

UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT OF FLORIDA

LUIS DAVID FLORES RUIZ

Proceeding Pro Se,

Petitioner,

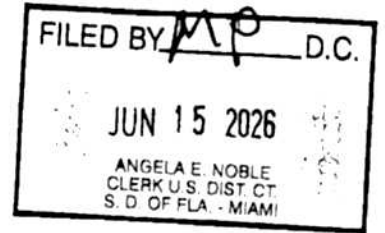
v.

_____, Warden, Pompano Beach Detention Facility;
_____, Field Office Director, Miami Field Office, United
States Immigration and Customs Enforcement; TODD M.
LYONS, Acting Director, United States Immigration and
Customs Enforcement; ALEJANDRO MAYORKAS,
Secretary of Homeland Security; MERRICK B.
GARLAND, United States Attorney General,

Respondents.

Civil Action No.:

**PETITIONER'S REPLY IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS AND
IN OPPOSITION TO
RESPONDENTS' MOTION TO
DISMISS**



INTRODUCTION & SUMMARY OF ARGUMENT

This case presents a straightforward yet profound constitutional question: May the Government indefinitely detain a non-criminal father of a United States citizen infant without ever affording him a bond hearing? The answer must be no. Petitioner Luis David Flores Ruiz, a man with no criminal history, deep community ties, a pending humanitarian U Visa application, and a U.S. citizen daughter who depends on him entirely, has been incarcerated in civil immigration detention since September 12, 2025. He has never been afforded an individualized custody determination. His detention is governed not by the mandatory detention statute, 8 U.S.C. § 1226(c), which applies to criminal aliens, but by the discretionary provision of § 1226(a), which requires an individualized assessment. Respondents' failure to provide this basic process violates both the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

Respondents' anticipated Motion to Dismiss rests on a series of flawed jurisdictional and procedural arguments that mischaracterize the nature of this action. Petitioner does not challenge his underlying removal order, which is pending appeal before the Board of Immigration Appeals (BIA). Rather, he challenges the *fact and lawfulness of his present physical confinement*. This

Court therefore has unquestionable jurisdiction under 28 U.S.C. § 2241 to hear this fundamental challenge to executive detention.

This Reply and Brief will demonstrate that:

1. **Jurisdiction is Proper:** This Court possesses subject matter jurisdiction under 28 U.S.C. § 2241 because this Petition challenges the legality of Petitioner's detention itself, a claim that falls outside the jurisdiction-stripping provisions of the REAL ID Act, which apply to challenges of final removal orders.
2. **Exhaustion is Not Required:** The administrative exhaustion requirement is inapplicable because there is no administrative remedy for a constitutional due process violation stemming from the denial of any bond hearing whatsoever.
3. **Section 1226(e) is No Bar:** The bar on judicial review in 8 U.S.C. § 1226(e) applies to discretionary decisions made *during* a bond hearing, not to the Government's failure to provide a statutorily and constitutionally required hearing in the first place.
4. **Detention is Unlawful:** Petitioner's prolonged detention without an individualized bond hearing—where the Government would be required to prove he is a flight risk or danger by clear and convincing evidence—is a flagrant violation of the Due Process Clause.
5. **A TRO is Essential:** A Temporary Restraining Order (TRO) is necessary not merely to prevent a transfer for convenience, but to preserve this Court's jurisdiction and prevent the irreparable harm of mootness through removal, which would permanently sever Petitioner from his U.S. citizen daughter.

This Court should deny Respondents' Motion to Dismiss and grant the writ, ordering Petitioner's immediate release or, in the alternative, a prompt, individualized bond hearing before a neutral decision-maker.

II. THE COURT HAS JURISDICTION UNDER 28 U.S.C. § 2241 BECAUSE THIS PETITION CHALLENGES THE LAWFULNESS OF PETITIONER'S DETENTION, NOT A FINAL ORDER OF REMOVAL

Respondents will likely argue that the REAL ID Act of 2005, codified in relevant part at 8 U.S.C. § 1252, strips this Court of subject matter jurisdiction over this habeas petition. This argument fundamentally misconstrues both the REAL ID Act and the nature of Petitioner's claim. While the Act channels direct review of "final orders of removal" to the courts of appeals, it does not repeal the "Great Writ" for individuals challenging the constitutionality of their physical confinement.

