UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-CV-24078-MOORE/Elfenbein

JOSE SERRANO, Petitioner,	)	
v.	)	**PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**
JUAN LOPEZ-VEGA, In his official capacity as Acting Director, Miami Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, et al; Respondents.	)	

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

It is unfortunate that Respondents made a factual misstatement in their Response which goes to the core of this Petition. It is doubly unfortunate that this occurs in a case where the US government is colluding with the corrupt Ecuadorean government to return an important political asylee to face persecution by that government.

Respondent's allege that "on August 21, 2025 the Attorney General's office in Ecuador formally charged Petitioner with murder," which is false. The facts and correct timeline are as follows:

1) It has been widely reported that that Respondents are seeking to deport criminal aliens whose governments will not accept them to third countries. A well-known example is that Venezuelan criminal aliens were deported to El Salvador after an agreement with President Bukele of that country. Third country criminal detainees have recently been deported from the US to South Sudan and other countries.
2) The US government is currently negotiating such an agreement with the government of Ecuador (See Exhibit A).
3) On August 1, 2025 Department of Homeland Security Kristi Noem signed a Memorandum of Understanding with the government of Ecuador (exhibit B).

4) Six days after the signing of the Memorandum of Understanding, agents of the Homeland Security Department arrested Petitioner at his home. The timing is clearly not a coincidence. Petitioner is probably the best known, most vocal and most credible critic of the current President of Ecuador, having denounced him repeatedly as a drug dealer, with extensive details, on his Twitter account, which has a million followers (Exhibit C).
5) Petitioner is the former President of the Congress of Ecuador, and former Justice, Interior, Finance and Labor Minister, serving as essentially the number two in power in his country for six years (Exhibit D). He had no criminal arrests or convictions anywhere in the world at the time Respondents arrested him, had cooperated extensively with the US government while in power, and was given an award by the Drug Enforcement Agency in Washington (among the reasons Ecuador's current government seeks to persecute him) (Exhibit E).
6) Petitioner entered the US legally, and sought asylum within a few months while in legal status. Undersigned counsel has been an immigration attorney for over 25 years and is not aware of a single other non-criminal affirmative asylum seeker arrested in their home while their case is pending. Petitioner was allegedly told by the DHS agent who arrested him that it was on behalf of Ecuador (Exhibit H).
7) On August 18, 2025, 11 days after Petitioner's arrest by Respondents, Ecuadorean prosecutors attempted for the first time to investigate (not bring formal charges as Respondents claim) Petitioner for the notorious murder of a political candidate. (See Exhibit F: "These justify not an accusation, but rather the need to formalize and continue the investigation. The main legal effect of the hearing of charges … is not the opening of a trial, but the formal commencement of the prosecutorial investigation stage… possible participation in a crime are sufficient, thereby justifying the continuation of the investigation).
8) On September 3 charges against Petitioner were rejected by heroic Ecuadorean Judge Ayala who said there was no evidence, and that "the prosecutor's office cannot be the enforcement arm of the government of the day" (Exhibit F).
9) As a direct result of her disobedience to the Ecuadorean government in this case, Judge Ayala was then suspended without pay for three months, for "disrespect of the prosecutor." A criminal investigation was then begun against Counselor Goyes, who had voted not to sanction Judge Ayala (Exhibit F). As a result of the judge's heroic actions, there are no murder charges against Petitioner, only a continued investigation.
10) Ecuador is not Switzerland, as Respondent's apparently want this Court to believe. Ecuador was ranked 97 out of 142 countries in the world by World Justice Project in 2024 (See Exhibit G) On April 5, 2024 the Ecuadorean government sent the military into the Mexican embassy to arrest former Vice President Jorge Glas who had been granted asylum by Mexico (See Exhibit G) "The action triggered global

condemnation for violating the Vienna Convention on Diplomatic Relations and led Mexico to break relations with Ecuador. The use of militarized force against a diplomatic mission to seize a high-profile opposition figure has been considered a grave overreach." Ecuador, surrounded by Colombia and Peru, is considered by to be a narco-state with regular "targeted political and judicial persecution of opponents." The convergence of these factors… deeply entrenched narco-politics and corruption in justice institutions, emergency powers that erode constitutional guarantees and the instrumentalization of the judiciary to target dissent – creates a well-founded and imminent risk of violations of due process… this risk is particulary acute for individuals who are politically exposed, critical of the government… who are vulnerable to being targeted under the guise of security operations" (Exhibit G).

