

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ROBERTO MENDOZA RAYMUNDO

Petitioner,

v.

Civil Action No. _____

JUDITH ALMODOVAR,
in her official capacity as Acting
Field Office Director, New York
Field Office, U.S. Immigration &
Customs Enforcement;

MARKWAYNE MULLIN,
in his official capacity as
Secretary, U.S. Department of
Homeland Security;

TODD BLANCHE,
in his official capacity as Acting
Attorney General, U.S.
Department of Justice;

RAUL MALDONADO,
in his official capacity as the
Metropolitan Detention Center
Warden.

Respondents.

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §
2241**

INTRODUCTION

1. Petitioner Roberto Mendoza Raymundo (“Mr. Mendoza Raymundo”) is a 41-year-old who has resided in the United States for over 21 years. He is a stepfather and caretaker of his lawful permanent resident wife who suffers from mental health disorders and chronic medical conditions. He has been detained by Immigration and Customs Enforcement (“ICE”) for over 7 months without a constitutionally adequate bond hearing. There is no end in sight to his detention because Mr. Mendoza Raymundo’s removal proceedings are on appeal before the Board of Immigration Appeals (“BIA”), and, if necessary, he intends to pursue a Petition for Review before the U.S. Court of Appeals for the Second Circuit. Mr. Mendoza Raymundo remains in detention after Immigration Judge (“IJ”) Dara F. Reid denied him bond in a hearing where the Department of Homeland Security (“DHS”) did not file any evidence and where the burden was improperly placed on him to prove he was neither a flight risk nor a danger to the community. Absent intervention from this Court, Mr. Mendoza Raymundo’s unlawful detention will continue indefinitely.
2. By placing the burden on Mr. Mendoza Raymundo to prove that he was not a danger to the community, the government violated his procedural due process rights under the Fifth Amendment, as well as the Administrative Procedure Act (“APA”). *See J.C.G. v. Genalo*, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *7 (S.D.N.Y. Jan. 14, 2025) (joining the numerous courts in this Circuit to conclude that “the Fifth Amendment Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that such detention is justified.”) (internal quotation marks omitted); *Quintanilla v. Decker*, No. 21-CV-417, 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021) (joining the “‘overwhelming consensus of judges in this district’ in concluding that the Government should bear the burden to deny liberty at any Section 1226(a) bond hearing, regardless of

the noncitizen's length of detention"); *Guerrero v. Decker*, 19-cv-11644 (KPF), 2020 WL 1244124, at *5 (S.D.N.Y. Mar. 16, 2020) ("[I]n accordance with every court to have decided this issue, [] the Court concludes that due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under § 1226(a).") (internal citations omitted).

3. Moreover, Mr. Mendoza Raymundo's detention is now prolonged, and the government has still never justified his continued detention on an individualized basis. This is also a violation of Mr. Mendoza Raymundo's due process rights under the Fifth Amendment. Under binding case law from the Second Circuit, he is entitled to a new bond hearing. *Velasco Lopez v. Decker*, 978 F.3d 842, 846 (2d Cir. 2020) (holding that prolonged detention under § 1226(a) without government justification that a noncitizen was a danger or flight risk violated due process and concluding that "the district court appropriately addressed the violation by ordering a new hearing."). Following *Velasco Lopez*, the Second held that "any immigration detention exceeding six months without a bond hearing raises serious due process concerns." *Black v. Decker*, 103 F.4th 133, 150 (2d Cir. 2024); *see e.g.*, *J.C.G.*, 2025 WL 88831, at *10 (granting the writ and ordering a burden-shifted bond hearing to a petitioner detained for nine months at Orange County Jail, after analysis guided by the framework of *Velasco Lopez*); *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833 (S.D.N.Y. Dec. 14, 2020) (same).
4. In line with the decisions in this district and the Second Circuit's holdings in *Velasco Lopez* and *Black*, Mr. Mendoza Raymundo seeks a constitutionally adequate bond hearing where the government bears the burden of justifying his continued detention by clear and

convincing evidence and where an impartial adjudicator considers alternatives to detention and Mr. Mendoza Raymundo's ability to pay.

PARTIES

5. Petitioner Roberto Mendoza Raymundo is a resident of New York State. *See* Ex. A, Austin Thierry Decl. ¶ 4 [hereinafter Thierry Decl.]. He is detained in the custody of ICE, a sub-agency of DHS, at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. *Id.* ¶ 24. He has been detained by ICE since August 23, 2025. *Id.* ¶¶ 13-24.
6. Respondent Judith Almodovar is named in her official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations. As such, she is the legal custodian of Petitioner. Respondent Almodovar's office is located at 26 Federal Plaza, New York, NY 10278.
7. Respondent Markwayne Mullin is named in his official capacity as the Secretary of DHS. In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Eastern District of New York, and is legally responsible for the pursuit of Mr. Mendoza Raymundo's detention and removal. As such, Respondent Mullin is the legal custodian of Petitioner. Respondent Mullin's office is located at the United States Department of Homeland Security, Washington, DC 20528.
8. Respondent Todd Blanche is named in his official capacity as the Acting Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by Executive Office for Immigration Review ("EOIR")

pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Eastern District of New York and is legally responsible for administering Mr. Mendoza Raymundo's removal and bond proceedings and the standards used in those proceedings. As such, he is the legal custodian of Mr. Mendoza Raymundo. Respondent Blanche's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

9. Respondent Raul Maldonado Jr. is named in his official capacity as the warden of MDC. In this capacity, he is responsible for the administration of MDC. As such, he is the legal custodian of Mr. Mendoza Raymundo. Respondent Maldonado's office is located at 80 29th Street, Brooklyn, NY 11232.

JURISDICTION & VENUE

10. This Court has jurisdiction over this Petition pursuant to 28 U.S.C. §§ 1331 and 2241, and Article I, § 9, cl. 2 of the Constitution; and the All Writs Act, 28 U.S.C. § 1651, and the Administrative Procedure Act, 5 U.S.C. § 701. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241; *see also Fay v. Noia*, 372 U.S. 391, 430-31 (1963).
11. While only the federal courts of appeals have jurisdiction to review removal orders through petitions for review, *see* 8 U.S.C. § 1252(a), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention by DHS. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

12. Venue properly lies in the Eastern District of New York because Mr. Mendoza Raymundo is physically present in this district and in the custody of Respondents at MDC in Brooklyn, New York. *See* 28 U.S.C. §§ 1391(e), 2241; *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 495-97 (S.D.N.Y. 2009).

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
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. at 400 (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

STATUTORY TEXT, FRAMEWORK & RECENT DEVELOPMENTS

15. Congress has authorized DHS to detain noncitizens during their removal proceedings. *See generally Jennings v. Rodriguez*, 583 U.S. 281 (2018) (discussing authority to detain under 8 U.S.C. §§ 1225(b), 1226(a), 1226(c)). Some noncitizens are subject to discretionary detention and are eligible to seek bond from an immigration judge, while others are subject to mandatory detention. *Id.* at 288-289.

16. Individuals arrested inside the United States are generally placed into removal proceedings under 8 U.S.C. § 1229(a), during which an immigration judge—and later potentially the BIA and a United States Court of Appeals—will decide whether the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, and adjustment of status. This process can take months or even years. Any detention of individuals arrested inside the United States and placed in removal proceedings—including individuals charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), which applies to noncitizens present in the United States without being admitted or paroled—is subject to 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to people “inside the United States” and “present in the country”).

17. Section 1226(a) states:

- (a) **Arrest, detention, and release.** On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
- (b) may continue to detain the arrested alien; and
 - (1) may release the alien on—
 - (2) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
 - (A) conditional parole; but
 - (B) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

18. Accordingly, under § 1226(a), individuals are entitled to a custody redetermination hearing (often colloquially referred to as a “bond hearing”) before an immigration judge to decide whether they should be detained or released pending the adjudication of their removal proceedings. *See* 8 C.F.R. §§ 1003.19(a), 236.1(d).

19. For more than two decades, the BIA has consistently held that in order to succeed in a request for custody redetermination, a noncitizen detained pursuant to § 1226(a) “must establish to the satisfaction of the Immigration Judge and the Board of Immigration Appeals” that he is not a danger to property or persons, a flight risk, or a threat to national security. *Matter of Adeniji*, 22 I&N Dec. 1102, 1113 (BIA 1999); *see also Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009); *Matter of Fatahi*, 26 I&N Dec. 791, 793 (BIA 2016); *Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 (BIA 2020).
20. The Supreme Court and the Second Circuit have recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainees. In 2003, in *Demore v. Kim*, the Court held that 8 U.S.C. § 1226(c) contemplates a narrow category of people who can be subjected to mandatory detention for a brief period, if they have conceded removability and have been convicted of certain crimes after having been afforded the due process required for criminal adjudication. 538 U.S. at 513.
21. This system, in which people arrested inside the United States are generally eligible for a bond hearing during immigration proceedings—albeit a constitutionally deficient one—has existed in essentially this form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587.
22. Recently, however, DHS announced a policy that rejected the well-established understanding of the INA’s detention framework, reversed decades of practice, and implemented the unlawful practice of subjecting noncitizens who entered the United States

without inspection to mandatory detention across the country.¹ Pursuant to this policy, ICE's representatives in the immigration courts began to request that immigration judges misclassify individuals eligible for bond under § 1226(a) as mandatorily detained under 8 § 1225(b), and that immigration judges refuse to conduct bond hearings on that basis.

