UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JORDY LOPEZ ZAMORA,

***Petitioner*,**

v.

JUDITH ALMODOVAR,
in her official capacity as Acting Field Office Director, New York Field Office, U.S. Immigration & Customs Enforcement;

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

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

PAUL ARTETA,
in his official capacity as Sheriff and Warden of ICE facility at Orange County Jail.

Respondents.

Civil Action No. _____

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

INTRODUCTION

1. Petitioner Jordy Lopez Zamora is a 28-year-old person who fled repeated instances of torture in Ecuador almost a decade ago. He has *no* criminal convictions, and yet he has been detained by U.S. Immigration and Customs Enforcement ("ICE") for more than **eight months** without a constitutionally adequate bond hearing, all while he has been denied access to necessary medical care. His period of detention will continue indefinitely as Mr. Lopez Zamora avails himself of an appeal in front of the Board of Immigration Appeals ("BIA") and, if necessary, a petition for review to the Second Circuit. Mr. Lopez Zamora only remains in detention after he was denied bond by an Immigration Judge ("IJ") in a hearing where the burden was improperly placed on him to prove he was neither a flight risk nor a danger to the community. Mr. Lopez Zamora's more than eight months of wrongful detention will continue for the foreseeable future absent intervention from this Court.

2. In particular, the IJ in Mr. Lopez Zamora's case "acknowledge[d] that the respondent only has one conviction for disorderly conduct," but concluded that Mr. Lopez Zamora nevertheless had not met his burden of proving he was not a danger to the community based on the allegations and original criminal charges laid out in charging documents from his arrests. Exh. F at 3, Memorandum & Order of the Immigration Judge, May 12, 2025 (forthcoming with a motion to file under seal). Even further, the IJ credited that Mr. Lopez Zamora was a victim of repeated acts of abuse, and that there were "numerous letters of support in the record from family and friends" but concluded that "none of the letters…address the respondent's arrests or the serious allegations that were lodged against him." *Id.* at 5. Finally, the IJ explicitly declined to address Mr. Lopez Zamora's risk of flight, because she found that Mr. Lopez Zamora posed a danger to the

community. *Id.* at 6. The BIA dismissed Mr. Lopez Zamora's bond appeal. Exh. G, BIA decision, August 5, 2025.

3. By placing the burden on Mr. Lopez Zamora to prove that he was not a danger to the community, the government detained Mr. Lopez Zamora without ever providing him a constitutionally adequate bond hearing, violating his procedural due process rights under the Fifth Amendment, as well as the Administrative Procedure Act ("APA"). *See J.C.G. v. Genalo,* No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *7 (S.D.N.Y. Jan. 14, 2025) (joining the numerous courts in this district to conclude that "the Fifth Amendment Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that such detention is justified.") (internal quotation marks omitted); *Quintanilla v. Decker*, No. 21-CV-417, 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021) (joining the "'overwhelming consensus of judges in this district' in concluding that the Government should bear the burden to deny liberty at any Section 1226(a) bond hearing, regardless of the noncitizen's length of detention"); *Guerrero v. Decker*, 19-cv-11644 (KPF), 2020 WL 1244124, at *5 (S.D.N.Y. Mar. 16, 2020) ("[I]n accordance with every court to have decided this issue, [] the Court concludes that due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under § 1226(a).") (internal citations omitted).

4. Moreover, Mr. Lopez Zamora's detention is now prolonged, and the government has still never justified his continued detention on an individual basis. This is also a violation of Mr. Lopez Zamora's due process rights under the Fifth Amendment; under binding caselaw from the Second Circuit, he is entitled to a new bond hearing. Indeed, as the Second Circuit recently held in *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), "any immigration detention exceeding six months without a bond hearing raises serious due process concerns." *Id.* at 150; *see also Velasco Lopez v. Decker*,

978 F.3d 842, 846 (2d Cir. 2020) ("We conclude that Velasco Lopez's prolonged incarceration, which had continued for fifteen months without an end in sight or a determination that he was a danger or flight risk, violated due process. We further conclude that the district court appropriately addressed the violation by ordering a new hearing at which the Government was called upon to justify continued detention."); *e.g.*, *J.C.G.*, 2025 WL 88831, at *10 (granting the writ and ordering a burden-shifted bond hearing to a petitioner detained for nine months at Orange County Jail, after analysis guided by the framework of *Velasco Lopez*); *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833 (S.D.N.Y. Dec. 14, 2020) (same).

5. In line with the decisions in this district and the Second Circuit's holdings in *Black v. Decker* and *Velasco Lopez*, Mr. Lopez Zamora seeks a constitutionally adequate bond hearing where the government bears the burden of justifying his continued detention by clear and convincing evidence; where the immigration judge considers alternatives to detention and Mr. Lopez Zamora's ability to pay; and where the immigration judge does not place undue weight on unsubstantiated criminal allegations in determining bond.

PARTIES

6. Petitioner Jordy Lopez Zamora is a 28-year-old man from Ecuador who has lived in the United States since he last entered on or about September 2016. He is detained in the custody of ICE, a sub-agency of the United States Department of Homeland Security ("DHS"), at the Orange County Jail in Goshen, NY, and in removal proceedings venued at the Immigration Court at 201 Varick Street, New York, NY. He has been detained by ICE since February 13, 2025.

7. Respondent Judith Almodovar is named in her official capacity as the Acting Director of the New York Field Office for ICE within DHS. In this capacity, she is responsible for the administration of immigration laws and execution of detention and removal determinations for

individuals under the jurisdiction of the New York Field Office. As such, she is the custodian of Petitioner. Respondent Almodovar's office is at 26 Federal Plaza, New York, NY 10278.

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

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

10. Respondent Paul Arteta is the Sheriff of Orange County Jail ("OCJ"). In this capacity, he is the warden for the ICE facility at OCJ. As such, he is the custodian of Petitioner. Respondent Arteta's office is at 110 Wells Farm Road, Goshen, NY 10924.

JURISDICTION & VENUE

11. This Court has jurisdiction over this Petition pursuant to 28 U.S.C. §§ 1331 and 2241, and Article I, § 9, cl. 2 of the Constitution; and the All Writs Act, 28 U.S.C. § 1651, and the Administrative Procedure Act, 5 U.S.C § 701. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that

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

12. While only the federal courts of appeals have jurisdiction to review removal orders through petitions for review, *see* 8 U.S.C. § 1252(a), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention by DHS. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

13. Venue properly lies in the Southern District of New York. *See* 28 U.S.C. §§ 1391(e), 2241; *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 495-97 (S.D.N.Y. 2009). This petition is being filed while Mr. Lopez Zamora is physically present within the district, as he is detained by Respondents at the Orange County Jail in Goshen, NY. *See Araujo-Cortes*, 35 F. Supp. 3d at 537-38 & n.2.

STATUTORY TEXT & FRAMEWORK

14. Congress has authorized DHS to detain noncitizens during their removal proceedings. *See generally Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) (discussing authority to detain under 8 U.S.C. §§ 1225(b), 1226(a), 1226(c)). The general "discretionary" detention statute, § 1226(a), enables noncitizens to seek release on bond from an Immigration Judge ("IJ"):

> (a) **Arrest, detention, and release.** On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole; but
>
> (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or

> otherwise would (without regard to removal proceedings) be provided such authorization.

15. For more than two decades, the BIA has consistently held that in order to succeed in a request for custody redetermination, a noncitizen detained pursuant to § 1226(a) "must establish to the satisfaction of the Immigration Judge and the Board of Immigration Appeals" that he is not a danger to property or persons, a flight risk, or a threat to national security. *Matter of Adeniji*, 22 I&N Dec. 1102, 1102, 1113 (BIA 1999); *see also Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009); *Matter of Fatahi*, 26 I&N Dec. 791, 793 (BIA 2016); *Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 (BIA 2020).

EXHAUSTION

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

17. However, to the extent exhaustion is required, Mr. Lopez Zamora has exhausted all available remedies. He sought a custody redetermination and was denied bond pursuant to 8 U.S.C. § 1226(a), by Immigration Judge Dara Reid on April 29, 2025. Exh. E, IJ Order; see also Exh. F, IJ Memo. He then appealed the IJ's determination to the BIA, which dismissed his bond appeal on August 5, 2025. Exh. G.

