IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JUAN MANUEL LOPEZ MARQUEZ Petitioner, v. **JUAN BALTAZAR,** Warden, Denver Contract Detention Center, in his official capacity; **ROBERT HAGAN,** Director of the Denver Field Office for the U.S. Immigration and Customs Enforcement, the U.S. Department of Homeland Security, in his official capacity; **TODD M. LYONS,** Acting Director of the U.S. Immigration and Customs Enforcement, the U.S. Department of Homeland Security, in his official capacity; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security, in her official capacity; **PAMELA BONDI,** Attorney General of the United States, in her official capacity; and **DAREN MARGOLIN,** Director of the Executive Office for Immigration Review, in his official capacity, Respondents.	Case No. _____ **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case concerns the prolonged civil detention of a non-criminal father and husband without constitutionally adequate process. Petitioner Juan Manuel Lopez Marquez has

been detained for more than twelve months under 8 U.S.C. § 1226(a), despite having no criminal history, strong family ties in the United States, and a viable pathway to lawful permanent residence through his U.S. citizen spouse's immediate-relative petition. Yet he remains incarcerated with no defined end point to his detention.

2. The Constitution does not permit prolonged civil detention without meaningful safeguards. As detention lengthens, due process requires the Government to justify continued incarceration by clear and convincing evidence that detention is necessary.

3. Mr. Lopez's detention is further tainted by his warrantless arrest. ICE officers made no individualized determination that he was likely to escape before obtaining a warrant, as required by 8 U.S.C. § 1357(a)(2), and conducted no meaningful pre-detention custody assessment.

4. Mr. Lopez is challenging the constitutionality of his prolonged detention, the absence of meaningful due process, and arbitrary decision-making unsupported by clear and convincing evidence given his substantial family ties and lack of criminal history or history of noncompliance.

5. After more than a year of civil incarceration (with no end in sight), Respondents continue to detain Mr. Lopez without constitutionally sufficient justification. He respectfully asks this Court to declare his continued detention unlawful and order his immediate release, or, at minimum, require a prompt bond hearing at which the Government bears the burden of proof by clear and convincing evidence.

JURISDICTION

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody within this District in violation of the Constitution and laws of the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Challenges to immigration detention are properly brought through habeas corpus. *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004). Petitioner's entitlement to due process is not discretionary and remains subject to judicial review. *See Zadvydas*, 533 U.S. at 688.

8. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question), and authority to grant declaratory and equitable relief under 28 U.S.C. §§ 2201–02 and 28 U.S.C. § 1651.

9. This Petition does not seek review of any removal order or discretionary determination. Rather, it challenges the legality and constitutionality of Petitioner's ongoing civil detention and the procedures that resulted in his prolonged incarceration. Accordingly, the jurisdiction-limiting provisions of 8 U.S.C. § 1252 do not apply.

10. This Court also has authority under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702, 706(2), to set aside agency action that is arbitrary, capricious, or otherwise not in accordance with law. APA review may proceed through habeas corpus. 5 U.S.C. § 703.

VENUE

11. Venue is proper in the District of Colorado because Petitioner is detained at the Denver Contract Detention Center in Aurora, Colorado, which is located within this District, and his immediate custodian is located here. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004).

12. Venue is also proper under 28 U.S.C. § 1391(e) because this is a civil action against officers and agencies of the United States acting in their official capacities, and a substantial part of the events or omissions giving rise to Petitioner's claims, including his arrest, detention, and bond proceedings, occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

13. Under 28 U.S.C. § 2243, the Court must either grant the writ or issue an order directing Respondents to show cause why the writ should not be granted. The statute provides that such proceedings shall occur "forthwith" and contemplates a prompt return from the custodian unless additional time is allowed for good cause.

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "[T]he statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

15. Because Petitioner challenges ongoing, prolonged physical confinement, prompt judicial review is especially warranted.

PARTIES

16. Petitioner Juan Manuel Lopez Marquez is a 30-year-old citizen of Mexico. Mr. Lopez is currently detained at the Denver Contract Detention Center in Aurora, Colorado. He is in the custody, and under the direct control, of the Respondents and their agents.

17. Respondent Juan Baltazar is the Warden of Denver Contract Detention Center, and he has immediate physical custody of Petitioner, pursuant to the facility's contract with U.S.

Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Baltazar is a legal custodian of Petitioner.

18. Respondent Robert Hagan is sued in his official capacity as the Acting Director of the Denver Field Office of U.S. Immigration and Customs Enforcement. Respondent Hagan is a legal custodian of Petitioner and has authority to release him.

19. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of the U.S. Immigration and Customs Enforcement. In this capacity, Respondent Lyons is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the actions of Respondent Guadian and the U.S. Immigration and Customs Enforcement in general. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

20. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

21. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA). Respondent Bondi is a legal custodian of Petitioner.

22. Respondent Darien Margolin is sued in his official capacity as the Director of the Executive Office for Immigration Review, the sub-agency of the U.S. Department of Justice

(DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA). Respondent Margolin is a legal custodian of Petitioner.

