IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ERIC GONZALEZ ORDONEZ, Petitioner, v PAUL PERRY, *et al.*, Respondents.	No. 1:25-cv-662 (LMB/LRV)

FEDERAL RESPONDENTS' RESPONSE IN OPPOSITION TO THE PETITION FOR THE WRIT OF HABEAS CORPUS

Petitioner Eric Gonzalez Ordonez, a native of Guatemala convicted of sexual battery, is currently in mandatory immigration detention while his removal proceedings are pending. Petitioner is mandatorily detained under 8 U.S.C. § 1226(c) for committing a serious criminal offense making him deportable or inadmissible to the United States. Petitioner now challenges that his mandatory detention violates the Due Process Clause of the Fifth Amendment and asks this Court to conduct its *own* bond hearing where the government must prove by clear and convincing evidence that Petitioner is not a flight risk or danger to the community

Petitioner is not entitled to any bond hearing, let alone one conducted by this Court. The Supreme Court in *Demore v Kim*, 538 U.S. 510 (2003), made clear that detaining a criminal noncitizen under § 1226(c) without a bond hearing is a constitutionally permissible part of removal proceedings because of the government's legitimate interest in ensuring that criminal noncitizens appear for their removal proceedings and do not endanger the community by committing additional crimes This is exactly Immigration and Customs Enforcement's ("ICE's") purpose in detaining Petitioner, who is removable or inadmissible because of his criminal conviction. This Court should thus find that Petitioner's detention satisfies the *Demore* standard

If the Court were nevertheless to analyze whether additional due process is warranted, this Court should apply the three-factor test the Supreme Court outlined in *Mathews v. Eldridge*, 424 U S 319 (1976), to determine what process is due. In weighing all three factors, it is clear that no additional due process is warranted And even if the Court—instead of applying *Demore*'s purpose-based standards or the *Mathews* test—were to apply the five-factor test of *Portillo v. Hott*, 332 F Supp. 3d 698 (E D Va. 2018), Petitioner's detention satisfies that test as well. However, if the Court were to determine that due process requires that Petitioner obtain additional relief here, the Court should—at most—order an Immigration Judge ("IJ") to hold an individualized bond

hearing under existing regulations, where Petitioner bears the burden of proof. This is consistent with Fourth Circuit case law and a long line of Supreme Court precedent

For all these reasons, Federal Respondents respectfully request that the Court deny Petitioner's Petition for a Writ of Habeas Corpus.

BACKGROUND

A. Statutory and Regulatory Background.

The statutory authority for detaining a noncitizen during and after removal proceedings has been the subject of extensive judicial discussion, especially in recent years. *See generally Jennings v. Rodriguez*, 583 U S. 281, 288–89 (2018). Stated briefly, 8 U S.C. § 1225 governs the Department of Homeland Security's ("DHS") authority to detain a noncitizen *during* the pendency of administrative removal proceedings. *See* 6 U.S.C. § 251(2). That provision establishes two types of detention authority: (1) discretionary detention pursuant to 8 U.S.C. § 1225(a), and (2) mandatory detention pursuant to 8 U.S.C. § 1225(b). A third type of detention authority, 8 U.S C § 1226(c), mandates detention of noncitizens convicted of specific criminal offenses listed in 8 U.S C § 1227 or who are inadmissible under certain provisions in 8 U.S.C. § 1182 *See generally Guzman Chavez v. Hott*, 940 F 3d 867, 873 (4th Cir 2019) ("*Guzman Chavez I*"), *rev'd in other part by Johnson v. Guzman Chavez* ("*Guzman Chavez II*"), 594 U.S. 523 (2021) Relevant here, detention is mandatory for a noncitizen who "is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title." 8 U.S.C. § 1226(c)(1)(A). Under 8 U.S C. § 1182(a)(2)(A)(i)(I), this includes any noncitizen who was "convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude " Petitioner's crime—sexual battery—constitutes such a crime. *See Mohamed v. Holder*, 769 F 3d 885, 888 (4th Cir. 2014) ("We thus can conclude that the statutory

crime of sexual battery involves moral turpitude separate and apart from the wrong inherent in violating the statutory proscription."); *Gomez-Ruotolo v. Garland*, 96 F.4th 670, 681 (4th Cir. 2024) ("We have said it is self-evident that 'sexual battery on another person' under Virginia Code § 18.2-67.4 'involves moral turpitude'").

Noncitizens who are subject to § 1226(c) mandatory detention may be released on bond "only if the Attorney General decides . . . that release of the [noncitizen] from custody is necessary to provide protection to a witness . . and the [noncitizen] satisfies the Attorney General that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(2); *see* 8 C.F.R. § 236 1(c)(1)(i). The noncitizen bears this burden. 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8).

B. Petitioner's Criminal and Immigration History.

Petitioner, a twenty-eight-year-old native and citizen of Guatemala, entered the United States without inspection in January 2023. *See* Dkt. 1-5 at 2; Ex. 1 ¶¶ 5–6, Declaration of Justin Richardson ("Decl.").

On October 15, 2023, the Harrison Police Department arrested Petitioner on a charge of misdemeanor sexual battery under Virginia Code § 18.2-67 4. Decl ¶ 7; *see also* Ex A to Decl. at 1. According to the criminal complaint, in the early evening of that same day, Petitioner attempted to lure a woman walking her dogs into the woods using gestures, saying "come here," and attempting to communicate via google translate. Ex. A to Decl. at 4–5. After the woman said no and walked to her car, Petitioner approached her and "offered her $500 to have sex with him for 30 minutes." *Id* at 5 The woman refused and Petitioner "continued to increase the price and offered less time." *Id* The woman again said no *Id.* In response, Petitioner reached inside the car through the open window and grabbed her vagina. *Id* The woman pushed him away and

repeated her refusals *Id* Petitioner then reached back into the car and grabbed her left breast *Id* The woman grabbed his arm and pushed him away, saying no yet again. *Id* She then closed the window and called 911. *Id.* Petitioner was later detained in the same area and was positively identified by the woman as the man who had touched her. *Id.*

After being arrested, a Magistrate Judge at Rockingham General District Court ordered Petitioner to be held without bail *Id* at 6–7, Decl. ¶ 7. On December 12, 2023, Petitioner pled nolo contendere to misdemeanor sexual battery[1] and was sentenced to twelve months' imprisonment (with ten months suspended) and a year of probation. Decl ¶ 8; Ex. A to Decl. at 2, 10. The Rockingham General District Court also prohibited Petitioner from future contact with his victim and ordered Petitioner to submit to a psychosexual evaluation. Ex. A to Decl. at 9.

