

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

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
* JUNE 11, 2026 *
BROOKLYN OFFICE

VENANCIO DE JESUS ESPINAL FRIAS,

Petitioner,

-against-

**RAUL MALDONADO JR., Warden,
Metropolitan**

Detention Center, Brooklyn;

TODD M. LYONS, Acting Director, U.S.

Immigration and Customs Enforcement;

MARKWAYNE MULLIN, Secretary, U.S.

Department of Homeland Security; and

**TODD BLANCHE, Attorney General of the
United States,**

Respondents.

)
)
) Civil Action No.: 26-CV-3502
) Judge Ramon E. Reyes

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

**TO: THE WARDEN, METROPOLITAN DETENTION CENTER, BROOKLYN; THE
ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; THE
SECRETARY OF HOMELAND SECURITY; THE ATTORNEY GENERAL OF THE
UNITED STATES; AND ANY OTHER OFFICERS OR AGENTS HAVING CUSTODY
OF THE PETITIONER.**

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Venancio de Jesus Espinal Frias, by and through his undersigned counsel, respectfully files this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner is currently detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Metropolitan Detention Center, Brooklyn ("MDC Brooklyn"), in Brooklyn, New York. Petitioner respectfully requests that this Court grant a writ of habeas corpus and the other relief described below. In support of this Petition, Petitioner states the following:

INTRODUCTION

1. Petitioner is 59 years old. He is a native and citizen of the Dominican Republic who has lived in the United States continuously since March 25, 2005. He is married to a United States citizen, Nelly Altagracia Abreu Fernandez, who filed a Form I-130 Petition for Alien Relative on his behalf that U.S. Citizenship and Immigration Services approved on October 28, 2025. He has two children who are lawful permanent residents, as well as numerous United States citizens and lawful permanent resident siblings. He is the primary financial provider for his family. He has no felony convictions and no criminal history that would disqualify him from relief.
2. ICE has detained Petitioner since January 29, 2026, which is a period of more than four months. He has been confined at MDC Brooklyn, a facility operated by the Federal Bureau of Prisons, since February 4, 2026, and he does not appear in ICE's online Detainee Locator.
3. Petitioner received an initial bond hearing on March 31, 2026, at which the Immigration Judge declined to set bond on the ground that Immigration Judges lack jurisdiction over a person who entered without admission.¹ After Petitioner sought habeas relief, the district court held that he is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and ordered an individualized bond hearing. At that court-ordered hearing on April 16, 2026, the Immigration Judge — no longer relying on any lack of jurisdiction — denied bond, finding Petitioner a “danger to the community.” That finding rested entirely on Petitioner's January 2026 arrest, which was dismissed and resolved as a single non-criminal disorderly conduct violation, with no conviction of any kind. No decisionmaker has required the Government to justify Petitioner's continued detention by clear and convincing evidence, even though he has now been confined for more than four months.
4. On April 23, 2026, the Immigration Judge ordered Petitioner removed to the Dominican Republic, and ICE has continued to detain him while purportedly pursuing that removal. More than four months into his confinement and more than a month after the removal

¹See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (holding that, under INA § 235(b)(2)(A), Immigration Judges lack authority to grant bond to noncitizens present in the United States without admission). The statutory premise of that decision has been rejected by the Second Circuit. See *Cunha v. Freden*, No. 25-3141-PR, 2026 WL 1146044 (2d Cir. Apr. 28, 2026).

order, the Government has not shown any significant likelihood of removing Petitioner in the reasonably foreseeable future and has not taken any meaningful step to do so. His continued, open-ended detention is therefore unlawful under 8 U.S.C. § 1231(a)(6) and the Due Process Clause. Petitioner previously challenged his detention in this District in *Espinal Frias v. Maldonado*, No. 1:26-cv-1810 (E.D.N.Y.), which he voluntarily dismissed without prejudice on May 19, 2026, in light of intervening developments, including the Immigration Judge's April 23, 2026 order of removal. This Petition challenges the lawfulness of Petitioner's detention as it stands today.

5. Independently, and whatever the statutory label for his custody, controlling law makes clear that once immigration detention becomes prolonged, due process requires a hearing at which the Government, not the detainee, bears the burden of justifying continued confinement by clear and convincing evidence.² The April 16, 2026 hearing did not apply that standard: the Immigration Judge denied bond on a bare finding of dangerousness drawn from a dismissed arrest, without requiring the Government to carry any burden, let alone by clear and convincing evidence.
6. To the extent any custody finding has been made, the determination that Petitioner is a "danger to the community" rested on his January 28, 2026 arrest. This determination was not based on any conviction. The principal felony charge was dismissed, and the matter was reduced to a single non-criminal disorderly conduct violation. The Government's suggestion during the hearing that Petitioner was subject to mandatory detention as a noncitizen because there is "reason to believe" he trafficked in controlled substances is unsupported: the dismissed charges produced no conviction, and the police report included medications at issue that are not federally controlled substances. *See Exhibit H.*
7. Along with an incorrect ruling regarding the "dangerousness" of the Petitioner, a disorderly conduct violation imposed onto the Petitioner should not be deemed to justify ruling him to be a risk of flight.
8. Petitioner has substantial ties to the United States. He has a United States citizen spouse who depends on him, an approved I-130 immediate-relative petition through which he is pursuing lawful permanent residence, more than 20 years of continuous residence, and

