UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No: 25-cv-61632-RAR

EVELYN VASQUEZ VEGA
Petitioner

v.

UNITED STATES ATTORNEY GENERAL
WARDEN BROWARD TRANSITIONAL CENTER
Respondents

_____/

MOTION TO LEAVE TO FILE A PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO COURT ORDER TO SHOW CAUSE WHY PEPTION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 SHOULD NOT BE GRANTED.

COMES NOW, the petitioner, EVELYN VASQUEZ VEGA pro se, and respectfully, moves for reply to respondent's response to court order to show cause a writ of habeas corpus, which the only issue raised was "the challenges the validity of her continued detention pending the outcome of her appeal"; since that petitioner's renewed bond request citing 'changed circumstances' based on the appeal proceeding pending of review in the Board of Immigration appeals. *See* 8 C.F.R. 1003.19(e), was denied in violation of the respondent's constitutionals rights to the Due Process, and seek leave of this court to file this petitioner's reply to respondent's response out of the deadline of five days as ordered by this court, since that the petitioner received the response to this petition in the detention center via legal mail on August 26, 2025; when the date of ordered had end, and in support allege as follows:

1. The respondent erred finding that petitioner "failed to exhaust her administrative remedies in... her appeal of the removal order":

The only issue raised was the "challenges the validity of her continued detention pending the outcome of her appeal" (See Doc.1 pag 1). which this court should find that petitioner is not challenging "**the removal order**". The issues raised were "The Immigration Judge's constitutional error prejudiced Petitioner, under the Immigration court current scheme of placing the burden on Petitioner to prove that she should be released on bond contravenes due process. For the foregoing reasons "the current scheme of placing the burden on Petitioner to prove that he should be released on bond contravenes due process" L.G. v. Choate, et al., 744 F. Supp. 3d 1172 (D.C. Col 2024). The Petitioner is being detained in violation of the Constitution and laws of the United States, and that this court should determine whether her continued detention is justified" (See Doc 1, pag.3).

Petitioner alleged that ICE is detaining Petitioner in violation of a Department of Homeland Security "DHS" regulation, and the Due Process Clause of the Fifth Amendment to the United States Constitution, and it violate current policy to proceed, a judgment in the prior determination of release on bond may be set aside, where the respondent was entitle to the same relief to other similarly situated upon the respondents unopposed motion to terminate these removal proceedings based on the respondents acquisition of asylee status under section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158. (See Doc 1, pag.3).

LEGAL STANDARD

This Court may review a petition for writ of habeas corpus on the ground that a petitioner is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. 2241(c)(3). Federal courts have habeas jurisdiction to examine the statutory and constitutional bases for immigration detention unrelated to a final order of removal. *See Carbajal v. Holder*, 43 F. Supp. 3d 1184, 1186 (D. Colo. 2014) (citing *Demore v. Kim*, 538 U.S. 510, 517-18, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003)). Relevant here, a detainee may bring a habeas petition under this section if his or her confinement violates the Fifth Amendment's guarantee of due process. *See, e.g., Straley v. Utah Bd. of Pardons*, 582 F.3d 1208, 1212 (10th Cir. 2009).

It is well established that the Fifth Amendment entitles noncitizens5 to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) (citing *The Japanese Immigrant Case*, 189 U.S. 86, 100-101, 23 S. Ct. 611, 47 L. Ed. 721 (1903)); *Fong Yue Ting v. United States*, 149 U.S. 698, 724, 13 S. Ct. 1016, 37 L. Ed. 905 (1893) ("[All noncitizens] residing in the United States for a shorter or longer time, are

entitled, so long as they are permitted by the government of the United States to remain in the country, to the safeguards of the constitution, and to the protection of the laws, in regard to their rights of person and of property, and to their civil and criminal responsibility."). Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action. *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992). "It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Id.* (quoting *Jones v. United States*, 463 U.S. 354, 361, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983)); *see also Kansas v. Hendricks*, 521 U.S. 346, 357, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997) ("We have consistently upheld such involuntary commitment statutes provided the confinement takes place pursuant to proper procedures and evidentiary standards."). Case law emphasizes that due process usually requires that the Government bears the burden of proving facts to justify civil detention. *Zadvydas v. Davis*, 533 U.S. 678, 692, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Foucha*, 504 U.S. at 80; *Addington v. Texas*, 441 U.S. 418, 431-33, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979).