STATEMENT OF FACTS

23. Mr. Lopez is a 30-year-old citizen of Mexico.

24. He entered the United States on March 22, 2018, with a H-2B work visa. After the period of authorized stay expired, he remained in the United States.

25. Mr. Lopez is the father of three (3) minor United States citizen children: K[redacted] (age 10), D[redacted] (age 7), and J[redacted] (age 5). Ex. 12, Colorado Birth Certificates for Petitioner's Children.

26. His son D[redacted] has been diagnosed with autism and requires special services. Ex. 13, Autism Diagnostic Evaluation for Petitioner's minor child.

27. Mr. Lopez has no criminal history and is not subject to mandatory detention under 8 U.S.C. § 1226(c).

28. On the morning of February 5, 2025, ICE officers entered the apartment that Mr. Lopez resided in to execute an arrest warrant for another individual. Ex. 3, I-213 Record.

29. Officers detained Mr. Lopez after confirming his identity and lack of lawful status. Mr. Lopez did not attempt to flee and cooperated with officers. Officers did not ask him questions concerning flight risk, including inquiries about his family ties, employment, or community connections. *Id.*

30. ICE did not obtain a warrant for Mr. Lopez's arrest.

31. ICE subsequently charged Mr. Lopez with overstaying his visa and detained him pursuant to 8 U.S.C. § 1226(a). Ex. 4, Notice to Appear.

32. Mr. Lopez has remained detained at the Denver Contract Detention Center since February 5, 2025, now over twelve months. Ex. 1, ICE Detainee Locator Record.

33. On August 28, 2025, Mr. Lopez appeared before the Aurora Immigration Court for a bond hearing. Under agency procedures, he bore the burden of establishing that he was neither a flight risk nor a danger to the community.

34. Following the hearing, the Immigration Judge issued a one-sentence order denying bond, stating that Mr. Lopez "did not meet his burden to establish that he would not be a flight risk," citing *Matter of R-A-V-P-*, 27 I&N Dec. 803 (BIA 2020). Ex. 5, IJ Bond Order (First Bond Hearing).

35. While detained, Mr. Lopez married Lucia Elizabeth Donovan, a United States citizen. Ex. 10, State of Colorado Marriage Certificate for Petitioner and Lucia Donovan.

36. Ms. Donovan suffers from post-traumatic stress disorder (PTSD). Her symptoms of anxiety, panic, and trauma-related distress have been exacerbated by Mr. Lopez's prolonged detention.

37. Ms. Donovan filed an immediate-relative I-130 petition with U.S. Citizenship and Immigration Services (USCIS) on Mr. Lopez's behalf. They attended an interview with USCIS on December 11, 2025. The petition remains pending. Ex. 11, USCIS Form I-130 Receipt Notice and I-130 Interview Notice.

38. On October 8, 2025, Mr. Lopez filed a renewed bond motion based on changed circumstances, including his marriage and the pending I-130 petition. *See* 8 C.F.R. § 1003.19(e).

39. The Immigration Judge granted a second bond hearing over DHS's objection.

40. At the October 24, 2025 bond hearing, the Immigration Judge declined to take live testimony and instead requested an offer of proof from counsel. Ex. 7, October 24, 2025 Bond Hearing Transcript.

41. DHS presented no witnesses and offered no evidence of criminal history, danger, or prior noncompliance. *Id.*

42. Although Ms. Donovan was present and prepared to testify, the Immigration Judge declined to hear her testimony. *Id.*

43. Later that same day, the Immigration Judge issued a one-sentence order again denying bond on flight-risk grounds. Ex. 6, IJ Bond Order (Second Bond Hearing).

44. Mr. Lopez appealed the bond denial to the Board of Immigration Appeals on November 21, 2025. Ex. 8, BIA Bond Appeal Notice.

45. The Immigration Judge issued a written bond decision on December 16, 2025, Ex. 9, IJ Bond Written Decision.

46. The appeal remains pending.

47. If Ms. Donovan's I-130 petition is approved, Mr. Lopez will be eligible to seek adjustment of status before the Immigration Judge.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

48. Section 2241 contains no statutory exhaustion requirement. Accordingly, exhaustion in habeas proceedings is prudential, not jurisdictional. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

49. Courts may waive prudential exhaustion where administrative remedies are inadequate or futile, where irreparable injury would result from delay, or where the claim raises substantial constitutional questions beyond the agency's authority to resolve. *Id.* at 146 – 49; *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

50. Mr. Lopez has pursued available administrative remedies. He sought bond, moved for custody redetermination based on changed circumstances, and appealed the bond denial to the Board of Immigration Appeals (BIA). His appeal remains pending.

51. Further exhaustion would be futile and inadequate. The BIA lacks authority to adjudicate the constitutional claims raised here, including the allocation of the burden of proof, the adequacy of bond procedures, and the legality of prolonged detention. *See Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020) ("There is no administrative mechanism by which [petitioner] could have challenged his detention on the ground that it reached an unreasonable length.").

