UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JUAN CARLOS BOHORQUEZ-VALENCIA,

Petitioner,

v. Case No. 3:25-cv-1383-MMH-LLL

Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami, Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, United States Attorney General, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Scotty RHODEN, Sheriff of Baker County Detention Center.

Respondents.
_____/

PETITIONER'S REPLY TO RESPONDENT'S RETURN

Petitioner, Juan Carlos Bohorquez-Valencia, respectfully submits this Reply to Respondents' Response filed December 19, 2025. Respondents' arguments do not cure the fundamental constitutional defect identified in the Petition. The Immigration Judge denied bond based on an allegation of terrorist association without the Government presenting any evidence to support that allegation. Petitioner's continued detention, now exceeding six months, following a constitutionally deficient bond proceeding, violates the Fifth Amendment.

I. THIS COURT HAS HABEAS JURISDICTION OVER PETITIONER'S CLAIMS

Petitioner is a civil immigration detainee challenging the legality of his ongoing detention. This Court has jurisdiction under 28 U.S.C. § 2241. Habeas corpus is the proper vehicle to

challenge unlawful immigration custody. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner does not seek review of a final order of removal, nor does he challenge the discretionary merits of a bond determination. He challenges the constitutionality of the process that resulted in continued physical restraint.

Such claims fall squarely within habeas jurisdiction and are not barred by 8 U.S.C. § 1252(g). The Eleventh Circuit has made clear that provisions limiting judicial review of removal orders do not preclude habeas challenges to detention where the petitioner is not seeking review of an order of removal. *Madu v. U.S. Attorney General*, 470 F.3d 1362, 1367–68 (11th Cir. 2006).

Respondents argue the Court lacks jurisdiction to hear Petitioner's claims under 8 U.S.C. § 1252(g). However, courts across the country have concluded § 1252(g) and (b)(9) do not deprive the Court of jurisdiction in this matter. *See, e.g., Jose J.O.E. v. Bondi*, No. 25-CV-3051, —— F.Supp.3d ——, —— – ——, 2025 WL 2466670, at *6–7 (D. Minn. Aug. 27, 2025); *Romero v. Hyde*, No. CV 25-11631-BEM, —— F.Supp.3d ——, —— – ——, 2025 WL 2403827, at *4–5 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142, —— F.Supp.3d ——, —— – ——, 2025 WL 2374411, at *4–8 (D. Minn. Aug. 15, 2025).

Section 1252(g) is a jurisdiction-stripping provision divesting courts of the power to hear cases in a limited set of circumstances. In relevant part, 8 U.S.C. § 1252(g) states:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). Section 1252(g) is a "narrow" jurisdictional bar that "applies only to three discrete actions that the Attorney General make take," not all actions taken as part of the deportation process. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 119 S.Ct.

936, 142 L.Ed.2d 940 (1999); *see Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) ("We did not interpret [8 U.S.C. § 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.").

Section 1252(g)'s narrow jurisdictional bar applies *only* to the three specific situations enumerated in the statutory language: the Attorney General's decision or action to

1) commence proceedings,
2) adjudicate cases, or
3) execute removal orders.

Reno, 525 U.S. at 482, 119 S.Ct. 936; 8 U.S.C. § 1252(g).

Petitioner's claims fall outside § 1252(g)'s narrow jurisdictional bar. He does not challenge commencement of proceedings, the adjudication of his case, or the execution of a removal order. Rather, Petitioner challenges his detention without an adequate bond hearing.

Respondents also argue § 1252(g) bars the Court from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings, which includes the decision to detain a noncitizen pending removal, claiming that Petitioner's 90-day removal period has not been triggered. (Doc 8, at Pg. 4-5). This argument does not comport with the narrow construction of § 1252(g) affirmed by the Supreme Court. *See Jennings*, 583 U.S. at 294, 138 S.Ct. 830. The majority in *Jennings* specifically declined to support Justice Thomas's concurrence, which tracked Respondents' argument in this case. *Id.* at 295 n.3, 138 S.Ct. 830 ("The concurrence contends that 'detention is an "action taken ... to remove" an alien' and that therefore 'even the narrowest reading of "arising from" must cover' the claims raised by respondents. We do not follow this logic."). Put simply, detention of a noncitizen pending removal does not "arise from" the Attorney General's decision to commence proceedings against an alien. Petitioner's

claim is not barred by § 1252(g) because he challenges his detention without an adequate bond hearing, not the Secretary of Homeland Security's decision to commence removal proceedings against him.

