UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

NERY VIDAL RAMIREZ ZAPET; Petitioner, vs. LADEON FRANCIS, *ICE Atlanta Field Office Director*; and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security* And PAMELA BONDI, *U.S. Attorney General.* Respondents.	))))))))))))	CASE No.: 1:25-cv-07085-VMC

PETITIONER'S RESPONSE TO
GOVERNMENT'S BRIEF AND PI COURT ORDER

Petitioner submits this response to the Government's Response (ECF No. 21) pursuant to the Court's January 8, 2026, PI Order (ECF No. 20ICE's warrantless and unlawful arrest led to Mr. Zapet's detention and, as the detention is fruit of the poisonous tree, and the only appropriate remedy is to order Petitioner's immediate and unconditional release.

I. Unlawful Arrest without Reason to Believe or Probable Cause

As already briefed in ECF No. 19 (Notice of Supplemental Authorities), referenced and incorporated herein in its entirety, ICE failed to meet the strict requirements of 8 U.S.C. § 1357(a)(2) when arresting Mr. Zapet. The facts here show Mr. Zapet was an admittedly "collateral arrest," likely stemming from racial profiling, during an unrelated individual's investigation, where ICE had no prior suspicion of Mr. Zapet, probable cause, or warrant for his arrest, other than the fact that he was in a car that left a surveilled home for a noncitizen for which ICE had an arrest warrant for.

The statute and implementing regulation at 8 C.F.R. § 287.8(c)(2)(ii) demand that a warrant is required for a civil immigration arrest unless an officer has **reason to believe** the individual "is in the United States in violation of [the immigration laws]" and "is likely to escape before a warrant can be obtained". This "reason to believe" language is the equivalent of the constitutional requirement of **probable cause**. *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *2 (D. Colo. Nov. 25, 2025); *see, e.g., Roa-Rodriguez v. United States*, 410 F.2d 1206, 1209 (10th Cir. 1969) (adopting the "probable cause" standard in finding that a warrantless arrest violated § 1357(a)(2)); *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (collecting cases interpreting "reason to believe" in § 1357(a)(2) as the equivalent of probable cause).

And the reasoning must be based on an **individualized assessment of specific facts.**[1] *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417

[1] *See Castañon Nava v. DHS*, No. 18-cv-3757, --- F.Supp.3d ----, ----, 2025 WL 2842146, at *1 (N.D. Ill. Oct. 7, 2025) (approving a settlement wherein ICE agreed to issue a nationwide "Broadcast Statement of Policy" articulating that "[] when determining "likelihood of escape," an officer "must consider" the totality of the circumstances known to them before the arrest;" and "relevant factors include whether the officer can "determine the individual's identity, knowledge of **that individual's prior escapes or evasions of immigration authorities,**

(BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (Whether a person is likely to escape before an administrative warrant can be obtained requires an individualized determination based on knowledge of facts "particularized with respect to that person.") (quotation omitted) (discussing factors); *Moreno v. Napolitano*, 213 F.Supp.3d 999, 1007-08 (N.D. Ill. 2016) (Before effecting a warrantless arrest, ICE officers must make a "particularized inquiry" that the subject is likely to abscond); *United States v. Pacheco-Alvarez*, 227 F.Supp.3d 863, 889 (S.D. Ohio 2016) (the statutory requirement, that an immigration officer must have probable cause of flight risk, "is not mere verbiage.") (citing *Arizona v. U.S.*, 567 U.S. 387, 394 (2012)); *Storey v. Taylor*, 696 F.3d 987, 992 (10th Cir. 2012) (Probable cause requires a "substantial probability" **based on facts related to the individual**); *see also United States v. Khan*, 324 F.Supp.2d 1177, 1186-87 (D. Colo. 2004) (considering defendant's traditional flight risk factors, **including ties to the community**, in finding that his warrantless arrest violated § 1357(a)(2)); *United States v. Bautista-Ramos*, No. 18-cr-4066-LTS, 2018 WL 5726236, at *7 (N.D. Iowa Oct. 15, 2018) (same).

A. *Lack of Individualized Suspicion and Impermissible Racial Profiling*

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attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances" weighing in favor or against flight risk;" and admitting that "**mere presence within the United States in violation of U.S. immigration law" is not, on its own, evidence of flight risk**); *Ramirez Ovando*, 2025 WL 3293467, at *3 (discussing *Castañon Nava* in depth).