11) There is no legitimate explanation for Respondents simply parroting and sending to this Court accusations by Ecuador's corrupt government against a former President of Congress, top government minister in Ecuador and fierce critic of the Ecuadorean government at face value, without any question or context.

12) The specific murder accusations regarding Presidential Candidate Villavicencio are especially ludicrous to any expert (See exhibit H). "Upon information and belief, the corrupt Ecuadorean prosecutor presented nothing other than the live testimony of only one witness – Danel Salcedo – who has been convicted of perjury… and is serving a 30-year sentence… Salcedo's testimony was not based on his personal knowledge… rather his testimony was that an inmate who Salcedo was with in jail – who is now deceased – told Salcedo – that another inmate told that inmate that a third person told him that he had overheard Mr. Serranto was one of the intellectual authors behind the Villavicencio assassination. This was four levels of hearsay - uncorroborated by zero evidence..." (Exhibit H)

13) It is obvious from the timing that the charges against Petitioner in Ecuador were invented solely for purposes of Petitioner's US deportation proceeding. The Petitioner had been in the US and out of power for two years at the time of Villavicencio's murder. His potential involvement in the murder had never been mentioned in the two years since the crime until this time (See Exhibit I, an affidavit by Villavicencio's widow who says she has closely followed every detail of the case and Petitioner's involvement was never mentioned). Candidate Villavicencio was a fellow member of the opposition and vocal critic of the Ecuadorean government, and therefore the government had everything to gain by his murder while Petitioner had no motive whatsoever.

SUBJECT MATTER JURISDICTION

Respondents argue that this Court lacks Subject Matter Jurisdiction, however this is clearly contradicted by many important Supreme Court and Eleventh Circuit precedent cases. This Court has subject-matter jurisdiction over the instant petition and action under 28

U.S.C. § 2241(c)(1) and (3), Art. I, § 9, C1. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as Petitioner is in the custody of the United States Department of Homeland Security ("DHS"), acting under the color of authority, by Respondents, agents of the United States.

Despite the provisions of INA § 236(e), codified at 8 U.S.C. § 1226(e), which bar federal courts from reviewing discretionary decisions regarding parole and bond "under this section," it is well-settled that INA § 236(e) does not serve to bar federal courts from reviewing questions of statutory construction or Constitutional claims such as mandatory detention under the statutory writ of habeas corpus, 28 U.S.C. §2241. *See Demore v. Kim,* 123 S.Ct. 1708, 1713-14 (2003) (INA §236(e) does not bar habeas jurisdiction in absence of specific provision barring habeas and because petitioner lodged a constitutional challenge to legislation); *Zadvydas v. Davis,* 533 U.S. 678, 686-89, 121 S.Ct. 2491, 2497-98 (2001) (INA 236(e), 242(a)(2)(B)(ii), 242(a)(2)(C), 242(g) did not bar habeas jurisdiction for challenge to post-removal detention); *Haitian Refugee Ctr., Inc. v. Nelson,* 872 F.2d 1555, 1560 n. 9 (11th Cir. 1989) (holding that federal courts also have jurisdiction to review allegations that agency officials have acted outside their statutory authority); *Gonzalez v. O'Connell,* 355 F.3d 1010, 1014-15 (7th Cir. XXXX) (Habeas jurisdiction to challenge mandatory detention even where the predicate issue to the constitutional claim was a statutory claim); *Aguilar v. Lewis,* 50 F. Supp.2d 539, 542-43 (E.D. Va. 1999) (INA §236(e) bars discretionary decisions not statutory interpretation); *Velasquez v. Reno,* 37 F. Supp.2d 663, 667-70 (D.N.J. 1999) (INA §236(e) barring review of detention decisions does not foreclose habeas challenge to application of statute). Moreover, INA §242(g) does not bar review of detention decisions; nor does INA §242(b)(9) or INA §242(a)(2)(B)(ii). *Zhislin v. Reno,* 195 F.3d 810 (6th Cir. 1999) (INA § 242(g) as interpreted by *Reno v. American- Arab Anti-Discrimination Comm.*, 119 S.Ct. 936, 943 (1999) does not bar review of challenge to indefinite detention); *Parra v. Perryman,* 172 F.3d 954 (7th Cir. 1999) (In light of *American Arab* INA §242(g) does not bar habeas to review detention issue); *Sillah v. Davis,* 252 F. Supp.2d 589, 593-97 (W.D. Tenn. 2003) (INA §242(a)(2)(B)(ii) does not preclude habeas jurisdiction to challenge revocation of parole); *Bouayad v. Holmes,* 74 F. Supp.2d 471, 473-74 (E.D. Pa. 1999) (Government conceded that habeas jurisdiction existed to challenge mandatory detention and the court determined that neither INA § 236(e) nor INA § 242(b)(9) preclude jurisdiction over detention); *Kiareldeen v. Reno,* 71 F. Supp.2d 402, 405-07 (D. N.J. 1999) (Neither INA § 236(e) nor § 242(g) bars habeas jurisdiction to review detention based upon secret evidence); *Alikhani v. Fasano,* 70 F. Supp.2d 1124, 1126-30 (S.D. Cal. 1999) (INA §§242(g), 242(b)(9) and 236(e) do not bar challenge to statutory and constitutional challenge to mandatory detention).

