UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Willian A. Portillo Melara

Petitioner,

v.

HERIBERTO TELLEZ, Warden of Metropolitan Detention Center; JUDITH ALMODOVAR, Director of ICE New York Field Office; TODD M. LYONS, Acting Director of ICE; KRISTI NOEM, U.S. Secretary of Homeland Security, *in their official capacities.*

Respondents.

Civil Action No.: _____

PETITION FOR A WRIT OF HABEAS CORPUS

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

Willian Alexander Portillo Melara, by and through undersigned counsel, petitions this Honorable Court for a Writ of Habeas Corpus to remedy his unlawful detention. The Immigration Judge ("IJ") improperly placed the burden on the Petitioner to show why bond should be granted. The IJ improperly denied bond by relying exclusively on unproven allegations in a police report in order to find dangerousness. In support thereof, Mr. Portillo Melara states as follows:

CUSTODY

1. Mr. Portilla Melara is in the physical custody of the United States Immigration and Customs Enforcement ("ICE") detained at Metropolitan Detention Center ("MDC") in Brooklyn, NY. ICE has contracted with the MDC to detain individuals in ICE custody. Mr. Portillo Melara is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

2. This case arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. §701 *et seq.* This Court has jurisdiction in this action under 28 U.S.C. §§ 2241(a) and (c)(1) and (3); U.S. CONST. art. I, §9, cl. 2 (the "Suspension Clause"); and 28 U.S.C. § 1331, as Mr. Rosa Pineda is presently in custody under the authority of the United States, and such custody is in violation of the Constitution and laws of the United States.

3. The Court may grant relief pursuant to 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*; and the All Writs Act, 28 U.S.C. § 1651.

4. Further, this Court has jurisdiction under 28 U.S.C. § 2241 to review constitutional as well as statutory issues. *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d. Cir. 2020) (*citing Jennings v. Rodriguez*, 583 U.S. 281 (2018)).

5. The Writ of Habeas Corpus "is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290 (1969). The power of this Court's inquiry on federal habeas corpus review is plenary. *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001); *Townsend v. Sain*, 372 U.S. 293, 312 (1963). "District courts retain jurisdiction over challenges to the legality of detention in the immigration context." *Aguilar v. U.S. Immigration & Customs Enforcement Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007). 2nd cir quote.

6. Venue is proper as Mr. Portillo Melara is presently detained in Brooklyn, NY at the MDC. 28 U.S.C. §2241(a); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243 FOR PROMPT PROCESS

7. A court must grant the petition for writ of habeas corpus or issue an order to show cause to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

PARTIES

8. Petitioner, Wilian Alexander Portillo Melara, is a native and citizen of El Salvador, who entered the United States by an Entry Without Inspection ("EWI") in 2014. ICE arrested Mr. Portillo Melara in Uniondale, NY on April 26, 2025.

9. Respondent, Heriberto Tellez, is the warden of Metropolitan Detention Center in Brooklyn, NY. In his official capacity, he is the legal custodian of Petitioner.

10. Respondent, Judith Almodovar, is the Director of the ICE New York Field Office. ICE is the component agency of the U.S. Department of Homeland Security ("DHS") responsible for detaining and deporting non-U.S. citizens. In her legal capacity, she is the legal custodian of Petitioner.

11. Respondent, Todd M. Lyons, is the Acting Director of Immigration and Customs Enforcement. In his official capacity, he is the legal custodian of Petitioner.

12. Respondent, Kristi Noem, is the U.S. Secretary of Homeland Security. In her official capacity, she is the legal custodian of Petitioner.

EXHAUSTION

13. There is no statutory exhaustion requirement under 28 U.S.C. § 2241. Habeas protections have been recognized by the Court as fundamental to individual liberty. *See e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 740-46 (2008).

STATEMENT OF RELEVANT FACTS

14. Mr. Portillo Melara entered the United States without inspection in 2014 and lived on Long Island, NY. He married a United States citizen, Jennifer Romero, in 2017. Together, they have 4 children – the youngest is one year and five months and the oldest is seven years old.

15. The I-130 Petition for Alien Relative was approved for Mr. Portillo Melara on December 18, 2018. The approval allows Mr. Portillo Melara to submit an additional application for lawful permanent residence based on his marriage to a U.S. citizen, although he cannot do so currently while he is in removal proceedings before the immigration court.

