UNITED STATES DISTRTCT COURT
NORTHERN DISTRICT OF NEW YORK

**SHAUN RICARDO RAMBARRAT,**

**Petitioner**

vs.

**TODD LYONS, ACTING DIRECTOR, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, AND FREDERICK AKSHAR, SHERIFF, BROOME COUNTY JAIL**

**Respondents.**

PETITIONER'S REPLY

Civil Action No:
9:26-cv-00448 (ECC)

## Violation of Petitioner's Due Process Rights

Following hearings conducted on February 9, 2026 and March 2, 2026 Petitioner was denied bond. It is respectfully submitted that the Immigration Judge (IJ) violated Petitioner's Fifth Amendment due process protections by requiring him to bear the burden of proving that he was not a flight risk. Specifically, at the conclusion of the February 9 hearing, the IJ ruled that he was "really not certain (Petitioner) is going to appear in court here as directed." At the conclusion of the bond redetermination hearing conducted on March 2, 2026 the IJ stated

> "(Petitioner) still constitutes a flight risk and it's going to deny the second bond. There are no significant or material change in facts that would cause this court to find he is now a good flight risk".

When a noncitizen is not in prolonged detention and has been ordered removed, the consensus of district courts within the Second Circuit is that the government bears

the burden of proving by clear and convincing evidence that detention is warranted because the detainee is either a danger to the community or a flight risk. See, *J.C.G. v Genato,* 2025 U.S. Dist. LEXIS 8279 (SDNY 2025) and cases cited along with the comprehensive opinion explaining the reasoning behind the Second Circuit rule. Accordingly, Petitioner should be released because the IJ applied an incorrect burden of proof, and the evidence submitted with this Petition demonstrates that the government cannot overcome the correctly applied burden. Return to the Immigration Court would not be appropriate because the Board of Immigration Appeals (BIA) in the Second Circuit holds a contrary view of the burden of proof. *Id.* And for that reason as well, (together with the fact that the BIA does not have jurisdiction to decide constitutional questions) exhaustion of remedies in this case would be futile.

**Violation of Petitioner's Fourteenth Amendment Right to Marry**

Respondent's recitation of the cases governing the constitutional right to marry is correct as far as it goes. However, its application of those cases is wrong. To argue that Petitioner's right to marry in this case is not related to Petitioner's claim for habeas relief is not borne out by the facts. Indeed, the two claims are intimately related. Petitioner's fiancée intends to file an I-130 application setting the stage for legal immigration as soon as the couple is married.

This Court can see from the undisputed evidence submitted in this case that the proposed marriage, initiated before these proceedings were commenced, is a product of love and familial obligation. The government has cited no basis, much less a compelling one, to deny Petitioner and his fiancée of this basic right. This Court has

authority to issue an order requiring Respondents to permit a marriage of Petitioner and his fiancée within the next 30 days. See, e.g. *Theck v. Warden, INS*, 22 F. Supp. 2d 1117, 1118 (C.D. Cal. 1998).

What is the government interest in preventing the filing of such an order? Compare that to the interest of Petitioner, fiancée/mother and their child of legal recognition of their union and the hope that in the future they can all live together as legal residents of this country.

**Fourth Amendment Violation**

The government cites to the timing and location of the arrest as grounds for support of the roving border patrol's actions. In fact, those grounds are insufficient to justify the stop or arrest of Petitioner.

There is no proof supporting the claim that Petitioner was even conceivably engaged in any illegal activity at the time he was sighted by Border Patrol. It is not like he was using the so-called pathways from Canada to enter the United States. That would be difficult to do given the fact that he was in a car, and the car was not in a "getaway" mode. Rather, he was asleep in a parked car in an area where cars are allowed to park. If the Border Patrol was interested in catching persons entering the country illegally, and the officer truly believed that Petitioner was waiting for someone to get in the car with him, he would have staked out the lot and avoided scaring off any illegal border crossers.

It is respectfully submitted that the problem here is that although Petitioner's rights may have been violated, he may be without a remedy. It is respectfully suggested that the Court take this into account when considering the violations of the Fifth and Fourteenth Amendments discussed above.

Dated: Vestal, New York
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