In *INS v. St. Cyr*, 533 U.S. 289, 302 (2001), the Supreme Court held that habeas is still Available; *See Calcano-Martinez v. I.N.S.*, 533 U.S. 338 (2001) (holding that aliens may bring their statutory and constitutional claims in district court by filing a habeas petition although such claims brought in petitions for review with courts of appeals would be dismissed for lack of jurisdiction); *Bejacmar v. Ashcroft*, 291 F.3d 735, 736 (11th Cir. 2002) (abandoning its reasoning in *Richardson v. Reno,* 180 F.3d 1311 (11th Cir. 1998), *cert. denied,* 120 S.Ct. 1529 (2000), and finding that "*St. Cyr* removes the last statutory pillar supporting our circuit's earlier conclusion that IIRIRA repealed district court jurisdiction in habeas cases")

Similarly, in *Zadvydas v. Davis*, 533 U.S. 678, 694-97, 121 S.Ct. 2491 2501-02 (2001), resident aliens who had been ordered removed brought habeas petitions challenging their detention during a period of custody beyond the 90-day removal period. In that case, the

Supreme Court stated as follows regarding habeas jurisdiction: "We note at the outset that the primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases." *Id.* at 687 (citing Section 2241(c)(3), authorizing any person to claim in federal court that he or she is being held "in custody in violation of the Constitution or laws. . .of the United States"). With respect to the alien's important Constitutional claims, the Court found that [a] statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to "depriv[e]" any person . . . of . . . liberty . . . without due process of law." Freedom from imprisonment--from government custody, detention, or other forms of physical restraint--lies at the heart of the liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992). And this Court has said that government detention violates that clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), or, in certain special and "narrow" nonpunitive "circumstances," *Foucha*, supra, at 80, 112 S.Ct. 1780, where a special justification, such as harm-threatening mental illness, outweighs the "individual's constitutionally protected interest in avoiding physical restraint." *Kansas v. Hendricks*, 521 U.S. 346, 356, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997). The proceedings at issue here are civil, not criminal, and we assume that they are nonpunitive in purpose and effect.

Petitioner's case goes to the core of statutory and constitutional habeus corpus jurisdiction. If, as Respondents claim, the Federal Government can jail a non-criminal asylum seeker at the behest of a corrupt foreign government in any conditions they choose, and the Judicial Branch of government has no jurisdiction to hear the case, this would upend the protections put in place for individuals against the government by the framers of the Constitution. Federal courts have jurisdiction over habeas corpus petitions, primarily under 28 U.S.C. § 2241. This broadly worded statute allows federal courts to grant the writ when a person is in custody in violation of the Constitution, laws, or treaties of the United States. Detained asylum seekers are considered to be in federal custody. Habeas corpus is commonly used by detained immigrants, including asylum seekers, to challenge the legality of their detention. This can include challenging detention (arguing detention violates the Constitution's Due Process Clause) and challenging the conditions of confinement.