23. Section 1225(b) mandates the detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for recent arrivals "seeking admission" under (b)(2). The Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287. These individuals may only request release under a "humanitarian parole" provision, and the request must be made directly to DHS. 8 U.S.C. § 1182(d)(5)(A).

24. On September 5, 2025, the BIA ratified the DHS policy in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 20025). In that case, the BIA held that all noncitizens who entered the United States without admission or parole—that is, noncitizens charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i)—were "seeking admission" and therefore subject to § 1225(b)(2) and ineligible for bond. *Id.* at 217–20. Because *Yajure Hurtado* is a precedential decision, it effectively directs all immigration judges to misclassify people who entered the United States without inspection as mandatorily detained, rendering them ineligible for bond throughout proceedings that can last at least several months and, in many cases, years.

¹ See *Interim Guidance Regarding Detention Authority for Applications for Admission*, Immigr. Policy Tracking Project (July 8, 2025), <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

25. The DHS policy and BIA decision have been the subject of extensive litigation, including a nationwide class action lawsuit that is currently on appeal. In *Maldonado Bautista v. Santacruz*, the U.S. District Court for the Central District of California initially granted partial summary judgment on behalf of individual plaintiff-petitioners, holding unlawful the DHS policy of deeming noncitizens who entered the United States without inspection subject to mandatory detention under 8 U.S.C. § 1225(b)(2). No. 25-cv-01873-SSS-BFM, 2025 WL 3289861, at *6–11 (C.D. Cal. Nov. 20, 2025). Shortly thereafter, the Court certified a nationwide Bond Eligible Class—namely, people who had entered the United States without inspection, were not apprehended upon arrival, and were not otherwise subject to mandatory detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231—and extended declaratory judgment to the certified class. *Maldonado Bautista*, No. 25-cv-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).
26. Following numerous reports that immigration judges continued to deny the opportunity for a bond hearing to members of the Bond Eligible Class, the *Maldonado Bautista* petitioners sought clarification of the Court’s order. See *Maldonado Bautista v. Noem*, 813 F. Supp. 3d 1084, 1095 (C.D. Cal. Dec. 18, 2025). The Court then issued an amended order on the plaintiff-petitioners’ motion for partial summary judgment, class certification, and application for reconsideration or clarification. *Id.* at 1193. In the amended order, the Court reiterated its holding that the DHS policy of subjecting individuals who entered the United States without inspection to mandatory detention under 8 U.S.C. § 1225(b)(2) was unlawful, vacated the policy under the APA, and clarified that “all members of the Bond Eligible Class are entitled to relief in the form of declaratory relief, which declares the DHS [p]olicy unlawful, and grants vacatur under the APA, which sets aside the DHS [p]olicy.”

Id. at 1127. The Court entered final judgment as to the relevant counts of the petitioners' amended class complaint. *Id.*

27. Nationwide class action litigation yielding declaratory relief squarely rejecting the BIA's reasoning did not change the position of the EOIR—the agency that houses both the immigration courts and the BIA. Indeed, on January 13, 2026, “Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that ‘*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*.’” Ex. B, *Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, AILA (Jan. 14, 2026) (setting forth screenshot of guidance sent to immigration judges via email);² *see also Maldonado Bautista*, No. 25-cv-01873-SSS-BFM, 2026 WL 468284, at *8 (C.D. Cal. Feb. 18, 2026) (“Petitioners point to the nationwide guidance issued by Chief Immigration Judge Teresa L. Riley. The guidance effectively encourages IJs across the country to stay the course of violating the rights of Bond Eligible Class Members. And so they did.”) (internal citations omitted).

28. On February 18, 2026, the Court granted the *Maldonado Bautista* petitioners' motion to enforce the court's judgement and vacated *Yajure Hurtado*. *Maldonado Bautista*, No. 25-cv-01873-SSS-BFM, 2026 WL 468284, at *12.

29. On March 6, 2026, the U.S. Court of Appeals for the Ninth Circuit temporarily stayed the Court's December 18, 2025, declaratory judgement, and the Court's February 18, 2026, order granting petitioners' motion to enforce and vacating *Yajure Hurtado*. *Maldonado Bautista v. DHS*, 26-cv-1044 (9th Cir. Mar. 6, 2026). On March 31, 2026, the Ninth Circuit

² Available at <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista>.

granted the government's motion for a stay pending appeal of the Court's December 18, 2025, class certificate order and final judgement, insofar as they extend beyond the Central District of California, and the Court's February 18, 2026, post judgement order vacating *Yajure Hurtado. Maldonado Bautista v. DHS*, 25-cv-7958, 26-cv-1044 (9th Cir. Mar. 30, 2026).

30. Between February 18, 2026, and March 6, 2026, however, a limited number of immigration judges, including IJ Reid in Mr. Mendoza Raymundo's case, held traditional bond hearings under § 1226(a) pursuant to the declaratory judgment and vacatur of *Yajure Hurtado*.

EXHAUSTION

31. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of their detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010). To the extent that prudential concerns lead the Court to require exhaustion as a discretionary matter, courts in this and neighboring districts "have excused exhaustion when considering whether '(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.'" *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 489 (E.D.N.Y. 2025) (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).
32. In Mr. Mendoza Raymundo's case, exhaustion may be excused under any of the four *Beharry* exceptions.
33. As to the first and third exceptions, there are no administrative remedies that could provide Mr. Mendoza Raymundo with the relief he seeks. As an initial matter, Mr. Mendoza

Raymundo has already pursued a bond hearing where he bore the burden of proof, in front of IJ Reid and where IJ Reid denied bond. DHS did not submit any evidence.

34. An administrative appeal of the bond denial to the BIA would be futile. First, in *Yajure Hurtado*, the BIA held that immigration judges lack authority to hear bond requests from noncitizens who are present in the United States without admission, contending that such noncitizens are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). 29 I&N Dec. at 218. While this decision was vacated in conjunction with the issuance of class-wide declaratory relief in *Maldonado Bautista*, as noted *supra*, the Ninth Circuit granted the government's motion for a stay pending appeal of the Court's December 18, 2025, class certification order and final judgement, and the Court's February 18, 2026, post judgement order vacating *Yajure Hurtado*. *Maldonado Bautista*, 25-cv-7958, 26-cv-1044 (Mar. 30, 2026). Mr. Mendoza Raymundo's bond hearing was held on March 5, 2026, between the *Yajure Hurtado* vacatur and the subsequent issuance of a stay. With the stay, *Yajure Hurtado* was again given effect. Accordingly, although Mr. Mendoza Raymundo appealed to the BIA on the merits of his bond request, his appeal will assuredly be denied due to a putative lack of jurisdiction given *Yajure Hurtado*.

35. Even if the BIA were to consider his appeal on the merits, the process is time-consuming and with little to no chance of success. Notably, in 2025, "[a]ll but one of the [BIA's] decisions published . . . resulted in a negative outcome for the" noncitizen in the case, marking a dramatic shift in the pace at which the Board issued precedential decisions. CLINIC, *Precedent or Policy? A Quiet Transformation of the Board of Immigration Appeals*, (2025), <https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-immigration-appeals> (analyzing the BIA's precedential decisions

through August 22, 2025); *see also* Jayashri Srikantiak & Rajah Lukose, *The Board of Immigration Appeals Under the Second Trump Administration, An Empirical Analysis of Grant Rates and DHS Appellate Behavior* (March 25, 2026), <https://law.stanford.edu/documents/research-on-bia-decision-making/> (“Bond appeals saw the most dramatic shift: DHS-filed appeals in bond cases increased 28-fold, and the noncitizen-filled share of the bond docket dropped from 93.2% to 45.1%. The Board sustained DHS appeals at a markedly higher rate (51.6% to 69.0%)”).

36. As to the second *Beharry* exception, should he remain detained while awaiting a decision from the BIA on his bond appeal, Mr. Mendoza Raymundo faces irreparable injury: continued unlawful detention without the opportunity to seek release, as well as separation from his community, including his lawful permanent resident wife, Maria, and one stepson, . *See* Thierry Decl. ¶ 5. Mr. Mendoza Raymundo also faces separation from job in Port Chester, NY, where he consistently worked as a landscaper since 2015. *Id.* ¶ 12.
37. Fourth and finally, Mr. Mendoza Raymundo’s claim “raises a substantial constitutional question that cannot be properly adjudicated administratively.” *J.U.*, 805 F. Supp. 3d at 490. Mr. Mendoza Raymundo contends that IJ Reid’s placement of the burden on him to establish his own eligibility for release violated due process, the INA, and the APA. These claims, which attack the lawfulness of the current procedural standards for § 1226(a) bond hearings as required by BIA precedent, are not properly raised in front of an immigration judge or the BIA. *Khan v. United States A.G.*, 448 F.3d 226, 228 (3d Cir. 2006) (“due process claims generally are exempt from the exhaustion requirement because the BIA does not have jurisdiction to adjudicate constitutional issues.”); *Matter of Valdovinos*, 18

I&N Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

38. Under the four criteria set forth in *Beharry*, Mr. Mendoza Raymundo should be excused from pursuing administrative remedies—here, a BIA bond appeal—to their conclusion.

