UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

JOHN DOE *Plaintiff-Petitioner*, v. **CHRISTOPHER BRACKETT** Superintendent of Strafford County Department of Corrections; **PATRICIA H. HYDE** Boston Field Office Director Immigration and Customs Enforcement **TODD LYONS** Acting Director U.S. Immigration and Customs Enforcement **KRISTI NOEM** Secretary U.S. Department of Homeland Security *Defendants-Respondents*.	Civ. No: 1:25-cv-00158-PB-TSM **AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 (EXPEDITED HEARING REQUESTED)**

PRELIMINARY STATEMENT

1. Petitioner John Doe ("Petitioner") is being unlawfully detained at the Strafford County Department of Corrections ("SCDOC") in Dover, New Hampshire, under the custody of the Department of Homeland Security ("DHS"). He has been in DHS custody for almost two years (since July 13, 2023), with no end in sight. *See* **ECF 1-3**. The Immigration Judge

(IJ) conducted a bond hearing on September 28, 2023, and declined to release Petitioner, stating that he was a danger to the community. *See* **ECF 1-13**. Most recently, on March 27, 2025, the IJ wrongly denied Petitioner's motion for a new bond hearing by misapplying the materiality standard, effectively ignoring the significant change in his circumstances. *See* **ECF 1-2**.

2. Petitioner is entitled to a new bond hearing because the IJ failed to apply the materiality standard of 8 C.F.R. § 1003.19(e) correctly to Petitioner's changed circumstances and failed to consider alternatives to detention, in addition to other legal errors.

3. Petitioner's circumstances have materially changed since the IJ first denied bond on Sept. 28, 2023. [redacted] officially went into remission since March 22, 2024, and remains in remission to this day. *See* **ECF 1-3, TAB B**. His medical records noted [redacted] on March 22, 2024, which is now over a full year ago. *See id.* Furthermore, Petitioner has demonstrated sustained good behavior during the two years since his assault charges in March 2023. The only times Petitioner has ever had any violent behavioral issues occurred when he was (1) improperly medicated, and (2) in a custodial setting. *See* **ECF 1-3, TAB E** and **F**. Petitioner has no history of violent incidents outside of the isolated incidents that occurred in custodial settings during periods of inadequate medical care, where his medications were improperly altered or discontinued, leading to [redacted] His behavior at these times was always directly linked to this lack of proper medical treatment, not to an inherent propensity for violence.

4. In addition to the personal progress he has made during detention, Petitioner now has the confirmed support from his primary care physician, Dr. J.H., MD, which will help ensure the continuation of his mental and behavioral progress into the community. *See* **ECF 1-3,**

TAB D. Having treated Petitioner for nearly a decade prior to his detention, Dr. J. H. has committed to continuing to oversee, treat, and provide care for [redacted] and any other health needs in the future upon release from detention. *See id.* Petitioner is firmly committed to continuing his progress upon release. Finding the right treatment has been transformative for him, and he is firmly resolved to keep up with his medication and treatment upon release from detention.

5. Second, Petitioner has significant support from his family in the Boston area. Multiple family members and friends have offered shelter, emotional, financial, medical support, and transportational assistance upon his release from jail. *See* **ECF 1-3, TAB F**. Petitioner did not have the same level of support and commitment when he requested bond before.
6. Third, Petitioner's young daughter, D. V. O., has been experiencing severe health issues since around 2021, with her condition worsening over time. Her epilepsy was diagnosed around the time of Petitioner's detention, and her health continues to decline. *See* **ECF 1-3, TAB G; ECF 1-4, TAB H**. As a result, his ex-wife and children need his presence and support now more than ever. His absence has placed an immense strain on the family, both emotionally and financially. *See* **ECF 1-3, TAB F.**
7. Lastly, Petitioner's immigration case has procedurally changed, as he was ***granted*** withholding of removal, and subsequently, deferral of removal under the Convention Against Torture (CAT), with both decisions appealed by the government and remanded by the Board of Immigration Appeals (BIA) back to the immigration judge for further consideration. *See* **ECF 1-5, TAB I**.
8. Petitioner respectfully requests that this honorable Court declare that his evidence has met the materiality standard for changed circumstances under 8 C.F.R. § 1003.19(e), and thus

require a new, constitutionally adequate bond redetermination hearing to be heard promptly before an immigration judge, where the government shall bear the burden of proving Petitioner's dangerousness and flight risk under 8 U.S.C. § 1226(a). *See Hernandez Lara v. Lyons*, 10 F.4d 19 (1st Cir. 2021). Additionally, Petitioner respectfully requests that, at his new bond redetermination hearing, this Court requires the immigration judge to consider alternatives to detention, such as conditioning Petitioner's release on his continued medical treatment and monitoring by his primary care physician in Boston, Massachusetts and periodic check-ins with ICE or another community-based organization as necessary. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 992-93 (9th Cir. 2017); *Doe v. Tompkins*, 2019 U.S. Dist. LEXIS 22616, at *5 (D. Mass. Feb. 12, 2019), *aff'd*, 11 F.4th 1, 2 (1st Cir. 2021).