²See *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020) (holding that prolonged detention under 8 U.S.C. § 1226(a) without the Government justifying continued confinement violates due process, and that the Government must bear the burden of proving danger or flight risk by clear and convincing evidence).

extensive family and community support. He has a clear path to citizenship, as he plans to file applications for relief under a 601(a) waiver and an I-212 waiver based on the I-130 approval he has received. His only arrest in the United States, a minor charge dismissed as a non-criminal disorderly conduct violation, resulted in no conviction. He has identified a United States citizen bond sponsor and is willing to comply with any reasonable conditions of supervision. His wife suffers from several chronic medical conditions that require ongoing care. Having been detained for more than four months without any determination that his continued confinement is justified, Petitioner is entitled to release. Moreover, the Government has not demonstrated any ability to remove Petitioner within a reasonable time: more than a month has passed since he was ordered removed; his removal order is not final because he reserved appeal; his applications for relief remain pending; and no meaningful step has been taken to effect his deportation.

9. Petitioner further requests, as an essential component of this Court's ability to grant meaningful relief, an immediate order prohibiting Respondents from transferring him outside the Eastern District of New York while this Petition is pending. ICE routinely transfers detainees on short or no notice. A transfer outside this District would defeat this Court's habeas jurisdiction, separate Petitioner from his counsel and family, and frustrate the relief this Petition seeks.
10. Petitioner respectfully asks this Court to: (i) order Respondents to show cause why a writ of habeas corpus should not issue; (ii) issue a writ of habeas corpus directing Respondents to release him from custody on his own recognizance or on reasonable conditions of supervision; (iii) issue an order, immediately upon filing and pending resolution of this Petition, prohibiting Respondents from transferring Petitioner outside the Eastern District of New York or otherwise removing him from this Court's jurisdiction; and (iv) grant any other relief the Court considers just and proper.

JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause); and the Fifth Amendment to the United States Constitution.

12. This Court has jurisdiction even though Petitioner is subject to a removal order. The bar on review in 8 U.S.C. § 1252 does not apply to a habeas challenge to the lawfulness of immigration detention.³ Petitioner challenges only his present civil detention; he does not seek review of any final order of removal.
13. Venue is proper in the Eastern District of New York because Petitioner is detained at MDC Brooklyn, in Kings County, New York, and his immediate custodian is located within this District.⁴
14. To preserve this Court's jurisdiction and its ability to grant meaningful relief, Petitioner requests that the Court enjoin Respondents from transferring him outside this District during the pendency of this Petition.

PARTIES

15. Petitioner, Venancio de Jesus Espinal Frias, is a native and citizen of the Dominican Republic, born on [REDACTED]. His Alien Registration Number is [REDACTED]. He entered the United States on March 25, 2005, across the United States-Canada border, without admission or parole, and has lived continuously in the United States since that date. Before his detention, Petitioner lived at [REDACTED]. [REDACTED] He is currently detained at the Metropolitan Detention Center, Brooklyn, 80 29th Street, Brooklyn, New York 11232 (Bureau of Prisons Register No. 00858-506).
16. Respondent Raul Maldonado Jr. is the Warden of the Metropolitan Detention Center, Brooklyn, sued in his official capacity. The Warden has day-to-day control over Petitioner's confinement and is Petitioner's immediate custodian for purposes of *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).⁵
17. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, sued in his official capacity, with authority over ICE operations nationwide, including the detention of persons like Petitioner.
18. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security, sued in his official capacity. ICE is a component of the Department

³See *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

⁴See *Rumsfeld v. Padilla*, 542 U.S. 426, 442–47 (2004).

⁵See *Padilla*, 542 U.S. at 442.

of Homeland Security, and the Secretary has authority over its immigration enforcement actions.

19. Respondent Todd Blanche is the Attorney General of the United States, sued in his official capacity, and has authority over the Executive Office for Immigration Review, including the Immigration Courts.

STATEMENT OF FACTS

A. Petitioner's Background and Family in the United States

20. Petitioner is a 59-year-old citizen of the Dominican Republic, born on [REDACTED]. He entered the United States on March 25, 2005, across the United States–Canada border without admission or parole and has resided continuously in this country for more than twenty years. His home address is [REDACTED] where he resided prior to his detention. *See Exhibit F.*
21. Petitioner is married to Nelly Altagracia Abreu Fernandez, a United States citizen who naturalized on August 8, 2025. The couple married on June 17, 2023. *See Exhibits B and C.* Petitioner has deep family ties in the United States. His daughter, [REDACTED] [REDACTED] are lawful permanent residents. His wife, several siblings, and other close relatives are either United States citizens or lawful permanent residents. *See Exhibit K.* Although one son and several siblings reside in the Dominican Republic, the center of Petitioner's family life has been in the United States for decades. *See Exhibit D.* Petitioner is the primary financial provider for his household and has long been employed as a grocery store clerk. *See Exhibit I.*
22. Petitioner also has an approved Form I-130 Petition for Alien Relative filed by his United States citizen spouse, which was approved on October 28, 2025. *See Exhibit A.* In addition, he has sought cancellation of removal based on the hardship his removal would cause to his qualifying United States citizen and lawful permanent resident family members. *See Exhibit G.*
23. Petitioner's family and community ties are extensive and well documented. Numerous letters submitted on his behalf attest to his good moral character, strong work ethic, and longstanding presence in the community. He has identified a bond sponsor, Angeury Perez Espinal, a United States citizen who is gainfully employed and willing to provide

housing, financial support, and assistance in ensuring Petitioner's appearance at all future immigration proceedings. *See Exhibit M.*