16. On January 17, 2025, Mr. Portillo Melara was given a citation for N.Y.P.L. § 245.00 Public Lewdness, a misdemeanor, for which he was later arrested. The charge stemmed from an accusation that he was engaging in public lewdness in his car while waiting for his daughter to leave school.

17. After the issuance of the citation and before the plea in the criminal case, Mr. Portillo Melara was arrested by Nassau County police and ICE agents while driving with his family. His car was followed from his wife's parents' home on route to his child's daycare. Three vehicles from Nassau County police and ICE stopped Mr. Portillo Melara and his family members. Petitioner was taken out of car. His wife inquired why he was being arrested and the Nassau County police officer responded that they had an ICE warrant for his arrest. This arrest occurred on April 26, 2025.

18. While in ICE custody, Mr. Portillo Melara sought release through a custody redetermination hearing pursuant to 8 C.F.R. § 1236, known as a "bond hearing." The bond hearing took place on May 14, 2025. The IJ placed the burden on Mr. Portillo Melara to demonstrate why he was not a danger to the community or a flight risk. The IJ denied the request for bond because the Petitioner "failed to demonstrate not a danger." The IJ bond order attached hereto as Exhibit 1.

19. The IJ relied on the police incident report for N.Y.P.L. § 245.00, Mr. Portillo Melara's testimony about his arrest and what the IJ referred to as "two detailed statements" submitted by Petitioner's attorney. The government additionally submitted two news articles about Petitioner's arrest for "exposing himself." At the time of the bond hearing, the misdemeanor charge was pending.

20. About three months later, on September 25, 2025, Mr. Portillo Melara pleaded guilty to N.Y.P.L. § 240.20(7) in New York state criminal court. The sentence was 15 days jail time and a conditional discharge, as well as court costs. The two statutes N.Y.P.L. § 245.00 and § 240.20(7) prohibit different conduct. § 240.20(7) makes it illegal to "create a hazardous or physically offensive condition by any act which serves no legitimate purpose." N.Y.P.L. § 240.20(7) (2014). By contrast, § 245.00 states "[a] person is guilty of public lewdness when he or she intentionally exposes the private or intimate parts of his or her body in a lewd manner or commits any other lewd act" and contains subsections for lewd acts in a public place or other location. § 240.20(7) is a violation while § 245.00 is a B misdemeanor. N.Y.P.L. § 245.00 (2015).

21. Mr. Portillo Melara had another hearing before the immigration court to present his evidence for INA § 240A(b)(1), 8 U.S.C. § 1229b(b), cancellation of removal for nonlawful permanent residents and voluntary departure in the alternative under INA § 240B(b), 8 U.S.C. §1229c(a). The immigration judge denied both forms of relief on November 25, 2025. Mr. Portillo

Melara filed a timely notice of appeal on December 23, 2025 challenging the denial of the applications for asylum and related relief and cancelation of removal. The appeal is currently pending.

22. Mr. Portillo Melara remains in ICE custody.

LEGAL FRAMEWORK

23. "It is well-settled that the Fifth Amendment entitles aliens to due process in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). The Second Circuit in *Velasco Lopez v. Decker* applied the *Mathews v. Eldridge* balancing test to due process protections in an immigration court bond hearing. *Velasco Lopez v. Decker*, 978 F.3d 842 (2d. Cir. 2020) citing *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)). The balance of the three *Mathews* factors "involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action." *Mathews,* 424 U.S. at 348. The Court of Appeals held that the bond hearing for the Petitioner shall allocate the burden to the government to show dangerousness by clear and convincing evidence. *Id.* at 855, n. 13(collecting cases in agreement with this holding); *see Hernandez-Lara,* 10 F.4th 19 (subsequent decision holding the same).

24. In so doing, the Court found that the due process liberty interest at stake weighed heavily in the petitioner's (detainee's) favor. *Velasco Lopez*, 978 F.3d at 851 ("The deprivation he experienced while incarcerated was, on any calculus, substantial. He was locked up in jail.").