A. Statutory Bar

Respondent also argues that 8 U.S.C. 1226(e) bars judicial review of discretionary detention decisions like the one now before the Court. That section provides that "the Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." In a different context, the United States Supreme Court has not equated "review" to habeas review. *See INS v. St. Cyr*, 533 U.S. 289, 150 L. Ed. 2d 347, 121 S. Ct. 2271, 2286-87 (2001). In light of *St. Cyr*, the Court shall does not find that 1226(e) statutorily bars habeas review of the bond issue before it and to "who would have been eligible for waiver".

B. Exhaustion

The petitioner alleged that the "current scheme of placing the burden on Petitioner to prove that she should be released on bond contravenes due process"; and "since the alien was not seeking review of a final order of removal, but rather was challenging the validity of his continued detention pending the outcome of his appeal, exhaustion was not required". Serrano v. Estrada, 2002 U.S. Dist. LEXIS 3667, NO. 3-01-CV-1916-M (S.D. tex. 2002).

In light of the foregoing, the Court should conclude that Petitioner's claims for relief are not barred by the prudential doctrine of administrative exhaustion. The Court should therefore proceeds to consider Petitioner's claim for relief, since that under these circumstances, exhaustion is not required. *See Sehuma v. INS*, 2001 U.S. Dist. LEXIS 13810, 2001 WL 984884 at *2 (N.D. Tex. Aug. 14, 2001) (habeas petitioner not required to exhaust administrative

remedies in order to seek review of bond decision). SERRANO v. ESTRADA, 2002 U.S. Dist. LEXIS 3667, NO. 3-01-CV-1916-M (D.C. Tex. 2002);

C. Violation of Fifth Amendment Due Process Clause

Due process challenges to prolonged immigration detention under 1231(a)(6) should be evaluated through ICE is obligated to conduct for non-citizens detained under 1231(a)(6), as well as a response to a release request that Petitioner submitted to ICE. During these reviews, officials must consider both favorable factors (such as close relatives residing here lawfully) and unfavorable factors (such as flight risk and danger of future criminal activity), and the foreign national has the right to submit evidence, to use an attorney or other representative and, if appropriate, to seek a government-provided translator. 8 C.F.R. 241.4(f)(5), (7), (8)(iii), (h)(2), (i)(3). However, these proceedings suffer from three significant shortcomings.

First, the Department of Homeland Security ("DHS") bears the burden of showing by clear and convincing evidence that his continued detention is justified" when the detained noncitizens "have little ability to collect evidence". Here, the Government makes much of the fact that the courts expressly declined "to establish a bright-line rule for when due process entitles an individual detained under 1226(a) to a new bond hearing with a shifted burden." According to the Government, *Petitioner* "suggests that there is no constitutional infirmity in an immigration judge's placement of the burden of proof on a noncitizen detained under 1226(a) at her initial bond hearing where the noncitizen has been afforded adequate process."

This Court should declines to read any such "suggestion". *See, e.g., B.S. v. Joyce*, No. 22-cv-09738 (PKC), 2023 WL 1962808, at *4 (S.D.N.Y. Feb. 13, 2023) (rejecting argument that *petitioner* that due process does not always require the burden to be placed on the government at a Section 1226(a) bond hearing); *Banegas*, 2021 WL 1852000, at *3 ("[N]either the Circuit's decision in nor any other binding appellate authority overrules the 'overwhelming consensus' of courts in the Districts that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden to justify continued detention of a noncitizen who is detained pursuant to 1226(a).

Disagreement among the Circuit exists regarding which party shoulders the burden and quantum of proof at the individualized bond hearing. In first instance the Eleventh Circuit place the burden of proof on the criminal alien who must demonstrate that he is neither a flight risk nor a danger to others. Sopo v. United States AG, 825 F.3d 1199 (11th Cir. 2016)(adopting the procedures from 8 C.F.R. 1236.1(c)). But this decision was Vacated by, Appeal dismissed by Sopo v. United States AG, 890 F.3d 952, 2018 U.S. App. LEXIS 12780 (11th Cir. Ga., May 17, 2018) Petition denied by Maxi Dinga Sopo v. United States AG, 2018 U.S. App. LEXIS 17147 (11th Cir., June 25, 2018).