24. Petitioner's wife suffers from several chronic medical conditions, including  all of which require ongoing medical care and monitoring. *See Exhibit E.*

25. Prior to his January 2026 detention, Petitioner had no criminal history. He has only had one arrest in the entirety of his time in the United States, which resulted in him pleading guilty to a disorderly conduct charge. Petitioner has never been convicted of a felony and has no prior criminal record. *See Exhibit H.*

B. Petitioner's Pending Immigration Relief

26. On October 28, 2025, U.S. Citizenship and Immigration Services approved a Form I-130, Petition for Alien Relative, filed by Petitioner's United States citizen spouse. As the spouse of a United States citizen, Petitioner is an "immediate relative" under INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i), for whom a visa is immediately available. He has a clear path to relief through 601 (a) and I-212 waivers, should he choose not to continue with his appeal. *See Exhibit A.*

27. Petitioner filed an application for cancellation of removal for certain nonpermanent residents under INA § 240A(b), 8 U.S.C. § 1229b(b) (Form EOIR-42B), on March 2, 2026, based on the exceptional and extremely unusual hardship his removal would cause his United States citizen and lawful permanent resident family members; the associated fee was paid on February 17, 2026. He was given a very brief amount of time to gather hardship documents while detained, and as a result of his inability to gather these documents to show "prima facie relief", he was ordered removed without an individual hearing. He is currently appealing this matter. *See Exhibit G.*

C. Petitioner's Arrest and the Disposition of the Criminal Matter

28. On January 28, 2026, Petitioner was arrested in Nassau County, New York, during a law-enforcement action at the grocery store where he worked. He was charged with Criminal Diversion of Prescription Medications and Prescriptions in the Third Degree (a class E felony) and three class A misdemeanors relating to gambling. *See Exhibit H.*

29. The principal felony charge was dismissed. The matter was reduced to, and resolved as, a single disorderly conduct violation, with a conditional discharge and a fine. Under New York law, disorderly conduct is a non-criminal violation, not a crime. Petitioner has no felony conviction and no prior criminal history. *See Exhibit H.*

D. Petitioner's Detention and Procedural History

30. On January 28, 2026, ICE issued a Form I-200 warrant. On January 29, 2026, ICE took Petitioner into custody, issued a Notice to Appear charging him as a person present without admission or parole under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and began removal proceedings. Petitioner was transferred among facilities and, on February 4, 2026, was moved to MDC Brooklyn, where he has remained since.
31. At master calendar hearings on February 17 and March 3, 2026, the allegations were addressed, and an individual merits hearing was scheduled. On March 2, 2026, Petitioner filed his application for cancellation of removal. *See Exhibit G.*
32. On March 25, 2026, Petitioner filed a request for bond redetermination. At the bond hearing on March 31, 2026, the Immigration Judge denied the request for lack of jurisdiction, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
33. On March 26, 2026, Petitioner filed a petition for a writ of habeas corpus in this District challenging his detention. *See Espinal Frias v. Maldonado*, No. 1:26-cv-1810 (E.D.N.Y.) (Komitee, J.). On April 10, 2026, the district court held that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and directed Respondents to afford him an individualized bond hearing on or before April 16, 2026. The court further declined to credit the Government's alternative theory of mandatory detention under 8 U.S.C. § 1226(c)(1)(A), which had not been presented to the immigration authorities, and directed the Government to raise any such argument before the immigration court in the first instance. Petitioner later voluntarily dismissed that petition without prejudice on May 19, 2026, in light of intervening developments, including the Immigration Judge's April 23, 2026 order of removal.
34. At the court-ordered bond hearing on April 16, 2026, the Immigration Judge exercised jurisdiction under 8 U.S.C. § 1226(a) and, for the first time, reached the merits of Petitioner's custody. The Immigration Judge denied bond, finding only that Petitioner is a "danger to the community." The sole basis for that finding was Petitioner's January 28,

2026 arrest, which had been dismissed and resolved as a non-criminal disorderly conduct violation. *See Exhibit H*. The order reflects no written reasoning and no finding that the Government carried any burden of proof.

35. On April 23, 2026, the Immigration Judge ordered Petitioner removed to the Dominican Republic, deeming his applications for relief abandoned on the ground that proof of statutory eligibility for cancellation of removal had not been filed by the deadline set at the March 3, 2026 master calendar hearing. Petitioner reserved appeal. He remains detained at MDC Brooklyn and has now been confined for more than four months.

