

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

Wiliam 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.: 1:25-cv-522-MSM-AEM

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION AND
MOTION TO DISMISS**

Petitioner Wiliam Antonio Rosa Pineda, by and through his undersigned counsel, respectfully submits this Reply to Respondents' Opposition and Motion to Dismiss ("Resp."). Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules governing 2254 cases.

Respondents asserts that the Petition for Writ of Habeas Corpus fails to state a valid due process claim because Petitioner's bond hearing was an informal hearing where any information may be considered, because the police report alone was sufficient evidence of dangerousness, and because the Petitioner did not appeal his denial of bond to the Board of Immigration Appeals ("BIA"). They also assert that this Court is without jurisdiction because the challenge to the bond hearing involves discretionary concerns only.

Respondents' arguments skirt the legal authority behind Petitioner's claim. The legal standards for bond hearings derive from core due process principles recognized in the First Circuit.

Petitioner's claim challenges the misapplication of these legal standards in his bond hearing. The Court does not need to require exhaustion where the twin concerns of the interest of the individual to prompt access to a judicial forum and the countervailing institutional interests both favor this Court's review.

I. ADDITIONAL FACTUAL BACKGROUND

Mr. Rosa Pineda was released on bond of \$5,000 in March 2023. DHS/ICE revoked the bond based on the changed circumstance of his arrest by the Central Falls Police Department on February 24, 2025. ECF 1-1, Exhibit ("Exh.") 1. ICE arrested and re-detained Mr. Pineda on March 4, 2025. *Id.* At the bond hearing held on April 3, 2025, the immigration judge considered Mr. Rosa Pineda's bond application anew. The immigration judge stated at the hearings on both April 3, 2025 and September 4, 2025 that the sole basis for the dangerousness finding was the Central Falls police report. ECF 6, Exhs. 2A, 3A. At the September 4th hearing, the immigration judge said that the police report may be relied upon. ECF 6, Exh. 3A. She said that "an uncorroborated police report whatever that phrase means is a factual determination that the court has to make." *Id.* She went on to say that it was "already the law in the First Circuit that the police report has to be reliable but in this case I found the police report was reliable." *Id.* The immigration judge did not say what factual evidence provided corroboration. *Id.* Mr. Rosa Pineda has not been convicted of the offense for which he was arrested, driving under the influence of liquor, R.I.G.L. § 31-27-2-d(1) and the case remains pending. After the motion for the new bond hearing was denied on September 4, 2025, the BIA decided *Matter of Yajure Hurtado* on September 5, 2025.

No evidence was submitted regarding Mr. Rosa Pineda's alleged "historic gang ties," Resp. at 5, and the immigration judge did not rely on those unsubstantiated allegations in making the custody determination. The I-213 Record of Deportable/Inadmissible Alien contains a notation for

an arrest in El Salvador in 2013, but does not state that this case was dismissed. ECF 1, Exhs. ##1, 4.

II. ARGUMENT

A court may grant a writ of habeas corpus where a petitioner demonstrates that his detention violates the Constitution or laws of the United States. *Astudillo v. Hyde*, No. 25-cv-551-JJM-AEM, 2025 WL 3035083, at *3 (D.R.I. Oct. 30, 2025) (citing *Chang Barrios v. Shepley*, No. 1:25-cv-00406-JAW, 2025 WL 2772579, at *10 (D. Me. Sept., 29, 2025)).

A. Immigration Bond Hearings Must Comport With Due Process in First Circuit

"It is well-settled that the Fifth Amendment entitles aliens to due process in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). The First Circuit in *Hernandez-Lara* applied the *Mathews v. Eldridge* balancing test to due process protections in immigration court bond hearings. *Hernandez v. Lara*, 10 F.4th 19, 27 (1st Cir. 2021). The balance of the three *Mathews* factors "involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). In so doing, the Court found that the due process liberty interest at stake weighed heavily in the petitioner's (detainee's) favor. 10 F.4th at 30. Freedom from imprisonment lies at the heart of the due process clause and "the government's exercise of its power to detain immigrants pending removal is 'subject to important constitutional limitations.'" *Id.* at 28-29 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001)). The Second Circuit undertook the same analysis on the same issue, whether due process required the government to bear the burden of proving dangerousness in a bond hearing, and likewise placed heavy weight on the affected liberty

interest. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d. Cir. 2020) (“The deprivation he experienced while incarcerated was, on any calculus, substantial. He was locked up in jail.”).

