UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMIRO LINARES MARTINEZ,
Petitioner,

v.

WILLIAM P. JOYCE,
in his official capacity as Acting Field Office Director, New York City Field Office, U.S. Immigration & Customs Enforcement;

KRISTI NOEM,
in her official capacity as Secretary, U.S. Department of Homeland Security;

PAMELA BONDI,
in her official capacity as Attorney General, U.S. Department of Justice.

Respondents.

Civil Action No. _____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

PRELIMINARY STATEMENT

1. Petitioner, Ramiro Linares Martinez, seeks a Writ of Habeas Corpus to remedy his unlawful detention by the Respondents. This habeas is necessary because U.S. Immigration and Customs Enforcement ("ICE") violated Petitioner's due process rights and acted arbitrarily and capriciously when it failed to provide any notice or hearing before revoking Mr. Linares Martinez's bond and re-incarcerating him, even though an Immigration Judge ("IJ") had determined he was not a danger or a flight risk.

2. Mr. Linares Martinez is a 42-year-old citizen of El Salvador who has resided in the United States for over 19 years. ICE redetained him over nine months ago, on May 14, 2024, and has since held him at the Orange County Correctional Facility. The redetention of Mr. Linares Martinez is unlawful because he was granted bond by an IJ in 2018, did not violate the conditions of release and his removal proceedings remain ongoing. Respondents' redetention of Mr. Linares Martinez without notice or a hearing on the revocation of bond violates due process and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) ("APA"). His ongoing detention without a constitutionally adequate bond hearing also violates due process and the APA.

3. By way of background, on February 15, 2018, the Department of Homeland Security ("DHS") initiated removal proceedings against Mr. Linares Martinez, and he was incarcerated in ICE detention. On July 19, 2018, Mr. Linares Martinez filed a petition for writ of habeas corpus, challenging his prolonged detention without a constitutionally sufficient bond hearing. *Linares Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946 (S.D.N.Y. Oct. 17, 2018). On October 17, 2018, District Court Judge Jesse Furman issued an order requiring a bond hearing within 7 days at which the government "shall bear the burden to demonstrate, by clear-and-convincing evidence, that he is a danger to the community or a flight risk."

4. At the time of the district-court ordered bond hearing on October 23, 2018, misdemeanor criminal charges were pending in the Rockland County criminal court against Mr. Linares Martinez based on alleged conduct from 2012 and 2013. This was the sole criminal case against Mr. Linares Martinez in his two decades in the U.S. As a result of the application of the proper burden of proof, and after considering the criminal case as well extensive evidence from Mr. Linares Martinez, the IJ found that DHS did not meet its burden of proof as to

dangerousness or flight risk and granted Mr. Linares Martinez' release on bond. He returned to his family and community.

5. Mr. Linares Martinez did not engage in any new criminal conduct while out on bond. He attended all court appearances for his open criminal case and maintained steady employment and a consistent home address. The criminal case, that the IJ considered when granting bond, resolved with misdemeanor convictions on May 31, 2023 and remains on direct appeal. Mr. Linares Martinez and his partner have continued to maintain his innocence. To date, removal proceedings are ongoing and Mr. Linares Martinez continues to seek multiple forms of relief.
6. However, on May 14, 2024, approximately six years after the grant of bond and one year after the criminal case was resolved, ICE unlawfully and without warning revoked the court-ordered bond, re-arrested Mr. Linares Martinez at his home, and detained him pursuant to 8 U.S.C. § 1226(a) (discretionary detention statute). ICE failed to provide any notice or opportunity to be heard prior to the bond revocation and redetention. Respondents then violated Mr. Linares Martinez's due process rights when, at a bond redetermination hearing on September 26, 2024, they placed upon Mr. Linares Martinez the burden to demonstrate that he is neither a danger to the community nor a flight risk and thereafter denied release on bond.
7. A writ of habeas corpus from this Court is necessary because Respondents (1) violated Mr. Linares Martinez' due process rights under the Fifth Amendment by revoking bond without notice and an opportunity to be heard, and (2) violated the APA by revoking bond without showing sufficient changed circumstances.
8. Even if Respondents' re-detention of Mr. Linares Martinez was lawful – which it is not – a writ of habeas corpus is necessary because Mr. Linares Martinez' continued detention without a constitutionally adequate bond hearing also violates the Fifth Amendment and the APA.

Velasco Lopez v. Decker, 978 F.3d 842, 846 (2d Cir. 2020) (Holding that non-citizen's prolonged incarceration under § 1226(a) violated due process and that additional procedural protections were necessary, including that the government bear the burden of proof by clear and convincing evidence.)

9. As a result of Respondents' unlawful actions, Mr. Linares Martinez seeks immediate release on the original bond, unless and until a notice and hearing in accordance with due process takes place prior to any re-detention. Alternatively, Mr. Linares Martinez seeks a constitutionally adequate bond hearing – as previously ordered by this Court – where the government bears the burden of proof by clear and convincing evidence to justify the continued detention, with consideration of alternatives to detention and ability to pay.

PARTIES

10. Petitioner Ramiro Linares Martinez is a 41-year-old citizen of El Salvador. *See* Exh A., NTA. He has resided in the United States since October 1999. Mr. Linares Martinez and his partner have four U.S. citizen children, and they resided in Rockland County, New York prior to Mr. Linares Martinez' detention by Respondents. Respondents placed Mr. Linares Martinez into removal proceedings at the Varick Street Immigration Court in New York, NY. *See* Exh A, Notice to Appear. He is currently incarcerated in ICE custody under the direction of Respondents at Orange County Correctional Facility in Goshen, NY.

11. Respondent William P. Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations.

As such, he is the legal custodian of Petitioner. Respondent Joyce's office is located at 26 Federal Plaza, New York, NY 10278.

12. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the Southern District of New York, and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is the legal custodian of Petitioner. Respondent Noem's office is located in the United States Department of Homeland Security, Washington, DC 20528.

13. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal and bond proceedings and the standards used in those proceedings. As such, she is the legal custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

14. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. §§ 1331 and 2241, and Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C § 701. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation

of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241; *see also Fay v. Noia*, 372 U.S. 391, 430-31 (1963).

15. While only the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review—*see* 8 U.S.C. § 1252(a)(1), (b)—the federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by immigration authorities. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The federal district court has jurisdiction to consider questions of law and constitutional challenges relating to a decision to revoke or failure to reinstate immigration bond. *See Zabaleta v. Decker*, 331 F. Supp. 3d 67, 72 (S.D.N.Y. 2018).

16. The Supreme Court affirmed the federal courts' jurisdiction to review statutory claims by noncitizens subjected to detention pursuant to, *inter alia*, 8 U.S.C. § 1226(a), concluding that neither § 1252(b)(9) nor § 1226(e) deprived federal courts of jurisdiction to review the noncitizens' claims. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840-41 (2018).

VENUE

17. Venue is proper in the Southern District of New York under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. The Petitioner is presently detained at the direction of Mr. Joyce, and a substantial part of the events giving rise to the claims and relevant facts occurred within this district.

18. Mr. Linares Martinez is detained by Respondents at Orange County Correctional Facility, in Goshen, NY, which is within the Southern District of New York. *See* 28 U.S.C. § 1391(e); *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 495-97 (S.D.N.Y. 2009).

