

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Jordy LOPEZ ZAMORA,

*Petitioner,*

v.

ALMODOVAR et al,  
et al.,

*Respondents.*

No. 25-cv-08643 (RA)

PETITIONER'S REPLY IN SUPPORT OF  
PETITION FOR A WRIT OF HABEAS CORPUS

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## INTRODUCTION

This case involves a straightforward application of the Second Circuit’s decision in *Velasco Lopez v. Decker*, and relief is warranted under the *Mathews* framework it applied. 978 F.3d 842 (2d Cir. 2020). In fact, just two days ago in this district, a petitioner seeking the exact relief Mr. Lopez Zamora seeks here, was awarded a burden-shifted bond hearing based on prolonged detention, and the court directed the Immigration Judge to consider alternatives to detention and ability to pay, in assessing dangerousness and flight risk. *G.F.F., v. LADEON FRANCIS, ET AL.*, No. 25-CV-7368 (JGK), 2025 WL 3141735, at \*6 (S.D.N.Y. Nov. 10, 2025) (Koetlrl, U.S.D.J.). Faced with clear governing precedent in the Second Circuit in Mr. Lopez Zamora’s favor, Respondents resort to rote assertions about the government’s plenary authority over immigration, the facial constitutionality of the detention statutes, and the procedures that have kept Mr. Lopez Zamora detained for nearly nine months and counting in a county jail. But as the Second Circuit explained succinctly in *Velasco Lopez*: “The constitutionality of detention pending removability proceedings under § 1226(a) is not at issue in this case. Our concern is . . . with the important constitutional limitations on that power’s exercise.” 978 F.3d at 848 (citation and quotation omitted). In Mr. Lopez Zamora’s case, and in light of his prolonged detention, the Constitution requires more protections – a bond hearing where the government must justify the continued detention by clear and convincing evidence. Relief is also warranted under two alternative theories, that his initial bond hearing violated due process by placing the burden on him, and that the burden placement runs afoul of the Administrative Procedure Act.

**ARGUMENT**

**I. Mr. Lopez Zamora Is Entitled to Habeas Relief Under *Velasco Lopez* Because his Detention Has Become Unconstitutionally Prolonged.**

A straightforward application of *Velasco Lopez* establishes Mr. Lopez Zamora's entitlement to habeas relief. Respondents' efforts to distinguish or effectively re-litigate *Velasco Lopez* fail, and their *Mathews* analysis runs contrary to the Second Circuit's plain guidance.

Mr. Lopez Zamora has been detained for nearly nine months and counting, and he is only midway through the administrative process, having recently submitted his brief to the BIA. Given this posture, his detention is likely to continue for months or years. *See Velasco Lopez*, 978 F.3d at 852 (explaining that “[d]etention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded” and contrasting brief detention described in *Demore* with lengthy detention that lasts “through the initial removal determination proceedings . . . and all inter-agency and federal court appeals”). While the court in *Velasco Lopez* left the term “prolonged” undefined, it observed that “a presumptively constitutional period of detention does not exceed six months,” *id.* at 855 n.13, and held that fifteen months violates due process “[o]n any calculus,” *id.* The Second Circuit's decision in *Black v. Decker* reiterated that detention exceeding six months without adequate procedural protections “raises serious due process concerns.” 103 F.4th 133, 150 (2d Cir. 2024); *see G.F.F.*, 2025 WL 3141735, at \*4 (citing same). Mr. Lopez Zamora's detention of nearly nine months is prolonged under *Velasco Lopez*, and additional process is therefore constitutionally required. *See* Pet. ¶ 62 (citing cases from this district post-*Velasco Lopez* granting relief based on prolonged detention of nine, 11, and 12 months in duration); for an additional and very recent example *see G.F.F.*, 2025 WL 3141735, at \*6 (finding a detention of more than ten months under § 1226(a) entitled the petitioner to a burden-shifted bond hearing, based on the *Mathews* due process factors and *Velasco Lopez*).