While Federal law, particularly the provisions governing judicial review of removal orders, has significantly limited the use of habeas corpus to challenge the merits of an underlying removal or asylum decision itself, the Supreme Court has clarified that constitutional claims, especially those concerning the legality and constitutionality of detention, remain open to challenge via habeas corpus, even after statutory reforms were intended to limit judicial review. In *Zadvydas v. Davis*, 533 U.S. 678 (2001) the Supreme Court explicitly held that 28 U.S.C. § 2241 habeas proceedings are available as a forum for statutory and constitutional challenges to immigration detention. The Court found that Congress's statutory changes (like those in IIRIRA) were not clear enough to eliminate the availability of the writ for challenges to custody itself, which is a key purpose of the writ. Likewise, *Rasul v. Bush* 542 U.S. 466 (2004) held that U.S. federal courts have jurisdiction to hear habeas corpus petitions from foreign nationals. *Hamdan v. Rumsfeld* 548 U.S. 557 (2006) and *Boumediene v. Bush* 553 U.S. 723 (2008) held that the detainees at Guantanamo Bay have a constitutional right to the writ of habeas corpus under the Suspension Clause. It also found the substitute judicial review provided by the Detainee Treatment Act (DTA) and Military Commissions Act (MCA) to be an unconstitutional suspension of the writ. Other recent Supreme Court cases which found jurisdiction for alien

habeas corpus are *Demore v. Kim*, 538 U.S. 510 (2003) and *Jennings v. Rodriguez*, 583 U.S. 830 (2018) where the Supreme Court remanded the case to consider the constitutional claims directly, which reinforces the continued viability of Due Process challenges.

The primary legal case in the Eleventh Circuit that addresses an asylum seeker's right to a writ of habeas corpus is *Sopo v. U.S. Attorney General*, 825 F.3d 1199 (11th Cir. 2016). In the Eleventh Circuit, the ability of an asylum seeker to request habeas corpus (28 U.S.C. § 2241) typically centers on a challenge to the lawfulness or constitutionality of their detention. The most common ground for this challenge is that their detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

Exhaustion of Administrative Remedies Is Not Required in This Case

"Of 'paramount importance' to any exhaustion inquiry is congressional intent. Where Congress specifically mandates, exhaustion is required. But where Congress has not clearly required exhaustion, sound judicial discretion governs." *McCarthy v. Madigan,* 503 U.S. 140, 144, 112 S.Ct. 1081 (1992); *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (11th Cir. 1989) ("We note at the outset that the application of the judicial exhaustion doctrine is subject to the discretion of the trial court.") (citing *Panola Land Buyers Ass'n v. Shuman,* 762 F.2d 1550, 1556-57 (11th Cir. 1985); *Haitian Refugee Center v. Smith,* 676 F.2d 1023, 1034 (5th Cir. 1982) ("the exhaustion requirement is not a jurisdictional prerequisite but a matter committed to the sound discretion of the trial court"). Here, Congress has not specifically mandated exhaustion before judicial review of custody determinations. Because exhaustion is not required by statute, sound judicial discretion must govern this Court's decision of whether to exercise jurisdiction absent exhaustion. *See McCarthy,* 503 U.S. at 144. Exercise of such sound judicial discretion is warranted here because there is an abundant body of law that supports this Court's jurisdiction over this case absent exhaustion.

First, exhaustion does not apply where, as here, a petition challenges only the agency action collateral to removal proceedings, such as bond. *Welch v. Reno,* 101 F.Supp.2d 347, 351 (D. Md. 2000) (Statutory exhaustion only for review of final orders of removal); *Aguilar v. Lewis,* 50 F.Supp.2d 539, 541 (E.D. Va. 1999) (No federal statute imposes an exhaustion requirement concerning bond); *Rowe v. INS,* 45 F. Supp. 2d 144, 145-46 (D. Mass. 1999) (and cases cited therein); *Pastor-Camarena v. Smith*, 977 F. Supp. 1415, 1417 (W.D. Wash. 1997) (and cases cited therein); *Montero v. Cobb*, 937 F. Supp. 88, 90-91 (D. Mass. 1976). *Alikhani v. Fasano,* 70 F.Supp.2d 1124, 1129- 30 (S.D. Cal. 1999). The instant petition only seeks review of the IJ's bond determination, and not of a final order of removal. In addition, exhaustion is not required "where [, as here,] an agency's exercise of authority is clearly at odds with the specific language of the statute." *McClendon v. Jackson Television Inc.*, 603 F.2d 1174, 1177 (5th Cir. 1979). As discussed *infra*, the IJ's exercise of authority to deny Petitioner release on bond solely on the ground that the IJ has no statutory authority to impose bond conditions other than monetary conditions directly contravenes the specific language of § 236(a), which confers the IJ such authority.

