

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

)
MARVIN DUBON MIRANDA)
Howard County Detention Center)
7301 Waterloo Road)
Jessup, MD 20794)
Worcester County, MD;)

)
AJIBADE THOMPSON ADEGOKE)
Worcester County Detention Center)
5022 Joyner Road)
Snow Hill, MD 21863)
Worcester County, MD;)

)
and)

)
JOSE DE LA CRUZ ESPINOZA)
Howard County Detention Center)
7301 Waterloo Road)
Jessup, MD 20794)
Howard County, MD)

)
on behalf of themselves and all others)
similarly situated,)

)
Plaintiffs-Petitioners,)

)
v.)

)
WILLIAM P. BARR, Attorney General,)
U.S. Department of Justice)
950 Pennsylvania Ave. NW)
Washington, D.C. 20530;)

)
CHAD F. WOLF, Acting Secretary,)
U.S. Department of Homeland Security)
Secretary of Homeland Security)
Washington, D.C. 20528;)

)
MATTHEW T. ALBENCE, Deputy)
Director and Senior Official Performing)
the Duties of the Director,)
Immigration and Customs Enforcement)
500 12th St., SW)

Civil No. _____

INTRODUCTION

1. Liberty is a fundamental right enshrined in the U.S. Constitution, the deprivation of which is only permitted with due process of law. As the Supreme Court has explained, “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). In immigration proceedings, however, Respondents-Defendants (“Respondents”) have turned this principle on its head. Although these are civil proceedings, the government routinely jails noncitizens—including Plaintiffs-Petitioners Marvin Amilcar Dubon Miranda, Ajibade Thompson Adegoke, and Jose de la Cruz Espinoza (“Petitioners”)—pursuant to immigration court custody hearings (colloquially known as “bond hearings”) that lack the most basic due process protections.

2. Respondents’ bond hearings are flawed in two ways. First—in contrast to nearly every other custody hearing in the U.S. legal system—the government jails noncitizens pending their removal proceedings without being required to demonstrate that such detention is even warranted in the first place. Instead, noncitizens bear the burden of proving, to the satisfaction of an immigration judge (“IJ”), that they pose no danger or flight risk and should be free. Second, Respondents condition release on payment of a money bond, without any requirement that IJs consider the noncitizen’s financial circumstances when setting a bond amount, or that IJs consider whether the person can be released on alternative conditions of supervision, such as electronic monitoring, in-person or telephonic reporting, curfews and travel restrictions, home visits, or case management services. As a result, Petitioners and people like them are detained arbitrarily, either because the government has not established that their imprisonment is in fact necessary, or because they are detained under a bond that is set unnecessarily beyond their financial means.

3. Courts have repeatedly held that such detention is unlawful, but the government's practices have not abated. Unless this Court intervenes, the government will continue to imprison the Petitioners and others like them without ever being required to prove that this imprisonment is necessary to protect public safety or to ensure their appearance in immigration court, and will guarantee that noncitizens continue to be detained based solely on their poverty.

4. Petitioners bring this action to compel the government to provide constitutionally adequate bond hearings for them and a class of similarly situated people. The proposed class includes all people who are or will be detained under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), and had or will have a bond hearing before the Baltimore Immigration Court in Baltimore, Maryland. On behalf of themselves and the class, Petitioners seek declaratory and injunctive relief that prohibits further detention without a constitutionally adequate bond hearing—that is, a hearing in which the government bears the burden to prove by clear and convincing evidence that detention is necessary because the noncitizen is a danger to others or a flight risk, and that there is no condition or combination of conditions that will reasonably assure the noncitizen's future appearance and the safety of the community. Moreover, in setting conditions of release, the immigration court must consider the noncitizen's ability to pay in setting the amount of any bond and must consider the noncitizen's suitability for release on alternative conditions of supervision.

5. Respondents' violations of the Petitioners' rights have become all the more harmful—and Petitioners' request for relief all the more urgent—in light of the ongoing COVID-19 pandemic. Public health experts have warned that immigration detention centers are hotbeds for the spread of the coronavirus that causes COVID-19—a disease for which there is no vaccine and no cure, and which in many cases results in serious illness and death. There has already been

a confirmed case of COVID-19 at one of the Maryland detention facilities, the detention facility that is currently holding Petitioners Marvin Amilcar Dubon Miranda and Jose de la Cruz Espinoza.¹ Moreover, researchers project that, within 90 days, 72% to nearly 100% of individuals in the custody of U.S. Immigration and Customs Enforcement (“ICE”) will be infected with the COVID-19 virus.² Given the near-certainty of exposure to COVID-19 in ICE detention, it is more urgent than ever to ensure that individuals held in ICE custody are not deprived of their liberty without due process of law.