The REAL ID Act states that a petition for review filed with an appropriate court of appeals "shall be the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5). Petitioner, however, does not ask this Court to review, vacate, or modify the Immigration Judge's December 1, 2025 removal order. That order is the subject of a pending appeal before the BIA. Instead, this Petition challenges a distinct legal wrong: the executive branch's ongoing, unauthorized physical restraint of Petitioner in violation of statute and the Constitution.

Courts have consistently recognized this critical distinction. "The REAL-ID Act does not repeal the habeas jurisdiction available to [a petitioner], as the government contends. The jurisdiction-stripping provisions of the REAL-ID Act removed federal habeas jurisdiction over final orders of removal, in favor of direct petitions for review. But the REAL-ID Act's jurisdiction-stripping provisions do not remove federal habeas jurisdiction over petitions that do not directly challenge a final order of removal." *Hedelito Garcia v. Linda Thomas*, 683 F.3d 952, 957-58 (9th Cir. 2012). Petitioner's claims "do not relate to the IJ's decision to deny bond but instead involve a challenge to the conditions of his confinement," which falls squarely within the traditional scope of habeas corpus. *Vidal-Martinez v. Prim*, No. 20-cv-1564, 2020 WL 6713307, at *4 (N.D. Ill. Nov. 3, 2020).

Petitioner's claim is not that he is legally entitled to remain in the United States; it is that he is legally entitled to be free from arbitrary detention *while* the legality of his status is adjudicated. The writ of habeas corpus has always existed to test the legality of executive detention, and this Court retains jurisdiction to do so. *See Campbell v. Washburn*, No. 4:19-cv-108-CDL, 2023 WL 2912312, at *4 (M.D. Ga. Mar. 31, 2023) (acknowledging habeas jurisdiction remains to challenge the fact of custody). Because this Petition challenges the "fact or duration" of confinement, not the merits of a removal order, this Court has jurisdiction under 28 U.S.C. § 2241.

III. THE EXHAUSTION REQUIREMENT OF 8 U.S.C. § 1252(d)(1) DOES NOT APPLY TO CONSTITUTIONAL CHALLENGES TO PROLONGED DETENTION WITHOUT A BOND HEARING

Respondents may also argue that this Petition is barred because Petitioner has failed to exhaust his administrative remedies as required by 8 U.S.C. § 1252(d)(1). This argument fails because the remedy Petitioner seeks—a constitutionally adequate bond hearing to remedy a due process violation—is not available through any administrative channel.

The exhaustion requirement applies when there is an administrative process available to provide the relief sought. For example, in the context of challenging a removal order, a non-citizen must first appeal to the BIA before seeking judicial review. *See Harrypersad Sundar v. INS*, 328 F.3d 1320, 1324 (11th Cir. 2003) (holding that exhaustion applies to review of removal orders). But Petitioner's claim is different. He asserts that the Government's failure to provide him with *any* individualized bond hearing is a violation of his constitutional right to due process.

There is no administrative form to file or motion to make before an agency to vindicate this specific constitutional claim. An Immigration Judge's authority is limited to applying statutes and regulations; an IJ cannot declare those statutes or their application unconstitutional. Because no

administrative proceeding exists to address this issue, requiring exhaustion would be futile and would serve only to prolong an unconstitutional detention.

As one court aptly held, “Petitioner is requesting that the Court review whether his continued detention is consistent with the Fifth Amendment, and there is no administrative proceeding that would address this issue. In light of these circumstances, the Court will not require that Petitioner exhaust his administrative remedies.” *Duong v. Immigration & Naturalization Serv.*, 118 F. Supp. 2d 1059, 1064 (S.D. Cal. 2000). The exhaustion doctrine does not compel a petitioner to pursue a remedy that does not exist. This Court should reject any such argument from Respondents.

