UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Nathaniel Sterling,

Petitioner,

v.

Pamela J. Bondi, Attorney General of the United States; Kristi Noem, Secretary of the Department of Homeland Security; Todd Lyons, Acting Director, Immigration and Customs Enforcement; Floyd Cleveland, Hartford Field Office Assistant Director, Immigration and Customs Enforcement,

Respondents.

No. 3:25-cv-02122 (KAD)

March 9, 2026

REPLY MEMORANDUM OF LAW IN SUPPORT OF

PETITION FOR WRIT OF HABEAS CORPUS

In his Second Amended Petition, Mr. Sterling alleges that the Immigration Judge (IJ) failed to hold the government to its burden of proving dangerousness by clear and convincing evidence. The bond hearing was constitutionally defective in three independent ways. First, the IJ impermissibly relied upon uncorroborated police reports. Second, the IJ wrongly relied on Mr. Sterling's law enforcement contacts—evidence that is insufficiently probative of dangerousness. Third, the IJ considered a false statement that government counsel declined to withdraw even when challenged. The resulting bond order therefore failed to satisfy the Fifth Amendment's guarantee of Due Process before the government deprives a person of liberty.

The Government raises two main arguments in response. First, the government contends that Mr. Sterling failed to exhaust administrative remedies by not appealing the bond decision. ECF 30 at 3. The government fails to inform this Court that Mr. Sterling timely filed his notice of appeal to the Board of Immigration Appeals (BIA) on February 8, 2026. He filed his BIA brief on the same day, even though the BIA had not yet issued a briefing schedule.[1] Moreover, as numerous district courts have held in a wide range of immigration habeas decisions, prudential exhaustion does not bar this Court from reviewing the claims of unconstitutional detention.

Second, the government attempts to recharacterize Mr. Sterling's position as a belated objection to the admissibility of the police reports and a misguided challenge to how the IJ weighed the evidence, which this Court lacks jurisdiction to review. ECF 30 at 7 (citing 8 U.S.C. § 1226(e)). The government is wrong. Section 1226(e) does not bar habeas jurisdiction over constitutional claims or questions of law. And recent Supreme Court precedent, also not cited by the government, confirms that mixed questions of law and fact such as an IJ finding of

[1] A copy of the notice of appeal is attached as Exhibit A and a screenshot of the online BIA docket confirming submission of his appeal and brief is attached as Exhibit B. Ten days later, the IJ issued a post-hoc rationalization for her decision denying bond. *See* Exhibit C. The government's March 2, 2026 brief mentions none of these.

"dangerousness" are questions of law and thus reviewable in a district court habeas action. Here, Mr. Sterling challenges the constitutionality of the bond determination—specifically, the lawfulness of the IJ's reliance on inaccurate criminal history assertions and uncorroborated police reports to conclude the Department of Homeland Security (DHS) satisfied its burden to prove dangerousness by clear and convincing evidence. He does not dispute the admissibility of the police reports. An appeal premised on the incorrect *weighing* of evidence presupposes an evidentiary record that reasonable minds could disagree about; by contrast, no measured adjudicator could hold as the IJ did in this case.

Tellingly, the government does not dispute several key facts: that DHS counsel incorrectly represented that Mr. Sterling had been convicted of a firearms offense and had pending charges; that these assertions were never withdrawn on the record; nor that the government's evidentiary submission consisted of uncorroborated police reports and arrest allegations. This fundamentally deficient record cannot establish clear and convincing evidence of dangerousness, and the Court should grant the petition.