Second, proving a negative (especially a lack of danger) can often be more difficult than proving a cause for concern. Accordingly, this court will join the "consensus view" among District Courts concluding that after *Jennings v. Rodriguez* 583 U.S. 281, 306, 138 S. Ct. 830, (2018) "where . . . the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified." *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018); *see also, e.g., Brito v. Barr*, 415 F. Supp. 3d 258, 2019 WL 6333093, at *4 (D. Mass. Nov. 27, 2019) ("[T]he Court holds that the Due Process Clause requires the Government bear the burden of proof in 1226(a) bond hearings."); *Rajesh v. Barr*, 420 F. Supp. 3d 78, 2019 WL 5566236, at *6 (W.D.N.Y. Oct. 29, 2019) ("The Court joins with these courts and concludes that the Fifth Amendment's Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that detention is justified at a bond hearing under 1226(a)."); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019) ("*Singh v. Barr*") ("The Court agrees with the reasoning of its sister courts and concludes that the Fifth Amendment's Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that continued detention is justified at a 1226(a) bond redetermination hearing."); *Hernandez-Lara v. Immigration & Customs Enf't.*, 2019 U.S. Dist. LEXIS 124144, 2019 WL 3340697, at *4 (D.N.H. July 25, 2019) ("This court finds persuasive those opinions that have held that, in 1226(a) cases, due process requires the burden be placed on the government."); *Diaz-Ceja v. McAleenan*, 2019 U.S. Dist. LEXIS 110545, 2019 WL 2774211, at *10 (D. Colo. July 2, 2019) ("The court finds that allocating the burden to a noncitizen to prove that he should be released on bond under 1226(a) violates due process"). This court will also join other District Courts to hold that due process requires the Government to carry its burden by clear and convincing evidence. *See, e.g., Rajesh*, 420 F. Supp. 3d 78, 2019 WL 5566236, at *6; *Singh v. Barr*, 400 F. Supp. 3d at 1018; *Marroquin Ambriz*, 420 F. Supp. 3d 953, 2019 U.S. Dist. LEXIS 186531, 2019 WL 5550049, at *8 (N.D. Cal. Oct. 28, 2019) ("Marroquin Ambriz is entitled to a hearing at which the government bears the burden of proof, by clear and convincing evidence, that he is dangerous or a flight risk.").

Moreover, as "the Government shall bear the burden of proving by clear and convincing evidence that his continued detention is justified" Perez v. McAleenan, 435 F. Supp. 3d 1055 (9th Cir. Cal. 2020). Which the Immigration Judge's constitutional error prejudiced Petitioner, under the Immigration court current scheme of placing the burden on Petitioner to prove that she should be released on bond contravenes due process, when The IJ found:

> "Petitioner has not met her burden in establishing that she is not a DTC/Public Safety Risk, and has not met her burden of establishing that she is a suitable bail risk."

D. Prejudice:

The Immigration Judge's constitutional error prejudiced Petitioner. *See Singh v. Barr*, 400 F. Supp. 3d at 1019. The Immigration Judge's denial of bond was based on the DHS's testimony

about a fraudulent address with her application. The Service repeatedly charged that the Petitioner had submitted a fraudulent address with her application, and that her requests for relief should be denied because of this misrepresentation.

The Petitioner describes this issue as a "classic red herring" and claims that she submitted to the ICE a copy of the two address of the actual sponsor's residence. The court need not resolve this authenticity issue, because it is readily apparent that the ICE's decision to continue the Petitioner's detention was based in large part on confidential information offered by the government, and because the court is unable to presume that the ICE's decision would have been the same in absence of the secret evidence, see Bridges v. Wixon, 326 U.S. 135, 155, 89 L. Ed. 2103, 65 S. Ct. 1443 (1945). Second, the decision is by ICE itself, not an outside arbiter such as an immigration judge. Finally, the regulations do not provide for an in-person hearing, where Petitioner can present his argument, call witnesses and confront the Government's evidence.