LEGAL FRAMEWORK

A. Petitioner's Prolonged Detention Pending Removal Is Unlawful Because There Is No Significant Likelihood of His Removal in the Reasonably Foreseeable Future

36. Civil immigration detention is authorized only by statute and only within constitutional limits. Detention during the pendency of removal proceedings is governed by 8 U.S.C. § 1226, while detention after an order of removal has been entered is governed by 8 U.S.C. § 1231(a). On April 23, 2026, the Immigration Judge ordered Petitioner removed to the Dominican Republic. The Government therefore now detains Petitioner, if at all, under § 1231(a) as it purports to carry out that order.
37. Detention under § 1231(a) is not open-ended. Following an order of removal, the Government is afforded a ninety-day "removal period" within which to effect removal. 8 U.S.C. § 1231(a)(1). Although § 1231(a)(6) permits continued detention beyond that period in limited circumstances, that authority has been construed to permit detention only for a period reasonably necessary to bring about the noncitizen's removal, and not indefinitely; once the presumptively reasonable six-month period has passed, a detained person is entitled to release if there is no significant likelihood of removal in the reasonably foreseeable future.⁶
38. Petitioner's case presents precisely the circumstances in which continued detention cannot be sustained. He has now been confined for more than four months. He reserved appeal of the April 23, 2026 removal order, his applications for relief remain unresolved, and his removal is therefore neither imminent nor reasonably foreseeable. The

⁶See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Enoh v. Sessions*, 236 F. Supp. 3d 787 (W.D.N.Y. 2017) (ordering a bond hearing for a noncitizen detained more than six months under § 1231(a)).

Government has identified no travel document, no scheduled removal, and no other concrete step taken to effectuate his removal in the more than one month since the order was entered. On this record, there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future; his continued detention serves no legitimate purpose, and courts in this Circuit have ordered the release of noncitizens held in comparable circumstances.⁷

39. Moreover, to the extent any pending appeal renders the removal order non-final, Petitioner's detention remains governed by 8 U.S.C. § 1226(a), under which he is eligible for release on bond; and should he obtain a stay of removal in connection with his pending proceedings, his detention likewise reverts to § 1226(a). Under either statute, no provision authorizes Petitioner's continued, unreasonably prolonged confinement.⁸

B. Due Process Limits on Prolonged Civil Detention

40. The Due Process Clause of the Fifth Amendment applies to all persons within the United States, including noncitizens, and freedom from physical confinement lies at the core of the liberty it protects.⁹
41. Whether a particular detention comports with due process is assessed under the familiar balancing of the private liberty interest, the risk of erroneous deprivation under the procedures used, and the Government's interest.¹⁰ The Second Circuit has applied that framework to immigration detention and held that, while the Government's interest may justify short-term detention at the outset, that balance shifts as confinement becomes prolonged.
42. Once immigration detention is prolonged, due process requires a hearing at which the Government bears the burden of justifying continued confinement and must prove by clear and convincing evidence that the person poses a danger or flight risk. This applies

⁷See *Rueda v. Catletti*, No. 26-CV-2977 (VSB), 2026 WL 1194956 (S.D.N.Y. May 1, 2026); *Guardado v. Maldonado*, No. 26-CV-1170 (OEM), 2026 WL 670156 (E.D.N.Y. Mar. 10, 2026) (ordering release of a noncitizen who entered without admission and was detained by the same Warden); *Leiva v. Shanahan*, No. 26-CV-1509 (PKC), 2026 WL 829119 (E.D.N.Y. Mar. 26, 2026); see also *Ortiz v. Freden*, 808 F. Supp. 3d 579 (W.D.N.Y. 2025); *Melara v. Tellez*, No. 26-CV-1453 (AMD), 2026 WL 1146054 (E.D.N.Y. Apr. 28, 2026).

⁸See *Hechavarria v. Sessions*, 891 F.3d 49 (2d Cir. 2018).

⁹See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing that freedom from physical confinement lies at the core of the liberty the Due Process Clause protects).

¹⁰See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Velasco Lopez*, 978 F.3d at 851 (applying the *Mathews* factors to prolonged immigration detention).

whether or not the detainee is confined under § 1226(a) or § 1231(a).¹¹ The Second Circuit has confirmed that due process precludes a noncitizen's unreasonably prolonged detention without a bond hearing.¹² Courts in this Circuit have repeatedly ordered such hearings and required the Government to prove dangerousness or flight risk by clear and convincing evidence.¹³ Detaining a person for months without such a hearing and placing the burden on the detainee violates due process.

43. Due process also constrains the evidence on which a finding of dangerousness may rest. While an Immigration Judge may consider a detainee's arrest history within the totality of the circumstances¹⁴, an arrest is not an adjudication of guilt, and courts in this Circuit have cautioned that an adjudicator should not rely on a police report or criminal complaint "absent a conviction or corroborating evidence of the allegations contained therein,"¹⁵ and that a bare arrest is "not compelling evidence" that a person poses a danger that cannot be mitigated short of detention.¹⁶

C. Risk of Flight

44. Preventing flight is one of only two legitimate, nonpunitive purposes that can justify civil immigration detention; the other is protecting the community from danger.¹⁷ Detention untethered from either purpose cannot stand.
45. In assessing flight risk, adjudicators in this Circuit consider a familiar set of factors: whether the noncitizen has a fixed address in the United States; the length of his residence here; his family ties, including whether they may entitle him to remain; his employment history; his record of appearing for court and immigration proceedings; his criminal record; his immigration history; and any prior attempts to flee.¹⁸ The inquiry is holistic, and no single minor incident is dispositive.

