

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

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ELDAR MURATOV,

Petitioner,

v.

Case No. 3:26-cv-01110-JEP-PDB

RONNIE WOODALL, Warden, Florida
Baker Correctional Institution. *et al.*,

Respondents.

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**PETITIONER'S REPLY/TRVERSE TO FEDERAL RESPONDENTS' RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Eldar Muratov respectfully submits this Reply/Traverse to Federal Respondents' Response to the Petition for Writ of Habeas Corpus. Doc. 19.

Federal Respondents' Response confirms the central point of the Petition: Mr. Muratov is detained under 8 U.S.C. § 1226(a), the discretionary pre-removal-order detention statute, while his removal proceedings and protection claims remain pending. Doc. 19 at 2–4. He is not detained under § 1225(b), he is not detained under § 1226(c), and he is not detained under § 1231(a). *Id.* Federal Respondents therefore do not dispute that Mr. Muratov is detained under a statute that authorizes discretionary release on bond or conditional parole. See 8 U.S.C. § 1226(a)(1)–(2).

The dispute is whether the custody process used to continue his detention satisfied due process. It did not. Federal Respondents attempt to recast the Petition as a request that this Court simply reweigh the Immigration Judge's discretionary bond determination. But that is not Mr. Muratov's claim. Mr. Muratov challenges the constitutional adequacy of the process that produced

his continued civil detention: a process in which the burden was placed on the detainee, DHS submitted no evidence, the alleged INTERPOL-derived information was not disclosed or tested, the Immigration Judge admittedly did not know what the alleged Red Notice said, and the written custody order denied release through conclusory checked boxes for “Danger to the community/Flight risk” without reasoned findings or meaningful consideration of alternatives to detention.

That is a legal and constitutional challenge to custody process. It is not barred by 8 U.S.C. § 1226(e).

I. FEDERAL RESPONDENTS CONCEDE THAT MR. MURATOV IS DETAINED UNDER § 1226(a).

Federal Respondents expressly state that “Petitioner is detained pursuant to 8 U.S.C. § 1226(a).” Doc. 19 at 3. They further acknowledge that Mr. Muratov entered the United States as a B-2 visitor, was charged under 8 U.S.C. § 1227(a)(1)(B) for overstay, has applied for relief from removal, and remains in ongoing removal proceedings. *Id.* at 2.

That concession matters. Section 1226(a) is discretionary. It provides that the Attorney General “may continue to detain” a noncitizen pending removal proceedings, or “may release” the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). Because detention under § 1226(a) is discretionary rather than mandatory, continued detention must be justified through a meaningful individualized process that reliably determines whether detention is actually necessary to address proven danger or flight risk.

Federal Respondents’ concession also narrows the issues. This is not a case about whether the Immigration Judge had statutory jurisdiction to conduct a custody redetermination. The Government agrees that Mr. Muratov received a § 1226(a) bond hearing. Doc. 19 at 2. The question

is whether that hearing and resulting custody determination were constitutionally adequate. They were not.

II. SECTION 1226(e) DOES NOT BAR REVIEW OF MR. MURATOV'S CONSTITUTIONAL PROCESS CLAIM.

Federal Respondents rely heavily on 8 U.S.C. § 1226(e), but that provision does not bar this Court from reviewing constitutional and legal challenges to immigration detention procedures. Section 1226(e) prevents courts from reviewing the Attorney General's discretionary bond judgment as such. It does not strip habeas jurisdiction over constitutional challenges to the legality of detention or the procedures used to authorize continued custody.

The Supreme Court has made this distinction clear. In *Demore v. Kim*, the Court held that § 1226(e) did not bar habeas review of a constitutional challenge to immigration detention. 538 U.S. 510, 516–17 (2003). In *Jennings v. Rodriguez*, the Court likewise explained that § 1226(e) does not bar challenges to the statutory framework governing detention or to constitutional limits on detention authority. 583 U.S. 281, 295–97 (2018).