C. Petitioner's Immigration Proceedings.

On December 13, 2023, DHS served Petitioner with a Notice to Appear, charging him as subject to removal pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled. Decl. ¶ 9; Dkt 1-5 at 2.

On December 14, 2023, ICE took custody of Petitioner and detained him under INA § 236(c)(1)(A), 8 U.S.C. § 1226(c)(1)(A), as a noncitizen who committed a crime of moral turpitude. Decl.¶ 10; s*ee* 8 U S.C § 1182(a)(2)(A)(i)(I) On March 14, 2024, an IJ with the Annandale Immigration Court in Virginia conducted a judicial competency inquiry and determined that Petitioner was not competent to represent himself. Decl. ¶ 11; Dkt 1-5 at 2; Dkt. 1-6. Accordingly,

[1] While Petitioner claims that he "initially was unaware of what the charges were" and that he only pled guilty "[o]n the advice of his attorney" and because he "wish[ed] to avoid spending time in prison," Petitioner does not deny committing the underlying offense (nor did he do so before the IJ) Pet. ¶ 17; *see also* Dkt 1-5 at 13 ("Notably, although [Petitioner] asserts that the 'conviction does not accurately reflect [his] character,' he did not deny to this Court that he committed the offense for which he was charged and convicted.")

the IJ appointed a qualified representative to represent Petitioner in his immigration proceedings. Decl ¶ 11; Dkt. 1-6

On August 27, 2024, Petitioner appeared again before an IJ with the Annandale Immigration Court. Decl. ¶ 12. The IJ sustained the charge of inadmissibility against Petitioner. *Id.* That same day, Petitioner filed an I-589 application seeking asylum and withholding of removal under the INA and protection under the Convention Against Torture ("CAT") *Id* ; Dkt. 1-5 at 2–3.

Following two hearings in September and October 2024 on the merits of Petitioner's request for relief from removal, the IJ issued an order on January 2, 2025, denying Petitioner's application for asylum and for withholding of removal. Decl. ¶¶ 13–14. The IJ based its decision on the particularly serious nature of Petitioner's crime, finding that it rendered him ineligible for asylum and withholding of removal. *Id* ¶ 14; *see* Dkt. 1-5 at 11–13 ("The nature and circumstances of the [Petitioner's] offense evince the clear seriousness and dangerousness of it "). However, the IJ did grant Petitioner deferral of removal based on the IJ's finding that he would "more likely than not than not face torture from gang members with the consent or acquiescence of a public official" if he were removed to Guatemala. Dkt. 1-5 at 14; Decl. ¶ 14 Accordingly, while Petitioner was ordered removed to Guatemala, that removal order was simultaneously deferred. Dkt 1-5 at 18–19 Petitioner did not appeal the IJ's denial of his applications for asylum and withholding of removal. Decl ¶ 15.

On January 10, 2025, DHS appealed the IJ's order granting deferral of Petitioner's removal under CAT. Decl. ¶ 15, Pet ¶ 20; Dkt. 1-7 That appeal remains pending. Decl. ¶ 17. In early January 2025, pursuant to ICE policy following an appeal, ICE conducted a custody review of Petitioner and determined that, in light of Petitioner's recent criminal conviction, exceptional

circumstances warranted Petitioner's continued detention. Decl. ¶ 16; Ex. D to Decl., Custody Review Determination.

D. Petitioner's Detention at Caroline Detention Facility.

Petitioner arrived at Caroline Detention Facility ("Caroline") in Bowling Green, Virginia on December 14, 2023 Decl. ¶¶ 10, 18. As of the date the Petition for a Writ of Habeas Corpus was filed, Petitioner has been continuously detained by ICE for sixteen months. Pet ¶¶ 1, 21.

While detained at Caroline, Petitioner has received routine medical care, treatment, and medication Decl. ¶¶ 20, 25–26 This includes medical treatment for an unspecified anxiety disorder, primarily through the prescription of anti-depressant and/or anti-anxiety medications and regular mental health check-ins. *See, e.g* , Ex. C to Decl. at 12–13, 19–20, 23–24, 49–51, 135–38, 159–61, 202–05, 227–29, 234–36, 266–68, 287–89, 313–15, 343–46, 363–65, 371–74, 407–09, 411–13, 420–22, 424–26, 433–35, 477–79, 484–86, 504–06, 522–24, 526–28, 630–34, 639, 640–42, 816–18. Notably, Petitioner refused, on multiple occasions, to take his prescribed medications and/or appear for mental health appointments.[2] Decl ¶ 27; *se* Ex C to Decl. at 7, 32, 35, 121, 125, 139, 156, 158, 176–77, 181–83, 200, 277, 368, 379–80, 383–84, 388, 400, 484, 495, 498, 502, 512, 516–17, 653, 902, 904, 906–08 Despite Petitioner's noncompliance with his treatment, during a recent mental health follow-up on April 22, 2025, Petitioner reported that "the medication has been very effective at balancing his mood and managing his sleep and appetite," and shared that he was successfully utilizing various coping mechanisms such as drawing, painting, playing soccer, reading, and communicating with his family on a regular basis to support his mental health.

[2] Following repeated refusals to take his prescribed anti-anxiety/anti-depressant medication in December 2024, Petitioner's prescription was switched to a different type of medication, which he appears to have complied with since and seen positive improvement *See* Ex. C to Decl. at 13, 32, 37, 49, 121, 156–58, 175–77, 182–83.

Ex C to Decl. at 13; *see also id* at 37 (Petitioner "reports a notable reduction in symptoms which has resulted in decreased anxiety and distress, improved sleep hygiene, and improvement in regards to his previous appetite complaint.").