STATEMENT OF FACTS & PROCEDURAL HISTORY

18. The undersigned represents Mr. Lopez Zamora in his removal proceedings, which are currently pending before the BIA. The undersigned took over representation of Mr. Lopez Zamora's case on August 14, 2025. Before that, another attorney at The Bronx Defenders, Michael Leonetti, represented Mr. Lopez Zamora as pro bono counsel, dating back to February 24, 2025. Thus, all facts are taken from the undersigned's personal review of the records kept by The Bronx Defenders, conversations with prior counsel, as well as proceedings in front of the Executive Officer for Immigration Review ("EOIR").

Immigration Proceedings

19. On information and belief, on February 13, 2025, ICE arrested and detained Mr. Lopez Zamora, and DHS issued him a Notice to Appear. *See* Exh. A, Notice to Appear and Custody Determination. He has been at OCJ ever since.

20. Mr. Lopez Zamora's first, *pro se*, appearance before an Immigration Judge was on February 20, 2025. The immigration judge adjourned the hearing for 14 days to March 6, 2025.

21. Mr. Lopez Zamora retained The Bronx Defenders as pro bono counsel on February 24, 2025. On March 5, 2025, through counsel, Mr. Lopez Zamora filed a motion to terminate his proceedings, based on DHS's failure to prove Mr. Lopez Zamora's alienage by clear and convincing evidence. Mr. Lopez Zamora's March 6, 2025, appearance could not take place as planned, because there was a medical quarantine in effect at Orange County Jail. Nevertheless, on the same date, Mr. Lopez Zamora's prior counsel appeared, the case was adjourned to March 11, 2025, and the Immigration Judge issued a written order denying the Motion to Terminate.

22. On March 11, 2025, Mr. Lopez Zamora was still not produced for his appearance because of the quarantine. However, through counsel, he entered pleadings and the IJ adjourned the case to March 18, 2025 for another master calendar hearing. In advance of that date, on March 17, 2025,

through counsel, Mr. Lopez Zamora filed an I-589 application seeking asylum, withholding of removal under the Immigration and Nationality Act ("INA"), and protection under the Convention Against Torture. At the master calendar hearing on March 18, 2025, the Immigration Judge adjourned the case to May 6, 2025, for an individual hearing on the merits of Mr. Lopez Zamora's fear-based claims.

23. On April 21, 2025, while preparing for his individual hearing, Mr. Lopez Zamora requested a hearing for custody redetermination, which the Court scheduled for April 29, 2025. On April 28, 2025, Mr. Lopez Zamora filed evidence supporting his request for bond. *See generally* Exh. C., Bond evidence submitted to the Immigration Judge (forthcoming to be filed under seal). In addition to the criminal court complaints and dispositions, he provided a sworn declaration, a psychosocial assessment from his Social Worker Ashley Guzman, LMSW, numerous letters of support from family and friends, attesting to his character as "reliable, a hard worker, a dedicated father and a kind and positive person," Exh. C at 8, Letter from Ashley Guzman, LMSW (summarizing the letters provided in Exh. C. at 11-17), as well as information about how his health was suffering in detention, Exh. C. at 37-164.[1] For its part, DHS provided only a list of Mr. Lopez Zamora arrests from an unverified RAP sheet. At the hearing, the IJ denied bond, finding Mr. Lopez Zamora had not met his burden of demonstrating that he is not a danger to the community. Exh. E., IJ Order Denying Bond, April 29, 2025

24. Mr. Lopez Zamora reserved appeal and, on May 2, 2025, filed a notice of appeal. Following this, the IJ issued a written decision further detailing the court's reasons for denying bond. *See* Exh. F. In the Bond Memo, the court "acknowledges that the respondent only has one conviction for disorderly conduct," but concluded that Mr. Lopez Zamora had not met his burden of proving

[1] Mr. Lopez Zamora's i-589 application was also included as part of his bond evidence, however, it will be removed from the information filed with this Court to protect Mr. Lopez Zamora's privacy.

he is not a danger to the community based on the allegations and original criminal charges laid out in charging documents from three separate arrests. *Id.* at 3. The court also credited that Mr. Lopez Zamora was a victim of repeated acts of abuse, and that there were "numerous letters of support in the record from family and friends" but concluded that "none of the letters…address the respondent's arrests or the serious allegations that were lodged against him." *Id.* at 5. Finally, the IJ explicitly declined to address Mr. Lopez Zamora's risk of flight, because she found that Mr. Lopez Zamora posed a danger to the community. *Id.* at 6.

25. On May 2, 2025, through counsel, Mr. Lopez Zamora filed an appeal of his bond determination before the IJ. On May 23, 2025, the BIA issued a briefing schedule, setting a deadline of June 13, 2025 for Mr. Lopez Zamora to file his bond appeal. Mr. Lopez Zamora filed his appeal in accordance with the schedule. On August 5, 2025, the BIA issued an unpublished order, affirming the IJ's decision and dismissing Mr. Lopez Zamora's bond appeal. *See* Exh. G.

26. Throughout the entirety of his bond proceedings, while DHS opposed granting Mr. Lopez Zamora bond, the government never opposed bond on the basis that a statutory detention authority other than § 1226(a) governed Mr. Lopez Zamora's detention.

27. As for the merits of his application for fear-based relief, they are still pending. On May 14, 2025 there were technical issues, which would not allow for Mr. Lopez Zamora's individual hearing to occur. Thus, the IJ continued Mr. Lopez Zamora's individual hearing to May 30, 2025, through no fault of his own. On May 30, 2025, the hearing went forward, and the IJ denied Mr. Lopez Zamora's applications for relief, though the IJ acknowledged that he had suffered past torture. See Exh. H at 15, IJ Oral Decision on the merits, (forthcoming with motion to file under seal). Mr. Lopez Zamora filed a notice of appeal to the BIA on June 12, 2025.

28. Mr. Lopez Zamora's counsel did not receive the transcript of his merits proceedings in front of the IJ nor a briefing schedule until August 11, 2025. Initially, the appeal on the merits was due on September 2, 2025. At that time, the case had to be transferred internally within The Bronx Defenders, as Mr. Lopez Zamora's prior counsel was leaving the office. The undersigned counsel filed one extension request due to the recent reassignment, which the BIA granted. Mr. Lopez Zamora timely filed his appeal through undersigned counsel on September 22, 2025. Mr. Lopez Zamora intends to pursue all avenues of relief, including a petition for review to the Second Circuit, should his appeal be denied.

Strain of Ongoing Detention

29. Mr. Lopez Zamora has been detained by ICE at OCJ for more than eight months.

30. Orange County Jail in Goshen, NY, is a county jail contracted by ICE to detain noncitizens. It has been the subject of a complaint with DHS's Office of Civil Rights & Civil Liberties that detailed "appalling conditions," including retaliatory abuse, violence, and medical neglect.[2] It also has a pending lawsuit brought by numerous advocacy groups for retaliation against those detainees who spoke out about the abhorrent conditions at the facility.[3] Just recently, the New York Lawyers for the Public Interest (NYLPI) Health Justice Program released a comprehensive and damning report, detailing the systemic failures in the procurement of medical care to people in immigration detention at Orange County Jail.[4] After surveying conditions at OCJ for the past ten years, the

[2] *See* Letter to DHS Off. of Civil Rights & Civil Liberties, *Racist and Retaliatory Abuse, Violence, and Medical Neglect Endured by Individuals Detained at Orange County Correctional Facility* (Feb. 17, 2022), https://www.law.nyu.edu/sites/default/files/OCCF%20Multi-Organization%20DHS%20CRCL%20Complaint%20and%20Index_2%2017%202022.pdf.

[3] *Detained Immigrants Sue ICE and NY Officials for Retaliation Against First Amendment Protected Protest*, Press Release, New York Civil Liberties Union (April 4, 2023), https://www.nyclu.org/press-release/detained-immigrants-sue-ice-and-ny-officials-retaliation-against-first-amendment

[4] NYPLI, "Denied Care, Denied Dignity: Systemic Medical Failures in Immigration Detention at Orange County Jail," *available at* https://www.nylpi.org/denied-care-denied-dignity/ (last accessed October 18, 2025).

report concluded that there is a "pattern of inadequate medical treatment, creating grave risks for detained individuals." [5]

31. Moreover, the access-to-counsel problems at Orange County Jail are serious: the facility not only does not have sufficient space for in-person visits but relies on video-conferencing technology that frequently malfunctions.

