UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SHAUN RICARDO RAMBARRAT, Petitioner, v. TODD LYONS, ACTING DIRECTOR, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, AND FREDERICK AKSHAR, SHERIFF BROOME COUNTY JAIL, Respondents.	Civil Action No. 9:26-cv-00448 (ECC)

FEDERAL RESPONDENT'S SURREPLY
IN FURTHER OPPOSITION TO PETITION
FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. 2241

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PRELIMINARY STATEMENT

Todd Lyons, Acting Director of USCIS, respectfully submits this surreply pursuant to the Court's Text Order dated May 6, 2026. *See* Dkt. 10. For the reasons discussed below, the Court should reject the argument that Petitioner is entitled to a burden-shifted bond hearing. As an initial matter, Petitioner has waived any argument regarding the allocation of the burden of proof during his bond hearings. But even if properly before the Court, the burden was properly allocated to Petitioner at his two previous bond hearings, and he should bear the burden of proof at any bond hearing that this Court may order. Finally, to the extent that Petitioner's reply argument concerning the burden of proof is an attempt to challenge the IJ's discretionary decisions to deny bond, 8 U.S.C. § 1226(e) squarely forecloses that argument.

ARGUMENT

I. Petitioner Waived Any Argument Regarding the Allocation of the Burden of Proof.

This Court should reject Petitioner's belated argument, raised only in his reply brief, that his due process rights were violated because the IJ required Petitioner to bear the burden of proof at his two previous bond hearings. *See* Dkt. 8 at 1-2. During the hearing before this Court on April 6, 2026, Petitioner's counsel conceded that he never raised any argument about the burden of proof at those bond hearings in the Petition. Indeed, the phrase "burden of proof" appears nowhere in the Petition. *See* Dkt. 1. "[T]hat parties may not introduce arguments for the first time in reply is beyond well-established." *Krause v. Kelahan*, 575 F. Supp. 3d 302, 307 (N.D.N.Y. 2021) (emphasis added), *aff'd*, 161 F.4th 66 (2d Cir. 2025); *see, e.g.*, *CITGO Petroleum Corp. v. Ascot Underwriting Ltd.*, 158 F.4th 368, 388 (2d Cir. 2025) ("[A]rguments not raised in an appellant's opening brief, but only in his reply brief, are not properly before an appellate court.");

Gonzales v. Agway Energy Servs., LLC, No. 5:18-cv-235 (MAD/ATB), 2019 WL 910669, at *2 (N.D.N.Y. Feb. 25, 2019) (collecting cases disregarding arguments raised only in reply).

This well-established rule applies equally in habeas proceedings. Indeed, "courts have observed that a traverse, or reply, is not a proper vehicle for raising additional grounds for habeas relief, and claims raised for the first time in such a pleading have been considered as not properly before the court." *Lee v. Greene*, No. 9:05-CV-1337 (GTS/DEP), 2010 WL 5779440, at *5 (N.D.N.Y. Dec. 15, 2010), *R. & R. adopted*, 2011 WL 500673 (N.D.N.Y. Feb. 10, 2011); *see also Lalonde v. Thomas*, No. 9:20-CV-1561 (GTS), 2022 WL 1303918, at *14 n.4 (N.D.N.Y. May 2, 2022); *Parker v. Smith*, 858 F. Supp. 2d 229, 233 n.2 (N.D.N.Y. 2012) (refusing to address new arguments raised in traverse that were not in petition because a traverse or reply is not the proper pleading to raise additional grounds for habeas relief); *Parker v. Duncan*, No. 9:03-CV-0759 (LEK/RFT), 2007 WL 2071745, at *6 (N.D.N.Y. July 17, 2007), *aff'd*, 255 F. App'x 565 (2d Cir. 2007). Accordingly, notwithstanding being afforded the opportunity to address the issue in this surreply, the Federal Respondent maintains that the Court should apply this ordinary principle regarding the proper presentation of arguments in briefing and reject this argument as waived.

II. Petitioner Appropriately Bore the Burden of Proof at his Bond Hearings.

Even if Petitioner's burden-shifting argument was properly before the Court, the Court should reject it. At a § 1226(a) bond hearing, Petitioner should bear the burden of proof to show to the satisfaction of the IJ that he is neither a flight risk nor a danger to the community. After Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") in 1996, the Immigration and Naturalization Service ("INS") implemented new regulations that "altered the standard for the initial post-arrest custody determination made by INS officials." *Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (citing 8 C.F.R. § 236.1(c)(2)-(8)).