As in *Velasco Lopez*, and as explained in the Petition, the application of the *Mathews* test demonstrates the need for additional safeguards in the form of a burden-shifted bond hearing. Respondents' contrary application of *Mathews* is flawed in several respects. First, Respondents at step one improperly degrade the significant liberty interests at stake, Resp. MOL at 15-16, despite *Velasco Lopez*'s binding holdings, in a nearly identical posture, that "the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment," that "[c]ase after case instructs us that in this country liberty is the norm and detention is the carefully limited exception," and "[w]e have always been careful not to minimize the importance and fundamental nature of the individual's right to liberty," *Velasco Lopez*, 978 F.3d at 851 (citations and quotations omitted). Respondents' broad statements regarding plenary immigration powers and the lack of an absolute right to freedom in removal proceedings are entirely misplaced in this as-applied due process challenge to the procedures attendant to Mr. Lopez Zamora's lengthy incarceration. Resp. MOL at 15-16.

Second, with regard to the risk of erroneous deprivation, Respondents make much of the procedures already in place to review Mr. Lopez Zamora's detention. *See* Resp. MOL at 16-17. Yet the typical bail procedures were reviewed by the circuit in *Velasco Lopez*, and by many district courts in this district in similar challenges, and they have been no obstacle to habeas relief. *See* Pet. ¶ 55 (collecting cases); *see also* *G.F.F.*, 2025 WL 3141735 at \*5. That is because each of these layers of review named by Respondents is predicated on a presumption of detention, erroneously requiring the detainee to prove at each stage why they are not dangerous or a flight risk. Under this burden allocation, "ambiguities, or lack of information, in the record result in an adverse inference against the detainee." *Velasco Lopez*, 978 F.3d at 847. The additional levels therefore do little to

mitigate the risk of error. *Cf. Hernandez-Lara v. Lyons*, 10 F.4th 19, 32 (1st Cir. 2021) (“Loaded dice rolled three times are still loaded dice.”).

Respondents also argue that Mr. Lopez Zamora suffered no “prejudice” from the burden being placed on him at his initial bond hearing. Resp. MOL at 18. This argument is unavailing. As an initial matter, it is not relevant to the clear holding of *Velasco Lopez*, where the prolonged nature of detention requires a new bond hearing with the burden shifted to the government. *Velasco Lopez*, 978 F.3d at 855. Mr. Lopez Zamora warrants habeas relief on that basis alone. Moreover, the improper placement of the burden was, in itself, prejudicial. As *Velasco Lopez* recognized, petitioners in bond hearings face difficulties challenging criminal charges while confined and in accessing relevant documents. *Id.* at 852; *see also Hernandez-Lara*, 10 F.4th at 30-31 (noting that “proving a negative (especially a lack of danger)” can itself be difficult). This is especially the case for Mr. Lopez Zamora, where the immigration judge focused almost exclusively on his “arrests,” Exh. F. at 3, while expressing “extreme[] concern[]” about the “violent nature of the *allegations* against [Mr. Lopez Zamora],” *id.* at 4 (emphasis added). Mr. Lopez Zamora’s ability to provide the requisite amount of mitigating evidence was also hampered by access to counsel problems at the facility, as well as his serious mental and physical health problems which have been exacerbated by his conditions of confinement. *See* Pet. at ¶¶ 31-37.

With regard to the third *Mathews* factor, the government’s interest and the administrative burdens, Respondents rely on the obvious fact that the government has an interest in detaining aliens under § 1226(a) to prevent “absconding” and the commission of crimes. Resp. MOL at 18. Nobody disputes these are the only interests that could justify detention pending removal, as recognized by the Second Circuit in *Velasco-Lopez*. 978 F.3d at 854. The question is *who* should bear the burden to establish these interests would be met, by continuing someone’s detention once

it has become prolonged. To answer that question, the Second Circuit has spoken unequivocally that is it the government: “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. As a court in this district held just days ago, “[i]f [Mr. Lopez Zamora] poses either [a flight or security] risk, then the Government has the opportunity to prove it at a bond hearing, thereby vindicating its interest. If it cannot, then continuing to detain [Mr. Lopez Zamora] would not advance the Government’s interest in any event.” *See G.F.F.*, 2025 WL 3141735, at \*5.