PARTIES

9. Petitioner John Doe is currently detained at the Strafford County Department of Corrections, 266 County Farm Road, Dover, NH 03820, in the Respondents' custody.

10. Respondent Christopher Brackett is named in his official capacity as the Superintendent of Strafford County Department of Corrections. Respondent Brackett has custody of Petitioner because ICE contracts with Strafford County to house immigration detainees, including Petitioner.

11. Respondent Patricia H. Hyde is named in her official capacity as the acting Boston Field Office Director for ICE. In this capacity, Respondent Lyons has responsibility for and authority over the detention and removal of noncitizens within the Boston Region, which includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

12. Respondent Todd Lyons is named in his official capacity as the Acting Director of U.S. Customs and Immigration Enforcement. In this capacity, Respondent Lyons has responsibility for and authority over the detention and removal of noncitizens in the United States.

13. Respondent Kristi Noem is named in her official capacity as the U.S. Secretary of the Department of Homeland Security. In this capacity, Respondent Noem has responsibility for and authority over the enforcement of immigration laws and immigrant detention throughout the United States.

JURISDICTION

14. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 2241 and Article I § 9, cl. 2 and the Fifth Amendment of the U.S. Constitution.

15. The federal district courts have jurisdiction to hear habeas claims by noncitizens contesting the lawfulness of their immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Aguilar v. U.S. Immigration & Customs Enf't Div. of Dep't of Homeland Sec'y,* 510 F.3d 1, 11 (1st Cir. 2007) (citing *Demore v. Kim*, 538 U.S. 510, 516 (2003)).

VENUE

16. Venue properly lies in the District of New Hampshire because Petitioner is physically present and in the custody of Respondents at the SCDOC at 266 County Farm Road, Dover, NH 03820, in the territorial jurisdiction of this Court. 28 U.S.C. § 2241(d); 28 U.S.C. § 1391; *Vasquez v. Reno*, 233 F.3d 688, 696 (1st Cir. 2000).

STATEMENT OF FACTS REGARDING PETITIONER AND HIS CURRENT IMMIGRATION DETENTION

A. Background and Criminal Charges

17. Petitioner is 41 years old and from El Salvador. Petitioner came to the United States on April 7, 2003 and has lived here ever since. He settled in the Boston, Massachusetts area with various family members. Petitioner was diagnosed with [redacted] around 2009/2010 and successfully managed [redacted] for many years while living in the community. *See* **ECF 1-3**.

18. Petitioner is not a danger to the community because he simply has never had any violent acts outside of his commitment to psychiatric facilities when he was not properly medicated. *See* **ECF 1-3, TAB E** and **F**. While two-plus-year-old assault and battery charges – dating back to March of 2023 - remain pending, those episodes occurred in a lock-down mental hospital setting during a distinct period of time in which Petitioner experienced a psychotic state due to lack of access to proper medication for his [redacted]

19. In early 2023, Petitioner was not able to obtain a refill of his medication at the East Boston Health Center Pharmacy because they had no record of a refill at that time. *See* **ECF 1-3, TAB E**. Thus, Petitioner was unable to take his medication as prescribed. Because of that, he checked himself into Boston Medical Center, as a responsible, preventative measure. At Boston Medical Center, Petitioner received a change in treatment for [redacted] This medication was not the same medication that he had been prescribed in the past. Petitioner reports that the changed medication did not work the way his formerly prescribed pills did for him. This led to Petitioner's downward spiral and relapse into a psychotic state. Petitioner was then transferred over to UMass

Memorial Medical Center in Worcester, MA. UMass Memorial continued giving him the new treatment instead of the medicine he was used to. This resulted in further problems for Petitioner while housed in the UMass Memorial psychiatric ward. While housed in the UMass psychiatric ward and not receiving the proper medication, Petitioner was involved in multiple physical altercations. These incidents in 2023 surrounding Petitioner's improperly treated psychotic state constitute Petitioner's *only* pending criminal charges.

20. The physical altercations that occurred are completely uncharacteristic of Petitioner when he is properly medicated and out in the community. All of this could have been avoided had the East Boston Health Center Pharmacy contacted Petitioner's doctor immediately given the urgent nature underlying Petitioner's need to receive his properly prescribed medication. It also could have been avoided if Boston Medical Center and UMass Memorial had administered the medications that Petitioner was prescribed instead of the medical treatments that they randomly determined would work better for him.

21. Nearly two full years have passed since the incidents resulting from the improper medical care of Petitioner. The deterioration in his mental health was a direct consequence of improper treatment in a custodial setting, not an inherent threat to public safety. Since receiving the correct medication at SCDOC, Petitioner's [redacted] and he has demonstrated significant improvement both mentally and behaviorally. *See* **ECF 1-3, TABS B and E**.