PARTIES

6. Petitioner Marvin Amilcar Dubon Miranda is a resident of Baltimore City, Maryland. He has been held in immigration detention since December 12, 2019, 140 days as of today. He is currently detained by ICE at the Howard County Detention Center.

7. Petitioner Ajibade Thompson Adegoke is a resident of Baltimore City, Maryland. He has been held in immigration detention since November 18, 2019, 164 days as of today. He is currently detained by ICE at the Worcester County Detention Center.

8. Petitioner Jose de la Cruz Espinoza is a resident of Georgetown, Delaware, in Sussex County. He has been held in immigration detention since February 12, 2020, 78 days as of today. He is currently detained by ICE at the Howard County Detention Center.

9. Respondent William P. Barr is the Attorney General of the United States. In this capacity, he is responsible for the policies and operations of the U.S. Department of Justice (“DOJ”), including the Executive Office for Immigration Review (“EOIR”), the office that runs

¹ Ex. 1 (Notice, ECF No. 71, *Coreas, et al. v. Bounds, et al.*, No. 8:20-cv-00780-TDC (D. Md. Apr. 25, 2020)).

² Ex. 2 (Michael Irvine, et al., *Modeling COVID-19 and impacts on U.S. Immigration and Enforcement (ICE) detention facilities, 2020*, Journal of Urban Health 2020), available at https://whistleblower.org/wp-content/uploads/2020/04/Irvine_JUH_ICE_COVID19_model.pdf.

the nation's immigration courts and Board of Immigration Appeals. He is sued in his official capacity.

10. Respondent Chad F. Wolf is the Acting Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, he directs each of the component agencies within DHS, including ICE. As a result, Respondent Wolf has responsibility for the administration of the immigration laws, and is a legal custodian of the Petitioners. He is sued in his official capacity.

11. Respondent Matthew T. Albence is the Deputy Director and Senior Official Performing the Duties of the Director of ICE. In this capacity, he directs all ICE operations. As a result, Respondent Albence has responsibility for the administration of the immigration laws, and is a legal custodian of the Petitioners and members of the putative class. He is sued in his official capacity.

12. Respondent James McHenry is the Director of EOIR, a component of the U.S. DOJ. In this capacity, he is responsible for the policies and operations of the immigration courts. He is sued in his official capacity.

13. Respondent Janean Ohin is the Acting Field Office Director for the Baltimore Field Office of ICE's Enforcement and Removal Operations ("ERO"), located in Baltimore, Maryland. She is sued in her official capacity. The Baltimore Field Office is responsible for and has authority over ICE's apprehension, detention, and removal operations in Maryland. Ms. Ohin is the immediate legal custodian of Petitioners and members of the putative class.

14. Respondent William DeLauter is the Corrections Bureau Chief of the Frederick County Adult Detention Center in Frederick County, Maryland. He is the immediate custodian of numerous members of the putative class. He is sued in his official capacity.

15. Respondent Jack Kavanagh is the Director of the Howard County Detention Center in Howard County Maryland. He is the immediate custodian of Marvin Dubon Miranda and Jose de la Cruz Espinoza and numerous members of the putative class. He is sued in his official capacity.

16. Respondent Donna Bounds is the Warden of the Worcester County Detention Center in Worcester County, Maryland. She is the immediate custodian of Ajibade Thompson Adegoke and numerous members of the putative class. She is sued in her official capacity.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction under 28 U.S.C. §§ 2241 *et seq.*, Art. I § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), 28 U.S.C. § 1331 (federal question jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), and 28 U.S.C. § 1346 (original jurisdiction).

18. Venue is proper in the District of Maryland under 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b) and (e) because the events giving rise to the claim occurred in this district.