52. Moreover, requiring Mr. Lopez to await a BIA ruling would prolong his detention and exacerbate the irreparable deprivation of liberty he challenges. Habeas corpus is the proper mechanism to test the legality of ongoing custody. *See Zadvydas*, 533 U.S. at 688.

53. Under these circumstances, prudential exhaustion should be waived and immediate judicial review is warranted.

LEGAL FRAMEWORK

Due Process

54. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

55. These protections extend to all persons within the United States, including noncitizens regardless of immigration status. *Zadvydas*, 533 U.S. at 693 (noting that due process protects "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent"); *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (explaining that due process "protects every [noncitizen] from deprivation of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.") (internal citations omitted).

56. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. Because immigration detention is civil confinement, it "constitutes a significant deprivation of liberty that requires due process protections." *See Addington v. Texas*, 441 U.S. 418, 425 (1979).

57. In cases arising under 8 U.S.C. § 1226(a), procedural due process claims are evaluated under the framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts consider: (1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards; and (3) the government's interest, including fiscal and administrative burdens that the additional procedural requirements would entail. *Id.* at 335.

Prolonged Detention

58. Even where the statute allows detention, due process prohibits "unreasonably prolonged" civil detention where the government cannot justify ongoing custody by evidence of danger or likelihood of removal in the reasonably foreseeable future. *Zadvydas, 533* U.S. at 690-701.

59. In *Zadvydas*, the Supreme Court held that post-removal-order detention beyond six months is presumptively unreasonable where there is no significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701. Although this case arises under § 1226(a), the principle remains the same: civil detention must bear a reasonable relation to its purpose and cannot continue indefinitely without adequate justification. *Velasco Lopez*, 978 F.3d at 854 (holding that "individuals subject to prolonged detention under § 1226(a) must be afforded process in addition to that provided by the ordinary bail hearing, just as . . . [those noncitizens] subjected to prolonged detention under § 1226(c) may be entitled to further process").

60. Detention under § 1226(a) often continues until removal proceedings and appeals conclude, which may take many months or years. *Velasco Lopez*, 978 F.3d at 852; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 29 (1st Cir. 2021) ("The exact length of detention under section 1226(a) is impossible to predict and can be quite lengthy. . .").

61. As the duration of confinement increases, so too does the constitutional scrutiny applied to continued detention. *Zadvydas*, 533 U.S. at 701 (noting that "as the period of confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). Where detention becomes prolonged, courts must ensure that continued confinement

remains reasonably related to ensuring appearance and protecting the community, and that adequate procedural protections are provided. *See Hernandez-Lara*, 10 F.4th at 27-30.

ARGUMENT

I. MR. LOPEZ'S DETENTION FOR OVER ONE YEAR VIOLATES SUBSTANTIVE DUE PROCESS.

62. Courts in this District evaluate whether detention under 8 U.S.C. § 1226(a) has become unreasonably prolonged by considering several factors, including: (1) the total length of detention; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays attributable to the detainee; (5) delays attributable to the government; and (6) the likelihood that removal proceedings will result in a final order of removal. *Singh v. Choate*, No. 19-CV-00909-KLM, 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019); *Villaescusa-Rios v. Choate*, No. 20-CV-03187-CMA, 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021).

63. Each factor weighs in Mr. Lopez's favor. After more than twelve months of confinement, with no imminent conclusion to proceedings, Mr. Lopez's continued detention has become unreasonable as applied. *See Zadvydas*, 533 U.S. at 690–701.

A. The Length of Detention Strongly Favors Release.

64. First, Mr. Lopez has been detained since February 5, 2025, now over twelve months. Duration is the "most important factor" in the reasonableness analysis. *Id.* at 701; *Chavez-Alvarez v. Warden*, 783 F.3d 469, 475–78 (3d Cir. 2015); *Diop v. ICE*, 656 F.3d 221, 233–34 (3d Cir. 2011).

65. The Supreme Court in *Demore v. Kim*, 538 U.S. 510 (2003), upheld mandatory detention based in part on the "brief" and "limited" duration of detention, typically one to five

months. *Id.* at 513, 526, 529-30. Mr. Lopez's detention has far exceeded that timeframe. Courts in this District have found similar or shorter periods sufficient to trigger constitutional concern. *See Viruel Arias v. Choate*, No. 1:22-CV-02238-CNS, 2022 WL 4467245, at *2 (D. Colo. Sept. 26, 2022); *Villaescusa-Rios*, 2021 WL 269766, at *3.

B. The Likely Duration of Future Detention Weighs in Mr. Lopez's Favor.

66. Removal proceedings remain ongoing. Mr. Lopez has a pending I-130 petition filed by his U.S. citizen spouse. If approved, he will be eligible to seek adjustment of status before the Immigration Judge. If relief is denied, further appeals would follow. Each stage may add months, if not years, to his confinement. *See Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 212 (3d Cir. 2020).

