UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Harmanpreet SINGH

Petitioner,

v.

LaDeon FRANCIS, *et al.*,

Respondents.

Civil Case No. 26-cv-344-OEM

MOTION TO ENFORCE

Petitioner Harmanpreet Singh (Mr. Singh) moves this Court to enforce its Order, dated February 24, 2026, directing Respondents to conduct an individualized bond hearing to correct Mr. Singh's ongoing unconstitutionally prolonged detention or, in the alternative, to immediately release Petitioner. ECF No. 13. At that hearing, Respondents were directed to shift the burden on the Department of Homeland Security (DHS) to show by clear and convincing evidence that Mr. Singh is a danger to the community or a risk of flight. *Id.* Respondents were ordered to hold the burden-shifted individualized bond hearing by March 4, 2026, or, in the alternative, to immediately release the Respondent.

On March 4, 2026, Immigration Judge (IJ) Conroy presided over a bond hearing at the Varick Street Immigration Court in New York, NY. *See* ECF No. 15.1. During the hearing, IJ Conroy did not properly shift the burden onto the Respondents. Digital Audio Recording (DAR) at [00:16:32]. IJ Conroy presupposed that the Respondents' evidence was sufficient to meet their burden of proof and gave undue weight to an arrest report from dismissed criminal proceedings. *Id.* Based upon the Respondents' mere filing of proof that Mr. Singh had two prior arrests for which he was not convicted, IJ Conroy found that Mr. Singh was a danger to the community and

ordered that he must remain in custody. *See* Ex. 1, Respondents' Bond Evidence. March 8, 2026, marked two years of detention for Mr. Singh, an asylum seeker from India who was arrested when he voluntarily attended an ICE check-in on March 8, 2024, and has no criminal convictions.

BACKGROUND

The factual background to Mr. Singh's habeas petition has been detailed in prior filings. ECF No. 1. As relevant to this motion to enforce, this Court ordered that the Immigration Court hold a burden shifted bond hearing by March 4, 2026, in which the Respondents would bear the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk. ECF No. 13.

To satisfy their burden of proving Mr. Singh is a danger, Respondents only provided documents pertaining to two arrests from 2023, neither of which have resulted in convictions. *See* Ex. 1. These documents were presented to IJ Conroy when he last considered bond. No new evidence was submitted. The February 2023 arrest report describes an incident in which Mr. Singh was allegedly driving under the influence. Ex. 1 at 7-12. The police officer who pulled him over found a small amount of what the officer believed to be marijuana in Mr. Singh's car. *Id.* at 9-11. The arrest report suggests that the officers did not use an interpreter to help Mr. Singh, who is not a fluent English speaker, to understand the questioning. *Id.* Mr. Singh was charged with misdemeanor offenses, which are still pending due to Mr. Singh's inability to appear in court while detained by Respondents. *Id.* at 8. The August 2023 arrest report describes a situation in which Mr. Singh requested emergency services for his then-girlfriend who was having a seizure. At that time, Mr. Singh had been living with his girlfriend at her childhood home. *Id.* at 13-19. She had been keeping drugs in her room, which were discovered when Mr.

Singh called 911. Id. at 17-18. Again, the arrest report makes no mention of the use of an interpreter to facilitate Mr. Singh's understanding of the questioning. *Id.* The police found the drugs and arrested Mr. Singh for possessing the drugs while his then-girlfriend was sent to the hospital. *Id.* Later, his ex-girlfriend admitted that the drugs were hers. Ex. 2, Petitioner's Evidence in Support of Custody Redetermination, at 10. She was convicted of possession of methamphetamine and the charges against Mr. Singh were dropped. Ex. 1 at 14; Ex. 2 at 13.

Other than the documents pertaining to the arrest in dismissed proceedings and the arrest in pending misdemeanor proceedings, Respondents proffered no other proof that Mr. Singh is a danger. Through counsel, Petitioner offered proof of community ties to a Gurdwara in Queens, a support letter from a social worker, a letter from his ex-girlfriend admitting that the drugs found in her room were hers, proof that his ex-girlfriend was convicted of possession of methamphetamine, a letter from Orange County Jail attesting that Mr. Singh signed up for AA meetings, and evidence showing of the merits of his Petition for Review pending before the Second Circuit. *See* Ex. 2.