Petitioner has provided sufficient evidence that "the Government might find difficult to overcome if it had to demonstrate affirmatively that Petitioner poses a risk of flight or danger to the community necessitating (her) continued detention." *Jimenez v. Decker*, No. 21 Civ. 880, 2021 U.S. Dist. LEXIS 40727, 2021 WL 826752, at *9 (S.D.N.Y. Mar. 3, 2021) (internal quotation marks omitted). As the period of confinement grows, "so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." The Government has now detained Petitioner for eight months and Petitioner's withholding-only proceedings are still pending in appeal.

While an immigration judge recently denied Petitioner's applications and removal order on June 9, 2025, she filed a notice of appeal. As her first appeal to the BIA took two months between filing notice on June 24, 2025 and receiving a decision of a filing receipt for appeal date on August 18, 2025; Petitioner will likely remain in detention for at least the next several months and, if her case is remanded again, for much longer. Pending the resolution of those proceedings and any eventual removal, a bond hearing would help mitigate the "risk of error inherent in the truth-finding process."

At time of application submitted (See Doc #1), the petitioner did not had acknowledgment that a case appeal was filed on the Board regarding to her removal order, since that a decision of a filing receipt for appeal was executed on August 18, 2025. Which this court should agree that the respondent erred finding that petitioner "failed to exhaust her administrative remedies in... her appeal of the removal order", and "since the alien was not seeking review of a final order of removal, but rather was challenging the validity of her continued detention pending the outcome of her appeal, exhaustion was not required.

2. Defendant failed to follow his own Policy Manual stating that the petitioner's failed to Name the proper Respondent.

The Section 8 U.S.C.S. 1252(b)(3)(A).establish that:

"The respondent is the Attorney General. The petition shall be served on the Attorney General".

The Supreme Court had established that: "the Fifth Amendment entitles aliens to due process of law in deportation proceedings," Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993), and that "When the Government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954). Under the Due Process Clause, The Defendant violated the petitioner's constitutional rights to the due process when it departed from a prior policy, since that a violation of the *Accardi* doctrine constitute "a violation of the Fifth Amendment's Due Process Clause, as follow:

A.- According to USCIS Policy Manual:

|iii| Attorney General/DHS Is the Proper Custodian

Several courts continue to hold that the Attorney General or Secretary of Homeland Security is the proper custodian in immigration detention cases. 199 Some of these courts have reasoned that because the officials, in their official capacity, transact business within the courts territorial jurisdiction, they can be reached by service of process. 200 Furthermore, because habeas petitions generally challenge the imposition, rather than the execution, of particular policies, it is the actions of the Attorney General or Secretary, not those of the warden of any particular facility, that are being challenged. 201 Courts have also noted that the Attorney General or Secretary could direct his or her subordinates to carry out any order to produce or release the petitioner. 202 These courts also reason that if a habeas corpus petition could be heard only where the petitioner was detained, the Attorney General or Secretary could seriously undermine the remedy of habeas corpus by detaining illegally a large group of persons in one facility so that the resulting torrent of habeas corpus petitions would overwhelm the local court. 203. (See Exhibit B Attach - Part 9 Special Alert Adjudicators Field Manual Incorporated in USCIS Policy Manual. CHAPTER 104. Judicial Review *. 104.04 Habeas Corpus. [5] Jurisdiction. [b] Determining the Proper Custodian. [iii] Attorney General/DHS Is the Proper Custodian); which were described the No(s):

199. Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) (Attorney General and DHS Secretary are proper respondents (citing Rumsfeld v. Padilla, 542 U.S. 426, 436 n.8 (2004)); Somir v. United States, 354 F. Supp. 2d 215 (E.D.N.Y. 2005) (Attorney General remains proper custodian post-*Padilla*); Mandarino v. Ashcroft, 318 F. Supp. 2d 13 (D. Conn. 2003) (Attorney General is proper custodian).

