IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 26-cv-00829-SBP

JUAN MANUEL LOPEZ MARQUEZ

Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Center, in his official capacity;
GEORGE VALDEZ, Acting Denver Field Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, in his official capacity;
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, in his official capacity;
KRISTI NOEM, Secretary, 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.

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

INTRODUCTION

Respondents' opposition relies on a single premise: that any bond hearing, no matter how procedurally deficient, satisfies due process. That premise is incorrect. Mr. Lopez's continued detention, now exceeding one year, rests on bond proceedings that lacked fundamental procedural protections, including the allocation of the burden of proof to the detainee, the refusal to hear live testimony, and the absence of any evidentiary showing by the Government. Due process requires more.

I. Administrative Exhaustion Does Not Bar Review of Mr. Lopez's Constitutional Detention Claims.

Respondents claim Mr. Lopez's habeas action is premature because his bond denial appeal remains pending before the Board of Immigration Appeals ("BIA"). ECF No. 11 at 7–8. They assert that Mr. Lopez's constitutional claims may become moot if he prevails on appeal, and that because "Petitioner has not established that his appeal to the BIA is guaranteed to lose," his habeas petition is premature. *Id.*

This argument mischaracterizes the nature of Petitioner's claims. Mr. Lopez does not challenge the discretionary outcome of a bond determination or procedural errors correctable by the BIA. Rather, he challenges the lawfulness of his continued detention and the denial of a meaningful opportunity to be heard in violation of due process.

It is well established that the BIA lacks authority to adjudicate constitutional claims. *See, e.g.*, *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (exhaustion is a "futile exercise" where the agency lacks jurisdiction to review constitutional claims); *Padilla–Padilla v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006) ("The BIA does not have jurisdiction to determine the constitutionality of the statutes it administers."). Accordingly, exhaustion is not required where, as here, the petitioner raises claims beyond the agency's competence.

Moreover, as Respondents acknowledge, exhaustion is not required where it would be futile. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010); *see also Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (permitting early judicial review where delay would cause hardship or exhaustion would be futile).

Exhaustion would be futile here. The BIA has consistently held that the burden of proof in bond proceedings rests on the noncitizen. *See, e.g.*, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181–82 (D. Colo. 2024) (finding exhaustion futile where BIA precedent foreclosed relief); *Ramirez Martinez v. Noem*, No. 25-cv-12029, 2025 WL 3145103, at *4 (N.D. Ill. Nov. 11, 2025) (refusing to find exhaustion because the BIA has "predetermined the statutory issue" presented in the petitioner's habeas petition); *Romero v. Hyde*, 795 F. Supp. 3d 271, 277–82 (D. Mass. 2025) (waiving exhaustion where the petitioner's appeal was foreclosed by BIA precedent). Because the BIA cannot grant the relief Mr. Lopez seeks, requiring exhaustion would serve no purpose.

Finally, requiring Mr. Lopez to remain detained while awaiting resolution of his BIA appeal would impose precisely the type of hardship that justifies immediate habeas review. As courts have recognized, "depriving [a petitioner] of his liberty while awaiting a BIA appeal decision certainly equates to hardship," and delay perpetuates the very injury the petitioner seeks to remedy – continued detention. *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 779 (E.D. Mich. 2025) (waiving administrative exhaustion, granting habeas petition, and ordering the petitioner's immediate release); *see also Soto-Medina v. Lynch*, No. 1:25-cv-1704, 2026 WL 161002, at *4 (W.D. Mich. Jan. 21, 2026).

Accordingly, administrative exhaustion is not required.

II. Mr. Lopez's Prior Bond Hearings Did Not Provide Meaningful Due Process.

Respondents argue that the only remedy for prolonged detention is a bond hearing, and that Mr. Lopez has already received two hearings that "comport with due process." ECF No. 11 at 5–6, 8. They further contend that Mr. Lopez has no statutory right to a bond hearing under 8 U.S.C. § 1226(a), and that even if such a right existed, the only available remedy would be a bond hearing,

which he has already received. *Id.* According to Respondents, he is therefore "entitled to no further relief than he has already been given." *Id.* at 2.