Petitioner also received medical care and treatment for his migraine headaches throughout his detention at Caroline, including at least one CT scan. Decl. ¶ 20, *see e g.*, Ex C to Decl. at 367–69, 397–99, 640–42, 657–59, 662–64, 672–74, 683–85, 693–96, 700–02, 709–10, 719–21, 729–30, 733–35, 743–45, 748–49, 752–55. However, Petitioner repeatedly refused to take his prescribed medication—which included a multi-layered approach to the problem that was both preventative and curative. Decl ¶ 20; *see, e.g.*, Ex. C to Decl. at 517 ("This patient has had multiple refusals for medication trials, office visits etc. has similar complaints all the time but unwilling to comply with prescribed medications. I am recommending that he continue to see mental health for counseling."); *id.* at 661 ("Patient has had significant compliance issues with prescribed medication for his headaches "), *see also* Ex. C to Decl. at 387–89, 653, 656–657, 686, 700, 704–709, 740, 742–744, 923, 925–26, 929–30, 945, 947 (refusing to take, at various points, prescribed topiramate, ondansetron, and sumatriptan succinate). Petitioner also had a history of overusing his headache medication, which caused rebound headaches. *See* Ex. C to Decl at 677, 696, 720 At one point, Petitioner was also counseled for diverting some of his medications to his dorm mate *Id* at 699 ("Patient has a history of coming to sick call frequently for headaches and stomachaches and stating that none of the treatments help him, but he is the only patient in facility of topiramate for headache prophylaxis, and [famotidine] for stomach pain, but both meds were found in the locker of patient in next dorm room ").

Petitioner complained at various points during his detention that he was experiencing stomach issues, including intermittent constipation, mild abdominal pain, nausea/vomiting, and

irritable bowel syndrome. Ex. C at 430–32, 513–15, 533–35, 547, 662–64, 678, 683–85, 688–89, 709–10, 714–21, 724–35, 729–30, 816–18 Each time he complained of such problems, Petitioner was examined and received medical care and treatment to assist with his complaints. *Id.*; *see also id* at 206–08, 210, 815–18, 859–60 He was assigned various medications to combat these issues, some of which he repeatedly refused to take. *See id.* at 355, 370, 383–85, 392, 493, 495–501, 512, 532, 662, 666–67, 686, 704–09, 712, 878, 884–90, 898–907, 911, 924, 927–29, 943–46 (refusing to take, at various points medication prescribed for indigestion, acid reflux and/or constipation, including famotidine, methylprednisolone, pantoprazole, psyllium fiber, polyethylene glycol powder, and/or dicyclomine) Some of Petitioner's stomach discomfort was likely due to his other medications, including pain relievers prescribed for his chronic headaches. *See id* at 721, *see also id* at 433 ("He stated he is taking medication for his migraines and it effects his stomach."). Petitioner's medical provider switched his prescriptions to combat these side effects *Id.* at 721 Petitioner was also cautioned against eating spicy foods, which he denied eating—although Petitioner's commissary list revealed that he was "ordering a lot of jalapeno refried beans and lime chili shrimp soup." *Id* at 420; *Compare* Ex. 2, Petitioner's Commissary List (listing, *inter alia*, purchases of spicy refried beans, chili ramen, hot spicy pork rinds, hot sausage, hot chili with beans, flaming hot Cheetos, spicy black beans, jalapeno cheese, and hot BBQ chips), *with* Ex. C to Decl. at 394 ("[Petitioner] expresses concern regarding ongoing abdominal discomfort related to the food being provided by food services. Specifically, he feels the food provided is too spicy. . he has also made numerous purchases of hot sauce from the commissary and he was instructed to avoid use of this product.")

Beginning in February 2024, Petitioner complained that he was lactose intolerant, at which point medical staff recommended that he be given a special diet until he could be tested for lactose

intolerance. *See* Ex. C to Decl. at 533, 640, 913 In March 2024, Petitioner complained that he wanted milk and his lactose-free diet was cancelled at his request *Id.* at 533–58 In early July 2024, Petitioner again complained that he was lactose intolerant. *Id.* at 356. Petitioner's blood was drawn for a lab test on July 8, 2024; his test came back negative for lactose intolerance three days later. *Id.* at 353–54, 772–73. On July 16, 2024, Petitioner was informed that he did not have any lactose allergy Decl. ¶ 23; *see* Ex. C to Decl. at 340–41 ("[T]he patient does not have a lactose allergy per lab."). Accordingly, Petitioner does not have any current recommendation or approval from medical staff for a special diet. Decl. ¶ 24.

On November 18, 2024, Petitioner presented with a swelling toothache and was prescribed an antibiotic—amoxicillin—along with pain medication. Ex. C to Decl at 192–94. Petitioner refused to take his prescribed antibiotic on multiple occasions. *See id* at 189–90, 842, 853–56 Petitioner returned for a dental appointment on December 10, 2024, asking for a cleaning. *Id.* at 165–68. Petitioner was examined, underwent the dental cleaning, and was advised on oral hygiene techniques *Id* He returned two days later, on December 12, 2024, asking to have his tooth taken out *Id* at 149–50 However, Petitioner's medical provider was unable to complete a tooth extraction because Petitioner had not completed his prescribed course of antibiotics. Decl ¶ 21; Ex. C to Decl. at 841–42 Accordingly, Petitioner was once again prescribed pain medication and antibiotics Ex C to Decl. at 150. Petitioner continued to refuse to take his antibiotics as prescribed *Id* at 140, 840. In January 2025, Petitioner was informed that his tooth extraction had been rescheduled and he had an upcoming appointment *See id.* at 132 On February 5, 2025, Petitioner's tooth was successfully extracted. *Id* at 43–45, 831; Decl. ¶ 21.