I. This Court Has Jurisdiction to Review the Bond Determination.

The IJ's finding of dangerousness and Mr. Sterling's due process claims are reviewable by this Court. The Supreme Court held in *Wilkinson v. Garland,* 601 U.S. 209, 225 (2024), that "mixed questions of law and fact, even when they are primarily factual, fall within the statutory definition of 'questions of law' in [the INA] and are therefore reviewable." *See also Guerrero-Lasprilla v. Barr*, 589 U.S. 221 (2020) (same); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 240 (W.D.N.Y. 2019) ("the evidence itself could not—as a matter of law—have supported" the IJ's decision) (internal quotation omitted). The IJ's determination of dangerousness is a mixed question of law and fact. *See Martinez v. Clark*, 144 S. Ct. 1339 (2024) (in light of *Wilkinson*, vacating Ninth Circuit opinion that had held district court lacked jurisdiction to review dangerousness determination in immigration bond proceeding), *on remand*, 124 F.4th 775, 779 (9th Cir. 2024) ("After *Wilkinson*, the determination whether an alien is 'dangerous' for immigration-detention purposes is a mixed question of law and fact and is reviewable as a 'question of law.'"); *Picado v. Hyde*, No. 26-cv-065-JJM-PAS, 2026 WL 352691, at *5 (D. R.I. February 9, 2026) (McConnell, C.J.) ("[B]ecause the IJ's finding of dangerousness is a finding based on the application of a statutory legal standard to an established set of facts, it is not a 'discretionary judgment' barred by Section 1226(e) and is also reviewable . . . as a 'question of law.'" (citations omitted)). This Court therefore has jurisdiction to review Mr. Sterling's claims.

II. The Bond Hearing Violated Mr. Sterling's Due Process Rights.

Mr. Sterling's bond hearing fell short of due process because the IJ failed to hold the government to its burden of showing dangerousness by clear and convincing evidence. Immigration detention based on dangerousness is appropriate "only when limited to specially dangerous individuals and subject to strong procedural protections." *Zadvydas v. Davis*, 533 U.S. 678, 691 (2001). Under First Circuit precedent, binding on the Chelmsford Immigration Court, DHS must prove by clear and convincing evidence that Mr. Sterling is a danger. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 244 (1st Cir. 2021). "Merely stating the proper standard does not discharge the obligation to correctly apply the standard." *Akinsanya v. Garland*, 125 F.4th 287, 297 (1st Cir. 2025). The record lacks clear and convincing evidence of dangerousness, and no reasonable IJ could have found otherwise.

The IJ failed to apply the proper legal standard in three ways. First, the IJ erred as a matter of law by giving substantial weight to uncorroborated police reports. Such records are admissible, but an uncorroborated police report alone cannot—as a matter of law—be afforded substantial weight in a discretionary determination. *Rosa v. Garland*, 114 F.4th 1, 17 (1st Cir. 2024) (citing *Matter of Arreguin De Rodriguez*, 21 I. & N. Dec. 38, 42 (BIA 1995)). Considerations of reliability and fundamental fairness "are distinct from the additional requirement that a police report, absent a conviction, must be corroborated before the agency may give the report substantial weight" in denying discretionary relief. *Maurice v. Bondi*, 154 F.4th 15, 22 (1st Cir. 2025) (remanding to BIA to consider whether police reports were corroborated where the agency failed to make the necessary express finding).[2]

IJ Smith made no such finding of corroboration at Mr. Sterling's bond hearing or in her post-hoc written decision, and DHS made no effort to corroborate its evidence. Nevertheless, the IJ's decision substantially relied on the factual allegations within police reports—the only negative factor put forth in the hearing.[3] The IJ's failure to perform the threshold inquiry or hold the government to its constitutional burden violated Mr. Sterling's due process rights and warrants his release. *Rosa Pineda v. Nessinger*, No. 1:25-CV-522-MSM-AEM, 2025 WL 3267328 (D.R.I. Nov. 24, 2025) (holding that IJ's reliance on uncorroborated police reports violated due process and ordering release); *Alvarez Puerta v. Nessinger*, No. 1:25-CV-108-JJM-AEM (D.R.I. June 27, 2025) (finding that an uncorroborated police report is not clear and convincing evidence of dangerousness and ordering release); *Picado*, 2026 WL 352691 (same). The government shrugs off *Rosa Pineda* by asserting that Judge McElroy "made [a] mistake." ECF 30 at 10 n.1. On the contrary, Judge McElroy—as well as Chief Judge McConnell in