Hernandez-Lara decided that due process required the government to bear the burden in a bond hearing to establish dangerousness by clear and convincing evidence and to show risk of flight by a preponderance of the evidence. 10 F.4th 19. Where those standards have not been applied, this Court has ruled in favor of habeas petitioners challenging the constitutional violations during their bond hearings. In *Alvarez Puerta v. Nessinger*, this Court held that an uncorroborated police report could not constitute clear and convincing evidence of dangerousness as a matter of law and ordered release where the petitioner had twice been denied bond based on the uncorroborated police report. *Alvarez Puerta v. Nessinger*, No. 1:25-cv-108-JJM-AEM (D.R.I. June 17, 2025). In *I.G.S. v. Nessinger*, this Court held that the immigration judge failed to apply the proper legal standard for flight risk in denying the petitioner bond and ordered release. *I.G.S. v. Nessinger*, No. 1:25-cv-339-MRD-PAS (D.R.I. Sept. 12, 2025).

Nevertheless, in their opposition and motion to dismiss, Respondents downplay the due process protections for immigration bond hearings in the First Circuit by referring to bond hearings as informal in nature and for which the immigration judge may take any information into consideration pursuant to the federal regulation at 8 C.F.R. § 1003.19. Resp. at 11-12. The instant petition raises a due process challenge to the legal standard employed during the Petitioner’s bond hearing, which has resulted in his continued detention for over seven months, despite precedent from the First Circuit circumscribing the sole reliance on uncorroborated police reports in immigration proceedings, and a decision from this Court and others that doing so to deny bond is a violation of the legal standard.

B. Dangerousness Is Not a Discretionary Determination

The Supreme Court recently held that discretionary decisions that are tethered to a legal standard are subject to review as mixed questions of law and fact. *Wilkinson v. Garland*, 601 U.S. 209 (2024). The Supreme Court then summarily vacated and remanded a case from the Ninth Circuit that held 8 U.S.C. § 1226(e) prevented the federal courts from reviewing a determination by the immigration judge that a detained noncitizen posed a danger to the community under § 1226(a). *Martinez v. Clark*, 144 S. Ct. 1339 (2024). On remand, the Ninth Circuit found that *Wilkinson* compelled the conclusion that an agency finding of “dangerousness for immigration detention purposes” is a mixed question of law and fact and therefore reviewable. *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024).

Before *Hernandez-Lara* was decided, and prior to *Wilkinson*, decisions from district courts also found that the question of whether a bond hearing complied with constitutional requirements, specifically the legal standard for dangerousness, was reviewable. *Massingue v. Streeter*, No. 3:19-CV-30159-KAR, 2020 WL 1866255 at *4 (D. Mass. Apr. 14, 2020) (recognizing that it must review both whether “evidence itself could . . . – as a matter of law – have supported the adjudicator’s conclusion” and whether it is clear from the opinion itself that the adjudicator applied the incorrect legal standard); *Diaz Calderon v. Barr*, 535 F.Supp.3d 669 (E.D. Mich. 2020) (finding that failure to apply the correct evidentiary standard in petitioner’s bond hearing was a due process violation); *Reyes v. Wolf*, 2:19-cv-02086-GMN-EJY, 2020 WL 2308075, at *10 (D. Nev. May 8, 2020) (finding that the IJ violated the petitioner’s due process because the record did not contain clear and convincing evidence of dangerousness); *Rodriguez v. Decker*, 20-cv-4118-PKC, 2020 WL 3618990, at *2 (S.D.N.Y. Jun. 30, 2020) (requiring the government to prove dangerousness by clear and convincing evidence during a bond hearing); *Calderon-Rodriguez v. Wilcox*, 374 F.Supp.3d 1024 (W.D. Wash. 2019) (holding that clear and convincing evidence did

not support the IJ's decision to deny bond); *Pensamiento v. McDonald*, 315 F.supp.3d 684 (D. Mass. 2018) (finding that due process requires the government to show dangerousness by clear and convincing evidence at a bond hearing); *Ortega-Rangel v. Sessions*, 313 F.Supp.3d 993,1004-05 (N.D. Cal. 2018) (mere fact of detainee's arrest and pending criminal charge was not "probative and specific;" thus, IJ's sole reliance on such information to deny bond violated due process).

