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; and KRISTI NOEM, U.S. Secretary of Homeland Security, *in their official capacities.* Respondents.	Civil Action No. 1:25-CV-522-MSM-AEM

OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS PETITION

The United States of America, on behalf of Respondents Patricia Hyde, Todd M. Lyons, and Kristi Noem,[1] in their official capacities, by and through their attorney, Acting United States Attorney Sara Miron Bloom, respectfully submits this Opposition to Petitioner Wilian Antonio Rosa Pineda's Petition for Writ of Habeas Corpus, and Motion to Dismiss Petition.

Petitioner is in immigration custody at the Wyatt Detention Facility after Immigration Judge Yul-Mi Cho ("the IJ") revoked his bond. The IJ found Petitioner to

[1] The United States Attorney's Office does not represent the Warden of the Wyatt Detention Facility, Michael Nessinger.

be a danger to the community by clear and convincing evidence after he was arrested by the Central Falls Police Department for Driving Under the Influence of Liquor ("DUI") and various traffic infractions while on immigration bond.

In his habeas petition, Petitioner claims that the IJ violated his right to due process. He claims that the IJ improperly relied on an uncorroborated police report to find that Petitioner was a danger to the community.

In fact, Petitioner's detention is lawful. The IJ properly applied the law and found that the detailed report, describing Petitioner's dangerous driving, failure of multiple field sobriety tests, and two failed breath tests that put his Breath Alcohol Concentration ("BrAC") at over twice the legal limit nearly two hours after arrest, was reliable evidence. Courts have long recognized that bail hearings are far more informal hearings and distinct from other types of immigration hearings, the regulations provide that the IJ may consider any evidence, and the Rules of Evidence do not apply. Moreover, Petitioner failed to exhaust his administrative remedies as he twice failed to appeal the ruling of the IJ.

Petitioner has been provided with all process that is due to him as an alien ordered removed, and his period of detention remains reasonable under the Constitution.[2] Because Petitioner's detention is fully supported by statute, regulation, and the Constitution, the Petition should be denied.

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[2] Petitioner is not yet subject to a final order of removal as he has appealed the order of removal. Although Petitioner has not challenged the length of his detention, courts within the First Circuit have repeatedly rejected claims of unreasonably prolonged detention brought by noncitizens who have been detained for much longer than

I. GOVERNING LEGAL STANDARDS

A. Standard for a Motion to Dismiss Under Rule 12(b)(6).

To withstand a motion to dismiss under Federal Rule 12(b)(6), "the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Cunningham v. Nat'l City Bank*, 588 F.3d 49, 52 (1st Cir. 2009) (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The Court, however, need not credit or accept mere conclusory statements or conclusions of law. *See Iqbal*, 556 U.S. at 678.

B. Standard for a Motion for Summary Judgment Under Rule 56.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

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Petitioner. *See, e.g., Melo v. Ashcroft*, 364 F. Supp. 2d 183, 197-98 (D.R.I. 2005) (denying habeas petition and holding that detention exceeding 6 months did not violate substantive due process, absent evidence demonstrating there was no significant likelihood of removal in reasonably foreseeable future); *Podoprigora v. Chadbourne*, No. 03-cv-00420-T, 2004 WL 725057, at *3-4 (D.R.I. Mar. 2, 2004) (same); *Alphonse v. Moniz*, No. 21-cv-11844-FDS, 2022 WL 279638 at *9 (D. Mass. Jan. 31, 2022) (habeas relief denied despite detention lasting nearly 14 months); *Dos Santos v. Moniz*, No. 21-cv-10611-PBS, 2021 WL 3361882, at *4 (D. Mass. May 18, 2021) ("mandatory detention [exceeding 16 months] . . . has not been unreasonably prolonged"); *Martinez Lopez v. Moniz*, No. 21-cv-11540-FDS, 2021 WL 6066440, at *5 (D. Mass. Dec. 22, 2021) (detention over 13 months did not independently warrant a bond hearing); *Silva v. Moniz*, No. 20-cv-12255-DJC, ECF No. 26 (D. Mass. Oct. 28, 2021) (denying *Reid* claim brought by petitioner detained for 27 months); *Lafortune v. Mayorkas*, No. 22-cv-11624-DJC, ECF No. 16 (D. Mass. Apr. 20, 2023) (habeas relief denied despite detention for over 19 months at time of decision).

party is entitled to a judgment as a matter of law." *Mulvihill v. Top-Flite Golf Co.*, 335 F.3d 15, 19 (1st Cir. 2003) (quoting Fed. R. Civ. P. 56(c)).[3]