22. Multiple family members have attested to Petitioner's character, emphasizing that he is not a danger but rather a hardworking individual dedicated to his family. *See* **ECF 1-3, TAB F**. He has two U.S. citizen daughters who currently reside with his ex-wife, K. E.

O. His eldest daughter, D. V. O., suffers from serious medical conditions, including epilepsy, and would benefit immensely from having her father present to provide support and care. *See id.* Additionally, K. E. O., as the primary caregiver, would greatly benefit from Petitioner's co-parenting assistance in managing D. V. O.'s medical needs, which have only worsened in his absence. *See id.*

23. Petitioner has strong evidence of rehabilitation and a concrete rehabilitation plan going forward. If released, Petitioner will live with his sister, S. V. G., in her home in Needham, Massachusetts. *See* **ECF 1-3, TAB E** and **F**. He has employment lined up, involving painting and construction work with a family friend. *See id.*

B. Immigration Proceedings

24. Petitioner was granted withholding of removal on December 5, 2023. The government appealed that decision, and their appeal was granted in a 2-1 decision that included a critical dissenting opinion. *See* **ECF 1-8**. On October 4, 2024, the same IJ granted Petitioner relief once again, this time granting him deferral of removal under the Convention Against Torture. *See* **ECF 1-5, TAB I**. Again, the government appealed that decision, and the BIA remanded the case back to the Immigration Judge for further consideration. *See* **Exhibit 2** (Attached to this Amended Petition). At this point, Petitioner has been in jail for nearly two years awaiting a final decision in his case. He faces prolonged incarceration due to a potentially indeterminate cycle of decisions and appeals which will chronically delay the issuance of a final decision.

25. Petitioner will now have his case considered by an IJ for the third time, after having twice been granted relief from removal by the IJ, yet still spending over 20 months in immigration detention. He has an upcoming individual hearing on August 12, 2025.

C. Bond Proceedings

26. On September 25, 2023, Petitioner filed an initial request for bond. *See* **ECF 1-14**. The IJ conducted a bond hearing on September 28, 2023, and declined to release Petitioner, stating that he was a danger to the community. *See* **ECF 1-13**.

27. On December 8, 2023, Petitioner filed a motion for a bond redetermination hearing based on materially changed circumstances including his overwhelming family support and the worsening health conditions of his daughter, pursuant to 8 C.F.R. § 1003.19(e). *See* **ECF 1-12**. Notwithstanding these material changes, the IJ denied Petitioner a new bond hearing on December 21, 2023, stating that the evidence did not support a finding of changed circumstances to warrant a second bond hearing. *See* **ECF 1-10**.

28. On June 21, 2024, Petitioner filed a renewed motion for a bond redetermination hearing based on materially changed circumstances pursuant to 8 C.F.R. § 1003.19(e), reiterating the material changes in his family support and deteriorating health of his daughter. *See* **ECF 1-9**. After no response, Petitioner filed again on September 12, 2024, this time citing the procedural changes that had occurred in his case after the IJ had granted him relief from removal. *See* **ECF 1-7**. On September 12, 2024, the IJ denied Petitioner a new bond hearing, recognizing the procedural changes in his removal proceedings but stating that they were not material to the issue of whether Petitioner is a danger to the community to warrant a second bond redetermination hearing. *See* **ECF 1-6**.

29. On March 17, 2025, Petitioner filed another renewed motion for a bond redetermination hearing based on materially changed circumstances pursuant to 8 C.F.R. § 1003.19(e). *See* **ECF 1-3**. This time, the prominent changes in circumstances included Petitioner's remission [redacted] for over one full year, confirmed support from his primary care physician, reconfirmed family support, and the continually deteriorating health of his

eldest daughter. Notwithstanding these material changes, on March 27, 2025, the IJ again denied Petitioner a new bond hearing, stating that "The Respondent has not made "a showing that [his] circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19 (e); *See* **ECF 1-2**.

30. On May 20, 2025, the IJ prepared a written memorandum explaining her previous denial of his motion for a new bond based on changed circumstances. *See* **Exhibit 1** (attached to this Amended Petition). In this written denial, the IJ justified her decision by writing that "he has shown significant dangerous behavior when he is not in custody," which contradicts the factual record. *Id.* She also described that in each of his motions for new bond hearing, he argued that he is now "properly medicated," without any discussion of his official [redacted], which was an additional changed circumstance, supported with evidence that he cited to in his March 17, 2025 motion. *Id.* The IJ also provided no discussion of his proposed alternative to detention, which was to continue medication and monitoring by his doctor, as a way to reasonably assure the safety of the community. *Id.* Finally, the IJ made no reference to his arguments that the standard for "materiality" was a lower bar than the standard she would apply in a bond hearing. *Id.*