In their Opposition, the Respondents also cite two decisions judicially reviewing the legal standards in bond hearings, but then separately make the argument that this Court has no jurisdiction over the constitutional challenge to a bond hearing raised in this habeas petition. Resp. at 13-14 (citing *Rubio-Suarez v. Hodgson*, No. 20-10491-PBS, 2020 WL 1905326 (D. Mass. Apr 17, 2020); *Medley v. Decker*, 18-cv-7261-AJN, 2020 WL 1033344 (S.D.N.Y. Mar. 3, 2020)). The Respondents' Opposition and Motion to Dismiss tries to argue against jurisdiction by claiming that the instant petition challenges a discretionary determination. The legal standard for dangerousness is not discretionary. Whether the immigration judge applied the correct legal standard in a bond hearing is a constitutional question over which courts maintain jurisdiction. "District courts retain jurisdiction over challenges to the legality of detention in the immigration context." *Aguilar v. U.S. Immigration and Customs Enforcement Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007); see also *Pensamiento v. McDonald*, 315 F. Supp 3d 684, 68-89 (D. Mass. 2018) ("What § 1226(e) does not bar, however, are constitutional challenges to the immigration bail system." (citing *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018))).

C. Due Process Requires the Government Bear the Burden To Prove Dangerousness by Clear and Convincing Evidence

Detention on the basis of dangerousness in civil immigration proceedings is appropriate "only when limited to specially dangerous individuals and subject to strong procedural

protections.” *Zadvydas v. Davis*, 533 U.S. at 691. Due process requires an individualized determination of a detainee’s risk of flight and future dangerousness. *Demore v. Kim*, 539 U.S. 510, 531 (2003) (Kennedy, J., concurring). The government must bear the burden to show dangerousness through clear and convincing evidence before bond can be denied on that ground. *Hernandez-Lara*, 10 F.4th at 41.

As articulated in *Hernandez Lara*, the government has greater access to law enforcement records than a detained individual. This, in part, justifies the burden it carries to prove dangerousness in bond hearings as the greater access to law enforcement records reduces the risk of an erroneous deprivation of liberty. *Id.* at 31 (citing *Velasco Lopez*, 978 F.3d at 853 (explaining that the government has access to “numerous databases[,]... to information collected by DHS, DOJ, and the FBI, [and to] information in the hands of state and local authorities,” in addition to having “broad regulatory authority” to obtain information it does not have readily available)). However, the First Circuit did not hold that any piece of evidence the government procures will be sufficient to carry its burden. *Hernandez-Lara*, 10 F.4th 19. The Court noted that an INTERPOL red notice would not have allowed the government to meet its burden to show dangerousness. *Id.* at 24-25. In a different case regarding evidence derived from law enforcement records used to defeat credibility, the First Circuit closely examined the evidence drawn from gang databases and found that it lacked objective and verified criteria to substantiate allegations of gang affiliation. *Diaz Ortiz v. Garland*, 23 F.4th 1, 17 (1st Cir. 2022).

The Respondents argue that the police report submitted at the Petitioner’s April 3, 2025 bond hearing justifies his continued detention without once referring to the standard of clear and convincing evidence, other than referring to the rights an “American citizen” would have under the Bail Reform Act. Resp. at 12. Instead, the Respondents assert that the police report is reliable,

that hearsay is admissible, and that the facts contained within the police report are corroborating evidence. Resp. at 11-13.