IV. 8 U.S.C. § 1226(e) DOES NOT BAR THIS COURT FROM REVIEWING WHETHER PETITIONER WAS AFFORDED THE STATUTORILY REQUIRED INDIVIDUALIZED CUSTODY DETERMINATION UNDER § 1226(a)

Respondents will likely contend that 8 U.S.C. § 1226(e) strips this Court of jurisdiction to review any bond-related matter. This is a gross overreading of the statute. Section 1226(e) states that “No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.” This provision bars review of the Attorney General’s *discretionary judgments*, such as the amount of bond set or the weighing of evidence at a hearing. It does not, however, bar review of whether the Government acted in accordance with the law in the first place.

The central issue here is that Respondents have failed to apply the correct statutory framework to Petitioner’s detention. Detention authority under the INA is divided into two main categories. Section 1226(c) mandates detention for individuals convicted of certain crimes. Section 1226(a), the default provision, grants the Attorney General discretionary authority to detain or release an individual pending removal proceedings.

Petitioner has absolutely no criminal history. He cannot, as a matter of law, be subject to mandatory detention under § 1226(c). His detention can only be authorized, if at all, under the discretionary standard of § 1226(a). This provision and its implementing regulations require an individualized assessment of whether the non-citizen poses a danger to the community or a risk of flight. *See* 8 C.F.R. §§ 236.1(c), 1003.19. There is a “strong presumption... in favor of discretionary detention and individualized bond hearings” under § 1226(a). *Gordon v. Johnson*, 991 F. Supp. 2d 258, 267 (D. Mass. 2013).

Petitioner has never been afforded this required individualized determination. He is not challenging the *outcome* of a discretionary decision; he is challenging the *absence* of any lawful process. Section 1226(e) does not immunize the Government’s failure to hold a legally required hearing. This Court has jurisdiction to determine whether the Government has complied with the statutory prerequisites of § 1226(a), and if it has not, to order that a constitutionally-compliant hearing be held.

V. PETITIONER'S PROLONGED DETENTION WITHOUT AN INDIVIDUALIZED BOND HEARING VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

Independent of the statutory violation, Petitioner’s detention of now nine months without a bond hearing is a profound violation of the Fifth Amendment’s Due Process Clause. The Supreme Court has unequivocally held that the Due Process Clause applies to all “persons” within the United States, including non-citizens, and that it prohibits the government from imposing “arbitrary” physical restraint. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil detention, particularly when prolonged, “is constitutionally suspect.” *Id.* at 699.

In the Eleventh Circuit, it is established that even mandatory detention under § 1226(c) “contain[s]

an implicit temporal limitation at which point the government must provide an individualized bond hearing” once detention becomes “unreasonably prolonged.” *Maxi Dinga Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1203 (11th Cir. 2016). If even Congressionally-mandated detention is subject to a due process time limit, then it follows *a fortiori* that discretionary detention of a non-criminal individual like Petitioner must, at a minimum, be accompanied by a prompt and meaningful hearing. Indeed, courts in this District recognize that “individualized bond hearings... are appropriate in this Circuit.” *Rogers v. Field Office Director, ICE, Miami Field Office*, No. 21-cv-20562, 2022 WL 553458, at *3 (S.D. Fla. Feb. 25, 2022).

The procedural due process analysis established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), confirms the constitutional violation here:

1. **The Private Interest:** The private interest at stake is fundamental: freedom from physical restraint. *Zadvydas*, 533 U.S. at 690. This interest is magnified by the devastating impact of Petitioner’s detention on his family. His U.S. citizen daughter, born in Fort Myers, is deprived of the care, support, and presence of her father during her most formative years. His partner and disabled father are deprived of their sole financial provider. The interest in family unity and parental rights is of constitutional magnitude.
2. **The Risk of Erroneous Deprivation:** The risk of an erroneous deprivation of liberty is not just high; it is absolute. Without a hearing, there is no mechanism to assess whether Petitioner’s detention is justified. The Government has never had to present evidence that Petitioner is a flight risk or a danger. Petitioner has never had an opportunity to present evidence to the contrary—his lack of a criminal record, his stable work history, his deep family and community ties, his pending U Visa, and his willingness to comply with any and all conditions of release. The current process guarantees an erroneous outcome because

it is no process at all.

3. **The Government's Interest:** The Government's interest in detaining a non-criminal, non-dangerous applicant for humanitarian relief who is the father of a U.S. citizen is minimal. He poses no threat to national security or public safety. Any concern about flight risk can be amply addressed through less restrictive means, such as bond, electronic monitoring, or regular check-ins, which Petitioner has repeatedly stated he would honor. The burden of providing a single bond hearing is negligible compared to the severe harm caused by prolonged, arbitrary detention.