C. Applicable Provisions of the Immigration and Nationality Act.

The Immigration and Nationality Act ("INA") includes several provisions governing ICE's authority to detain individuals during the pendency of immigration proceedings. 8 U.S.C. § 1226(a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." Section 1226(a) establishes the "default rule," giving the Attorney General "broad discretion" over detention matters. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *Nielsen v. Preap*, 586 U.S. 392, 409-10 (2019). For these individuals, the Attorney General can either "continue to detain the arrested alien," or "may release the alien on (A) bond of at least $1,500 . . . or (B) conditional parole." 8 U.S.C. § 1226(a)(1)–(2). When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination. 8 C.F.R. § 236.1(c)(8). Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final. *See id.* §§ 236.1(d)(1), 1003.19. The detainee can also appeal an adverse decision to the BIA. *See id.* § 236.1(d)(3). On top of this, an individual detained pursuant to § 1226(a) may request an additional bond hearing whenever they experience a material change in circumstances. *See id.* § 1003.19(e). The outcome of this new hearing is also appealable to the BIA. *See id.* § 1003.19(f).

[3] The government frames this motion under Rule 56 in the alternative, given the submission of extrinsic evidence regarding Petitioner's status.

II. RELEVANT FACTUAL BACKGROUND

Petitioner, a native and citizen of El Salvador with historic ties to M.S. 13, entered the United States at an unknown date and time without inspection. *See* Exhibit 1 to Rosa Pineda's Habeas Petition (hereinafter "Pet."), ECF 1-1 at 3. On February 16, 2023, Immigration and Customs Enforcement ("ICE") arrested Petitioner in Pawtucket, RI and issued him a Notice to Appear pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* at 5.

On March 13, 2023, after a bond hearing before an IJ, Petitioner was released on a $5,000 bond. Pet., ECF 1 at ¶ 15. The order of release required Petitioner to not violate any criminal or immigration laws of the United States. *See* Exhibit 1, Order of the Immigration Judge dated 3/13/23.

In the early morning hours of February 24, 2025, Petitioner violated the conditions of his release when he was arrested by the Central Falls Police Department after he veered into the opposite lane, appeared and acted intoxicated, and failed field sobriety tests. *See* Pet., ECF 1-1 at 9. Petitioner was taken to the police station where he subsequently failed two breathalyzers approximately two hours later with BrAC readings of .176%, and 5 minutes later, .171%. *Id.* at 11. Petitioner appeared before a 6th Division District Court Judge on February 25, 2025, and was ordered released on $1,000 personal recognizance. *See* Exhibit 2 to Pet., ECF 1-2 at 2. The charge is pending. *Id.*

On March 4, 2025, ICE arrested Petitioner for violation of U.S. immigration law. Petitioner requested a bond hearing, which was held on April 3, 2025. *See* Exhibit 2, Audio file and Transcript of Bond Hearing held 4/3/25. At the hearing, Petitioner was represented by counsel from Bremer Law & Associates, LLC. *Id.*; Exhibit 3 to Pet., ECF

1-3. Petitioner submitted a bond motion with 33 pages of documents and evidence, and Department of Homeland Security ("DHS") submitted the I-213 Record of Inadmissible Alien, as well as the police report from his February 24, 2025 encounter with the Central Falls Police Department. *See* Exhibit 2; Exhibit 1 to Pet., ECF 1-1. The IJ admitted both exhibits without objection from either side. *See* Exhibit 2. Counsel for DHS argued that Petitioner was a danger and a flight risk. *Id.* She pointed out to the Court that Petitioner's breathalyzer after his arrest showed that he was "more than twice the legal limit." *Id.* Petitioner's counsel argued in response that "he made one mistake," that his daughter was suffering as a result of his detention, and that he wanted to be released so that he could "resolve this criminal matter." *Id.*

After hearing argument from both sides, the IJ determined that Petitioner was a danger to the community. The IJ found the police report to be reliable. *Id.* Based on the report and the fact that Petitioner had violated his previous bond, the IJ denied his request for bond. *Id.*; Exhibit 3 to Pet., ECF 1-3. The IJ advised Petitioner of his right to appeal, and she instructed him to stay in touch with his lawyer and do everything that his lawyer asked so that he could file an appeal on time. *See* Exhibit 2. Petitioner did not appeal the IJ's order to the Board of Immigration Appeals ("BIA").

On July 15, 2025, the IJ ordered the Petitioner removed to El Salvador. Pet., ECF 1 at ¶ 8. Petitioner appealed the order of removal to the BIA. *Id.* That appeal remains pending.