STATEMENT OF FACTS & PROCEDURAL HISTORY

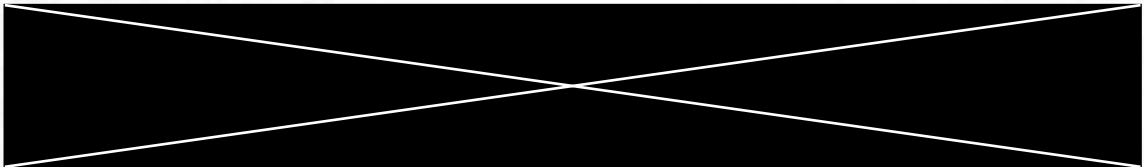
39. Mr. Mendoza Raymundo is a 41-year-old Latino man who resides in New York State. *See* Thierry Decl. ¶ 4. Mr. Mendoza Raymundo has resided in the United States since November 2004—approximately 21 years—since he was 20 years old. *Id.* Prior to his detention, Mr. Mendoza Raymundo had been gainfully employed on a regular basis since his arrival in 2004. *Id.* ¶ 12. Since 2015, he has consistently worked as a landscaper in Port Chester, NY. *Id.* Before ICE detained Mr. Mendoza Raymundo, he lived with his lawful permanent resident wife, Maria, and one stepson, [REDACTED]. *Id.* ¶ 5.

40. Maria has significant history of trauma, [REDACTED]. *Id.* ¶ 6. She relies on Mr. Mendoza Raymundo for primary financial and emotional support. *Id.* Additionally, Maria has chronic medical conditions [REDACTED] that limit her part-time work and for which she depends on Mr. Mendoza Raymundo's assistance with daily activities and care. *Id.*

41. Maria has a history of [REDACTED]. *Id.* ¶ 7. After her first marriage, she felt isolated, and lacked support for her children. *Id.* Her second marriage deteriorated with verbal abuse focused on her appearance escalating to physical abuse. *Id.*

42. Maria found stability and support in her marriage with her current husband, Mr. Mendoza Raymundo. *Id.* ¶ 8. They have been together for nine years, and his companionship is a

vital source of emotional support and stability in her life. *Id.* However, his recent detention by ICE has triggered depression and anxiety. *Id.* She feels down, depressed, or hopeless every day. *Id.* She also feels excessive worry about her husband's future and potential removal from the United States. *Id.* Based on the foregoing, Maria was diagnosed with

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43. Mr. Mendoza's criminal record consists of one misdemeanor conviction from almost ten years ago. On May 1, 2016, Mr. Mendoza Raymundo was convicted of misdemeanor driving while intoxicated under VTL § 1192(2-AA). *Id.* ¶ 9.
44. He has had other non-criminal violations over the past 21 years for non-violent offenses including three disorderly conduct violations under NYPL § 240.20(7). *Id.* ¶ 9. Through his attorney, he has attempted to collect these records. *Id.* ¶¶ 9-11.
45. On or about August 23, 2025, the Port Chester Village Police Department arrested Mr. Mendoza Raymundo for allegedly consuming alcohol in public. *Id.* ¶ 13. The Port Chester Village Police Department gave Mr. Mendoza Raymundo a desk appearance ticket for August 28, 2025. *Id.* ¶ 14. The same day, according to ICE's own records, ICE officers received Mr. Mendoza Raymundo pursuant to a "TOT" or "turn over to" notification and transported him to 26 Federal Plaza, New York, NY 10278. *Id.* ¶ 14-15.
46. On or about August 24, 2025, ICE transferred Mr. Mendoza Raymundo from 26 Federal Plaza to a facility in Nassau County where he spent the night in a cell. *Id.* ¶ 16. The next morning, on August 25, 2025, ICE transferred Mr. Mendoza Raymundo back to 26 Federal Plaza. *Id.* ¶ 16.

47. On August 25, 2025, ICE transferred Mr. Mendoza Raymundo from 26 Federal Plaza to the MDC in Brooklyn, New York. *Id.* ¶ 16. On or about November 21, 2025, ICE transferred Mr. Mendoza Raymundo from MDC to Orange County Jail (“OCJ”) in Goshen, New York. *Id.* ¶ 21. On or about February 14, 2026, ICE transferred Mr. Mendoza Raymundo from OCJ to MDC. *Id.* ¶ 24. He has now been detained for over seven months. *Id.*

48. On August 28, 2025, ICE filed a Notice to Appear with the Varick Street Immigration Court in New York, New York, charging Mr. Mendoza Raymundo as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), the provision of the INA pertaining to entering the United States without inspection. Ex. C, Form I-286, Notice to Appear. ICE alleges that he entered the United States without having been admitted or paroled on an unknown date at an unknown place. *Id.*

49. On September 5, 2025, Mr. Mendoza Raymundo appeared *pro se* for the first time before IJ Charles Ouslander. Thierry Decl. ¶ 17. IJ Ouslander adjourned the case to give Mr. Mendoza Raymundo time to retain an attorney. *Id.*

50. On September 12, 2025, Mr. Mendoza Raymundo again appeared *pro se* before IJ Ouslander. *Id.* IJ Ouslander adjourned the case again to give Mr. Mendoza Raymundo time to retain an attorney. *Id.*

51. On September 26, 2025, Mr. Mendoza Raymundo appeared with *pro bono* counsel from The Bronx Defenders and requested an adjournment for attorney preparation. *Id.* ¶ 18.

52. On October 3, 2025, Mr. Mendoza Raymundo appeared with *pro bono* counsel and entered pleadings. *Id.* ¶ 19. IJ Ouslander sustained the sole charge of removability and adjourned

proceedings November 14, 2025, for Mr. Mendoza Raymundo to file applications for relief. *Id.*

53. On November 3, 2025, Mr. Mendoza Raymundo requested an adjournment of the November 14, 2025, hearing to allow him to marry his then fiancé, Maria. *Id.* ¶ 20. On November 13, 2025, IJ Ouslander granted the request and adjourned to December 5, 2025. *Id.*

54. On December 5, 2025, IJ Ouslander scheduled an individual hearing on the merits of Mr. Mendoza Raymundo's application for cancellation of removal for certain nonpermanent residents under 8 U.S.C. 1229b(b) for February 27, 2026. *Id.* ¶ 22.

55. On February 17, 2026, Mr. Mendoza Raymundo's case was *sua sponte* transferred from IJ Ouslander to IJ Reid and advanced to a master calendar hearing on February 24, 2026. *Id.* ¶ 25.

56. On February 24, 2026, Mr. Mendoza Raymundo appeared before IJ Reid and again requested an individual hearing on the merits of his application for cancellation of removal. *Id.* ¶ 26. IJ Reid scheduled an individual hearing for March 23, 2026. *Id.*

57. On February 18, 2026, while awaiting his individual hearing date, the Court in *Maldonado Bautista* entered final judgement which vacated *Yajure Hurtado* and enforced its prior judgment declaring that indefinite detention for petitioner noncitizens and those similarly situated was unlawful, and certified a nationwide class of bond-eligible immigration detainees to which such declaration would apply. No. 5:25-cv-01873-SSS-BFM, 2026 WL 468284, at *12; *see also Maldonado Bautista*, 813 F. Supp. 3d at 1127. Following the Court's February 18, 2026, decision, on February 25, 2026, Mr. Mendoza Raymundo

requested a custody redetermination hearing (a “bond hearing”) before IJ Reid. Thierry Decl. ¶ 33. IJ Reid scheduled the bond hearing for March 5, 2026.³ *Id.*

58. In support of his request for bond, Mr. Mendoza Raymundo submitted evidence related to his pending applications for relief before IJ Reid, documents (including a detailed declaration) regarding his contacts with the criminal legal system, and letters of support from family and community members. *Id.* ¶ 34. DHS did not submit any evidence. *Id.*

59. On March 5, 2026, IJ Reid held a bond hearing pursuant to § 1226(a), in accordance with the February 18, 2026, decision in *Maldonado Bautista*. *Id.* ¶ 35. IJ Reid denied bond, finding that Mr. Mendoza Raymundo had not met his burden of demonstrating that he is not a danger to the community. Ex. D, Immigration Judge Dara F. Reid Bond Order. As required under current agency precedents, IJ Reid placed the burden on Mr. Mendoza Raymundo to establish that he does not pose a danger or flight risk and found that Mr. Mendoza Raymundo had not met his burden to show that he does not pose a danger to persons or property. *See* Ex. E, Immigration Judge Dara F. Reid Bond Memorandum. In denying Mr. Mendoza Raymundo bond, IJ Reid faulted him for failing to submit evidence of each contact with the criminal legal system, despite submitting a detailed declaration explaining the circumstances surrounding his past contacts and a declaration outlining his efforts to obtain criminal records while detained. *Id.* at 3-4; *see also* Thierry Decl. ¶ 34. In addition, IJ Reid also relied on a temporally distant (almost 10 years old) conviction for Driving While Intoxicated to deny his request for release on bond. *See* Ex. E, Immigration

³ The Ninth Circuit has since stayed *Maldonado Bautista* pending appeal. *Maldonado Bautista v. DHS*, 26-cv-1044 (9th Cir. Mar. 6, 2026); *see also Maldonado Bautista v. DHS*, 25-cv-7958, 26-cv-1044 (Mar. 30, 2026). It was within this small window that Mr. Mendoza Raymundo requested a bond hearing.