Multiple courts have found that a police report alone is not sufficient to meet the standard of clear and convincing evidence. *Alvarez-Puerta*, No. 1:25-cv-108 (finding an uncorroborated police report insufficient as a matter of law to establish clear and convincing evidence of dangerousness); *Diaz Calderon v. Barr*, 535 F.Supp.3d 669 (finding that alleged conduct in a police report for driving under the influence was not clear and convincing evidence of dangerousness); *Ortega-Rangel v. Sessions*, 313 F.Supp.3d 993, 1004-05 (N.D. Cal. 2018) (stating that the mere fact of detainee's arrest and pending criminal charge was not "probative and specific;" thus, IJ's sole reliance on such information to deny bond violated due process); *see also Reyes v. Wolf*, 2:19-cv-2086 (finding that criminal charges for robbery, discharging firearm, attempted murder and others that were eventually dismissed could not constitute clear and convincing evidence of dangerousness to deny bond).

A police report does not in and of itself establish dangerousness under the clear and convincing evidence standard to which the government is bound at a bond hearing. In the Petitioner's bond hearing on April 3, 2025, the immigration judge merely stated that she was finding dangerousness based on the police report for the alleged DUI. ECF 6, Exh. 2A (written transcript). Courts have clearly stated that such evidence is insufficient as a matter of law. Merely stating the proper legal standard on the record does not unburden the adjudicator of the duty to correctly apply it. *Akinsanya v. Garland*, 125 F.4th 287, 294-95 (1st Cir. Jan. 10, 2025).

D. Use of Uncorroborated Police Reports Scrutinized by the First Circuit

The First Circuit recognizes that, under BIA precedent, the agency may not rely solely on an uncorroborated police report in making a negative discretionary finding in the absence of a conviction or other corroborating evidence. *Rosa v. Garland*, 114 F.4th 1, 17-18 (1st Cir. 2024). This is a consistent holding in the First Circuit, being recently reaffirmed in *Maurice v. Bondi*, 21-1395 at *14 (1st Cir. Oct 02, 2025) (“[A] police report, absent a conviction, must be corroborated before the agency may give the report substantial weight in denying adjustment of status as a matter of discretion.” (citing *Rosa*, 114 F.4th at *18 (citing *Matter of Arreguin*, 21 I. &N. Dec. 38, 42 (BIA 1995))). The rule that uncorroborated police reports should be given minimal weight has been in place since *Henry v. I.N.S.*, 74 F.3d 1 (1st Cir. 1995). The question of corroboration differs from the separate inquiry of whether the police report is reliable and its use fundamentally fair. *Id.*; *Arias-Minaya v. Holder*, 779 F.3d 49, 54 (1st Cir. 2015).

In *Rosa*, the Court looked at a police report that had been used to deny adjustment of status, and found that the agency had violated its own precedent in making a negative discretionary decision based solely on the police report. *Rosa*, 114 F.4th at 21. While the Court found that whether corroborating evidence could be contained within the police report was an issue that the agency had not reached and remanded for further proceedings, the Court did note that evidence of the pending indictment did not constitute corroboration. *Id.*

In *Maurice*, the Court found that it could not “conclude that the BIA considered whether the police reports were corroborated before giving those reports substantial weight in denying Maurice adjustment of status” and therefore it vacated and remanded the BIA’s decision. *Maurice*, 21-1395 at *15. Where the BIA could not identify the corroborating information with specificity, the decision was vacated and the case remanded. *Id.*

Other Courts of Appeals have made similar rulings. *Billeke-Tolosa v. Ashcroft*, 385 F.3d 708, 712-13 (6th Cir. 2004) (holding that an immigration judge contravenes BIA precedent and therefore commits reversible error when it relies on “consideration of unproven allegations that lack any other corroboration.”); *Avila-Ramirez v. Holder*, 764 F.3d 717 (7th Cir. 2014) (holding that the immigration court failed to follow its binding precedent when it gave significant weight to uncorroborated arrest reports); *Rogel v. Garland*, 21-1163 at *2 (4th Cir. Sep. 15, 2022) (“We grant the petition for review because the IJ’s good moral character determination was based solely on an uncorroborated police report detailing the sexual abuse allegations, in violation of the BIA’s contrary directive from *In re Arreguin*”) (citation omitted)). And one district court recognized the rule in a case for prosecution of illegal reentry under 8 U.S.C. § 1326(a). *United States v. Sorto-Gomez*, Crim. Action TDC-24-0071 (D. Md. Jan. 30, 2025) (recognizing that arrest records without proof of conviction or corroboration should be given minimal weight and ultimately dismissing an indictment for illegal reentry under this and other grounds).