25. Freedom from imprisonment lies at the heart of the due process clause and "the government's exercise of its power to detain immigrants pending removal is 'subject to important constitutional limitations.'" *Id.* at 28-29 (*quoting Zadvydas v. Davis*, 533 U.S. 678, 695 (2001)). The First Circuit undertook the same analysis on the same issue, whether due process required the

government to bear the burden of proving dangerousness in a bond hearing, and likewise placed heavy weight on the affected liberty interest. *Hernandez v. Lara*, 10 F.4th 19, 27 (1st Cir. 2021). The First Circuit also found that the government should establish dangerousness through clear and convincing evidence. *Id.*

26. District courts find that the question of whether a bond hearing complied with constitutional requirements, specifically the legal standard for dangerousness, is reviewable. *See Rosa Pineda v. Nessinger et al.*, No. 1:25-cv-522-MSM-AEM (D.R.I. Nov. 24, 2025); *Massingue v. Streeter*, No. 3:19-CV-30159-KAR, 2020 WL 1866255 at *4 (D. Mass. Apr. 14, 2020) (recognizing that it must review both whether "evidence itself could . . . – as a matter of law – have supported the adjudicator's conclusion" and whether it is clear from the opinion itself that the adjudicator applied the incorrect legal standard); *Diaz Calderon v. Barr*, 535 F.Supp.3d 669 (E.D. Mich. 2020) (finding that failure to apply the correct evidentiary standard in petitioner's bond hearing was a due process violation); *Reyes v. Wolf*, 2:19-cv-02086-GMN-EJY, 2020 WL 2308075, at *10 (D. Nev. May 8, 2020) (finding that the IJ violated the petitioner's due process because the record did not contain clear and convincing evidence of dangerousness); *Rodriguez v. Decker*, 20-cv-4118-PKC, 2020 WL 3618990, at *2 (S.D.N.Y. Jun. 30, 2020) (requiring the government to prove dangerousness by clear and convincing evidence during a bond hearing); *Calderon-Rodriguez v. Wilcox*, 374 F.Supp.3d 1024 (W.D. Wash. 2019) (holding that clear and convincing evidence did not support the IJ's decision to deny bond); *Pensamiento v. McDonald*, 315 F.supp.3d 684 (D. Mass. 2018) (finding that due process requires the government to show dangerousness by clear and convincing evidence at a bond hearing); *Ortega-Rangel v. Sessions*, 313 F.Supp.3d 993,1004-05 (N.D. Cal. 2018) (mere fact of detainee's arrest and pending criminal charge was not

"probative and specific;" thus, IJ's sole reliance on such information to deny bond violated due process).

27. Multiple courts have found that unproven allegations of criminal conduct are not sufficient to meet the standard of clear and convincing evidence. *See United States v. Sorto-Gomez*, No. TDC-24-0071, 2025 WL 359782, at *13 (D. Md. Jan. 30, 2025) (finding it inappropriate to give substantial weight to multiple uncorroborated criminal charges in alien defendant's record that did not result in conviction); *Diaz Calderon v. Barr*, 535 F.Supp.3d 669 (finding that alleged conduct in a police report for driving under the influence was not clear and convincing evidence of dangerousness); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993,1004-05 (N.D. Cal. 2018) (stating that the mere fact of detainee's arrest and pending criminal charge was not "probative and specific;" thus, IJ's sole reliance on such information to deny bond violated due process); *Reyes v. Wolf*, 2:19-cv-2086 (finding that criminal charges for robbery, discharging firearm, attempted murder and others that were eventually dismissed could not constitute clear and convincing evidence of dangerousness to deny bond); *Avila-Ramirez v. Holder*, 764 F.3d 717, 722-23, 725 (7th Cir. 2014) (remanding because the BIA erred when, in denying discretionary relief from removal, it gave "significant weight to uncorroborated arrest reports" relating to incidents involving alleged stalking, credit card theft, inappropriate contact with a minor, and unlawful possession of a firearm for which charges were either never instituted or later dropped).

28. Bond should only be denied if the government prove[s] by clear and convincing evidence that [the noncitizen] poses a danger to the community. *Velasco Lopez*, 978 F.3d 842. In addition to bond, the immigration judge may order release on conditional parole. 8 U.S.C. § 1226(a)(2)(b); *see Rivera v. Holder*, 307 F.R.D. 539 (W.D. Wa. 2015) (certifying class and granting summary

judgment, issuing declaratory and injunctive relief clarifying that IJ's have authority under § 1226(a) to grant release on conditional parole as an alternative to release on a monetary bond); *see also United States v. Salerno,* 481 U.S. 739, 742 (1987) (finding that a court can consider any suitable conditions of release in order to avoid the deprivation of liberty presented by pretrial detention).