D. Changes in Circumstances to Merit Bond Redetermination Hearing

31. Petitioner cites four materially changed circumstances since his initial bond hearing. *First* and foremost, Petitioner's medical records demonstrate that [redacted] has been officially in remission since March 22, 2024, and remains in remission. During Petitioner's 90-day ICE-required follow-up on March 22, 2024, Medical Staff Author Diane Levesque noted that "he is doing well. Denies any need to see mental health. States that he is doing well on medications and does not see the need to see the psychiatrist or make any changes

in his medication regimen." Levesque also stated, [redacted] *See* **ECF 1-3, TAB B**. Petitioner's [redacted] continued to improve and remains in remission. On October 1, 2024, LICW Patricia Hiscoe noted that "[He] presents with good grooming/hygiene and good eye contact. Mood is euthymic. Affect is happy and smiling. Denies having suicidal thoughts. Denies hallucinations. Content of thought revolves around his desire to be released from incarceration [redacted]." *See* **ECF 1-3, TAB B**. His medical records started noting [redacted] on March 22, 2024, nearly a full year ago. *See* **ECF 1-3, TAB B**. Research [redacted] shows that patients in symptomatic remission tend to have a better overall symptomatic status, improved functioning levels, and, to a lesser extent, enhanced quality of life and cognitive performance. *See* **ECF 1-3, TAB C**. Petitioner is currently medicated properly at the jail he is housed in – treatment that replicates his treatment by his primary care physician prior to 2023. Today, his psychotic symptoms are under control, which is the same as when his [redacted] was under control while he was living in the community with this diagnosis from around 2009 through 2023. He is still mentally struggling with being locked in a cell for the majority of the day for over a year and a half, but he is no longer in a psychotic state and has not instigated any issues of violence or misconduct while in jail. *See* **ECF 1-3, TAB E**. The only incident that has occurred during Petitioner's nearly two years in jail happened on April 26, 2024, which was nearly a year ago. Petitioner testified that a few other inmates were intentionally messing with him and saying that he liked men. Petitioner told them that was not true and to stop talking to him. One of the other inmates got mad and hit Petitioner. *See id.* His medical reports also corroborate this, stating that on April 26, 2024, he had bleeding in his mouth, needed sutures, and sustained multiple blows to his head. *See* **ECF 1-3, TAB B.**

32. At this point, Petitioner has fulfilled nearly two entire years with no issues since his assault

charges from March 2023. This progress is paramount to the determination of whether Petitioner remains a danger to the community. Rather than characterizing Petitioner as a continual danger to the community, his progress supports an understanding of his deteriorated mental state in the time frame of early 2023 as a period caused and exacerbated by the lack of proper medical care. When receiving his correctly prescribed treatment, Petitioner is not a danger to the community, a fact that is strongly supported both by his family affidavits testifying to their lived experiences with him prior to his detention and by his disciplinary and medical records during his time in jail. During both these periods of time, he still has had a diagnosis of schizophrenia but, with proper medication, had no erratic incidents of criminal behavior. *See* **ECF 1-3, TAB E**.

33. *Second*, Petitioner has overwhelming support from his primary care physician and his family and friends in the Boston area. *See* **ECF 1-3, TABS D** and **F**. Before, he did not have the same amount of support that he does now. Six separate affidavits in support of Petitioner and his release were filed with his renewed motions for a bond based on changed circumstances. If Petitioner were a true danger to the community, his family and friends arguably would not be supporting him, offering up their homes as places for him to live, or proposing emotional, financial, medical, and transportation help upon his release from jail. *See* **ECF 1-3, TAB F**. Increased family and medical support also strongly endorses an Immigration Judge when considering alternatives to detention for Petitioner. Petitioner's proposed alternative to detention ensures (1) the continual, proper dosage and form of medication that has effectively treated his [redacted] and (2) continual treatment from his primary care doctor, as well as any necessary check-ins with ICE or alternative community-based organization. *See* **ECF 1-3, TAB E**. Six different family members and friends have testified to their willingness and ability to help Petitioner to his medical appointments and maintain his medication regimen that has successfully regulated his

symptoms. *See* **ECF 1-3, TAB F.** Petitioner's primary care physician has also committed to continuing [redacted] treatment upon release, as well as any other medical needs that may arise. *See* **ECF 1-3, TAB D.** Thus, not only is Petitioner himself capable of complying with this plan to ensure his medical compliance and safety but he also has a robust support system of family, friends, and doctors who will help him do so.

34. *Third*, Petitioner's eldest daughter has serious health issues that continue to decline while he remains incarcerated and unable to help her and his immediate family. His daughter, D. V. O., suffers from childhood absence epilepsy, motor tic disorder, developmental health problems, abnormal EEG, abnormal brain MRI, a mood disorder, a coordination disorder, a language disorder, a learning disorder, ADHD, and vitamin D deficiency. *See* **ECF 1-4, TAB H**. These health issues have continued to develop while Petitioner is in jail, which places significant hardship on his ex-wife in taking care of their two daughters alone without Petitioner's presence, emotional support, and financial assistance. Petitioner's ex-wife reiterates the importance of Petitioner's presence, love, and support for his daughter. *See* **ECF 1-3, TAB F**. If Petitioner were dangerous, his immediate family arguably would not be requesting his presence and support to help his daughter who is in a vulnerable state.