¹¹See *Velasco Lopez*, 978 F.3d at 851; see also *Foucha v. Louisiana*, 504 U.S. 71 (1992); *Addington v. Texas*, 441 U.S. 418 (1979).

¹²See *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024).

¹³See *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000 (S.D.N.Y. May 7, 2021); *Garcia v. Decker*, 448 F. Supp. 3d 297 (S.D.N.Y. 2020).

¹⁴See *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *4 n.4 (S.D.N.Y. May 7, 2021).

¹⁵See *Melara v. Tellez*, No. 26-CV-1453 (AMD), 2026 WL 1146054 (E.D.N.Y. Apr. 28, 2026).

¹⁶See *Banegas*, 2021 WL 1852000, at *4 n.4.

¹⁷See *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (the Government has identified its legitimate interests under § 1226(a) as ensuring appearance and preventing danger; it has no interest in detaining a noncitizen who is neither a flight risk nor a danger).

¹⁸See *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (identifying factors relevant to a custody determination, including a fixed address, length of residence, family ties, employment history, and record of appearance in court).

46. Most important, once detention becomes prolonged the burden does not rest on the detainee. Due process requires the Government to prove flight risk by clear and convincing evidence, and a noncitizen's sustained compliance with supervision, settled residence, and strong community ties weigh heavily against any such finding.¹⁹

D. "Danger to the Community" Standard

47. In the ordinary bond context, the Board of Immigration Appeals analyzes dangerousness before flight risk: a noncitizen must first show that he is not a danger to the community, and only if he makes that showing does the adjudicator proceed to assess flight risk.²⁰
48. That framework, however, presupposes a constitutionally adequate hearing. Once immigration detention becomes prolonged, the Due Process Clause shifts the burden to the Government, which must prove dangerousness by clear and convincing evidence; the detainee need not prove a negative.²¹
49. Due process also constrains the evidence on which a dangerousness finding may rest. A bare arrest that produced no conviction is not an adjudication of guilt, and an adjudicator should not rely on a police report or criminal complaint absent a conviction or corroborating evidence of the allegations it contains.²²
50. Where dangerousness has been sustained notwithstanding dismissed charges, it has rested on additional, corroborated indicia of danger. These entail actual criminal convictions and conduct found without clear error, not on the dismissed charges alone.²³ Absent such corroboration, a dismissed arrest reduced to a non-criminal violation is not compelling evidence of danger.

¹⁹See *Velasco Lopez*, 978 F.3d at 851, 855; *W.A.C. v. Rokosky*, No. 26-cv-03419, 2026 U.S. Dist. LEXIS 109092 (D.N.J. May 18, 2026) (record could not support a flight-risk finding where the noncitizen had complied with conditions of supervision for years and had previously surrendered himself for removal).

²⁰See *Matter of Dubon Miranda*, 29 I&N Dec. 335, 337 (BIA 2025) ("Dangerous aliens are properly detained without bond," and "Only if an alien demonstrates that he does not pose a danger to the community should an Immigration Judge continue to a determination regarding the extent of flight risk posed by the alien" (quoting *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009))).

²¹See *Velasco Lopez*, 978 F.3d at 851; *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024).

²²See *Melara v. Tellez*, No. 26-CV-1453 (AMD), 2026 WL 1146054 (E.D.N.Y. Apr. 28, 2026); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *4 n.4 (S.D.N.Y. May 7, 2021).

²³See *Matter of Dubon Miranda*, 29 I&N Dec. at 336-37 (sustaining detention where, beyond charges that had been dismissed, the record included criminal convictions for driving under the influence and disturbing the peace and inappropriate conduct toward a minor found without clear error).

GROUND FOR RELIEF

GROUND ONE — Petitioner’s Prolonged Detention Pending Removal Is Unlawful Because There Is No Significant Likelihood of His Removal in the Reasonably Foreseeable Future

51. Petitioner restates every paragraph above as if fully repeated here.
52. Petitioner is now subject to an order of removal and is detained, if at all, under 8 U.S.C. § 1231(a). Section 1231(a)(6) authorizes detention only for the period reasonably necessary to effect removal; it does not authorize indefinite or unreasonably prolonged confinement. Petitioner has been detained for more than four months; he reserved appeal of the April 23, 2026 removal order; his applications for relief remain pending; and the Government has taken no meaningful step to remove him in the more than one month since the order was entered. Accordingly, there is no significant likelihood of his removal in the reasonably foreseeable future, and his continued detention is unlawful. The appropriate remedy is release. To the extent any pending appeal renders the removal order non-final, Petitioner is detained under § 1226(a) and is eligible for release on bond; under either statute, no provision authorizes his continued, open-ended confinement.²⁴

GROUND TWO — Petitioner’s Unreasonably Prolonged Detention Violates Due Process and Requires That the Government Justify His Continued Confinement by Clear and Convincing Evidence