67. Courts recognize that detention under § 1226(a) often continues until all proceedings and appeals conclude. See *Velasco Lopez*, 978 F.3d at 852. Even if detention will eventually end, the relevant inquiry is whether that endpoint is reasonably near. Here, it is not. *See, e.g., Juarez v. Choate*, No. 1:24-CV-00419-CNS, 2024 WL 1012912, at *7 (D. Colo. Mar. 8, 2024) (finding prolonged detention unreasonable and noting that while the petitioner's "detention will definitely terminate at some point, [ ] that point is likely to be many months or even years from now"); *Singh*, 2019 WL 3943960, at *6 ("Nor can the Court rely on the presumption that Petitioner's case will be resolved in 'due course' given the current backlog of removal cases.").

C. The Conditions of Mr. Lopez's Detention Are Prisonlike and Punitive in Nature.

68. In considering reasonableness, courts consider whether the conditions of civil immigration detention are "meaningfully different" from penal confinement. *See Chavez-Alvarez*,

783 F.3d at 478. As detention lengthens, this factor carries greater weight. *Id.*; *See Santos*, 965 F.3d at 212-13.

69. Mr. Lopez's confinement at the Denver Contract Detention Center is materially indistinguishable from penal incarceration. *See Singh v. Garland*, No. 21-CV-00715-CMA, 2021 WL 2290712, at *4 (D. Colo. June 4, 2021). The punitive character of prolonged civil detention further supports a finding of unreasonableness.

D. Mr. Lopez's Has Not Engaged in Dilatory Tactics.

70. Mr. Lopez has not delayed proceedings in bad faith. Seeking bond, pursuing relief from removal, and pursuing adjustment of status are legitimate exercises of statutory rights and do not constitute dilatory conduct. *See Villaescusa-Rios*, 2021 WL 269766, at *4; *Singh*, 2019 WL 3943960, at *6.

71. To the extent proceedings have extended in duration, that delay is attributable in significant part to the pendency of the I-130 petition before USCIS, an adjudication outside Mr. Lopez's control.

E. Mr. Lopez Has a Viable Avenue for Relief.

72. Mr. Lopez has no criminal history and has a pending immediate-relative petition. If the I-130 petition is approved, he will be eligible to seek lawful permanent residence. The existence of a viable avenue for relief weighs against the reasonableness of continued detention. *See Singh*, 2019 WL 3943960, at *6.

73. After more than twelve months of civil detention, with removal proceedings ongoing, a pending I-130 petition, no criminal history, and no evidence of dilatory conduct, continued confinement no longer bears a reasonable relation to its regulatory purpose. Under the

framework applied by courts in this District, Mr. Lopez's detention has become unreasonably prolonged and violates substantive due process. *See Singh*, 2021 WL 2290712, at *5; *see also Villaescusa-Rios*, 2021 WL 269766, at *5; *Viruel Arias*, 2022 WL 4467245, at *3; *Juarez*, 2024 WL 1012912, at *8.

II. RESPONDENTS FAILED TO JUSTIFY MR. LOPEZ'S CONTINUED DETENTION BY CLEAR AND CONVINCING EVIDENCE.

74. When the government seeks to restrain such liberty in a civil context, it must satisfy a heightened burden of proof. *See Addington*, 441 U.S. at 423–25, 433 (requiring clear and convincing evidence in civil commitment proceedings).

75. Where detention under § 1226(a) becomes prolonged, due process requires the Government, not the detained individual, to justify continued confinement. Indeed, this Court held that allocating the burden to a noncitizen to prove eligibility for release under § 1226(a) violates due process because it improperly assigns the risk of error to the party whose liberty is at stake. *Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019 WL 2774211, at *10 (D. Colo. July 2, 2019)

76. Courts addressing prolonged § 1226(a) detention have accordingly required the Government to prove, by clear and convincing evidence, that continued detention is necessary to prevent flight or danger. *See Velasco Lopez*, 978 F.3d at 856–57; *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

77. Here, the Government presented no live testimony, no documentary evidence of criminal history or prior noncompliance, and no individualized evidence establishing that Mr. Lopez poses a flight risk or danger. Instead, the Immigration Judge denied bond based solely on Mr. Lopez's purported failure to meet his burden.

78. Because Mr. Lopez's detention has become prolonged, due process required the Government to justify continued confinement by clear and convincing evidence. It did not do so. Continued detention under these circumstances violates the Fifth Amendment.

III. MR. LOPEZ'S PROCEDURAL DUE PROCESS RIGHTS WERE VIOLATED UNDER THE *MATHEWS* ANALYSIS.

A. Mr. Lopez Has Suffered a Substantial Deprivation of Liberty.

79. Under the first *Mathews* factor, the private interest affected is the fundamental liberty interest in freedom from physical restraint. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Civil detention "constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States*, 463 U.S. 354, 361 (1983); *see also Zadvydas*, 533 U.S. at 690.

80. Mr. Lopez has been detained for over one year. During that time, he has been separated from his three minor U.S. citizen children and his U.S. citizen spouse. He has lost employment and has been confined in conditions materially indistinguishable from penal incarceration. His detention is civil, not criminal, and is not mandated under § 1226(c). The private interest at stake is therefore commanding.