200. So v. Reno, 251 F. Supp. 2d 1112, 1128 (E.D.N.Y. 2003) (There is personal jurisdiction over the Attorney General in New York, since he or she regularly transacts business in New York in an official capacity.); Small v. Ashcroft, 209 F. Supp. 2d 294 (S.D.N.Y. 2002); Cinquemani v. Aschcroft, 2001 U.S. Dist. LEXIS 12163 (E.D.N.Y. Aug. 16, 2001) (There is no question that the Attorney General is a legal custodian of [a habeas petitioner being held in DHS custody].); Mojica v. Reno, 970 F. Supp. 130, 16667 (E.D.N.Y. 1997) (the Attorney General is one of several custodians), *affd on other grounds sub nom.* Henderson v. INS, 157 F.3d 106, 12228 (2d Cir. 1998); Nwankwo v. Reno, 828 F. Supp. 171, 17374 (E.D.N.Y. 1993); *see also* Ali v. Ashcroft, 213 F.R.D. 390, 408 (W.D. Wash. 2003) (Attorney General and INS Commissioner were appropriately named as respondents for class action challenging Attorney Generals statutory authority to remove large numbers of unidentified Somalis located across the country), *affd*, 346 F.3d 873 (9th Cir. 2003), *vacated sub nom.* Ali v. Gonzales, 421 F.3d 795 (9th Cir. 2005).

201 . Chavez-Rivas v. Olsen, 194 F. Supp. 2d 368, 374 (D.N.J. 2002).

202. Lee v. Ashcroft, 216 F. Supp. 2d 51, 5455 (E.D.N.Y. 2002) (collecting cases and noting that: (1) the Attorney General had the power to produce, detain, and release petitioners and was the ultimate decision-maker on removal matters; (2) Congress had designated the Attorney General as legal custodian of noncitizens; and (3) there is a compelling practical interest in protecting local district courts from becoming overwhelmed with habeas petitions); Mojica v. Reno, 970 F. Supp. 130, 167 (E.D.N.Y. 1997) (quoting Nwankwo v. Reno, 828 F. Supp. 171, 175 (E.D.N.Y. 1993)), *affd on other grounds sub nom.* Henderson v. INS, 157 F.3d 106, 12224 (2d Cir. 1998).

203. Lee v. Ashcroft, 216 F. Supp. 2d 51, 5455 (E.D.N.Y. 2002).

204. Armentero v. INS, 340 F.3d 1058, 1073 (9th Cir. 2003) (emphasis in original), *vacated*, 382 F.3d 1153 (9th Cir. 2004) (discussing previous Supreme Court and circuit precedent).

B.- According to case law precedents:

"The proper respondent for habeas petition must be someone who has authority over the detention of the prisoner, and in the immigration context, this authority often lies with the U.S. Attorney General or the Secretary of the Department of Homeland Security" Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) (Attorney General and DHS Secretary are proper respondents (citing

Rumsfeld v. Padilla, 542 U.S. 426, 436 n.8 (2004)); Somir v. United States, 354 F. Supp. 2d 215 (E.D.N.Y. 2005) (Attorney General remains proper custodian post-*Padilla*); Mandarino v. Ashcroft, 318 F. Supp. 2d 13 (D. Conn. 2003) (Attorney General is proper custodian).

Here, the Defendant's violation of the *Accardi* doctrine by the statements gave in the "Defendant's Response to Petitioner's Writ of Habeas Corpus, when stated: "Petitioner Failed to Name the proper respondent....Because Petitioner is detained at the Broward Transitional Center...Respondent in the instant case is the Warden for that facility"; constitute "a violation of the Fifth Amendment's Due Process Clause" *United States v. Teers*, 591 F. App'x 824, 840 (11th Cir. 2014) (recognizing that an *Accardi* violation may be a due process violation,); *Jean v. Nelson*, 727 F.2d 957, 976 (11th Cir. 1984) ("Agency deviation from its own regulations and procedures may justify judicial relief"). A violation of the *Accardi* doctrine, constitute a violation of the Fifth Amendment's Due Process Clause. ("[I]t is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required."). " An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515, 129 S. Ct. 1800, 173 L. Ed. 2d 738 (2009).

Further, "[i]t is well established that an agency acts arbitrarily . . . when it does not follow its own procedures." Torres v. U.S. Dep't of Homeland Sec., No. 17-cv-01840, 2017 U.S. Dist. LEXIS 161406, (S.D. Cal. 2017)(holding that "[the] failure [of Defendants, DHS, USCIS, U.S. Immigration and Customs Enforcement, and CBP] to follow the termination procedures set forth ...is arbitrary, capricious, and an abuse of discretion" because ...a fundamental principle of federal law is that a federal agency must follow its own procedures" (citations omitted)); see also Andriasian v. INS, 180 F.3d 1033, 1046 (9th Cir. 1999). See also, *Damus v. Nielsen*, 313 F. Supp. 3d 317, 335-38 (D.D.C. 2018) (APA claim based on DHS failure to comply with an ICE...Directive).