32. These "appalling conditions," that include "inadequate medical treatment," harm Mr. Lopez Zamora in particular, who, in January 2023, sustained serious injuries in a workplace incident where he fell eight feet from a ladder. Exh. B at ¶ 7, Declaration of Social Worker Ashley Guzman, LMSW, (forthcoming with a motion to file under seal). Because of this, he has had reparative surgery on his neck, knee, and shoulder, and before detention was receiving physical therapy treatments three times per week. Exh. C at 8-9 (letter from Ms. Guzman). According to a review of his medical history by Dr. Kate Sugarman, the injuries he suffered from the fall have left him with "multiple debilitating conditions…including incapacitating cervical and lumbar spine injury, left knee and shoulder injuries, and post-concussion syndrome." Exh. D. at 2.

33. Before entering detention, Mr. Lopez Zamora had undergone multiple surgeries, and was receiving physical therapy three times a week, as well as frequent acupuncture and lumbar steroidal injections; he also received over the counter pain killers as well as prescription muscle relaxants for his pain. *Id.* at 2-3. His detention led to an "abrupt discontinuation" of his care. *See id.* at 3. He has made more than twenty-five requests for medical attention that have gone unanswered while he has been at OCJ. Exh. B at ¶ 9. He was told by officials at OCJ that he would only be taken for treatment if he were "dead or bleeding."

[5] *Id.* at P 5.

34. His lack of treatment has resulted in severe pain and a slowing of progress toward recovery. He has "worsening pain in his foot and knee when he walks as well as worsening pain when he moves his head from side to side, up and down, and when he swallows." Exh. B at ¶ 7. Furthermore, he has "consistent cramping in the sites of his injuries that are greatly affecting his quality of life." *Id.* The pain, as well as the inadequate mattress that OCJ has provided him, mean that he only sleeps a few hours every night. *Id.*

35. While in detention, he also suffered a burn to his hand from scalding water. Officials just ran cold water on it, and only sent him to the nurse two days later, after he suffered severe swelling in his hands. The nurse gave him ointment, but offered no further or follow up treatment.

36. His detention has also caused a severe financial strain. When he was not incarcerated, he was pursuing a worker's compensation claim, because of the fall in January 2023. However, he is unable to pursue his worker's compensation claim while he is incarcerated. Exh. B at ¶ 12.

37. His mental health has also suffered. He suffered a difficult and traumatic upbringing, and he often experiences horrific flashbacks to these incidents. *See* Exh. C. at 8. Prior to his detention, he was able to cope by distracting himself with his obligations to work, going on walks, and taking care of his son. *Id.* But since his detention, these mechanisms are no longer available to him. *Id.* In detention, he has felt depressed and anxious, feels frustrated, and experiences headaches and sweaty palms. *Id.*; Exh. B at ¶ 6. He has no access to the mental health therapeutic services he needs while detained at OCJ. Exh. B at ¶ 6.

38. Furthermore, the adjudication of his application for relief from removal is likely to take, at minimum, several more months. His case is currently pending before the BIA. See Exh. I, EOIR Portal printout. The BIA may remand to the immigration judge who already rejected Mr. Lopez Zamora's claims, after which either Mr. Lopez Zamora or the government would return to the BIA

for review, which would again take months for briefing and adjudication. Moreover, Mr. Lopez Zamora may seek judicial review at the Second Circuit Court of Appeals of any legal or constitutional errors in the agency's decision, a process that can take years. *See* 8 U.S.C. § 1252. In short, Mr. Lopez Zamora's length of detention—and, as a result, the violation of his constitutional rights—will continue indefinitely.

Criminal History

39. For nearly a decade after his arrival in the United States, Mr. Lopez Zamora had no criminal arrests. He has absolutely no criminal convictions, and his only conviction to date is for disorderly conduct under N.Y.P.L. § 240.20, a non-criminal violation. *See* Exh. C at 25 (criminal history chart). The details of his limited criminal legal system entanglement, which were all presented by Mr. Lopez Zamora to the IJ, follow.

40. On August 31, 2024, he was arrested and charged with eight counts of offenses including three felony counts, four misdemeanor counts, and one violation. The only basis for these charges were the purported hearsay statements of the complainant, [redacted] The criminal court complaint was signed by a police officer on September 1, 2024, however, all of these allegations were claimed to have taken place almost six months earlier, at three separate times, all on January 16, 2024. *See id.*

41. Mr. Lopez Zamora was arrested for this incident on August 31, 2024, eight months after these alleged incidents, and spent about three days in jail. Exh. C at 18. He denied that he ever [redacted] Exh. C at 18-19. Additionally,

[redacted]

42. On December 6, 2024, the Queens Criminal Court dismissed *all* felony counts, which included strangulation and rape in the third degree, and scheduled the remaining misdemeanor counts to be dismissed on December 5, 2025, pursuant to an adjournment in contemplation of dismissal ("ACD") under N.Y.C.P.L. § 170.55. Exh. C at 26.

43. On November 16, 2024, Mr. Lopez Zamora was arrested and charged with criminal contempt under N.Y.P.L. § 215.50(3), harassment under N.Y.P.L. § 240.26(3), and disorderly conduct under N.Y.P.L. § 240.20. Exh. C at 32. The complaint alleges that he called [redacted] *Id.* at 32-33. On December 6, 2024, Mr. Lopez Zamora pleaded guilty to a disorderly conduct violation in satisfaction of all charges. *Id.* at 30. Mr. Lopez Zamora received a sentence of time served in prison and a court surcharge in the amount of $120 dollars. *Id.* In Mr. Lopez Zamora's sworn declaration, he explained that this incident occurred because he had lent $500 to [redacted] *Id.* at 19. For that case, Mr. Lopez Zamora was arrested, saw a judge, and was released the next day. *Id.*

44. Finally on November 18, 2024, Mr. Lopez Zamora was arrested and charged with criminal possession of stolen property under N.Y.P.L. § 160.50 and with an infraction for driving without a license under N.Y.V.T.L. § 509(1). *Id.* at 34. The complaint alleges that Mr. Lopez Zamora was observed driving a car bearing license plates that were registered to the complainant, and that upon stop by the police, Mr. Lopez Zamora "was unable to produce a valid driver's license." *Id.* at 35-36. Mr. Lopez Zamora was in custody from November 18 through November 20, 2024. *Id.* at 19.

In his declaration filed with the immigration court, Mr. Lopez Zamora stated that he was unaware that there were fraudulent plates on the car that he had purchased, and that he possessed a valid permit that he had forgotten at home. *Id.* at 19.

45. The Queens Criminal Court dismissed all charges in this case on March 13, 2025. *Id* at 34.

LEGAL BACKGROUND

I. DUE PROCESS REQUIRES THAT PETITIONER BE AFFORDED A CONSTITUTIONALLY ADEQUATE BOND HEARING

46. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "It is well established that the Fifth Amendment entitles aliens to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). While "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process," there are "important constitutional limitations on that power's exercise." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (internal quotations and citations omitted).

47. One of those limitations is the "fundamental requirement" of procedural due process, namely "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). When the government seeks to use its weighty power to confine a person, due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil

detention—to mitigate the risks of danger to the community and prevent flight. *Id.* at 690; *accord Velasco Lopez*, 978 F.3d at 854–55.

48. Because Mr. Lopez Zamora has never received adequate procedural protections to protect his weighty interest in freedom, Mr. Lopez Zamora's continued incarceration violates his constitutional right to due process.

49. First, at no time during Mr. Lopez Zamora more than eight month detention has DHS justified his ongoing incarceration. As a chorus of district courts in this Circuit has held, due process requires the government to bear the burden of proof by clear and convincing evidence at all bond hearings regardless of the length of detention. Instead, the immigration judge at Mr. Lopez Zamora's initial bond hearing unconstitutionally placed the burden of proof on him. In addition, whether or not the initial hearing was adequate, Mr. Lopez Zamora's detention is now prolonged, entitling him to a new bond hearing with the burden of proof on the government, as dictated by the Circuit in *Black* and *Velasco Lopez*.

50. Second, to ensure that Mr. Lopez Zamora's detention is related to a legitimate government interest as the Due Process Clause requires, an immigration judge must meaningfully consider alternatives to detention and the petitioner's ability to pay and must not give undue weight to unsubstantiated criminal allegations in preliminary charging documents in making a custody redetermination. These procedural protections were absent from Mr. Lopez Zamora's initial hearing and are necessary in any subsequent hearing.