Mr. Muratov does not ask this Court to decide whether the Immigration Judge should have assigned more or less weight to a particular exhibit. He asks whether due process permits continued civil detention where the process placed the burden on the detainee, allowed detention to be justified by an undisclosed and untested foreign-supplied allegation, provided no reasoned necessity determination, and failed to meaningfully address whether conditions of release could satisfy the Government's regulatory interests.

That claim falls outside § 1226(e)'s bar. A court does not become a discretionary bond tribunal merely by asking whether the detention process complied with the Constitution. Due process would be meaningless if the Government could avoid review simply by characterizing

every custody-process challenge as disagreement with an Immigration Judge's ultimate bond result.

Federal Respondents cite cases where courts declined to review ordinary attacks on discretionary bond weighing. Those cases do not control here. The Petition is not a generalized complaint that the Immigration Judge gave insufficient weight to family ties or community support. It identifies specific legal defects: the wrong burden, lack of disclosure, lack of reliability review, reliance on INTERPOL-derived accusations without identifying the information relied upon, absence of reasoned findings, and failure to consider less restrictive alternatives. Those are reviewable constitutional process defects.

III. FEDERAL RESPONDENTS' OWN ACCOUNT OF THE BOND HEARING CONFIRMS THE DUE-PROCESS PROBLEM.

Federal Respondents' factual account, even if accepted for purposes of this Reply, strengthens rather than defeats Mr. Muratov's habeas claim.

Federal Respondents assert that before the bond hearing, Mr. Muratov submitted "a lengthy brief with 60 exhibits," while "DHS did not submit any." Doc. 19 at 7. They further assert that DHS did not submit the Red Notice to the Immigration Judge. *Id.* They state that DHS referenced the alleged Red Notice as its "only concern" regarding bond. *Id.* They also state that the Immigration Judge "did not know what the Red Notice said" and asked counsel what Petitioner was accused of in the Red Notice. *Id.*

Those assertions are critical. Under the Government's own description, DHS submitted no evidence, did not submit the Red Notice, did not disclose the underlying documents, and nonetheless identified the supposed existence of that Red Notice as its only concern. The Immigration Judge then denied bond even though, according to Federal Respondents, he did not know what the Red Notice said. *Id.* at 7–8.

That is not a reliable custody process. It is the opposite. If an alleged Red Notice or foreign accusation is the Government's "only concern," due process requires disclosure of the information relied upon, a meaningful opportunity to rebut it, and a reasoned determination that the information is reliable and actually probative of present danger or flight risk. The Government cannot avoid that requirement by saying that Petitioner's counsel discussed the Red Notice first. Once DHS identified the Red Notice as its "only concern," and once the Immigration Judge used the uncertainty surrounding it as part of the reason to deny release, the Red Notice became part of the adverse basis for detention. Due process required more than speculation about an undisclosed foreign-supplied allegation.

The Court should not resolve disputed hearing facts based only on counsel's characterization of an audio recording that has not been filed. Federal Respondents say that "[a] copy of the audio record of proceeding can be provided to the Court upon request." Doc. 19 at 8. If the Court considers the hearing details material, Petitioner respectfully requests that Respondents be directed to file the complete bond-hearing recording or transcript and that Petitioner be afforded a reasonable opportunity to address the actual record. But even under Federal Respondents' version, the constitutional defect is apparent: detention was continued without DHS evidence, without disclosure of the alleged Red Notice, and without a reasoned finding explaining why detention was necessary.

IV. MATTER OF W-E-R-B- DOES NOT AUTHORIZE DETENTION BASED ON AN UNDISCLOSED OR UNTESTED RED NOTICE.

Federal Respondents rely on the Immigration Judge's reference to *Matter of W-E-R-B-*, 27 I. & N. Dec. 795 (B.I.A. 2020), but that decision does not support the custody process used here.

W-E-R-B- was not an immigration-bond case. It addressed whether an INTERPOL Red Notice could constitute reliable evidence in the different context of the serious-nonpolitical-crime

bar to asylum and withholding of removal. *Id.* at 795. It did not hold that an alleged Red Notice proves dangerousness for bond purposes. It did not hold that a Red Notice authorizes civil detention. And it did not hold that the Government may rely on an undisclosed or unexplained INTERPOL communication without reliability findings.