Those regulations "established a presumption of detention and placed on the arrested individual the burden of demonstrating, to the satisfaction of the arresting officer, that release would not pose a danger to property or persons and that the individual is likely to appear for any future proceedings." *Id.* (citing 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien . . . provided that *the alien must demonstrate* to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." (emphasis added)). Although that regulation applies to the "initial custody determination made by the arresting officer and not to immigration judges in bond hearings," the BIA has applied the rule in § 236.1(c)(8) "including the presumption of detention, to bond hearings conducted by immigration judges under § 1226(a)." *Id.* (citing *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1112 (B.I.A. 1999); *Matter of Guerra*, 24 I. & N. Dec. 27, 38 (B.I.A. 2006)). Accordingly, as the Second Circuit has summarized it, "[u]nder the regime fashioned by the INS and the BIA, a noncitizen detained under § 1226(a) is subject to detention unless *that person* is able to show to the satisfaction of the [IJ] that he or she merits release on bond," and "the *Government does not need to show at any point* that a noncitizen is a danger to the community or a flight risk" during § 1226(a) bond hearings conducted by IJs. *Id.* (quotation omitted) (emphasis added).

In *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020), the Second Circuit considered the process due to an alien under § 1226(a) after that alien had been detained for nearly 15 months. *See Mahmodi v. Marich*, No. 25-CV-6762-MAV, 2026 WL 113473, at *6 (W.D.N.Y. Jan. 15, 2026). To determine what process the Fifth Amendment required in that case, the *Velasco Lopez* court applied the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Velasco Lopez*, 978 F.3d at 851; *see also Mahmodi*, 2026 WL 113473, at

*6. That test requires courts to consider the following: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews*, 424 U.S. at 335). Within the Second Circuit, district courts have observed that *Velasco Lopez* is not an "abstract analysis," but rather its analysis was fact-specific and relied "heavily on the specifics of petitioner's detention in assessing the strength of his individual interest." *Mahmodi*, 2026 WL 113473, at *6 (citing *Onosamba-Ohindo v. Searls*, 678 F. Supp. 3d 364, 373 (W.D.N.Y. 2023); *Huanga v. Decker*, 599 F. Supp. 3d 131, 140-41 (S.D.N.Y. 2022)).

Based on its fact-specific analysis, the *Velasco Lopez* court concluded that the petitioner's 15-month incarceration under § 1226(a), without a determination that he was a danger to the community or flight risk, violated due process. *Velasco Lopez*, 978 F.3d at 855. Accordingly, the Second Circuit found that the petitioner was entitled to a bond hearing and "concluded that the district court's order requiring the Government to prove that [petitioner] is a danger to the community or a flight risk by clear and convincing evidence to justify his continued detention strikes a fair balance between the rights of the individual and the legitimate concerns of the state." *Id.* at 857 (quotation omitted).

Contrary to Petitioner's suggestion, there is not a "consensus" that *Velasco Lopez* requires the Government to bear the burden of proof in bond hearings. Rather, following *Velasco Lopez*, district courts in the Second Circuit have reached conflicting interpretations of the opinion. *Mahmodi*, 2026 WL 113473, at *6. Although some district courts have held that the Government must bear the burden as a rule, others district courts have concluded that *Velasco Lopez* requires case-specific balancing of the *Mathews* factors to determine if the allocation of the burden of

proof at a § 1226(a) hearing violated due process. *See id.* (citing cases). Additionally, circuit courts are also split on the issue of how to allocate the burden of proof at bond hearings. *Id.* *Compare Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (concluding due process requires the Government to bear the burden of proof), *with Miranda v. Garland*, 34 F.4th 338, 366 (4th Cir. 2022) (finding "no problem with" the alien bearing the burden of proof), *and Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018) (same), *and Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205, 1214 (9th Cir. 2022) (same).[1]

Against this backdrop, the Government submits that the burden of proof at a bond hearing appropriately falls on Petitioner. This outcome does not run afoul of due process and is consistent with *Velasco Lopez*, in which the Second Circuit expressly stated that "[w]hile the Government's interest may have initially outweighed short-term deprivation of [the petitioner]'s liberty interests, that balance shifted *once his imprisonment became unduly prolonged*." *Velasco Lopez*, 978 F.3d at 855 (emphasis added). In this way, the Second Circuit did "*not* . . . establish a bright-line rule for when due process entitles an individual detained under § 1226(a) to a new bond hearing with a shifted burden." *Id.* at 855 n.13 (emphasis added). Rather, *Velasco Lopez* reached a case-specific conclusion following application of the three-factor *Mathews* test to the circumstances of the case. *Id.* Doing so here, as discussed below, leads to the conclusion that Petitioner appropriately bore the burden of proof at his prior bond hearings and should be required to do so at any bond hearing this Court may order.