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

The Burden Must Be on the Government Regardless of the Length of Detention.

51. As repeatedly recognized by courts in this Circuit, the government must bear the burden of proof by clear and convincing evidence for a bond hearing to be constitutionally adequate, regardless of the length of detention.

52. The Second Circuit requires that, once detention is prolonged, the government *must* bear the burden of justifying detention by "clear and convincing evidence." *Black*, 103 F.4th at 155; *Velasco Lopez*, 978 F.3d at 855. Nevertheless, the Second Circuit has expressly declined to reach the question of what protections due process requires, even before detention becomes prolonged. *See Velasco Lopez,* 978 F.3d at 855 n.13; *Quintanilla v. Decker*, No. 21 CIV 17 (GBD), 2021 WL 707062, at *4 (S.D.N.Y. Feb. 22, 2021) (discussing *Velasco Lopez*); *Jimenez v. Decker*, No. 21-CV-880 (VSB), 2021 WL 826752, at *8 (S.D.N.Y. Mar. 3, 2021) (declining to interpret *Velasco Lopez* to foreclose petitioner's argument that a burden-shifted hearing was required before detention was prolonged).

53. Even prior to *Velasco Lopez*, an "overwhelming consensus" of district courts had held that placing the burden on the noncitizen was unconstitutional regardless of the noncitizen's length of detention. *See Quintanilla*, 2021 WL 707062, at *3 (collecting cases).

54. In *Velasco Lopez*, the Second Circuit suggested that placing the burden on the petitioner at the time of his initial bond hearing was unconstitutional. *See* 978 F.3d at 852 n.8 (noting the time lapse between petitioner's detention and the initial bond hearing and observing that, "[h]ad he been charged with a violent felony . . . the Government would have been required . . . to carry the burden of establishing by a preponderance of the evidence that no conditions of release would reasonably assure the defendant's presence at trial and by clear and convincing evidence that no conditions could assure the safety of the community"). The First Circuit has also held that the government

must bear the burden at all 1226(a) custody hearings. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 35 (1st Cir. 2021) (relying on the logic of *Velasco Lopez*)

55. Since *Velasco Lopez*, district courts that have considered the procedural protections required at the initial bond hearing have continued to require the burden to be on the government at all Section 1226(a) custody hearings.[6] *J.C.G. v. Genalo*, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *9 (S.D.N.Y. Jan. 14, 2025) ("According to the Government, *Velasco Lopez* 'suggests that there is no constitutional infirmity in an immigration judge's placement of the burden of proof on a noncitizen detained under § 1226(a) at his initial bond hearing where the noncitizen has been afforded adequate process.' This Court declines to read any such 'suggestion' into *Velasco Lopez's* holding."); *B.S. v. Joyce*, No. 22-CV-9738 (PKC), 2023 WL 1962808, at *4 (S.D.N.Y. Feb. 13, 2023) ("Like other courts faced with due process challenges to initial bond hearings since *Velasco Lopez*, this Court will continue to require the government to bear the burden of proof at all section 1226(a) bond hearings."); *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at *7 n.7 (S.D.N.Y. Aug. 20, 2021) (agreeing with the "'overwhelming majority of courts' that have found that the Due Process Clause of the Fifth Amendment requires" the government to bear the burden of demonstrating by clear and convincing evidence that detention is justified" and refusing to alter the analysis in light of *Velasco Lopez*); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) ("[N]either the Circuit's decision in *Velasco Lopez* nor any other binding appellate authority overrules the 'overwhelming consensus' of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden . . . even absent 'prolonged detention.'"); *Jimenez v. Decker,* No. 21-CV-880 (VSB), 2021

[6] Some district courts have focused on the narrower question posed by *Velasco Lopez*, analyzing only whether detention is prolonged such that a new bond hearing is required. *See Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *6–7 (S.D.N.Y. Dec. 14, 2020); *Gonzalez Evangelista v. Decker*, No. 20 CIV. 8758 (AKH), 2021 WL 101201, at *5 (S.D.N.Y. Jan. 12, 2021).

WL 826752, at *8, 11 (S.D.N.Y. Mar. 3, 2021) (rejecting the government's argument that *Velasco Lopez* only authorized shifting the burden with prolonged detention and applying the *Mathews* factors); *Quintanilla v. Decker*, No. 21 CIV. 417 (GBD), 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021) (joining the "'overwhelming consensus of judges in this district' in concluding that the Government should bear the burden to deny liberty at any Section 1226(a) bond hearing, regardless of the noncitizen's length of detention").

56. This consensus approach aligns with the Second Circuit's analysis in *Velasco Lopez*, which affirmed that longstanding Supreme Court precedents in other civil confinement contexts apply with equal force in the immigration context. *Velasco Lopez*, 978 F.3d at 856; *see Hernandez-Lara*, 10 F.4th at 37–38.

57. Those precedents underscore that civil detention must be carefully limited to avoid due-process concerns. *See, e.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

58. These precedents further instruct that, given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers—not the person detained—to establish the necessity of that detention. *See, e.g.*, *Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the government); *see also Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil insanity detention "statute that place[d] the burden on the detainee to prove that he is not dangerous"). That interest in liberty is strong even at the outset of detention: "[I]t is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Velasco Lopez*, 978 F.3d at

851 (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)); *United States v. Comstock*, 560 U.S. 126, 130-31 (2010) (clear and convincing standard applies under a federal statute which permits a continued confinement of a "mentally ill, sexually dangerous" prisoner beyond a date that the prisoner would otherwise be released, from the outset of that continued detention period). That is particularly true where, as here, a detainee has developed close and meaningful ties to the United States. *See, e.g., Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950) (noting that noncitizens' rights increase with increased ties to the country). Even when the Supreme Court upheld the constitutionality of categorical detention for certain noncitizens with criminal convictions, it relied on those individuals having received "the *full procedural protections* our criminal justice system offers," *Demore v. Kim*, 538 U.S. 510, 513 (2003); on Congress considering specific studies regarding its legislative choice, *id.* at 518-21; and on the relatively short duration of detention it anticipated, *id.* at 529. None of those circumstances are applicable to the discretionary, potentially indefinite detention at issue here. *See Velasco Lopez*, 978 F.3d at 850 n.7, 852; *Hernandez-Lara*, 10 F.4th at 35–36.

59. And finally, those precedents hold that, in contrast to the preponderance-of-the-evidence standard in most civil proceedings, the government must be held to a clear and convincing standard of proof when an individual's liberty is at stake. *Black v. Decker*, 103 F.4th at 138; *Velasco Lopez*, 978 F.3d at 856 n.15 ("When someone stands to lose an interest more substantial than money, we protect that interest by holding the Government to a higher standard of proof." (quoting *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020))); *see Cooper*, 517 U.S. at 363; *Foucha,* 504 U.S. at 81. In cases where the individual's interest is of "such weight and gravity," it is improper to ask an individual to "share equally with society the risk of error."

Addington, 441 U.S. at 427. Immigration detention implicates "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

The Burden Must Be on the Government When Detention Becomes Prolonged.

60. Regardless of whether Mr. Lopez Zamora's initial bond hearing was unconstitutional, a hearing where the burden is shifted to the government is required once detention becomes prolonged under the clear holdings of *Black*, 103 F.4th at 138 and *Velasco Lopez*, 978 F.3d at 855.

61. While in *Velasco Lopez*, the Second Circuit declined to "establish a bright-line rule for when due process entitles an individual detained under § 1226(a) to a new bond hearing with a shifted burden," *Id.* at 855 n.13, the Second Circuit later held "that any immigration detention exceeding six months without a bond hearing raises serious due process concerns," *Black v. Decker*, 103 F.4th at 150. It must be underscored that the bond hearing that *Black* is referring to, is one where the government *must* bear the burden of justifying detention by "clear and convincing evidence." *Black*, 103 F.4th at 155. This comports with Supreme Court precedent, which requires additional scrutiny of detention as the period of incarceration approaches or surpasses six months. *See Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months"); *Demore*, 538 U.S. at 529-30; *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015), *cert. granted, judgment vacated*, 138 S. Ct. 1260, 200 L. Ed. 2d 415 (2018) (requiring bail hearings "within six months" of detention); *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *6–7 (S.D.N.Y. Dec. 14, 2020) (citing cases invoking the six-month threshold as significant and holding that nine months was sufficiently prolonged to warrant an individualized hearing with a shifted burden); *Graham v. Decker*, No. 20 CIV. 3168 (PAE), 2020 WL 3317728, at *5 (S.D.N.Y. June 18, 2020) ("[A] detention exceeding six months fairly favors the claimant in a multi-factor analysis"); *see also Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality

opinion) (limiting imposable sentence to six months for a criminal offense without procedural protection of a jury trial). The Supreme Court has also looked to six months as a benchmark in other civil detention contexts. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as outer limit for confinement without individualized inquiry for civil commitment).