To the contrary, *W-E-R-B-* cuts against Respondents here. There, the Board affirmed a finding that the Red Notice was reliable only after discussing specific record-based factors: the Red Notice identified the issuing country, identified the respondent, was tied to a valid national arrest warrant, involved a crime found not to be political in nature, remained active, and was accompanied by other record evidence, including Form I-213 information. *Id.* at 798–99. The Board also recognized that, where a noncitizen presents evidence that the issuing country abuses Red Notices for political reasons, the Immigration Judge should consider that evidence. *Id.* at 800 n.5.

Here, Federal Respondents' own account shows no comparable process. DHS did not submit the alleged Red Notice. Doc. 19 at 7. The Immigration Judge did not know what it said. *Id.* The written custody order did not identify the alleged INTERPOL information, did not state whether the information was a Red Notice, Diffusion, or something else, did not identify any underlying warrant or foreign charge, did not make reliability findings, and did not explain how any foreign accusation established present danger or flight risk.

A bare citation to *W-E-R-B-* cannot substitute for individualized findings. If the Government or Immigration Judge relies on foreign accusations or INTERPOL-derived information to justify detention, due process requires disclosure, reliability review, and a meaningful opportunity to respond. That is especially true where, as here, the alleged foreign

accusation concerns Russia and Petitioner presented evidence of Russia's misuse of INTERPOL mechanisms against political dissidents.

V. KHARIS DOES NOT SUPPORT FEDERAL RESPONDENTS; IT SUPPORTS THE NEED FOR MEANINGFUL REVIEW OF RED NOTICE EVIDENCE.

Federal Respondents cite *Kharis v. Sessions*, No. 18-cv-04800-JST, 2018 WL 5809432 (N.D. Cal. Nov. 6, 2018), for the proposition that due process is not violated if an Immigration Judge gives some weight to a Russian Red Notice in assessing flight risk. Doc. 19 at 9. But *Kharis* does not hold that an undisclosed or unproduced Red Notice may justify detention. Nor does it hold that foreign accusations may be accepted without reliability review.

To the contrary, although the court declined to hold that a Russian Red Notice was categorically entitled to no weight, it emphasized the serious reliability concerns surrounding Red Notices and expressed doubt whether a Red Notice alone could support a flight-risk finding as a matter of law. *Kharis*, 2018 WL 5809432, at *8. The court then granted habeas relief in part because the agency failed to meaningfully address highly probative evidence undermining the reliability of the Red Notice and Russia's use of INTERPOL mechanisms. *Id.* at *9–10, *12.

That reasoning favors Mr. Muratov. In *Kharis*, the Red Notice and underlying allegations were known and discussed in the administrative record. The petitioner appealed to the BIA, the Immigration Judge issued a written memorandum, and the court still found due-process defects because the agency failed to meaningfully address evidence undermining the Red Notice's reliability. *Id.* at *9–10. Here, Federal Respondents' own account is worse: DHS did not submit the Red Notice, the Immigration Judge did not know what it said, and the custody order contains no reasoned analysis of reliability, political motivation, danger, flight risk, or alternatives to detention. Doc. 19 at 7–8.

Federal Respondents therefore cannot use *Kharis* as a shield. At most, *Kharis* stands for the limited proposition that a properly identified and disclosed Red Notice may receive some weight in an appropriate case. It does not authorize detention based on an undisclosed, untested, and unexplained INTERPOL-derived allegation, especially where the detainee has presented evidence of political misuse and foreign-state repression.

VI. THE DEFECT IS NOT MERELY THAT THE WRITTEN ORDER WAS “NOT PARTICULARLY ROBUST”; THE DEFECT IS THAT THE PROCESS DID NOT RELIABLY JUSTIFY DETENTION.

Federal Respondents describe the written bond decision as “not particularly robust” but argue that the bond-hearing audio supposedly shows the Immigration Judge considered the evidence. Doc. 19 at 9. That misses the point.