E. The Instant Habeas Petition.

On April 18, 2025, Petitioner filed the instant petition for a writ of habeas corpus, asserting

that his continued detention without a bond hearing violates the Fifth Amendment's due process clause Pet. ¶¶ 33–49, 79–82. Petitioner argues that this Court should conduct his bond hearing, consider Petitioner's ability to pay and alternatives to detention, and require the Government to bear the burden of proving that his continued detention is justified by clear and convincing evidence. *Id* ¶¶ 55–59.

ARGUMENT

I. Petitioner's Continued Detention Does Not Violate the Due Process Clause.

A. Under *Demore*, the Appropriate Standard is Whether the Continued Detention Carries Out the Purpose of 8 U.S.C. § 1226(c) By Ensuring the Protection of the Community from Serious Criminal Offenders.

Petitioner's due process challenge to the length of his detention without a bond hearing is subject to well-established Supreme Court caselaw holding that detention of a criminal noncitizen under §§ 1225(b), 1226(c) *without* a bond hearing is a constitutionally permissible part of removal proceedings. For mandatory detention under 8 U S C. § 1226(c), *Demore v. Kim*, 538 U S 510 (2003), is controlling In *Demore*, a lawful permanent resident subject to mandatory detention challenged the constitutionality of § 1226(c), asserting that his detention during removal proceedings for more than six months without a bond hearing violated the Due Process Clause. 538 U.S at 523, 531. *Demore* rejected this challenge and held that "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Id.* at 531.

In upholding the constitutionally of § 1226(c), the *Demore* Court reasoned that Congress—"[i]n the exercise of its broad power over naturalization and immigration" and in an effort to address legitimate concerns that "deportable criminal [noncitizens] who remained in the U.S often committed more crimes before being removed"—was justified in legislating that certain noncitizens must be detained, without bond hearings, during their removal proceedings. *Id* at 513,

518–22. The Court also observed that a noncitizen placed in § 1226(c) detention, though not entitled to receive a bond hearing, is entitled to request an individualized hearing at which to challenge her or his categorization as a noncitizen subject to mandatory detention. *Id.* at 514; *see also id.* at 531–32 (Kennedy, J., concurring) (noting the availability of a hearing provides due process)

The *Demore* Court also reasoned that, because the mandatory detention required by § 1226(c) has a "definite termination point"—the end of a noncitizen's removal proceeding—and does not require "indefinite" or "potentially permanent" detention, detention without a bond hearing until that definite termination point does not violate due process. *Id* at 528–31. This definite-termination-point, the Court reasoned, distinguished *Demore* from *Zadvydas v. Davis*, 533 U.S. 678 (2001) In *Zadvydas*, the Court addressed post-removal-proceeding-but-pre-removal detention under 8 U S C. § 1231(a)(6)—not applicable here—and concluded that after a presumptively reasonable six-month period, continued detention under § 1231 could raise due process concerns. 533 U S. at 701. *Zadvydas* also stated that "[a] statute permitting indefinite detention of a[] [noncitizen] would raise a serious constitutional problem" under the Due Process Clause. *Id.* at 690. In *Demore*, the Court found *Zadvydas* "materially different from the present case in two respects." *Demore*, 538 U.S. at 527 First, the Court reasoned that, unlike detention under § 1231, detention under § 1226(c) "necessarily serves the purpose of preventing deportable criminal [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed." *Id* at 528 Second, the Court found that, unlike detention under § 1231—which "was 'indefinite' and 'potentially permanent'"—detention under § 1226(c) "ha[s] a definite termination point." *Id* at

529.[3] The *Demore* Court thus found no need to adopt a presumptive six-month limitation as it did in *Zadvydas*. *Id.* at 528–31. Indeed, Congress enacted mandatory detention precisely out of concern that such individualized [bond] hearings could not be trusted to reveal which "deportable criminal [noncitizens] who are not detained" might "continue to engage in crime [or] fail to appear for their removal hearings." *Nielsen v. Preap*, 586 U.S. 392, 412 (2019) (quoting *Demore*, 538 U.S. at 513 (internal quotations omitted)).

B. Under the *Demore* Standard, Petitioner Has Received the Process He Is Due.

Because Petitioner's removal proceedings have a *definite* termination point and there is no evidence that ICE is detaining him for any purpose other than to protect against risk of flight or dangerousness, Petitioner has already received the appropriate due process protections. Under *Demore*, mandatory detention under § 1226(c) is constitutional so long as it continues to serve its purpose of preventing the risk of flight or dangerousness, two concerns that are present throughout removal proceedings. 538 U.S. at 528; *id.* at 526 (noting the "longstanding view that the Government may constitutionally detain deportable [noncitizens] during the limited period necessary for their removal proceedings"). As the Supreme Court has emphasized, "having thus required the Secretary to impose mandatory detention without bond hearings immediately, for safety's sake, Congress could not have meant for judges to 'enforce' this duty in case of delay by—of all things—forbidding its execution." *Nielsen*, 586 U.S. at 412–13.

In *Jennings v. Rodriguez*, the Supreme Court considered whether § 1226(c) itself contains

[3] The *Demore* Court cited statistics the government had provided calculating that, for noncitizens in immigration detention under § 1226(c), "removal proceedings are completed in an average time of 47 days and a median of 30 days" and that an appeal takes "an average of four months, with a median that is slightly shorter." *Demore*, 538 U.S. at 529. These statistics are outdated and while the government cannot provide current processing times, removal proceedings now take significantly longer.

an implicit limit on the length of detention before a noncitizen is entitled to an individualized bond hearing. The Ninth Circuit, like several other Circuit Courts and courts within this district, had relied on the canon of constitutional avoidance to read a time limit into the statute. 583 U.S. at 286; *see also Rodriguez v. Robbins*, 804 F.3d 1060, 1074 (9th Cir. 2015), *rev'd sub nom by Jennings*, 583 U S at 305–06, *Mauricio-Vasquez v Crawford*, 2017 WL 1476349, at *4 (E D. Va. Apr. 24, 2017) (Trenga, J.), *abrogated by Jennings*, 583 U S. at 305–06; *Haughton v. Crawford*, 2016 WL 5899285, at *4 (E D Va Oct. 7, 2016), *abrogated by Jennings*, 583 U.S. at 305–06. In *Jennings*, the Supreme Court foreclosed using the constitutional-avoidance canon on § 1226(c) and rejected any implicit time limit because the "only if" language in § 1226(c)(2) clearly states that "[noncitizens] detained under its authority are not entitled to be released under any circumstances other than those expressly recognized by the statute"—for witness protection purposes when the noncitizen does not pose a danger or flight risk 583 U.S. at. 303; *see also id.* at 304 (stating that "the statute expressly and unequivocally imposes an affirmative prohibition on releasing detained [noncitizens] under any other conditions").