Here, Respondents have failed to show the officers had probable cause to pull over the car in the first place, let alone to arrest Mr. Zapet. Respondents have not offered any evidence (nor did the ICE I-213 report even stated) that they had probable cause to follow or stop the vehicle. *See* ECF No. 11-2 (I-213 Report) ("Officers noticed that several individuals exit the last known residence of identified target and enter a vehicle that was picking up just outside the target residence. ERO Officers followed the vehicle and conducted a vehicle stop. . . ."). No where does the I-213 report any reason for following the individuals—none of whom are identified as the target—, nor does the I-213 include any reason or probable cause to stop the vehicle. Nothing. The report does not state that any individual looking like the target entered the vehicle or that they had a reason to believe any of the individuals inside the car was the target.

Respondents even admit that the I-213 report "does not specifically state that the officers believed that the target individual was among those leaving the house." ECF No. 19 at 2. Yet now, without any evidentiary support, Respondents' brief claims the officers followed a car that picked up several people from the residence "because the officers suspected that the relevant individual was among those who entered the car." *Id.* [2] This is not only unsupported but also

[2] Respondents' brief also baldly asserts without support that "but that seems to have been the case because the officers ceased surveilling the house and followed the vehicle." *Id.* As this type of assertion of unsupported assumptions is rampant in Respondents' briefing, Petitioner must

unreasonable where the alleged warrant for the suspected target would have included the individual's picture and description and other identifying information. Further again, the I-213 report is devoid of any reference to ICE seeing or believing the suspected target got into the car.

Even assuming, in the best light for Respondents, that the ICE agents *believed* that the target entered the car or could have entered the car with the other individuals, once they stopped the vehicle and confirmed that Mr. Zapet (and the other individuals) were NOT the target, they had to follow the law.

Respondents erroneously reject Petitioner's claim that ICE unlawfully followed the car with Mr. Zapet and other unknown individuals because of their race and ethnicity and a baseless assumption that it meant they were in the U.S. illegally. *See* ECF No. 21 at 3 (Respondents alleged that "[c]ommon sense suggests that this is not the best assumption, but the I-213 report does not specifically state otherwise."). Notably however, given this Administration's overt, public, and repeated mandate to indiscriminately arrest individuals via a daily quota of 3,000 immigration arrests and the command from White House deputy chief of staff, Stephen Miller, to "just go out there and arrest illegal aliens," Petitioner's

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highlight that an attorney's statement is not evidence. *INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984) (declining to consider "[c]ounsel's unsupported assertions in respondent's brief" as evidence); *Kulhawik v. Holder*, 571 F.3d 296, 298 (2d Cir. 2009) ("An attorney's unsworn statements in a brief are not evidence."); *Skyline Corp. v. NLRB*, 613 F.2d 1328, 1337 (5th Cir. 1980) ("Statements by counsel in briefs are not evidence.").

unrefuted claim is more than reasonable. *See* https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota (last visited January 16, 2026); *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *7-8 (D. Colo. Nov. 25, 2025) (recounting several public statements);[3] *see also Escobar Molina*, 2025 WL 3465518, at *15 (finding "evidence from both parties [ ] offer support for plaintiffs' allegation that defendants target individuals who 'appear Latino, work in low-wage jobs, and live in or frequent neighborhoods with large numbers of Latino residents.'").[4]

Critically, a set of facts cannot constitute reasonable suspicion if it "describe[s] a very large category of presumably innocent" people. *Reid v. Georgia*, 448 U.S. 438, 441 (1980) (per curiam). And here, Respondents have not supplied any evidence to show that the ICE officers had any probable cause or reason to

[3] The *Ramirez Ovando* decision recounted public statements including "Tom Homan, former ICE deputy director and "Border Czar," echoed this, stating that if ICE officers encounter people in the country illegally while pursuing their targets, "they're going to get arrested too" and Robert Guadian, Denver's former ICE field office director, similarly confirmed in a local news interview that "if we encounter someone who is illegally present during the course of our operations, we're going to take those people into custody"). 2025 WL 3293467, at *7-8.