Mr. Muratov does not argue that due process always requires a lengthy written opinion in every bond case. The problem is that the custody process as a whole failed to provide a meaningful basis for continued detention. The written order checked “Danger to the community/Flight risk” and cited *Matter of Dobrotvorskii*, 29 I. & N. Dec. 211 (B.I.A. 2025), and *Matter of W-E-R-B-*, 27 I. & N. Dec. 795 (B.I.A. 2020), but did not identify the evidence relied upon, did not explain whether the finding rested on danger, flight risk, or both, did not explain the role of the alleged INTERPOL information, did not address reliability or political motivation, and did not explain why conditions of release would be insufficient.

The regulation governing custody determinations requires that the Immigration Judge’s custody determination be entered on the appropriate form and that the parties be informed orally or in writing of the reasons for the decision. 8 C.F.R. § 1003.19(f). A checked box stating “Danger to the community/Flight risk” is not a meaningful explanation where the alleged basis for danger or flight risk is an undisclosed foreign accusation that DHS did not submit and the Immigration

Judge did not know. It does not allow meaningful review, does not show that constitutionally adequate process was applied, and does not demonstrate that continued detention was actually necessary.

Due process requires a meaningful opportunity to be heard “at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). That requirement is not satisfied by a hearing where the Government submits no evidence, references an undisclosed Red Notice as its only concern, places the burden on the detainee to disprove danger and flight risk, and obtains a custody denial without reasoned findings.

VII. THE GOVERNMENT’S HABEAS-BURDEN ARGUMENT DOES NOT ANSWER THE BOND-HEARING-BURDEN QUESTION.

Federal Respondents state that a habeas petitioner bears the burden of proving custody violates federal law. Doc. 19 at 3. That is true but beside the point. Mr. Muratov meets his habeas burden by showing that the process used to continue his civil detention was constitutionally inadequate. The question within that constitutional claim is who must bear the burden at a custody hearing when the Government seeks to continue physical confinement.

The answer should be the Government. Physical liberty is the baseline. Detention is the exception. When the Government seeks to imprison a person for civil regulatory purposes, due process requires the Government to justify that restraint. See *Addington v. Texas*, 441 U.S. 418, 425, 431–33 (1979); *Foucha v. Louisiana*, 504 U.S. 71, 80–83 (1992); *United States v. Salerno*, 481 U.S. 739, 750–52 (1987).

Several courts of appeals have recognized that due process requires the Government to bear the burden at constitutionally adequate immigration custody hearings. See *Velasco Lopez v. Decker*, 978 F.3d 842, 855–56 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39–41 (1st Cir. 2021); *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011). At minimum, danger should

be proven by clear and convincing evidence, and flight risk by at least a preponderance of the evidence. See *Hernandez-Lara*, 10 F.4th at 39–41.

Those authorities are persuasive because they apply ordinary due-process principles to the severe deprivation of physical liberty. Federal Respondents cite regulations and BIA decisions placing the burden on the detainee in ordinary § 1226(a) bond proceedings. But those administrative rules do not answer the constitutional question. A regulation cannot cure a due-process violation. Where the Government seeks to continue civil imprisonment, especially based on undisclosed or contested government information, requiring the detained person to prove a negative—that he is not dangerous and not a flight risk—creates an unacceptable risk of erroneous detention.

This case illustrates that risk. Federal Respondents say DHS submitted no evidence. Doc. 19 at 7. Yet Mr. Muratov remained detained because he supposedly did not satisfy the Immigration Judge that he was not a danger or flight risk in the face of an unproduced Red Notice. That is precisely why the burden matters. The Government should not be able to continue detention by presenting no evidence and then faulting the detainee for failing to disprove an undisclosed accusation.

VIII. EXHAUSTION DOES NOT DEFEAT THIS PETITION.

Federal Respondents also argue that Mr. Muratov has not exhausted because, according to ICE, he had not appealed the custody order to the BIA “as of” May 18, 2026. Doc. 19 at 2. That argument does not defeat habeas review.