The instant Petition raises a claim that the First Circuit deliberated in *Rosa* and *Maurice*, and found worthy of a remand to the BIA. In *Rosa*, the Court remanded for the BIA to decide whether the corroboration could be found within the police report itself. 114 F.4th at 21. In *Maurice*, the Court remanded because the agency could not place substantial weight on the police report without specifying what the corroboration was. *Maurice*, 21-1395 at *15.

Respondents argue that because this First Circuit precedent and other circuit decisions concern adjustment of status, it is not applicable to bond hearings. Resp. at 11. As made clear in *Hernandez Lara*, bond hearings touch on the core liberty interest. 10 F.4th at 40. Bond hearings do not implicate less due process rights than the benefits sought in removal proceedings. Therefore, the binding precedent on the minimal weight afforded to uncorroborated police reports

without evidence of conviction is a legal standard for all immigration proceedings, and it cannot be denied to individuals seeking bond. *See Alvarez Puerta*, 1:25-cv-108.

To further get around First Circuit precedent, the Respondents cite to a recent decision from the BIA holding that a corroborated police report was properly considered as a negative discretionary factor in denying cancellation of removal. Resp. at 13 (citing *Matter of D. Rodriguez*, 28 I&N Dec. 815 (BIA 2024)). The *D. Rodriguez* decision is different from this case, however, because there the BIA stated the extent to which the police report is corroborated and identified the corroborating evidence. *D. Rodriguez*, 28 I & N at 824 (“Here, however, the police report is not limited to an officer’s personal observations or opinions, but also collects statements that the victim made to her therapist, her mother, and a forensic interviewer, as well as statements allegedly made by the respondent himself to the victim’s mother.”). Based on the corroborating evidence in the form of third-party statements, and the fact of a conviction, the BIA found the use of the police report as a negative discretionary factor proper.

The Respondents additionally do a deep dive into the record for this Court’s decision in *Alvarez Puerta* and claim that the factual record of a letter submitted by the Petitioner was a counterweight that led the Court to its decision, Resp. at 11. In fact, the briefing in *Alvarez Puerta* primarily argued the legal standard based on the same precedent of *Rosa v. Garland* and *Hernandez Lara v. Lyons*. Indeed, had the Petitioner’s argument in *Alvarez Puerta* only involved how the immigration judge weighed the factual record, this Court would have been deprived of jurisdiction.

Respondents also refer to two district court decision from 2020, predating *Hernandez Lara* and *Rosa*. Resp. at 13-14. In *Rubio Suarez*, the district court considered a challenge to the use of police reports based on hearsay within the reports, to which the district court recognized that hearsay is admissible in immigration proceedings, “though “[h]ighly unreliable hearsay might raise

due process problems.” *Rubio-Suarez v. Hodgson*, No. 20-10491-PBS (D. Mass. Apr 17, 2020) (citing *Yongo v. INS*, 355 F.3d 27, 30-31 (1st Cir. 2004)). *Medley v. Decker* finds that police reports and criminal complaints for dismissed cases may be clear and convincing evidence of dangerousness, without discussing the standard for corroboration subsequently recognized in the First Circuit, or *Rosa*’s holding that evidence of an indictment is not further corroboration. *Medley v. Decker*, 18-cv-7261-AJN (S.D.N.Y. Mar. 3, 2020).