35. *Lastly*, Petitioner's case has changed procedurally since his first bond hearing. On December 5, 2023, Petitioner was granted withholding of removal. *See* **ECF 1-5, TAB I**. The government appealed that decision, and the BIA remanded the case back to the Immigration Judge for further consideration. *See* **ECF 1-8**. On October 4, 2024, the same Immigration Judge granted Petitioner deferral of removal under CAT. *See* **ECF 1-5, TAB I**. Again, the government appealed that decision, and the BIA remanded the case back to the Immigration Judge for further consideration. *See* **Exhibit 2** (Attached to this Amended Petition). At this point, Petitioner has been in jail for nearly two years awaiting a final decision on his relief. His incarceration likely could be further prolonged due to a

potentially indeterminate cycle of decisions and appeals with no finalized decision.

LEGAL BACKGROUND

A. 8 U.S.C. § 1226(a) – Discretionary Detention

36. U.S.C. § 1226 governs detention during immigration removal proceedings. 8 U.S.C. §1226(a) provides the government general discretionary authority to detain noncitizens or release them on bond or conditional parole. Noncitizens detained under Section 1226(a) are entitled to a bond hearing, at which an Immigration Judge decides if the detention is justified by determining if the individual presents a flight risk or threat to public safety.

37. The standard and burden of proof in a § 1226(a) bond hearing require DHS to prove that the individual is a danger to public safety by clear and convincing evidence and a flight risk by preponderance of evidence. *See Hernandez-Lara v. Lyons*, 10 F.4d 19 (1st Cir. 2021).

38. The government must prove by clear and convincing evidence that no reasonable alternative to detention exists that would ensure the safety of the community. *See Brito v. Barr*, 415 F.Supp.3d at 266-270, aff'd in part, vacated in part, remanded by *Brito v. Garland*, 22 F.4th at 252 (holding that at § 1226(a) bond hearings, the government must bear the burden of proof and the IJ must consider alternatives to detention and a detainee's ability to pay); *Doe v. Tompkins*, No. 18-12266, 2019 WL 8437191, at *2 (D. Mass. Feb. 12, 2019), *aff'd*, 11 F. 4th 1 (1st Cir. 2021).

39. Due process requires that the immigration judge consider alternative conditions to release and that no combination of conditions will ensure the safety of the community. *See Doe v. Tompkins*, No. 18-12266, 2019 WL 8437191, at *2 (D. Mass. Feb. 12, 2019), *aff'd*, 11 F. 4th 1 (1st Cir. 2021) (holding that the immigration court should properly allocate the burden of proof and consider alternatives to detention to ensure the

safety of the community and the petitioner's future appearances); *see also Brito v. Barr*, 415 F.Supp.3d 258, 266-270 (D. Mass. 2019), aff'd in part, vacated in part, remanded by *Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021) (holding that at § 1226(a) bond hearings, the government must bear the burden of proof and the IJ must consider alternatives to detention and a detainee's ability to pay);[1] *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) ("A bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests."); *Ousman D. v. Decker*, Civil No. 20-9646 (JMV), 2020 WL 5587441, at *4 (D.N.J. Sept. 18, 2020) (bond hearing failed to comply with due process where immigration judge did not consider less restrictive alternatives to detention); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (holding that due process requires immigration judges to consider whether less restrictive alternatives to detention would address the government's legitimate purposes); *Reid v. Donelan*, 390 F. Supp. 3d 201, 225 (D. Mass. 2019), aff'd in part, vacated in part, remanded by *Reid v. Donelan*, 17 F.4th 1, 12 (1st Cir. 2021) (holding that Due Process requires the IJ to consider alternatives to detention and a detainee's ability to pay and explaining "this requirement guarantees that the decision to continue to detain a criminal alien is reasonably related to the Government's interest in protecting the public and assuring appearances at future

[1] The First Circuit, in *Brito v. Garland*, did not affirm the District Court's holdings with respect to requiring IJs to consider alternatives to detention and a detainee's ability to pay. *See* 22 F.4th at 252-256. The First Circuit did not opine on the merits of these constitutional claims, but rather reversed because petitioners had not exhausted the alternatives to detention claim before the IJ, and the named plaintiffs did not have standing to address the ability to pay claim. *Id.* The First Circuit noted, "it is easy to see how conditions of release might shape an immigration judge's determination as to whether a noncitizen poses a flight risk or danger." *Id.* at 254.

proceedings");[2] *Hernandez*, 872 F.3d at 1000 (explaining that "alternatives to monetary bonds … would also serve the same interest the bond requirement purportedly advances"); *Davis v. Garland*, No. 22-CV-443-LJV, 2023 WL 1793575 (W.D.N.Y. Dec. 21, 2023) ("The decision maker must consider—and must address in any decision—whether there is clear and convincing evidence that there are no less-restrictive alternatives to physical detention, including release on conditions, that could reasonably address the government's interest in detaining"); *O.F.C. v. Decker*, 2022 WL 4448728, at *11 (S.D.N.Y Sept. 12, 2022) (finding that the IJ must consider alternative conditions of release in determining whether to grant bond).