On August 22, 2025, Petitioner, represented by counsel, filed a motion for a new bond hearing arguing materially changed circumstances based on *Alvarez Puerta v.*

Nessinger, et al., No. 1:25-cv-108-JJM-AEM (D.R.I. June 27, 2025) (McConnell, C.J.). In *Alvarez*, Judge McConnell found that the IJ had erred by relying on an uncorroborated police report. *Id.*

On September 4, 2025, the IJ held a hearing on Petitioner's motion. *See* Exhibit 3, Audio file and Transcript of hearing dated 9/4/25.[4] At the hearing, the IJ noted that whether a police report is corroborated is a factual determination, and that she had found the police report in this case to be reliable. *Id.* The IJ did not find a material change in circumstances, and she denied Petitioner's motion for a third bond hearing. *Id.* Again, Petitioner, who was represented by counsel, did not appeal the IJ's order to the BIA. Pet., ECF 1 at ¶¶ 27-28.

A little over a month later, after Petitioner's time for appeal expired, Petitioner, through counsel, filed this petition asking that the Court order his release from ICE custody while he appeals his order of removal. He asks the Court to excuse his repeated failure to exhaust his remedies in immigration court and to find that the IJ applied the wrong legal standard in finding him to be a danger to the community.

III. ARGUMENT

A. Petitioner Has Failed to Exhaust his Administrative Remedies.

First and foremost, the petition should be denied because Petitioner failed to exhaust his administrative remedies before filing it. Petitioner failed to file an appeal of

[4] Although Petitioner did not attach the audio file to his petition as an exhibit, Petitioner's counsel provided a copy of the September 4, 2025 hearing to counsel for Respondents. In the copy provided by Petitioner, only the judge may be heard clearly.

the IJ's April 3, 2025 denial of bond, and he again failed to file an appeal of the IJ's September 4, 2025 decision that there were no material changed circumstances that would warrant another bond hearing. Petitioner should have exhausted all available remedies at the administrative level before seeking relief before this Court.

Generally, a plaintiff's failure to exhaust his administrative remedies "precludes [him] from obtaining federal review of claims that would have properly been raised before the agency in the first instance." *Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021); *see Perevoznikov v. Wyatt et al.*, C.A. No. 25-cv-085-JJM-LDA, 2025 WL 1645294, at *1 (D.R.I. May 2, 2025) (McConnell, C.J.) (denying Petitioner's request for release or in the alternative, an order for a bond hearing, and stating, "[t]here is no question that before filing a habeas petition a petitioner must exhaust all administrative remedies."). Exhaustion must be "proper," which requires "compliance with an agency's deadlines and other critical procedural rules," as well using "all steps that the agency holds out." *Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (internal quotations omitted). As the First Circuit has noted, "[e]xhaustion allows 'an agency the first opportunity to apply [its] expertise' and 'obviat[es] the need for [judicial] review in cases in which the agency provides appropriate redress." *Brito*, 22 F.4th at 256 (quoting *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 174-76 (1st Cir. 2016)). It "gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court, and it discourages disregard of [the agency's] procedures." *Woodford*, 548 U.S. at 89 (cleaned up). Moreover, administrative exhaustion often results in the creation of a developed administrative record that is useful to the court in the event of

subsequent judicial review. *See id.* at 94-95.

Petitioner contends that he should be exempt from any administrative exhaustion requirement because exhaustion is futile due to the BIA's recent holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (determining that the immigration judge lacked authority to hear inadmissible alien's request for a bond as the alien was an applicant for admission subject to mandatory detention under section 8 U.S.C. § 1225(b)(2)(A)).[5] However, at the April 3, 2025 hearing, the IJ did not take the position that § 1225 mandated detention. Instead, the IJ found Petitioner to be a danger to the community and revoked his bond. The IJ explained to Petitioner in detail his right to appeal her ruling to the BIA, but Petitioner and his counsel chose not to pursue an appeal. The BIA had not decided *Matter of Yajure Hurtado* at that time, and therefore, that opinion provides no excuse for Petitioner's failure to file a timely appeal. At the September 4, 2025 motion hearing, the IJ found that Petitioner had not made "a showing that [his] circumstances [had] changed materially since the prior bond redetermination." Exhibit 5 to Pet., ECF 1-5 at 1. Again, Petitioner and his counsel elected to not appeal the IJ's ruling. Petitioner's belated efforts to explain his failure to appeal by pointing to a BIA opinion not relied upon by the IJ, does not provide a sufficient basis for waiving exhaustion.