In the instant case, the immigration judge clearly stated that she was denying bond based on the police report alone. ECF 6, Exh. 2A. The immigration judge pointed to no other evidence of dangerousness. Furthermore, during the hearing on September 4, the immigration judge said that the applicable legal standard was the requirement to determine reliability but ignored the legal standard for giving uncorroborated police reports minimal weight. ECF 6, Exh. 3A. She ignored the legal standard pertaining to corroboration when she said “an uncorroborated police report whatever that phrase means,” and then said it was a “factual determination.” *Id.* There is no corroborating evidence included along with the report, the immigration judge did not identify any corroboration of the police report, and there was no proof of a conviction. The report itself contains references to other extrinsic pieces of evidence that were not submitted by the government at the bond hearing – most notably the Intoxilyzer report that the police report says is attached. Therefore, the entirety of the evidence submitted at the bond hearing to prove dangerousness consisted of the one police officer’s statements and observations contained within the report. The immigration judge did not give the uncorroborated police report minimal weight; she relied on it solely without acknowledging the First Circuit’s holding that uncorroborated police reports without corroboration or a conviction must receive minimal weight. Under binding precedent, this evidence should not be given more than minimal weight and, therefore, cannot constitute clear and convincing evidence

which this Court has previously recognized in *Alvarez Puerta*, 1:25-cv-108. Other district courts have likewise come to the same conclusion. *Supra* II.C.

E. Exhaustion Not Required

There is no statutory exhaustion requirement to which Mr. Rosa Pineda must adhere, and the court has latitude to relax exhaustion requirements. *See Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021); *Flores-Powell*, 677 F. Supp. 2d at 463 (finding that the district court could hear the habeas petition where petitioner had not appealed to the BIA). No statutory requirement for exhaustion exists for a habeas petitioner challenging immigration detention and courts may waive administrative exhaustion. *Id.* (citing *Portela-Gonzalez v. Secretary of the Navy*, 109 F.3d 74,77 (1st Cir. 1997)). Courts may hear unexhausted claims where petitioner would suffer irreparable harm, where substantial doubt exists that the agency can provide meaningful redress, or where the agency review would be futile. *See McCarthy v. Madigan*, 503 U.S. 140, 145-48 (1992). Mr. Rosa Pineda's petition may be heard by the Court because administrative exhaustion may be waived for all three reasons.

i. *Appeal futile because BIA would find petitioner ineligible for bond*

On September 5, 2015, the BIA issued its decision in *Matter of Yajure Hurtado*, wherein it held that all persons present in the United States without having been admitted or inspected are ineligible for bond under 8 U.S.C. § 1225(b)(2) as applicants for admission. 29 I&N Dec. 216 (BIA 2025). Under this BIA decision, Mr. Rosa Pineda would be found ineligible for bond absent a ruling from this Court. *See Sibri v. Hyde et al.*, No 25-0561-JJM (D.R.I. Oct. 30, 2025). As held in *Sibri* and other decisions, exhaustion is not required given the BIA's holding. *Id.* at *5; *Tomas*

Elias v. Hyde et al., No. 25-0540-JJM (D.R.I. Oct. 27, 2025); *Romero v. Hyde*, 25*11631-BEM (D. Mass. Aug. 19, 2025).

In *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025), the district court did not require exhaustion through appeal to the BIA for several reasons and noted that the irreparable harm caused by a loss of liberty is not lessened when it is immigration custody. *Romero*, 25-11631 at *14 (“[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.”). The district court further recognized that the BIA falls under the Executive Branch, as a component of an administrative agency under the U.S. Department of Justice, and, therefore, agency rulings reflect supervisory directives. *Id.* at *12 (“[T]he prospect of an unaffected decisionmaker seems unrealistically think, and the Court finds little to be gained, in terms of insight into the Executive’s point of view, from making Petitioner go through the vain exercise of getting denied once again.”)

ii. *Irreparable harm caused by continued detention*

“A loss of liberty may be an irreparable harm.” *Flores-Powell*, 677 F. Supp.2d at 463 (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986)). Additional delay necessary to perfect exhaustion may sway the Court against requiring continued detention for exhaustion. *Id.* at 464 (“[T]he additional delay attendant to exhaustion ‘would just contribute to the troubling delay [Petitioner]’has already experienced in attempting to resolve [his] immigration status.”). There is no limit on length of detention under § 1226(a) and statistics cited by the First Circuit show that one in four immigration detainees were held for two years or longer. *Hernandez-Lara*, 10 F.4th at 30 (citing *Pereira-Brito v. Barr*, 415 F. Supp. 3d 258, 264-65 (D. Mass. 2019)). This Court has come to the same conclusion, finding that the irreparable harm caused by extended time in

