

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

Wilian Antonio Rosa Pineda
Petitioner,

v.

MICHAEL NESSINGER, Warden of Wyatt
Detention Facility; PATRICIA HYDE,
Director ICE Boston Field Office; TODD M.
LYONS, Acting Director of ICE; KRISTI NOEM,
U.S. Secretary of Homeland Security, *in their official
capacities.*
Respondents.

Civil Action No.:

**Petition for a Writ of
Habeas Corpus**

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

1. Petitioner, Wilian Antonio Rosa Pineda, by and through undersigned counsel, petitions this Honorable Court for a Writ of Habeas Corpus to remedy his unlawful detention because the Immigration Judge improperly denied bond by relying exclusively on an uncorroborated police report to find the petitioner was a danger to the community. In support thereof, Mr. Rosa Pineda states as follows:

I. CUSTODY

2. Mr. Rosa Pineda is in the physical custody of the United States Immigration and Customs Enforcement ("ICE") detained at Wyatt Detention Facility ("WDF") in Central Falls, RI. ICE has contracted with the WDF to detain individuals in ICE custody. Mr. Rosa Pineda is under the direct control of Respondents and their agents.

II. JURISDICTION AND VENUE

3. This case arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedures Act (“APA”), 5 U.S.C. §701 *et seq.* This Court has jurisdiction in this action under 28 U.S.C. §§ 2241(a) and (c)(1) and (3); U.S. CONST. art. I, §9, cl. 2 (the “Suspension Clause”); and 28 U.S.C. § 1331, as Mr. Rosa Pineda is presently in custody under the authority of the United States, and such custody is in violation of the Constitution and laws of the United States.

4. The Court may grant relief pursuant to 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*; and the All Writs Act, 28 U.S.C. § 1651.

5. Further, this Court has jurisdiction under 28 U.S.C. § 2241 to review constitutional as well as statutory issues. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021).

6. The Writ of Habeas Corpus “is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.” *Harris v. Nelson*, 394 U.S. 286, 290 (1969). The power of this Court’s inquiry on federal habeas corpus review is plenary. *Zadvydus v. Davis*, 533 U.S. 678, 695 (2001); *Townsend v. Sain*, 372 U.S. 293, 312 (1963). “District courts retain jurisdiction over challenges to the legality of detention in the immigration context.” *Aguilar v. U.S. Immigration & Customs Enforcement Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007).

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

III. PARTIES

8. Petitioner, Wilian Antonio Rosa Pineda, is a native and citizen of El Salvador, who entered the United States by an Entry Without Inspection (“EWI”) in January, 2016, and was arrested by ICE in Pawtucket, RI, in February, 2023, when he was first placed into removal proceedings and

then released. He was arrested by ICE a second time in March 2025 and detained by ICE at the WDF. The immigration judge ordered removal on July 15, 2025 and Mr. Rosa Pineda is appealing his removal order to the Board of Immigration Appeals (“BLA”) part of the Executive Office of Immigration Review (“EOIR”).

9. Respondent, Michael Nessinger, is the warden of WDF since August 2023. In his official capacity, he is the legal custodian of Petitioner.

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

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

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

IV. EXHAUSTION

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

V. STATEMENT OF RELEVANT FACTS

14. Petitioner was first arrested by ICE on February 16, 2023 on his way to work in Pawtucket, RI. At a custody redetermination hearing held pursuant to 8 C.F.R. §1236 (a “bond hearing”) on

March 13, 2023, the immigration judge found that Mr. Rosa Pineda was neither a danger to the community nor a flight risk and ordered his release on payment of a \$5,000 bond. ICE form I-213 containing information about Mr. Rosa Pineda's immigration history attached hereto as **Exhibit #1**.

15. On July 10, 2023, Mr. Rosa Pineda submitted the I-589 application for asylum and related relief, based on his arbitrary detention in El Salvador and other persecution, to the immigration court.

16. On March 4, 2025, ICE again took Mr. Rosa Pineda into custody. Mr. Rosa Pineda was arrested by ICE while driving in Central Falls, RI, with his children. ICE had targeted Mr. Rosa Pineda for arrest, after he had been released on personal recognizance on a pending charge for a misdemeanor charge, R.I.G.L. § 31-27-2(d)(1)(ii), DUI of Liquor, the arrest for which had occurred on February 24, 2025 in Central Falls, RI. *See Exhibit #1* (p.4). *See also*, case summary from Sixth Division District Court attached hereto as **Exhibit #2**.