62. The Second Circuit has repeatedly emphasized that where the Supreme Court has upheld the constitutionality of detention pursuant to removal proceedings, it has done so in reliance on "the relatively short duration of detention"—between one-and-a-half and four months in the vast majority of cases. *Black*, 103 F.4th at 151 (citing *Demore*, 538 U.S. at 529); *Velasco Lopez*, 978 F. at 852 (same). In contrast, Mr. Black's seven-month detention without an individualized determination "more seriously infringed" on his liberty interest. *Black*, 103 F.4th at 151. In the case of Mr. Velasco Lopez, his fifteen-month incarceration without individualized justification was unconstitutional "on any calculus." *Id.* at 855 n.13; *see also J.C.G.,* 2025 WL 88831, at *9 ("Even if *Velasco Lopez* were construed as requiring a finding of 'prolonged detention' prior to granting a noncitizen a burden-shifting hearing, J.C.G.'s nine-month detention qualifies as a 'prolonged detention.'"); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) (holding that "even if *Velasco Lopez* were correctly read to impose a bright line requirement of 'prolonged detention', Mr. Banegas would qualify for a new hearing because of his nine-month detention"); *Gonzalez Evangelista v. Decker*, No. 20 CIV. 8758 (AKH), 2021 WL 101201, at *5 (S.D.N.Y. Jan. 12, 2021) (applying the *Mathews* analysis and finding that the petitioner's 11-month "detention has been unreasonable in duration"); *Jimenez v. Decker,* No. 21-CV-880 (VSB), 2021 WL 826752, at *11 (S.D.N.Y. Mar. 3, 2021) (granting relief where petitioner was detained for twelve months).

63. In *Velasco Lopez*, to determine whether a new bond hearing with the burden on the Government was required, the Circuit conducted the three-factor analysis laid out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Velasco Lopez*, 978 F.3d at 851-55.

64. Under the first factor, the court recognized that "the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment." *Id.* at 851. Noting the Supreme Court's jurisprudence on the relatively brief length of the detention described in *Demore*, the Circuit further recognized that "[t]he longer the duration of incarceration, the greater the deprivation." *Id.* at 852. District courts in this Circuit have examined "whether the detention will exceed the time the petitioner spent in prison for the crime that made him removable" and "whether the petitioner's detention is near conclusion" under this prong. *See, e.g.*, *Gonzalez Evangelista*, 2021 WL 101201, at *4. Also relevant to the petitioner's interest are the conditions of confinement. The *Velasco Lopez* court noted that the petitioner there had spent his "civil detention" "incarcerated in the Orange County Correctional Facility where he was held alongside criminally charged defendants and those serving criminal sentences." 978 F.3d at 851.

65. Next, the Circuit found that the second *Mathews* factor, "the risk of erroneous deprivation of such private interest . . . and the probable value, if any, of additional or substitute procedural safeguards," also weighed "heavily" in the petitioner's favor. *Id.* at 852. This was true even where the petitioner had been arrested three times, had a conviction for driving while ability impaired, pending charges for aggravated unlicensed operation and driving while intoxicated, and dismissed charges for a bar fight. *Id.* at 846–47. As the Circuit held, "Velasco Lopez was neither a flight risk nor a danger to the community but was unable to prove that was the case." *Id.* at 853. Specifically, the Circuit pointed to the difficulties petitioner faced in challenging outstanding criminal charges

while confined in detention and in accessing relevant documents. *Id.* at 852; *see also Hernandez-Lara*, 10 F.4th at 30–31 (noting, as well, that the government will know immigration law and procedures much better than the petitioner and that "proving a negative" can itself be difficult). By contrast, the government had "substantial resources to deploy" in obtaining information about the petitioner, including access to government databases. *Velasco Lopez*, 978 F.3d at 853. The existing framework of administrative review does not change this calculus, as it is unable to correct the fundamental misallocation of the risk of error. *See Hernandez-Lara*, 10 F.4th at 32 ("Loaded dice rolled three times are still loaded dice.").

66. Third, the Circuit recognized only two valid governmental interests in detaining noncitizens under Section 1226 pending removal proceedings: to prevent absconding and to prevent the commission of crimes. *Velasco Lopez*, 978 F.3d at 854–55. However, the Court was unequivocal that "shifting the burden of proof to the Government to justify continued detention promotes the Government's interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose." *Id.* at 854. The Circuit also found that the public interest cut "strongly in favor" of the petitioner, because the Government failed to demonstrate any justification for "separat[ing] families and remov[ing] from the community breadwinners, caregivers, parents, siblings, and employees" whom the Government cannot show are in fact a poor bail risk. *Id.* at 855.

67. The government must justify itself when it deprives someone of their exceptional interest in liberty. When an immigration judge does not require the government to do so at the initial hearing, or when a person's detention has become prolonged, the caselaw is clear: the government cannot continue detaining that person unless they receive a bond hearing where the government bears the burden of proof by clear and convincing evidence.

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

68. The Due Process Clause requires that detention "bear a reasonable relation to its purpose." *Zadvydas*, 533 U.S. at 690; *see also Velasco Lopez*, 978 F.3d at 854–55 (holding that the only legitimate purposes for immigration detention are to protect community safety and to ensure that noncitizens attend future hearings); *Hernandez-Lara*, 10 F.4th 19, 32 n.5 (1st Cir. 2021) (same). To satisfy this requirement, a bond hearing must include additional procedural protections. Specifically the IJ must consider an individual's ability to pay, as well as alternative conditions of release, and the IJ must not give undue weight to allegations underlying dismissed or reduced criminal charges.

69. Under binding Second Circuit case law, due process requires the consideration at any bond hearing of "alternatives to detention and the noncitizen's ability to pay." *Black*, 103 F.4th at 159; *accord Hernandez v. Sessions*, 872 F.3d 976, 991 & n.4 (9th Cir. 2017) ("[A] bond determination 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."). After a noncitizen has been deemed eligible for bond, "refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons." *Black*, 103 F.4th at 58. Indeed, at that point, the noncitizen will continue to be detained not for a legitimate purpose but solely due to their indigency, accomplishing "little more than punishing a person for his poverty." *Hernandez*, 872 F.3d at 992 (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)).

70. Similarly, if the government is able to protect its regulatory interests through less restrictive means, detention is no longer reasonably related to a legitimate purpose. *See Salerno v. United States*, 481 U.S. 739, 755 (1987) (approving a pre-trial detention act that required the Government

to show that no conditions of release could satisfy its interests); *Bell v. Wolfish*, 441 U.S. 520, 538 (1979); *Hernandez*, 872 F.3d at 991. Where an alternative condition of release would reasonably safeguard the government's interest, the government has no legitimate interest in detaining that person. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 231 (W.D.N.Y. 2019) ("[T]he determination of whether detention was 'necessary to serve a compelling regulatory purpose' necessarily required the decisionmaker to consider whether 'a less restrictive alternative to detention' would suffice."). Accordingly, due process requires that the government, in order to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect their interests, and the immigration judge in turn must consider those alternatives. *See Cantor v. Freden*, 761 F. Supp. 3d 630, 640 (W.D.N.Y. 2025) ("This Court therefore holds that when a petitioner is entitled to a hearing because his detention pending removal has become unreasonably prolonged, the hearing requires a neutral decisionmaker to address whether alternatives to detention might ameliorate risk of danger as well as risk of flight" and *Black* does not state otherwise); *see also Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances).

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

The Due Process Clause Forbids Giving Undue Weight to Unsubstantiated Allegations in Police Reports Without Appropriate Safeguards.

