UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

Plasido Fuentes Cordero

Petitioner,

v.

Markwayne Mullin, in his Official Capacity, Secretary of the U.S. Department of Homeland Security;
Todd Blanche, in his Official Capacity, Acting Attorney General of the United States;
Rodney S. Scott, in his Official Capacity, Commissioner, U.S. Customs and Border Protection;
Juan Di Bella, in his Official Capacity, Patrol Agent in Charge, Wellesley Island Border Patrol Station, U.S. Border Patrol, Buffalo Sector.

Respondents.

Civil Action No.
9:26-cv-01381 (ECC)

Hon. Elizabeth C. Coombe

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

PRELIMINARY STATEMENT

Respondents now concede that Petitioner's detention has never been governed by 8 U.S.C. § 1225(b)(2)(A), and that *Barbosa da Cunha v. Freden,* 175 F.4th 61 (2d Cir. 2026), controls. Resp. at 5–6. That concession establishes that the statutory basis DHS originally invoked to detain Petitioner, and under which Petitioner remained confined for eleven days before Respondents filed their Response, was incorrect from the outset. Respondents' remaining defense reduces to two propositions. First, that an immigration stop conducted without a warrant, based on an out-of-state

license plate, an early-morning drive toward a worksite, and asserted nervousness, supplied the reasonable suspicion and probable cause the Fourth Amendment and 8 U.S.C. § 1357(a)(2) require; and second, that Petitioner, having been stopped and detained on that basis, must now bear the burden of proving his own release at a bond hearing his own unlawful arrest and Respondents' subsequent processing delays helped bring about. Neither proposition withstands scrutiny.

ARGUMENT

I. RESPONDENTS' CONCESSION CONFIRMS THAT PETITIONER'S DETENTION WAS UNLAWFUL FROM ITS INCEPTION

1. Respondents concede exactly what the Petition alleged. That is, that Petitioner's detention has been governed at all times by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and that *Da Cunha* forecloses any contrary classification. Resp. at 5–6. That the Form I-213 and the Notice of Custody Determination served on Petitioner invoked section 236 of the Act and "section 235(b)(2)(A)" as the basis for his detention "pending a final administrative determination," Ex. A at 5, 7, while Respondents themselves now acknowledge that provision never applied, is not a harmless clerical matter. It means Petitioner was held in CBP and ICE custody for well over a week under a legal authority Respondents now admit did not exist.

2. Respondents attempt to minimize this concession by arguing that Petitioner has since been afforded the process to which § 1226(a) entitles him, namely, the opportunity to seek a custody redetermination. Resp. at 5–6. But the question is not simply whether Petitioner may eventually receive that process; it is whether the process he actually received, and the manner in which Respondents arrived at their present position, satisfies the Due Process Clause. We submit it doesn not.

II. PETITIONER'S WARRANTLESS ARREST WAS NOT SUPPORTED BY REASONABLE SUSPICION OR PROBABLE CAUSE

A. The Circumstances Agent Di Bella Cites Do Not Establish Reason to Believe That Petitioner Was Unlawfully Present

3. An immigration officer executing a warrantless arrest under 8 U.S.C. § 1357(a)(2) must have "reason to believe" that the individual is unlawfully present, a standard the Second Circuit has equated with probable cause. *Avila-Gallegos v. INS,* 525 F.2d 666, 667 (2d Cir. 1975). Probable cause, in turn, requires specific, articulable facts particular to the individual, not generalized suspicion drawn from lawful, everyday conduct. *See United States v. Brignoni-Ponce,* 422 U.S. 873, 884 (1975) (roving patrol stops require "specific articulable facts," not generalized characteristics shared by law-abiding travelers); *United States v. Cortez,* 449 U.S. 411, 417–18 (1981) (the totality of the circumstances must "raise a suspicion that the particular individual being stopped is engaged in wrongdoing").

4. The circumstances Agent Di Bella recites, an out-of-state license plate, an early-morning departure, travel toward a worksite associated with day labor, and asserted nervous glances toward a passing law-enforcement vehicle, describe the ordinary morning commute of any construction or landscaping worker in Watertown, regardless of immigration status. Di Bella Decl. ¶¶ 6–7, 10–11; Ex. A at 2. *Brignoni-Ponce* rejected the proposition that such generalized characteristics can substitute for individualized suspicion. 422 U.S. at 885–87. Nor does the Declaration or the I-213 identify any observation particular to Petitioner himself, as opposed to the vehicle's owner and driver, Asención Fuentes Cordero, made before the stop was initiated. Di Bella Decl. ¶¶ 8–11.

5. The vehicle's asserted connection to "a prior U.S. Border Patrol immigration encounter in Arizona," Di Bella Decl. ¶ 9, does nothing to establish reasonable suspicion as to Petitioner, who is not alleged to have been present at, or connected to, that prior encounter. A

vehicle's history says nothing about a passenger's immigration status, particularly where, as here, the vehicle was driven by someone else. Di Bella Decl. ¶ 8.