53. Petitioner restates every paragraph above as if fully repeated here.
54. Petitioner has now been detained for more than four months. At his initial hearing on March 31, 2026, the Immigration Judge denied bond without reaching the merits; and at the court-ordered hearing on April 16, 2026, the Immigration Judge denied bond on a bare finding that Petitioner is a “danger to the community,” drawn solely from his dismissed disorderly conduct disposition and without requiring the Government to justify his continued confinement. Under controlling Second Circuit law, once immigration detention becomes prolonged, due process requires a hearing at which the Government bears the burden of proving, by clear and convincing evidence, that the person is a danger

²⁴See *Rueda*, 2026 WL 1194956, at *4; *Zachvydas v. Davis*, 533 U.S. 678, 701 (2001); *Ortiz v. Freden*, 808 F. Supp. 3d 579 (W.D.N.Y. 2025); *Guardado v. Maldonado*, No. 26-CV-1170 (OEM), 2026 WL 670156 (E.D.N.Y. Mar. 10, 2026).

to the community or a flight risk.²⁵ At no hearing has the Government been required to carry that burden, and the April 16, 2026 denial rested on nothing more than a dismissed arrest. Petitioner's continued, prolonged detention without a hearing at which the Government justifies confinement by clear and convincing evidence violates the Due Process Clause, and the appropriate remedy is release.

GROUND THREE — The April 16, 2026 Finding That Petitioner Is a Danger to the Community Cannot Be Sustained Because It Rests on a Dismissed Arrest That Produced No Conviction

55. Petitioner restates every paragraph above as if fully repeated here.
56. The Immigration Judge's April 16, 2026 finding that Petitioner is a danger to the community was arbitrary. It rests entirely on his January 28, 2026 arrest and its underlying allegations, not on any conviction, and the only disposition that arrest produced was a single non-criminal disorderly conduct violation. The felony charge was dismissed, and the matter was reduced to a non-criminal disorderly conduct violation. *See Exhibit H.* The Government's alternative "reason to believe" theory of controlled-substance trafficking is likewise unsupported, because there was no conviction and the medications at issue are not federally controlled substances. Although an Immigration Judge may consider arrest history within the totality of the circumstances, an uncorroborated arrest that produced no conviction is not compelling evidence of dangerousness.²⁶ A court in this Circuit recently rejected a materially identical dangerousness theory, holding that where a petitioner's criminal charges were dismissed and resolved as a non-criminal disorderly-conduct violation, any argument that he posed a danger to the community would fail.²⁷ Because the felony was dismissed and the matter resolved as a non-criminal violation, the dangerousness finding cannot be sustained on this record by clear and convincing evidence.

GROUND FOUR — Violation of the Due Process Clause of the Fifth Amendment

57. Petitioner restates every paragraph above as if fully repeated here.

²⁵ See *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024); *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000 (S.D.N.Y. May 7, 2021).

²⁶ See *Melara v. Tellez*, No. 26-CV-1453 (AMD), 2026 WL 1146054 (E.D.N.Y. Apr. 28, 2026); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *4 n.4 (S.D.N.Y. May 7, 2021).

²⁷ See *Rueda v. Catletti*, No. 26-CV-2977 (VSB), 2026 WL 1194956, at *4 (S.D.N.Y. May 1, 2026).

58. The Due Process Clause requires that civil immigration detention be authorized by law and attended by adequate procedural protections. Petitioner's detention has become unreasonably prolonged; the Government has never been required to justify his confinement by clear and convincing evidence; and the determination that he is a danger to the community rests on a single arrest that produced a disorderly conduct conviction. Petitioner has powerful equities and every incentive to appear: a United States citizen spouse who depends on him, an approved I-130 immediate-relative petition through which he is pursuing lawful permanent residence, more than twenty years of continuous residence, a United States citizen bond sponsor, no felony conviction, no record of ever failing to appear, and a willingness to comply with any condition of supervision, including GPS monitoring. These ties and his approved I-130 confirm that he is neither a flight risk nor a danger, and that his continued detention serves no legitimate governmental purpose. *See Exhibits A-D, J-M*. Where, as here, civil custody is unjustified and unreasonably prolonged, due process requires release.

GROUND 5 – Petitioner cannot be deemed a “danger to the community” as to justify his detention.

59. Petitioner restates every paragraph above as if fully repeated here.

60. The only basis ever offered for detaining Petitioner as a danger to the community is his January 28, 2026 arrest. That arrest produced no conviction. The principal felony charge was dismissed, and the matter was resolved as a single non-criminal disorderly conduct violation under New York law. Under New York law, disorderly conduct is a violation rather than a crime.²⁸

61. Respondent's conviction for Disorderly Conduct, N.Y. Penal Law § 240.20, is neither an aggravated felony under INA § 101(a)(43) nor a crime involving moral turpitude. The offense is a violation under New York law and lacks any element of fraud, theft, intent to permanently deprive, or conduct that is inherently base, vile, or depraved as required for a CIMT determination.²⁹

²⁸ See N.Y. Penal Law § 240.20; N.Y. Penal Law § 10.00(3), (6).

²⁹ See *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016); see also *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004) (discussing the meaning of a “conviction” for immigration purposes and emphasizing the distinction between criminal offenses and lesser violations).