Judge Dara F. Reid Bond Memorandum. IJ Reid also cited Mr. Mendoza Raymundo's pending non-criminal violation charge in Port Chester, New York, without acknowledging the difficulties he has faced in challenging that charge while in ICE custody. *Id.* at 4. Because IJ Reid found that Mr. Mendoza Raymundo did not meet his burden with respect to danger, she declined to reach the question of flight risk. *Id.* at 5. IJ Reid also did not consider whether the imposition of conditions could ameliorate any risk of danger. *See generally* Ex. E, Immigration Judge Dara F. Reid Bond Memorandum.

60. On March 12, 2026, Mr. Mendoza Raymundo filed a timely Notice of Appeal of IJ Reid's bond denial with the BIA. Thierry Decl. ¶ 36. This appeal remains pending without a briefing schedule. *Id.*
61. After Mr. Mendoza Raymundo filed an appeal with the BIA, however, the Ninth Circuit stayed the decision in *Maldonado Bautista* pending appeal. *Maldonado Bautista v. DHS*, 26-cv-1044 (9th Cir. Mar. 6, 2026); *see also Maldonado Bautista v. DHS*, 25-cv-7958, 26-cv-1044 (Mar. 30, 2026). As such, *Yajure Hurtado* is again binding, and the agency again lacks jurisdiction to hear bond for noncitizens who entered without inspection such as Mr. Mendoza Raymundo.
62. On March 23, 2026, IJ Reid held the individual hearing on Mr. Mendoza Raymundo's application for cancellation of removal. Thierry Decl. ¶ 27. The hearing concluded on that date, and IJ Reid issued an oral decision denying Mr. Mendoza Raymundo's application for cancellation of removal. *Id.* Mr. Mendoza Raymundo timely appealed to the BIA. *Id.* This appeal remains pending without a briefing schedule. *Id.*
63. The adjudication of Mr. Mendoza Raymundo's claims for relief is likely to take, at a minimum, several more months. His case is currently pending before the BIA without a

briefing schedule. *Id.* ¶ 27. If the BIA remands to IJ Reid, Mr. Mendoza Raymundo or DHS will likely return to the BIA for review, which would again take months for briefing and adjudication. *Id.* ¶ 28. And if the BIA dismisses his currently pending appeal, Mr. Mendoza Raymundo intends to file a Petition for Review with the Second Circuit Court of Appeals. *Id.* Adjudication of that petition can take years. *Id.* In short, Mr. Mendoza Raymundo faces indefinite detention and the continuing violation of his constitutional rights.

LEGAL BACKGROUND

I. DUE PROCESS REQUIRES THAT PETITIONER BE AFFORDED A CONSTITUTIONALLY ADEQUATE BOND HEARING

64. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “It is well established that the Fifth Amendment entitles aliens to due process of law in [removal] proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). While “[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process,” there are “important constitutional limitations on that power’s exercise.” *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (internal quotations and citations omitted).
65. One of those limitations is the “fundamental requirement” of procedural due process, namely “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). When the government seeks to use its weighty power to confine a person, due process requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal

quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and prevent flight. *Id.* at 690; *accord Velasco Lopez*, 978 F.3d at 854–55.

66. Because Mr. Mendoza Raymundo has never received adequate procedural protections to protect his weighty interest in freedom, Mr. Mendoza Raymundo’s continued incarceration violates his constitutional right to due process.

67. First, at no time during Mr. Mendoza Raymundo’s more than seven-month detention has DHS justified his ongoing incarceration. As a chorus of district courts in this Circuit has held, due process requires the government to bear the burden of proof by clear and convincing evidence at all bond hearings regardless of the length of detention. Instead, IJ Reid at Mr. Mendoza Raymundo’s initial bond hearing unconstitutionally placed the burden of proof on him. In addition, whether the initial hearing was adequate, Mr. Mendoza Raymundo’s detention is now prolonged, entitling him to a new bond hearing with the burden of proof on the government, as dictated by the Second Circuit in *Black* and *Velasco Lopez*.

68. Second, to ensure that Mr. Mendoza Raymundo’s detention is related to a legitimate government interest as the Due Process Clause requires, an immigration judge must meaningfully consider alternatives to detention and his ability to pay. These procedural protections were absent from Mr. Mendoza Raymundo’s initial hearing and are necessary in any subsequent hearing.

Due Process Requires That Petitioner Receive a Hearing Where the Government Bears the Burden of Proof by Clear and Convincing Evidence.

The Burden Must Be on the Government Regardless of the Length of Detention.

69. As repeatedly recognized by courts in this Circuit, the government must bear the burden of proof by clear and convincing evidence for a bond hearing to be constitutionally adequate, regardless of the length of detention.
70. The Second Circuit requires that, once detention is prolonged, the government *must* bear the burden of justifying detention by “clear and convincing evidence.” *Black*, 103 F.4th at 155; *Velasco Lopez*, 978 F.3d at 855. Nevertheless, the Second Circuit has expressly declined to reach the question of what protections due process requires, even before detention becomes prolonged. *See Velasco Lopez*, 978 F.3d at 855 n.13; *Quintanilla v. Decker*, No. 21 CIV 17 (GBD), 2021 WL 707062, at *4 (S.D.N.Y. Feb. 22, 2021) (discussing *Velasco Lopez*); *Jimenez v. Decker*, No. 21-CV-880 (VSB), 2021 WL 826752, at *8 (S.D.N.Y. Mar. 3, 2021) (declining to interpret *Velasco Lopez* to foreclose petitioner’s argument that a burden-shifted hearing was required before detention was prolonged).
71. Prior to *Velasco Lopez*, an “overwhelming consensus” of district courts had held that placing the burden on the noncitizen was unconstitutional regardless of the noncitizen’s length of detention. *See Quintanilla*, 2021 WL 707062, at *3 (collecting cases).
72. In *Velasco Lopez*, the Second Circuit suggested that placing the burden on the petitioner at the time of his initial bond hearing was unconstitutional. *See* 978 F.3d at 852 n.8 (noting the time lapse between petitioner’s detention and the initial bond hearing and observing that, “[h]ad he been charged with a violent felony . . . the Government would have been required . . . to carry the burden of establishing by a preponderance of the evidence that no conditions of release would reasonably assure the defendant’s presence at trial and by clear and convincing evidence that no conditions could assure the safety of the community”). The First Circuit has also held that the government must bear the burden at all 1226(a)

custody hearings. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 35 (1st Cir. 2021) (relying on the logic of *Velasco Lopez*).

73. Since *Velasco Lopez*, district courts that have considered the procedural protections required at the initial bond hearing have continued to require the burden to be on the government at all Section 1226(a) custody hearings.⁴ *J.C.G. v. Genalo*, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *9 (S.D.N.Y. Jan. 14, 2025) (“According to the Government, *Velasco Lopez* ‘suggests that there is no constitutional infirmity in an immigration judge’s placement of the burden of proof on a noncitizen detained under § 1226(a) at his initial bond hearing where the noncitizen has been afforded adequate process.’ This Court declines to read any such ‘suggestion’ into *Velasco Lopez*’s holding.”); *B.S. v. Joyce*, No. 22-CV-9738 (PKC), 2023 WL 1962808, at *4 (S.D.N.Y. Feb. 13, 2023) (“Like other courts faced with due process challenges to initial bond hearings since *Velasco Lopez*, this Court will continue to require the government to bear the burden of proof at all section 1226(a) bond hearings.”); *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at *7 n.7 (S.D.N.Y. Aug. 20, 2021) (agreeing with the “‘overwhelming majority of courts’ that have found that the Due Process Clause of the Fifth Amendment requires” the government to bear the burden of demonstrating by clear and convincing evidence that detention is justified” and refusing to alter the analysis in light of *Velasco Lopez*); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) (“[N]either the Circuit’s decision in *Velasco Lopez* nor any other binding appellate

⁴ Some district courts have focused on the narrower question posed by *Velasco Lopez*, analyzing only whether detention is prolonged such that a new bond hearing is required. See *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *6–7 (S.D.N.Y. Dec. 14, 2020); *Gonzalez Evangelista v. Decker*, No. 20 CIV. 8758 (AKH), 2021 WL 101201, at *5 (S.D.N.Y. Jan. 12, 2021).

authority overrules the ‘overwhelming consensus’ of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden . . . even absent ‘prolonged detention.’”); *Jimenez v. Decker*, No. 21-CV-880 (VSB), 2021 WL 826752, at *8, 11 (S.D.N.Y. Mar. 3, 2021) (rejecting the government’s argument that *Velasco Lopez* only authorized shifting the burden with prolonged detention and applying the *Mathews* factors); *Quintanilla v. Decker*, No. 21 CIV. 417 (GBD), 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021) (joining the “‘overwhelming consensus of judges in this district’ in concluding that the Government should bear the burden to deny liberty at any Section 1226(a) bond hearing, regardless of the noncitizen’s length of detention”).