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[2] The government misconstrues this claim. ECF 30 at 8 (arguing for *admissibility* of police reports). Mr. Sterling does not dispute the admissibility of the reports but rather explains that uncorroborated allegations within the reports are insufficient to establish clear and convincing evidence of dangerousness. The government's reliance on *Zerrei, Vargas,* and *Carcamo* for the propositions that police reports are *admissible*. *See* ECF 30 at 8 (citing *Zerrei v. Gonzales*, 471 F.3d 342, 346 (2d Cir. 2006), *Vargas v. Davies*, No. 15 CIV. 3525-ER, 2016 WL 3044850, at *4 (S.D.N.Y. May 27, 2016), and *Carcamo v. U.S. Dep't of Just.*, 498 F.3d 94, 98 (2d Cir. 2007)).

[3] The IJ's error is not cured by labeling the police reports "reliable." Ex. C at 4.

Alvarez Puerta and *Picado*—appropriately found that a bond denial based on uncorroborated police reports alone constitutes legal error reviewable by a federal court.[4]

Second, Mr. Sterling's mere "contacts" with law enforcement cannot meet the clear and convincing evidence standard, because "contacts" are insufficiently probative of dangerousness. In *Fernandez Aguirre v. Barr*, Judge Caproni confronted a similar question, concluding that "this standard of proof requires that the evidence support such a conclusion with a high degree of certainty." No. 19-cv-7048-VEC, 2019 WL 4511933 at *6 (S.D.N.Y. Sept. 18, 2019) (quoting *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985)). As she explained:

> [T]he evidence of dangerousness consisted, in its entirety, of a rap sheet and two charging instruments...[showing] that Petitioner had some traffic tickets, charges for low-level state offenses (all of which were dismissed and all but one of which were misdemeanors), and a guilty plea to resisting arrest (also a misdemeanor)[...] Based on this record, no reasonable fact-finder could find by clear and convincing evidence that Petitioner posed a danger to the community. That conclusion is beyond serious dispute.

Id., at *4. Reliance on such non-probative evidence to deny bond violates due process. *Garcia v. Hyde,* No. 25-cv-585, 2025 WL 3466312 (D.R.I. Dec. 3, 2025), at *9; *I.G.S. v. Nessinger*, No. 25-cv-339-MRD-PAS, at *2-4 (D.R.I. Sept. 12, 2025).

Third, DHS falsely asserted to the IJ that Mr. Sterling had a firearm conviction and other pending criminal charges. These assertions were considered within the record. *See* ECF 25 at ¶

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[4] At least seven courts of appeals agree that police reports are insufficiently probative without corroboration. *See Gallego v. Holder*, 516 F. App'x 81, 83 (2d Cir. 2013) (unpublished) (recognizing police reports were made probative by their corroboration with additional evidentiary reports); *Doyduk v. Att'y Gen. United States*, 66 F.4th 132 (3d Cir. 2023) (police reports warrant "little weight" absent corroboration); *Garcia Rogel v. Garland*, No. 21-1163, 2022 WL 4244508 (4th Cir. Sept. 15, 2022) (IJ erred in according dispositive weight to uncorroborated police reports); *Billeke–Tolosa v. Ashcroft*, 385 F.3d 708, 713 (6th Cir. 2004) (IJ erred by denying relief based on uncorroborated arrest reports and remanding with instructions to disregard police reports); *Avila-Ramirez v. Holder*, 764 F.3d 717, 725 (7th Cir. 2014) (BIA erred by giving significant weight to uncorroborated arrest reports); *Abbas v. Lynch*, 647 F. App'x 671, 672 (9th Cir. 2016) (unpublished) (reliance on police reports was permissible where noncitizen admitted to charges); *Garces v. U.S. Atty. Gen.*, 611 F.3d 1337, 1350 (11th Cir. 2010) ("Absent corroboration, the arrest reports by themselves do not offer reasonable, substantial, and probative evidence.").