The *Jennings* Court also emphasized that it could not read a time limit into § 1226(c) simply because it is "silent" as to the length of the mandatory detention, and instead held that § 1226(c) "is *not* 'silent' as to the length of detention." *Id* at 304. Specifically, the Court concluded that § 1226(c) "mandates detention 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Id.* (quoting 8 U.S.C. § 1226(a)); *see also id.* (noting that 1226(c) has "a definite termination point") (citing *Demore*, 538 U.S. at 529). In other words, the mandatory detention required by § 1226(c) terminates at the conclusion of a noncitizen's removal proceedings. *See id.* The Court thus held that § 1226(c) "mandates detention of any [noncitizen] falling within its scope and that detention may end prior to the conclusion of removal proceedings

'only if' the [noncitizen] is released for witness-protection purposes." *Id.* at 305–06. The Court then remanded the case to the Ninth Circuit to determine in the first instance, among other issues, whether the Constitution requires that a noncitizen detained under § 1226(c) receive a bond hearing before removal proceedings have concluded. *Id.* at 312–14.

Although the Fourth Circuit has not addressed whether the Due Process Clause requires release or bond hearings for noncitizens detained under § 1226(c), it stated—in a case analyzing a constitutional challenge to bond procedures for those detained under § 1226(a)—that "[t]he Supreme Court has determined that several statutory procedures that presume detention categorically do not offend the Constitution," citing § 1226(c). *Miranda v Garland*, 34 F.4th 338, 363 (4th Cir. 2022) (citing *Demore*, 538 U.S. at 531). The Fourth Circuit further noted that detention under § 1226(c) is limited and *not* indefinite. *Id.* at 360 (citing *Demore*, 538 U.S at 521).

Here, as in *Demore*, the government has not unreasonably delayed Petitioner's removal proceedings, and there is no indication that the government's purposes in detaining him are punitive, in bad faith, or for any other purpose other than those for which § 1226(c) was enacted and held constitutional: avoiding risk of flight and the commission of additional crimes while immigration proceedings are pending Again, Congress enacted § 1226(c) in response to evidence that immigration authorities were unable to remove many criminal noncitizens because they failed to appear for removal hearings and that criminal noncitizens released on bond often committed additional crimes before they could be removed *See Demore*, 538 U.S. at 518–20. Here, ICE took Petitioner into custody after his serious criminal conviction requiring him to be mandatorily detained under § 1226(c) Decl ¶¶ 11–13, 27. It confirmed its conclusion that the serious nature of Petitioner's criminal conviction required ongoing detention in January 2025, after DHS

appealed the IJ's ruling to defer Petitioner's removal under CAT. *Id.* ¶ 16; Ex. D to Decl.

As other courts have concluded following *Jennings*, detention for the legitimate purposes of ensuring attendance at removal proceedings, protecting the community from further crimes, and ensuring attendance at the time of removal, is constitutional. *See, e g , Dryden v Green*, 2018 WL 3062909, at *5 (D.N J. June 21, 2018) (denying habeas petition because "it fully appears that Petitioner's detention stills serves the purposes of § 1226(c)" in light of the noncitizen's "self-inflicted delays, and the lack of any bad faith or unreasonable action on the part of the Government"); *Coello-Udiel v. Doll*, 2018 WL 2198720, at *4 (M.D Pa. May 14, 2018) (denying habeas relief under similar reasoning); *see also Misquitta v. Warden Pine Prairie ICE Processing Ctr*, 353 F. Supp. 3d 518, 527 (W.D. La 2018) ("Where removal proceedings are delayed solely by a party's good faith exercise of its procedural remedies—whether by the petitioner or the government—continued detention is unlikely to trigger due process concerns."); *Manley v. Delmonte*, 2018 WL 2155890, at *2 (W.D N.Y. May 10, 2018) (denying habeas relief under similar reasoning). Petitioner's continued detention carries out the purpose of § 1226(c) by ensuring attendance at removal proceedings and protecting the community from any more crimes and thus is permissible under the Due Process Clause. Accordingly, *Demore* provides the appropriate due process protections for the Petitioner and this Court should dismiss the Petition.

C. Even Apart from *Demore*, Petitioner is Not Entitled to Additional Process.

1. Under the Mathews *factors, the length of Petitioner's detention is reasonable.*

Even if Supreme Court precedent did not squarely govern Petitioner's Fifth Amendment claim (though it does), Petitioner would not be entitled to immediate release and the specialized bond hearing that he seeks. The analytical framework established in *Mathews v Eldridge* generally controls the analysis of claims seeking additional procedural protections under the

Constitution, though the doctrine has already been applied in this context (*i.e* , noncitizen subject to an order of removal) when the Supreme Court examined the constitutionality of these detention statutes. *See Demore*, 538 U.S. at 527–28; *Zadvydas*, 533 U.S. at 699.

Under *Mathews*, a court must consider three factors in assessing whether a given procedural framework affords due process: (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 requirements would entail. 424 U.S at 335 Any analysis of these factors in the immigration context must "weigh heavily" the fact that "control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S 21, 34 (1982). A correct application of the *Mathews* test weighs against ordering the specialized bond hearing and immediate release the Petitioner requests

1. With respect to the first factor—the private interest at stake—it is true that freedom from physical restraint "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U S at 690 But if "an illegal [noncitizen] [is] present within the United States," Petitioner may claim only a "limited liberty interest." *Wilson v. Zeithern*, 265 F Supp. 2d 628, 635 (E D. Va 2003) (detention of inadmissible noncitizen pending removal did not violate due process); *see Demore*, 538 U.S at 522 (explaining noncitizens' "liberty rights . are subject to limitations and conditions not applicable to citizens" (quoting *Zadvydas*, 533 U S. at 718 (Kennedy, J., dissenting))).