74. This consensus approach aligns with the Second Circuit’s analysis in *Velasco Lopez*, which affirmed that longstanding Supreme Court precedents in other civil confinement contexts apply with equal force in the immigration context. *Velasco Lopez*, 978 F.3d at 856; see *Hernandez-Lara*, 10 F.4th at 37–38.
75. Those precedents underscore that civil detention must be carefully limited to avoid due-process concerns. See, e.g., *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979); see also *United States v. Salerno*, 481 U.S. 739, 755 (1987) (“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”).
76. These precedents further instruct that, given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers—not the person detained—to establish the necessity of that detention. See, e.g., *Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the

government); *see also Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil insanity detention “statute that place[d] the burden on the detainee to prove that he is not dangerous”). That interest in liberty is strong even at the outset of detention: “[I]t is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Velasco Lopez*, 978 F.3d at 851 (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)); *United States v. Comstock*, 560 U.S. 126, 130-31 (2010) (clear and convincing standard applies under a federal statute which permits a continued confinement of a “mentally ill, sexually dangerous” prisoner beyond a date that the prisoner would otherwise be released, from the outset of that continued detention period). That is particularly true where, as here, a detainee has developed close and meaningful ties to the United States. *See, e.g., Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950) (noting that noncitizens’ rights increase with increased ties to the country). Even when the Supreme Court upheld the constitutionality of categorical detention for certain noncitizens with criminal convictions, it relied on those individuals having received “the *full procedural protections* our criminal justice system offers,” *Demore v. Kim*, 538 U.S. 510, 513 (2003); on Congress considering specific studies regarding its legislative choice, *id.* at 518–21; and on the relatively short duration of detention it anticipated, *id.* at 529. None of those circumstances are applicable to the discretionary, potentially indefinite detention at issue here. *See Velasco Lopez*, 978 F.3d at 850 n.7, 852; *Hernandez-Lara*, 10 F.4th at 35–36.

77. And finally, those precedents hold that, in contrast to the preponderance-of-the-evidence standard in most civil proceedings, the government must be held to a clear-and-convincing standard of proof when an individual’s liberty is at stake. *Black v. Decker*, 103 F.4th at 138; *Velasco Lopez*, 978 F.3d at 856 n.15 (“When someone stands to lose an interest more

substantial than money, we protect that interest by holding the Government to a higher standard of proof.” (quoting *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020)); see *Cooper*, 517 U.S. at 363; *Foucha*, 504 U.S. at 81. In cases where the individual’s interest is of “such weight and gravity,” it is improper to ask an individual to “share equally with society the risk of error.” *Addington*, 441 U.S. at 427. Immigration detention implicates “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez*, 978 F.3d at 851.

The Burden Must Be on the Government When Detention Becomes Prolonged.

78. Regardless of whether Mr. Mendoza Raymundo’s initial bond hearing was unconstitutional, a hearing where the burden is shifted to the government is required once detention becomes prolonged under the clear holdings of *Black*, 103 F.4th at 138 and *Velasco Lopez*, 978 F.3d at 855.

79. While in *Velasco Lopez*, the Second Circuit 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, the Second Circuit later held “that any immigration detention exceeding six months without a bond hearing raises serious due process concerns,” *Black*, 103 F.4th at 150. It must be underscored that the bond hearing that *Black* is referring to, is one where the government *must* bear the burden of justifying detention by “clear and convincing evidence.” *Black*, 103 F.4th at 155. This comports with Supreme Court precedent, which requires additional scrutiny of detention as the period of incarceration approaches or surpasses six months. See *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of detention for more than six months”); *Demore*, 538 U.S. at 529-30; *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015),

cert. granted, judgment vacated, 138 S. Ct. 1260 (2018) (requiring bail hearings “within six months” of detention); *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *6–7 (S.D.N.Y. Dec. 14, 2020) (citing cases invoking the six-month threshold as significant and holding that nine months was sufficiently prolonged to warrant an individualized hearing with a shifted burden); *Graham v. Decker*, No. 20 CIV. 3168 (PAE), 2020 WL 3317728, at *5 (S.D.N.Y. June 18, 2020) (“[A] detention exceeding six months fairly favors the claimant in a multi-factor analysis”); *see also Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion) (limiting impossible sentence to six months for a criminal offense without procedural protection of a jury trial). The Supreme Court has also looked to six months as a benchmark in other civil detention contexts. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250–52 (1972) (recognizing six months as outer limit for confinement without individualized inquiry for civil commitment).

80. The Second Circuit has repeatedly emphasized that where the Supreme Court has upheld the constitutionality of detention pursuant to removal proceedings, it has done so in reliance on “the relatively short duration of detention”—between one-and-a-half and four months in the vast majority of cases. *Black*, 103 F.4th at 151 (citing *Demore*, 538 U.S. at 529); *Velasco Lopez*, 978 F. at 852 (same). In contrast, Mr. Black’s seven-month detention without an individualized determination “more seriously infringed” on his liberty interest. *Black*, 103 F.4th at 151. In the case of Mr. Velasco Lopez, his fifteen-month incarceration without individualized justification was unconstitutional “on any calculus.” *Id.* at 855 n.13; *see also J.C.G.*, 2025 WL 88831, at *9 (“Even if *Velasco Lopez* were construed as requiring a finding of ‘prolonged detention’ prior to granting a noncitizen a burden-shifting hearing, J.C.G.’s nine-month detention qualifies as a ‘prolonged detention.’”); *Banegas v. Decker*,

No. 21-CV-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) (holding that “even if *Velasco Lopez* were correctly read to impose a bright line requirement of ‘prolonged detention’, Mr. Banegas would qualify for a new hearing because of his nine-month detention”); *Gonzalez Evangelista v. Decker*, No. 20 CIV. 8758 (AKH), 2021 WL 101201, at *5 (S.D.N.Y. Jan. 12, 2021) (applying the *Mathews* analysis and finding that the petitioner’s 11-month “detention has been unreasonable in duration”); *Jimenez v. Decker*, No. 21-CV-880 (VSB), 2021 WL 826752, at *11 (S.D.N.Y. Mar. 3, 2021) (granting relief where petitioner was detained for twelve months).

81. In *Velasco Lopez*, to determine whether a new bond hearing with the burden on the government was required, the Second Circuit conducted the three-factor analysis laid out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Velasco Lopez*, 978 F.3d at 851-55.

82. Under the first *Mathews* factor, the court recognized that “the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment.” *Id.* at 851. Noting the Supreme Court’s jurisprudence on the relatively brief length of the detention described in *Demore*,⁵ the Circuit further recognized that “[t]he longer the duration of incarceration, the greater the deprivation.” *Id.* at 852. District courts in this Circuit have examined “whether the detention will exceed the time the petitioner spent in prison for the crime that made him removable” and “whether the

⁵ The Solicitor General’s office has stated that the government “made several significant errors in calculating” the statistics relied upon in the Court’s decision in *Demore*; the actual average completion time was 372 days. Letter from Ian Heath Gershengorn, Acting Solicitor General, to Hon. Scott S. Harris, Clerk, Supreme Court (Aug. 26, 2016), *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), available at <http://on.wsj.com/2mtjnUP>; see *Jennings*, 138 S. Ct. at 869 (Breyer, J., dissenting) (“The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did ... thousands of people here are held for considerably longer than six months without an opportunity to seek bail.”).

petitioner's detention is near conclusion" under this prong. *Black*, 103 F.4th at 146 (citing *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018)). Also relevant to the petitioner's interest are the conditions of confinement. The *Velasco Lopez* court noted that the petitioner there had spent his "civil detention" "incarcerated in the Orange County Correctional Facility where he was held alongside criminally charged defendants and those serving criminal sentences." 978 F.3d at 851.

83. Next, the Circuit found that the second *Mathews* factor, "the risk of erroneous deprivation of such private interest . . . and the probable value, if any, of additional or substitute procedural safeguards," also weighed "heavily" in the petitioner's favor. *Id.* at 852. This was true even where the petitioner had been arrested three times, had a conviction for driving while ability impaired, pending charges for aggravated unlicensed operation and driving while intoxicated, and dismissed charges for a bar fight. *Id.* at 846–47. As the Circuit held, "Velasco Lopez was neither a flight risk nor a danger to the community but was unable to prove that was the case." *Id.* at 853. Specifically, the Circuit pointed to the difficulties petitioner faced in challenging outstanding criminal charges while confined in detention and in accessing relevant documents. *Id.* at 852; *see also Hernandez-Lara*, 10 F.4th at 30–31 (noting, as well, that the government will know immigration law and procedures much better than the petitioner and that "proving a negative" can itself be difficult). By contrast, the government had "substantial resources to deploy" in obtaining information about the petitioner, including access to government databases. *Velasco Lopez*, 978 F.3d at 853. The existing framework of administrative review does not change this calculus, as it is unable to correct the fundamental misallocation of the risk of error. *See Hernandez-Lara*, 10 F.4th at 32 ("Loaded dice rolled three times are still loaded dice.").