B. Respondents Have Not Shown That Petitioner Was Likely to Escape Before a Warrant Could Be Obtained

6. Section 1357(a)(2)'s second requirement, that the officer reasonably determine the individual is likely to escape before a warrant can be obtained, cannot be satisfied merely because an encounter occurs on a public road rather than at a fixed address. Respondents' own submission establishes that Petitioner had a fixed, identifiable address in East Hartford, Connecticut, an identified relative in the United States, his nephew, Asención Fuentes Cordero, and an identified employer. Ex. A at 6 (listing "US POC and selector data: Nephew"; "US Employer: DC Solar"). These are precisely the kind of verifiable community ties that shift in favor of obtaining a warrant rather than dispensing with one. Respondents' contrary determination rests on the same generalized characteristics addressed above. There was no individualized indication that Petitioner intended to flee. Di Bella Decl. ¶¶ 19–21.

7. To be clear, Petitioner does not ask this Court to suppress evidence or terminate his removal proceedings based on the unlawfulness of his arrest. *See INS v. Lopez-Mendoza,* 468 U.S. 1032, 1050 (1984) (exclusionary rule generally inapplicable in civil deportation proceedings). Rather, the unlawfulness of the stop and arrest bears directly on the due process calculus set forth in Point III below. It is part of the process, and lack of process, Petitioner has received, and it is directly relevant to whether Respondents, who instigated an unlawful arrest and then held Petitioner for eleven days under a statute they now concede did not apply, should be permitted to place the entire burden of proving safety and non-flight risk on Petitioner at the hearing their own conduct delayed.

III. THE UNLAWFUL STOP AND DEFICIENT PROCESS PETITIONER HAS RECEIVED REQUIRE A BOND HEARING AT WHICH RESPONDENTS BEAR THE BURDEN

8. Respondents rely on *Mahmodi v. Marich,* No. 25-CV-6762-MAV, 2026 WL 113473 (W.D.N.Y. Jan. 15, 2026), for the proposition that a noncitizen detained under § 1226(a) bears the burden of proof at his initial bond hearing. Resp. at 12–14. *Mahmodi* is not binding on this Court and, in any event, is distinguishable. Unlike the petitioner there, Petitioner here was arrested without a warrant under circumstances that did not satisfy § 1357(a)(2), see Point II, *supra*; was processed and detained for eleven days under a statutory provision, § 1225(b)(2)(A), that Respondents now concede never applied to him, Resp. at 5–6; and received a corrected Notice to Appear only on July 20, 2026, eleven days after his arrest and after this action was filed. Resp. at 5 n.1. These are not the circumstances of the routine, promptly and correctly processed § 1226(a) detention that *Mahmodi* addressed.

9. The Second Circuit's decision in *Velasco Lopez v. Decker,* 978 F.3d 842 (2d Cir. 2020), while addressing a longer period of detention, rests on a principle equally applicable which is that when the process afforded a detained noncitizen has been delayed, erroneous, or otherwise deficient, the risk of an erroneous deprivation of liberty rises, and due process may require that the burden shift to the Government at the noncitizen's custody hearing. *Id.* at 852–55. Respondents' own filings establish exactly that kind of deficient process here. There was an arrest unsupported by reasonable suspicion or probable cause, eleven days of detention under a legal theory Respondents have since abandoned, and a corrected charging document served only after Petitioner sought judicial relief.

10. Under *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976), the process due is measured against the risk of an erroneous deprivation and the value of additional safeguards. Where, as here, the charging document Respondents rely upon to justify continued detention was itself defective

and required correction mid-litigation, placing the burden on Petitioner to disprove flight risk and dangerousness, rather than requiring Respondents to justify a detention their own procedural errors helped prolong, does not adequately guard against the risk of erroneous deprivation that *Mathews* requires courts to weigh.

11. Respondents' remaining reliance on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), does not state otherwise. *Jennings* addressed only whether § 1226(a) itself, as a matter of statutory construction, assigns the burden of proof to the Government. It did not address, and did not foreclose, a due process claim resting on the specific procedural irregularities present in an individual case. *See id.* at 301–03. Petitioner's claim is of the latter kind.

12. Should this Court conclude that the deficiencies identified above, Petitioner's unlawful arrest, his eleven days of detention under an inapplicable statute, and the belated correction of his charging document, are so substantial as to independently violate due process regardless of the forthcoming bond hearing, Petitioner respectfully submits that immediate release, rather than a further custody hearing, would be the appropriate remedy.

CONCLUSION

For the foregoing reasons, and those set forth in the Petition, Petitioner respectfully requests that this Court:

1. Find and declare that Petitioner's warrantless arrest was not supported by reasonable suspicion or probable cause under 8 U.S.C. § 1357(a)(2) and the Fourth Amendment;
2. To the extent this Court finds that Petitioner's continued detention independently violates the Due Process Clause given the unlawfulness of his arrest and the delay in correcting the charging document against him, order Petitioner's immediate release;

3. In the alternative, Order Respondents to provide Petitioner a prompt custody redetermination hearing before an Immigration Judge at which Respondents bear the burden of demonstrating, by clear and convincing evidence, that Petitioner's continued detention is justified;

4. Grant such further relief as the Court deems just and proper.

Dated: July 23, 2026

Respectfully submitted,

/s/ Andrea C. Soto

By:_____

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