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July 9, 2025

Via ECF

Honorable Pamela K. Chen
United States Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn New York 11201

Re: L.G.M. v. LaRocco, et al., No. 2:25-cv-02631-PKC

Dear Judge Chen:

Undersigned counsel for L.G.M. files this Letter Brief in support of his request to be released on bond at the hearing scheduled before this Court for July 9, 2025.

As counsel for government Respondents correctly notes, in accordance with the Second Circuit's decision in *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), the government bears the burden of proof, by clear and convincing evidence, at the bond hearing in this case. *See* ECF 37 at 1. A heightened evidentiary standard, particularly one that is imposed for constitutional reasons, has objective requirements. "[C]lear and convincing evidence . . . means something more than 'preponderance of the evidence,' and something less than 'beyond a reasonable doubt.'" *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985).

Under this heightened standard, the government must establish that L.G.M. is a danger to the community or a risk of flight, that no alternative to detention can mitigate, and that further deprivation of liberty is the only option. First, whether a person is a "danger to the community" is a forward-looking analysis and past criminal conduct alone cannot justify continued civil detention. For example, in *Hechavarria*, government argued that the non-citizen had a past history of dangerous behavior while using drugs, and that his drug use only stopped because he was held in detention. The government argued that the court should continue to find the non-citizen to be a danger to the community because "we don't know how he will act when he is released." *Id.* at 232-33. However, the district court found that the immigration judge ("IJ") was "forced to speculate as to how [Hechavarria] would conduct himself if released into the community" and that such speculation may be enough for a "typical" bond hearing, but "it does not meet [the clear and convincing evidence] standard applicable here." *Id.* at 241. "If the clear and convincing standard means what it says, it cannot permit detention based on mere speculation that [a respondent]'s

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release might possibly pose a danger." *Id.* (*citing Addington v. Texas*, 441 U.S. 418, 427 (1979) ("The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state."). *See also, Fernandez Aguirre v. Barr*, 2019 WL 4511933 at *6 (S.D.N.Y. Sept. 18, 2019) (finding the IJ failed to comply with the clear-and-convincing standard because "[i]n order to arrive at the conclusion that Petitioner was dangerous, therefore, the IJ had to have engaged in conjecture and guesswork about facts not in the record before him."); *R.R.M.C. v. Decker*, 2022 WL 4639674 at *4 (S.D.N.Y. Sept. 30, 2022) (concluding that the IJ did not properly allocate the burden of proof when the IJ was not convinced that the respondent would report to the appropriate authorities, but when it is the government's burden to prove that this "*would not*" occur) (emphasis in original)

In this case the Court must also consider L.G.M.'s mental health and intellectual disability. It is recognized that mental health conditions present at the time of an offense may be amenable to treatment and rehabilitation, which is relevant to a "danger to the community" analysis. Reid v. Bondi, 132 F.4th 109, 125 (2d Cir. 2024), as amended, March 14, 2025 discussing that incompetency can be "fleeting" or "might plausibly be ameliorated with future treatment."). The heightened legal standard—of clear and convincing evidence—cannot be met "entirely on facts surrounding [the petitioner's] . . . conviction" and the Court must consider "individualized facts." *Argueta Anariba v. Shanahan*, No. 16-CV-1928 (KBF), 2017 WL 3172765, at *4 (S.D.N.Y. July 26, 2017).

Importantly, the Court must consider whether "certain options short of detention" are sufficient. *See Hernandez-Aviles v. Decker*, No. 20 CIV. 7636 (ER), 2020 WL 5836519, at *3 (S.D.N.Y. Oct. 1, 2020) (explaining that "procedural due process requires an examination of whether detention is necessary to safeguard the community," and "if there is a viable option short of detention" then "the Government's case for detention is no longer clear and convincing."); *Reid v. Decker*, No. 19-cv-8393 (KPF), 2020 WL 996604, at *12 (S.D.N.Y. Mar. 2, 2020) (agreeing "that the IJ should consider certain options short of detention that may ensure the safety of the community and Reid's appearance in court"); *see also Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 242 (W.D.N.Y. 2019) (finding error where the IJ did not consider possible alternatives to detention.).

As other courts in this Circuit have concluded, when dangerousness is premised on a person's mental health, "the obvious alternative to detention that would have mitigated . . . stated concerns was to condition his release on obtaining mental health treatment and submitting proof that he was receiving such treatment." *Mathon v. Searls*, 623 F. Supp. 3d 203, 218 (W.D.N.Y. 2022). In fact, "the form used by ICE to list the terms of supervision (Form I-220B) includes a section for 'other specified conditions', which implies that ICE has flexibility in imposing release terms." *Id.*

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In this case, reasonable alternatives to detention are available that mitigate any potential findings of dangerousness or flight risk. *See Tucker v. Searls*, No. 22-CV-608-LJV, 2023 WL 3267085, n. 7 (W.D.N.Y. May 5, 2023) (Concluding that the immigration judge erred by failing to consider "obvious alternative[s] to detention, such as the requirement that a petitioner obtain continuing mental health treatment when the government is concerned that his compliance with other conditions of release depends on his mental health treatment"). The Second Circuit in *Black*, "guided principally" by *Mathews*, found that the district court had properly required consideration the noncitizen's ability to pay and alternatives to detention when setting the bond amount. *See Black*, 103 F.4th at 155 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Following *Black*, and employing a *Mathews* analysis, this court must determine "whether alternatives to detention might ameliorate risk of danger as well as risk of flight." *Cantor v. Freden*, 761 F. Supp. 3d 630, 640 (W.D.N.Y. 2025).

As the Supreme Court has instructed, the purpose of civil detention is limited and must not be impermissible punishment. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). Consideration of alternatives to detention ensures that detention is not imposed arbitrarily.

Respectfully submitted,

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