B. The Bond Procedures Created a High Risk of Erroneous Deprivation.

81. The second *Mathews* factor considers the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards. 424 U.S. at 335. Here, the bond procedures created a substantial risk of error because: (1) the burden was placed on Mr. Lopez; (2) the IJ declined to take live testimony and curtailed record development; (3) the IJ issued conclusory denials without meaningful individualized findings; (4) the IJ failed to consider less restrictive alternatives; and (5) delayed written reasoning impaired meaningful review.

a. The Burden of Proof Was Improperly Placed on Mr. Lopez.

82. Placing the burden on a detained noncitizen to prove that he is not a flight risk substantially increases the risk of erroneous detention. *Diaz-Ceja*, 2019 WL 2774211, at *10.

83. Detained individuals face practical barriers in gathering evidence while incarcerated, including limited communication, restricted access to documents, and reduced ability to secure witness testimony. *See Hernandez-Lara*, 10 F.4th at 55. On the other hand, while the government "faces few obstacles in obtaining evidence required to demonstrate whether a noncitizen is a flight risk or danger to the community," it "is not required to present a shred of evidence." *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1337-38 (M.D. Ga. 2020).

84. Requiring a detainee "to prove a negative," that he is not a flight risk, further heightens the risk of error. *See Elkins v. United States*, 364 U.S. 206, 218 (1960).

85. At both bond hearings, the IJ denied release based on Mr. Lopez's failure to meet his burden, despite DHS presenting no live testimony and no individualized evidence of danger or prior noncompliance. The allocation of the burden was outcome-determinative and materially increased the risk of erroneous deprivation.

b. The IJ Failed to Provide a Meaningful Opportunity to be Heard and Individualized Findings.

86. Due process requires a meaningful opportunity to present evidence and an individualized determination based on the record. *See Foucha v. Louisiana*, 504 U.S. 71, 81 (1992); *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013).

87. More specifically, "the Government [is] required, in a 'full-blown adversary hearing,' to convince a neutral decisionmaker by clear and convincing evidence that no conditions of release can reasonably assure" that the noncitizen will appear for a future hearing. *Foucha*, 504

U.S. at 81 (internal citations omitted); *Hemans v. Searls*, No. 18-CV-1154, 2019 WL 955353, at *7-8, n.7 (W.D.N.Y. Feb. 27, 2019) (noting that courts hold the government to the clear-and-convincing-evidence standard as to both risk of flight and dangerousness once immigration detention has been prolonged).

88. Indeed, "due process is not satisfied . . . by rubberstamp denials [of bond]," and immigration judges are not absolved of their duty to ensure that noncitizens receive constitutionally adequate bond hearings." *Garcia v. Hyde*, No. 25-CV-585-JJM-PAS, 2025 WL 3466312, at *11 (D.R.I. Dec. 3, 2025) (*quoting Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 398 (3d Cir. 1999)).

89. At the October 24, 2025 bond hearing, the IJ declined to take live testimony and instead requested an offer of proof from counsel. Although Mr. Lopez's U.S. citizen spouse was present and prepared to testify regarding his family ties and pending I-130 petition, the IJ refused to hear her testimony. DHS presented no witnesses and no documentary evidence establishing flight risk or danger.

90. The IJ subsequently issued a one-sentence denial finding Mr. Lopez a "flight risk," without explaining how the evidence supported that conclusion. Conclusory findings, unaccompanied by reasoned analysis, substantially increase the risk of Mr. Lopez's erroneous detention and frustrate meaningful review.

91. The IJ later issued written findings only after a notice of appeal had been filed. A post hoc explanation cannot cure the absence of contemporaneous, reasoned findings at the time liberty was denied. *Vo v. Lyons*, No. 1:25-CV-533-JL-TSM, 2026 WL 323133, at *5 (D.N.H. Jan. 27, 2026) (noting that courts repeatedly rejected attempts to justify immigration detention or re-

detention based on conclusory or post hoc rationales rather than contemporaneous, individualized findings.) Indeed, the issuance of written findings *before* their appeal is filed is fundamental for a noncitizen to be able to file a notice of appeal. *See* 8 C.F.R. § 1003.3(b) (mandating dismissal of a Notice of Appeal which is insufficiently detailed). Written findings issued *after* the notice of appeal is filed are of little benefit, could be subject to bias in favor of the adverse ruling, and may overlook key facts and findings because often being composed weeks after the hearing itself. *See Padilla v. US Immigr. & Customs Enf't*, 379 F. Supp. 3d 1170, 1178–79 (W.D. Wash. Apr. 5, 2019).

c. The IJ Failed to Consider Less Restrictive Alternatives to Detention.