II. EXHAUSTION DOES NOT PRECLUDE REVIEW OF A CONSTITUTIONALLY DEFECTIVE BOND PROCEEDING

Respondents argue that habeas relief is unavailable because Petitioner has a bond appeal pending before the Board of Immigration Appeals. That argument mischaracterizes both the nature of Petitioner's claim and the role of exhaustion in § 2241 cases. In § 2241 cases, exhaustion is prudential, not jurisdictional, and does not bar review of constitutional claims that the agency lacks authority to finally resolve. *See Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). The Eleventh Circuit has long recognized that pure constitutional challenges are not foreclosed by exhaustion doctrines. *See Gonzalez v. United States*, 959 F.2d 211, 212 (11th Cir. 1992); *Sundar v. INS*, 328 F.3d 1320, 1325 (11th Cir. 2003).

"There are two species of exhaustion: statutory and common-law." *Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021). "The former deprives a federal court of jurisdiction, while the latter 'cedes discretion to a [federal] court to decline the exercise of jurisdiction.' " *Id.* (quoting *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 174 (1st Cir. 2016)).

Here, no statute requires exhaustion. Since no statute requires it, "sound judicial discretion governs." *Morgan v. Garland*, 120 F.4th 913, 927 (1st Cir. 2024) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144, 112 S.Ct. 1081, 117 L.Ed.2d 291 (1992)). However, sound judicial discretion requires courts to "balance the interest of the individual in retaining prompt access to a federal judicial forum against countervailing institutional interests favoring exhaustion." *Anversa*, 835 F.3d at 176 (quoting *McCarthy*, 503 U.S. at 146, 112 S.Ct. 1081). Although "the exhaustion doctrine ordinarily 'serves the twin purposes of protecting administrative agency authority and

promoting judicial efficiency,' and, thus, should customarily be enforced, the [Supreme] Court identified 'three broad sets of circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.' " *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy*, 503 U.S. at 145, 146, 112 S.Ct. 1081).

> First, a court may consider relaxing the rule when unreasonable or indefinite delay threatens unduly to prejudice the subsequent bringing of a judicial action. *See* [*McCarthy*, 503 U.S.] at 146–47 [112 S.Ct. 1081]. And, relatedly, if the situation is such that "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim," exhaustion may be excused even though "the administrative decisionmaking schedule is otherwise reasonable and definite." *Id.* at 147 [112 S.Ct. 1081].
>
> Second, *McCarthy* acknowledges that it sometimes may be inappropriate for a court to require exhaustion if a substantial doubt exists about whether the agency is empowered to grant meaningful redress. *See id.* at 147–48, 154 [112 S.Ct. 1081]; *see also Gibson v. Berryhill*, 411 U.S. 564, 575 n.14, 93 S.Ct. 1689, [1696 n.14], 36 L.Ed.2d 488 (1973). An agency, for example, may lack authority to grant the type of relief requested. *See, e.g.*, *McNeese v. Board of Educ.*, 373 U.S. 668, 675, 83 S.Ct. 1433, 10 L.Ed.2d 622 (1963).
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> Finally, *McCarthy* teaches that the exhaustion rule may be relaxed where there are clear, objectively verifiable indicia of administrative taint. Thus, if the potential decisionmaker is biased or can be shown to have predetermined the issue, failure to exploit an available administrative remedy may be forgiven. *See McCarthy*, 503 U.S. at 148, 112 S.Ct. 1081.

Id.

Contrary to Respondents' suggestion that "a habeas petition is not the proper avenue to dispute the IJ's findings", (Doc 8, Pg. 5-6), "challenges to an alien's detention must be brought pursuant to a habeas corpus petition" in district court. *Gudiel Polanco*, 839 Fed. App'x at 805; *see also, e.g.*, *De Ming Wang v. Brophy*, 2019 WL 4199901, at *1 (2d Cir. Aug. 1, 2019) ("Appellee ... cannot challenge an immigration judge's denial of bond in this Court in the first instance." (citing Fed. R. App. P. 22(a) ("An application for a writ of habeas corpus must be made to the appropriate district court."))); *Ben Halim v. Ashcroft*, 107 F. App'x 1, 6 (7th Cir. 2004) ("[T]o the extent Ben

Halim is entitled to any form of judicial review of the bond determination, it would be through a habeas corpus petition." (citing *Demore v. Kim*, 538 U.S. 510, 517, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003))).