As an initial matter, the Government’s statement was premature on its own terms. The custody order states that Petitioner reserved appeal and that any appeal was due on May 21, 2026. Pet. ¶ 35. Federal Respondents filed their Response on May 18, 2026—before the appeal deadline.

Their statement that no appeal had been filed “as of today’s date” did not establish a failure to exhaust when made.

In any event, exhaustion is not jurisdictional in § 2241 proceedings in the Eleventh Circuit. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474–75 (11th Cir. 2015). At most, it is a nonjurisdictional, judge-made requirement that may be excused where administrative review is inadequate, futile, or incapable of preventing irreparable injury. See *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992), superseded by statute on other grounds as recognized in *Booth v. Churner*, 532 U.S. 731 (2001).

Exhaustion should be excused here because Mr. Muratov raises constitutional claims concerning present physical detention. The BIA cannot grant habeas relief, cannot order this Court’s habeas remedy, and cannot declare the governing custody process unconstitutional. See *Matter of C-*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992). Nor would ordinary administrative review provide a prompt remedy for ongoing unconstitutional detention, especially where the injury is the deprivation of physical liberty itself.

Federal Respondents’ exhaustion position also reveals a practical contradiction. They argue that the written custody order need not provide meaningful reasons because the Immigration Judge may have considered everything orally. But if the detainee must appeal to the BIA, meaningful reasons are essential. A bare checked-box order deprives both the detainee and reviewing bodies of the basis necessary to evaluate the decision. The Government cannot simultaneously insist on administrative appeal while defending a custody order that does not meaningfully explain what is being appealed.

IX. LESS RESTRICTIVE ALTERNATIVES HAD TO BE MEANINGFULLY CONSIDERED.

Federal Respondents argue that “the rejection of alternatives is a discretionary decision.” Doc. 19 at 1–2. That framing is incomplete. The ultimate custody decision may involve discretion, but due process requires the decisionmaker to meaningfully consider whether detention is necessary in light of less restrictive alternatives.

Civil immigration detention is regulatory, not punitive. It is justified only by legitimate nonpunitive purposes, principally ensuring appearance and protecting the community where actual danger is proven. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). If those purposes can be served through bond, release to family, reporting requirements, electronic monitoring, travel restrictions, address-update obligations, or other supervision conditions, continued incarceration is excessive. Section 1226(a) itself confirms the relevance of alternatives. Congress expressly authorized release on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). A custody process that does not meaningfully assess whether those statutory alternatives can address any proven concern does not reliably determine whether detention is necessary.

Here, the written order does not identify any release conditions considered or explain why any conditions would be insufficient. Nor does Federal Respondents’ Response identify any such reasoned analysis. Instead, the Government argues that the Immigration Judge’s decision should be insulated from review because the ultimate custody determination was discretionary. That approach would collapse due process into unchecked detention discretion. The Constitution requires more.

X. THE COURT SHOULD GRANT HABEAS RELIEF.

Federal Respondents' Response confirms that Mr. Muratov remains detained under § 1226(a) after a constitutionally inadequate custody process. DHS submitted no evidence. The alleged Red Notice was not produced. The Immigration Judge did not know what the Red Notice said. The burden was placed on Mr. Muratov. The written order provided only conclusory checked boxes. No reasoned finding explains why Mr. Muratov is dangerous, why he is a flight risk, why any INTERPOL-derived information is reliable and nonpolitical, or why conditions of release would be insufficient.

That process is not enough to justify continued civil imprisonment.

The Court should grant the Petition and order Mr. Muratov's immediate release under appropriate conditions of supervision. At minimum, the Court should order Respondents to provide a constitutionally adequate custody hearing within seven days before a neutral decisionmaker, at which the Government bears the burden of justifying continued detention, any INTERPOL-derived information or foreign-supplied allegation relied upon must be disclosed and subjected to reliability review, evidence of political motivation and INTERPOL misuse must be meaningfully considered, less restrictive alternatives must be considered, and any continued detention must be supported by specific, reasoned findings.

Respectfully submitted on May 20, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2026, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF system, which provides notice to all counsel of record.

/s/ Vano I. Haroutunian
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