77; ECF 25-1 at 3-4. Mr. Sterling does not have any convictions, had no pending charges on the day of the bond hearing, and has none today. Yet, even when challenged, DHS counsel did not withdraw the statements. *See* ECF 25-1 at 4-5. It is "beyond serious dispute," *Fernandez Aguirre*, 2019 WL 4511933 at *6, that as a matter of law, false allegations plus mere *contact* with law enforcement (resulting in charges that were later nolle'd) is not clear and convincing evidence of dangerousness. Even *conviction* of a crime may not suffice. *See Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011), *abrogated on other grounds by Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) ("[C]riminal history alone will not always be sufficient to justify denial of bond on the basis of dangerousness[...] the recency and severity of the offenses must be considered."); *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 693 (D. Mass. 2018) (recognizing that "the IJ could well have found that Pensamiento was not dangerous based on a single misdemeanor conviction"); *United States v. Berroa-Torres*, No. CR 25-455 (-GMM), 2025 WL 3653775, at *6 (D.P.R. Dec. 17, 2025) (finding that alleged possession of firearms "is far from showing that Mr. Berroa . . . cannot be released with conditions").

The IJ is supposed to act as a neutral adjudicator responsible for ensuring that the government justifies Mr. Sterling's continued detention by clear and convincing evidence of dangerousness. To find that DHS met that significant burden here—based on uncorroborated allegations, blatant falsities, and law enforcement contacts—violates due process.

III. Exhaustion Principles Do Not Divest This Court of Jurisdiction to Grant Relief.

Administrative exhaustion does not bar this Court from reviewing Mr. Sterling's habeas petition. *Cf.* ECF 30 at 6-7. This case involves prudential, not statutory exhaustion, which is discretionary and subject to several exceptions. *See Beharry v. Ashcroft*, 329 F.3d 51, 56-57 (2d Cir. 2003). Courts excuse exhaustion when irreparable harm would occur, when a plaintiff raises substantial constitutional questions, or when administrative review would be futile. *Id.* at 62.[5]

To begin, Mr. Sterling will suffer irreparable harm without immediate judicial relief. In general, courts "may find exhaustion to be unnecessary where 'a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim.'" *Picado v. Hyde*, 2026 WL 352691 at *5 (quoting *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997)). And "the loss of liberty endured by a noncitizen in ICE custody is a 'severe form of irreparable injury." *Id.* at *6*; see also, e.g., Hechavarria*, 358 F. Supp. at 237 (excusing prudential exhaustion requirement due to irreparable injury of prolonged ICE detention); *Fernandez Aguirre v. Barr*, 2019 WL 3889800, at *3-4 (same); *Sampiao v. Hyde*, 799 F. Supp. 3d 14, 26 (D. Mass. 2025) (same); *Gomes v. Hyde*, 804 F. Supp. 3d at 272-73 (same); *Alvarez Puerta*, No. 1:25-cv-108-JJM-AEM, at *2 (same). The average processing time for bond appeals at the BIA was over 200 days in 2024. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248-49 (W.D. Wash. 2025).

These concerns are especially acute in this case. Mr. Sterling's fragile medical condition and his two hospitalizations in just three months of detention justify excusing the exhaustion requirement. *See, e.g.,* ECF 25-1 at 4 (Petitioner "receives vital medical care for a number of serious health issues which have been exacerbated while he's been in detention," including hospitalization "within 24 hours of being detained by ICE."); Ex. D.[6] Mr. Sterling is recovering from life-threatening gunshot injuries to his right leg and groin that demand consistent medical attention. ECF 25 ¶ 30. He suffers from dangerously high blood pressure and the risk of

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[5] The district court cases the government cites on pages 6-7 confirm that exhaustion is not statutorily required. *See, e.g., Bogle v. Dubois*, 236 F. Supp. 3d 820, 823 (S.D.N.Y. 2017). Applying the more forgiving common-law exhaustion rule, district courts have rightly come to different conclusions on different facts. *See, e.g., Fernandez Aguirre v. Barr*, 2019 WL 3889800 (granting habeas relief before resolution of bond appeal based on deficient hearing because Petitioner's compromised ability to prepare for an imminent asylum hearing was irreparable harm).
[6] Mr. Sterling will move to file Exhibit D under seal because it contains private medical information.

developing blood clots, Ex. D, which led to his hospitalization shortly after his arrest. ECF 25-1 at 4.[7] The government's policy arguments about irreparable harm and the broader population of detained non-citizens are unavailing given Mr. Sterling's medical conditions.