DETENTION UNDER THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)

19. Immigration removal proceedings begin when ICE accuses a person of being a noncitizen subject to being removed (commonly, “deported”) from the United States. The person may contest their deportation, and may also apply for various forms of relief from deportation. Many people placed in removal proceedings will not ultimately be deported. However, it takes months or years for the courts to decide if a person should be deported or if they are legally entitled to remain in the United States.³

³ Ex. 3 (Immigration Court Backlog Tool, Transactional Records Access Clearinghouse (TRAC) of Syracuse University), *available at* https://trac.syr.edu/phptools/immigration/court_backlog/.

20. The government’s authority to jail people during their removal proceedings is generally governed by 8 U.S.C. § 1226. Those individuals are eligible to be released on bond and other conditions of supervision under § 1226(a), unless they are subject to mandatory detention under 8 U.S.C. § 1226(c), which prohibits release on bond for noncitizens who are removable on the basis of certain criminal or national security grounds.

21. For individuals detained under § 1226(a), ICE makes an initial custody determination after the individual’s arrest to decide if an individual should be detained or released on bond or other conditions of supervision. 8 C.F.R. § 1236.1(c)(8).

22. Thereafter, the individual may request a custody redetermination of ICE’s decision from an IJ, through what is colloquially referred to as a “bond hearing.”⁴ See 8 C.F.R. § 1236.1(d)(1).

23. In the Baltimore Immigration Court, the individual currently waits a week or more in ICE custody to have this bond hearing before the immigration judge. Upon information and belief, over 2,000 noncitizens had bond hearings before the Baltimore Immigration Court between January 1, 2017 and December 31, 2019.

24. The statute and regulations are silent as to who bears the burden of proof at the bond hearing. Indeed, prior to 1999, the government interpreted the statute to impose a *presumption of release*. The Board of Immigration Appeals (“BIA”)—which makes controlling precedent for immigration judges—held that “[a]n alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is

⁴ The “bond hearing” requested through this action would include consideration of conditions of release other than a monetary bond.

a poor bail risk,” and required that the government provide reasons to justify detention. *See Matter of Patel*, 15 I. & N. Dec. 666, 666–67 (BIA 1976) (citations omitted).

25. In 1999, the BIA abruptly reversed course and made detained individuals bear the burden of proof in bond hearings. *See Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999). Under *Adeniji* and its progeny, the BIA currently requires that people seeking release prove “to the satisfaction of” an immigration judge that they do not pose a danger to property or persons, and are likely to appear for any future proceeding. *See id.* at 1112–1113; *see also Matter of Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006).⁵

26. Consequently, ICE routinely holds allegedly removable people in jail without ever being required to show that such detention is necessary. These people—the vast majority of whom are unrepresented by counsel—may affirmatively request and receive bond hearings before immigration judges.⁶ However, at those hearings, the *individuals* bear the burden to prove that they should *not* be jailed because they are *not* a danger to the community and *not* a flight risk. As the Supreme Court previously noted, “[i]n . . . litigation it is plain that where the burden of proof lies may be decisive of the outcome.” *Speiser v. Randall*, 357 U.S. 513, 525 (1958). These individuals are being deprived of freedom—jailed and separated from their families and livelihoods—because

⁵ *See also* Ex. 4 (Declaration of Adam N. Crandell (“Crandell Decl.”)) ¶¶ 4, 7; Ex. 5 (Declaration of Katherine J. Perino (“Perino Decl.”)) ¶ 9; Ex. 6 (Declaration of Michelle N. Mendez (“Mendez Decl.”)) ¶ 6; Ex. 7 (Declaration of Former Immigration Judge Denise Noonan Slavin (“Judge Slavin Decl.”)) ¶¶ 5–10.

⁶ Ex. 8 (Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council, Sept. 28, 2016), *available at* https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

they cannot meet the unlawful burden of proving a negative.⁷ Upon information and belief, in the Baltimore Immigration Court over 300 individuals who were statutorily eligible for bond were denied bond by the IJ in the last three years.

27. Furthermore, individuals who satisfy this unfair evidentiary burden may face an additional hurdle: their release is routinely conditioned on a bond which is set without consideration of their ability to pay. There is no requirement that IJs in the Baltimore Immigration Court even consider an individual's ability to pay when setting a bond amount.⁸ As a result, IJs routinely set high bonds that individuals are unable to pay.⁹ Upon information and belief, bond amounts in the Baltimore Immigration Court range from the statutory minimum of \$1,500 to \$50,000. Bond amounts are frequently set between \$8,000 and \$15,000. Moreover, unlike in the criminal context, the individual posting bond must pay the full amount up front to secure release.¹⁰ Additionally, IJs in the Baltimore Immigration Court are not required to consider whether an individual is eligible for alternative conditions of release that do not require the posting of bond.¹¹ Such bonds set beyond a person's ability to pay are simply *de facto* detention orders.¹²

⁷ While placing the burden on a detained individual to prove they are not a flight risk or a danger is onerous for all members of the Class, the impact on individuals proceeding *pro se* is especially acute. *See* Ex. 7 (Judge Slavin Decl.) ¶ 6; Ex. 5 (Perino Decl.) ¶¶ 13, 16.