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[1] Additionally, in dicta, the Eighth Circuit has observed that "[t]he Supreme Court has never indicated the bond hearing process set forth in [§ 1226(a)] and accompanying regulations is constitutionally deficient. To the contrary, Supreme Court precedent indicates such a framework is constitutionally permissible." *Ali v. Brott*, 770 F. App'x 298, 301 (8th Cir. 2019).

A. First *Mathews* Factor: The Private Interest Affected

The first *Mathews* factor often weighs in favor of habeas petitioners because the affected private interest is "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). But because Petitioner had been detained for less than three months when he filed his Petition,[2] this factor's weight is significantly diminished in Petitioner's case.

Indeed, "it is important not to overstate the strength of [Petitioner]'s showing under the first *Mathews* factor." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022). It is well established that "the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Demore v. Kim*, 538 U.S. 510, 526 (2003). And, Petitioner's detention is finite, because, by statute, he may only be detained under § 1226(a) pending a decision on whether he is to be removed from the United States. *See, e.g.*, *id.* at 528 (finding a significant due process consideration to be that detention under § 1226 has a "definite termination point"). Also, critically, Petitioner had been detained for only about (i) one month when his first bond hearing occurred, on February 9, 2026; (ii) two months when his second bond hearing occurred, on March 2, 2026; (iii) three months when he filed his Petition; and (iv) four months overall. *See* Dkt. 7 at 4-7 (explaining procedural history). *See Velasco Lopez*, 978 F.3d at 852, 854. By contrast, in *Velasco Lopez*, the Second Circuit found that shifting the burden to the Government was fair only *after* finding that detention had become unduly prolonged, which usually occurs sometime after six months. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (recognizing six months as a presumptively constitutional removal period).

[2] As explained in the Federal Respondents' response, Petitioner has been detained since January 6, 2026, and he filed his Petition on March 23, 2026. *See* Dkt. 7 at 4, 7.

There is no basis to require the additional procedures—i.e., burden shifting—contemplated by *Velasco Lopez* under the facts of this case.

In sum, because of the length of Petitioner's detention, the first factor weighs in Petitioner's favor to a far lesser extent than it did for the *Velasco Lopez* petitioner or others for whom detention is considered "prolonged." *See Zadvydas*, 533 U.S. at 701.

B. Second *Mathews* Factor: Rick of Erroneous Deprivation

The second *Mathews* factor, the risk of erroneous deprivation, does not weigh in Petitioner's favor. The Second Circuit found in *Velasco Lopez* that "the procedures underpinning [the petitioner]'s lengthy incarceration markedly increased the risk of error." *Velasco Lopez*, 978 F.3d at 852. But here, Petitioner has not made any showing that his circumstances are factually similar to that of the petitioner in *Velasco Lopez*, who had been turned over to ICE custody after being arrested by state police on driving-while-intoxicated and related charges, and waited four months before his first bond hearing. *Id.* at 846-47. But because ICE never produced him for state court criminal proceedings in that time, he could not meet his burden to show the IJ that he was not a danger to the community based on the charges he faced. *See id.*

Here, no evidence in the record establishes—or even suggests—that the ordinary process is deficient. *See Mahmodi*, 2026 WL 113473, at *4-5 (summarizing the ordinary course of bond hearings and factors to be considered). Further, the record does not suggest that Petitioner has a criminal record that would implicate the alleged informational disadvantage caused by the "substantial resources" the Government may use to discover information about Petitioner. *See id.*; *see also Miranda v. Garland*, 34 F.4th 338, 362 (4th Cir. 2022) (finding the second factor tips in the Government's favor, in part, because aliens should know much more about their history,

family, and employment than the Government, and because they have the opportunity to retain counsel to represent them before the Immigration Judge).