92. Civil detention must remain reasonably related to its regulatory purpose. See *Zadvydas*, 533 U.S. at 690. A neutral decisionmaker cannot determine that detention is necessary without considering whether conditions of release, such as supervision, reporting requirements, electronic monitoring, or increased bond, could reasonably mitigate flight risk. *See United States v. Salerno*, 481 U.S. 739, 750–51 (1987); *Hernandez-Lara*, 10 F.4th at 29. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight." *Bell v. Wolfish*, 441 U.S. 520, 539-540 (1979); *Rivera v. Holder*, 307 F.R.D. 539, 547 (W.D. Wash. 2015) (declining to conclude that aliens presenting some flight risk are per se ineligible for conditional parole);*Cantor v. Freden*, 761 F. Supp. 3d 630, 637 (W.D.N.Y. 2025) (finding that "a neutral decisionmaker cannot possibly make [a detention] determination without considering less restrictive alternatives to detention").

93. Here, the IJ provided no analysis of less restrictive alternatives. There was no discussion of supervision, electronic monitoring, or bond modification. The absence of such consideration increases the likelihood that detention was imposed without adequate necessity.

d. The Bond Redetermination Process Does Not Cure the Risk of Error.

94. Although bond redetermination is theoretically available, a detained noncitizen must first demonstrate materially changed circumstances. 8 C.F.R. § 1003.19(e). This additional procedural hurdle does not correct an initial erroneous deprivation.

95. Administrative review by the BIA often requires months to resolve. As the Supreme Court has recognized, the potential length of wrongful deprivation is a critical factor in assessing due process. *Mathews*, 424 U.S. at 341–42. Prolonged detention pending appellate review magnifies the consequences of procedural deficiencies at the initial hearing.

C. The Government's Interest Does Not Outweigh the Risk of Error.

96. The third *Mathews* factor considers the Government's interest and the burden of additional safeguards. 424 U.S. at 335.

97. The Government has legitimate interests in ensuring appearance and protecting the community. However, it has no interest in detaining individuals who can be safely released under appropriate conditions. See *Addington*, 441 U.S. at 426.

98. Additional safeguards, *i.e.*, placing the burden on the Government, requiring live testimony when offered, making individualized findings, and considering alternatives, impose minimal administrative burden.

99. In analogous pretrial detention contexts, the Tenth Circuit has held that lack of citizenship alone or potential removal does not establish serious flight risk. *United States v. Ailon-Ailon*, 875 F.3d 1334, 1337 (10th Cir. 2017); *Diaz-Ceja*, 2019 WL 2774211, at *10.

100. Here, continued incarceration of Mr. Lopez, a non-criminal, non-dangerous parent and spouse with a viable pathway to permanent residence, for over a year in support of civil proceedings is grossly disproportionate and not narrowly tailored to any legitimate government interest.

101. In sum, the balance of the *Mathews* factors weighs in favor of Mr. Lopez. Where the private interest affected is commanding, the risk of error from placing the burden of proof on the noncitizen is substantial, and the countervailing governmental interest is comparatively slight, due process requires more than the cursory procedures afforded here. *See Santosky v. Kramer*, 455 U.S. 745, 758 (1982).

102. Considering the *Mathews* factors as a whole, Mr. Lopez was denied a constitutionally adequate bond hearing. The procedures employed, burden shifting, refusal of testimony, conclusory findings, failure to consider alternatives, and delayed reasoning, created an unacceptably high risk of erroneous and prolonged deprivation of liberty. His continued detention therefore violates the Fifth Amendment.

VI. MR. LOPEZ'S WARRANTLESS ARREST VIOLATED THE FOURTH AMENDMENT AND 8 U.S.C. § 1357(A)(2)

103. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. Immigration officers may conduct warrantless arrests only in limited circumstances defined by statute. *See*

Arizona v. United States, 567 U.S. 387, 407–08 (2012) (noting strong Congressional preference, as expressed in INA, for immigration arrests to be based on warrants).

104. Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest a noncitizen without a warrant only if the officer has reason to believe that the individual (1) is present in violation of the immigration laws, and (2) "is likely to escape before a warrant can be obtained for his arrest." *See also* 8 C.F.R. § 287.8(c)(2). "Reason to believe" is equivalent to probable cause. *See Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

105. Probable cause depends on the totality of facts known to the officer at the time of arrest and must be assessed from the standpoint of an objectively reasonable officer. *See Luethje v. Kyle*, 131 F.4th 1179, 1193 (10th Cir. 2025); *Storey v. Taylor*, 696 F.3d 987, 992 (10th Cir. 2012). Mere suspicion is insufficient. *United States v. Valenzuela*, 365 F.3d 892, 896 (10th Cir. 2004).

106. Even assuming ICE had probable cause to believe Mr. Lopez lacked lawful status, § 1357(a)(2) required separate probable cause that he was likely to escape before a warrant could be obtained. The statute does not permit warrantless arrest based solely on removability. *See Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007 (N.D. Ill. 2016) ("Nor can it be the case that, simply by being potentially removable, an alien must be deemed likely to evade detention."); *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 889–90 (S.D. Ohio 2016).

107. A person's mere presence at a location where officers are executing a warrant for someone else does not create probable cause to arrest that individual absent individualized facts. *See Storey*, 696 F.3d at 992.