This argument misstates both the law and the record. The question is not whether Mr. Lopez received bond hearings, but whether those proceedings provided constitutionally adequate process. This Court previously rejected the Government's position that the mere occurrence of a bond hearing satisfies due process. *See, e.g., Moreno Santana v. Baltazar*, No. 26-cv-0787-WJM-SBP, 2026 WL 709759, at *2–3 (D. Colo. Mar. 13, 2026) (rejecting the government's position that "a noncitizen's procedural due process rights end at the point they request bond from an IJ and have had the opportunity to appeal any adverse bond decision to the BIA"); *Arenas v. Noem*, No. 1:26-cv-00024-SBP, 2026 WL 317562, at *7 (D. Colo. Feb. 5, 2026) (recognizing that detention implicates significant liberty interests subject to constitutional limitations); *Merchan-Pacheo v. Noem*, No. 25-cv-03860-SBP, 2026 WL 88526, at *4–6 (D. Colo. Jan. 12, 2026) (holding that although detention during removal proceedings may be permissible, not all detention procedures comport with due process).

Respondents' argument also fails because courts in this District consistently apply the *Mathews v. Eldridge* framework to determine what process is constitutionally required in immigration detention cases. *See Merchan-Pacheo*, 2026 WL 88526, at *4–6 (noting that "*Demore* in no way suggests that the court should decline to consider the *Mathews* factors."); *L.G.*, 744 F. Supp. 3d at 1181–82 (applying *Mathews* and recognizing its applicability in this context); *Vizguerra-Ramirez v. Baltazar*, No. 25-CV-00881-NYW, 2025 WL 3653158, at *13 (D. Colo. Dec. 17, 2025) (same); *Moreno Santana*, 2026 WL 709759, at *2–3 (concluding the *Mathews* test properly governed the procedural due process challenge).

Respondents assert that "procedural safeguards under § 1226(a)" are "extensive" and rely on the existence of prior hearings. ECF No. 11 at 13. However, they refuse to meaningfully address the deficient procedures employed in Mr. Lopez's case: (1) the Government presented no evidence supporting a finding that Mr. Lopez posed a danger or flight risk; (2) the Immigration Judge refused to permit live testimony; (3) the burden of proof was placed entirely on Mr. Lopez; and (4) the resulting decisions were conclusory and unsupported by any meaningful analysis. *See* ECF Nos. 1-6, 1-7, 1-8. The Immigration Judge's written orders contain no discussion of the evidence, no explanation of the reasoning underlying the decision, and no analysis of the relevant custody factors. *See* ECF Nos. 1-6, 1-7. Notably, the written decision following the second bond hearing was issued seven weeks after the hearing and only after Mr. Lopez had filed a bond appeal, further underscoring the absence of meaningful contemporaneous review. *See* ECF Nos. 1-9, 1-10.

These deficiencies are not minor procedural irregularities as they go to the core of whether Mr. Lopez received a meaningful opportunity to be heard. The absence of any evidentiary showing by the Government, combined with the lack of reasoned decision-making, creates an unacceptably high risk of erroneous deprivation of liberty under *Mathews*. *See, e.g.*, *Perez Mejia v. Bondi*, No. CV 26-1592, 2026 WL 752560, at *4 (D.N.J. Mar. 17, 2026) (ordering release where bond proceedings lacked adequate procedural safeguards). Nor have Respondents identified any "special justification" sufficient to outweigh Mr. Lopez's fundamental liberty interest in freedom from physical restraint. *See Merchan-Pacheo*, 2026 WL 88526, at *16.

Accordingly, the existence of prior bond hearings does not resolve the constitutional question. Because those proceedings failed to provide meaningful due process, Mr. Lopez's continued detention is unlawful.

III. Due Process Requires the Government to Bear the Burden of Justifying Continued Detention.

Courts in this District and nationwide have increasingly required the Government to bear the burden of demonstrating, by clear and convincing evidence, that continued detention is justified by flight risk or danger to the community. *See, e.g.*, *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *Ramirez v. Bondi*, No. 25-cv-1002-RMR, 2025 WL 1294919, at *7 (D. Colo. May 5, 2025); *Juarez v. Choate*, No. 1:24-cv-00419-CNS, 2024 WL 1012912, at *8 (D. Colo. Mar. 8, 2024); *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 944 (D. Colo. 2025); *Ekenge v. Baltazar*, No. 1:26-cv-00630-SBP, 2026 WL 617341, at *8 (D. Colo. Mar. 5, 2026).