19. Moreover, all material events leading to Mr. Linares Martinez' detention took place in the Southern District of New York: he is in immigration proceedings venued in New York, NY, initiated by the New York Field Office of ICE Enforcement and Removal Operations, and he resided in Rockland County, New York prior to his detention by Respondents. *See Farez-Espinoza*, 600 F. Supp. 2d at 496. The place of employment of Respondent Joyce is located within the district, at 26 Federal Plaza, New York, NY.

EXHAUSTION

20. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of their detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010). No exhaustion requirement applies to the claims raised in this petition because the IJ and the Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *Khan v. United States A.G.*, 448 F.3d 226, 228 (3d Cir. 2006); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

21. However, to the extent exhaustion is required, Mr. Linares Martinez has exhausted all available remedies. On September 3, 2024, he requested a hearing to challenge the bond revocation and to enforce the prior bond order. *See* Exh B, Declaration of D. Kim ("Kim Decl."), ¶40. When that request was denied, Mr. Linares Martinez then appeared for a bond redetermination hearing on September 26, 2024 and, after the IJ denied bond under a misapplication of the burden of proof, Mr. Linares Martinez appealed the outcome of the bond hearing to the BIA, receiving a final decision on February 12, 2025. *See* Kim Decl. ¶ 44. Mr. Linares Martinez also submitted two parole requests to ICE, both of which have been denied. *Id.* ¶ 45. Mr.

Linares Martinez has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

STATEMENT OF FACTS

22. Petitioner Ramiro Linares Martinez is a 42-year-old citizen of El Salvador who has lived in the United States for most of his life. *See* NTA. He came to the United States in October 1999, when he was approximately 16 years old, and has lived in New York state since. *See* Kim Decl., ¶ 5. Mr. Linares Martinez worked at a car wash and in auto detailing for many years. He has four U.S. citizen children with his partner of nearly twenty years. In the more than two decades that he has lived in the United States, Mr. Linares Martinez has become an integral part of his local community. *Id.*

Mr. Linares Martinez' Prior Habeas Petition and Release on Bond

23. DHS initiated removal proceedings on or about February 15, 2018, charging Mr. Linares Martinez as being removable from the United States under 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled. *See* NTA.

24. At the time that removal proceedings began, Mr. Linares Martinez had maintained his innocence and pleaded not guilty to charges filed on February 9, 2018 in Rockland County criminal court. Kim Dec. ¶¶ 6-11. This was the first time Mr. Linares Martinez faced criminal charges in his nearly two decades in the U.S. The criminal charges included sexual abuse, forcible touching, and endangering the welfare of a child. The charges arose from allegations made by Mr. Linares Martinez's partner's daughter and claimed to relate to conduct in 2012 and 2013. *Id.* ¶ 7. At all times, Mr. Linares Martinez and his partner maintained his innocence and explained the fraught relationship with the daughter's biological father, who was a violent, abusive person. The allegations arose after the daughter began to spend more time with her

biological father. *Id.* In or around July 25 2018, the criminal charges were reduced from felonies to misdemeanors. *Id.* ¶ 8.

25. On or about May 25, 2018, upon the motion of Mr. Linares Martinez, the IJ held a bond re-determination hearing. The IJ placed the burden of proof upon Mr. Linares Martinez and, despite extensive evidence from Mr. Linares Martinez and minimal evidence from DHS, the IJ denied bond. *Id.* ¶ 32.

26. On July 19, 2018, Mr. Linares Martinez filed a Petition for Writ of Habeas Corpus in the Southern District of New York. *See Linares Martinez v. Decker*, 1:18-cv-06527-JMF. The petition challenged the IJ's improper burden allocation at the bond redetermination hearing.

27. On October 17, 2018, District Court Judge Furman granted the habeas petition and ordered a bond hearing within 7 days at which the government "shall bear the burden to demonstrate, by clear-and-convincing evidence, that he is a danger to the community or a flight risk." *See* Exh C, SDNY Opinion and Order, at 11.

28. As a result of the habeas order, a new bond hearing was held on October 23, 2018. At the bond hearing, the government put forth evidence of Mr. Linares Martinez's criminal case in Rockland County court. Mr. Linares Martinez provided letters from family members, friends, his landlord, an employer as well as evidence of medical issues faced by his U.S. Citizen children and evidence of extreme hardship to his family. Kim Decl. ¶ 35.

29. After considering all of the evidence, under the proper burden of proof, the IJ granted bond in the amount of $7,500. Exh D, October 23, 2018 Bond Order.

30. Following his release from ICE detention, Mr. Linares Martinez returned to his family and community. Kim Decl. ¶37.

31. In light of Mr. Linares Martinez release on bond and his ongoing criminal proceedings, the IJ took Mr. Linares Martinez's case off the court's active docket, "administratively closing" removal proceedings on or about January 25, 2022. Kim Decl. ¶17.

32. While out on bond, Mr. Linares Martinez maintained a steady home address and worked to support himself and his family. He pleaded not-guilty in the criminal proceedings, maintaining his innocence, and attended all criminal court appearances. Kim Decl. ¶9 -10. In May 2023 a jury trial was held and Mr. Linares Martinez was found guilty of NYPL § 130.60(2) misdemeanor sexual abuse second degree and NYPL § 260.10(01) misdemeanor endangering the welfare of a child. He was sentenced to one year of jail and six years' probation. Exh. E, Certificate of Disposition. Mr. Linares Martinez served eight months of his sentence and was released early for good conduct, in February 2024. Kim Decl. ¶11.

33. Shortly after trial, in or around June 27, 2023, Mr. Linares Martinez filed a timely appeal of the criminal conviction and continues to maintain his innocence. Exh. F, Notice of Appeal, Appellate Term, Supreme Court of the State of New York.

Constitutionally Deficient Bond Revocation and Redetention

34. On or about May 14, 2024, in the morning, approximately eight ICE agents appeared at Mr. Linares Martinez's home. He was on the phone with his partner at the time and was startled by officers banging on the doors and entering into the apartment. The officers only identified themselves as "police." The officers immediately arrested Mr. Linares Martinez, refused his request to put on shoes, and placed him in handcuffs and into a vehicle waiting outside. Kim Decl. ¶39.

35. Mr. Linares Martinez was transferred to Orange County Correctional Facility where he has remained for the past 9 months. *Id.*

36. Respondents did not state whether Mr. Linares Martinez' bond was revoked or the reasons for any revocation. Respondents never explained why they were arresting Mr. Linares Martinez or why he was being re-detained. *Id.* ¶42.

37. As a result of Mr. Linares Martinez re-detention in ICE custody, on or about June 6, 2024 his removal proceedings were placed back on the immigration court's active docket. *Id.* ¶18.

38. On September 3, 2024 Mr. Linares Martinez filed a motion with the IJ to enforce the prior bond order or in the alternative for a bond re-determination hearing. *Id.* ¶40. Respondents still had not provided any reason for the bond revocation and redetention. *Id.* ¶402

39. IJ Dara Reid denied the request to enforce the prior bond order. Exh G, IJ Order Denying Bond Enforcement, September 4, 2024.

40. The IJ concluded that she did not have jurisdiction to determine whether changed circumstances warranted the detention by ICE and that **any review "must be by the federal district court."** *Id.*

41. The IJ also concluded that she could not place the burden of proof on the government – despite the initial habeas grant ordering the proper burden – and the IJ directed Mr. Linares Martinez to **"re-apply to the District Court for a new order."** *Id.*

42. Instead, on September 26, 2024, the IJ held a bond re-determination hearing. At the hearing, the IJ improperly placed the burden of proof on Mr. Linares Martinez and denied bond. *See* Kim Decl ¶43; Exh H, Sept. 2024 Bond Denial Order

43. An appeal of the IJ's bond denial was filed with the BIA. The BIA denied the appeal and affirmed the decision of the IJ on February 12, 2025. Exh I, BIA Bond Decision, February 12, 2025.