Respondents also assert that the government has an interest in maintaining the existing § 1226(a) procedures because Congress intended to “increase the probability that aliens who are ordered removed are in fact removed.” Resp. MOL 19 (citing H.R. Rep. No. 104-469(I), at 123 (1996)). But this mischaracterizes the statutory history. Since its enactment in 1952, the Immigration and Nationality Act has contained a pretrial detention provision with virtually identical language as is now found at § 1226(a). *See* Pub. L. No. 414, § 242(a), 66 Stat. 208, 208-09 (1952). Although Congress modified other aspects of the immigration detention system in 1996, it did not disturb the general detention provision except to modestly increase the minimum bond amount. *Compare* 8 U.S.C. § 1252(a) (1995), *with* 8 U.S.C. § 1226(a) (1998). Contrary to Respondents’ arguments, the statutory history of § 1226(a) suggests that “Congress intended to continue the customary view that detention authorizations must be carefully limited.” *Hernandez-*

*Lara*, 10 F.4th at 51 (Lynch, dissenting). The government has expressed—and the Second Circuit has found—no public interest in the detention of individuals under § 1226(a) who do not present a danger or flight risk. *Velasco Lopez*, 978 F.3d at 857.

In light of (1) the clear mandates of *Velasco Lopez*, (2) Mr. Lopez Zamora’s prolonged detention, and (3) the *Mathews* factors all weighing in his favor, habeas relief is warranted on this claim alone.

**II. Mr. Lopez Zamora’s Claim that His Initial Hearing Violated Due Process Is the Prevailing View in This District and Not Foreclosed.**

Respondents’ opposition to the separate claim that due process requires the government to bear the burden at an initial bond hearing is premised on a serious misreading of the Second Circuit’s decision in *Velasco Lopez*. They assert that *Velasco Lopez* foreclosed this claim, when it did not. Resp. MOL at 14-15. In fact, both before and after the decision in *Velasco Lopez*, courts in this district have repeatedly found a due process violation at the initial bond hearing. Pet. at ¶¶ 52-55.

For his part, Mr. Velasco Lopez made two arguments before the district court: first, that a burden-shifted bond hearing is constitutionally required as an initial matter; and second, in the alternative, that this safeguard is required once detention becomes prolonged. The district court granted relief on the first argument and did not reach the second. *Velasco Lopez v. Decker*, No. 19-cv-2912 (ALC), 2019 WL 2655806, at \*3 (S.D.N.Y. May 15, 2019). On appeal, the Second Circuit reviewed this grant of habeas relief *de novo*. *Velasco Lopez*, 978 F.3d at 848.<sup>1</sup> It opted for

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<sup>1</sup> In *Velasco Lopez*, the Second Circuit was addressing the appropriate burden under § 1226(a) for the first time, and it was doing so in a case involving extremely prolonged detention. The case was in a different posture than *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), where the First Circuit issued a broad ruling after hearing argument in three different § 1226(a) burden-shifting cases, one of which was a class action. *Id.* at 46 (Lynch, J., dissenting) (discussing procedural posture).

a narrower ruling based on the record before it, explaining that “[t]his case does not require us 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.” *Velasco Lopez*, 978 F.3d at 855 n.13. At the same time, however, the court cited approvingly district court cases that had endorsed a broader ruling. *Id.* at 855 n.14 (collecting cases). It also explained that “[t]he Supreme Court has consistently held the Government to a standard of proof higher than a preponderance of the evidence where liberty is at stake, and has reaffirmed the clear and convincing standard for various types of civil detention,” *id.* at 856. The court rejected “[t]he Government’s claim that these precedents are inapplicable in an immigration context [a]s unpersuasive.” *Id.* The Second Circuit thus expressly left open the question of whether the same procedural protections were required in all cases.

In light of Mr. Lopez Zamora’s prolonged detention, this Court can take the same approach here and grant the petition based squarely on *Velasco Lopez*’s narrower reasoning.<sup>2</sup> But contrary to the Respondents’ arguments, and for the reasons set forth in the Petition, the Second Circuit’s analysis in *Velasco Lopez* supports a heightened evidentiary standard for all § 1226(a) bond hearings. Because *Velasco Lopez* did not decide the issue, district court decisions issued both prior to and after the decision in *Velasco Lopez* support Mr. Velasco’s claim here. *See* Pet. ¶ 55 (citing cases).