62. A disorderly conduct violation is not an aggravated felony, because it does not fall within any of the aggravated felony categories enumerated in INA § 101(a)(43), 8 U.S.C. § 1101(a)(43). Aggravated felonies are limited to specifically enumerated serious offenses.³⁰ This violation also cannot be deemed a crime involving moral turpitude, being that this offense lacks the element of inherent baseness or depravity required for such a designation.³¹ A finding of dangerousness cannot rest on that record.³²
63. Because Petitioner's detention is now prolonged, the Government—not Petitioner—bears the burden of proving dangerousness, and it must do so by clear and convincing evidence. A dismissed arrest cannot carry that burden.³³
64. Courts in this District have ordered release on records far stronger for the Government than this one. In *Y.S.A. v. Genalo*, when the court was addressing the same Warden and custodial officials named here, it held that the Government could not justify detention where the petitioner had only a single, decade-old criminal conviction and deep community ties, and did not, and could not, argue that the petitioner was a danger or a flight risk.³⁴ Petitioner's record is even weaker for the Government: he has no convictions at all.
65. Likewise, even an actual conviction that is a decade old does not establish present dangerousness, and release is the appropriate remedy where the Government cannot show danger.³⁵ Here there is not even a conviction, but merely a dismissed arrest reduced to a non-criminal violation.
66. Nor can the Government revive a dangerousness theory through its suggestion that there is "reason to believe" Petitioner trafficked in controlled substances. There was no conviction, and the medications identified in the police report are not federally controlled substances. New York's controlled-substance schedules are broader than the federal

³⁰See INA § 101(a)(43), 8 U.S.C. § 1101(a)(43)

³¹ See *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016); see also USCIS Policy Manual, Vol. 12, Part F, Ch. 5 (CIMTs generally involve willful conduct that is morally reprehensible and intrinsically wrong).

³²See *Melara v. Tellez*, No. 26-CV-1453 (AMD), 2026 WL 1146054 (E.D.N.Y. Apr. 28, 2026); *Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *4 n.4 (S.D.N.Y. May 7, 2021).

³³See *Velasco Lopez*, 978 F.3d at 851; *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024).

³⁴See *Y.S.A. v. Genalo*, No. 26-CV-1557 (AMD), 2026 U.S. Dist. LEXIS 74092 (E.D.N.Y. Apr. 3, 2026) (granting habeas relief and ordering release where the Government did not argue, and could not show on the record, that the petitioner was a danger to the community or a flight risk).

³⁵See *W.A.C. v. Rokosky*, No. 26-cv-03419, 2026 U.S. Dist. LEXIS 109092 (D.N.J. May 18, 2026) (a decade-old conviction, standing alone, does not establish present dangerousness, and release is appropriate where the Government cannot make that showing).

schedules, so a New York drug charge does not categorically establish a federally cognizable controlled-substance offense.³⁶

67. Because no decisionmaker has required the Government to prove dangerousness by clear and convincing evidence. Being that the only evidence here to justify his “dangerousness” is a dismissed, non-criminal disorderly conduct disposition, this ultimately cannot support such a finding. Therefore, the dangerousness rationale cannot justify Petitioner’s continued detention. The appropriate remedy is release.

GROUND 6 – Petitioner’s Disorderly Conduct Disposition should not justify the determination that he is a “flight risk.”

68. Petitioner restates every paragraph above as if fully repeated here.
69. No decisionmaker has found Petitioner to be a flight risk. The April 16, 2026 denial of bond rested solely on a finding of dangerousness; the Immigration Judge made no flight-risk finding at all. To the extent the Government now invokes Petitioner’s disorderly conduct disposition to suggest a risk of flight, that reliance is misplaced.
70. A non-criminal disorderly conduct violation has no logical bearing on whether Petitioner will appear for future proceedings. The recognized flight-risk factors uniformly favor him: more than twenty years of continuous residence in the United States; a fixed home address in Copiague, New York; a United States citizen spouse who depends on him; an approved I-130 immediate-relative petition through which he is pursuing lawful permanent residence; two lawful permanent resident children and extensive family ties; a longstanding employment history; an identified United States citizen bond sponsor; and a willingness to comply with any condition of supervision. He has no history of failing to appear.³⁷
71. Petitioner’s powerful incentives to remain and litigate confirm the absence of flight risk: a person pursuing an approved immediate-relative petition and appeal has every reason to appear, not to abscond. Courts in this District and Circuit have recognized that such ties and compliance defeat a flight-risk rationale.³⁸

³⁶See *Harbin v. Sessions*, 860 F.3d 58 (2d Cir. 2017) (New York’s controlled-substance schedules are broader than the federal schedules, so a New York controlled-substance offense does not categorically establish a federally cognizable controlled-substance offense). See Exhibit H.

³⁷See *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). See Exhibits A–D, J–M.

³⁸See *Y.S.A. v. Genalo*, No. 26-CV-1557 (AMD), 2026 U.S. Dist. LEXIS 74092 (E.D.N.Y. Apr. 3, 2026); *Velasco Lopez*, 978 F.3d at 854.

72. In all events, because Petitioner's detention is prolonged, the Government bears the burden of proving flight risk by clear and convincing evidence, and a dismissed, non-criminal disorderly conduct disposition cannot carry it.³⁹ No flight-risk rationale can justify Petitioner's continued detention, and the appropriate remedy is release.