[4] The district court in *Escobar Molina* found the plaintiffs "have established a substantial likelihood of an unlawful policy and practice by defendants of conducting warrantless civil immigration arrests without probable cause." "Defendants' systemic failure to apply the probable cause standard, including the failure to consider escape risk, directly violates the clear statutory requirements under the INA, see 8 U.S.C. § 1357(a)(2), and DHS's implementing regulations." Further, "defendants' policy and practice of making warrantless civil immigration arrests without the requisite probable cause findings is also 'arbitrary, capricious, or contrary to law' and 'in excess of statutory authority,' in violation of the APA. . . ." 2025 WL 3465518, at *26-27.

believe Mr. Zapet was in the U.S. unlawfully. Thus, ICE's unlawful stop, based on racial profiling, alone warrants Petitioner's immediate release. *See Trump v. Illinois*, No. 25A443, 2025 WL 3715211, at *9 (U.S. Dec. 23, 2025) ("The Fourth Amendment requires that immigration stops must be based on reasonable suspicion of illegal presence, stops must be brief, arrests must be based on probable cause, and officers must not employ excessive force. Moreover, the **officers must not make interior immigration stops or arrests based on race or ethnicity**." (emphasis added) (citing *Whren v. United States*, 517 U.S. 806, 813 (1996) ("[T]he Constitution prohibits selective enforcement of the law based on considerations such as race")' *see also Noem v. Vasquez Perdomo*, 2025 WL 2585637 at *6, 146 S. Ct. ---, 222 L. Ed. 2d at 1219 (Sotomayor, J., dissenting) (It is clear that federal constitutional protections are being steadily eroded, particularly as applied to "anyone who looks Latino, speaks Spanish, and appears to work a low wage job.").

B. *No Reason to Believe Mr. Zapet would Escape*

The Court should find the warrantless arrest is also unlawful where Respondents failed to establish the ICE officer had reason to believe that Mr. Zapet was likely to escape before a warrant could be obtained. The arresting officer's only surmisable justification, taken from the I-213, was based on Mr. Zapet's "lack of U.S. identification, unwillingness to provide a valid address in the U.S., and the mobile setting of the encounter". ECF No. 11-2. This justification fails to meet the 'reason to believe' (probable cause) standard.

First, "[m]ere presence within the United States in violation of United States immigration law is not, by itself, sufficient to conclude that a person is likely to escape before a warrant for arrest can be obtained." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *24 (D. Colo. Nov. 25, 2025); *Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 937, 946 (D. Minn. 2017) (holding, despite defendant's admission that "he was in the country illegally," that "having reason to believe [that the defendant] is an alien subject to removal from the United States does not, without more, provide the probable cause needed to make a lawful [warrantless] arrest" (internal quotation marks omitted); *Contreras v. U.S.*, 672 F.2d 307, 309 (2d Cir. 1982) (rejecting proposition that "in every case in which an alien is deportable an arrest can be made without a warrant"); *U.S. v. Harrison*, 168 F.3d 483, 1999 WL 26921, *4 (4th Cir. 1999) (per curiam) (same discussing *Contreras*). Indeed, conflating unlawful status and escape risk "would run counter to the Supreme Court's instruction that the likelihood-of-escape requirement be seriously applied to cabin 'officers [to a] more limited authority' where 'no federal warrant has been issued.' *Escobar Molina*, 2025 WL 3465518, at *14 (quoting *Arizona*, 567 U.S. at 408).

Second, the I-213 shows that the office ignored substantial countervailing facts and failed to meet the standards for determining escape risk. The I-213 reports that Petitioner (1) cooperated with ICE questioning including stating that he was in a common law marriage, had two young U.S. children and was employed as a laborer, (2) did not have any aggravated felony convictions, (4) "freely admitted" his identity and Guatemalan citizenship, and (5) "was amenable to removal proceedings". These are precisely the sort of "ties to the community" that weigh *against* a finding of escape risk. Further, ICE did not have any evidence of Petitioner absconding or escaping in the past. Having Guatemalan citizenship by itself is insufficient to prove someone is in the country illegally (there are many visas and statuses available for someone to be here, including an asylee for one example which is a valid status). To the contrary, the fact that Petitioner resided in the U.S. for over 15 years and has two U.S. citizen children ages 14 and 13 **would heavily weigh against finding of a flight risk**.