At the hearing, after hearing arguments from both sides, IJ Conroy stated:

> Based on the record I am going to find that the government has demonstrated by clear and convincing evidence that the respondent is a danger to the community. The respondent I understand has been detained for two years. Prior to detention he had these two arrests, they were serious. I know that there is a dismissal in one of them. But that alone is not sufficient, what we look at is the underlying circumstances to evaluate dangerousness. The conduct that he was involved in was very dangerous. The letter from his friend--his girlfriend, his ex-girlfriend or whatever--that letter carries diminished weight as evidence to mitigate the factor because she is not here to testify. So based on the whole record I am looking at here, I think this record demonstrates dangerousness. The respondent has been detained for two years. This record demonstrates that -- a propensity for illegal and dangerous conduct -- uh -- and for me it's clear and convincing evidence. There's a firm conviction in my mind that he is danger going forward. There is nothing to mitigate that finding, so that is where it stands.

See DAR at [00:16:32].

ARGUMENT

According to the United States Supreme Court, "liberty is the norm, and detention . . . is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). In the context of civil immigration proceedings, detention is appropriate "only when limited to specially dangerous individuals and subject to strong procedural requirements." *Zadvydas v. Davis*, 533 U.S. 678, 691 (2001). More specifically, Respondents' prolonged detention of Petitioner under §1226(a) without ever bearing the burden of showing that he is a danger to the community or a flight risk constitutes a violation of due process. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir., 2020). Accordingly, this Court ordered that Respondents hold a bond hearing at which Respondents bore the burden of justifying the continuation of Mr. Singh's two-year long detention by showing by clear and convincing evidence that he is a danger to the community or a flight risk. ECF No. 13. While Respondents held a bond hearing, the bond hearing was not constitutionally sufficient, as the adjudicator failed to correctly hold the DHS to the clear and convincing evidence standard and was overly credulous with regards to an arrest report in dismissed criminal proceedings.

I. The IJ committed a constitutional error by not applying the clear and convincing evidence standard, as required this Court's order.

The clear and convincing evidence standard is met when there is sufficient evidence to convince the fact finder that "the truth of the factual contentions are 'highly probable.'" *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (internal citation omitted). When applied to a determination of dangerousness, this standard requires "the evidence to support . . . a conclusion [of dangerousness] with a high degree of certainty." *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985). While IJ Conroy verbally acknowledged the correct burden of

proof standard throughout the hearing, he failed to hold the Respondents to their burden. *See Mathon v. Searls*, 623 F. Supp. 3d 203, 214 (W.D.N.Y. 2022) ("[T]he mere utterance of the correct standard of proof early in the IJ's decision is insufficient to demonstrate that it was applied when the rest of that decision demonstrates otherwise."). In fact, IJ Conroy consistently presupposed that Respondents had met their burden of proving by clear and convincing evidence that Petitioner was a danger to the community. After closing arguments from both sides were heard, IJ Conroy asked Petitioner's lawyer "what is the government supposed to present to demonstrate that the person is a danger in the future?" DAR at [00.14.46]. This question displays that the judge was, in fact, placing the burden on the Petitioner and presupposing the sufficiency of the Respondents'evidence. Later, during his oral opinion, IJ Conroy focused on the two arrests, acknowledging the dismissal of one of the charges, but ultimately minimizing the dismissal as "not sufficient." DAR at [00:16:42]. He also acknowledged the letter from Mr. Singh's ex-girlfriend but diminished its "weight as evidence to mitigate the factor because she is not here to testify." DAR at [00:17:03]. IJ Conroy's focus on the dismissal and the letter from Petitioner's ex-girlfriend as evidence insufficient to mitigate Petitioner's dangerousness suggests that IJ Conroy presupposed the sufficiency of Respondents' evidence, ultimately shifting the burden onto petitioner to show that he is not a danger.

To satisfy their burden of proving Mr. Singh is a danger, Respondents only provided documents pertaining to two arrests from 2023, neither of which have resulted in convictions. *See* Ex. 1. Based on the application of the clear and convincing evidence standard in other cases, Respondents did not provide sufficient evidence to support that it is highly probable that Mr. Singh will be danger to the community if released. *Velasco Lopez v. Decker*, factually similar to this case, is instructive. 978 F.3d 842, 853 (2d Cir. 2020); ECF No. 13, 9 (noting specifically that