Second, Mr. Sterling raises a substantial constitutional question arising from his bond hearing. "[W]hen constitutional questions are in issue, the availability of judicial review is presumed." *Califano v. Sanders*, 430 U.S. 99, 109 (1977). The Second Circuit has likewise held that prudential exhaustion should be excused when constitutional claims are more properly addressed in a federal district court. *See Able v. United States*, 88 F.3d 1280, 1289 (2d Cir. 1996) (exhaustion excused where "substantial constitutional question" was presented and the challenge did not "necessitate significant fact-finding."). As detailed above, there are serious doubts about the constitutional adequacy of the process afforded to Mr. Sterling at his bond hearing—to say nothing of the constitutional question raised by the other claims in Mr. Sterling's petition. The BIA is a poor forum in which to adjudicate these claims, and thus, like countless district courts adjudicating habeas petitions by ICE detainees, the court should excuse exhaustion.[8]

Lastly, prolonging detention so that the BIA may adjudicate his bond appeal would not

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[7] Moreover, should this Court dismiss Mr. Sterling's bond hearing claim for failure to exhaust and deny the balance of his habeas petition, its order against transfer, ECF 6, may also be dissolved. This could result in ICE moving Mr. Sterling to a detention facility in Texas or Louisiana, where ICE now detains many persons in conditions that deny basic medical care and human needs, *see, e.g., Fort Bliss Declarations- December 2025*, ACLU (Dec. 12, 2025), https://tinyurl.com/mryc7hxx, and have more than doubled deaths in ICE detention. *See Detainee Death Reporting*, U.S. Immigration & Customs Enforcement, https://tinyurl.com/49arsnst (last visited Mar. 7, 2026); *Deaths at Adult Detention Centers*, American Immigration Lawyers Association (Feb. 9, 2026), https://tinyurl.com/44pnfcs3. Such a transfer would further jeopardize Mr. Sterling's precarious health and threaten his life. It could also lead ICE to argue that the venue for any future habeas challenge to an adverse BIA bond ruling would be where ICE chooses to detain him. While Mr. Sterling contends that the First Circuit law governs habeas review of any bond ruling, the government may well argue (and a foreign habeas court agree) that it is Fifth Circuit law that applies to habeas filed in, for instance, Texas or Louisiana. These circumstances intensify the risk of irreparable harm.

[8] Furthermore, the constitutional nature of Mr. Sterling's claim defeats the government's argument that excusing exhaustion would "swallow the rule." ECF 30 at 5. This case presents substantial constitutional questions absent from ordinary appeals to the BIA. *See Garcia v. Decker*, 448 F. Supp.3d 297, 308-09 (S.D.N.Y. 2020) ("[T]he Court rejects the Government's suggestion that hearing [the] petition will incentivize other immigration detainees to bypass administrative appeals and run to federal court" (citations omitted)).

advance the *purposes* of the prudential exhaustion requirement. *See Abbey v. Sullivan*, 978 F.2d 37, 45 (2d Cir. 1992) ("[S]aying that exhaustion would be futile is merely another way of stating that the policies underlying the exhaustion requirement do not apply in a given case."). A court assesses futility by asking whether requiring exhaustion would meaningfully advance the underlying policy interests, such as promoting efficient judicial review by allowing the agency to develop the factual record, limiting interference with agency affairs, and protecting agency authority. *See Garcia*, 448 F. Supp. 3d at 305. Requiring exhaustion here would be futile.[9]