B. 8 C.F.R. § 1003.19(e) – Materially Changed Circumstances

40. The regulation provides that "[a]fter an initial bond redetermination, an alien's request for a subsequent bond redetermination shall be in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e).

41. Other than the fact that an IJ "can decline to change the prior bond decision" if "there are no changed circumstances shown," the BIA has no precedent interpreting the regulation

[2] In 2021, the First Circuit affirmed in part, vacated in part, and remanded the District Court's 2019 *Reid* decision. *See Reid v. Donelan*, 17 F.4th 1, 12 (1st Cir. 2021). However, the First Circuit affirmed only as to the "judgment against the class rejecting the claim that persons detained for six months under section 1226(c) are automatically entitled to a hearing before an IJ that might lead to their release on bond pending the conclusion of removal proceedings." *See id.* at 12. The decision held that the district court impermissibly issued declaratory and injunctive relief, and that the district court erred in using the "class as a bootstrap to then adjudicate, on a class-wide basis, claims that hinge on the individual circumstances of each class member." *Id.* at 9-12. Notably, the First Circuit did not rule on the constitutionality of the procedural protections granted to class members by the District Court. Rather, the First Circuit rejected that the District Court could order such procedural protections outside of the context of an individual habeas petition. *See id.* at 11. Although the District Court's 2019 Reid decision is no longer binding, much of the rationale employed by the District Court in its holding setting forth the burden and standards of proof at § 1226(c) bond hearings protections follows the rationale utilized by the First Circuit in Hernandez-Lara to hold that Due Process requires the government to bear the burden of proof at § 1226(a) bond hearings. *See Hernandez-Lara*, 10 F.4th at 28-41; Reid, 819 F.3d at 224-225.

for the proper legal standard. *See Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989) (citing *Matter of Chew*, 18. I. & N. Dec. 262, 263 n.2 (BIA 1982)).

42. Under the traditional tools of construction, the text of the regulation is clear that the proper legal standard is "whether Petitioner's circumstances have materially changed, not whether the new evidence would have changed the IJ's findings [of the initial bond hearing]." *Cruz-Zavala v. Garland*, No. 20-CV-06972-LHK, 2021 U.S. Dist. LEXIS 63592 at *29 (N.D. Cal Mar. 29, 2021) (internal quotation marks and brackets omitted). *See Morales v. Sociedad Espanola de Auxilio Mutuo y Beneficencia*, 524 F.3d 54, 59 (1st Cir. 2008) (the traditional tools of canons of statutory construction are "fully transferable to the construction of regulations").

43. Materiality for changed circumstances is a low bar. *See Cabas v. Barr*, 928 F.3d 177, 182-83 (1st Cir. 2019) (finding that the BIA erred in denying a noncitizen's motion to reopen because there had been material changes in circumstances since the initial denial of his application); *see also Smith v. Holder*, 627 F.3d 427, 438-39 (1st Cir. 2010) (holding that the BIA incorrectly applied the materiality requirement when it rejected [Respondent's] evidence of changed conditions); *Kungys v. U.S.*, 485 U.S. 759, 772 (1988) ("materiality" in misrepresentation as only requiring that "it has the natural tendency to influence the decision of INS"); *Arellano v. Sessions*, No. 6:18-cv-06625-MAT, 2019 U.S. Dist. LEXIS 125057, at *38 (W.D.N.Y. July 26, 2019) (finding that Petitioner was unlawfully denied a bond redetermination hearing under 8 C.F.R. § 1003.19(e) based on an erroneous finding that she had not shown changed circumstances); *Reyes v. Bonnar*, 362 F. Supp. 3d 762, 773 (N.D. Cal. 2019) (finding that the IJ erred in determining that Petitioner failed to establish material change in

circumstances when critical evidence of change included Petitioner's "new, unequivocal commitment to sobriety," other significant psychological evidence, and increasing remoteness of his last conviction); *Kharis v. Sessions*, No. 18-cv-04800-JST, 2018 U.S. Dist. LEXIS 190082, at *30-31 (N.D. Cal. Nov. 6, 2018) (holding that "the IJ failed to adequately consider the evidence supporting [the petitioner's] motion [for redetermination under 8 C.F.R. § 1003.19(e)]").

44. Thus, the standard is only "materiality," and not whether the changes were sufficient enough to change the outcoming of the prior custody determination. *See Cruz-Zavala v. Garland*, No. 20-CV-06972-LHK, 2021 U.S. Dist. LEXIS 63592 at *29; *see also Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 774 (N.D. Cal. 2019).