LEGAL BACKGROUND

I. DUE PROCESS REQUIRES NOTICE AND A HEARING BEFORE REVOCATION OF BOND AND REDETENTION OF A PERSON WHOM THE COURT HAS DETERMINED NOT TO BE A FLIGHT RISK OR DANGER.

44. "In our society liberty is the norm," and detention is the "carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

45. The Fifth Amendment accordingly requires— "[a]t the least"—that detention be "reasonabl[y] relat[ed]" to a valid governmental purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

46. Incarceration can be used to punish criminal acts but may be imposed only after extensive procedural protections designed to ensure that punishment is warranted and that a person is not unjustly deprived of liberty. *See Santobello v. New York*, 404 U.S. 257, 264 (1971) (Douglas, J., concurring). By contrast, civil detainees "may not be punished." *Foucha*, 504 U.S. at 80; *see also Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015). Accordingly, the constitutional constraints on civil detention are even higher than in the criminal context. *See Zadvydas*, 533 U.S. at 690; *see also Addington v. Texas*, 441 U.S. 418, 425 (1979) ("civil commitment for any purpose constitutes a significant deprivation of liberty"); *Rosales-Garcia v. Holland*, 322 F.3d 386, 414 (6th Cir. 2003) (applying *Salerno* line of cases to civil immigration detention).

47. To ensure that civil detention does not become impermissible punishment, the Supreme Court has carefully limited its use, insisting that civil detention be used only in "special and narrow nonpunitive circumstances," *Zadvydas*, 533 U.S. at 690, and that it must "bear[] [a] reasonable

relation to the purpose for which the individual [was] committed." *Id.* at 690 (*quoting Jackson*, 406 U.S. at 738). Absent a reasonable relation to these governmental objectives, civil detention becomes impermissible punishment. *Bell*, 441 U.S. at 539. In the immigration context, the Supreme Court has recognized only two valid purposes for civil immigration detention—to mitigate a risk of danger to the community and to prevent flight. *Demore*, 538 U.S. at 528.

48. In addition, a person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91; *Hendricks*, 521 U.S. at 357; *see also Addington*, 441 U.S. at 425-27. A long line of Supreme Court precedent recognized the liberty interests of individuals on conditional release. In those cases, the Supreme Court held that due process requires notice and an opportunity to be heard before the government deprives a person of their conditional liberty. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding liberty interest of individual on parole requires probable cause and revocation hearings before the state may revoke parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding that individuals released on felony probation have a protected liberty interest that requires a pre-deprivation process of *Morrissey* before they can be sentenced to term of incarceration); *Young v. Harper*, 520 U.S. 143, 152 (1997) (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest triggering the same pre-deprivation process as *Morrissey* provides); *see also Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated").

49. In *Morrissey*, the Supreme Court considered the process that was due to a parolee prior to parole revocation. The Court concluded that all "liberty is valuable" and must be seen as within

the protection of the due process clause. Therefore, even though parole may be lawfully revoked, "[i]t's termination calls for some orderly process, however informal." 408 U.S. at 482. The Court went on to find that while the government may have many interests for returning an individual to imprisonment, it "has no interest in revoking parole without some informal procedural guarantees. . . Nor are we persuaded by the argument that revocation is so totally a discretionary matter that some form of hearing would be administratively intolerable." *Id.* at 483.

50. To comport with due process, the Supreme Court concluded that a hearing to determine whether "the individual has in fact breached the conditions of parole" not only serves the individual's protected liberty interests, but also serves the interest of society "in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole . . ." *Id.* at 483-84 (*citing People ex rel. Menechino v. Warden*, 27 N.Y.2d 376, 379, and n. 2 (1971)).

51. A year later, the Supreme Court held that due process also mandates a hearing prior to the revocation of probation. *Scarpelli*, 411 U.S. at 778. The Supreme Court applied *Morrissey* and found that "[e]ven though the revocation of parole is not a part of the criminal prosecution," nonetheless "the loss of liberty entailed is a serious deprivation requiring that the [individual] be accorded due process." *Id.* at 781. "Accordingly, we hold that a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in *Morrissey*." *Id.* at 782.

52. This rationale equally applies to the revocation of immigration bond and re-detention by ICE. *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("'It is well established that the Fifth Amendment entitles aliens to due process of law in deportation

proceedings.'"). District courts have recognized that non-citizens facing civil re-detention share this constitutionally protected interest in their continued liberty. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying *Morrissey* and *Gagnon* to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody"); *see also Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (concluding that petitioner raised "serious questions going to the merits" that she had a "vested interest" in her continued release from immigration detention). Indeed, as the court in *Ortega* recognized, a petitioner subject to a civil detention scheme has an "arguably greater" liberty interest "than the interest of parolees in *Morrissey*." *Ortega*, 415 F. Supp. at 970.

53. Because of Mr. Linares Martinez's protected interest in his liberty while on bond, the Due Process Clause requires, at a minimum, sufficient procedural protections before the government can strip Mr. Linares Martinez of that liberty. As set forth in *Mathews v. Eldridge*, this Court must consider three factors to determine what procedural protections the Constitution requires: (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 requirement would entail." 424 U.S. 319, 335 (1976).

54. The balance of factors makes clear that, at a minimum, the Respondents were required to provide a pre-deprivation hearing where the government bears the burden of proving that the revocation of bond and re-detention was constitutionally permissible, and Mr. Linares

Martinez must be immediately released unless and until a notice and hearing in accordance with due process takes place prior to any re-detention.

A. Application of the *Mathews* Factors Makes Clear That Notice And A Pre-Deprivation Hearing Was Required.

55. With respect to the first factor, the "importance and fundamental nature" of an individual's liberty interest is well-established. *See Salerno*, 481 U.S. at 750. As Judge Furman wrote in Mr. Linares Martinez's habeas decision, for someone "who can face years of detention before resolution of their immigration proceedings, 'the individual interest at stake is without doubt particularly important.'" *Linares Martinez v. Decker*, No. 18-cv-6527 (JMF), 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018). Weighing this factor in *Velasco Lopez*, in a separate *Mathews* analysis relating to prolonged immigration detention, the Second Circuit found the private interest to be "on any calculus, substantial." 978 F.3d at 851-52. This is because "[f]reedom from imprisonment . . . lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. *See also*, *Foucha*, 504 U.S. at 80.

56. Second, there is a high risk of an "erroneous deprivation" of liberty through the current procedures and a significant value to providing notice and a hearing. ICE revoked bond and immediately arrested and detained Mr. Linares Martinez without setting forth the basis for the revocation and detention, and without first providing any hearing or any other form of procedural due process. The probative value of procedural safeguards is immense. In *Villiers v. Decker*, 31 F.4th 825 (2d Cir. 2022), the Second Circuit recognized the value of notice and a hearing prior to re-detention by ICE. In *Villiers*, a group of detainees filed a habeas petition to seek release from ICE detention during the height of the COVID-19 pandemic. In response to petitioners' temporary restraining order, the district court ordered Villiers' release and restrained ICE from arresting him for immigration detention without first obtaining the court's

permission. *Id.* at 828-29. ICE later sought permission to detain Villiers following new criminal charges and the district court denied the motion. In reviewing the government's appeal, the Second Circuit considered the general conditions that are imposed upon release from detention. *Id.* at 832.