108. The record contains no facts establishing probable cause that Mr. Lopez was likely to flee. Officers entered the apartment to execute a warrant for another individual. Mr. Lopez cooperated, provided identifying information, and did not attempt to leave. Officers asked no questions regarding flight risk, family ties, employment, or community connections.

109. The I-213 prepared after the arrest documents only that Mr. Lopez lacked lawful status. It contains no factual findings supporting likelihood of escape. Cooperation with officers weighs against flight risk. *See Pacheco-Alvarez*, 227 F. Supp. 3d at 972, 890 (holding that ICE lacked reason to believe that defendant posed a risk to escape despite his admission that he "was born in Mexico and did not have any documentation that would allow him to reside in the United States.").

110. Further, the requirement that a custody determination by an ICE officer *before or when* the person is detained, and not afterwards, without the participation of the person being arrested, is required by ICE's own regulation. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 496–97 (S.D.N.Y. 2025); *Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130, at *2 (E.D.N.Y. Nov. 13, 2025) (noting that "before the Government may exercise discretion to detain a person, Section 1226(a) and 8 C.F.R. 1236.1(c)(8) require ICE officials to make an individualized custody determination") ((internal citation omitted).

111. An agency policy of effecting warrantless immigration arrests under § 1357(a)(2) without regard for individualized flight risk violates the Fifth Amendment. *Creedle v. Miami-Dade Cnty.*, 349 F.Supp.3d 1276, 1295 (S.D. Fla. 2018); *United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 735 (E.D. Cal. 2025).

112. Although a bond hearing may follow an initial detention, post-deprivation procedures cannot retroactively supply the statutory prerequisites for a warrantless arrest. See *Zadvydas*, 533 U.S. at 690 (liberty from physical restraint lies at the heart of due process). Where custody is initiated in violation of the Fourth Amendment and the INA, habeas relief is appropriate.

IV. MR. LOPEZ'S WARRANTLESS ARREST VIOLATED THE ADMINISTRATIVE PROCEDURE ACT ("APA").

113. The Administrative Procedure Act ("APA") requires courts to "hold unlawful and set aside" agency action that is "not in accordance with law" or is arbitrary and capricious. 5 U.S.C. § 706(2)(A). Agency action is unlawful where it fails to comply with statutory or regulatory mandates. *See Judulang v. Holder*, 565 U.S. 42, 53 (2011).

114. Under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Thus, noncitizens may contest actions taken by immigration agencies when those agencies fail to follow required procedural regulations or their own internal rules and procedures, particularly when such failures affect individuals' rights. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individual are affected, it is incumbent upon agencies to follow their own procedures.").

115. The Tenth Circuit has recognized that an agency's failure to adhere to its own regulations renders its action unlawful. *See, e.g., Suncor Energy (U.S.A.), Inc. v. United States Env't Prot. Agency*, 50 F.4th 1339, 1352 (10th Cir. 2022) (holding that EPA action violated § 706(2)(A) because it ignored the agency's regulatory definition of "facility").

116. Petitioner does not challenge the discretionary weighing of bond factors. Rather, he challenges Respondents' failure to comply with mandatory statutory and regulatory prerequisites governing warrantless arrests. Section 1357(a)(2) authorizes a warrantless arrest only where the

officer has probable cause to believe that the individual (1) is present in violation of immigration law and (2) is likely to escape before a warrant can be obtained. *See also* 8 C.F.R. § 287.8(c)(2).

117. These requirements are not discretionary. They impose binding conditions on ICE's authority to arrest without a warrant. An arrest made without probable cause of likely escape is contrary to § 1357(a)(2) and therefore "not in accordance with law" within the meaning of § 706(2)(A).

118. As set forth above, ICE made no individualized determination that Mr. Lopez was likely to escape before a warrant could be obtained. The I-213 contains no findings supporting flight risk, and officers asked no questions concerning his ties to the community or likelihood of absconding.

119. Because Respondents failed to comply with mandatory statutory and regulatory limits on their arrest authority, Mr. Lopez's arrest constitutes agency action that was not in accordance with law and must be set aside under the APA.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment – Substantive Due Process
(Prolonged Civil Detention)

120. The allegations in the above paragraphs are realleged and incorporated herein.

121. Petitioner has been detained for over one year under 8 U.S.C. § 1226(a) while removal proceedings remain pending, with no final order of removal and no imminent resolution of his case. This prolonged detention exceeds the constitutional threshold established in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

122. As applied to Petitioner, this prolonged civil detention no longer bears a reasonable relation to its regulatory purpose and has become unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment.

123. Petitioner's continued detention therefore violates substantive due process.

COUNT TWO
Violation of Fifth Amendment – Procedural Due Process
(Constitutionally Inadequate Bond Hearings)

124. The allegations in the above paragraphs are realleged and incorporated herein.

125. Due process requires notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews*, 424 U.S. at 333.

126. At Petitioner's bond hearings, the Immigration Judge refused to take live testimony, placed the burden of proof on Petitioner, issued conclusory findings without meaningful explanation, and failed to consider less restrictive alternatives to detention.