Petitioner does not ask this Court to reweigh evidence or substitute its judgment for that of the Immigration Judge. He challenges a bond denial that rested on an allegation unsupported by any evidence. An administrative appeal cannot cure a bond proceeding that never satisfied minimum due process requirements. The Board of Immigration Appeals may review discretionary bond determinations, but it cannot supply evidence that was never presented, nor can it retroactively cure a proceeding that deprived the detainee of a meaningful opportunity to contest the factual basis for detention.

Moreover, to the extent Respondents have argued that a BIA appeal would have the benefit of appellate review—that argument is based on a plain misreading of the law, courts of appeal do *not* have independent jurisdiction to review BIA bond decisions directly. *See, e.g.*, *Gudiel Polanco v. Garland*, 839 F. App'x 804, 805 (4th Cir. 2021) (explaining that the appeals court has jurisdiction to review "final orders of removal or deportation," not "request[s] for release on bond"); *Gomez De Chacon v. Barr*, 828 F. App'x 459, 460 (9th Cir. 2020) ("[T]his court does not adjudicate bond or custody status through a petition for review."). Thus, there is no path from the denial of a bond appeal by the BIA to any appellate court without first filing a Petition for Writ of Habeas Corpus. Additionally, "*timely* appellate review is a key feature of any civil detention scheme." *Salerno*, 481 U.S. at 752, 107 S.Ct. 2095 (emphasis in original); *see also Zadvydas*, 533 U.S. at 690–91, 121 S.Ct. 2491 (citing *Salerno* multiple times to compare the "adequate procedural protections" upheld by the Court to their corollaries in the immigration detention context).

In *Salerno*, the Supreme Court upheld the federal pretrial detention scheme under the Bail Reform Act against a facial due process challenge. *Salerno*, 481 U.S. at 751–52, 107 S.Ct. 2095. Among the Court's reasons for upholding the pretrial detention scheme was the "immediate appellate review of the detention decision," which the Court noted as one of the "extensive safeguards" sufficient to repel a due process challenge. *Id.* at 752, 107 S.Ct. 2095; *see also Stack v. Boyle*, 342 U.S. 1, 4, 72 S.Ct. 1, 96 L.Ed. 3 (1951) (granting certiorari and overturning lower court's pretrial bail determination in criminal case while noting that "[r]elief in this type of case must be speedy if it is to be effective").

In the instant case, it is clear that the upheaval left in the wake of *ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025), which the BIA adopted in *Hurtado*, 29 I. & N. Dec. 216, has created a massive barrier to timely and effective appellate review, even in the context of BIA appeals. *See Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *14 (W.D. Wash. Sept. 30, 2025) (noting that DHS provided datasets that showed BIA's processing time for appeals, including that between FY 2015 and FYI 2024, took a year or longer, in 200 bond appeal cases, to resolve).

BIA processing times now exceed (and in some cases, far surpass) its own guidelines, especially considering that adjudication of bond appeals is classified as a "priority." *See* 8 C.F.R. § 1003.1(e)(8).

As such, this Court should exercise jurisdiction in this matter as Petitioner will suffer irreparable harm without immediate judicial consideration of his claim.

III. THE BOND DENIAL VIOLATED PROCEDURAL DUE PROCESS

Civil detention during removal proceedings is authorized by federal law and generally permitted under the Constitution. *See Demore v. Kim*, 538 U.S. 510, 523, 123 S.Ct. 1708, 155

L.Ed.2d 724 (2003). Limitations like the Due Process Clause, however, restrict the Government's power to detain noncitizens. *Id.*; *see Frech v. U.S. Att'y Gen.*, 491 F.3d 1277, 1281 (11th Cir. 2007) ("It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment.") (citing *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993)).

In the instant case, Respondents immigration bond procedure is unconstitutional. Specifically, allocating the burden of proof to Petitioner to determine his release or detention pending removability proceedings violates the Due Process Clause, where, as here, Respondents allege Petitioner has ties to a terrorist organization.