57. In looking to *Morrisey*, *Scarpelli* and additional Supreme Court precedent, the Second Circuit found that "an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing. . . ." *Villiers*, 31 F.4th. at 833. The Second Circuit remanded the case, ordering the district court to provide an evidentiary hearing, if the petitioner so requested, to determine whether it was more likely than not that the petitioner violated his conditions of release from immigration detention. *See id.* at 837. As recognized by the Second Circuit, there is substantial probative value in notice and a hearing prior to bond revocation and re-detention.

58. Third, the proposed procedures—namely, that ICE provide notice of intent to revoke bond with a pre-deprivation hearing at which the government bears the burden of proof —do not meaningfully prejudice the government's interest in mitigating danger and risk of flight during removal proceedings. *See Zadvydas*, 533 U.S. at 690. Indeed, the government's interest supports notice and a hearing prior to bond revocation and re-detention because the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 855; *see also, Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (noting that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"). Additionally, "unnecessary detention imposes substantial societal costs . . . The needless detention of those

individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). In this case, the government would not have been prejudiced by providing notice and a hearing to justify proposed bond revocation and re-detention for Mr. Linares Martinez, who had already been determined not to be a danger nor a flight risk by an Immigration Judge. *See* Exh D, 2018 IJ Bond Order.

59. In addition, because Mr. Linares Martinez complied with the terms of his release for five and a half years, the burden must rest with the Respondents by clear and convincing evidence to justify why revocation of bond and re-detention is warranted. "Because it is improper to ask the [noncitizen] to 'share equally with society the risk of error when the possible injury to the individual'—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection." *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir.2011) (*quoting Addington*, 441 U.S. at 427); *see also*, *Velasco Lopez*, 978 F.3d at 856 (*citing Singh*, 638 F.3d at 1203 - 04).

60. Ultimately, immigration detention must be reasonably related to its regulatory purposes of ensuring appearances at proceedings and preventing danger, and it cannot be excessive in relation to these purposes. *See Zadvydas*, 533 U.S. at 690. Without an individualized review to determine whether revoking bond and re-detention of Mr. Linares Martinez is reasonably related to legitimate governmental purposes and is not excessive in relation to these purposes, Mr. Linares Martinez is being detained in violation of these constitutional constraints. *See Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018) (finding high risk of deprivation where the petitioner, released as a minor pursuant to a

sponsorship agreement, "was detained [once he turned eighteen] . . . with no notice, hearing, opportunity to be heard, nor a finding of changed circumstances to justify detention").

61. Because Mr. Linares Martinez' bond has been unlawfully revoked and he has been incarcerated without due process, his immediate release must be ordered until such a time that notice is provided and a hearing is held to determine whether there are sufficient grounds for revocation of bond and re-detention. *See Kiareldeen v. Reno*, 71 F. Supp. 2d 402, 414 (D.N.J. 1999) ("The INS procedures patently failed the *Mathews* test of constitutional sufficiency. And the court finds this failure to be sufficient basis to grant the petitioner's writ of habeas corpus and direct his release from custody.")

II. REDETENTION WITHOUT CAUSE VIOLATES THE APA.

62. The APA creates a presumption in favor of judicial review over agency action. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 298 (2001). A petitioner "adversely affected" by agency action may seek judicial review through a petition for habeas corpus. 5 U.S.C. §§ 702, 703. A reviewing court must set aside agency action that is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to a constitutional right; (3) in excess of statutory authority or limitations; (4) without observance of procedures required by law; or (5) unwarranted by the facts. 5 U.S.C. §§ 702, 706(2); *Natural Resources Defense Council v. U.S. E.P.A.*, 808 F.3d 556, 569 (2d Cir. 2015).

63. The revocation of bond in this case was "arbitrary and capricious" and contrary to a constitutional right of due process such that it violated the APA, §§ 706(2)(A), (B).

64. The statute and regulations grant ICE the ability to revoke a non-citizen's immigration bond. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language, in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens.

65. The BIA held in *Matter of Sugay* that redetermination or revocation of bond must be based on "changed circumstances" arising after an IJ's initial bond determination. 17 I&N Dec. at 640 (holding that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a chance of circumstance"); *see also Zabaleta*, 331 F. Supp. 3d at 70 (noting that the BIA agreed that *Matter of Sugay* applied to bond proceedings requiring a change in circumstances for bond revocation); *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D.Ca. Nov 20. 2017) (government conceding that "DHS has incorporated this holding [of *Matter of Sugay*] into its practice.")

66. "Changed circumstances" is not defined in the INA. However, the regulations specify that a bond is breached if there has been a "substantial violation of the stipulated conditions." 8 C.F.R. § 103.6(e). In order to determine whether a "substantial violation" has occurred, the district courts require consideration of factors such as whether any breach "was intentional or accidental, whether it was in good faith, and whether the noncitizen took steps to make amends or put themself in compliance." *See Int'l Fid. Ins. Co. v. Crosland*, 490 F. Supp. 446, 448 (S.D.N.Y. 1980); *see also Matter Kubacki*, 18 I&N Dec. 43 (BIA 1981) (same).

67. Respondents did not establish sufficient "changed circumstances" or a "substantial violation of the conditions" to justify revocation of the bond in this case. Unlike the respondent in *Sugay*, Mr. Linares Martinez has not engaged in any new criminal activity and does not have any new arrest to justify changed circumstances. At the time that bond was granted, Mr. Linares Martinez faced misdemeanor criminal charges and the IJ was fully aware of the allegations in the criminal case. No new criminal conduct occurred during the five and a half years between the grant of bond and ICE's redetention of Mr. Linares Martinez. The guilty verdict that was ultimately imposed in the criminal case remains on direct appeal, while Mr. Linares Martinez

maintains his innocence, and is not final for immigration purposes. *See Matter of Brathwaite*, 28 I&N Dec. 751, 754 (BIA 2023) (holding that "a respondent with a pending appeal under [New York Criminal Procedure Law section 460.30] does not have a final conviction for immigration purposes."); *Matter of J.M. Acosta*, 27 I&N Dec. 420, 431-32 (BIA 2018) (holding that a conviction based on a formal judgment of guilt must be final before it constitutes a "conviction" for immigration purposes). Even if the IJ could consider Mr. Linares Martinez's non-final conviction on appeal, it does not constitute a changed circumstance for purposes of bond revocation. The non-final conviction is based on an arrest and charges that pre-dated the grant of bond. Since release on bond, Mr. Linares Martinez has been successfully living in the community, validating the court's bond findings. He held steady housing, worked consistently to support himself and his family, attended all court hearings, has been a contributing member of his local community and continues to pursue relief in his removal proceedings.

68. The revocation of bond and re-detention of Mr. Linares Martinez was "arbitrary and capricious" and contrary to the APA because the Respondents did not establish "changed circumstance" or a "substantial violation of the conditions" and failed to abide by the BIA's decision in *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

III. REQUIRING PETITIONER TO BEAR THE BURDEN OF PROOF TO ESTABLISH ELIGIBILITY FOR RELEASE ON BOND UNDER 8 U.S.C. § 1226(A) IS UNLAWFUL.

69. Even if the Respondents re-detention of Petitioner was lawful, the bond re-determination hearing held by the IJ was contrary to the law and violated due process because the burden of proof was placed upon Mr. Linares Martinez. *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020).

