Brooklyn Defenders

Amelia Marritz
Supervising Attorney, Immigration Practice
O: (917) 336-1627
M: (929) 627-1035
amarritz@bds.org

Brooklyn Defender Services
177 Livingston St, 7th Fl
Brooklyn, NY 11201

Tel (718) 254-0700
Fax (347) 457-5194
info@bds.org

BY ECF

May 16, 2026

The Honorable Gary R. Brown
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *B.P.S. v. Genalo, et.al.*, Civil Action No. 26-cv-2923 (GRB)

Dear Judge Brown:

This office represents Petitioner B.P.S. in the above captioned habeas. This letter is respectfully submitted in reply to Respondent's letter submitted pursuant to Your Honor's Order to Show Cause dated May 15, 2026.

Your Honor directed that, in lieu of an emergency bail hearing, the government should show cause "as to whether it has any particularized reason to believe that Petitioner presents a danger to the community, a flight risk, or otherwise should be detained because of involvement with illegal narcotics, violence, criminal history, firearms, gang affiliation and the like." ECF No. 5. In the event the government does not have such information, the Court indicated it would "enter an order releasing Petitioner on his or her own recognizance pending resolution of the petition," subject to the terms of supervised release attached to the order. *Id.*

Respondents do not ever claim they believe Petitioner to be a danger to the community or a flight risk. In fact, they affirmatively state they did *not* make any individualized consideration of those factors prior to detaining him, because the statute under which they claim authority for his detention—8 U.S.C. § 1226(c)—does not require it. *See* ECF 7 at 2 ("[T]here is nothing in the statute that requires consideration of whether Petitioner presents a flight risk or danger to the community as a condition precedent to the mandatory detention required by the [Laken Riley Act]"). Instead, the government claims that under the Laken Riley Act ("LRA"), the sole fact

that Petitioner has been arrested on allegations of larceny, for allegedly taking items from two stores, is enough to mandate his detention without even the opportunity to seek release on bond. *Id.*

Application of mandatory detention to Petitioner under this provision, however, likewise violates Petitioner's due process rights. Absent a conviction, mandatory civil immigration detention based solely on a charge or arrest, as is the case for Petitioner, violates a noncitizen's right to due process. *See, e.g.*, *Nosirov v. Jamison*, No. 2:26-CV-1534, 2026 WL 916602, at *2 (E.D. Pa. Apr. 1, 2026) (finding due process violation where ICE mandatorily detained noncitizen based on pending charges related to receiving stolen property while criminal case was ongoing); *S.E. v. Noem*, No. 1:26-CV-00356, 2026 WL 206085, at *2–4 (E.D. Cal. Jan. 27, 2026) (finding due process violation for noncitizen detained based on arrest for battery causing serious bodily injury that the D.A. declined to prosecute); *see also Doe v. Moniz*, 800 F. Supp. 3d 203, 215 (D. Mass. 2025) (finding the petitioner, who was arrested for shoplifting, was likely to succeed on due process grounds). Here, the due process concerns are even more elevated, where Petitioner's ICE detention has prevented him from facing the charges—indeed, he has not even been arraigned, and his attempts to be writ back to the custody of Nassau County in order to contest the charges against him have been unsuccessful.

As other Courts have explained, mandatory civil immigration detention pursuant to anything short of a conviction deprives a noncitizen of "due process, either for a criminal proceeding to adjudicate guilt, or a bond hearing to evaluate flight risk or dangerousness." *Brandon Y. M. v. Andrews*, No. 1:25-CV-01962, 2026 WL 125234, at *3 (E.D. Cal. Jan. 16, 2026) (finding the LRA would "raise serious constitutional concerns" if it applied); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (contrasting criminal detention as one "ordered in a *criminal* proceeding with adequate procedural protections" with civil immigration detention, assumed to be "nonpunitive in purpose and effect" and pursuant to two regulatory goals: preventing flight risk and danger).

Application of the *Mathews v. Eldrige* due process factors would overwhelmingly support Petitioner's release. As described in the Petition, the private interest at stake is freedom from imprisonment—the most elemental liberty interest that exists. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Zadvydas*, 533 U.S. at 690. This is especially true where Petitioner's removal proceedings will likely last for a long time and frustrate his access to the criminal justice system. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019) (noting a BIA appeal and petition for review "may take up to two years or longer"); Tiffany J. Lieu, *The Accountability Deficit: When Immigration Detention Obstructs One's Day in Criminal Court*, 125 Columbia L. Rev. 1631, 1648–54 (2025) (describing instances when ICE refused to temporarily release detained noncitizens to the sheriff's department custody to be produced for in-person hearings, despite court orders).

Second, the risk of error is substantial where the underlying charges have not resulted in a conviction and have no relation to danger or flight risk. *See Nosirov*, 2026 WL 916602, at *7; *Doe*, 800 F. Supp. 3d at 216; *see also Demore*, 538 U.S. at 528 ("Such detention [pending a noncitizen's removal proceedings] necessarily serves the purpose of preventing deportable criminal [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed."). There is an added risk of error where Petitioner's civil immigration detention frustrates his access to pursue defense of his criminal case, indeed, preventing him from even being arraigned.

Finally, Respondents have failed to assert *any* valid governmental interest in continuing to detain Petitioner. They make no assertion he is a danger or flight risk, beyond pointing to his arrest. He has a partner and child, and his partner is expected to give birth to their U.S. Citizen son in the coming days. It is in the "Government's interest—one we believe to be paramount—[to] minimize[e] the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

In sum, Respondents' mandatory detention of Petitioner—absent any conviction and based instead on mere accusations—subjects him to guilt before any criminal proceeding. B.P.S.'s mandatory detention likewise subjects him to indefinite detention without any finding of danger or flight risk in punitive conditions akin to criminal punishment. Respondents' use of the LRA to mandatorily detain Petitioner thus violates due process.

As an additional point of correction, Respondents state that B.P.S. initially entered the United States on December 26, 2022 and was neither admitted nor paroled after inspection by an Immigration Officer. *See* ECF 7 at 1. This is error. While Petitioner remains inadmissible because he "entered at a time or place not designated by Attorney General," 8 USC § 1182(a)(6)(A)(i), he was in fact paroled into the United States under 8 USC § 1182(d)(5) at the government's discretion. *See* ECF 1-1 (parole documents).

Pending additional briefing on the claims in the Petition, Petitioner should be released from custody, even if on conditions or alternatives to detention. Petitioner's arrest for larceny—which he has not been able to contest, let alone yet been arraigned—is not akin to an arrest or conviction for the offenses listed by Your Honor's Order to Show Cause (narcotics, violence, firearms, or gang affiliation), and nowhere do Respondents even argue that he is in fact a danger to the community or flight risk.

Petitioner again notes the imminent birth of his son. While initially scheduled for a c-section for today, May 16, 2026, his partner's delivery has now been moved to Wednesday, May 20, 2026. *See* Exh. A (partner's pre-surgery instructions). Petitioner's partner is also facing

Brooklyn Defenders

potential eviction from their apartment at the end of this month. We urge this Court to release Petitioner promptly.

I thank the Court for its consideration of this letter.

Respectfully submitted,

/s/ Amelia Marritz
Amelia Marritz
Alexandra Lampert
Brooklyn Defender Services
177 Livingston St, 7th Floor
Brooklyn, NY 11201
Tel: 718-254-0700
amarritz@bds.org

Pro bono Attorneys for Petitioner