⁸ *See* Ex. 4 (Crandell Decl.) ¶ 16; Ex. 5 (Perino Decl.) ¶¶ 21–24; Ex. 6 (Mendez Decl.) ¶ 13; Ex. 7 (Judge Slavin Decl.) ¶¶ 9–10; *see also Guerra*, 24 I. & N. Dec. at 40 (enumerating factors that the immigration judge may consider in setting bond, without mention of ability to pay).

⁹ *See* Ex. 4 (Crandell Decl.) ¶ 14; Ex. 5 (Perino Decl.) ¶ 21.

¹⁰ Ex. 5 (Perino Decl.) ¶ 24.

¹¹ Ex. 7 (Judge Slavin Decl.) ¶ 14; Ex. 4 (Crandell Decl.) ¶ 17; Ex. 5 (Perino Decl.) ¶ 23.

¹² In one instance, an individual was granted bond in the Baltimore Immigration Court for \$7,500 even though he had no criminal convictions and strong family ties. Because he could not afford to pay the amount, he remained detained for six months. While he was in detention, his pregnant U.S. citizen wife and children became homeless and he missed the birth of their son. He was ultimately granted lawful permanent residence. Ex. 5 (Perino Decl.) ¶ 27.

28. Courts have repeatedly held that the government violates detainees' constitutional rights by requiring the individual to bear the burden of proof at his or her bond hearing. *See, e.g., Brito v. Barr*, 415 F. Supp. 3d 258, 263 (D. Mass. 2019) (holding that BIA policy of placing burden of proof on the noncitizen at § 1226(a) bond hearings violates due process), *appeal docketed*, No. 20-1119 (1st Cir. 2020); *see also, e.g., Rajesh v. Barr*, 420 F. Supp. 3d 78, 87 (W.D.N.Y. 2019); *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018); *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018); *Medley v. Decker*, No. 18-cv-7361 (AJN), 2019 WL 7374408, at *3 (S.D.N.Y. Dec. 11, 2019); *Hernandez-Lara v. ICE*, No. 19-cv-394-LM, 2019 WL 3340697, at *3–7 (D.N.H. July 25, 2019); *Doe v. Tompkins*, No. 18-12266-PBS, 2019 WL 8437191, at *1 (D. Mass. Feb. 12, 2019); *Diaz Ortiz v. Tompkins*, No. 18-12600-PBS, 2019 WL 7755299, at *1 (D. Mass. Jan. 29, 2019); *Brevil v. Jones*, No. 17 CV 1529-LTS-GWG, 2018 WL 5993731, at *4 (S.D.N.Y. Nov. 14, 2018); *Alvarez Figueroa v. McDonald*, --- F. Supp. 3d ---, No. 18-10097, 2018 WL 2209217, at *5 (D. Mass. May 14, 2018).

29. Courts have also repeatedly held that the government is violating detainees' constitutional rights by failing to consider their ability to pay when setting bond amounts or considering their eligibility for alternative, nonmonetary conditions of release. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 990–94 (9th Cir. 2017); *Brito*, 415 F. Supp. 3d at 267–68; *Lett v. Decker*, 346 F. Supp. 3d 379, 389 (S.D.N.Y. 2018); *Brissett v. Decker*, 324 F. Supp. 3d 444, 454 (S.D.N.Y. 2018).

30. Nevertheless, in this District, the government continues to make individuals bear the burden of proof when they seek release from detention, and to detain individuals on bond

without consideration of their financial circumstances or suitability for alternative conditions of release.¹³

31. Unless this Court orders class-wide relief, the government will continue to routinely deny fundamental constitutional and statutory rights to immigration detainees. To comport with due process, at a bond hearing for an 8 U.S.C. § 1226(a) detainee, the government must be required to prove by clear and convincing evidence that the detainee is a danger to others or a flight risk and that no condition or combination of conditions will reasonably assure his/her future appearance and the safety of the community. Additionally, where an immigration judge determines that release is warranted, the immigration judge must consider the detainee's ability to pay the bond before determining any bond amount, as well as whether alternative, nonmonetary conditions are sufficient to permit his or her release.