84. As to the third factor, the Circuit recognized only two valid governmental interests in detaining noncitizens under Section 1226 pending removal proceedings: to prevent absconding and to prevent the commission of crimes. *Velasco Lopez*, 978 F.3d at 854–55. However, the Court was unequivocal that “shifting the burden of proof to the Government to justify continued detention promotes the Government’s interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Id.* at 854. The Circuit also found that the public interest cut “strongly in favor” of the petitioner, because the Government failed to demonstrate any justification for “separat[ing] families and remov[ing] from the community breadwinners, caregivers, parents, siblings, and employees” whom the Government cannot show are in fact a poor bail risk. *Id.* at 855.

85. The government must justify itself when it deprives someone of their exceptional interest in liberty. When an immigration judge does not require the government to do so at the initial hearing, or when a person’s detention has become prolonged, the caselaw is clear: the government cannot continue detaining that person unless they receive a bond hearing where the government bears the burden of proof by clear and convincing evidence.

Petitioner’s Bond Hearing Must Have Further Procedural Protections to Satisfy Due Process including hold a bail hearing before this Court.

86. The Due Process Clause requires that detention “bear a reasonable relation to its purpose.” *Zadvydas*, 533 U.S. at 690; *see also Velasco Lopez*, 978 F.3d at 854–55 (holding that the only legitimate purposes for immigration detention are to protect community safety and to ensure that noncitizens attend future hearings); *Hernandez-Lara*, 10 F.4th 19, 32 n.5 (1st Cir. 2021) (same). To satisfy this requirement, a bond hearing must include additional

procedural protections. Specifically, the immigration judge must consider an individual's ability to pay, as well as alternative conditions of release.

87. Under binding Second Circuit case law, due process requires the consideration at any bond hearing of "alternatives to detention and the noncitizen's ability to pay." *Black*, 103 F.4th at 159; accord *Hernandez v. Sessions*, 872 F.3d 976, 991 & n.4 (9th Cir. 2017) ("[A] bond determination that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests.").
88. After a noncitizen has been deemed eligible for bond, "refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons." *Black*, 103 F.4th at 58. Indeed, at that point, the noncitizen will continue to be detained not for a legitimate purpose but solely due to their indigency, accomplishing "little more than punishing a person for his poverty." *Hernandez*, 872 F.3d at 992 (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)).
89. Furthermore, numerous courts in the Second Circuit, including in this district, have held, post-*Black v. Decker*, that "due process requires that IJs consider alternatives to detention when evaluating a noncitizen's *dangerousness*" in addition to risk of flight. *G.F.F., v. Francis, et al.*, No. 25-CV-7368 (JGK), 2025 WL 3141735, at *6 (S.D.N.Y. Nov. 10, 2025) (emphasis added); accord *Cantor v. Freden*, 761 F. Supp. 3d 630, 639 (W.D.N.Y. 2025); *Castro Coneo v. Almodovar*, No. 25-CV-09850 (NSR), 2025 WL 3754079, at *6 (S.D.N.Y. Dec. 29, 2025); see also *L.G.M. v. LaRocco*, No. 25-CV-2631 (PKC), 2025 WL 2173577,

at *3-4 (E.D.N.Y. July 31, 2025) (reaching the same conclusion when ordering a burden-shifted bond hearing where petitioner was held under 8 U.S.C. § 1226(c)).

90. Similarly, if the government can protect its regulatory interests through less restrictive means, detention is no longer reasonably related to a legitimate purpose. *See Salerno v. United States*, 481 U.S. 739, 755 (1987) (approving a pre-trial detention act that required the government to show that no conditions of release could satisfy its interests); *Bell v. Wolfish*, 441 U.S. 520, 538 (1979); *Hernandez*, 872 F.3d at 991. Where an alternative condition of release would reasonably safeguard the government's interest, the government has no legitimate interest in detaining that person. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 231 (W.D.N.Y. 2019) (“[T]he determination of whether detention was ‘necessary to serve a compelling regulatory purpose’ necessarily required the decisionmaker to consider whether ‘a less restrictive alternative to detention’ would suffice.”).

91. Accordingly, due process requires that the government, to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect their interests, and the immigration judge in turn must consider those alternatives. *See Cantor v. Freden*, 761 F. Supp. 3d at 640 (“This Court therefore holds that when a petitioner is entitled to a hearing because his detention pending removal has become unreasonably prolonged, the hearing requires a neutral decisionmaker to address whether alternatives to detention might ameliorate risk of danger as well as risk of flight” and *Black* does not state otherwise); *see also G.F.F.*, 2025 WL 3141735, at *6 (citing and relying on same); *Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances).

92. Finally, the Court has jurisdiction under 28 U.S.C. § 2241 to address Mr. Mendoza Raymundo's claims of unconstitutional detention in a petition for writ of habeas corpus. Inherent in the Court's authority is the ability to craft appropriate habeas relief, including holding a bail hearing. *Boumediene v. Bush*, 553 U.S. 723, 745 (2008); *Mapp v. Reno*, 241 F.3d 221, 227 (2d Cir. 2001). The Second Circuit recognizes that "[the Court's] inherent power to affect[] the custody of a detainee extends to admitting petitioners to bail in the immigration habeas context." *Elkimya v. Dep't of Homeland Sec.*, 484 F.3d 151, 153 (2d Cir. 2007) (citing *Mapp*, 241 F.3d at 227) (internal quotations omitted). Just last year, the Second Circuit found that district courts can hear and decide Section 2241 habeas petitions brought by individuals in immigration detention, so long as the petitions challenge the constitutionality of the petitioners' detention rather than the underlying removal proceedings. *Ozturk v. Hyde*, 136 F.4th at 399-400 (2d Cir. 2025) (finding petitioner's First and Fifth Amendment challenges to her detention distinct from challenges to her removal proceedings and therefore properly within the district court's jurisdiction) (collecting cases); *Mahdawi v. Trump*, 136 F.4th 443, 452 (2d Cir. 2025) (same).
93. At least one Court in this district has held a burden shifted bond hearing. *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405 (E.D.N.Y. 2025) (holding bond hearing for petitioner subject to 1226(c)); *see also Centeno-Martinez v. Jamison*, No. CV 25-3593, 2025 WL 3157711 (E.D. Pa. Nov. 12, 2025). In *L.G.M.*, the Court held that the "need of constitutional scrutiny" outweighed "any claimed efficiencies." *Id.* at 405-406. Judge Chen noted the large number of "cases in which district courts ruled on motions to enforce their judgements after IJs had failed to properly conduct bail hearings on referral." *Id.* at 406; *see, e.g., Fernandez Aguirre v. Barr*, No. 19-CV-7048 (VEC), 2019 WL 4511933 at *5-8

(S.D.N.Y. Sept. 18, 2019) (granting motion to enforce and ordering petitioner's immediate release where immigration judge failed to consider alternatives to detention and "failed to comply with the standard of proof required" by the court's previous order); *R.R.M.C. v. Decker*, No. 22 CIV. 2942 (LGS), 2022 WL 4639674, at *4 (S.D.N.Y. Sept. 30, 2022) (granting in part the petitioner's motion to enforce judgement where the immigration judge did not properly allocate the burden of proof and failed to meaningfully consider alternatives to detention); *Apollinaire v. Bar*, No. 19-CV-6285-FPG, 2019 WL 4023560, at *2 (W.D.N.Y. Aug. 27, 2019) (finding that the court maintains jurisdiction "to review compliance with and, if necessary, enforce its previous order."); *Hechavarria v. Whitaker*, 358 F. Supp. 3d at 235-36 ("[T]he Court is determining whether the order it issued on November 2, 2018, was followed—that is, whether [the petitioner] received the due process to which he was entitled."); *Nguti v. Sessions*, No. 16-CV-6703, 2017 WL 5891328, at *2 (W.D.N.Y. Nov. 29, 2017) ("[T]he question is whether the immigration judge relied upon proof that could not possibly be established by clear and convincing evidence—as a matter of law—that [the petitioner] is a danger to the community."); *Enoh v. Sessions*, No. 16-CV-85(LJV), 2017 WL 2080278, at *10 (W.D.N.Y. May 15, 2017) (concluding that "the IJ failed to apply the clear and convincing standard" at the petitioner's bond hearing as ordered by the Court and ordering petitioner's release under conditions of supervision); *Blandon v. Barr*, 434 F. Supp. 3d 30, 36 (W.D.N.Y. 2020) (concluding that the immigration judge did not comply with the decision and order of the district court and ordering a new bond hearing).