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<sup>2</sup> The Court may also grant the petition based on the APA claim in the alternative. *See Hernandez-Lara*, 10 F.4th at 47-53 (Lynch, J., dissenting). Respondents do not meaningfully address this claim; instead, they alternate between reiterating the agency’s erroneous interpretation of the relevant regulation, 8 C.F.R. § 236.1(c)(8) (as “intended to be part of permanent regulations and would apply to immigration judges,” Resp. MOL at 24) and offering a different interpretation of the regulation (as simply “permit[ting]” the agency to place the burden on noncitizens at bond hearings, *id.*). *See* Resp. MOL at 23-24. This is not a viable defense against an arbitrary and capricious challenge and should be rejected. Nor, following *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), is the agency entitled to any deference in its statutory interpretation.

### **III. Due Process Requires Certain Procedural Safeguards at the Bond Hearing.**

#### **A. The Immigration Judge Must Consider Alternatives to Detention and Ability to Pay.**

At a bond hearing, the immigration judge must also consider alternatives to detention and ability to pay. Respondents err in advocating that the inquiry would end upon a finding that the government met its burden as to dangerousness. See Resp. MOL at 19-21. To the contrary, courts have recognized that due process requires that alternatives to detention be considered precisely so the immigration judge can “determine whether measures less intrusive than detention can . . . reasonably assur[e] the safety of the community.” See *Fernandez Aguirre v. Barr*, No. 19-CV-7048 (VEC), 2019 WL 4511933, at \*5 & n.3 (S.D.N.Y. Sept. 18, 2019) (recognizing that alternatives to detention can mitigate both dangerousness and flight risk); *G.F.F.*, 2025 WL 3141735, at \*6 (“Numerous courts in the Second Circuit have similarly concluded that due process requires that IJs consider alternatives to detention when evaluating a noncitizen’s dangerousness.”); *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.”); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 242 (W.D.N.Y. 2019) (“[a] due process [bond] hearing” requires the IJ “to consider alternatives before resorting to detention”).

Respondents do not engage with Mr. Lopez Zamora’s compelling argument regarding due process on this point. Instead, they rely entirely on language contained in *Black v. Decker*, that they argue stands for the “clear holding” that IJs are not required to consider alternatives to detention when assessing dangerousness. Resp. MOL at 19-20. But the weight of authority

disagrees that *Black* contained any such holding, let alone a “clear” one, on this point. To the contrary, numerous courts in the Second Circuit, including in this district, have held the opposite following *Black*, that “due process requires that IJs consider alternatives to detention when evaluating a noncitizen’s dangerousness.” *G.F.F.*, 2025 WL 3141735, at \*6; *accord Cantor*, 761 F. Supp. at 639; *see also L.G.M. v. LaRocco*, No. 25-CV-2631 (PKC), 2025 WL 2173577, at \*3-4 (E.D.N.Y. July 31, 2025) (reaching the same conclusion when ordering a burden-shifted bond hearing where petitioner was held under 8 U.S.C. § 1226(c)).

As these courts persuasively argue, Respondents argument “misreads *Black*, which addressed *only* risk of flight and not dangerousness.” *See Cantor*, 761 F. Supp. at 639 (emphasis added). To explain further, the Second Circuit in *Black* was focused on whether there were alternatives to detention sufficient to assure the petitioners return to court; the panel was not addressing the issue of whether alternatives should be considered that could ameliorate any potential danger to the community. *Cantor*, 761 F. Supp. at 640-41. In fact, the government argued to the Second Circuit in *Black* that the district court erred in requiring consideration of ability to pay and alternatives to detention notwithstanding a finding of dangerousness. But the Second Circuit emphasized that the government was misreading the underlying district court decision: “We do not read the district court’s order in that way: it required only that “the IJ ... consider Petitioner’s ability to pay and the availability of alternative means of *assuring his appearance*.” 103 F.4th at 158–59 (citing opinion below in *Black v. Decker*, No. 20 CIV. 3055 (LGS), 2020 WL 4260994, at \*9 (S.D.N.Y. July 23, 2020)) (emphasis in original). Whether or not the district court in *Black* was correct to limit consideration of alternatives to detention to flight risk was thus not properly before the Court in *Black*: the government had prevailed on that point below, and petitioner Black did not cross appeal. Any broader language in *Black* as to whether alternatives to

detention should be considered with respect to danger is therefore dicta. *See, e.g., Chem One, Ltd. v. M/V RICKMERS GENOA*, 660 F.3d 626, 640 (2d Cir. 2011) (explaining that where language in a decision was “not necessary” to decide the case before it, such language is dictum and is not binding) (collecting cases).