The Supreme Court has emphasized that "detention during deportation proceedings

[remains] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that noncitizens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure.") Indeed, "when the Government deals with deportable [noncitizens], the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Miranda*, 34 F.4th at 360 (quoting *Demore*, 538 U.S. at 528) (internal quotations omitted).

Petitioner also contends that the length of his detention alone bears on the strength of his liberty interest and "is given significant weight." Pet. ¶ 37. Even assuming, *arguendo*, that this is an accurate statement of the *law*, it does not significantly aid Petitioner. Courts have upheld periods of mandatory detention much longer than Petitioner's as constitutional. *See, e.g.*, *Luna-Aponte v. Holder*, 743 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (noncitizen's three-plus-year detention was constitutional). Petitioner alleges that he will be in detention for "many more months" unless this Court intervenes because DHS appealed the IJ's January 2025 ruling granting Petitioner relief under CAT and "there is no timeline of when the BIA will issue a decision." Pet. ¶ 40. But "[w]here removal proceedings are delayed solely by a party's good faith exercise of its procedural remedies—whether by the petitioner or the government—continued detention is unlikely to trigger due process concerns." *Misquitta*, 353 F. Supp. 3d at 526–27.

2. Regarding the second *Mathews* factor, applicable statutes and regulations already provide extensive protections to all noncitizens detained pursuant to § 1226(c). There is no basis in law for imposing yet more procedures that neither Congress nor the relevant agencies have adopted, nor has Petitioner offered any idea of *what* new procedures are needed.

Section 1226(c) provides that ICE *may* release noncitizens if certain requirements are met. *See* 8 U.S.C. § 1226(c)(2). And federal regulations reemphasize that "no [noncitizen] described in section 236(c)(1) [8 U.S.C. § 1226(c)(1)] of the [INA] *may* be released from custody during removal proceedings *except* pursuant to section 236(c)(2) [8 U.S.C. § 1226(c)(2)] of the [INA]." 8 C.F.R. § 236.1 (emphasis added). Under this statutory and regulatory framework, ICE may release the noncitizen only if it is necessary to provide protection to a witness *and*, in DHS's *discretion*, the noncitizen will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. 8 U.S.C. § 1226(c)(2) (emphasis added). Therefore, Petitioner could be released only for narrow, witness-protection purposes. *Id*; *see Demore*, 538 U.S. at 513–14. Indeed, the Supreme Court concluded in *Demore* that the statutorily established process overcomes *any* constitutional concerns the applicable procedures might raise *See Demore*, 538 U.S. at 513, *see also Nielson v. Preap*, 586 U.S. 392, 412–13 (2019) (emphasizing that Congress did not intend for judges to enforce releasing noncitizens due to delays); *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (rejecting claim for bond hearing to justify continuing detention).

3. Regarding the third *Mathews* factor, the government's interests in maintaining the existing procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation *Mathews v Diaz*, 426 U.S. 67, 81 (1976). Accepting Petitioner's position would flout this directive by injecting that very rigidity into the discretionary detention regime adopted by Congress.

In determining what process is due in immigration proceedings, "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the

control of the executive and the legislature." *Landon*, 459 U.S. at 34. "[A]ny policy toward [noncitizens] is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Diaz*, 426 U S. at 81 n.17 (quoting *Harisiades v Shaughnessy*, 342 U S. 580, 588–89 (1952)). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal [noncitizens]—to be a vital public interest." *Miranda*, 34 F.4th at 364. It is thus clear that, in the removal process, "the government interest includes detention." *Id.* And the Supreme Court has stated removal proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Wong Wing v. United States*, 163 U.S. 228, 235 (1896).

Finally, and particularly salient here, the government unquestionably has a vital interest in protecting public safety. *See Demore*, 538 U S. at 518–19. And Petitioner fails to contend that he is not "a danger to the community" and is not a flight risk. Petitioner is clearly a risk to the public as he was convicted of sexual battery—and indeed the state court thought the same when it held him after his arrest without bail. Pet. ¶ 17; *see also* Ex. D to Decl. (finding continued detention appropriate given the danger Petitioner poses to community); Ex. A to Decl The nature of Petitioner's offense—and the specific circumstances involved (i.e., a repeated sexual battery of a stranger in a public place)—was serious enough to lead the IJ to conclude that Petitioner was not eligible for withholding from removal or asylum. Decl. ¶ 14; *see* Dkt. 1–5 at 10–13

Therefore, it is clear from the *Mathews* factors that Petitioner is not entitled to additional process aside from what he has received here, as *Demore* provides, and this Court should dismiss the Petition for that reason

2. *Even if the Court Were to Apply the Five-Factor Balancing Test from* Portillo v. Hott, *Petitioner's Detention is Reasonable.*

Several jurists in this district, including this Court, have—notwithstanding the above authority—adopted a five-factor test to determine whether continued detention without a bond hearing comports with due process. *See Portillo v Hott*, 322 F Supp. 3d 698 (E.D. Va 2018) (Brinkema, J); *Abreu v Crawford*, 2025 WL 51475, at *5 (E.D. Va Jan. 8, 2025) (Nachmanoff, J.) (adopting the *Portillo* factor-based test); *Martinez v Hott*, 527 F. Supp. 3d 824, 836 (E D. Va. 2021) (Alston, J.). Under the *Portillo* balancing test the five factors are: "(1) the duration of the detention, including the anticipated time to completion of the [noncitizen's] removal proceedings; (2) whether the civil detention exceeds the criminal detention for the underlying offense; (3) dilatory tactics employed in bad faith by the parties or adjudicators; (4) procedural or substantive legal errors that significantly extend the duration of detention; and (5) the likelihood that the government will secure a final removal order." *Portillo*, 322 F. Supp. 3d at 707; *see Martinez*, 527 F. Supp. 3d at 836 (same). As noted above, Federal Respondents do not concede that the balancing test set forth in *Portillo* is the correct standard with which to assesses whether a noncitizen's continued detention is serving its intended purpose and thus outweighs the noncitizen's liberty interest. Nevertheless, applying those factors here warrants denial of the instant habeas petition.