Nothing in the I-213 shows that the ICE officer made the required "particularized inquiry" into whether Petitioner was likely to abscond. And again, Respondents have not identified any facts that demonstrate the officer had **reason to believe** that Mr. Zapet was "likely to escape before a warrant can be obtained." *See, e.g., Escobar Molina,* 2025 WL 3465518, at *13 (noting courts have also made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties); *La Franca v. INS*, 413 F.2d 686, 689 (2d Cir. 1969) (noting that being "the owner and operator of a bakery in Jersey City" lowered petitioner's likelihood of escape before a warrant could be obtained); *United States v. Abdi*, No. 04-cr-88 (ALM), 2005 WL 6119695, at *6 (S.D. Ohio Sept. 12, 2005), rev'd on other grounds, 463 F.3d 547 (6th Cir. 2006) (no probable cause for escape risk where defendant owned a business, leased property, lived with his then-pregnant wife and two children, and had family in the area); *cf. United States v. Meza-Campos*, 500 F.2d 33, 34 (9th Cir. 1974) (finding risk of flight where individual appeared "extremely nervous" as if "looking for an opportunity to run").[5]

The result of ICE's unlawful stop and subsequent arrest without probable cause or a warrant, Mr. Zapet has endured thirty-nine days, and counting, of unlawful detention. In the recent few months, it is clear from media reports and court records that ICE has been conducting massive sweeps across U.S. cities, including Atlanta. ICE officers are masked, armed, intimidating, threatening and fatal even to U.S. citizens who exercise their constitutional rights. ICE arrested

[5] As a final attempt to justify the unlawful arrest, Respondents' brief relies on post hoc rationalizations that are not supported by any testimony or facts in evidence. This Court must reject Respondents' claim that the ICE's officer's judgment is owed deference (ECF No. 21 at 7) where the record lacks any evidence of the officer's reasoning at all. *See* ECF No. 11-2, *see also Escobar Molina,* 2025 WL 3465518 at *13, n.20 (rejecting the holding in the case cited by Respondents here— *U.S. v. Murillo-Gonzalez,* 524 F. Supp. 3d 1139, 1151 (D.N.M. 2021), aff'd, No. 22-2123, 2024 WL 3812480 (10th Cir. Aug. 14, 2024)—that an individual poses an escape risk simply by being a passenger in a vehicle). Further, as noted in footnote 2 supra, an attorney's statement is not evidence.

Mr. Zapet without a warrant under 8 U.S.C. § 1225, because under that statutory scheme that ICE currently operates under (which has been invalidated by this Court and every nearly every other federal court in this country), ICE can execute warrantless arrests in the interior, where they would otherwise be required to follow due process and the law to have a reasonable suspicion and to obtain a warrant to effectuate a lawful arrest and detention in the interior under 8 U.S.C. § 1226(a). Therefore, ICE's unlawful continuation of that scheme is unlawful. While this Court correctly found that ICE unlawfully detained him under § 1225 and was wrongfully subjecting him to mandatory detention under § 1225 for over a month, the Court's job is not done.

C. *Fruit of the Poisonous Tree*

Mr. Zapet's ongoing detention is the direct and unattenuated product of an unconstitutional arrest, and as such, it is the "fruit of the poisonous tree" that this Court must remedy. The Supreme Court established in *Wong Sun v. United States*, 371 U.S. 471, 485 (1963), that the exclusionary rule bars not only evidence directly seized during an unlawful search but also evidence "come at by exploitation of that illegality." Here, the "fruit" is not merely the statements Mr. Zapet made, but his very physical confinement, which could not exist but for the initial unlawful stop and arrest. When officers engage in a traffic stop without reasonable suspicion, they have unlawfully "seized" the person in violation of the Fourth