The Defendant changed the policy, as established in the Part 9 Special Alert Adjudicators Field Manual Incorporated in USCIS Policy Manual, CHAPTER 104, Judicial Review *, 104.04 Habeas Corpus, [5] Jurisdiction, [b] Determining the Proper Custodian, [iii] Attorney General/DHS Is the Proper Custodian. This change in policy with regard to the Petitioner (1) was arbitrary and capricious; (2) was contrary to law and agency rules; and (3) unreasonably delayed

or unlawfully withheld adjudication of Petitioner imprisonment, and "was arbitrary and capricious under the APA because the Acting Secretary offered no reason for terminating the forbearance policy, did not consider alternatives that were within the ambit of the existing forbearance policy ...did not constitute a new and separately reviewable final agency action". *Department of Homeland Security* v. *Regents of Univ. of Cal.*, 591 U.S.140 S. Ct. 1891, 207 L. Ed. 2d 353.(2019). The Defendant changed the policy and violated the petitioner's constitutional rights as guarantee by the fifth Amendment of the United States Constitution, since that a fundamental principle of federal law is that a federal agency must follow its own procedures.

3. Defendant erred stating that the petition should be dismissed for lack of subject matter jurisdiction.

The Administrative Procedure Act creates a "basic presumption of judicial review [for] one suffering legal wrong because of agency action." *Weyerhaeuser Co. v. U.S. Fish and Wildlife Serv.*, 139 S. Ct. 361, 370, 202 L. Ed. 2d 269 (2018).

The legislative history indicates that Congress intended to create an exception for claims "independent" of removal. H.R.Rep. No. 109-72, at 175, *as reprinted in* 2005 U.S.C.C.A.N. at 300. Thus, when it passed the REAL ID Act, Congress stated unequivocally that the channeling provisions of section 1252(b)(9) should not be read to preclude "habeas review over challenges to detention." *Id.* (indicating that detention claims are "independent of challenges to removal orders"). In line with this prescription, we have held that the district courts retain jurisdiction over challenges to the legality of detention in the immigration context. *See Hernandez v. Gonzales*, 424 F.3d 42, 42 (1st Cir. 2005)(holding that detention claims are independent of removal proceedings and, thus, not barred by section 1252(b)(9)). This carve-out seemingly encompasses constitutional challenges regarding the availability of bail.

"The REAL ID Act does not divest the district court of jurisdiction over any habeas corpus petition merely because it is filed by an alien who is the subject of parallel proceedings in the Immigration Court. The REAL ID Act does not provide for transfer of that part of a habeas petition that simply challenges current detention by immigration authorities. It is appropriate for the district court to deal with that issue. The U.S. Court of Appeals for the Second Circuit has

held that federal district courts retain jurisdiction under 28 U.S.C.S. 2241 to grant writs of habeas corpus to aliens when those aliens are in custody in violation of the Constitution or laws or treaties of the United States. Issues that are purely legal in nature, raised by aliens detained under the immigration laws, are encompassed by a district court's 2241 habeas jurisdiction" Farez-Espinoza v. Chertoff, 600 F. Supp. 2d 488 (S.D.N.Y. 2009) Which Defendant erred stating that the petition should be dismissed for lack of subject matter jurisdiction.

The District Court(s) may review a question that is independent of removal or cannot effectively be handled through the available administrative process. *See id.; Hernandez*, 424 F.3d at 42 (holding challenge to length of detention was independent of challenge to removal order and therefore within the District Court's habeas jurisdiction); *Karim v. Cabral*, C.A. No. 07-10139, 2007 U.S. Dist. LEXIS 69377, 2007 WL 2746797, at *1 (D. Mass. Sept. 12, 2007)(stating that habeas jurisdiction remains in the District Court "if the detention challenge is merely ancillary to removal proceedings" and is directed towards "some essentially legal issue"); *see also* H.R. Rep. No. 109-72, at 175, *as reprinted in* 2005 U.S.C.C.A.N. 240, 300 (stating that the REAL ID Act "will not preclude habeas review over challenges to detention that are independent of challenges to removal orders"), and "challenging her continued detention" under *Clark v. Martinez*, 543 U.S. 371, 160 L. Ed. 2d 734, 125 S. Ct. 716 (2005).