LEGAL ARGUMENT

45. This Court should hold that the IJ misapplied the legal standard in determining that no materially changed circumstances existed in her March 27, 2025, decision to deny Petitioner a new bond hearing. She also ignored his arguments to the contrary in her May 20, 2025 written decision denying his 8 C.F.R. § 1003.19(e) motion. *See* **Exhibit 1** (Attached to this Amended Petition). Under the applicable regulation, a noncitizen can have a new bond hearing if his "circumstances have changed materially since the prior bond [denial] determination." 8 C.F.R. § 1003.19(e). Federal courts have reviewed immigration judges' denials of 8 C.F.R. §1003.19(e) motions as pure legal questions and mixed question of law and facts, which are also "questions of law." *See, e.g., Cruz-Zavala v. Garland*, No. 20-CV-06972-LHK, 2021 U.S. Dist. LEXIS63592, at 24-30 (finding that the IJ committed a legal error when he misapplied the legal standard of materially changed circumstances); *De Paz Sales v. Barr*, No. 19- cv-04148-KAW, 2019

U.S. Dist. LEXIS 169552, at *20-24 (N.D. Cal. Sep. 30, 2019) (same); *Arellano v. Sessions*, No. 6:28-cv-06625-MAT, 2019 U.S. Dist. LEXIS 12507 (W.D.N.Y. July 26, 2019) (finding "when all of [the petitioner's] evidence is considered, she has demonstrated, as a matter of law, that her circumstances materially changed since her initial bond hearing" because her criminal charges were reduced and the community supported her release); *Reyes v. Bonnar*, 362 F. Supp. 3d 762, 774-75 (N.D. Cal. 2019) (finding "as a matter of law, that [petitioner's] circumstances materially changed since his initial bond hearing" due to the increasing remoteness of his last conviction and new evidence that included commitment to sobriety and alcohol-related rehabilitation); *Kharis v. Sessions*, No. 18-cv-04800-JST, 2018 U.S. Dist. LEXIS 190082, at *30-31 (N.D. Cal. Nov. 6, 2018) (holding that "the IJ failed to adequately consider the evidence supporting [the petitioner's] motion [for redetermination under 8 C.F.R. § 1003.19(e)]"). These district courts' determinations that immigration judges' denials under 8 C.F.R. § 1003.19(e) are subject to review are further reinforced by recent Supreme Court precedent, which establishes that mixed questions of law and fact constitute reviewable questions of law, even in the presence of immigration jurisdiction-stripping statutes. *See Wilkinson v. Garland* 601 U.S. 209 (2024); *Guerrero-Lasprilla v. Barr*, 589 U.S. 221 (2020); *see also Martinez v. Clark*, 124 F. 4th 775 (9th Cir. 2024).

46. The IJ's March 27, 2025, decision—upon which she expounded in her May 20, 2025 written order—to deny Petitioner a new bond hearing based on a material change in circumstances is erroneous, and Petitioner's continuing detention without a new bond redetermination hearing is consequently unlawful because the IJ misapplied the legal standard in determining that no materially changed circumstances have occurred. *See*

ECF 1-2; Exhibit 1 (Attached to this Amended Petition). The proper legal standard is "whether Petitioner's circumstances have materially changed, not whether the new evidence would have changed the IJ's finding [of the initial bond hearing]." *Cruz v. Zavala*, 2021 U.S. Dist. LEXIS 63592 at *29 (internal quotation marks and brackets omitted). There are at least four materially changed circumstances since the denial: (1) Petitioner has demonstrated substantial rehabilitation and stability, maintaining a spotless disciplinary record while incarcerated, with [redacted] in remission, as corroborated by medical records, as well as an official letter from his primary care physician committing to continuing Petitioner's medical care upon release from detention; (2) he now has significant and unwavering family support in the Boston area, which was not present at the time of the initial bond determination, as evidenced by multiple affidavits from family members attesting to their commitment to his housing, financial stability, and emotional well-being upon release; (3) his medical and family circumstances have deteriorated, including his eldest daughter's worsening health condition, which underscores the increasing necessity of his presence to provide care and support for his children and his ex-wife; and (4) his case has now been remanded to the IJ for a second time after the government has twice appealed the IJ's grants of relief, and yet, Petitioner remains detained nearly two years later, despite these significant procedural developments. *See* **ECF 1-3**.

47. Furthermore, in *Reyes v. Bonnar*, 362 F. Supp. 3d 762 (N.D. Cal. 2019), the Court emphasized that the legal question at hand is whether circumstances have materially changed since the last bond hearing, rather than re-evaluating the ultimate issue of dangerousness. Here, the IJ incorrectly addressed the ultimate legal issue of whether

Petitioner is a danger, rather than whether the circumstances have materially changed since his last bond hearing. In other words, the IJ should have focused on the changed circumstances, such as Petitioner's [redacted] improved mental health conditions and rehabilitation, the commitment of support from his primary care physician in Boston, his stable family support, and his daughter's worsening health, rather than addressing the ultimate issue of dangerousness and whether it would have changed his initial bond determination.