94. As Judge Chen stated, "these are not ordinary times." *L.G.M.*, 788 F. Supp. 3d at 407. Indeed, now more than ever, immigration judges are under intense pressure to tailor their

rulings to the administration's directives, undermining their impartiality. *Cf.* Nicholas Nehama, et al., How Trump Purged Immigration Judges to Speed Up Deportations, NEW YORK TIMES (April 13, 2026), [https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.ZlA.JJNG.txwMTdEzjRn7&smid=url-share)

[purge.html?unlocked_article_code=1.ZlA.JJNG.txwMTdEzjRn7&smid=url-share](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.ZlA.JJNG.txwMTdEzjRn7&smid=url-share)

("Teresa Riley, the chief immigration judge, has received daily reports about bond rulings, according to a Justice Department official. Her office has sometimes emailed judges asking for an explanation about their decisions to grant bond, three people said. . . One current judge said the 'pressure to deny bond is over.'").

95. Considering the strong interest that Mr. Mendoza Raymundo has in his bodily liberty, the Constitution requires adequate procedural protections—namely the consideration of his ability to pay and alternative conditions of release and a bond hearing before this Court—prior to depriving him of his freedom.

II. THE CURRENT BURDEN ALLOCATION IN § 1226(A) BOND HEARINGS VIOLATES THE ADMINISTRATIVE PROCEDURE ACT

95. The APA creates a presumption in favor of judicial review over agency action. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 298 (2001). A petitioner "adversely affected" by agency action may seek judicial review through a petition for habeas corpus. 5 U.S.C. §§ 702, 703. A reviewing court must set aside agency action that is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to a constitutional right; (3) in excess of statutory authority or limitations; (4) without observance of procedures required by law; or (5) unwarranted by the facts. 5 U.S.C. §§ 702, 706(2); *Natural Resources Defense Council v. U.S. E.P.A.*, 808 F.3d 556, 569 (2d Cir. 2015).

96. The allocation of the burden of proof to the noncitizen in Section 1226(a) bond hearings violates the APA because the decision in *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999), which established the burden, is both “contrary to constitutional right,” § 706(2)(B), and “arbitrary and capricious,” § 706(2)(A). In *Adeniji*, the BIA placed the burden of proof squarely on the noncitizen in custody redetermination proceedings, even while acknowledging that Section 1226(a) has no such requirement. *Adeniji*, 22 I&N Dec. at 1113 (“[T]he alien must demonstrate that ‘release would not pose a danger to property or persons,’ even though section [1226(a)] does not explicitly contain such a requirement.”).
97. An APA claim alleging that a detention policy violates due process under § 706(2)(B) is distinct from a free-standing constitutional claim. See *Dolan v. Fed. Emergency Mgmt. Agency*, No. CIV 23-0908 JB/JFR, 2025 WL 2023315, at *20 (D.N.M. July 18, 2025) (“The presence of a Constitutional claim does not take a court’s review outside of the APA[.]”); *California v. U.S. Dep’t Homeland Sec.*, 612 F. Supp. 3d 875, 894-95 (N.D. Cal. 2025) (“[P]laintiffs could assert a cause of action under the APA so long as Congress had not limited review through other statutes or committed the administrative decision to agency discretion,” and “Plaintiffs’ claim ‘may exist wholly apart from the APA.’”) (citing *Sierra Club v. Trump*, 929 F.3d 670, 699 (9th Cir. 2019)). Courts have applied this principle in the immigration context as well. See, e.g., *Kidd v. Mayorkas*, No. 2:20-CV-03512, 2021 WL 1612087, at * 10 (C.D. Cal. Apr. 26, 2021) (finding an APA claim was validly pleaded where the plaintiffs alleged a “Fourth Amendment violation resulting from [ICE’s] policy.”).
98. Here, for the reasons already explained in depth, placing the burden on noncitizens to carry the burden in all bond hearings, even when detention has become prolonged, violates due

process. *See supra* Part I. As such, this burden allocation violates the APA, because it is contrary to a constitutional right. § 706(2)(B).

99. In addition, the burden allocation is arbitrary and capricious. First, the BIA in *Adeniji* analyzed and applied the wrong federal regulation to decide what standards should govern Mr. Adeniji's bond hearing. Specifically, the BIA held that 8 C.F.R. § 236.1(c)(8)⁶ "is binding on us" to conclude that Mr. Adeniji must shoulder the burden of proof in arguing for his release before an immigration judge. *See Adeniji*, 22 I&N Dec. at 1112. That regulation applies to ICE officers (employees of DHS) who determine whether a newly detained noncitizen should be granted bond by ICE in the first instance; it is inapplicable on its face to custody redetermination proceedings before an immigration judge (an employee of the Department of Justice). *See* 8 C.F.R. § 236.1(c)(8); *see also Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (clarifying that bond hearings in front of immigration judges are custody redeterminations). Bond hearings are held after ICE's initial determination to deny bond; different regulations and procedures apply. *See* 8 C.F.R. § 1003.19; *compare* 8 C.F.R. § 236.1(c) *with* 8 C.F.R. § 236.1(d). For the BIA to state that the standard set out in the inapplicable regulation was "binding" is plainly erroneous and unreasoned.

100. The Second Circuit acknowledged this shift, and reliance on an inapplicable regulation, in *Velasco Lopez*, explaining that "[u]ntil the early 1990s, the Attorney General exercised his discretion with a presumption in favor of liberty during the pendency of

⁶ Section 236.1(c)(8) reads in pertinent part, "Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act . . . ; 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."

removal proceedings. This presumption was repeatedly affirmed by the Board of Immigration Appeals ('BIA')." 978 F.3d at 848 (citing *Matter of Patel*, 15 I&N Dec. 666, 666 (BIA 1976); *Matter of Andrade*, 19 I&N Dec. 488, 489 (BIA 1987). The Court continued:

Following the enactment of IIRIRA, the Immigration and Naturalization Service ("INS"), not Congress, implemented new regulations that altered the standard for the initial post-arrest custody determinations made by INS officials. 8 C.F.R. § 236.1(c)(2)-(8). The new 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. *See* 8 C.F.R. § 236.1(c)(8). The regulation applies only to the initial custody determination made by the arresting officer and not to immigration judges in bond hearings. However, shortly after the new regulations were implemented, the BIA began applying the rule provided in § 236.1(c)(8) for arresting officers, including the presumption of detention, to bond hearings conducted by immigration judges under § 1226(a).

Id. at 849 (citing *Matter of Adeniji*, 22 I&N Dec. at 1112; *Matter of Guerra*, 24 I&N Dec. at 38).

101. The correct regulation governing custody redetermination hearings at issue here is 8 C.F.R. § 236.1(d)(1). This regulation—which plainly applies to bond redeterminations before an immigration judge—does not place the burden on the noncitizen. *Id.* The agency's decision in *Adeniji* is therefore arbitrary and capricious as it was not the result of reasoned decision-making: it ignored § 236.1(d)(1)⁷ and applied a regulation that is entirely irrelevant to custody hearings before an immigration judge. *See Encino Motorcars LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2015); *see also* 5 U.S.C. § 706(2).

⁷ Not only is 8 C.F.R. § 236.1(d) on its face more relevant for bond hearings before an immigration judge than 8 C.F.R. § 236.1(c)(8), it is also silent on the burden of proof, much like § 1226(a).

102. Second, *Adeniji*'s burden shift constituted an unexplained rule change; as an "[u]nexplained inconsistency" that was a "change from agency practice," it is invalid under the APA. *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). When *Adeniji* placed the burden on detained noncitizens, it ended the presumption of liberty and broke from the established precedent in *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); see also *Velasco Lopez*, 978 F.3d at 849. Nothing in § 1226(a), prior statutes, or the regulations relevant to bond redeterminations for non-criminal noncitizens gave rise to this radical shift; the agency's decision to place the burden on non-criminal detainees during bond redetermination hearings is therefore arbitrary and capricious. See 5 U.S.C. § 706(2); see also *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (noting that "[a]n agency may not . . . depart from prior policy sub silentio").

103. Third, *Adeniji*'s burden shift "failed to consider . . . important aspect[s] of the problem" before it. *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1910 (2020) (quoting *State Farm*, 463 U.S. at 43). When an agency makes a decision, fundamental principles of administrative law dictate that the agency "must explain the evidence which is available, and must offer a rational connection between the facts found at the choice made." *State Farm*, 463 U.S. at 52 (internal quotation marks omitted). Under the pre-*Adeniji* precedents, when the government made the weighty decision to detain someone, it would explain that decision, and this explanation would be scrutinized by an immigration court. Following *Adeniji*, the government can detain someone without providing any explanation to the person detained or the immigration judge. The reversal in *Adeniji* has enabled the creation of thousands of unreviewed agency decisions, a dramatic shift unconsidered and unaddressed by the BIA.