Respondents argue that Petitioner is currently pending removal, and no final order of removal has been issued. (Doc. 8 at 5). Thus, contrary to Respondents argument that § 241(a) of the INA, as amended 8 U.S.C. § 1231(a) governs Petitioner's detention (Doc. 8 at 4-5), the statute authorizing Petitioner's detention is 8 U.S.C. § 1226(a). Under § 1226(a), detention is discretionary; an IJ may release a noncitizen on bond during this period pending resolution of removal proceedings, or an IJ may choose to detain a noncitizen pending resolution of removal proceedings. 8 U.S.C. § 1226(a)(1).

The statute provides no guidance as to how IJs make discretionary bond determinations. Section 1226(a) is silent as to whether the Government or the noncitizen bears the burden of proof. To fill this gap, the BIA adopted 8 C.F.R. § 236.1(c)(8)'s standard for release. *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (B.I.A. 1999). The regulation, promulgated by the Immigration and Naturalization Service ("INS"), allows "[a]ny officer authorized to issue a warrant of arrest" to release the noncitizen provided that he "must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that [he] is likely to appear for

any future proceeding." 8 C.F.R. § 236.1(c)(8). The noncitizen carries the burden to prove that he is not a flight risk or danger to the community, and the standard of proof is "to the satisfaction of the officer" executing the arrest warrant. *Id.*

The regulation applies only to officials issuing arrest warrants for immigration violations. *Id.*; 8 C.F.R. §§ 236.1(b), 287.5(e)(2). As written, this regulation does not apply to IJs determining release at bond hearings. *See Matter of Adeniji*, 22 I. & N. Dec. at 1112 ("An Immigration Judge is not authorized to issue a warrant of arrest."). Nevertheless, the BIA concluded that 8 C.F.R. § 236.1(c)(8) provided the appropriate standard "for ordinary bond determinations" under 8 U.S.C. § 1226(a). *Matter of Adeniji*, 22 I. & N. Dec. at 1113. Thus, at a § 1226(a) bond hearing, a noncitizen must demonstrate that his release would not pose a danger to the community and that he is likely to appear "even though [§ 1226(a)] does not explicitly contain such [ ] requirement[s]." *Matter of Adeniji*, 22 I. & N. Dec. at 1113. The BIA has repeatedly applied this burden of proof in subsequent opinions. *See, e.g., Matter of Fatahi*, 26 I. & N. Dec. 791, 795 n.3 (B.I.A. 2016); *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006).

The statutory background provides context for the issue ultimately before this Court: whether the procedures employed at Petitioner's bond hearing satisfied due process, and what—if any—additional procedural protections are necessary. Neither the Supreme Court nor the Eleventh Circuit have resolved this issue. Other courts around the country that have considered the burden of proof at immigration bond hearings are split.

The Third Circuit stated it "perceive[d] no problem" with noncitizens bearing the burden of proof under § 1226(a). *Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018). The Ninth Circuit found that noncitizens detained under § 1226(a) are "entitled to release on bond unless the government establishes that he is a flight risk or will be a danger to the

community." *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 951 (9th Cir. 2008) (internal quotation marks and citation omitted); *see Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) ("[T]he burden of establishing whether detention is justified falls on the government."). Most recently, the Second Circuit also concluded that placing the burden of proof on the government was proper. *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020). It should be noted that the Ninth and Second Circuits, as well as "the overwhelming majority of district courts" hold the Government must bear the burden of proof to justify a noncitizen's detention pending removal proceedings. *Hernandez-Lara v. Immigr. & Customs Enf't, Acting Dir.*, No. 19-cv-394-LM, 2019 WL 3340697, at *3 (D.N.H. July 25, 2019); *see, e.g., Dubon Miranda v. Barr*, 463 F. Supp. 3d 632, 646–47 (D. Md. 2020); *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018).

However, in the instant case, Respondents have effectively sandbagged their allegations against Petitioner waiting until the day of Petitioner's Bond Redetermination Hearing to argue that he was associated with an international terrorist organization, or [redacted] In doing so, Respondents failed to give Notice to Petitioner of the allegations against him that constituted the basis for his detainment, risk of flight, and further failed to provide Petitioner with any adequate means to marshal the facts in preparation to defend against his detainment. Effectively, Respondents were able to make bald allegations—allegations which ordinarily would've required the Government to prove by a preponderance of the evidence, that Petitioner is associated with an international terrorist organization or [redacted] and thus subject to mandatory detention.