29. In the instant petition, the government could not meet its burden to show clear and convincing evidence of dangerousness based solely on unproven allegations that did not result in conviction. The IJ determined that Petitioner was a "danger to the community," and denied bond as a result, based on the allegations of public lewdness. That determination was an error as a matter of law. *See Diaz Calderon v. Barr*, 535 F.Supp.3d 669, 681 (E.D. Mich. 2020) ("Accordingly, the police report upon which the Respondents rely was properly considered by the Immigration Judge, but the standard required by the case law, that unproved allegations should be assigned little weight in determining Petitioner's dangerousness, was not applied correctly. To have relied so heavily on a matter that must only be given little weight as the basis for meeting a "clear and convincing" standard of evidence is not consistent with due process.").

30. Individuals detained pursuant to 8 U.S.C. § 1226(a) are entitled to a bond hearing. *Arizmendi v., Noem*, No. 25-cv-7056 (E.D.N.Y. Dec. 24, 2025) (granting temporary restraining order); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) (finding that Petitioner was not an applicant for admission and entitled to a bond hearing).

31. Petitioner is a member of the Bond Eligible Class in *Maldonado Bautista*, as he:

a. Does not have lawful status in the United States and is currently detained. He was apprehended by ICE on April 26, 2025;

b. Entered the United States without inspection over 12 years ago and was not apprehended upon arrival; and

c. Is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1321.

See Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, ---- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

32. Respondents are bound by the injunction in *Maldonado Bautista*, as they have the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

33. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the injunction in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See also,* https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista (last visited January 15, 2026).

34. The Court may order outright release when individuals have been illegally detained by ICE. "Habeas has traditionally been a means to secure release from unlawful detention ...." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). The first defective bond hearing need not be repeated where courts have flexibility to order the appropriate remedy. *See Diaz Calderon*, 535 F. Supp. 3d at 682 ("The Court concludes that because Respondents ... failed to apply the correct evidentiary standard in Petitioner's bond hearing, any further continuation of Petitioner's prolonged detention would be a violation of his rights to due process of the law."); *see e.g., Rosa Pineda*, No. 1:25-cv-522; *Alvarez Puerta v. Nessinger et al.*, No. 1:25-cv-108-JJM-AEM

(D.R.I. Jun. 27, 2025). "It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for procedural protections as the particular situation demands." *Morrisey v. Brewer*, 408 U.S. 471, 481 (1971).

CAUSE OF ACTION

COUNT ONE

Violation of Procedural Due Process under the Fifth Amendment of the U.S. Constitution

35. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

36. Petitioner is entitled to a constitutionally adequate bond hearing where the government bears the burden to show dangerousness by clear and convincing evidence. Placing the burden on the Petitioner violates procedural due process under *Mathews v. Eldridge* and *Velasco Lopez v. Decker*.

37. Absent proper allocation of the burden to prove dangerousness and flight risk, Petitioner's detention is unlawful.

COUNT TWO

Violation of Substantive Due Process under the Fifth Amendment of the U.S. Constitution

38. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

39. Bond cannot be denied based on dangerousness without clear and convincing evidence. Clear and convincing evidence must support a conclusion of danger to the community "with a high

degree of certainty." *United States v. Chimurenga,* 760 F.2d 400, 405 (2d Cir. 1985). Clear and convincing evidence "means something more than `preponderance of the evidence,' and something less than `beyond a reasonable doubt.'" *Id.* Unproven allegations extrinsic to the conviction do not constitute clear and convincing evidence.

40. Petitioner's detention is unlawful where unproven allegations are the sole basis for denying continuing detention.

COUNT THREE

Violation of Substantive Due Process under the Fifth Amendment of the U.S. Constitution

41. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

42. Petitioner's detention at nearly ten months, without the requisite proof of dangerousness by the government, is unreasonably prolonged and therefore, unconstitutional.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully request this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the Eastern District of New York;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that Petitioner's detention is unlawful absent a constitutionally adequate bond hearing before an Immigration Judge;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a constitutionally adequate bond hearing within 7 days and order Petitioner's release on conditions the Court deems just and proper;

(6) Order Respondents to return Petitioner's property upon release from immigration custody;

(7) Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Dated: February 20, 2026

/s/ Ann Elise McCaffrey

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