"[T]he general rule is that even post-REAL ID Act, aliens may continue to bring collateral legal challenges to the Attorney General's detention authority through a petition for habeas corpus." *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (internal alterations, quotation marks, and citation omitted); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759 (9th Cir. 2020) ("[D]istrict courts retain jurisdiction under 28 U.S.C. 2241 to consider habeas challenges to immigration detention that are sufficiently independent of the merits of the removal order."). Petitioner's challenge to confinement does not involve a final order of removal. Accordingly, this Court has jurisdiction under 28 U.S.C. 2241.

Petitioner further asserts that her lone arrest cannot support a finding that she is a danger to the community. As such, the IJ's bond decisions were legally incorrect and constitutionally deficient. Although an IJ generally may consider arrests, Petitioner asserts that the IJ erred in considering her initial arrest because there is no evidence to support a finding that she committed the charges, no stated in the Notice to Appear (NTA), which had been waived under an

"unnopossed motion to terminate" and "who would have been eligible for waiver", the United States Supreme Court allowed habeas review. *See INS v. St. Cyr*, 533 U.S. 289, 150 L. Ed. 2d 347, 121 S. Ct. 2271, 2286-87 (2001). In light of *St. Cyr*, the Court shall does not find that 1226(e) statutorily bars habeas review of the bond issue before it to "who would have been eligible for waiver".

WHEREFORE, Turning to the question of remedy, this Court will finds that a new bond hearing conducted in accordance with the legal standards articulated in this order, on an expedited basis, is the appropriate remedy. *E.g., Lopez Reyes*, 362 F. Supp. 3d at 778; *Calderon-Rodriguez*, 374 F. Supp. 3d at 1037. The Court therefore will grants Petitioner's Petition with respect to her request and If the government is unable to justify Petitioner's continued detention at the new bond hearing, she should be released on appropriate conditions, and should find as a matter of law and of rights that all the defendant's allegations gave in the Defendant's Response to Petitioner's Writ of Habeas Corpus, should be dismissed.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this honorable Court granted this petition for writ of habeas corpus and/or in the alternative a conditional relief or any other appropriate relief that this honorable court deem just and proper.

OATH

UNDER PENALTIES OF PERJURY, I, Evelyn Vasquez Vega, declare that I have read the foregoing document, and I Understand its content: this document is filed in good faith and is timely filed, I understand its content in English, has potential merit, and that facts contained in the documents are true and correct.

Date: August 26, 2025

Evelyn Vasquez Vega

Evelyn Vasquez Vega
Pro se Petitioner
A#: [redacted]
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct original of the foregoing document has been furnished by U.S. Mail-postage prepaid to The Clerk of the District Court Southern District of Florida, to, Immigration and Custom Enforcement, Department of Homeland Security, Chief Counsel, Deputy Chief Counsel, Assistant Chief Counsel, Office of the principal Legal Advisor at Broward Transitional Center.3900 N. Powerline Road, Pompano Beach, Fl 33073, to the U.S. Dpt. of Justice, 950 Pennsylvania Av. NW, Office of the Attorney General, Room 5114, Washington DC. 20530-0001, and all the lawyer on record via e-filing court system, on this day August 26, 2025.

Respectfully Submitted:

Evelyn Vasquez Vega.

Evelyn Vasquez Vega
Pro se Petitioner
A#: [redacted]
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

NOTICE OF FILING DOCUMENTS IN SUPPORT OF PETITIONER'S REPLY

Exhibit A

Board Notice in the removal appeal case on appeal dated on August 18, 2025

Exhibit B

Board Notice in the Bond appeal case

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

VASQUEZ VEGA, EVELYN
A [redacted]
BTC
3900 N. POWERLINE RD
POMPANO BEACH, FL 33073

DHS/ICE Office of Chief Counsel - BTC
3900 N. Powerline Road
Pompano Beach, FL 33073

Name: VASQUEZ VEGA, E...