70. Following the bond revocation, Respondents are detaining Mr. Linares Martinez pursuant to 8 U.S.C. § 1226(a), the discretionary detention statute. Section 1226(a) of title 8 of the United States Code provides:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole; but
>
> (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

8 U.S.C. § 1226(a)

71. In the bond redetermination hearing pursuant to § 1226(a), Mr. Linares Martinez was forced to carry the burden of proof to establish that he is not a danger or a flight risk. This misallocation of the burden of proof—which is incorrectly required by BIA case law—violates the INA, Mr. Linares Martinez' due process rights, and the APA. *See Linares Martinez*, No. 18-CV-6527 (JMF), Exh C at 10 ("Accordingly, the Court agrees with the *Singh*, *Hernandez*, and *Sajous* Courts and holds that, as a matter of due process, the Government must prove by clear-and-convincing evidence that an alien poses a risk of flight or a danger to the community before he or she may be detained under Section 1226(a). It follows that Linares is entitled to a new bond hearing at which the Government is required to shoulder that burden to justify his continued detention.")

A. Congress Did Not Intend for Civil Detainees to Bear the Burden of Proof in Bond

Proceedings.

72. Although 8 U.S.C. § 1226(a) is silent as to which party carries the burden of proof, the statutory context and legislative history of that provision demonstrates that DHS properly bears the burden of justifying a noncitizen's continued detention. Placing the burden on DHS instead of the Petitioner is required for two reasons:

73. First, if Congress wanted noncitizens to carry the burden of proof in bond hearings pursuant to § 1226(a) it would have expressly said so—as it did in another subsection of § 1226. *See* § 1226(c)(2) ("The Attorney General may release an alien" subject to mandatory detention if release is (1) "necessary to provide protection to a witness . . ." and (2) "*the alien satisfies the Attorney General* that the alien will not pose a danger to the safety of other person or of property and is likely to appear for any scheduled proceedings") (emphasis added).

74. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Nken v. Holder*, 556 U.S. 418, 430 (2009) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)). This is "particularly true" in instances—like here—when Congress enacts statutes "as part of a unified overhaul" of the prior law. *Id.* at 430-31. Congress enacted all of § 1226 at the same time, in 1996. *See Demore*, 538 U.S. at 521 (describing "wholesale reform" of immigration laws as including enactment of § 1226). Nonetheless, § 1226(a) is silent with respect to the burden of proof, while § 1226(c)(2) squarely places the burden on noncitizens to establish that their release is proper. Congress' failure to expressly require noncitizens to carry the burden of proof under § 1226(a) when it overhauled

immigration law clear indicates that placing the burden on detainees contravenes congressional intent.[1]

75. Second, maxims of statutory construction dictate that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). That canon applies here: Congress, in replacing 8 U.S.C. § 1252(a)(1) with § 1226(a), made no meaningful changes to the language of the original statute and thus preserved the presumption against detention that existed at the time. *See Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976) (articulating that an immigrant "generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security or that he is a poor bail risk") (internal citations omitted).

76. Former 8 U.S.C. § 1252(a)(1) governed the detention of deportable immigrants prior to § 1226(a).[2] Before the enactment of § 1226 and while § 1252(a)(1) was in effect, the BIA

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[1] The Supreme Court's decision in *Jennings* does not foreclose Mr. Linares Martinez's argument that DHS should bear the burden of proof under §1226(a). The Court in *Jennings* was not squarely presented with this issue. *See generally Jennings*, 138 S. Ct. 830. Rather, the Court's analysis of § 1226(a) was limited to whether an interpretation of the statute using the canon of constitutional avoidance supported requiring periodic bond hearings every six months at which DHS carried the burden by clear and convincing evidence. *See* 138 S.Ct. at 847. Mr. Linares Martinez does not argue that a proper reading of the statute itself requires imposing a clear and convincing evidentiary standard, merely that Congress intended to place the burden on the government. As discussed *infra*, Petitioner's argument that a specific evidentiary standard applies in § 1226(a) hearings is rooted in due process, not statutory interpretation. The Court's conclusion in *Jennings* therefore does not undermine Mr. Linares Martinez's claims.

[2] Former 8 U.S.C. § 1252(a)(1) read: "Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody or (2) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may

routinely held that noncitizens detained pursuant to § 1252(a) benefited from a presumption against detention during immigration proceedings. *See Patel*, 15 I. & N. Dec. at 666. The BIA maintained this presumption in several precedential decisions after *Patel*. *See e.g.*, *Matter of Andrade*, 19 I. & N. Dec. 488, 489 (BIA 1987); *Matter of Spiliopoulos*, 16 I. & N. Dec. 561, 563 (BIA 1978).

77. When Congress preserved the language of former § 1252(a)(1) in re-enacting it as § 1226(a), it presumably adopted the Board's "administrative [] interpretation" of the statute and thereby *Patel*'s presumption against detention during removal proceedings. *Lorillard*, 434 U.S. at 580. Notably, both statutes are silent with respect to the burden of proof. *Compare* former § 1252(a)(1) *with* § 1226(a).

78. As such, the agency's requirement that Mr. Linares Martinez carry the burden of proof in the bond redetermination hearing pursuant to § 1226(a) is contrary to the statute.

B. Due Process Requires That Petitioner Receive a Hearing Where the Government Bears the Burden of Proof by Clear and Convincing Evidence.

79. The Fifth Amendment entitles noncitizens to due process of law. *See Demore*, 538 U.S. at 523 (quoting *Reno*, 507 U.S. at 306); *Zadvydas*, 533 U.S. at 690.

80. While "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process," there are "important constitutional limitations on that power's exercise." *Velasco Lopez*, 978 F.3d at 848 (internal quotations and citations omitted). One of those limitations is the "fundamental requirement" of procedural due process, namely "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

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prescribe; or (3) be released on conditional parole." Immigration and Nationality Act of 1952, Pub. L. No. 414, § 242(a), 66 Stat. 208, 209 (1952).

81. When the government seeks to use its weighty power to confine a person, due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

82. As repeatedly recognized by courts in this Circuit, the government must bear the burden of proof by clear and convincing evidence for a bond hearing to be constitutionally adequate, regardless of the length of detention. In *Velasco Lopez,* the Second Circuit applied a *Mathews* analysis to conclude that due process requires placing the burden of proof on the government in a §1226(a) bond redetermination hearing for a petitioner whose detention has become prolonged. *Id.* at 851 (*citing Mathews,* 424 U.S. at 319). Since then, courts in this circuit have consistently held that due process requires the government to bear the burden of proof. *See*, e.g., *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833 (S.D.N.Y. Dec. 14, 2020) (granting the writ and ordering a burden-shifted bond hearing to a petitioner detained for nine months at Orange County Jail after individualized analysis guided by the framework of *Velasco Lopez*); *Guerrero v. Decker*, 19-cv-11644 (KPF), 2020 WL 1244124, at *5 (S.D.N.Y. Mar. 16, 2020) ("[I]n accordance with every court to have decided this issue, [] the Court concludes that due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under § 1226(a).") (internal citations omitted).