Due process requires, at a minimum, "a bond hearing where the government must demonstrate dangerousness or flight risk by clear and convincing evidence, where the IJ considers whether less-restrictive alternatives to detention could mitigate that risk, and where the IJ considers ability to pay and alternative conditions of release in setting bond." *McDonald v. Searls*, No. 20-CV-613, 2021 WL 1646843, at *9 (W.D.N.Y. Apr. 26, 2021); *see also Reyes Rodriguez v. Cirillo*, No. 19-17984, 2021 WL 3007413, at *5 (D.N.J. July 13, 2021) ("We have already held that the Government bears the burden of proof. That burden, we now hold, is to justify detention by clear and convincing evidence."). Petitioner has been denied these fundamental safeguards. His continued detention is unconstitutional.

VI. RESPONDENTS' ARGUMENT THAT TRANSFER DOES NOT CONSTITUTE IRREPARABLE HARM MISSES THE POINT: THE TRO IS NECESSARY TO PREVENT REMOVAL AND PRESERVE THIS COURT'S JURISDICTION

Respondents may argue that the request for a TRO should be denied because a mere transfer from one detention facility to another does not constitute irreparable harm. They may cite cases holding that detainees have no protected liberty interest in being housed in a particular facility. *See, e.g.,*

Alvarez v. Wolf, No. 3:20-cv-01320, 2020 WL 6330248, at *5 (W.D. La. Oct. 27, 2020). This argument completely misses the point and ignores the grave reality of Petitioner's situation.

The TRO is not sought to secure a preferred place of detention. It is sought to prevent Respondents from taking actions—namely, transfer for the purpose of removal—that would destroy this Court's jurisdiction, render this habeas petition moot, and inflict the ultimate irreparable harm upon Petitioner and his family. The standard for a TRO in the Eleventh Circuit requires a showing of: (1) a substantial likelihood of success on the merits; (2) irreparable injury; (3) that the threatened injury outweighs the harm to the opposing party; and (4) that the injunction is not adverse to the public interest. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). Petitioner satisfies all four factors.

As established above, his likelihood of success on the merits is exceptionally high. The irreparable injury is self-evident. The deprivation of constitutional rights, including the fundamental right to liberty, "unquestionably constitutes irreparable injury." *KH v. Comm'r, Ga. Dep't of Human Servs.*, 914 F.3d 1336, 1344 (11th Cir. 2019). Furthermore, if Petitioner is transferred and removed while this petition is pending, his claims will be mooted, his pending U Visa will be extinguished, and he will be permanently separated from his two-year-old U.S. citizen daughter. This is the definition of irreparable harm. The risk is not speculative; Respondents have already transferred Petitioner out of state once without notice.

The balance of harms tips decisively in Petitioner's favor. The harm to Petitioner is the loss of his liberty and his family. The harm to the Government from a TRO is minimal—it is merely required to maintain the status quo by not removing Petitioner while this Court adjudicates his constitutional rights. Finally, the public interest is strongly served by ensuring access to the courts, preventing unlawful executive detention, and protecting the well-being of a U.S. citizen child.

VII. CONCLUSION

For the foregoing reasons, Petitioner Luis David Flores Ruiz respectfully requests that this Honorable Court:

1. **DENY** Respondents' Motion to Dismiss in its entirety;
2. **GRANT** the Petition for a Writ of Habeas Corpus and order Petitioner's immediate release from custody;
3. In the alternative, **ORDER** Respondents to provide Petitioner with an immediate, individualized bond hearing within five (5) days before a neutral decision-maker, at which the Government must prove by clear and convincing evidence that his continued detention is necessary to prevent a risk of flight or a danger to the community;
4. **MAINTAIN** the Temporary Restraining Order preventing Respondents from transferring or removing Petitioner pending a final resolution of this matter; and
5. Grant such other and further relief as this Court deems just and proper.

Dated: June 11, 2026

Respectfully submitted,

/s/ Luis David Flores Ruiz

Luis David Flores Ruiz

Pro Se