72. The Second Circuit has repeatedly warned against using statements in police and prosecutorial documents as undisputedly reliable evidence. The reason for this is self-evident and played out in reality in this very case: when "agencies whose jobs are to seek to detect and

prosecute crimes" produce records, they are susceptible to "biases" in the "often competitive enterprise of ferreting out crime." *Francis v. Gonzales*, 442 F.3d 131, 143 (2d Cir. 2006). Moreover, there are "daunting practical difficulties associated with scrutinizing the facts underlying a conviction . . . ." *Padmore v. Holder*, 609 F.3d 62, 69 (2d Cir. 2010) (citation omitted). As such, the Circuit has held in different contexts that immigration adjudicators should not credit a factual allegation in a charging instrument. *See, e.g., James v. Mukasey*, 522 F.3d 250, 257 (2d Cir. 2008); *Dulal-Whiteway v. U.S. Dep't of Homeland Sec.*, 501 F.3d 116, 132 (2d Cir. 2007), *abrogated on other grounds by Nijhawan v. Holder*, 557 U.S. 29 (2009). And although an immigration judge or the BIA may consider arrest reports or charging documents in its discretionary analysis, it "may not base its decision denying relief upon the assumption that the facts contained in such documents are true." *Padmore*, 609 F.3d at 69.

73. Due process and fundamental fairness require that evidence be admitted in immigration court only if its use is "fundamentally fair, fairness in this context being closely related to the reliability and trustworthiness of the evidence." *Aslam v. Mukasey*, 537 F.3d 110, 114 (2d Cir. 2008) (citation omitted).

74. Fundamental fairness imposes minimal safeguards that must be followed to ensure that the use of unproven and uncorroborated allegations do not violate the demands of due process. *See Padmore*, 609 F.3d at 68 (suggesting that the BIA's treatment of a police report may raise due-process concerns); *Arias-Minaya v. Holder*, 779 F.3d 49, 54 (1st Cir. 2015) (noting that, while immigration courts may consider police reports, "[t]here are, of course, limits"). The Second Circuit has already expressed its concern with immigration adjudicators' "apparent willingness to accept unproven and disputed allegations as true merely because they exist in the record." *Padmore*, 609 F.3d at 69. The First Circuit has provided some indicia of when a preliminary

adversarial document has been properly entered. The trier of fact must determine that the document is reliable and that its use would not be fundamentally unfair. *Arias-Minaya*, 779 F.3d at 54. The "nature and stage of the proceedings must be taken into account." *Id.* And the petitioner must have an "opportunity to challenge its veracity and refute its contents." *Id.*

75. The *Mathews v. Eldridge* test confirms that the use of such preliminary documents is barred when the state criminal proceeding has progressed and when the petitioner was not given a meaningful chance to contest its veracity. This *Mathews* analysis is distinct from the analysis about the placement of the burden during immigration custody hearings.

76. The private interest is twofold and paramount. First, "[t]he presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice." *Estelle v. Williams*, 425 U.S. 501, 503 (1976). As such, "courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." *Id.* (citing *In re Winship*, 397 U.S. 358, 364 (1970)); *see United States v. Gaines*, 457 F.3d 238, 245-46 (2d Cir. 2006) (noting that "this Court has placed out of bounds practices that threaten to dilute the presumption of innocence"). Criminal charges do not overcome this presumption. See *United States v. Drayton*, No. 22 Cr. 91, 2022 WL 1026727, at *2 (S.D.N.Y. Apr. 4, 2022) (citing *Stack v. Boyle*, 342 U.S. 1, 4 (1951)) ("One charged with a crime is, after all, presumed innocent."). Further, Petitioner has an interest in avoiding deportation, which is always a "particularly severe penalty," *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (quotation marks omitted), and a "drastic measure, often amounting to lifelong banishment or exile," *Sessions v. Dimaya*, 138 S. Ct. 1204, 1213 (2018) (cleaned up).

77. The risk of erroneous deprivation, the second *Mathews* factor, is high when the immigration judge uses a preliminary police report or charging document without meaningful

corroboration and when the criminal case based on that complaint has been reduced to a non-criminal offense or dismissed, as is the case with all of Mr. Lopez Zamora's prior charges. Criminal complaints are drafted by "agencies whose jobs are to seek to detect and prosecute crime," which is an "often competitive enterprise" that can lead to "biases." *Francis*, 442 F.3d at 143 (citations omitted). As the BIA itself has recognized, these complaints are replete with hearsay. *In re Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988). Preliminary criminal complaints are not "meant to serve an evidentiary function" as their primary purpose is to "acquaint the defendant with the specific crime with which he is charged, allow him to prepare his defense, and protect him from double jeopardy." *United States v. Juwa*, 508 F.3d 694, 701 (2d Cir. 2007) (citations and quotation marks omitted). In *Juwa*, the Second Circuit recognized the flaws within such documents and rejected their use in the sentencing context absent "testimonial or documentary" corroboration. *Id.* Even though the Circuit has approved of the use of police reports in certain immigration contexts, the risk of erroneous deprivation escalates when the case has been closed with a plea agreement, as the criminal process has then interrogated the statements in the complaint and determined what is supported by evidence and what is not. *Id.*; *see Billeke-Toloska v. Ashcroft*, 385 F.3d 708, 712 (6th Cir. 2004) (rejecting the notion that a plea to a lesser offense corroborates initial allegations in a police report).

78. The additional safeguards proposed—namely, that the immigration judge take into account the nature and stage of the criminal proceedings, require meaningful independent corroboration, and give a meaningful chance to refute their allegations—would aid in mitigating the flaws of using the criminal complaint. *See Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.").

79. The government's interest here is limited. The government does not have an interest in "separat[ing] families and remov[ing] from the community breadwinners, caregivers, parents, siblings and employees" when this is unnecessary to pursue the government's goal of enforcing the immigration laws. *Velasco Lopez*, 978 F.3d at 855.

80. By contrast, the government actually has an interest in respecting the validity of concurrent state proceedings. *See Diamond "D" Constr. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002) (noting that state criminal proceedings implicated "respect to co-equal sovereigns"). Moreover, there are judicial interests in the "accurate fact-finding and fair adjudication." *See, e.g., Doe v. Delta Airlines, Inc.*, 310 F.R.D. 222, 225 (S.D.N.Y. 2015).

81. Persuasively, a district court in Colorado, in remanding a case for a burden-shifted bond hearing, agreed that additional safeguards were necessary to satisfy due process, namely that the IJ "may not give undue weight to allegations underlying dismissed or pending criminal charges." *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1187 (D. Colo. 2024). As such, the use of criminal court complaints—in particular those containing only hearsay with no other corroboration—as indisputably reliable evidence of the facts contained therein, is inappropriate and invalid under the Due Process Clause.

II. THE CURRENT BURDEN ALLOCATION IN § 1226(A) BOND HEARINGS VIOLATES THE APA

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

5 U.S.C. §§ 702, 706(2); *Natural Resources Defense Council v. U.S. E.P.A.*, 808 F.3d 556, 569 (2d Cir. 2015).

83. The allocation of the burden of proof to the noncitizen in Section 1226(a) bond hearings violates the APA because the decision in *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999), which established the burden, is both "contrary to constitutional right," § 706(2)(B), and "arbitrary and capricious," § 706(2)(A). In *Adeniji*, the BIA placed the burden of proof squarely on the noncitizen in custody redetermination proceedings, even while acknowledging that Section 1226(a) has no such requirement. *Adeniji*, 22 I. & N. Dec. at 1113 ("[T]he alien must demonstrate that 'release would not pose a danger to property or persons,' even though section [1226(a)] does not explicitly contain such a requirement.").

84. An APA claim alleging that a detention policy violates due process under § 706(2)(B) is distinct from a free-standing constitutional claim. *See Dolan v. Fed. Emergency Mgmt. Agency*, No. CIV 23-0908 JB/JFR, 2025 WL 2023315, at *20 (D.N.M. July 18, 2025) ("The presence of a Constitutional claim does not take a court's review outside of the APA[.]"); *California v. U.S. Dep't Homeland Sec.*, 612 F. Supp. 3d 875, 894-95 (N.D. Cal. 2025) ("[P]laintiffs could assert a cause of action under the APA so long as Congress had not limited review through other statutes or committed the administrative decision to agency discretion," and "Plaintiffs' claim 'may exist wholly apart from the APA.'") (citing *Sierra Club v. Trump*, 929 F.3d 670, 699 (9th Cir. 2019)). Courts have applied this principle in the immigration context as well. *See, e.g.*, *Kidd v. Mayorkas*, No. 2:20-CV-03512, 2021 WL 1612087, at * 10 (C.D. Cal. Apr. 26, 2021) (finding an APA claim was validly pleaded where the plaintiffs alleged a "Fourth Amendment violation resulting from [ICE's] policy.").