17. Mr. Rosa Pineda requested another bond hearing, which was held on April 3, 2025, before the immigration court. To meet its burden to show danger to the community by clear and convincing evidence, the government submitted the arrest report from the Central Falls police department for the misdemeanor DUI arrest on February 24, 2025. DHS/ICE evidence attached hereto as **Exhibit #1**. The immigration judge found that Mr. Rosa Pineda was a danger to the community and denied bond. The IJ bond order is attached hereto as **Exhibit #3**. Since Mr. Rosa Pineda's release on bond by the IJ in 2023, there was no other change in circumstance besides the arrest report from the Central Falls police department. The IJ's finding on dangerousness was, therefore, based on this new evidence.

18. The final hearing on Mr. Rosa Pineda's asylum application was held on July 15, 2025, whereby the immigration judge denied all forms of relief from deportation and ordered removal. Mr. Rosa Pineda timely filed the notice of appeal to the BIA and that appeal remains pending.

19. On June 27, 2025, the United States District Court for the District of Rhode Island ruled in a habeas petition challenging unlawful immigration detention that the government could not meet its burden to show clear and convincing evidence of dangerousness in a bond hearing based solely on an uncorroborated police report as a matter of law. *Alvarez Puerta v. Nessinger et al.*, No. 1:25-cv-108-JJM-AEM (D.R.I. June 27, 2025) (McConnell, C.J.). Mr. Rosa Pineda filed a motion for a new bond hearing based on materially changed circumstances pursuant to 8 C.F.R. 1003.19(e) on August 22, 2025, moving for a new bond hearing based on the decision in *Alvarez Puerta* and the lack of corroboration for the police report regarding the arrest for R.I.G.L. § 31-27-2(d)(1)(ii) or the dismissed charges from El Salvador. The motion for a new bond hearing is attached hereto as **Exhibit #4**. The IJ order denying a new bond hearing on September 4, 2025 is attached hereto as **Exhibit #5**.

20. Mr. Rosa Pineda has been detained for more than seven months as of the filing of this instant petition.

21. Mr. Rosa Pineda has pending criminal court proceedings, related to his criminal charge of R.I.G.L. § 31-27-2(d)(1)(ii) in the Sixth District Court of Rhode Island, that he must attend and for which he needs access to his local criminal defense counsel.

VI. LEGAL FRAMEWORK

22. 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 Casun v. Hyde et al.*, No. 25-cv-427-JJM-AEM, 2025 WL 2806759 (D.R.I. Oct. 2, 2025); *Sampiao v. Hyde*, No. 1:25-cv-

11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Oliveira Gomes v. Hyde et al.*, No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Noem*, No 25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025).

23. Bond should only be denied if the government “either (1) prove[s] by clear and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove[s] by a preponderance of the evidence that [the noncitizen] poses a flight risk.” *Hernandez-Lara*, 10 F.4th at 41. If the government cannot meet its burden, then bond must be granted. *Gomes v. Hyde*, No. 1:25-cv-11571. In addition to bond, the immigration judge may order release on conditional parole. 8 U.S.C. § 1226(a)(2)(b); see *Rivera v. Holder*, 307 F.R.D. 539 (W.D. Wa. 2015) (certifying class and granting summary judgment, issuing declaratory and injunctive relief clarifying that IJ’s have authority under § 1226(a) to grant release on conditional parole as an alternative to release on a monetary bond); see also *United States v. Salerno*, 481 U.S. 739, 742 (1987) (finding that a court can consider any suitable conditions of release in order to avoid the deprivation of liberty presented by pretrial detention).

24. Here, the decision from this Court in *Alvarez Puerta* held that an uncorroborated police report could not establish dangerousness as a matter of law. That decision held that uncorroborated police report absent a conviction could not establish clear and convincing evidence of dangerousness, and could especially not do so when the criminal charges were dismissed.¹ *Alvarez Puerta*, No. 1:25-cv-108.

¹ First Circuit decisions have held that an uncorroborated police report should receive minimal weight in considering applications for discretionary immigration relief. *Maurice v. Bondi*, No. 21-1395 2025 WL 2802941 (1st Cir. Oct. 2, 2025) (remanding the decision to deny adjustment of status to the BIA to state whether the police reports used as basis of denial were corroborated); *Rosa v. Garland*, 114 F.4th 1, 19 (1st Cir. 2024) (finding that firm principles prevented the immigration agency from giving substantial weight to uncorroborated police reports in the absence of convictions or other corroborating evidence). This First Circuit precedent and the *Alvarez Puerta* decision also applies to the notation in the ICE form I-

25. This Court can review whether the immigration judge applied the correct legal standard. *See Garcia v. Bondi*, 135 F.4th 1 (1st Cir. 2025) (finding that the BIA did not explain its conclusions that the proper standard was not met); *Akinsanya v. Garland*, 125 F.4th 287 (1st Cir.2025) (finding that the BIA did not apply the correct legal standard).