This allocation of the burden reflects longstanding constitutional principles. The Supreme Court has repeatedly recognized that civil detention implicates a fundamental liberty interest and therefore requires heightened procedural protections, including proof by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 751 (1987); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

Respondents' reliance on *Basri v. Barr*, *De La Cruz v. Baltazar*, and *Molina v. Choate* is misplaced. *Basri* involved a conditions-of-confinement claim and did not address prolonged detention or fundamentally deficient bond procedures. *See Basri v. Barr*, 469 F. Supp. 3d 1063, 1065–66 (D. Colo. 2020) (petitioner detained approximately two months). *Molina*, a pro se case, addressed only a challenge to a discretionary bond determination and did not involve a developed constitutional claim concerning prolonged detention or the absence of meaningful procedural safeguards. *See Molina v. Choate*, No. 19-CV-00207-GPG, 2019 WL 13214049, at *2-3 (D. Colo. Mar. 22, 2019). And *De La Cruz* is distinguishable because the petitioner had not yet received a

bond hearing and failed to demonstrate prolonged or procedurally defective detention. *See De La Cruz v. Baltazar*, No. 26-CV-00360-PAB, 2026 WL 439217, at *2-3 (D. Colo. Feb. 17, 2026).

By contrast, Mr. Lopez has been detained for over a year and has received bond hearings in which the Government presented no evidence to justify his continued detention. Due process therefore requires that the Government justify continued detention by clear and convincing evidence.

IV. Mr. Lopez's Warrantless Arrest Was Unlawful and Supports Habeas Relief.

Respondents do not contend that they conducted the individualized flight-risk assessment required for a warrantless arrest under 8 U.S.C. § 1357(a)(2). *See* ECF No. 11-1, Declaration of Gregory Davies ¶ 7. Nor does the record reflect any such assessment. Instead, officers arrested Mr. Lopez without first making any inquiry into factors bearing on flight risk, including his family ties, employment, or community connections.

Courts have repeatedly held that warrantless immigration arrests are unlawful where officers fail to conduct the individualized assessment required by § 1357(a)(2). *See, e.g.*, *Khan v. Holder*, 324 F. Supp. 2d 1181, 1187 (D. Colo. 2004) (finding arrest unlawful where agents failed to consider flight-risk factors); *United Farm Workers v. U.S. Dep't of Homeland Sec.*, 785 F. Supp. 3d 673, 684 – 92, 735 (E.D. Cal. 2024) (describing systemic violations where agents made arrests without individualized flight risk assessments); *B.D.A.A. v. Bostock*, No. 6:25-cv-02062-AA, 2025 WL 3484912, at *8 (D. Or. Dec. 4, 2025) (finding the petitioner's arrest unlawful and ordering her immediate release).

Respondents suggest that this Court should decline to consider Mr. Lopez's arrest claim because it can be raised in removal proceedings. That argument ignores the nature of Petitioner's

claim. Mr. Lopez does not merely challenge the legality of his arrest in the abstract; he challenges the Respondents' decision to detain him without exercising the discretion required at the outset. *See Cardenas v. Almodovar*, No. 25-cv-9169 (JMF), 2025 WL 3215573, at *3 (S.D.N.Y. Nov. 18, 2025); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (holding that "a [bond] hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause"). Thus, habeas review is appropriate where the injury is ongoing detention resulting from that initial failure.

Respondents' reliance on *Min-Shey Hung v. United States*, 617 F.2d 201 (10th Cir. 1980), is misplaced. *Hung* applied a prudential rule that early-stage challenges to the legality of an arrest should not interrupt ongoing removal proceedings where the petitioner had already been released on bond. *Id.* at 202–03. This case presents a fundamentally different posture. Mr. Lopez remains detained after more than a year, and his claim challenges not only the legality of his arrest but the constitutionality of his continued detention. Section 2241 confers jurisdiction to review the legality of custody, and nothing in *Hung* strips this Court of authority to grant relief where detention violates due process.