85. Here, for the reasons already explained in depth, placing the burden on noncitizens to carry the burden in all bond hearings, even when detention has become prolonged, violates due process. *See supra* Part I. As such, this burden allocation violates the APA, because it is contrary to a constitutional right. § 706(2)(B).

86. In addition, the burden allocation is arbitrary and capricious. First, the BIA in *Adeniji* analyzed and applied the wrong federal regulation to decide what standards should govern Mr. Adeniji's bond hearing. Specifically, the BIA held that 8 C.F.R. § 236.1(c)(8)[7] "is binding on us" in order to conclude that Mr. Adeniji must shoulder the burden of proof in arguing for his release before an immigration judge. *See Adeniji*, 22 I&N Dec. at 1112. That regulation applies to ICE officers (employees of DHS) who determine whether a newly detained noncitizen should be granted bond by ICE in the first instance; it is inapplicable on its face to custody redetermination proceedings before an Immigration Judge (an employee of the Department of Justice). *See* 8 C.F.R. § 236.1(c)(8); *see also Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (clarifying that bond hearings in front of IJs are custody redeterminations). Bond hearings are held subsequent to ICE's initial determination to deny bond; different regulations and procedures apply. *See* 8 C.F.R. § 1003.19; *compare* 8 C.F.R. § 236.1(c) *with* 8 C.F.R. § 236.1(d). For the BIA to state that the standard set out in the inapplicable regulation was "binding" is plainly erroneous and unreasoned.

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

> Until the early 1990s, the Attorney General exercised his discretion with a presumption in favor of liberty during the pendency of removal proceedings. This

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

> presumption was repeatedly affirmed by the Board of Immigration Appeals ("BIA"). *Velasco Lopez*, 978 F.3d at 848 (citing *Matter of Patel*, 15 I. & N. Dec. 666, 666 (B.I.A. 1976); *Matter of Andrade*, 19 I. & N. Dec. 488, 489 (B.I.A. 1987).
> . . .
> Following the enactment of IIRIRA, the Immigration and Naturalization Service ("INS"), not Congress, implemented new regulations that altered the standard for the initial post-arrest custody determinations made by INS officials. 8 C.F.R. § 236.1(c)(2)-(8). The new regulations established a presumption of detention and placed on the arrested individual the burden of demonstrating, to the satisfaction of the arresting officer, that release would not pose a danger to property or persons and that the individual is likely to appear for any future proceedings. *See* 8 C.F.R. § 236.1(c)(8). The regulation applies only to the initial custody determination made by the arresting officer and not to immigration judges in bond hearings. However, shortly after the new regulations were implemented, the BIA began applying the rule provided in § 236.1(c)(8) for arresting officers, including the presumption of detention, to bond hearings conducted by immigration judges under § 1226(a). *Matter of Adeniji*, 22 I. & N. Dec. at 1112; *Matter of Guerra*, 24 I. & N. Dec. at 38.

Velasco Lopez, 978 F.3d at 849.

88. The correct regulation governing custody redetermination hearings at issue here is 8 C.F.R. § 236.1(d)(1). This regulation—which plainly applies to bond redeterminations before an IJ—does not place the burden on the noncitizen. *See id.* The agency's decision in *Adeniji* is therefore arbitrary and capricious as it was not the result of reasoned decision-making: it ignored § 236.1(d)(1)[8] and applied a regulation that is entirely irrelevant to custody hearings before an IJ. *See Encino Motorcars LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2015); *see also* 5 U.S.C. § 706(2).

89. Second, *Adeniji*'s burden shift constituted an unexplained rule change; as an "[u]nexplained inconsistency" that was a "change from agency practice," it is invalid under the APA. *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). When *Adeniji* placed the burden on detained noncitizens, it ended the presumption of liberty and broke from the established precedent in *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); *see also Velasco*

[8] Not only is 8 C.F.R. § 236.1(d) on its face more relevant for bond hearings before an immigration judge than 8 C.F.R. § 236.1(c)(8), it is also silent on the burden of proof, much like § 1226(a).

Lopez, 978 F.3d at 849. Nothing in § 1226(a), prior statutes, or the regulations relevant to bond redeterminations for non-criminal noncitizens gave rise to this radical shift; the agency's decision to place the burden on non-criminal detainees during bond redetermination hearings is therefore arbitrary and capricious. *See* 5 U.S.C. § 706(2); *see also F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (noting that "[a]n agency may not . . . depart from prior policy sub silentio"); *but see Maldonado-Velasquez v. Moniz*, 274 F. Supp. 3d 11, 13 n.1 (D. Mass. 2017).

90. Third, *Adeniji*'s burden shift "failed to consider . . . important aspect[s] of the problem" before it. *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1910 (2020) (quoting *State Farm*, 463 U.S. at 43). When an agency makes a decision, fundamental principles of administrative law dictate that the agency "must explain the evidence which is available, and must offer a rational connection between the facts found at the choice made." *State Farm*, 463 U.S. at 52 (internal quotation marks omitted). Under the pre-*Adeniji* precedents, when the government made the weighty decision to detain someone, it would explain that decision, and this explanation would be scrutinized by an immigration court. Now, the government can detain someone without providing any explanation to the person detained or the immigration judge. The reversal in *Adeniji* has enabled the creation of thousands of unreviewed agency decisions, a dramatic shift unconsidered and unaddressed by the BIA.

91. Thus, the Court should set aside the burden-on-detainee framework as both unconsitutional and arbitrary and capricious.

CLAIMS FOR RELIEF

COUNT ONE
PETITIONER'S ONGOING DETENTION VIOLATES HIS RIGHT TO PROCEDURAL DUE PROCESS

92. Requiring Mr. Lopez Zamora to bear the burden in bond hearings pursuant to § 1226(a) violates his due process rights in two ways: First, Mr. Lopez Zamora has never had a

constitutionally adequate bond hearing that justifies his detention. Second, Mr. Lopez Zamora has been subject to prolonged detention of over eight months. Under either situation, a constitutionally adequate bond hearing where the burden of proof is placed on DHS to justify detention by clear and convincing evidence, with consideration of ability to pay and alternatives to detention, is required under *Black, Velasco Lopez*, and *Mathews*. As a district court sitting in this state recently held, "when a petitioner is entitled to a hearing because his detention pending removal has become unreasonably prolonged, the hearing requires a neutral decisionmaker to address whether alternatives to detention might ameliorate risk of danger as well as risk of flight." *Cantor*, 761 F. Supp. 3d at 640.

93. With regard to the first *Mathews* factor, Mr. Lopez Zamora's interest is in being free from imprisonment, which is "the most significant liberty interest there is." *Velasco Lopez*, 978 F.3d at 851. Like the petitioner in *Velasco Lopez*, Mr. Lopez Zamora is incarcerated at the Orange County Jail, where conditions are indistinguishable from those charged criminally or serving criminal sentences. *Id.* The Second Circuit made clear that the reality of detainees' day-to-day experiences in detention must be considered when analyzing whether due process has been violated, stating "[t]he deprivation [petitioner] experienced while incarcerated was, on any calculus, substantial. He was locked up in jail. He could not maintain employment or see his family or friends or others outside visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone." *Id.* All of these circumstances apply to Mr. Lopez Zamora, who is at the same facility, and applied to him at the time of his initial bond hearing. Furthermore, the circumstances of incarceration are particularly detrimental to Mr. Lopez Zamora, who has been deprived of adequate medical care while incarcerated, resulting in increased pain

and decreased physical function, and whose mental health has also suffered tremendously because of his incarceration. *See supra* ¶¶ 29-38.

94. Mr. Lopez Zamora also has a significant interest in preparing his own defense from removal. *See Woodby v. I.N.S.*, 385 U.S. 276, 286 (1966) (recognizing the interest with significant procedural protections); *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) (same). This is nearly impossible while in detention. Moreover, the access-to-counsel problems at Orange County Jail are serious: the facility not only does not have sufficient space for in-person visits but relies on video-conferencing technology that frequently malfunctions.

95. In addition, Mr. Lopez Zamora's detention has become prolonged, strengthening the gravity of his private interest, and additional process is required. *See Black,* 103 F.4th at 150; *Velasco Lopez*, 978 F.3d at 853. His more than eight month detention is now twice the four month period the *Demore* Court viewed as "typical of agency trial and appeal periods combined." *Arana*, 2020 WL 7342833 at *6; *see also Hernandez-Lara*, 10 F.4th 19, 30 ("The ten months Hernandez was incarcerated . . . significantly exceeds the 'very limited time of the detention at stake' in *Demore*.").