To illustrate, in 1996, during a comprehensive revision of the immigration laws, Congress enacted § 1226(c), which requires the Government to detain noncitizens who are removable on the

basis of certain crimes or connections with terrorism and to hold them without bond until their removal proceedings. *See Nielsen v. Preap*, —— U.S. ——, 139 S. Ct. 954, 959, 203 L.Ed.2d 333 (2019); *Demore v. Kim*, 538 U.S. 510, 517–18, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003). Under *Joseph*, such detainees are entitled to a hearing before an Immigration Judge (IJ) to determine "whether the [Government] has properly included [them] within a category that is subject to mandatory detention" under § 1226(c). 22 I. & N. Dec. at 805; 8 C.F.R. § 1003.19(h)(2)(i)(D), (h)(2)(ii). If a detainee is found not to be "properly included" within § 1226(c), they may then seek release on bond under 8 U.S.C. § 1226(a).[3] *Joseph*, 22 I. & N. Dec. at 806.

Applying the *Mathews* test, the Third Circuit in *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321 (3d Cir. 2021) concluded that "the Government bears the burden of proof at *Joseph* hearings and that it must establish that a detainee is properly included within § 1226(c) by a preponderance of the evidence." 12 F.4th at 331-32.

In the instant case, Respondents argue that Petitioner failed to "show that his detention is not proportionately related to the government's non-punitive responsibilities and administrative purposes." (Doc. 8, at 8). Further, Respondents mischaracterize Petitioner's habeas claims as challenging "the conditions of confinement" and a "deliberate indifference claim". (Doc. 8 at 8-9). However, Respondent fails to acknowledge the crux of Petitioner's claim. That Respondents failed to provide him the minimum requirements of due process at an individualized bond hearing. Respondents argument is a veiled attempt to obfuscate the fact that Petitioner's bond hearing was a sham,

Where an Immigration Judge relies on an allegation of terrorist association or national security risk, due process requires that the Government present some reliable evidentiary basis for that allegation. Preventive detention, even in the civil context, must be regulatory rather than

punitive and must be accompanied by adequate procedural safeguards. *United States v. Salerno*, 481 U.S. 739, 746–48 (1987). It is well settled that the Government bears a "heightened burden of proof ... in civil proceedings in which the 'individual interests at stake ... are both "particularly important" and "more substantial than mere loss of money." ' " *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) (second omission in original) (quoting *Santosky v. Kramer*, 455 U.S. 745, 756 (1982)).

Here, DHS presented no evidence whatsoever to support the asserted [redacted] designation. There was no affidavit, declaration, testimony, or documentary submission. Petitioner was afforded no meaningful opportunity to rebut the allegation because there was nothing to rebut. A detention decision based on a bare, unsubstantiated assertion deprived Petitioner of a fair hearing and rendered the bond proceeding constitutionally deficient.

Courts routinely apply the *Mathews v. Eldridge* three-factor balancing test to evaluate constitutional adequacy of immigration bond procedures. 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The three factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural safeguard would entail." *Id.*

Petitioner is not alleged to be a deportable criminal alien. He has a prima facie VAWA case. When USCIS determined that Petitioner's VAWA self-petition "ha[d] been reviewed and found to establish a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act," this determination conferred significant benefits on Petitioner. Upon approval of a petition as a VAWA self-petitioner, "the alien is eligible for work authorization" (8

U.S.C.A. § 1154). Additionally, the statute provides that aliens may "apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner" (8 U.S.C.A. § 1255).

A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. *See id.* (Due Process requires hearing before revocation of preparole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context). To determine whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted).

In *Morrissey*, the Supreme Court explained that parole "enables [the parolee] to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. "Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens," such as monitoring and seeking authorization to work and travel, their "condition is very different from that of confinement in a prison." *Id.* "The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Id.* (quotations omitted). Therefore, a parolee possesses a protected interest in their "continued liberty." *Id.* at 481–84.

Immigration officials' prima facie determination for classification of Petitioner under VAWA's provisions is similar. Among other things, it allowed Petitioner to live in Florida for nearly three years, while being gainfully employed. Petitioner thus has a protected liberty interest in his release. *See Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025) (recognizing that "the liberty interest that arises upon release [from immigration detention] is *inherent* in the Due Process Clause"); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025) (collecting cases finding that noncitizens who have been released have a strong liberty interest).

Where an immigration "regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute," like the opportunity to be heard, "and [ICE] fails to adhere to it, the challenged [action] is invalid ...." *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993). Respondents failure to abide by its own regulations, *i.e.*, notice, an opportunity to be heard, and a *Joseph* hearing, undermine its argument that Petitioner's detention is valid. Clearly, Petitioner was not given notice, or an opportunity to be heard, at least insofar as Respondents argued that Petitioner was associated with an international terrorist organization or a positive match for a KST Code 3 member.