127. These procedures created a substantial risk of erroneous deprivation of liberty and denied Petitioner a constitutionally adequate custody determination.

128. Respondents thereby violated Petitioner's procedural due process rights under the Fifth Amendment.

COUNT THREE
Violation of Fourth Amendment
(Warrantless Arrest Without Probable Cause of Flight Risk)

129. The allegations in the above paragraphs are realleged and incorporated herein.

130. Respondents arrested Petitioner without a warrant and without probable cause to believe that he was likely to escape before a warrant could be obtained.

131. ICE officers made no individualized assessment of flight risk prior to arresting Petitioner and asked no questions concerning his ties to the community, employment, or likelihood of absconding.

132. The warrantless arrest violated 8 U.S.C. § 1357(a)(2) and the Fourth Amendment's prohibition on unreasonable seizures.

133. Because Petitioner's detention was initiated through an unlawful arrest, his continued custody violates the Constitution.

COUNT FOUR
Violation of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)
(Unlawful Warrantless Arrest)

134. The allegations in the above paragraphs are realleged and incorporated herein.

135. Section 1357(a)(2) authorizes warrantless arrest only where an officer has reason to believe both that the individual is present in violation of immigration law and that the individual is likely to escape before a warrant can be obtained.

136. Respondents arrested Petitioner without making the required finding that he was likely to escape.

137. The arrest therefore violated 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2).

138. Petitioner's detention is unlawful because it was initiated in violation of mandatory statutory and regulatory limits on ICE's arrest authority.

COUNT FIVE
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)
Warrantless Arrest Without Probable Cause of Flight Risk

139. The allegations in the above paragraphs are realleged and incorporated herein.

140. The Administrative Procedure Act, 5 U.S.C. § 706(2), requires courts to "hold unlawful and set aside" agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

141. Respondents' failure to comply with the mandatory requirements of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2) constitutes agency action not in accordance with law.

142. Petitioner has been adversely affected and aggrieved by this unlawful agency action.

143. Respondents therefore violated the Administrative Procedure Act.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court:[1]

(1) Assume jurisdiction over this action;

(2) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243 directing Respondents to show cause why this Petition should not be granted within three days. Given Petitioner's prolonged civil detention and the serious constitutional defects in the bond proceedings, expedited judicial review is warranted;

(3) Declare that Petitioner's continued detention violates the Fifth Amendment to the United States Constitution;

[1] The federal habeas corpus statute "does not limit the relief that may be granted to discharge of the applicant from physical custody." *Carafas v. LaVallee*, 391 U.S. 234, 239 (1968); *see also Peyton v. Rowe*, 391 U.S. 54, 66-67 (1968). The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution." *Boumediene*, 553 U.S. at 786; *Velasco Lopez*, 978 F.3d at 855; *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995).

(4) Declare that Petitioner's warrantless arrest violated the Fourth Amendment, 8 U.S.C. § 1357(a)(2), and applicable regulations;

(5) Issue a Writ of Habeas Corpus ordering Petitioner's immediate release from custody. Given the due process violations that pervaded his bond hearing, immediate release is appropriate;

(6) In the alternative, conduct a custody hearing before this Court at which Respondents bear the burden of proving by clear and convincing evidence that Petitioner's continued detention is necessary to prevent flight or danger;

(7) In the further alternative, order Respondents to provide Petitioner with a new, constitutionally adequate bond hearing before an Immigration Judge within seven (7) days, at which:

a. The Government bears the burden of proof by clear and convincing evidence;

b. Petitioner is permitted to present live testimony and documentary evidence;

c. The Immigration Judge makes individualized findings on the record;

d. The Immigration Judge considers less restrictive alternatives to detention and Petitioner's ability to pay any monetary bond;

e. Order Respondents to file a status report within seven (7) days of the Petitioner's bond hearing, stating whether he has been granted bond, and, if bond was denied, the reasons for that denial;

(8) Order Petitioner's immediate release unless Respondents provide such constitutionally adequate hearing within the time specified;

(9) Retain jurisdiction to ensure compliance with the Court's order;

(10) Enjoin Respondents from re-detaining Petitioner absent materially changed circumstances supported by individualized findings consistent with due process;

(11) Award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and on any other basis justified under law; and

(12) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 27th day of February, 2026.

/s/ Anya Lear
Anya Lear
Lear Immigration Law, P.C.
9975 Wadsworth Pkwy, Unit K-2124
Westminster, CO 80021
Telephone: (303) 578-9083
Email: anya@learimmigration.com

Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am counsel for Petitioner, Juan Manuel Lopez Marquez, and submit this verification on his behalf pursuant to 28 U.S.C. § 2242. I declare under penalty of perjury that the factual statements contained in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief, based upon my review of the record, communications with Petitioner, and documents obtained in the course of representation.

Dated this 27th day of February, 2026.

/s/ Anya Lear
Anya Lear
Counsel for Petitioner