Respondents' reliance on *Aguayo v. Garland*, 78 F.4th 1210 (10th Cir. 2023), is likewise erroneous. *Aguayo* addressed whether alleged Fourth Amendment violations warranted termination of removal proceedings, not whether a federal court may grant habeas relief from unlawful detention. The Tenth Circuit held only that termination requires a showing of prejudice or egregious conduct within the administrative process. *Id.* at 1218–20. That framework has no application here, where Petitioner seeks relief from ongoing custody under 28 U.S.C. § 2241.

Unlike the detainee in *Aguayo*, Mr. Lopez does not seek termination of removal proceedings, but relief from continued detention.

VI. Immediate Release Is the Appropriate Remedy for Mr. Lopez's Unlawful Detention.

Federal courts possess broad equitable authority in habeas proceedings to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. Habeas corpus is an equitable remedy, and district courts retain substantial discretion to fashion relief appropriate to the circumstances. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

Where the detention process has already failed to produce a constitutionally adequate custody determination, courts may order immediate release rather than directing yet another hearing that risks prolonging unlawful detention. *See, e.g.*, *Rodriguez v. Rokosky*, No. 25-47419, 2025 WL 3485628, at *3 (D.N.J. Dec. 3, 2025); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Perez Mejia*, 2026 WL 752560, at *5.

That principle applies here. Mr. Lopez has already been subjected to two bond proceedings that failed to provide meaningful due process. Ordering yet another hearing would be "inadequate to address the denial of due process that [he] was entitled to in the first instance." *Lopez Benitez v. Francis,* 795 F. Supp. 3d 475, 498 (S.D.N.Y. 2025).

The constitutional violation in this case is not merely procedural. It stems from Respondents' failure to conduct any individualized assessment before arresting and detaining Mr. Lopez, compounded by subsequent bond proceedings devoid of meaningful evidentiary support. Under these circumstances, a post hoc hearing cannot cure the deprivation. *See Yao v. Almodovar*, No. 25 Civ. 9982 (PAE), 2025 WL 3653433, at *10–12 (S.D.N.Y. Dec. 17, 2025) (explaining that release, rather than a bond hearing, more effectively remedies past unlawful detention); *Singh v.*

Taylor, No. EP-26-cv-00155-DB, 2026 WL 360913, at *4 (W.D. Tex. Feb. 9, 2026) (ordering immediate release as remedy for unconstitutional prolonged detention); *Tropskii v. Bondi*, No. CV 25-3226, 2025 WL 3016518, at *7 (E.D. Pa. Oct. 28, 2025) (declining to order a bond hearing and ordering immediate release instead); *Miri v. Bondi*, No. 5:26-cv-00698, 2026 WL 622302, at *10 (C.D. Cal. Mar. 5, 2026) (holding that petitioner did not receive a constitutionally adequate bond hearing under Section 1226(a), resulting in a deprivation of constitutional rights, and ordering immediate release).

Moreover, Respondents have already been twice afforded the opportunity to provide Mr. Lopez with a constitutionally adequate bond hearing and failed to do so. Under these circumstances, requiring Petitioner to undergo yet another deficient proceeding would only prolong his unlawful detention. *See Perez Mejia*, 2026 WL 752560, at *5–6.

Courts in this District have likewise recognized that where the Government fails to provide constitutionally adequate procedures, immediate release may be warranted. *See Arostegui-Maldonado*, 794 F. Supp. 3d at 944; *Moreno Santana*, 2026 WL 709759, at *2–3.

For the foregoing reasons, Mr. Lopez's continued detention violates due process, and the Court should grant the petition and order his immediate release

Respectfully submitted this 25th day of March, 2026.

/s/ *Anya Lear*
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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2026, I electronically served the Petitioner's Reply in Support of Petition for Writ of Habeas Corpus via the CM/ECF system. All the participants in that system will receive service via e-mail.

/s/ *Anya Lear*
Anya Lear