see also Lopez-Telles v. INS*, 564 F.2d 1302, 1304 (9th Cir. 1977). The immigration judge does not have the authority to decide the due process concerns with the detention authority and the burden proof raised by the respondent. Resp. at 6-11.

Article III of the United Nations Convention Against Torture.[6] *see* INA §§ 208(b)(2)(A)(v); INA § 209(c); INA § 240B(a)(1); INA § 240B(b)(1)(C); INA § 241(b)(3)(B)(vi); INA § 245(c); 8 C.F.R. § 1208.16(d)(2); *Matter of S-K-*, 23 I&N Dec. at 939. The lack of relief from removal further demonstrates that the respondent is a flight risk. Given the limited forms of relief from removal, the immigration judge should deny bond because the respondent is a risk of flight.

CONCLUSION

The respondent is an alien described in section 237(a)(4) of the Act and the immigration judge does not have authority to redetermine his custody status. 8 C.F.R. § 1003.19(h)(2)(i)(C). Assuming arguendo that the immigration judge had authority to redetermine the respondent's custody status, the request for release on bond should be denied because the respondent is both a danger to the community and a flight risk. Any request for release on bond must be denied.

Respectfully submitted on this 25th day of July, 2025

CHERYL C GUTRIDGE

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[6] Based on the three outstanding warrants in Iraq for murder and terrorism related activities, the respondent is also ineligible for asylum and withholding of removal because there are serious reasons for believing that the he committed serious nonpolitical crimes prior to his arrival to the United States. Exh. 5; INA §§ 208(b)(2)(A)(iii), 241(b)(3)(B)(iii). The Ninth Circuit Court of Appeals interpreted "'serious reasons' to believe" as being tantamount to probable cause. *McMullen v. INS*, 788 F.2d 591, 599 (9th Cir.1986), *overruled on other grounds by Barapind v. Enomoto*, 400 F.3d 744, 751 n. 7 (9th Cir.2005) (en banc) (per curiam).