104. Fourth, *Adeniji* is an invalid agency decision as applied to Mr. Mendoza because it was a custom-made solution for a uniquely situated detainee based on a stipulation from the parties. The outcome of *Adeniji* depended on a stipulation on a significant legal issue and a desire to avoid a windfall for a specific noncitizen convicted of an aggravated felony whose eligibility for bond was mere happenstance. *See Adeniji*, 22 I&N Dec. at 1105, 1109 (accepting the argument by both parties that the mandatory provisions in § 1226(c) do not apply because the respondent, despite having been convicted of an aggravated felony, was released from criminal custody prior to the expiration of the Transitory Rules); *see also id.* at 1112 (“We agree with the parties that the general bond provisions of [§ 1226(a)] govern bond for the respondent at present. The parties further agree that the respondent must show that he is not likely to abscond, is not a threat to the national security, and is not a threat to the community . . .”).

105. Thus, the Court should set aside the misallocation of the burden to the non-citizen as both unconstitutional and arbitrary and capricious.

CLAIMS FOR RELIEF

COUNT ONE

MR. MENDOZA RAYMUNDO’S ONGOING DETENTION VIOLATES HIS RIGHT TO PROCEDURAL DUE PROCESS UNDER THE FIFTH AMENDMENT

106. Requiring Mr. Mendoza Raymundo to bear the burden in bond hearings pursuant to § 1226(a) violates his due process rights in two ways: First, Mr. Mendoza Raymundo has never had a constitutionally adequate bond hearing that justifies his detention. Second, Mr. Mendoza Raymundo has been subject to prolonged detention of over seven months. Under either situation, a constitutionally adequate bond hearing where the burden of proof is placed on DHS to justify detention by clear and convincing evidence, with consideration

of ability to pay and alternatives to detention, is required under *Black*, *Velasco Lopez*, and *Mathews*. And, as a district court sitting in this Circuit held, “when a petitioner is entitled to a hearing because his detention pending removal has become unreasonably prolonged, the hearing requires a neutral decisionmaker to address whether alternatives to detention might ameliorate risk of danger as well as risk of flight.” *Cantor*, 761 F. Supp. 3d at 640.

107. Regarding the first *Mathews* factor, Mr. Mendoza Raymundo’s interest is in being free from imprisonment, which is “the most significant liberty interest there is.” *Velasco Lopez*, 978 F.3d at 851. Like the petitioner in *Lu v. Genalo*, Mr. Mendoza Raymundo is incarcerated at MDC in Brooklyn, where conditions of confinement are “particularly ‘dreadful’ and ‘inhumane.’” --- F. Supp. 3d ---, 2025 WL 3512244, at *5 (S.D.N.Y. Dec. 8, 2025) (citing *United States v. Chavez*, 710 F. Supp. 3d 227, 233 (S.D.N.Y. 2024); see also *Id.* at 238 n.20 (quoting the United States Attorney’s Office’s own statement that the conditions in New York City’s jail system are “unsafe, dangerous, and chaotic”). The Second Circuit made clear that the reality of detainees’ day-to-day experiences in detention must be considered when analyzing whether due process has been violated, stating “[t]he deprivation [petitioner] experienced while incarcerated was, on any calculus, substantial. He was locked up in jail. He could not maintain employment or see his family or friends or others outside visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone.” *Velasco Lopez*, 978 F.3d at 851. All these circumstances apply to Mr. Mendoza Raymundo, and applied to him at the time of his initial bond hearing.

108. In addition, Mr. Mendoza Raymundo's detention has become prolonged, strengthening the gravity of his private interest, and additional process is required. *See Black*, 103 F.4th at 150; *Velasco Lopez*, 978 F.3d at 853.

109. The second factor, risk of erroneous deprivation, also weighs in Mr. Mendoza Raymundo's favor. The government has "substantial resources to deploy" to obtain and present evidence justifying detention. *See Velasco-Lopez*, 978 F.3d at 852. By contrast, detention is hampering Mr. Mendoza Raymundo's ability to present evidence and secure bail. IJ Reid cited Mr. Mendoza Raymundo's failure to submit evidence of his criminal history as one of the reasons he did not meet his burden at his bond hearing. Ex. E, Immigration Judge Dara F. Reid Bond Memorandum at 3-4. Despite repeated attempts, while in ICE custody Mr. Mendoza Raymundo has been unable to access evidence of his criminal history. Thierry Dec. ¶¶ 10-11. IJ Reid also cited Mr. Mendoza Raymundo's pending criminal charge in Port Chester, New York, without acknowledging the difficulties he has faced in challenging that charge while in ICE custody. Ex. E, Immigration Judge Dara F. Reid Bond Memorandum at 4. In denying bond, IJ Reid did not consider whether conditions, such as electronic monitoring or mandating enrollment in therapeutic or other supportive services, could mitigate the risk of danger. *Hechavarria v. Sessions*, 2018 WL 5776421, at *9 n.13 (W.D.N.Y. Nov. 2, 2018) ("Whether detention is necessary to serve a compelling regulatory purpose requires consideration of whether a less restrictive alternative to detention ... would also address those purposes."). The constitutionally inadequate procedural protections at Mr. Mendoza Raymundo's first bond hearing pose a risk of erroneous deprivation.

110. The third *Mathews* factor involves an examination of the government's interests at stake. *Velasco Lopez*, 979 F.3d at 854. This factor also weighs in Mr. Mendoza Raymundo's favor because the government has no interest in detaining someone who poses neither a danger nor a risk of flight. *Id.*; see also *Arana*, 2020 WL 7342833 at *6-7. The additional burden on the government to attempt to prove the necessity of detention is minimal here, where it can rely upon its "substantial resources and access to sources of information" and has already done so for purposes of the merits case. *Velasco Lopez*, 978 F.3d at 854.

111. IJ Reid's requirement that Mr. Mendoza Raymundo carry the burden at his bond hearing, as well as the failure to consider alternatives to detention, despite the gravity of Mr. Mendoza Raymundo's liberty deprivation, was unconstitutional. The lack of sufficient process, wherein the government justifies his detention by clear and convincing evidence, after this prolonged period of detention, similarly violates his due process rights.

112. Should Mr. Mendoza Raymundo be released on bond after a constitutionally adequate bond hearing, "all interested parties" will have prevailed: the government "because it has no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community;" Mr. Mendoza Raymundo "because he is no longer incarcerated;" and the public because its "interest in seeing that individuals who need not be jailed are not incarcerated has been vindicated." *Velasco Lopez*, 978 F.3d at 857.

COUNT TWO

MR. MENDOZA RAYMUNDO 'S DETENTION VIOLATES THE ADMINISTRATIVE PROCEDURES ACT – 5 U.S.C. § 701 et seq.

113. IJ Reid's requirement that Mr. Mendoza Raymundo carry the burden in his § 1226(a) bond hearing was rooted in an invalid agency interpretation.

114. The burden allocation violates the APA because it violates the Due Process clause of the Fifth Amendment.

115. In addition, the decision in *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999), is arbitrary and capricious.

116. *Adeniji* was arbitrary and capricious because the BIA relied on an incorrect and inapplicable regulation when it shifted the burden to establish eligibility for release to detainees. *Compare* 8 C.F.R. § 236.1(c)(8), *with* § 236.1(d)(1).

117. The agency also acted unreasonably in deciding *Adeniji* because its decision constituted an unexplained departure from precedent that called for a presumption against detention. Specifically, the BIA abandoned the long-standing case law that favored liberty for non-criminal detainees and created a new presumption in favor of detention.

118. Lastly, *Adeniji* is an invalid agency decision as applied to Mr. Mendoza Raymundo because it was a custom-made solution for a uniquely situated detainee based on a stipulation from the parties. The outcome of *Adeniji* depended on a stipulation on a significant legal issue and a desire to avoid a windfall for a specific noncitizen convicted of an aggravated felony whose eligibility for bond was mere happenstance. *See Adeniji*, 22 I&N Dec. at 1105, 1109, 1112. The BIA's precedent placing the burden on all noncitizens, including those who do not have aggravated felony convictions, in § 1226(a) hearings, is therefore arbitrary and capricious.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;

- 2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the New York ICE Field Office pending the resolution of this case;
- 3) Issue an order to show cause directing the government to respond to this Petition within three (3) days, and hold a hearing within eight (8) days, pursuant to 28 U.S.C. § 2243;
- 4) Issue a writ of habeas corpus directing Respondents to provide Petitioner, within seven days, a constitutionally adequate, individualized hearing before an impartial adjudicator (this Court, or, in the alternative, an Immigration Judge) at which Respondents bear the burden of establishing by clear and convincing evidence that continued detention is justified and that no alternative to detention will suffice, and at which ability to pay is considered, and to immediately release Petitioner from custody on his own recognizance or on reasonable conditions of supervision if such hearing is not provided;
- 5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 6) Grant any other and further relief that this Court deems just and proper.

Dated: April 17, 2026
New York, New York

Respectfully submitted,

/s/ Juan Quevedo Gutierrez
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Counsel for Petitioner

Exhibits

- A. Declaration of Austin Thierry, Esq.
- B. *Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, AILA (Jan. 14, 2026)
- C. Form I-862, Notice to Appear
- D. Immigration Judge Dara F. Reid's Bond Order
- E. Immigration Judge Dara F. Reid's Bond Memorandum

VERIFICATION

I, Juan Quevedo Gutierrez, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: April 17, 2026

/s/ Juan Quevedo Gutierrez
Juan Quevedo Gutierrez
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