B. Petitioner's Due Process Claim Is Meritless.

[5] Petitioner does not cite to the BIA decision by name, but based on context and date, Respondents believe Petitioner is referring to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Petitioner claims that his current detention is unlawful. It is not – since entering the country illegally, he has had two bond hearings and a hearing on his motion for a third bond hearing. Although entitled to appeal, and represented by counsel, he did not file an appeal after any of the hearings.

As a starting point, "[t]he burden of proof of showing deprivation of rights leading to unlawful detention is on the petitioner." *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009). Here, Petitioner filed his petition without allowing for a full development of the record through exhaustion of his administrative rights, and without analyzing or discussing the very hearing he contends was unconstitutional.[6] In short, Petitioner asks the Court to speculate that his rights were violated.

Instead of analyzing the IJ's findings, Petitioner hangs his hat on the order issued by Chief Judge McConnell in an unrelated case, *Alvarez Puerta v. Nessinger, et al.*, No. 1:25-cv-108-JJM-AEM (D.R.I. June 27, 2025). That case does not support Petitioner's argument under the facts of his case. As a preliminary matter, *Alvarez Puerta* is not precedential authority. Furthermore, the opinion was brief, and it lacked citation to any law in support of its conclusion that "an uncorroborated police report . . . is not clear and convincing evidence sufficient for a finding of dangerousness. . . ." *Id.*

Significantly, *Alvarez Puerta* is distinguishable from the case at bar. In *Alvarez Puerta*, detention was based on Alvarez Puerta's arrest for domestic violence. By the

[6] As Petitioner did not file an appeal of any of the IJ's bond decisions, a full bond memorandum detailing the IJ's findings and conclusions of law was not created. *See* Immigration Court Practice Manual, Chapter 9.3(e)(7).

time of his second bond hearing, the charges had been dismissed and the victim had submitted a letter in support of Alvarez Puerta which was presented as a counterweight to the police report relied upon by the IJ. *Alvarez Puerta,* No. 1:25-cv-108-JJM-AEM, ECF 11 at 3. Petitioner's situation is different. Petitioner's charge remains pending as of October 27, 2025. Furthermore, the case against Petitioner is not premised upon revised witness testimony. Instead, Petitioner's case is based on the expected testimony of the arresting officer, who provided a detailed report made close in time to Petitioner's arrest, corroborated by other traffic violations and most importantly, the results of two breath tests.

Petitioner also cites to *Rosa v. Garland* for the proposition that in deciding whether to grant discretionary relief, "the agency may not give 'substantial weight' to a police report in the absence of a 'a conviction or corroborating evidence of the allegations contained' in the report." 114 F.4th 1, 17 (1st Cir. 2024); *see also Maurice v. Bondi*, --- F.4th —, 2025 WL 2802941, at *6 (1st Cir. Oct. 2, 2025) (remanding to the BIA to consider whether the administrative record contains corroboration for the police reports relied upon). Petitioner does not address, however, the difference between removal and adjustment of status proceedings that were at issue in *Rosa* and *Maurice* and bond hearings, which are at issue in this case. Bond hearings are informal in nature, the Rules of Evidence do not apply, and they are often not recorded or memorialized by a written decision absent an appeal. *See Joseph v. Holder*, 600 F.3d 1235, 1241-43 (9th Cir. 2010) (recognizing the informal nature of bond hearings and quoting the BIA in noting that "bond and removal are distinctly separate proceedings."); Immigration Court

Practice Manual, Chapter 9.3(e)(7). Indeed, "[t]he determination of the Immigration Judge as to custody status or bond may be based upon **any information** that is available to the Immigration Judge or that is presented to him or her by the alien or the Service." 8 C.F.R. § 1003.19(d) (emphasis added).

As Petitioner implicitly acknowledges in his petition through citation to *United States v. Salerno*, the due process behind pretrial detention in a criminal case under the Bail Reform Act of 1984 is analogous to the due process afforded immigration detainees. 481 U.S. 739 (1987) (holding that the due process clause did not prohibit pretrial detention imposed as regulatory measure on ground of community danger, without regard to duration of detention). Under the Bail Reform Act, an American citizen charged with a crime may be detained if the government establishes by clear and convincing evidence that the defendant poses a danger to the community. *See id.* at 751. In meeting its burden under the Bail Reform Act, the government may rely on hearsay and may proceed by attorney proffer. *United States v. Acevedo-Ramos*, 755 F.2d 203, 206-07 (1st Cir. 1985) ("well-kept records, though hearsay, may be more reliable than eyewitness accounts of, say, a road accident on a foggy night"); *see, e.g., United States v. Garay*, Cr. No. 21-CR-00062-JJM-03, 2024 WL 1240518, at *4 - 6 (D.R.I. Mar. 22, 2024) (recognizing that detention hearings are not "mini-trials" and a court "may and should continue to consider inherently trustworthy suppressed evidence to evaluate properly whether release poses danger to the community.") (emphasis added).