REQUEST FOR IMMEDIATE ORDER PROHIBITING TRANSFER

73. Petitioner requests that, immediately upon filing of this Petition and pending its resolution, this Court enter an order prohibiting Respondents from transferring Petitioner outside the Eastern District of New York, removing him from the United States, or otherwise transferring custody in any manner that would defeat this Court's habeas jurisdiction.

74. Such relief is necessary to preserve this Court's jurisdiction. Habeas jurisdiction under 28 U.S.C. § 2241 depends on the petitioner's physical presence within the territorial jurisdiction of the court.⁴⁰ A unilateral transfer by ICE (which can occur on short notice) would frustrate this Court's ability to grant relief, sever Petitioner from his counsel and family, and likely require refile in another District, prolonging his confinement. The Second Circuit has recognized that district courts retain jurisdiction over detention challenges and may prevent the Government from defeating that jurisdiction through transfer.⁴¹

75. Federal courts in this District routinely enter no-transfer orders in immigration habeas cases for these reasons. The order should remain in force until this Court has resolved the Petition on the merits and any appeals are exhausted, or until the Court orders otherwise.

EXHAUSTION OF REMEDIES

76. Petitioner is not required to exhaust administrative remedies before filing this Petition. Habeas review under 28 U.S.C. § 2241 is available to challenge the lawfulness of immigration detention, and Petitioner has in any event pursued the available custody process. He twice sought a bond redetermination: at the first hearing the Immigration Judge declined jurisdiction under *Matter of Yajure Hurtado*, and at the second,

³⁹See *Velasco Lopez*, 978 F.3d at 851, 857.

⁴⁰See *Rumsfeld v. Padilla*, 542 U.S. 426, 443–47 (2004).

⁴¹See *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025); *Mahdawi v. Trump*, 136 F.4th 443 (2d Cir. 2025).

court-ordered hearing the Immigration Judge reached the merits and denied bond on a finding of dangerousness drawn from his disorderly conduct charge rather than the actual disposition of the matter. No further agency process can supply the relief Petitioner seeks.

77. To the extent any prudential exhaustion requirement applies, Petitioner has satisfied it or is excused from it. Any further administrative process would be futile. The relief Petitioner seeks here is release from prolonged and unjustified civil detention. The Government bears the burden of justifying his confinement, in which this burden cannot meaningfully be satisfied through the agency. Ultimately, the constitutional questions presented are properly resolved by this Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Take jurisdiction over this matter;
2. Issue an Order, immediately upon filing of this Petition and pending its resolution, prohibiting Respondents, their agents, employees, contractors, and all persons acting in concert with them, from transferring Petitioner outside the Eastern District of New York, from removing him from the United States, or from otherwise altering Petitioner's place of custody in any manner that would defeat this Court's habeas jurisdiction;
3. Issue an Order directing Respondents to show cause, within three (3) days of service, why a writ of habeas corpus should not be granted.⁴²
4. Issue a writ of habeas corpus directing Respondents to release Petitioner from custody on his own recognizance or on reasonable conditions of supervision, including GPS monitoring;
5. Enjoin Respondents from re-detaining Petitioner without prior notice and a pre-deprivation bond hearing before a neutral decisionmaker at which the Government bears the burden of justifying detention under 8 U.S.C. § 1226(a), and from invoking the automatic-stay provision of 8 C.F.R. § 1003.19(i)(2) in any such proceeding;⁴³

⁴²See 28 U.S.C. § 2243; *Fay v. Noia*, 372 U.S. 391, 400 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977);

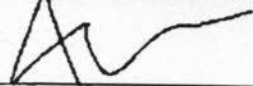
⁴³See *Rueda v. Catletti*, No. 26-CV-2977 (VSB), 2026 WL 1194956, at *5 (S.D.N.Y. May 1, 2026); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 495 (E.D.N.Y. 2025)

6. Award Petitioner reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable provision of law; and
7. Grant any other and further relief that this Court considers just and proper.

Dated: June 9th, 2026

New York, New York.

Respectfully submitted,



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Counsel for Petitioner

VERIFICATION

I, Venancio de Jesus Espinal Frias, declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746 and 28 U.S.C. § 2242, that:

58. I am the Petitioner in the above-captioned action.

59. I have read the foregoing Petition for Writ of Habeas Corpus, which was prepared by my counsel based on facts I provided.

60. The factual allegations contained in the Petition are true and correct based on my personal knowledge, except for those made on information and belief, which I believe to be true and correct.

Executed on June 9th, 2026
Brooklyn, New York

VENANCIO ESPINAL
Venancio de Jesus Espinal Frias
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus to be filed with the Clerk of the Court using the CM/ECF system, and to be served by the means indicated below upon the following:

By U.S. Mail (Legal Mail):

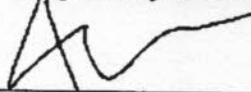
Raul Maldonado Jr., Warden
Metropolitan Detention Center, Brooklyn
80 29th Street, Brooklyn, NY 11232

United States Attorney's Office
Eastern District of New York
271 Cadman Plaza East, Brooklyn, NY 11201

Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
26 Federal Plaza, Room 1130, New York, NY 10278.

U.S. Department of Justice, Office of the Attorney General
950 Pennsylvania Avenue, NW, Washington, DC 20530

Respectfully submitted,



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