96. Mr. Lopez Zamora has been detained by ICE for longer than he was incarcerated criminally, as his more than eight-month detention far exceeds the approximately eight days total that he has spent in criminal pre-trial incarceration. *Cf. Gonzalez Evangelista*, 2021 WL 101201, at *4 (noting that the petitioner's 11-month-long detention nearly exceeded the amount of time he would have served for a misdemeanor in New York, his only pending charge). Mr. Lopez Zamora has asserted meaningful defenses to removal, and as such, his time in detention is not nearing its end. *See id.* (noting that it was unclear if the petitioner's detention was nearing its conclusion).

97. The second factor, risk of erroneous deprivation, also weighs in Mr. Lopez Zamora's favor. Mr. Lopez Zamora faces difficulties gathering evidence from detention, hampering his ability to secure bail. In light of the factual record, "the Government might find difficult to overcome if it had to demonstrate affirmatively" that he poses a risk of flight or a danger to the community. *See Arana,* 2020 WL 7342833, at *5. The process provided to him so far poses a substantial risk of erroneous deprivation, particularly given that DHS has submitted no evidence to show that he is a danger beyond his list of arrests.

98. The third *Mathews* factor involves an examination of the government's interests at stake. *Velasco Lopez*, 979 F.3d at 854. This factor also weighs in Mr. Lopez Zamora's favor because the government has no interest in detaining someone who poses neither a danger nor a risk of flight. *Id.*; *see also Arana*, 2020 WL 7342833 at *6-7. The additional burden on the government to attempt to prove the necessity of detention is minimal here, where it can rely upon its "substantial resources and access to sources of information" and has already done so for purposes of the merits case. *Velasco Lopez*, 978 F.3d at 854.

99. The IJ's requirement that Mr. Lopez Zamora carry the burden at his bond hearing, as well as the failure to consider alternatives to detention, despite the gravity of Mr. Lopez Zamora's liberty deprivation, was unconstitutional. The lack of sufficient process, wherein the government justifies his detention by clear and convincing evidence, after this prolonged period of detention, similarly violates his due process rights.

100. Further, the IJ placed undue weight on the preliminary criminal complaints, which was fundamentally unfair in violation of the Due Process Clause's limits on the evidence that can be used in immigration proceedings. The IJ assumed that the allegations in the preliminary prosecution reports were true in determining that Mr. Lopez Zamora was a danger, and did not

appropriately weigh later developments in his case, including that most of the charges were dismissed and that, in one case, Mr. Lopez Zamora pled guilty to a lesser, non-criminal offense. *See Padmore*, 609 F.3d at 69 (holding that immigration adjudicators "may not base [a] decision denying relief upon the assumption that the facts contained in such documents are true").

101. As with the placement of the burden on the noncitizen, the *Mathews v. Eldridge* factors confirm that the undue weight that the IJ gave to preliminary prosecution reports was fundamentally unfair. The private interests at stake—Mr. Lopez Zamora's—are paramount: the presumption of innocence and the avoidance of deportation. The government's interest is limited: the government does not have an interest in separating families when unnecessary, and the government has an interest in respecting the validity of concurrent state proceedings.

102. The risk of erroneous deprivation is the decisive factor here. Police reports and preliminary charging documents, such as the one the IJ relied upon, are subject to "biases" in the "often competitive enterprise" of detecting crime, *see Francis v. Holder*, 442 F.3d 131, 143 (2d Cir. 2006), and are replete with hearsay, *In re Grijalva*, 19 I&N Dec. 713, 722 (B.I.A. 1988). Charges themselves are not "meant to serve an evidentiary function." *United States v. Juwa*, 508 F.3d 694, 701 (2d Cir. 2007). Here the IJ did not properly evaluate the nature and stage of the proceedings following the criminal court complaint, as she did not give sufficient weight to further developments in Mr. Lopez Zamora's cases. This included that most of the charges were dismissed, as with the most serious allegations relating to the alleged January 2024 incident, while the remaining charges are pending dismissal. She also failed to weigh the inherent unreliability of the January 2024 allegations, having been made more than six months after the incidents allegedly occurred, and on an impossible date before the parties were known to each other. Finally, IJ also did not require meaningful corroboration, as she not only ignored that no police official had

[redacted] *See* Ex. F, IJ Memo, at 3-5. Each of these steps—consideration of future developments in the cases, assessments of reliability, and requiring meaningful corroboration—is required to mitigate the risk of erroneous deprivation, without which the use of preliminary charging documents is fundamentally unfair. As such, the undue weight the IJ gave in her consideration of the unsubstantiated preliminary criminal documents also violated the dictates of due process. *E.g.*, *L.G. v. Choate*, 744 F. Supp. 3d at 1187.

103. Should Mr. Lopez Zamora be released on bond after a constitutionally adequate bond hearing, "all interested parties" will have prevailed: the Government "because it has no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community;" Mr. Lopez Zamora "because he is no longer incarcerated;" and the public because its "interest in seeing that individuals who need not be jailed are not incarcerated has been vindicated." *Velasco Lopez*, 978 F.3d at 857.

COUNT TWO
PETITIONER'S DETENTION VIOLATES THE ADMINISTRATIVE PROCEDURES ACT – 5 U.S.C. § 701 et seq.

104. The IJ's requirement that Mr. Lopez Zamora carry the burden in his § 1226(a) bond hearing was rooted in an invalid agency interpretation.

105. The burden allocation violates the APA because it violates the Due Process clause of the Fifth Amendment.

106. In addition, the decision in *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999), is arbitrary and capricious.

107. *Adeniji* was arbitrary and capricious because the BIA relied on an incorrect and inapplicable regulation when it shifted the burden to establish eligibility for release to detainees. *Compare* 8 C.F.R. § 236.1(c)(8), *with* § 236.1(d)(1).

108. The agency also acted unreasonably in deciding *Adeniji* because its decision constituted an unexplained departure from precedent that called for a presumption against detention. Specifically, the BIA abandoned the long-standing case law that favored liberty for non-criminal detainees and created a new presumption in favor of detention.

109. Lastly, *Adeniji* is an invalid agency decision as applied to Mr. Lopez Zamora because it was a custom-made solution for a uniquely situated detainee based on a stipulation from the parties. The outcome of *Adeniji* depended on a stipulation on a significant legal issue and a desire to avoid a windfall for a specific noncitizen convicted of an aggravated felony whose eligibility for bond was mere happenstance. *See Adeniji*, 22 I&N Dec. at 1109, 1112. The BIA's precedent placing the burden on all noncitizens, including those who do not have aggravated felony convictions, in § 1226(a) hearings, is therefore arbitrary and capricious.

PRAYER FOR RELIEF

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

1) Assume jurisdiction over this matter;

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

3) Order Respondents to show cause why the writ should not be granted within **three days**, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. 2243;

4) Issue a writ of habeas corpus directing Respondents to provide Petitioner, within seven days, a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing by clear and

convincing evidence that continued detention is justified and that no alternative to detention will suffice, and at which ability to pay is considered, and at which unsubstantiated criminal allegations from preliminary criminal complaints are not given undue weight, and to immediately release Petitioner from custody on his own recognizance or on reasonable conditions of supervision if such hearing is not provided;

5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: October 18, 2025
Bronx, New York

Respectfully submitted,

Aurora Maoz
THE BRONX DEFENDERS
Counsel for Petitioner

Exhibits

A. Notice to Appear and custody determination, February 13, 2025
B. Declaration of Social Worker Ashley Guzman (forthcoming with a motion to file under seal)
C. Bond evidence submitted to the Immigration Judge (forthcoming with a motion to file under seal)
D. Dr. Kate Sugerman review of medical records related to injury
E. Immigration Judge Order Denying Bond, April 29, 2025
F. Immigration Judge Memorandum & Order Denying Bond, May 12, 2025 (forthcoming with a motion to file under seal)
G. Board of Immigration Appeals decision dismissing bond appeal, August 5, 2025
H. Immigration Judge Oral Decision on the merits, May 30, 2025 (forthcoming with a motion to file under seal)
I. EOIR Portal screenshot, October 17, 2025

VERIFICATION

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

Dated: October 18, 2025

Aurora Maoz
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Bronx, NY 10451