83. District courts that have considered the procedural protections required at the initial bond hearing have continued to require the burden to be on the government at all § 1226(a) custody hearings, regardless of the length of detention.[3] *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021

[3] Some district courts have focused on the narrower question posed by *Velasco Lopez*, analyzing only whether detention is prolonged such that a new bond hearing is required. *See Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *6–7 (S.D.N.Y. Dec. 14, 2020); *Gonzalez*

WL 3727614, at *7 n.7 (S.D.N.Y. Aug. 20, 2021) (agreeing with the "'overwhelming majority of courts' that have found that the Due Process Clause of the Fifth Amendment requires" the government to bear the burden of demonstrating by clear and convincing evidence that detention is justified" and refusing to alter the analysis in light of *Velasco Lopez*); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) ("[N]either the Circuit's decision in *Velasco Lopez* nor any other binding appellate authority overrules the 'overwhelming consensus' of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden . . . even absent 'prolonged detention.'"); *Jimenez v. Decker,* No. 21-CV-880 (VSB), 2021 WL 826752, at *8, 11 (S.D.N.Y. Mar. 3, 2021) (rejecting the government's argument that *Velasco Lopez* only authorized shifting the burden with prolonged detention and applying the *Mathews* factors); *Quintanilla v. Decker*, No. 21 CIV. 417 (GBD), 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021) (joining the "'overwhelming consensus of judges in this district' in concluding that the Government should bear the burden to deny liberty at any Section 1226(a) bond hearing, regardless of the noncitizen's length of detention").

84. This consensus approach aligns with the Second Circuit's analysis in *Velasco Lopez*, which affirmed that longstanding Supreme Court precedents in other civil confinement contexts apply with equal force in the immigration context. *Id.* at 856; *see Hernandez-Lara*, 10 F.4th at 37–38. Those precedents underscore that civil detention must be carefully limited to avoid due-process concerns. *See, e.g.*, *Hendricks*, 521 U.S. at 368; *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996); *Foucha*, 504 U.S. at 80 (1992); *Addington*, 441 U.S. at 425; *see also Salerno*, 481

Evangelista v. Decker, No. 20 CIV. 8758 (AKH), 2021 WL 101201, at *5 (S.D.N.Y. Jan. 12, 2021).

U.S. at 755 ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

85. They further instruct that, given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers to establish the necessity of that detention—not the person detained. *See, e.g.*, *Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the government); *see also Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil insanity detention "statute that place[d] the burden on the detainee to prove that he is not dangerous"). That interest in liberty is strong even at the outset of detention: "[I]t is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Velasco Lopez*, 978 F.3d at 851 (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)); *United States v. Comstock*, 560 U.S. 126, 130-31 (2010) (clear and convincing standard applies under a federal statute which permits a continued confinement of a "mentally ill, sexually dangerous" prisoner beyond a date that the prisoner would otherwise be released, from the outset of that continued detention period). That is particularly true where, as here, a detainee has developed close and meaningful ties to the United States. *See, e.g., Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950) (noting that noncitizens' rights increase with increased ties to the country). Even when the Supreme Court upheld the constitutionality of categorical detention for certain noncitizens with criminal convictions, it relied on those individuals having received "the *full procedural protections* our criminal justice system offers," *Demore*, 538 U.S. at 513; on Congress considering specific studies regarding its legislative choice, *id.* at 518-21; and on the relatively short duration of detention it anticipated, *id.* at 529. None of those circumstances are applicable

to the discretionary, potentially indefinite detention at issue here. *See Velasco Lopez*, 978 F.3d at 850 n.7, 852; *Hernandez-Lara*, 10 F.4th at 35–36.

86. And those precedents finally hold that, in contrast to the preponderance-of-the-evidence standard in most civil proceedings, the government must be held to a clear and convincing standard of proof when an individual's liberty is at stake. *Velasco Lopez*, 978 F.3d at 856 n.15 ("When someone stands to lose an interest more substantial than money, we protect that interest by holding the Government to a higher standard of proof." (quoting *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020))); *see Cooper*, 517 U.S. at 363; *Foucha,* 504 U.S. at 81. In cases where the individual's interest is of "such weight and gravity," it is improper to ask an individual to "share equally with society the risk of error." *Addington*, 441 U.S. at 427. Immigration detention implicates "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

C. Petitioner's Bond Hearing Must Have Further Procedural Protections to Satisfy Due Process.

87. The Due Process Clause requires that detention "bear a reasonable relation to its purpose." *Zadvydas*, 533 U.S. at 690; *see also Velasco Lopez*, 978 F.3d at 854–55 (holding that the only legitimate purposes for immigration detention are to protect community safety and to ensure that noncitizens attend future hearings); *Hernandez-Lara*, 10 F.4th at 32 n.5 (same). To satisfy this requirement, a bond hearing must include additional procedural protections, specifically consideration of an individual's ability to pay and alternatives conditions of release.

88. A robust consensus of district courts in this Circuit agree that due process requires consideration of an individual's ability to pay and alternative conditions of release when setting a bond. *See O.F.C. v. Decker*, No. 22 CIV. 2255 (JPC), 2022 WL 4448728, at *10 (S.D.N.Y.

Sept. 12, 2022) ("Courts in this District overwhelmingly agree that IJs must consider these two factors—alternatives to imprisonment and ability to pay—when determining bond for a detained immigrant.) (collecting cases); *Roman v. Decker*, No. 20-CV-6752 (AJN), 2020 WL 5743522, at *4 (S.D.N.Y. Sept. 25, 2020) ("Requiring that the adjudicator consider alternative conditions of release and the detainee's ability to pay in setting bond [] ensures that detention is not imposed arbitrarily."); *see also Rodriguez Sanchez v. Decker*, 431 F. Supp. 3d 310, 317 (S.D.N.Y. 2019) (collecting cases); *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *8 (S.D.N.Y. Dec. 14, 2020); *Hernandez-Aviles v. Decker*, No. 20 CIV. 7636 (ER), 2020 WL 5836519, at *2 (S.D.N.Y. Oct. 1, 2020); *Fernandez Aguirre v. Barr*, 19-CV-7048 (VEC), 2019 WL 4511933, at *4 (S.D.N.Y. Sept. 18, 2019); *Hernandez v. Decker*, No. 18-CV-5026 (ALC), 2018 WL 3579108, at *12 (S.D.N.Y July 25, 2018).

89. If the noncitizen's ability to pay is not considered after they have been deemed eligible for bond, they will continue to be detained not for a legitimate purpose but solely due to their indigency, accomplishing "little more than punishing a person for his poverty." *Hernandez*, 872 F.3d at 992 (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)).

90. Similarly, if the government is able to protect its regulatory interests through less restrictive means, detention is no longer reasonably related to a legitimate purpose. *See Salerno*, 481 U.S. at 755 (approving a pre-trial detention act that required the Government to show that no conditions of release could satisfy its interests); *Bell v. Wolfish*, 441 U.S. 520, 538 (1979); *Hernandez*, 872 F.3d at 991. Where an alternative condition of release would reasonably safeguard the government's interest, the government has no legitimate interest in detaining that person. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 231 (W.D.N.Y. 2019) ("[T]he determination of whether detention was 'necessary to serve a compelling regulatory purpose'

necessarily required the decisionmaker to consider whether 'a less restrictive alternative to detention' would suffice."). Accordingly, due process requires that the government, in order to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect their interests, and the immigration judge in turn must consider those alternatives. *See Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances).

91. In light of the strong interest that Mr. Linares Martinez has in his liberty, the Constitution requires adequate procedural protections—namely the consideration of his ability to pay and alternative conditions of release—prior to depriving him of his freedom.