Moreover, exhaustion is also not required where a review procedure exists but it is not mandated by statute or agency regulations. *Darby v. Cisneros*, 113 S.Ct. 2539 (1993) (Where regulation provided that ALJ's determination shall be final unless the Sec. of HUD, in his discretion, decides to review the decision after request of a party, such regulation does not provide for mandatory review and plaintiff could file suit without making request to Sec.); *Noriega-Lopez v. Ashcroft,* 335 F.3d 874, 880-82 (9th Cir. 2003) (Failure to file a motion to

reconsider BIA decision is neither statutorily required under INA §242(d)(1) nor prudentially required); *Chang v. U.S.,* 327 F.3d 911, 922- 24 (9th Cir. 2003) (Where investor was not required to seek a removal proceeding to review denied petition and where IJ in removal could not address APA, estoppel and constitutional claims and where statutes now limit the scope of removal proceedings, plaintiffs did not have to exhaust removal proceeding). Here, although Petitioner may appeal the IJ's decision to the BIA, such appeal is not mandated by statute or agency regulations. *See* 8 C.F.R. § 1003.19(f) ("An appeal from the determination by an Immigration Judge *may be taken* to the Board of Immigration Appeals pursuant to § 1003.38") (emphasis added).

Finally, exhaustion of administrative remedies would be futile in this case because the BIA has no jurisdiction to adjudicate constitutional issues raised here.1 *See Mathews v. Eldridge*, 424 U.S. 319, 328-30 (1976) (A constitutional challenge to administrative action does not require exhaustion.); *Jean v. Nelson,* 727 F.2d 957, 981 (11th Cir. 1984) (en banc), *aff'd,* 472 U.S. 846, 105 S.Ct. 2992 (1985) (allowing exception to exhaustion requirement where remaining administrative remedies could not cure alleged defect in agency procedures); *Ramirez-Osorio v. INS,* 745 F.2d 937, 939 (5th Cir. 1984) (holding that "exhaustion is not required when administrative remedies are inadequate"); *Haitian Refugee Center v. Smith,* 676 F.2d 1023, 1033-36 (5th Cir. 1982) (same). Some courts have held that, notwithstanding the constitutional claims, exhaustion is still required if the claims involve a procedural error that is correctable by the administrative tribunal. *Vargas v. INS,* 831 F.2d 906, 908 (9th Cir. 1987); *Dhangu v. INS,* 812 F.2d 455, 460 (9th Cir.1987). Nonetheless, exhaustion is not required here since the BIA has no expertise to adjudicate the equal protection claim raised in the instant case. *See Garberding v. INS*, 30 F.3d 1187, 1188 n.1 (9th Cir. 1994) (Although a party may be required to exhaust a procedural due process claim that could be remedied by the IJ, an equal protection claim that the IJ/BIA cannot decide does not require exhaustion); *Jankowski v. INS,* 138 F.Supp.2d 269, 273-76 (D. Conn. 2001) *rev'd on other grounds* 291 F.3d 172 (2d Cir. 2002) (Equal protection challenge does not require exhaustion).

CONCLUSION

It is clear from the timing, facts and circumstances of this case that Respondents are cooperating with the corrupt Ecuadorean government to return their most wanted political critic in exchange for benefits from Ecuador. The US is obligated by US and international law to protect legitimate asylum seekers like Petitioner from their persecutors. The framers of the Constitution would not have been surprised that the US government was attempting to exchange the freedom of an asylum seeker for benefits from a foreign country. Habeas Corpus and the independence of the Judicial Branch were made part of the US Constitution for exactly a case such as this one.

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Respectfully submitted,

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