Respondents also point to the fact that *Black* cited *Carlson v. Landon*, 342 U.S. 524 (1952), for the proposition that there is “no due process violation where there is cause to believe [the noncitizen’s] release would pose a safety risk.” Resp. MOL at 19. But as then-District Judge Nathan has explained, *Carlson v. Landon* addressed a “substantive due process question—whether an individual *may* be detained or denied bail,” but the question in these cases is a “procedural due process question—whether that individual is entitled to a hearing in which the adjudicator considers all relevant facts to establish whether detention is in fact necessary.” *Roman v. Decker*, No. 20-cv-6752 (AJN), 2020 WL 5743522, at \*4 (S.D.N.Y. Sept. 25, 2020) (emphasis in original). *Black* cited *Carlson* for the uncontroversial point that an individual found to be a danger can be detained without offending substantive due process. But *Carlson*, like *Black*, did not address the *procedural* question of *how* an immigration judge must evaluate danger, including whether the IJ should consider all facts relevant to danger such as whether less restrictive conditions can still assure public safety.

To conclude, due process requires the same safeguards when analyzing dangerousness, as when assessing flight risk. As the court in *Cantor* reasoned, “it may well be more challenging to come up with conditions that ameliorate risk of danger in the same way that bail or ankle bracelets ameliorate risk of flight . . . [T]hat is no reason to analyze the two risks any differently, and this Court does not believe that the panel in *Black* intended to suggest otherwise.” *See Cantor*, 761 F.

Supp. 3d at 640. In sum, for both factors—dangerousness as well as flight risk—due process requires IJs to consider alternatives to detention and the ability to pay.

If this Court agrees with the Respondents, however, and finds that *Black* clearly held that alternatives to detention cannot be considered with respect to dangerousness, that holding would still not control here. Petitioner is detained pursuant to Section 1226(a) and was previously afforded the right to a bond hearing; *Black* involved petitioners subject to mandatory detention pursuant to Section 1226(c), without any right to a bond hearing. Respondents argue that there is no difference between the process that should be afforded to individuals detained under the two statutes following *Velasco Lopez* and *Black* because “neither requires any more or any less dangerousness than the other.” Resp MOL at 20. They further claim that there is no need for a *Mathews* analysis, because *Black* is clear. *Id.* But a *Mathews* analysis must be tailored to the statute at hand. “[P]rocedural due process rules are shaped by the risk of error inherent in the truth finding process as applied to the generality of cases.” *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). Considering the generality of cases with respect to a Section 1226(c) detainee versus a Section 1226(a) detainee matters. As *Black* itself noted, for Section 1226(c) detainees who have had no bond hearing at all, an individualized bond hearing was an important procedural safeguard because “almost *any* additional procedural safeguards at some point in the detention would add value.” 103 F.4th at 153 (emphasis in original). Here, in contrast, individuals like Petitioner detained under Section 1226(a) have already had a bond hearing and thus would require additional procedural safeguards to add value and reduce further erroneous denials of bond. The *Mathews* analysis presented by petitioner—which is tailored to the specific question raised by this case, and which was un rebutted by Respondents—demonstrates that all factors support consideration of alternatives to detention with respect to danger as well as flight for Section 1226(a) detainees,

because alternatives like conditions of release, supervision, and electronic ankle monitoring reduce risks to public safety.

Respondents also rely on the BIA decision in *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). See Resp. MOL at 20. But the BIA’s statutory holdings do not control this Court’s constitutional analysis. See *Hechavarria*, 358 F. Supp. 3d at 242 (recognizing that the government’s argument that alternatives cannot be considered upon a finding of dangerousness “seems to be based on the ‘typical’ § 1226(a) bond hearing, where the alien has the burden . . . . [T]he hearing here . . . was a due process hearing”); *Fernandez Aguirre*, 2019 WL 4511933, at \*5 n.3 (“The Government provides no reason why the BIA’s holdings should control this Court’s constitutional analysis.”). The Court should not adopt Respondents’ position on alternatives to detention as it cannot be reconciled with constitutional analysis recognizing that alternatives to detention may render detention excessive and unnecessary.