In this case, Petitioner did not, and does not, challenge the accuracy or the reliability of the Central Falls Police Department report, and he did not dispute the

results of his two failed breath tests referenced therein.[7] In fact, he did not object to the report at the bond hearing – instead his counsel referred to this incident as "one mistake." *See* Exhibit 2. Petitioner has not called into question the reliability of the Central Falls Police Department report. *See* Exhibits 2 and 3. Instead, based on the opinion issued in *Alvarez Puerta*, Petitioner overlooks "the highly fact dependent" nature of a judge's consideration of police reports, a point repeatedly made by the IJ at the hearing on his motion for a third bond hearing. *See* Exhibit 3; *see also Matter of D. Rodriguez*, 28 I. & N. Dec. 815 (BIA 2024) (recognizing that a police report that is not limited to an officer's personal observations or opinions, and instead collects other statements, may be considered by an Immigration Judge in denying an application for cancellation of removal).

In short, not all police reports are the same. This one, which was not objected to, questioned, or contested by Petitioner, included two breath tests. The breath tests corroborate the evidence observed by the arresting officer and demonstrate that Petitioner was very drunk the night he ignored the conditions of his immigration bond and got behind the wheel to drive the streets of Central Falls.[8] *See Rubio-Suarez v.*

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[7] The Central Falls Police Department Report clearly provides that the "Intoxilyzer Results" are an attachment to the report. *See* Exhibit 1 to Pet., ECF 1-1 at 6.

[8] "'No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it.' . . . While some progress has been made, drunk driving continues to exact a terrible toll on our society." *Missouri v. McNeely*, 569 U.S. 141, 160 (2013); *see also https://www.nhtsa.gov/risky-driving/drunk-driving* ("Every day, about 34 people in the United States die in drunk-driving crashes — that's one person every 42 minutes. In 2023, 12,429 people died in alcohol-impaired driving traffic deaths. These deaths were all preventable.") (last visited October 25, 2025).

Hodgson, Civ. No. 20-10491-PBS, 2020 WL 1905326, at *3 (D. Mass. Apr. 17, 2020) (recognizing that the petitioner did not argue that the hearsay evidence within the reports was so inherently unreliable that its use violated due process and holding that petitioner failed to demonstrate that his due process rights were violated by the Immigration Judge's consideration of police reports for pending and dismissed charges to assess dangerousness); *Medley v. Decker*, No. 18-cv-7361, 2020 WL 1033344, at *3 (S.D.N.Y. Mar. 3, 2020) (Immigration Judge's reliance on unsworn police reports of dismissed charges to find dangerousness did not violate due process).

C. To the extent Petitioner is seeking review of the IJ's discretionary judgment, this Court lacks jurisdiction.

Petitioner is precluded by statute from challenging the IJ's determination that Petitioner's decision to drive under the influence of liquor while on immigration bond renders him a danger to the community. Section 1226(e) bars an alien's challenge to "a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding his detention or release." *Demore v. Kim*, 538 U.S. 510, 516 (2003); *see Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 688 (D. Mass. 2018) ("Congress has eliminated judicial review of discretionary custody determinations."); *see also Hamada v. Gillen*, 616 F. Supp. 2d 177, 181 (D. Mass. 2009) (section 1226(e) barred the district court from reviewing the IJ's and the BIA's decision to detain the petitioner, where petitioner had challenged the decision as "minimizing significant equitable factors in [his] favor.").

IV. CONCLUSION

For the reason described above, the Petitioner's Petition should be dismissed.

Respectfully submitted,

SARA MIRON BLOOM
Acting United States Attorney

By: */s/ Sandra R. Hebert*
SANDRA R. HEBERT
Assistant U.S. Attorney
One Financial Plaza, 17th Floor
Providence, RI 02903
(401) 709-5053
Sandra.hebert@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that, on October 28, 2025, I caused the foregoing Opposition to be filed by means of this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Fed. R. Civ. P. 5(b)(2)(E) and Local Rules Gen 304.

/s/ Sandra R. Hebert
SANDRA R. HEBERT
Assistant U.S. Attorney
One Financial Plaza, 17th Floor
Providence, RI 02903
(401) 709-5053
Sandra.hebert@usdoj.gov