As to the first factor—length of detention—this Court, and other jurists in this district, have found this first factor to be the "most important." *See Portillo*, 322 F. Supp 3d at 707; *Martinez*, 527 F Supp. 3d at 836 However, the Supreme Court's test in *Mathews* places an equal and even substantial weight on the *public's* interest, not just that of Petitioner. *See Mathews*, 424 U S. at 349 ("In striking the appropriate due process balance the final factor to be assessed is the public interest."). As of the date of this filing, Petitioner has been detained for approximately seventeen months (sixteen months as of the date of his habeas petition). Pet. ¶¶ 1, 21; Decl ¶ 18. But ICE

undertook a custody review of Petitioner *less than four months ago*—on January 10, 2025. *See* Decl ¶ 16; Ex. D to Decl. In that custody review, which included a review of all "available and relevant individual facts and circumstances of the case, including extensiveness, seriousness, and recency of the criminal activity, along with any evidence of rehabilitation," ICE determined that the recency of Petitioner's sexual assault conviction was an exception circumstance that made Petitioner's continued detention appropriate. Ex. D to Decl

Although Petitioner's removal proceedings and resulting detention have exceeded the period of detention at issue in *Demore* ("a month and a half . . . to five months"), *Demore* did not set an outer limit for a permissible period of detention. *See Demore*, 538 U.S. at 523, 531. Indeed, *Demore*'s "a month and a half . . . to five months" standard was based on ICE statistics at the time of such decision—in 2003. Over twenty years have passed since *Demore*, and there are significantly more noncitizens in removal proceedings today than in 2003. As the Fourth Circuit noted, detention under 8 U.S.C. § 1226(c) is *not* indefinite under *Demore*. *Miranda*, 34 F.4th at 360–61; *see also Hamama v Adducci*, 946 F.3d 875, 879 (6th Cir. 2020) (citing *Jennings* and *Demore* and noting the existence of an endpoint for detention under § 1226(c) detention (removal) "allay[s] any constitutional concerns")

While Federal Respondents recognize that courts—including this one—have ordered bond hearings for detentions longer than Petitioner's,[4] this Court should place equal significance on the other *Portillo* factors In addition, when addressing the constitutionality of § 1226(c) mandatory

[4] *See Bah*, 409 F. Supp 3d at 466 (ordering a bond hearing to noncitizen mandatorily detained under § 1226(c) for 26 months); *Gutierrez v Hott*, 475 F. Supp. 3d 492, 497–500 (E.D. Va. 2020) (same for noncitizens detained for 23 and 28 months) (Brinkema, J.); *Urbina v. Barr*, 2020 WL 3002344, at *6 (E.D. Va. June 4, 2020) (Brinkema, J.) (same for 19 months). Federal Respondents also recognize that this Court has ordered bond hearings for detentions of similar or lesser lengths than the one at bar. *See Portillo*, 322 F. Supp. at 700, 709 (ordering a bond hearing to noncitizen mandatorily detained under § 1226(c) for 14 months).

detention, other courts have upheld periods of detention that are far longer than Petitioner's detention *See, e g , Sodhi v Choate*, 2019 WL 3317293, at *9 (D. Colo. July 24, 2019) (holding that a noncitizen's 28-month long detention was constitutional); *Luna-Aponte v. Holder*, 743 F. Supp 2d 189, 197 (W.D.N.Y. 2010) (holding that a noncitizen's detention which lasted longer than three years was constitutional).

The second factor—whether the civil detention exceeds the criminal detention for the underlying offense—is neutral, or only slightly in favor of Petitioner. Pet. ¶ 41. Petitioner attempts to say that this factor "strongly favors" him because he has been in ICE custody "eight times the length of the sentence imposed by the criminal court, and four months longer than even the maximum sentence he could have received." *Id.* But as Petitioner concedes, he was sentenced to twelve months' imprisonment, which is the correct yardstick for measuring this factor. *Id* Under the INA, in defining a conviction, the term of imprisonment or sentence issued by a criminal court includes the period of incarceration or confinement "*regardless* of *any* suspension . . . of that imprisonment in whole or in part." 8 U.S C § 1101(a)(48)(B) (emphasis added); *see Ramtulla v Ashcroft*, 301 F.3d 202, 203 (4th Cir. 2002); *Laryea v. United States*, 300 F. Supp. 2d 404, 407 (E D Va. 2004). Accordingly, even though all but 60 days of his sentence were suspended, this Court should look to his entire imposed sentence—12 months—when weighing this factor. Thus, Petitioner has been in civil detention for only four months longer than his criminal sentence.

As to the third factor—dilatory tactics employed in bad faith by the parties—and the fourth factor—procedural or substantive legal errors that significantly extend detention—Petitioner's detention is lengthened here by the parties exercising options common in all immigration proceedings Petitioner's application for deferral of removal pursuant to CAT was granted by the IJ in January 2025 and the government appealed that decision. Pet ¶¶ 19–20 Any delay in the

proceedings has therefore come only through the parties' litigation of Petitioner's efforts to obtain relief in his immigration proceedings, which does not implicate the second or fourth factor *See Misquitta*, 353 F. Supp. 3d 526–27 ("Where removal proceedings are delayed solely by a party's good faith exercise of its procedural remedies—whether by the petitioner or the government—continued detention is unlikely to trigger due process concerns."); *see also Demore*, 538 U S at 530-31 & n. 14, 15 (noting that when noncitizens make choices during removal proceedings that delay removal, they bear the consequences for those decisions). Accordingly, there has been no bad faith by the government (and in any event Petitioner alleges none) and the third and fourth factors are neutral. *See Martinez*, 527 F. Supp 3d at 836–37.