Further, Respondents confuse the relief Mr. Lopez Zamora seeks when they explain that under certain circumstances, an immigration judge “may” consider ability to pay and alternatives to detention. Resp. MOL 20-21. But due process dictates that immigration judges *must* consider ability to pay and alternatives to detention. There is an emerging consensus in this Circuit on this issue, even after *Black*. E.g., *G.F.F.*, 2025 WL 3141735, at \*6; *Cantor*, 761 F. Supp. 3d at 640; *L.G.M.*, 2025 WL 2173577, at \*3-4; see also *Hernandez-Aviles v. Decker*, No. 20-cv-7636 (ER), 2020 WL 5836519, at \*2 (S.D.N.Y. Oct. 1, 2020) (collecting cases). At least one circuit court has reached the same conclusion. See *Hernandez v. Sessions*, 872 F.3d 976, 991-94 (9th Cir. 2017). These decisions recognize that a “bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government’s legitimate interests.” *Id.* at 991. Setting bond outside

the reach of an individual's ability to pay "amounts, for all practical purposes, to a denial of bond," and "raises serious due process concerns." *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 338 (W.D.N.Y. 2018). As for consideration of the suitability of alternatives, such consideration is necessary to ensure that detention is only imposed once an immigration judge concludes that nothing short of detention can "reasonably address" legitimate governmental goals. *See Hemans v. Searls*, No. 18-cv-1154 (LJV), 2019 WL 955353, at \*9 (W.D.N.Y. Feb. 27, 2019).

**B. Due Process Requires a Safeguard Against Undue Weight Placed on Unsubstantiated Criminal Allegations.**

Respondents appear to misapprehend Mr. Lopez Zamora's arguments regarding the additional due process protection sought in a new bond hearing, in that for their opposition, they rely mainly on immigration regulations and their interpretation, as well as standard § 1226(a) bond hearing procedures and evidentiary rules, and largely ignore the due process principles at issue. *See Resp. MOL* at 21-23. They make no attempt to contest the *Mathews* analysis. Much as Respondents' reliance on BIA cases interpreting the regulatory scheme are irrelevant in deciding whether due process requires consideration of alternatives to detention, *see supra* Section III.A, many of their arguments to defeat the imposition of this additional safeguard do not illuminate the as-applied constitutional analysis. *See Fernandez Aguirre*, 2019 WL 4511933, at \*5 n.3 ("The Government provides no reason why the BIA's holdings should control this Court's constitutional analysis.").

Mr. Lopez Zamora's argument is that additional procedures are required to vindicate his due process rights and liberty interest, which has deepened due to the prolonged nature of his detention. Thus, not only must the burden be shifted to the government, but the new hearing must be free from undue reliance on uncorroborated criminal allegations generated by law enforcement. As laid out in the Petition, a *Mathews* analysis requires this protection, as the

evidentiary rules applied by the Immigration Judge in the bond hearing and described by Respondents are constitutionally inadequate. *See* Pet. ¶¶ 72-81.

Respondents point to two courts in this district that have denied such a safeguard, but those cases, both §1226(c) mandatory detention, have similarly and cursorily relied on BIA precedent and procedures governing ordinary bond hearings, and did not engage in a *Mathews* due process analysis. Resp. MOL at 23 (citing *See Reid v. Decker*, No. 19 Civ. 8393 (KPF), 2020 WL 996604, at \*12 (S.D.N.Y. Mar. 2, 2020); *Jovel v. Decker*, No. 20 Civ. 308 (GBD) (SN), 2020 WL 1502038, at \*10 (S.D.N.Y. Mar. 24, 2020)). Furthermore, in these cases IJs were examining underlying charging documents where the petitioners' cases ultimately resulted in *criminal convictions*, *see generally id*, whereas in Mr. Lopez Zamora's case, all of his cases resulted in dismissals, or else in one case, a conviction for the violation of disorderly conduct, never any crimes.<sup>3</sup> This distinction is critical in Mr. Lopez Zamora's case, where corroboration of the allegations was absent. Mr. Lopez Zamora's cited authorities on the unreliability of police reports and the importance of fundamental fairness in the evaluation of evidence demonstrate the due process issues at stake here. Pet. ¶¶ 72-81; *e.g.*, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1187 (D. Colo. 2024) (ordering a burden-shifted bond hearing where the Immigration Judge was instructed not to give "undue weight" to the allegations underlying dismissed criminal charges).