Amendment. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). Here, the unlawful stop yielded everything that followed: the discovery of Mr. Zapet's identity, his statements regarding his citizenship, and ultimately, his physical confinement. The exclusionary rule was designed to "redress and deter overreaching governmental conduct" and mandates the suppression of evidence gained from an unlawful seizure, including from an illegal traffic stop. *Davis v. Mississippi*, 394 U.S. 721 (1969). And the proper remedy for evidence gained following an unlawful seizure is suppression of the obtained evidence under the exclusionary rule. *United States v. Blair*, *524 F.3d 740, 748 (6th Cir. 2008)*. This includes tangible materials and verbal evidence, such as statements about alienage. *United States v. Cabrera*, *796 F. Supp. 3d 660, 665 (S.D. Cal. 2025)*. The ultimate fruit of the illegality in this case, however, is not merely a piece of evidence, but Mr. Zapet's continued loss of liberty. The government cannot be permitted to launder its unconstitutional seizure into a seemingly lawful detention. *Segura v. U.S.*, 468 U.S. 796, 804 (1984) (The exclusionary rule applies to direct evidence seized as a result of the illegal search or seizure as well as "evidence later discovered and found to be derivative of an illegality or 'fruit of the poisonous tree.'") (citation omitted). This includes evidence of Petitioner's alienage and immigration status.

While the government will inevitably argue that the exclusionary rule is inapplicable under *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), that argument ignores the decision's two longstanding exceptions, which permit suppression: (1) when an agency violates its own regulations to the petitioner's prejudice, and (2) when the agency commits "egregious violations" of the Fourth Amendment. *See also Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018); *Adamson v. Comm'r*, 745 F.2d 541, 546 (9th Cir. 1984); *United States v. Calderon-Medina*, 591 F.2d 529, 531–32 (9th Cir. 1979).

The circumstances here—a pretextual stop based on apparent ethnicity without any individualized suspicion—fall squarely into the "egregious violation" exception. *See Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1014-15 (9th Cir. 2008) (holding that evidence of alienage should have been suppressed after an egregious Fourth Amendment violation); *Perez Cruz v. Barr*, 926 F.3d 1128, 1133 (9th Cir. 2019) (holding that mass arrests without individualized suspicion were unlawful and warranted suppression). As the court warned in *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 898-99 (S.D. Ohio 2016), when "overzealous officers exceed[ ] the limits" imposed by the Fourth and Fifth Amendments—which "apply with equal force to citizens and would-be citizens alike"—suppression is required.

As the district court in *United States v. Pacheco-Alvarez*, held:

> Our Constitution [] wisely interposes neutral and detached judicial officers between predator and prey. The Fourth and Fifth

> Amendments do most of this work, and as explained above, they apply with equal force to citizens and would-be citizens alike. Here, a pair of overzealous officers exceeded the limits those amendments impose, thus requiring suppression of Pacheco's un-Mirandized statements regarding his citizenship and immigration status, as well as the firearms and ammunition that the officers later discovered at his home, and Pacheco's admission to possessing a firearm.

Pacheco-Alvarez, 227 F. Supp. 3d at 898-99.

The government's reliance on the principle that the "body" of a defendant is never suppressible is misplaced. Petitioner is not asking the Court to suppress his identity; he is asking the Court to remedy his *unlawful physical confinement*. Where the *only* basis for that detention is evidence obtained through an egregious constitutional violation, there is no "sufficient ground" for detention, and the custody itself is unlawful. To hold otherwise would allow the government to use the fruits of an unconstitutional arrest to justify the ongoing deprivation of liberty, a result the exclusionary rule was designed to prevent. Because Mr. Zapet's detention is the direct fruit of an egregious constitutional violation, the only appropriate remedy is to suppress the unlawful detention itself by ordering his immediate release.

II. Immediate Release Is the Only Lawful and Just Remedy

Given that Mr. Zapet's detention is predicated on an unlawful arrest and has not been cured by a constitutionally adequate process, this Court's broad habeas authority compels his immediate release. Federal courts possess the equitable power under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering release when custody is unlawful. In *Boumediene v. Bush*, 553 U.S. 723, 787 (2008), the Supreme Court affirmed that a judicial officer hearing a habeas petition must have the authority "to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." Here, justice requires release for two dispositive reasons: the detention has been unlawful from its inception, and the purported remedy of a bond hearing proved to be a constitutionally defective nullity.