26. Here, the correct legal standard required the IJ to find that the government could not meet its burden to show clear and convincing evidence of dangerousness in a bond hearing based solely on an uncorroborated police report. The IJ determined that Petitioner was a “danger to the community,” and denied bond as a result, based only on an arrest report from the Central Falls Police Department. That determination was an error as a matter of law. *See Alvarez Puerta*, No. 1:25-cv-108; *Diaz Calderon v. Barr*, 535 F.Supp.3d 669, 681 (E.D. Mich. 2020) (“Accordingly, the police report upon which the Respondents rely was properly considered by the Immigration Judge, but the standard required by the case law, that unproved allegations should be assigned little weight in determining Petitioner’s dangerousness, was not applied correctly. To have relied so heavily on a matter that must only be given little weight as the basis for meeting a “clear and convincing” standard of evidence is not consistent with due process.”).

27. The court need not require prudential exhaustion by mandating an appeal of the denial of the motion for a new bond hearing to the BIA where such an appeal is futile and will cause irreparable harm. *See Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (finding that courts have latitude to relax exhaustion requirements); *Portela-Gonzalez v. Sec’y of Navy*, 109 F.3d 74, 77-80 (1st Cir. 1997) (excusing exhaustion when pursuing agency remedy would be futile or would cause irreparable harm); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (excusing exhaustion based on futility and irreparable harm); *Oliveira Gomes v. Hyde*, No.

213 regarding an arrest in El Salvador, for which Mr. Rosa Pineda presented evidence of dismissal of the charges.

1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *see also Garcia v. Decker*, 448 F. Supp. 3d 297 (S.D.N.Y. 2020) (requiring exhaustion would leave the petitioner without a remedy).

28. As of September 5, 2025, the BIA has taken the position in a precedential agency ruling that individuals like the Petitioner are ineligible for bond based on a statutory construction of the detention statute that has been repeatedly rejected by reviewing courts. *Elias Escobar v. Hyde*, No. 1:25-cv-12620-IT, 2025 U.S. Dist. LEXIS 196284 (D. Mass. Oct. 3, 2025); *Casun*, No. 25-cv-427-JJM-AEM. Courts do not require exhaustion where the BIA has already predetermined the issue and an appeal would be futile. *Id.*; *Romero*, No. 25-cv-11631-BEM.

29. Furthermore, the liberty interest may excuse the requirement of administrative exhaustion. *See Casun*, No. 25-cv-427-JJM-AEM (“[Petitioner] is being detained against his will without clear reason, a clear irreparable harm.”); *Romero*, 25-cv-11631 (“[I]t would be perverse to find that loss of liberty somehow suddenly stops being irreparable harm just because it is being considered in the immigration context.”); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455 (D. Mass. 2010) (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986) (loss of liberty may be an irreparable harm)).

30. The Petitioner has been detained for over seven months at a maximum-security facility² under conditions identical to criminal incarceration. *See Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (noting that ICE custody commonly occurs in criminal incarceration settings). Apart from the carceral conditions of custody, ICE detention centers generally expose people to worsening mental health symptoms. *See Emma Goldberg*, “‘People Are Losing Hope’: Suicide Risk Is Rife in ICE Detention Centers,” *NY Times*, Sept. 26, 2025.

² <https://www.centralfallsri.gov/bc-wdf>

31. The court can order release. *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (recognizing habeas courts' authority to order release). Courts may fashion the appropriate remedy for unlawful detention. *Flores-Powell*, 677 F.Supp.2d at 474.

VII. CAUSE OF ACTION

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

32. Petitioner realleges and incorporates by reference each allegation contained above.
33. An uncorroborated police report cannot establish dangerousness as a matter of law and the decision to deny Petitioner's release on bond or other conditions due to a finding of dangerousness based solely on an uncorroborated police report is a violation of due process.

VIII. PRAYER FOR RELIEF

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

1. Assume jurisdiction over the matter;
2. Order Respondents to show cause why the Writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
3. Enjoin the Petitioner's transfer outside the District of Rhode Island while his criminal case in Sixth Division District Court is pending;
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution;

5. Grant a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody, and in the alternative, order a constitutionally adequate bond hearing to be held within five days;
6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
7. Grant such further relief as this Court deems just and proper.

Date: October 10, 2025

Respectfully submitted,

/s/ Amy R. Romero
Amy R. Romero (RI Bar # 8262)
DeLuca, Weizenbaum, Barry & Revens, Ltd.
199 North Main Street
Providence, RI 02903
(401) 453-1500
Amy@dwbrlaw.com
Cooperating counsel, Lawyers' Committee for RI

/s/ Anne Elise McCaffrey
Ann Elise McCaffrey, Esq.
PO Box 4204
Middletown RI 02842
(347) 881-3032
eliselaw@protonmail.com
Pro Hac Vice Pending

COUNSEL FOR PETITIONER