48. This Court should also hold that the IJ violated Petitioner's Due Process rights by failing to consider any alternative to detention in her assessment of dangerousness. *See supra* ¶¶ 38-39 (collecting cases where courts held that immigration judge was required, under the Due Process Clause of the Fifth Amendment, to consider alternatives to detention). Petitioner presented an alternative to detention that could reasonably assure the safety of the community–close monitoring from the doctor treating him for [redacted] this fact was supported by his doctor's written commitment to supervising his treatment, as well as the commitment of Petitioner and his family to attend all appointments and ensuring that he continues his medication. *See* **ECF 1-3, TAB D, E, F**. The IJ, however, made no consideration of his alternatives to detention, as she did not mention any possible conditions of release in her assessment of whether he was a danger to the community. *See generally* **Exhibit 1** (Attached to this Amended Petition).

49. The IJ's May 20, 2025 written denial also committed legal error by making a factual finding that directly contradicted the record evidence. *See* **Exhibit 1** (Attached to this Amended Petition). The IJ wrote that Petitioner "has shown significant dangerous behavior when he is not in custody and under the treatment of a doctor." *Id.* However,

this fact is contrary to all of the record evidence, where each uncharacteristically violent act occurred while he was in a custodial setting and under improper medication. *See* **ECF 1-3, TAB E** and **F**; **ECF 1-11**.

50. Finally, the IJ committed legal error in failing to consider Petitioner's most recent changed circumstance, which is evidence of repeat medical findings by Strafford County medical staff that [redacted] is in remission. *See* **Exhibit 1** (Attached to this Amended Petition); **ECF 1-3, TAB B**. The IJ thus mischaracterized Petitioner's arguments in his March 17, 2025 motion for new bond hearing. *See id.* The IJ characterized Petitioner as only arguing that he was "properly medicated" without any mention of the medical opinion that [redacted] is in remission. *See id.*; *see also Contreras v. Bondi*, 134 F.4th 12, 15 (1st Cir. 2025) (holding that the BIA committed legal error "by failing to consider key record evidence," which was a psychological report assessing the mental health status of one of the noncitizen's children); *Enamorado- Rodriguez v. Barr*, 941 F.3d 589, 596 (1st Cir. 2019) (finding legal error when BIA mischaracterized record evidence).

CLAIMS FOR RELIEF

COUNT I - 8 C.F.R. § 1003.19(e) - MATERIALLY CHANGED CIRCUMSTANCES

51. The foregoing allegations are realleged and incorporated herein. Petitioner has been subject to unlawful detention without a new bond hearing under 8 C.F.R. § 1003.19(e) despite materially changed circumstances.

52. **COUNT II -- VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS**The foregoing allegations are realleged and incorporated herein. Petitioner's continued detention without any consideration of whether his detention is necessary in

light of available alternatives to detention that can reasonably assure the safety of the community violates his Due Process rights.

REQUEST FOR ORAL ARGUMENT

Counsel respectfully requests oral argument pursuant to Local Rule 7.1(d).

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Declare that Petitioner's continuing detention without a new bond hearing violates the governing regulation 8 C.F.R. § 1003.19(e);

(3) Declare that Petitioner's evidence has met the materially changed circumstances under 8 C.F.R. § 1003.19(e), entitling Petitioner to a new bond hearing;

(4) Order a new, constitutionally adequate bond hearing to be held promptly before an Immigration Judge, at which the government bears the burden of proving either by clear and convincing evidence that his detention is necessary to protect the community from harm or by preponderance of the evidence that his detention is justified to ensure his appearance for his removal proceedings; and even if it is, that no condition or combination of conditions, such as alternatives to detention can reasonably assure his future appearance and safety of the community; and finally, that if bond is set, the Immigration Judge be required to consider Petitioner's ability to pay in setting any bond amount;

(5) Require, at Petitioner's new bond redetermination hearing, that the Immigration

Judge consider alternatives to detention, such as conditioning Petitioner's release on his continued medical treatment and monitoring by his primary care physician in Boston, Massachusetts and periodic check-ins with ICE or another community-based organization as necessary. *See, e.g., Hernandez v. Sessions*, 872 F.3d 992-93; *Doe v. Tompkins*, 2019 U.S. Dist. LEXIS 22616, at *5 (D. Mass. Feb. 12, 2019), *aff'd*, 11 F.4th 1, 2 (1st Cir. 2021).

(6) Declare that the "[f]ailure of an Immigration Judge to conduct the bond hearing as ordered will entitle Petitioner to request a bond hearing before this [C]ourt." *Bourguignon v. MacDonald*, 667 F. Supp. 2d 175, 184 (D. Mass. 2009)

(7) Order any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Ronald Abramson
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*Attorney Holper, *admitted pro hac vice* under D.N.H. Local Rule 83.2(b) on May 5, 2025.

*Reysa and Brutis, *student appearances* under D.N.H Local Rule 83.2(c), Appearance in Court by Law Students and Graduates filed on May 8, 2025.