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.: 26-cv-1453 **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 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); *Hechavarria v. Whitaker et al.*, 358 F.Supp.3d 227 (W.D.N.Y. Jan. 16, 2019).

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 and he remains in ICE custody.

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 – [redacted]

15. 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.

16. 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 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.

17. 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 2025 IJ bond order is attached hereto as Exhibit 1.

18. On September 25, 2025, Mr. Portillo Melara was convicted of N.Y.P.L. § 240.20(7) in New York state criminal court after a plea. 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).

19. 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 cancellation of removal. The appeal is currently pending.

20. On February 20, 2026, Petitioner filed a Petition for a Writ of Habeas Corpus under case number 1:26-cv-1017-RER in the Eastern District of New York, seeking, among other relief, a bond hearing where the government bore the burden to show dangerousness and flight risk by clear and convincing evidence. A joint stipulation for a new burden-shifted bond hearing and dismissal of the Petition without prejudice was filed on March 3, 2026 and dismissal pursuant to the joint stipulation was ordered on the same date. *Portillo Melara v. Tellez et al.*, No. 1:26-cv-1017-RER (E.D.N.Y. Mar. 3, 2026) ECF 15.

21. The second bond hearing took place on March 11, 2026 at the Varick St. New York Immigration Court. Again, the Immigration Judge ("IJ") denied bond based on dangerousness. The IJ did not address flight risk. The 2026 IJ's decision on bond is attached hereto as Exhibit 2.

22. The IJ relied on the police incident report for the charge under N.Y.P.L. § 245.00, The government additionally submitted a press release from the Nassau County Police Department about Petitioner's arrest for "exposing himself." The DHS bond exhibits are attached hereto as Exhibit 3.

23. Mr. Portillo Melara remains in ICE custody. He has been detained for approximately 320 days.

LEGAL FRAMEWORK

24. "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 burden should be allocated 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.

25. 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.").

26. 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 held that due process requires 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 held that the government should establish dangerousness through clear and convincing evidence. *Id.*

27. 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).

28. Multiple courts have found that unproven allegations of criminal conduct are not sufficient to meet the standard of clear and convincing evidence as a matter of law. *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); *see also 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).

29. Immigration agency adjudicators must correctly apply legal standards, not just cite to them.[1] *Akinsanya v. Garland*, No. 24-1412 at *6 (1st Cir. Jan. 10, 2025) ("Merely stating the proper standard does not discharge the obligation to correctly apply the standard." (citing *Khalil v. Garland*, 97 F.4th 54, 68-69, 70 (1st Cir. 2024))). "[T]he mere utterance of the correct standard of proof" will not substitute for the application of the standard. *Hechavarria*, 358 F.Supp.3d at 241 (citing *Enoh v. Sessions*, 2017 WL 2080278, at *6 (W.D.N.Y. May 15, 2017)).

30. Petitioner is not required to administratively exhaust before seeking judicial review in a habeas petition. *Hechavarria*, 358 F.Supp.3d at 238. Prudential exhaustion may be waived based on several factors: (1) when administrative exhaustion provides no inadequate relief; (2) where irreparable harm would occur; (3)where administrative appeal would be futile; (4) where a substantial constitutional question is presented. *Id.* at 237 (citing *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (other citations omitted)).

31. "[T]he BIA does not have jurisdiction to adjudicate constitutional issues." *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002); *Matter of Rodriguez-Carrillo* , 22 I & N. Dec. 1031, 1035 (BIA 1999) ("neither the Immigration Judge nor this Board may rule on the constitutionality of the statutes that we administer"); *see Bagues-Valles v. I.N.S.*, 779 F.2d 483, 484 (9th Cir. 1985) (excusing requirement to exhaust administrative remedies regarding due process claim because BIA "has no jurisdiction to adjudicate constitutional issues"); *see also McCarthy v.*

[1] Kyle Cheney "Judges keep ordering immigration hearings – but say the results are a sham" Politico, Mar. 6, 2026 (last visited Mar. 12, 2026) available at: https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660?fbclid=IwZnRzaAQf3mBleHRuA2FlbQIxMQBzcnRjBm FwcF9pZAo2NjI4NTY4Mzc5AAEeVCDmzKrfGvCkKey7rb9Cz56YtpHD-GFW_NuEthCainwcf2qgP9 o7fY6HlE4_aem_I8wMqxL3VXgdmyZn7GNa8Q&utm_medium=twitter&utm_source=dlvr.it

Madigan, 503 U.S. 140, 147-48 (1992) ("an agency ... may be unable to consider whether to grant relief because it lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute"); *Sims v. Apfel*, 530 U.S. 103, 115, 120 S.Ct. 2080, 147 L.Ed.2d 80 (Breyer, J., dissenting) (exception rule "applies with particular force where the resolution of the claim significantly depends upon specialized agency knowledge or practice").

32. Courts have found that continued detention during the administrative appeals process would cause irreparable injury. *See Picado v. Hyde*, No. 1:26-cv-65-JJM-PAS at *11 (D.R.I. Feb. 9, 2026) ("[T]he loss of liberty endured by a noncitizen in ICE custody is a severe form of irreparable injury.") (quotation omitted); *Gomes v. Hyde*, No. 1:25-cv-11571-JFK at *9 (D. Mass. Jul. 7, 2025). Recent data shows that the appellate agency is taking up to six months to decide bond appeals. *See Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1248-49 (W.D. Wash. 2025).

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

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

35. 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. *Hechavarria*, 358 F.Supp.3d 227. The government could not as a matter of law 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 Picado*, No. 1:26-cv-65 at *14; *Diaz Calderon*, 535 F.Supp.3d at 681 ("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."). "If the clear and convincing standard means what it says, it cannot permit detention based on mere speculation that an alien's release might possibly pose a danger." *Hechavarria*, 358 F.Supp.3d at 241 (citing *Addington v. Texas*, 441 U.S. 418, 427 (1979)).

36. 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.

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

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. Petitioner's detention at nearly eleven months, without the requisite proof of dangerousness by the government, is unreasonably prolonged and therefore, unconstitutional. *See Addington v. Texas*, 441 U.S. 418 (1979); *Lopez Reyes v. Bonnar*, 362 F.Supp.3d 762,772-72 (ND Cal. 2019) (finding that the length of detention was sufficiently long to present a strong private liberty interest).

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: March 12, 2026

/s/ Ann Elise McCaffrey
Bar ID: 5100581
McCaffrey Immigration Law LLC
PO Box 4204
Middletown RI 02842
Tel: 347-881-3032
eliselaw@protonmail.com