First, the initial illegality of the arrest alone warrants immediate release. As demonstrated by the dozens of federal court orders already submitted, courts across the country are ordering outright release as the remedy for similar unlawful detentions. This is because the custody is illegal *ab initio*, and a subsequent bond hearing cannot retroactively legitimize a detention that never should have occurred. **A bond hearing is designed to assess risk for a lawfully detained person, not to launder an unlawful arrest.**

As Petitioner explained in previous filings, many federal courts are exercising their equitable habeas powers to grant the only meaningful remedy for a fundamentally unlawful detention: outright release. *See* ECF No. 18 (listing dozens of cases ordering outright release); see also *Ramirez Ovando*, 2025 WL 3293467 at *23 (granting a preliminary injunction ordering ICE to: (1) restore plaintiffs to the position they would have occupied but for ICE's unlawful conduct: to wit their original pre-detention position, free of ankle monitors, or reporting requirements, or other release conditions, and their bonds refunded; (2) enjoin further violations of the individualized-assessment-of-flight-risk requirement enshrined in § 1357(a)(2) and § 287.8(c)(2)(ii)).

Second, and critically, even if a bond hearing could theoretically remedy an unlawful arrest, the hearing afforded to Mr. Zapet was constitutionally deficient, leaving his detention uncured. As detailed in Section III, the IJ committed clear legal error by relying on impermissible factors and failing to properly apply the governing legal standard. Recent, on-point decisions from federal courts establish that when a court-ordered bond hearing is so fundamentally flawed, the proper remedy is not another futile hearing, but immediate release.

For example, in *Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ (D. Mass. Jan. 14, 2026), the court confronted a nearly identical scenario where an IJ denied bond after making an "impermissible leap in logic" and ignoring substantial countervailing evidence. Finding the IJ's decision to be a legal error that violated due process, the court did not order another bond hearing. Instead, it ordered the petitioner's **immediate release.** Similarly, in *Garcia v. Hyde*, No. 25-cv-585-JJM-PAS, 2025 WL 3466312 (D.R.I. Dec. 3, 2025), the court ordered immediate release after finding the bond hearing was constitutionally deficient because the

IJ failed to give "reasoned consideration to the evidence as a whole." The court in *Garcia* concluded that where "due process violations... pervaded his bond hearing," immediate release was the correct remedy.

These cases confirm that a bond hearing is only a remedy if it provides a legitimate opportunity for release. Where, as here, the hearing is a hollow formality, it fails to cure the underlying unlawful detention. Because Mr. Zapet's initial detention was unlawful and the subsequent hearing failed to provide a constitutional cure, this Court's job is not done. The only just outcome is to order Mr. Zapet's immediate and unconditional release.

III. The Court-Ordered Bond Hearing Was Constitutionally Deficient and Failed to Cure the Unlawful Detention

Although the Court ordered Respondents to provide Mr. Zapet with a bond hearing pursuant to INA § 236(a), the hearing was constitutionally deficient. Petitioner is not asking this Court to reweigh the evidence or overrule the Immigration Judge's (IJ) determinations. Instead, Petitioner raises this point to emphasize the need for the Court to order his immediate and unconditional release because of the unlawful arrest and detention from the outset and has not been remedied to date.

As remedy to an unlawful detention under § 1225, this Court has granted a bond hearing in other cases. While this Court possesses broad equitable power to fashion the proper remedy in a habeas action, a simple remand for a bond hearing has proven to be an ineffective and unjust remedy in Petitioner Zapet's case. A bond hearing can only be considered a meaningful remedy if it provides a legitimate opportunity for release. The bond hearing provided to Petitioner was constitutionally defective—a hollow formality lacking a neutral decision-maker and a meaningful opportunity to be heard.

To that end, Petitioner briefly discusses the constitutional deficiencies in the bond hearing to alert the Court that its Order did not remedy Petitioner's unlawful arrest. Due process requires the government to bear the burden of proof in bond hearings. *Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ (D. Mass. Jan. 14, 2026); *Garcia v. Hyde*, No. 25-cv-585-JJM-PAS, 2025 WL 3466312 (D.R.I. Dec. 3, 2025). The government must prove by clear and convincing evidence that the noncitizen poses a danger to the community, or by a preponderance of the evidence that they pose a flight risk. This burden is essential to safeguard due process and effectuate individualized, non-punitive detention determinations. An "overwhelming consensus" of courts place this burden on the government. *Cortes v. Olsen*, No. 25 C 6293, 2025 WL 3063636 (N.D. Ill. Nov 03, 2025).