"[w]hen afforded the new hearing with the shifted burden, [Velasco Lopez] was released on bond"). In that case, the Petitioner's criminal record included three arrests, spanning multiple years. Although the charges following a bar fight arrest were dismissed, Velasco Lopez had not only a pending charge for driving under the influence but also a separate conviction for driving under the influence dated two years prior. Despite having a more extensive criminal record than Mr. Singh—whose record comprises only one dismissed drug possession charge and one pending charge for driving under the influence—Velasco Lopez was ordered released after the burden was placed on the government to show that the Petitioner's detention should continue. District Courts in the Second Circuit have likewise found that the government had not met its burden in cases in which the petitioners had arguably more extensive or serious criminal records than Mr. Singh's. *See Fernandez Aguirre v. Barr*, No. 19-CV-7048 (VEC), 2019 WL 4511933, (S.D.N.Y. Sept. 18, 2019) (release ordered despite proof of guilty plea for resisting arrest, dismissed criminal charges—all misdemeanors except for one); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227 (W.D.N.Y. 2019) (release ordered despite proof of guilty plea for assaulting a person with a knife, conviction for possession of cocaine and accusations of rape); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401 (E.D.N.Y. 2025) (release ordered despite proof of several arrests and convictions for disorderly conduct, attempted assault in the second degree and attempted robbery resulting in one year prison sentence).

Significantly, courts in this circuit have held that the clear and convincing evidence standard is not met when the IJ is "forced to speculate as to how [the noncitizen] would conduct himself if released into the community." *Hechavarria*, 358 F. Supp. 3d at 241. In *L.G.M. v. LaRocco*, a court in this District stated that an adjudicator would have to engage in improper speculation to find that the clear and convincing evidence standard had been met based on the

record provided by the Respondents. No. 25-CV-2631 (PKC), 2025 WL 2173577, *7 (E.D.N.Y. July 31, 2025). In that case, "the criminal records on which Government Respondents rel[ied] to argue dangerousness contain[ed] only arrest notes and court paperwork, which [did] not provide a complete picture of the underlying facts relating to any of [the] convictions." *Id.* at *4. Alone, the documents submitted by Respondents to show that Mr. Singh is a danger paint an incomplete picture, such that an adjudicator would have to speculate to conclude that it is highly probable that Mr. Singh will pose a danger to the community. *See id.* at *4, 7. Indeed, the August 2023 arrest report for charges in dismissed criminal proceedings do not prove with a high probability that Mr. Singh actually engaged in the alleged conduct or that he is likely to engage in such conduct in the future. *See* Ex. 1 at 13-19. In fact, supplemental evidence shows that the charges against him were dismissed and that his ex-girlfriend was not only convicted of the crime but also admitted that the drugs were hers. *Id.* at 14; Ex. 2 at 9-13. As for the pending misdemeanor charges from February 2023 for driving under the influence—an isolated occurrence in Mr. Singh's 8 years of living in the United States—the government made no attempt to show that it is highly probably that Mr. Singh will be arrested for something similar in the future. *See* Ex. 1 at 7-12. Despite Mr. Singh's plan to live in New York upon release where public transportation is readily available, Respondents offered no proof that Mr. Singh is likely to drive, let alone be arrested for driving under the influence. Ex. 2 at 4; *see* Ex. 1 at 7-12.

Based on this evidence, IJ Conroy stated that "there is a firm conviction in [his] mind that [Mr. Singh] is a danger going forward." DAR at [00:17:30]. While such reasoning may comply with the standard applied by Respondents in ordinary § 1226(a) bond proceedings, it does not correspond to this Court's instructions to conduct a bond hearing in which Respondents hold the burden of proving by clear and convincing evidence that Mr. Singh is a danger. *Compare Matter*

of Guerra, 24 I. & N. Dec. 37, 38 (BIA 2006) (requiring a noncitizen to "establish *to the satisfaction of the Immigration Judge* . . . that he or she does not present a danger to persons or property . . . and does not pose a risk of flight") (emphasis added) *with Chimurenga*, 760 F.2d at 405 (requiring "the evidence to support . . . a conclusion [of dangerousness] with a high degree of certainty."); *see also Hechavarria*, 358 F. Supp. 3d at 241 ("If the clear and convincing standard means what it says, it cannot permit detention based on mere speculation that an [noncitizen]'s release might possibly pose a danger."). By concluding that it is highly probable that Mr. Singh will be a danger to the community based on the record, IJ Conroy necessarily engaged in improper speculation. *Compare Hechavarria*, 358 F. Supp. 3d at 240–41 (finding "mere speculation" based on past convictions inadequate to draw conclusions with the certainty required to meet the "clear and convincing" standard) *with Bonilla v. Decker,* 2024 WL 182315, at *3 (S.D.N.Y. 2024) (upholding IJ finding of ongoing dangerousness of convicted drunk driver because of "recidivist drunk driving," proof that noncitizen continued to struggle with alcoholism and "credible allegations of [ongoing] gang affiliation").

