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February 1, 2026

via ECF
Hon. Vernon S. Broderick
United States District Court
40 Foley Square
New York, NY 10007

Re: Ahmadi v. Almodovar, 26 Civ. 274 (VSB)

Dear Judge Broderick,

This letter is written in response to the letter of Jonaki Singh, dated January 30, 2026 (Doc. 12). Based upon that letter, Petitioner reiterates his request that this Court grant his petition and release him immediately.

The law supports the immediate release of Petitioner

The government concedes that "the facts in *Sidqui* [*v. Almodovar*, 25-cv-9349 (VSB), Doc. 31, Opinon and Order], appear to be otherwise materially indistinguishable from the facts in this case. Accordingly, the Court's decision in *Sidqui* would likely govern the statutory question here." (Doc. 12, Singh letter, p. 3, n.2) Petitioner agrees on both counts – that the material facts in the instant case are indistinguishable from those in *Sidqui*, and that the decision in *Sidqui* dictates the same outcome in the instant case, i.e. to "find that the Government detained Petitioner pursuant to 8 U.S.C. § 1226 and that his detention violated his due process rights," and to order the Government "to immediately release Petitioner from custody." (*Sidqui*, supra, at 1).

Petitioner here was explicitly released pursuant to "section 236 of the Immigration and Nationality Act" (Doc. 7-4), which makes his claim that 8 U.S.C. §1226 applies to him even stronger than the claim of Oumane Sidqui, whose basis of initial release is uncertain.

In *Sidqui*, this Court ruled that "in light of the Government's failure to provide Petitioner any individualized process either prior to or contemporaneous with the deprivation of his liberty, which was formerly granted by the Government, and the Government's inability to point to any evidence of risk of flight or danger, granting the Petition without requiring administrative exhaustion is the most appropriate remedy." (*Sidqui*, supra, at 47) For the reasons provided in that decision, granting the instant petition and releasing Petitioner immediately is likewise the most appropriate remedy.

Petitioner is not a flight risk

On January 26, 2026, this Court asked the government to clarify its position, by January 30, 2026, as to whether Petitioner is a flight risk or dangerous. The government has not done so.

Ignoring this Court's directive, the government simply claims that "Petitioner has not shown that he is not a flight risk." (Doc. 12, p. 2) But, as a matter of law, where the government has already determined (as it did here in April, 2023) that the immigrant is entitled to parole, the burden is upon the government to demonstrate that an immigrant poses a flight risk or danger. See, *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020). The Bureau of Immigration Appeals agrees: "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance." *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (quoted in *Sidqui*, supra, at p. 38). And the government has failed to advise this Court that Petitioner cannot flee, as ICE seized his passport.

Moreover, as a matter of fact, Petitioner has shown that he is not a flight risk. It is undisputed that, besides working steadily at his job and paying his taxes (Petition, Doc. 1, ¶32), Petitioner has always complied with every request of the government and kept all appointments that the government has set for him. (Id., ¶34) Even when the government made a mysterious appointment for Petitioner to appear at the government's office on January 13, 2026, "for case review and updates," Petitioner kept that appointment (Id., ¶¶36-37), even though he was aware that it might be a ruse to make him appear (which it was) so that the government could arrest him, just as the government has recently arrested so many Afghani asylum-seekers.[1]

Petitioner is not dangerous

The government's claim that Petitioner is dangerous also fails as a matter of fact and law. Claiming that the immigration authorities will consider "misconduct that does not result in a conviction" at a bond hearing, the government states that Petitioner "was arrested for an attempted felony forcible robbery. . . ." (Doc. 12, p. 2) And Respondents admit that they will provide "an Immigration Judge" with evidence of Petitioner's arrest record (but not the outcome of the arrest) at a bond hearing. (Id., p. 2, n.1) But an arrest is not "misconduct," merely an accusation of misconduct. Petitioner was never convicted of a crime. As even the government admits, petitioner has "no known criminal history." (Doc. 7-6, p. 3)

Petitioner had been arrested on October 21, 2024. At his arraignment on October 22, 2024, the District Attorney charged Petitioner with three counts, the highest being attempted robbery in the third degree. Contrary to the government's claim (Doc. 12, p. 2), that charge is a Class E felony, not a Class D felony. (See Stevenson Decl., dated February 1, 2026)

After an investigation, the District Attorney moved to dismiss the three criminal counts against Petitioner, and the judge granted the motion. As Petitioner has already stated (See

[1]See, "The Cruel Crackdown on Afghan Refugees," *The New York Times*, Opinion, p. 11 (Jan. 11, 2026); accord, Maanvi Singh, "U.S. Agents Increasingly Arresting Afghan Asylum Seekers, Lawyers Say: 'A Huge Chilling Effect,'" *The Guardian*, Dec. 12, 2025, available at https://www.theguardian.com/us-news/2025/dec/12/afghan-asylum-seekers-immigration

Petition ¶33), Petitioner pled guilty to Disorderly Conduct on December 12, 2024, and was released without any conditions or any monitoring, demonstrating that the Criminal Court judge did not consider Petitioner to be a danger. Petitioner does not have a criminal record.

Despite that dismissal, the government is now demonstrating conclusively that it will deny Petitioner a fair trial if it is allowed hold a bond hearing, because the government will presume, based solely upon an arrest which concluded in the dismissal of all criminal charges, that Petitioner committed the crimes for which the charges have been dismissed. Moreover, the government will continue to detain Petitioner without due process of law.

Contrary to the government's position (Doc. 12, p. 2), no court has ruled that, in determining dangerousness, the government may consider criminal charges which were lodged against the immigrant and later dismissed by the authorities. Instead, a state court dismissal of criminal charges against an immigrant has led to the opposite conclusion – that the government has no basis for claiming dangerousness. See, e.g., *Rueda Torres v. Francis*, No. 25-CV-8408, 2025 WL 3168759, at *5 (S.D.N.Y. Nov. 13, 2025); *Sidqui*, supra, at p. 9.

The cases that the government cites are inapposite. In *Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006), the immigrant had been tried and convicted of several felonies. He was later offered and accepted Youthful Offender Status, which did not alter the fact that he had committed violent crimes. In *Palaguachi v. Whitaker*, 755 F. App'x 81 (2d Cir. 2018), the immigrant's violent criminal behavior was undisputed, including his violation of an order of protection, even though he was not prosecuted criminally for that behavior. In the instant case, by however, Petitioner strenuously disputed the criminal charges that had been lodged against him; and the District Attorney's office, after conducting its own investigation, agreed that all criminal charges should be dismissed.

Accordingly, Petitioner requests that this Court grant the writ, release Petitioner immediately, set a schedule for a motion for attorney fees under the Equal Access to Justice Act, and grant such other and further relief as may be deemed just and proper.

Thank you for your consideration.

Very truly yours,

S/ Carolyn A. Kubitschek
Carolyn A. Kubitschek
Attorney for Petitioner

cc: all counsel, via ecf