Prior to the hearing, Petitioner submitted voluminous evidence documenting his fifteen years of U.S. presence, stable family life with two U.S. citizen children, consistent employment, and strong community ties. At the hearing, the government conceded Mr. Zapet was not a danger and offered no evidence to rebut his community ties, arguing only that he was a flight risk because his sponsor indicated he would live with his family. The IJ acknowledged Petitioner's significant community ties but still denied bond, improperly focusing on two impermissible factors: the sponsor's income and Petitioner's lack of a pending application for relief. *See* ECF No. 16-1 (Attorney Declaration).

At the hearing, Respondents could not claim Mr. Zapet is a danger to the community since he does not have any criminal record, not even a single ticket. DHS Assistant Chief Counsel Meredith Sharpe's only argument was that Mr. Zapet is a flight risk because his sponsor indicated that Mr. Zapet will live with his family instead of with him. DHS also baselessly claimed that Mr. Zapet failed to establish significant ties to the community but DHS did not presented any evidence, just made their usual oral arguments to this effect (which they now do in every single case objecting to release on flight risk grounds).

The IJ agreed that Mr. Ramirez Zapet is not a danger and found that he demonstrated significant ties to community through his 2 U.S. citizen children, fixed address proven, continuous physical presence from birth certificates of children, and letters of support. However, the IJ denied bond, noting only that Mr. Zapet's permanent resident sponsor does not make a lot of money to help support him and that Mr. Zapet does not have a pending application for relief from removal. Neither are permissible factors to consider under the bond rules.

The IJ failed to properly consider the bond factors articulated in *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *Matter of Andrade*, 19 I. & N. Dec. 488, 490 (BIA 1987), and instead focused on two impermissible factors. One, that Mr. Zapet does not have a pending application, which is not part of the bond requirements and also premature as his removal proceedings had just began recently with his arrest and the immigration court has not yet conducted an individualized merits hearing or ordered him to file any affirmative applications. Two, there is no requirement to have a bond sponsor, only that a Lawful Permanent Resident or U.S. citizen post the bond. The fact that Mr. Zapet's "sponsor" does not make a lot of money to help support Mr. Zapet is not even a factor as Mr. Zapet has been fully supporting himself and his family for over 15 years in this country. The judge stated how there is no evidence of how Mr. Zapet lawfully works in the U.S. but this is not one of the relevant factors as most noncitizens in the same situation who are in the country illegally also work illegally. The only consideration the IJ may consider based on the applicable law is whether there is evidence of stable employment. *Id.* As his attorney explains in her Declaration, it is clear that the IJ failed to consider the relevant enumerated factors properly, especially where in previous years, most IJs would have granted bond to a person like Mr. Zapet. Where it is clear that IJs are no longer neutral arbitrator, likely out of fear of retaliation and firing by the executive branch,[6] these bond hearings are no longer sufficient remedies when they do not result in a release.

In *Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ (D. Mass. Jan. 14, 2026), the court confronted a nearly identical scenario. After the court ordered a bond hearing, the IJ denied bond, making an "impermissible leap in logic" by equating the petitioner's OUI arrests with flight risk while ignoring substantial countervailing evidence of community ties. Upon a renewed habeas petition, the court found the IJ's decision was a legal error violating due process. Crucially, the court did not order another bond hearing. Instead, it ordered the petitioner's **immediate release**. The same logic applies here. The IJ in Mr. Zapet's case relied on impermissible factors—the sponsor's income and the lack of a pending relief application—while ignoring his deep community ties, stable employment, and family of U.S. citizens. As in *Romero-Nolasco*, this flawed hearing cannot stand as a lawful basis for continued detention, and release is the only appropriate remedy.

Similarly, in *Garcia v. Hyde*, No. 25-cv-585-JJM-PAS, 2025 WL 3466312 (D.R.I. Dec. 3, 2025), the court ordered the petitioner's **immediate release** after

[6] *See e.g*, https://www.brennancenter.org/our-work/research-reports/insiders-view-immigration-system (last visited January 16, 2026); https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista (last visited January 16, 2026)

finding the bond hearing was constitutionally deficient. The IJ there committed legal error by relying on a single piece of evidence (an old Guatemalan arrest warrant for unknown charges) while failing to give "reasoned consideration to the evidence as a whole," including exculpatory evidence. The *Garcia* court concluded that where "due process violations... pervaded his bond hearing," immediate release subject to reasonable supervision was the correct remedy.