Furthermore, in *Velasco Lopez*, the Second Circuit highlighted that, despite the significant resources available to the federal government, Respondents were unable to muster any proof over fifteen months of detention to show that Velasco Lopez was a danger or a flight risk. *Velasco Lopez*, 978 F.3d at 853. Similarly, over the past two years of Mr. Singh's detention Respondents have been unable to proffer anything more than documentation pertaining to two arrests with no convictions. By failing to even "attempt to substantiate the allegations in [the charging] documents," or "to marshal any evidence beyond these documents," Respondents failed to meet the clear and convincing evidence standard. *Fernandez Aguirre*, 2019 WL

4511933, at *6. Indeed, "it is beyond serious dispute" that "no reasonable fact-finder could find by clear and convincing evidence that Petitioner pose[s] a danger to the community." *Id.*

II. The IJ was overly credulous about arrest reports with dismissed and pending charges, in violation of Petitioner's due process rights.

In his rationale for denying bond, IJ Conroy fully based his decision on arrest reports related to dismissed and pending criminal proceedings. The reliance on dismissed or unsubstantiated criminal charges as a basis to deny bond violates due process. The fact of an arrest alone does not warrant a presumption of guilt. To the contrary: "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978) (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895)). As the Supreme Court has emphasized, the "beyond a reasonable doubt" standard applied to criminal allegations plays a "vital role" in American criminal procedure as it is a "prime instrument for reducing the risk of convictions resting on factual error." *In re Winship*, 397 U.S. 358, 363 (1970). Indeed, the standard "provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.' . . . 'a person accused of a crime would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.'" *Id.* (quotation omitted).

Giving undue weight to unproven criminal allegations is therefore fundamentally unfair, regardless of who carries the burden of proof in immigration bond proceedings. *See, e.g., Padmore v. Holder*, 609 F.3d 62, 69-70 (2d Cir. 2010) (EOIR may not base its denial of a

case "upon the assumption that the facts contained in [charging] documents are true"); *Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995) ("Just as we will not go behind a record of conviction to determine the guilt or innocence of an alien, so we are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein."); *Rojas v. Attorney General*, 728 F.3d 203, 220 (3d Cir 2013) ("[T]he police criminal complaint here implicates the Supreme Court's recent admonitions to be wary of attempts to relitigate prior convictions based on documents 'the meaning of [which] will often be uncertain,' or when 'the statements of fact in them may be downright wrong.'") (citing *Descamps v. United States*, 570 U.S. 254, 270 (2013)); *James v. Mukasey*, 522 F.3d 250, 257 (2d Cir. 2008) (admonishing the agency for crediting a factual allegation in a charging instrument connected with charges that were dismissed); *see also United States v. Juwa*, 508 F.3d 694, 700-01 (2d Cir. 2007) (calling it "axiomatic" that a charging document is not evidence of guilt and is not intended to serve a "evidentiary function"). With no other evidence provided to support a finding of dangerousness, IJ Conroy impermissibly based his entire decision to continue Mr. Singh's detention on arrest reports in pending and dismissed criminal proceedings.

III. This Court should order Mr. Singh released, or in the alternative, hold its own hearing to assess release.

This Court ordered a bond hearing in which Respondents bore the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk by March 4, 2026. The Court further ordered that if Respondents failed to hold such a hearing by such date, the Petitioner should be immediately released. Accordingly, IJ Conroy held a bond hearing on March 4, 2026. However, IJ Conroy violated the order by failing to hold the

government to its burden of proof. In denying bond due to a finding that Mr. Singh "is a danger going forward," IJ Conroy applied a lesser burden of proof standard than what was required by this Court's order. Having not fulfilled this Court's order to hold a bond hearing where Respondents bear the burden of justifying detention with clear and convincing evidence by March 4, 2026, Respondents should be required to immediately release the Petitioner, who has now been in their custody for more than two years.

In the alternative, this Court should remove this matter from the offending agencies entirely and conduct its own bond hearing. "[F]ederal courts have the . . . inherent authority to admit habeas petitioners to bail in the immigration context." *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). This Court has jurisdiction "to consider whether the petitioner is a risk of flight or a danger to the community," and it is "not bound by an executive branch employee's finding apparently unsupported by evidence." *Ozturk v. Trump*, 783 F. Supp. 3d 801, 808 (D. Vt. 2025) (stating that Article III courts are "obligated to conduct an independent and rigorous review of the evidence that is a part of the record"); *see L.G.M.*, 788 F.Supp.3d at 405-07 (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also* Santos v. Lowe, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination).

Mr. Singh's two-year detention on the flimsy foundation of a dismissed and a pending criminal proceeding has gone on too long.

Dated: March 12, 2026
New York, NY

Respectfully submitted,

/s/ Tosca Giustini

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