Indeed, the risk of erroneous deprivation was borne out in this case, where the agency relied on unsubstantiated allegations—in the absence of corroborating evidence or the opportunity to fully respond or cross-examine the witnesses against him—to make a finding that Mr. Lopez

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<sup>3</sup> The third case relied on by Respondents, the case of *Doe v. Decker*, No. 20 CIV. 4232 (KPF), 2020 WL 4937395, at \*10 (S.D.N.Y. Aug. 21, 2020) does not seem to apply to the circumstances here, as the safeguard requested was not related to the underlying charging documents in criminal cases. In any event, this case too did not address the due process argument under *Mathews*.

Zamora did not meet his burden regarding lack of dangerousness. Contrary to Respondents' assertions, the IJ did not meaningfully weigh various factors in deciding to rely on the uncorroborated charging documents. Resp. MOL at 22. Rather, the IJ's reasoning shows that she simply took the facts contained therein as true, thereby according them undue weight. Both the IJ, the BIA, and Respondents made much of the fact that some of Mr. Lopez Zamora's charges were dismissed only on speedy trial grounds, not because the prosecution did not "believe" he had committed these crimes. Exh. F. at 4; Exh. G at 2; see Resp. MOL at 10. This language demonstrates the depth of the erroneous deprivation in his particular case. First, a prosecutor's "belief" is only relevant if it is "reasonable" and derives from an assessment that "admissible evidence will be sufficient to support a conviction beyond a reasonable doubt." See ABA Crim. Justice Std., Prosecution Function, 3-4.3. The IJ's emphasis on the prosecution's unqualified "belief" as corroboration of Mr. Lopez Zamora's guilt is a clear example of the fundamental unfairness at play in this particular bond hearing. Second, the IJ here holds the procedural path of the charges against Mr. Lopez Zamora, when that was utterly outside of his control, a textbook example of unfairness: the prosecuting body never brought him to trial, so he never had the opportunity to prove he was not guilty.

Another prominent example of the IJ's reasoning, also highlighted by Respondents, is telling. As Respondents write, "the IJ expressed concern because [Mr.] Lopez Zamora failed to recognize that calling the Complainant's *mother* for 'any reason was a violation of the order of protection.'" Resp. MOL at 10 (emphasis added). However, this example does not show that the IJ engaged in proper weighing, but rather demonstrates both the IJ's bias and her lack of understanding of the posture of the case: no order of protection in favor of the complainant's mother was ever issued, thus no violation would be had by calling her. *See* Exh. 3 at 33 (criminal

court complaint describing the order of protection as issued). As well, the IJ's questioning of Mr. Lopez Zamora's "veracity" and "unforthcoming" nature in denying the allegations derived almost exclusively, and repeatedly, from the uncorroborated charging documents. *See* Exh. F. at 4-5 (IJ's Bond Memo).


These examples of undue weight placed on the underlying charges documents demonstrate why corrective action in the form of a new bond hearing with additional safeguards is necessary. To this end, Mr. Lopez Zamora seeks that the adjudicator be instructed not to simply credit the underlying charging documents as true, where the cases were dismissed or led to no criminal conviction. These safeguards are especially necessary as Mr. Lopez Zamora's detention has become prolonged. Without this additional safeguard, habeas relief will not be meaningful.

#### **CONCLUSION**

Based on the foregoing, Mr. Lopez Zamora respectfully requests the Court issue a writ of habeas corpus ordering his immediate release if the government does not promptly provide him a constitutionally sufficient bond hearing.

Dated: November 12, 2025  
Bronx, New York

Respectfully submitted,

  
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Aurora Maoz  
Nhu-Y Ngo  
THE BRONX DEFENDERS

*Counsel for Petitioner*