These cases confirm that a bond hearing is only a remedy if it provides a legitimate opportunity for release. Where, as here, the hearing is a hollow formality lacking a neutral decision-maker and a meaningful opportunity to be heard, it fails to cure the underlying unlawful detention. The Court's job is not done. As the initial remedy was ineffective, the Court must now dispose of the matter as law and justice require, and the only just outcome is to order Mr. Zapet's immediate and unconditional release.

Now, because of the IJ's erroneous determination that Mr. Zapet is a flight risk, and arbitrary denial of release on bond, he will be forced to remain in detention for months (if not years) while his removal proceedings—that are only in their initial stages—work their way through the immigration court, the Board of Immigration Appeals, and likely a petition for review before the relevant circuit court of appeals. As the *Garcia* and *Romero-Nolasco* courts explained, 8 U.S.C. 1226(e) prohibits a district court judge to evaluate an IJ's discretionary determination or weighing of evidence. However, when an IJ weighs irrelevant evidence to a bond hearing, or when an IJ uses impermissible factors to consider a bond, or where they fail to consider evidence in the record or fail to shift the burden to the government to prove by clear and convincing evidence that a noncitizen is a flight risk, those are constitutional Due Process violations that are reviewable in a habeas context.

And this grievous deprivation of liberty, inflicted upon a noncitizen with no criminal record, is all premised on ICE's unlawful arrest and detention. Not only was this "relief" in the form of a bond hearing under 8 U.S.C. § 1226(a) fruitless, but it was always wholly insufficient to remedy the unlawful arrest and detention *ab inicio*. Here, as explained *supra*, due to unlawful arrest, outright release is required relief to remedy Respondents' egregious violations of Mr. Zapet's constitutional rights. *See Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (Federal courts possess broad authority under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when detention is found to be unlawful.); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025).

Where the administrative remedy itself is broken, the Court's duty to "dispose of the matter as law and justice require," 28 U.S.C. § 2243, is best fulfilled not by ordering a futile process, but by issuing the only order that can actually correct the ongoing violation: Petitioner's immediate release. "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." *Boumediene v. Bush*, 553 U.S. 723, 787 (2008).

To provide a meaningful remedy, Petitioner requests that the Court order his unconditional release and enjoin Respondents from imposing ISAP conditions. *See Ramirez Ovando*, 2025 WL 3293467 at *23 (ordering plaintiffs restored to their 'original pre-detention position, free of ankle monitors, or reporting requirements, or other release conditions' to remedy unlawful ICE conduct). ICE is now engaged in a de facto policy of subjecting virtually every noncitizen released from custody to electronic monitoring, irrespective of individual circumstances and without any particularized finding of flight risk. This blanket policy imposes significant, custody-like restraints on liberty without the individualized assessment required by due process, allowing the agency to unilaterally subvert a judicial release order by substituting it with an alternative form of detention. Restrictions without due process are unlawful, and even alternatives to detention require individualized findings and due process protections. Therefore, to provide a meaningful remedy and to prevent Petitioner from having to come back to Court, Petitioner requests that the Court order his unconditional release and enjoin Respondents from imposing ISAP conditions unless they first demonstrate to this Court—with five days' advance notice—that significantly changed circumstances necessitate such conditions based on a new, particularized assessment of true risk. This Court's broad power to "dispose of the matter as law and justice require" under 28 U.S.C. § 2243 includes the authority to formulate orders that protect the integrity of its own rulings and provide effective relief, including release from all forms of unlawful restraint, including electronic monitoring and others.

Wherefore, Petitioner renews his request that the Court DECLARE that Petitioner's arrest was unlawful and that all evidence and proceedings derived from the unlawful arrest are tainted and must be set aside; SUPPRESS all evidence and proceedings derived from the unlawful arrest; ORDER Petitioner's immediate and unconditional release from custody; and ENJOIN Respondents from re-detaining Petitioner or enrolling Petitioner in invasive electronic monitoring, unless Petitioner has committed a new violation of any federal, state, or local law, or have failed to attend any properly noticed immigration or court hearing or are subject to detention pursuant to a final order of removal.

Respectfully Submitted,

This 16th day of January, 2026.

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Book Antiqua, 13 point font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2026, this DOCUMENT was served, via electronic delivery to Respondents' counsel via the CM/ECF system, which will forward copies to Counsel of Record.

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