As to the fifth factor—the likelihood that the government will secure a final removal order—is neutral. While the IJ granted Petitioner relief under CAT, the government has filed—and briefed—an appeal before the BIA, which has yet to issue a decision No party can predict whether the BIA will uphold, or overturn, the IJ's decision on appeal. Therefore, the fifth factor is neutral as to both parties

In sum, if this Court were to find the *Portillo* factors apply here, they weigh in favor of the Federal Respondents and merit denying the instant habeas petition.

D. In the Event the Court Finds Petitioner is Entitled to a Bond Hearing, the Only Relief the Court Should Consider is a Bond Hearing in Front of an IJ in which the Petitioner Bears the Burden of Proof.

Should the Court disagree and conclude that Petitioner is entitled to relief under *Portillo*, such relief should be limited to a bond hearing before an IJ that follows existing bond procedures *Martinez*, 527 F. Supp. 3d at 837–38; *Santos Garcia v. Garland*, 2022 WL 989019, at *7 (E.D. Va. Mar. 31, 2022) (Alston, J.).

Petitioner first asks this Court to conduct its own bond hearing instead of an IJ. *See* Pet.

¶¶ 49–51 However, by prohibiting federal courts from reviewing an IJ's decision on bond, the INA indicates that only an IJ can conduct such bond hearings *See* 8 U.S.C. § 1226(e). If this Court were to conduct its own bond hearing, it would be a waste of vital judicial resources as it is well within this Court's practice—and those of other jurists in this District—to order bond hearings in front of IJs. *See Gutierrez*, 475 F. Supp. 3d 492, 497–500 (ordering bond hearing before IJ for noncitizen detained under § 1226(c)), *Martinez*, 527 F. Supp. 3d at 838 (same); *Portillo*, 322 F. Supp 3d at 709 (rejecting noncitizen's request to retain jurisdiction over a habeas claim to determine whether he was afforded an appropriate bond hearing); *Santos Garcia*, 2022 WL 989019, at *9 (ordering bond hearing in front of IJ); *Urbina*, 2020 WL 3002344, at *7 (same). Federal Respondents are unaware of any *court* within this Circuit that has conducted such a bond hearing, and Petitioner presents only limited authority from out-of-circuit courts to suggest that doing so would be proper

Turning to the appropriate procedures, Petitioner should bear the burden of demonstrating by a preponderance of the evidence that he does not pose a flight risk or danger to the community in accordance with "[e]xisting regulations and Fourth Circuit authority."[5] *Martinez*, 527 F Supp 3d at 838; *see Guzman Chavez I*, 940 F 3d at 874, 882 ("The petitioners *must carry their* burden of proving that they are eligible for conditional release, and agency officials enjoy broad discretion in making detention-related decisions."), *rev'd on other grounds*, *Guzman Chavez II*, 594 U.S. 523; *Santos Garcia*, 2022 WL 989019, at *7 (same); *Palomares- Gastelum v. Barr*, 1:19-cv-1428, Order at 17–18, Dkt 28 (E.D. Va. Feb. 19, 2020) (Alston, J) (same); *see also Matter of Urena*, 25

[5] Federal Respondents recognize that this Court has previously determined that the government bears the burden in a bond hearing following a successful habeas claim for a noncitizen detained pursuant to 8 U.S C. § 1226(c). *See, e.g.*, *Portillo*, 322 F Supp. 3d at 710. Federal Respondents nonetheless maintain their position that the burden of proof should fall on Petitioner by a preponderance of the evidence.

I & N Dec. 140, 141 (BIA 2009); 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (relevant bond procedures).

Ordering a bond hearing that is consistent with well-established regulations, *i.e.*, which places the burden of persuasion on the noncitizen, is consistent with a long line of Supreme Court precedent. *See Demore*, 538 U S at 531 (detention of certain criminal noncitizens); *Reno v Flores*, 507 U.S. 292, 306 (1993) (detention of unaccompanied juvenile noncitizens); *Carlson*, 342 U.S. at 538 (detention of communist noncitizens); *cf. Zadvydas*, 533 U.S. at 701 (detention of certain noncitizens post-removal order). The Fourth Circuit recently reiterated this holding. *See Miranda*, 34 F 4th at 360 ("In *Demore*, a[] [noncitizen] argued that the Due Process Clause prevents the categorical placement of that burden on the [noncitizen]. The Supreme Court disagreed.").

Petitioner's arguments to the contrary are unpersuasive. For example, Petitioner points to the Fourth Circuit's decision in *Miranda v Garland*. Pet. ¶ 57. However, that case lends no support to Petitioner's claims. In *Miranda*, the Fourth Circuit applied the *Mathews v. Eldridge* analysis to the bond procedures available to detainees under 8 U.S C § 1226(a), § 1226(c)'s so-called "sister section." 34 F.4th at 360. The court held that those procedures—including those which place the burden of proof on the noncitizen—are constitutionally adequate under the Due Process Clause *Id* at 365 ("Those procedures, for individuals already in the country unlawfully, do not violate the Constitution's Due Process Clause.").

Finally, Petitioner asks this Court or the IJ to consider Petitioner's "limited ability to pay bond and alternatives to detention " Pet. ¶ 58. Under existing regulations, the IJ may consider *all* relevant information. *See* 8 C.F.R. § 1003.19(d) ("The determination of the [IJ] as to custody status or bond may be based upon any information that is available to the [IJ] or that is presented to him or her by the [noncitizen] or the Service.") Courts in this District have consistently held

that "[e]xisting regulations . . guide the Court's determination" of the appropriate procedures for bond proceedings *Martinez*, 527 F. Supp. 3d at 838; *Santos Garcia*, 2022 WL 989019, at *7, *Palomares*, No. 1:19-cv-1428, Order at 18, Dkt. 28; *see also Mauricio-Vasquez*, 2017 WL 1476349 at *6 ("It is . . . not the place of a federal court to craft a new standard, and this Court will therefore instead defer to the agency's existing regulations in this regard."). Thus, while the Court should not order any bond hearing to be held in this case, any hearing the Court does order should be conducted in accordance with *well-established* bond regulations—meaning before the IJ with the burden of proof on Petitioner.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny Petitioner's Petition for Writ of Habeas Corpus.

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Respectfully submitted,

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