As such, the IJ's decision determining that Petitioner was a flight risk, based upon Respondents bald allegations of his association with an international terrorist organization and/or [redacted] without requiring the Government to prove such allegations by a preponderance of the evidence, renders Petitioner's bond determination constitutionally invalid.

IV. PETITIONER'S CONTINUED DETENTION HAS BECOME PROLONGED AND VIOLATES SUBSTANTIVE DUE PROCESS

Petitioner has already experienced a severe liberty deprivation. He has been detained for over six (6) months. The Due Process Clause of the Fifth Amendment protects the substantive right to be free from unjustified deprivations of liberty. *Zadvydas*, 533 U.S. at 690. This right extends to both "removable and inadmissible" non-citizens. *Id.* at 721 (Kennedy, J. dissenting) (holding that both "removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious").

Petitioner's prolonged detention, which has lasted over 180 days, violates his substantive due process rights, including the right to be free from "inhumane treatment," such as "indefinite, hearingless detention." *See Castro v. U.S. Dep't Homeland Sec.*, 835 F.3d 422, 449 n.32 (3d Cir. 2016); *see also Zadvydas*, 533 U.S. at 693-94; *Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987).

Although *Zadvydas* addressed post final order detention under 8 U.S.C. § 1231(a), the Supreme Court's reasoning was constitutional in nature and emphasized that civil immigration detention must bear a reasonable relation to its nonpunitive purpose. *Zadvydas*, 533 U.S. at 690. Detention that becomes excessive in relation to that purpose violates substantive due process.

Pre final order detention under 8 U.S.C. § 1226(a) is not immune from constitutional limits. As detention lengthens, the need for individualized and reliable justification becomes more acute. *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (Kennedy, J., concurring). Courts applying *Zadvydas*'s due process framework have recognized that prolonged immigration detention must remain reasonable and justified by the Government's regulatory interests. *See, e.g., Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (unpublished).

Petitioner has no criminal history. The Immigration Judge made no finding of danger to the community, instead, finding Petitioner was a flight risk due to [redacted] or associated with an International Terrorist Organization. (Doc 1-5, at 2). Removal is not imminent. Continued detention under these circumstances has become excessive in relation to its purpose and violates the Fifth Amendment.

V. PETITIONER DOES NOT SEEK RELEASE BASED SOLELY ON CONDITIONS OF CONFINEMENT

Respondents devote substantial argument to conditions of confinement jurisprudence. Petitioner does not seek release based solely on conditions. Medical deterioration is relevant because it underscores the severity of the liberty deprivation and the harm caused by unlawful detention. The primary constitutional violation remains the deprivation of liberty without due process.

Respondents claim that his detention is proportionately related to the "deportation proceedings" instituted against him. (Doc. 8, at 7-8). Respondents seemingly argue that in order for Petitioner to be entitled to habeas relief, he must show that his detention constitutes "punishment". *Id.* However, Petitioner isn't contesting the constitutionality of "detention during the pendency of deportation proceedings" (Doc. 8, at 7). Rather, Petitioner challenges Respondents failure to provide Petitioner the minimum requirements of due process in determining that his detention was necessary to begin with.

Where detention itself is unlawful, habeas relief may include release or a new constitutionally adequate hearing. *Zadvydas*, 533 U.S. at 699–701; *Madu*, 470 F.3d at 1367.

VI. RELIEF REQUESTED

Petitioner respectfully requests that the Court grant the Petition and order appropriate relief, including:

1. A new bond hearing before at which DHS must present actual evidence supporting any allegation relied upon to justify detention; or
2. In the alternative, Petitioner's release unless such a hearing is provided within a time certain; and
3. Any further relief the Court deems just and proper.

CONCLUSION

The Constitution does not permit civil immigration detention to rest on an allegation of terrorist association unsupported by any evidence. Administrative exhaustion cannot cure a bond proceeding that never satisfied minimum due process. As detention exceeds six months without evidentiary justification or meaningful review, continued confinement violates both procedural and substantive due process. The Petition should be granted.

Dated this 6th day of January, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 6, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send an electronic copy to the registered participants.

/s/ Joel Alexis Caminero, Esq. /
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