Mr. Sterling challenges the constitutional sufficiency of his bond hearing based on a completed factual record. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (subject to exceptions not relevant, "the Board will not engage in factfinding in the course of deciding cases."). In other words, the agency has fully developed the factual record already, and exhaustion would disrupt and/or prolong judicial review rather than promote its efficiency. Further, the BIA is simply not the apt body to hear his claim, as Article III courts, not administrative appellate bodies, are the proper forum for adjudicating constitutional questions. *See United States v. Gonzalez-Roque*, 301 F.3d 39, 47–48 (2d. Cir. 2002). Exhaustion therefore would not "protect agency authority," nor would

[9] Appeal is also futile because the BIA is no longer engaging in meaningful appellate review. An Interim Final Rule ("IFR") published by EOIR on February 6, 2026 makes review discretionary unless a majority of the BIA agree to hear the case on the merits; EOIR described the Board there as "simply a vessel for further delay of the eventual resolution of an alien's case." *Appellate Procedures for the Board of Immigration Appeals*, 91 Fed. Reg. 5267 (Feb. 6, 2026) (to be codified at 8 C.F.R. pts. 1003, 1240); *id.* at n.8 (reporting that between Oct. 1, 2023 and Sept. 15, 2025 the BIA sustained only 123 of 55,065 merits appeals. While that IFR has been vacated and remanded, *Amica Ctr. for Immigrant Rts. v. Exec. Off. for Immigr. Rev.*, No. 26-cv-00696-RDM (D.D.C. Mar. 8, 2026), an appeal is all but certain. EOIR's attempt to dismantle its own appellate process demonstrates the futility of appeal to an agency that affirms in more than 99 percent of appeals. Federal courts have also consistently indicated that DHS and DOJ have forfeited the presumption of regularity otherwise afforded to government decision-making due to widespread legal violations by IJs and the BIA and the agency's failure to obey federal court orders. *See Lopez Benitez v. Francis,* 795 F. Supp. 3d 475, 486 (S.D.N.Y. 2025) (finding record "devoid" of evidence pertaining to DHS' claim); *Shinwari v. Hyde*, No. 25-cv-12021 (D. Mass. Oct. 20, 2025) (faulting DHS for "inaccurately describ[ing] the facts" and for their "different (and decidedly incorrect) recitation of the events."); *Juan T.R. v. Noem*, No. 26-CV-0107-PJS-DLM, 2026 WL 232015, at *2, (D. Minn. Jan. 28, 2026) (Schiltz, C.J.) (identifying 96 federal court orders violated by ICE in 74 cases since January 1, 2026, and warning that the agency's noncompliance "should give pause to anyone . . . who cares about the rule of law").

it prevent "interference" with the agency—district courts in recent months have hardly hesitated to correct IJ legal errors. *Cf. Barco Mercado v. Francis*, No. 25-CV-6582-LAK, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (collecting cases).

Even if the BIA reviewed the bond decision, this Court would still need to resolve the constitutional issues surrounding Mr. Sterling's courthouse arrest. *See Gonzalez-Roque*, 301 F. 3d at 47–48 (holding that procedural issues can be corrected by the BIA but not constitutional claims). Under these circumstances, requiring exhaustion would delay judicial review without advancing the purposes of prudential exhaustion. The futility exception therefore applies. Since Mr. Sterling raises substantial constitutional questions, review of which is futile, and his prolonged unconstitutional detention would cause him irreparable harm, the purposes of prudential exhaustion would not be furthered here. Where it has the power to put an end to the unconstitutional deprivation of Mr. Sterling's liberty, this court should not stay its hand.

IV. Conclusion

Mr. Sterling's detention rests on a bond determination produced by a constitutionally deficient process. This Court should therefore grant the petition and order Mr. Sterling's release. At minimum, this Court should order a new bond hearing within seven days, at which the IJ: (1) may not consider inaccurate DHS statements about past convictions or pending charges, because there are none; (2) may not rely on uncorroborated police reports alone to conclude DHS has carried its burden to establish dangerousness; and (3) must determine whether alternatives to detention would be adequate to ensure the safety of the community.

Respectfully submitted,

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