IV. THE CURRENT BURDEN ALLOCATION IN THE § 1226(a) BOND RE-DETERMINATION HEARING VIOLATES THE APA.

92. The APA creates a presumption in favor of judicial review over agency action and a petitioner "adversely affected" by agency action may seek judicial review through a petition for habeas corpus. 5 U.S.C. §§ 702, 703; *St. Cyr*, 533 U.S. at 298 (2001).

93. The allocation of the burden of proof on the noncitizen in § 1226(a) bond hearings violates the APA for two reasons. First, it violates the APA because, as described above, it is unconstitutional as applied to Mr. Linares Martinez. *See* 5 U.S.C. § 706(2)(B) ("The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . contrary to a constitutional right . . . ."); *Brito v. Barr*, 415 F. Supp. 3d 258, 268 (D. Mass. 2019), *affirmed in part and vacated in part on other grounds by Brito v. Garland*, 22 F.4th 240 (1st Cir. 2019) ("Because the Court has already concluded that the BIA's policy of placing the burden of proof on the [noncitizen] in § 1226(a) bond hearings is unconstitutional, the Court also holds that the BIA policy is a violation of the APA.").

94. Second, the decision in *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999), in which the BIA placed the burden on the noncitizen, is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A) ("The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . ."). As recently articulated by the Supreme Court in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), this Court must take an independent review of the applicable statutes and regulations and is not bound by prior interpretations of the agency. *Id.* at 2261 ("The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. It specifies that courts, not agencies, will decide '*all* relevant questions of law' arising on review of agency action, § 706 (emphasis added)—even those involving ambiguous laws—and set aside any such action inconsistent with the law as they interpret it.").

95. The BIA in *Adeniji* analyzed and applied the wrong federal regulation to decide what standards should govern a detained individual's bond hearing. Specifically, the BIA held that 8 C.F.R. § 236.1(c)(8)[4] "is binding on us" in order to conclude that Mr. Adeniji must shoulder the burden of proof in arguing for his release before an immigration judge. *See Adeniji,* 22 I&N Dec. at 1112; *see also* 8 C.F.R. § 236.1(c)(8). However, § 236.1(c)(8) applies to immigration officers (employees of DHS) who determine whether a newly detained noncitizen should be granted bond by DHS in the first instance; it is inapplicable on its face to bond redetermination

[4] Section 236.1(c)(8) reads in pertinent part, "Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act . . . ; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding."

proceedings before an immigration judge (employee of the Department of Justice). *See* § 236.1(c)(8); *see also Guerra*, 24 I&N Dec. at 37 (clarifying that bond hearings in front of IJs are custody redeterminations). Bond redetermination hearings are held subsequent to DHS's initial determination to deny bond, and different regulations and procedures apply. *See id.*; 8 C.F.R. § 1003.19. Additionally, § 236.1(c)(8) had a sunset provision that specified subsections (c)(2) through (c)(8) of § 236.1 only governed custody determinations while the Transitional Period Custody Rules were in effect. *See* § 236.1(c)(1)(ii). Those rules expired on October 8, 1998, and thus the regulation examined by the Board in *Adeniji* was no longer valid in 1999. *See Matter of West*, 22 I&N Dec. 1405, 1406 (BIA 2000). The agency's decision in *Adeniji* is arbitrary and capricious and need not guide this Court as it was not the result of reasoned decision making: it ignored § 236.1(d)(1) and applied a regulation that is irrelevant to custody hearings before an IJ. S*ee* 5 U.S.C. § 706(2).

96. The Second Circuit acknowledged this shift, and reliance on an inapplicable regulation, in *Velasco Lopez*, explaining:

> Until the early 1990s, the Attorney General exercised his discretion with a presumption in favor of liberty during the pendency of removal proceedings. This presumption was repeatedly affirmed by the Board of Immigration Appeals ("BIA"). *Velasco Lopez*, 978 F.3d at 848 (citing *Matter of Patel*, 15 I. & N. Dec. 666, 666 (B.I.A. 1976); *Matter of Andrade*, 19 I. & N. Dec. 488, 489 (B.I.A. 1987).
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> Following the enactment of IIRIRA, the Immigration and Naturalization Service ("INS"), not Congress, implemented new regulations that altered the standard for the initial post-arrest custody determinations made by INS officials. 8 C.F.R. § 236.1(c)(2)-(8). The new regulations established a presumption of detention and placed on the arrested individual the burden of demonstrating, to the satisfaction of the arresting officer, that release would not pose a danger to property or persons and that the individual is likely to appear for any future proceedings. *See* 8 C.F.R. § 236.1(c)(8). The regulation applies only to the initial custody determination made by the arresting officer and not to immigration judges in bond hearings. However, shortly after the new regulations were implemented, the BIA began applying the rule provided in § 236.1(c)(8) for arresting officers, including the presumption of detention, to

> bond hearings conducted by immigration judges under § 1226(a). *Matter of Adeniji*, 22 I. & N. Dec. at 1112; *Matter of Guerra*, 24 I. & N. Dec. at 38.
>
> *Velasco Lopez*, 978 F.3d at 849.

97. The correct regulation governing the bond redetermination hearings at issue here is 8 C.F.R. § 236.1(d)(1). That regulation, entitled "application to immigration judge," makes clear that "[a]fter an initial custody determination by the district director, including the setting of bond, the respondent may . . . request amelioration of the conditions under which he or she may be released . . . [and] the immigration judge is authorized to exercise authority in section 236 of the Act . . . to detain the [noncitizen] in custody, release the [noncitizen], and determine the amount of bond . . . under which the respondent may be released . . . ." *Id.* This regulation—which plainly applies to bond redeterminations before an IJ—does not place the burden on the noncitizen. *See id.*

98. Additionally, *Adeniji*'s burden shift constituted an unexplained rule change; as an "[u]nexplained inconsistency" that was a "change from agency practice," it is invalid under the APA. *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). When *Adeniji* placed the burden on detained noncitizens, it ended the presumption of liberty and broke from the established precedent in *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); *see also Velasco Lopez*, 978 F.3d at 849. Nothing in § 1226(a), prior statutes, or the regulations relevant to bond redeterminations for non-criminal noncitizens gave rise to this radical shift; the agency's decision to place the burden on non-criminal detainees during bond redetermination hearings is therefore arbitrary and capricious. *See* 5 U.S.C. § 706(2); *see also F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (noting that "[a]n agency may not . . . depart from prior policy sub silentio.")

99. Therefore, placing the burden of proof on Mr. Linares Martinez in the § 1226(a) bond hearing violated the APA because the burden allocation is unconstitutional and because the BIA decision requiring the burden shift is arbitrary and capricious and an application of the proper regulation reflects that the burden must be on the government.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

RESPONDENT'S BOND REVOCATION AND REDETENTION WITHOUT NOTICE OR PROCESS VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

100. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

101. The May 14, 2024 revocation of bond and re-detention by ICE caused Mr. Linares Martinez to be separated from his family, deprived of his work and community, and confined to a county jail for nine months and counting. His re-detention therefore infringed upon a liberty interest that cannot be revoked without adequate due process under the Fifth Amendment to the U.S. Constitution.

102. Under a proper *Mathews* analysis, notice of an intent to revoke bond and a hearing before a neutral arbitrator was required before Respondents could revoke bond and incarcerate Mr. Linares Martinez in ICE detention. *See supra*, ¶¶ 55 – 61.