A [redacted]

Type of Proceeding: Removal

Date of this notice: 8/18/2025

Type of Appeal: Case Appeal

Filed by: Alien

FILING RECEIPT FOR APPEAL

The Board of Immigration Appeals acknowledges receipt of your appeal and fee or fee waiver request (where applicable) on 6/24/2025 in the above-referenced case.

o
Case Appeal erroneously treated as second bond appeal. Amended filing receipt for case appeal received June 24,2025

WARNING: If you leave the United States after filing this appeal but before the Board of Immigration Appeals (Board or BIA) issues a decision, your appeal will be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. § 1001.1(q)).

WARNING: If you have been granted voluntary departure by the Immigration Judge, you must submit sufficient proof of having posted the voluntary departure bond set by the Immigration Judge to the Board. Your submission of proof must be provided to the Board within 30 days of filing this appeal. If you do not timely submit proof to the Board that the voluntary departure bond has been posted, the Board cannot reinstate the period of voluntary departure. 8 C.F.R. § 1240.26(c)(3)(ii).

FILING INSTRUCTIONS:

If the respondent/applicant is represented by counsel, a Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR-27) must be filed with the Board.

If the respondent/applicant is unrepresented (also called pro se) and receives assistance on documents to be filed with the Board (such as help preparing an appeal, motion, form, briefs, or other documents), a Notice of Entry of Limited Appearance for Document Assistance before the Board of Immigration Appeals (Form EOIR-60) must be submitted with the document(s) that assistance was provided when filed with the Board.

- Exhibit A -

In all future correspondence or filings with the Board, please list the name and registration number ("A" number) of the case (as indicated above), as well as all of the names and "A" numbers for every family member who is included in this appeal.

If you have any questions about how to file something at the Board, please review the Board's Practice Manual which is located within EOIR's Policy Manual, and is available on EOIR's website at www.usdoj.gov/eoir.

Certificate of service on the opposing party at the address above is required for ALL submissions to the Board of Immigration Appeals -- including correspondence, forms, briefs, motions, and other documents. If you are the Respondent or Applicant, the "Opposing Party" is the DHS Counsel or the Director of HHS/ORR at the address shown above. Your certificate of service must clearly identify the document sent to the opposing party, the opposing party's name and address, and the date it was sent to them. Any submission filed with the Board without a certificate of service on the opposing party will be rejected. See Chapter 3.2 (Service) of the Board's Practice Manual.

FILING INSTRUCTIONS -- IMPORTANT REMINDER

Electronic filing through ECAS is mandatory for attorneys and accredited representatives appearing as practitioners of record (filed a Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR-27)), as well as for DHS in every case that is eligible for electronic filing. *See* 8 C.F.R. §§ 1003.2(g)(4), 1003.3(g)(1), 1003.31(a).

Where electronic filing is not required, use of an overnight courier service to the address listed in the **FILING ADDRESS**: section below is encouraged to ensure timely filing.

FILING ADDRESS:

Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

Business hours: Monday through Friday, 8:00 a.m. to 4:30 p.m.

cc:

Userteam:

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

VASQUEZ VEGA, EVELYN
A [redacted]
BTC
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POMPANO BEACH, FL 33073

DHS/ICE Office of Chief Counsel - BTC
3900 N. Powerline Road
Pompano Beach, FL 33073

Name: VASQUEZ VEGA, E... [redacted]

Type of Proceeding: Removal

Date of this notice: 6/23/2025

Type of Appeal: Bond Appeal

Filed by: Alien

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The Board of Immigration Appeals acknowledges receipt of your appeal and fee or fee waiver request (where applicable) on 6/16/2025 in the above-referenced case.

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- Exhibit B -

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5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

Business hours: Monday through Friday, 8:00 a.m. to 4:30 p.m.

cc: Turner M

Userteam: F Civ

Jelyn Vasquez Vega
[redacted] BTC
9100 N. Powerline Rd.
Pompano Beach. Fl. 33073

INSPECTED

U.S. District Court - Southern District
Clerk of Court.
701 Clematis St. Room 202
West Palm Beach, Fl. 33401