immigration detention against the Petitioner's will, justifies relaxation of exhaustion. *Rodriguez v. Bondi*, No. 25-cv-406-JJM-PAS, 2025 WL 2899769, at *4 (D.R.I. Oct. 10, 2025); *Astudillo v. Hyde*, No. 25-cv-551-JJM-AEM, 2025 WL 3035083, at *3 (D.R.I. Oct. 30, 2025); *Alvarez Puerta*, No. 1:25-cv-108.

iii. *Lack of meaningful redress excuses exhaustion*

By imposing standards for bond hearings that lack statutory or regulatory authority, and which the First Circuit has expressly found insufficient for due process, the agency's inability to provide meaningful redress for the lack of due process in the instant petition is clear. The BIA decisions adopted regulations governing initial detention by the arresting officer as the standard for allocating the burden of proof to the detained individual in bond proceedings, despite the statute's silence on burden allocation in bond hearings. *Hernandez Lara*, 10 F. 4th at 27. Although that regulation applied only to the custody determination by the arresting officer, the BIA soon adopted that standard for section 1226(a) bond hearings before an IJ, reversing its prior rule. *Id.* (citations omitted). Therefore, the BIA's rule placing the burden of proof on the detained individual during a bond hearing conflicts with this circuit's pronouncement that due process requires the government to bear the burden. *See Rodriguez v. Decker*, 20-cv-4118-PKC at *3-4 (S.D.N.Y. June 30, 2020) ("Here, an appeal by petitioner to the BIA on the current record would be futile. ... [T]he BIA has determined, and repeatedly affirmed, that immigration detainees under 8 U.S.C. § 1226(a) bear the burden of demonstrating that they are not a danger to the community [...] [T]he BIA has given no indication of an intention to alter this standard.").

The Respondents state in their motion that the petition should be dismissed in order for the BIA to first decide the factual issues and further develop the record. Resp. at 8. By regulation, the BIA does not develop a factual record. 8 C.F.R. §§ 1003.1(d)(3)(i), (iv) ("[T]he Board will not

engage in factfinding in the course of deciding cases.”). The petition raises legal questions relating to the application of legal standards and the agency’s adherence to controlling precedent. The legal questions that this petition raises are properly before this Court and may be decided by this Court now.

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

Here, the petition raises legal questions that extend beyond the BIA’s zone of appellate jurisdiction. The legal questions concern legal standards for bond hearings that the First Circuit has put in place. See *Hernandez-Lara*, 10 F.4th 19; *Rosa*, 114 F.4th 1. The BIA recently ruled that bond is a discretionary decision. *Matter of Choc-Tut*, 29 I. & N. Dec. 48, 49 (BIA 2025). That decision conflicts with the Supreme’s Court holding in *Wilkinson*, its remand in *Martinez v. Clark*, and with *Hernandez-Lara* and the Second Circuit’s decision in *Lopez v. Decker*, 978 F.3d 842, 850 (2d. Cir. 2020). Therefore, the BIA cannot provide meaningful redress because it can not consider constitutional issues, its appellate jurisdiction is narrower than the legal questions presented here,

and its precedent conflicts with federal court decisions that bear directly on Mr. Rosa Pineda's claims.

III. CONCLUSION

The Petitioner seeks judicial review of the constitutional violations during his bond hearing that have resulted in his continued detention. The Court may hear the claim based on its clear jurisdiction, the ample bases to waive exhaustion, and the abundant legal precedent finding that an uncorroborated police report should not and does not justify a finding of dangerousness for which the Petitioner should remain detained in civil immigration detention. Based on the foregoing, the Court should deny the Motion to Dismiss and grant the requested relief.

Date: November 4, 2025

Respectfully submitted,

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COUNSELS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2025, I electronically filed the within motion and it is available for viewing and downloading from the Court's CM/ECF System, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system.

/s/ Ann Elise McCaffrey