103. Respondent's violated Mr. Linares Martinez's due process rights under the Fifth Amendment to the U.S. Constitution by detaining him after he was released on a court ordered bond, without providing adequate procedural protections to ensure that the bond revocation and re-detention serve a valid governmental purpose. *See* U.S. Const. Amend. V. *See also, Morrissey*, 408 U.S. at 471 (holding that parole may not be revoked without the minimum due

process protections of written notice of the alleged violations, disclosure of adverse evidence, opportunity to present defense evidence and confront witnesses, hearing before a neutral adjudicator, and written statement of fact findings).

104. For these reasons, Respondents deprived Mr. Linares Martinez of his liberty without constitutionally adequate procedural protections and his continued detention is in violation of the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

RESPONDENTS' REVOCATION OF PETITIONER'S BOND AND REDETENTION WITHOUT ESTABLISHING MATERIAL CHANGED CIRCUMSTANCES VIOLATES THE APA AND INA.

105. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

106. Under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (E).

107. As the Supreme Court has explained,

> Though the agency's discretion is unfettered at the outset, if it announces and follows-by rule or by settled course of adjudication-a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as 'arbitrary, capricious, [or] an abuse of discretion' within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

INS v. Yueh-Shaio Yang, 519 U.S. 26, 32 (1996).

108. Respondent's re-detention of Mr. Linares Martinez and revocation of his bond, without providing any procedural protections and without establishing material changed circumstances justifying re-detention, as required by *Matter of Sugay*, 17 I & N. Dec. 637 (BIA 1981) and

DHS' own internal policies and practices, *see Saravia*, 280 F.Supp.3d at 1197, was arbitrary and capricious and in violation of Respondents' authority under the INA.

THIRD CAUSE OF ACTION

THE BURDEN ALLOCATION AT PETITIONER'S BOND HEARING VIOLATED THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)

109. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

110. Respondents' position that Mr. Linares Martinez must carry the burden of proof in his bond hearing violated the INA's detention provision at 8 U.S.C. § 1226(a).

111. Section 1226(a) is silent as to burden of proof whereas other INA provisions specify when the detained noncitizen carries the burden to prove their fitness for release. *Nken*, 556 U.S. at 430 ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.")

112. Maxims of statutory construction dictate that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard*, 434 U.S. at 580.

113. When Congress preserved the language of former § 1252(a)(1) in re-enacting it as § 1226(a), it is presumed to have adopted the administrative presumption against detention during removal proceedings in place at that time. *Id.* at 580; *see also, Patel*, 15 I. & N. Dec. at 666.

114. As such, the presumption is against detention and therefore the agency's requirement that Mr. Linares Martinez carry the burden of proof in a bond hearing pursuant to § 1226(a) is contrary to the statute.

115. The IJ therefore erred when it required Mr. Linares Martinez to shoulder the burden in his § 1226(a) bond hearing because to do so was in violation of the statute.

FOURTH CAUSE OF ACTION

THE BURDEN ALLOCATION AT PETITIONER'S BOND HEARING VIOLATED HIS RIGHT TO DUE PROCESS UNDER THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

116. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

117. Requiring Mr. Linares Martinez to bear the burden of proof in his § 1226(a) bond hearing and failing to consider whether less-restrictive alternatives to detention would have met the government's interests violated the Due Process Clause of the Fifth Amendment to the United States Constitution.

118. The Due Process clause entitles noncitizens to due process of law in their removal proceedings. *Reno*, 507 U.S. at 306. The Supreme Court has repeatedly recognized that civil detention must be carefully limited to avoid due process concerns. *See, e.g.*, *Addington*, 441 U.S. at 425 (1979); *see also Salerno*, 481 U.S. at 755; *Foucha*, 504 U.S. at 80.

119. The government's interest in continuing to detain Mr. Linares Martinez, without a hearing at which it bears the burden of showing that such continued detention is necessary, does not outweigh the liberty interest at stake and the likely value of additional procedural safeguards. *See Mathews*, 424 U.S. at 335. While the government has an interest in detaining noncitizens who are likely to either abscond or be dangerous to the community, it does not have an interest in "the prolonged detention of noncitizens who are neither dangerous nor a risk of flight." *Velasco Lopez*, 978 F.3d at 854.

120. Therefore, "shifting the burden of proof to the Government to justify continued detention promotes the Government's interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose." *Id.*

121. The Respondents' requirement that Mr. Linares Martinez carry the burden at his bond hearing, as well as the failure to consider alternatives to detention, despite the gravity of Mr. Linares Martinez' liberty deprivation, was unconstitutional.

FIFTH CAUSE OF ACTION

RESPONDENTS' FAILURE TO PROVIDE PETITIONER WITH A CONSTITUTIONALLY ADEQUATE BOND HEARING WAS ARBITRARY AND CAPRICIOUS AND VIOLATES THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(1)-(2)

122. Plaintiff re-alleges and incorporates the above paragraphs.

123. The Administrative Procedure Act provides that "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

124. The statute further provides that the reviewing court shall "compel agency action unlawfully withheld or unreasonably delayed," *id.* at § 706(1), and "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and "contrary to constitutional right, power, privilege, or immunity," *id.* at § 706(2)(A)-(B).

125. Respondents' failure to provide Mr. Linares Martinez with a bond hearing in which the government bears the burden of proof is contrary to 8 U.S.C. § 1226(a), and is therefore arbitrary, capricious, and not in accordance with the law and contrary to his constitutional rights.

126. Mr. Linares Martinez has no other adequate remedy in court to obtain direct review of the agency actions and omissions challenged here, nor is there any available redress to the Respondents' failure to provide him with the bond procedures required by due process and the INA.

127. Respondents' failure to provide Mr. Linares Martinez with such a bond hearing has caused and continues to cause him substantial and concrete harm.

128. Accordingly, Respondents are in violation of the APA. 5 U.S.C. §§ 706(1), (2)(A)-(B).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1) Assume jurisdiction over this matter;

2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the New York Field Office of Immigration and Customs Enforcement pending the resolution of this case;

3) Grant Petitioner a writ of habeas corpus and order his immediate release from custody on his own recognizance, under the prior bond, or under reasonable conditions of supervision pending a pre-revocation hearing;

4) In the alternative, grant Petitioner a writ of habeas corpus and order Respondents to provide a prompt hearing where the government bears the burden of proof to demonstrate sufficient changed circumstances or violations of conditions to justify bond revocation and redetention;

5) In the alternative, order Respondents to provide Petitioner with a constitutionally adequate, individualized bond hearing before an impartial adjudicator at which Respondents bear the burden of establishing by clear and convincing evidence that continued detention is justified with consideration of (1) alternatives to detention as to dangerousness and flight risk, and (2) the ability to pay a bond;

6) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and

7) Grant any other and further relief that this Court deems just and proper.

Dated: March 3, 2025
Bronx, New York

Respectfully submitted,

/s/
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Counsel for Petitioner

EXHIBITS

A. Notice to Appear, February 8, 2018;
B. Declaration of Daniel Kim, Esq.
C. District Court Order, October 17, 2018
D. Immigration Judge Bond Order, October 23, 2018
E. Certificate of Disposition, Village of Haverstraw, Rockland County, NY
F. Notice of Appeal, Appellate Term, Supreme Court of the State of New York
G. Immigration Judge Order on Motion to Enforce Prior Bond Order or, In the Alternative, to Schedule a Burden-Shifted Bond Hearing
H. Immigration Judge Bond Re-Determination Order, September 26, 2024
I. Decision of the Board of Immigration Appeals, in bond proceedings, February 12, 2025

VERIFICATION

I, Daniel Kim, Esq., hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: February 27, 2025

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