Notably, Petitioner was represented by counsel at each of his bond hearings. *See* Dkt. 7-2 at 13, 19 (indicating Petitioner was represented by attorney Vimla Warslie at his prior bond hearings). Thus, he has not demonstrated that he will be unable to obtain any required information or otherwise be at an informational disadvantage in comparison to the Government. As such, the risk of erroneous deprivation does not weigh in Petitioner's favor.

C. Third *Mathews* Factor: The Government's Interest in Detention

The third *Mathews* factor—the Government's interest in detaining Petitioner—weighs squarely in the Government's favor. Indeed, "the Attorney General's discretion to detain individuals under § 1226(a) is valid where it advances a legitimate governmental purpose," such as ensuring the appearance of aliens at future immigration proceedings and ensuring they do not commit crimes. *Velasco Lopez*, 978 F.3d at 854. "The importance of these interests is well-established and not disputed." *Id.*

In *Velasco Lopez*, the Second Circuit stated that "[w]hile the Government's interest may have initially outweighed short-term deprivation of [the petitioner]'s liberty interests, that balance shifted once his imprisonment became unduly prolonged." *Id.* at 855. Nevertheless, it declined "to establish a bright-line rule for when due process entitles an individual detained under § 1226(a) to a new bond hearing with a shifted burden." *Id.* at 855 n.13. As such, "it may not be a violation of due process for an alien to bear the burden of proof at a hearing that takes place shortly after their initial detention . . . and where a petition is filed after a relatively brief period." *Raspoutny v. Decker*, 708 F. Supp. 3d 371, 383 (S.D.N.Y. 2023) (quoting *Huanga*, 599 F. Supp. 3d at 139).

That is what has happened here. The Petition was filed less than three months after Petitioner's arrest. He has been detained for four months overall. The bond hearings that took place in February and March 2026 have occurred within a period well short of that in *Velasco Lopez*. If a third bond hearing is ordered, it, too, will occur within a period well short of that in *Velasco Lopez*. The third factor thus weighs in the Government's favor.

Accordingly, Petitioner cannot show that due process required the Government to bear the burden of proof at his past bond hearings or requires it to do so at a future hearing. *See Mahmodi*, 2026 WL 113473, at *6. Particularly considering the length of Petitioner's detention—still within the presumptively reasonable period—Petitioner should bear the burden of proof.

Finally, it is worth noting that the single case that Petitioner cites to support his request for burden shifting is distinguishable from this case. Petitioner cites *J.C.G. v. Genalo*, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *8 (S.D.N.Y. Jan. 14, 2025), for the proposition that the consensus in the Second Circuit is that the Government bears the burden of proof. In that case, the *J.C.G.* court, "guided by the Second Circuit's application of *Mathews v. Eldrige*'s three-factor balancing test in *Velasco Lopez*," found it appropriate to require the Government to bear the burden of proof. *Id.* Applying that test here leads to a different result. The *J.C.G.* petitioner had been in detention for nine months, which that court found was prolonged detention. *Id.* at *9. That cannot be said of Petitioner's detention in this case. Also, unlike Petitioner in this case, the *J.C.G.* petitioner had a history of a criminal arrest, which raised the risk of erroneous deprivation of his liberty interest because the Government may readily have information about that underlying arrest available to it. *Id.* That concern is not present here. Petitioner's reliance on *J.C.G.* is thus not persuasive.

III. 8 U.S.C. § 1226(e) Bars Challenges to the IJ's Discretionary Bond Determination.

Additionally, to the extent that Petitioner's due process argument is meant to challenge the IJ's discretionary decision to deny bond, it is barred by 8 U.S.C. § 1226(e), as previously set forth in the Federal Respondent's response. *See* Dkt. 7 at 15-16. In his reply, Petitioner appears to challenge the results of his prior bond hearings to some extent, as he quotes excerpts of the IJ's reasoning set forth at each of Petitioner's prior bond hearings and argues that the prior denials of bond were improper. *See* Dkt. 8 at 1-2. As discussed, § 1226(e) states that "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). Any argument challenging the result of the substance of the IJ's bond determination is barred by § 1226(e) and should be raised in Petitioner's appeal to the BIA. *See* Dkt. 7 at 15-16.

CONCLUSION

For these additional, this Court should deny the Petition for a Writ of Habeas Corpus, along with such further relief as this Court deems fair, just, and equitable.

Dated: May 8, 2026

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