32. As described below, Petitioners' continued civil detention is unlawful because they have not received a bond hearing that meets these standards.

STATEMENT OF FACTS

I. Petitioner Marvin Dubon Miranda does not present a flight risk, is not dangerous, and was prejudiced by a flawed bond hearing.

33. Marvin Dubon Miranda is a 35-year old man from El Salvador who has lived in the United States for more than 10 years.¹⁴ He is seeking withholding of removal and protection under the Convention Against Torture because of his resistance to MS-13 control of his community back in El Salvador.¹⁵ He is devoted to his 13-year old son, Jason, who lives in Maryland and is the light

¹³ See Ex. 4 (Crandell Decl.) ¶¶ 4, 16–17; Ex. 5 (Perino Decl.) ¶¶ 9, 21, 23; Ex. 6 (Mendez Decl.) ¶ 13.

¹⁴ Ex. 9 (Declaration of Marvin Amilcar Dubon Miranda (“Dubon Miranda Decl.”)) ¶¶ 1–2.

¹⁵ *Id.* ¶ 10.

of Mr. Dubon Miranda's life, and his partner, Patricia ("Patty"), who is dying from end-stage renal disease.¹⁶ He was taken into ICE custody at the courthouse on December 12, 2019 after being sentenced to 60 days (with time served) for driving under the influence ("DUI").¹⁷

34. Mr. Dubon Miranda is not a flight risk. He has lived in the United States for over a decade. His son, Jason, and Jason's mother, Iris, live in Maryland, and Mr. Dubon Miranda and Iris co-parent Jason.¹⁸ Although they are divorced, Mr. Dubon Miranda and Iris maintain a friendly relationship with each other and co-parent their child, and Mr. Dubon Miranda is invested in providing for his son financially and emotionally. Jason is the "most important person in [Mr. Dubon Miranda's] life."¹⁹ Moreover, Mr. Dubon Miranda is seeking withholding of removal relief and protection under the Convention Against Torture and has every reason to appear for his immigration hearings to pursue that relief.²⁰

35. Mr. Dubon Miranda does not present a danger to the community. He has struggled with alcohol dependence in the past, leading to a conviction in 2017 for a DUI and the aforementioned conviction in 2019.²¹ However, Mr. Dubon Miranda is committed to his rehabilitation. He has sought out alcohol rehabilitation classes while detained at Howard County Detention Center and is currently waiting to be enrolled.²² He plans to continue seeking substance abuse counseling if he is released, submitted a detailed Post-Release Plan while seeking bond tailored to ensuring his continued rehabilitation, and wants to attend Alcoholics Anonymous.²³

¹⁶ *Id.* ¶¶ 3–5.

¹⁷ *Id.* ¶ 8–9.

¹⁸ *Id.* ¶ 3.

¹⁹ *Id.*

²⁰ *See id.* ¶ 10.

²¹ *Id.* ¶¶ 7–8.

²² *Id.* ¶ 11.

²³ *Id.*

Aside from his two DUIs, Mr. Dubon Miranda was convicted for misdemeanor second-degree assault over eight years ago.²⁴ The conviction arose from an altercation between Mr. Dubon Miranda and the man with whom his then wife was having an extramarital affair. Mr. Dubon Miranda and his ex-wife have since repaired their relationship as co-parents to their son.²⁵

36. Mr. Dubon Miranda has been in a romantic relationship with his partner, Patty, since 2015.²⁶ Tragically, Patty has a host of serious medical conditions, most severely end-stage renal disease.²⁷ Patty has been in and out of the hospital for several years and relies solely on Mr. Dubon Miranda to care for her and pay for her medical bills.²⁸ In fact, when Mr. Dubon Miranda found out that Patty was suffering from end-stage renal disease, his first instinct was to offer to donate his own kidney to save her life.²⁹ Mr. Dubon Miranda is committed to providing Patty comfort in her final days, which is impossible while he remains in detention.

37. To provide for his loved ones, Mr. Dubon Miranda worked as a construction worker before being detained.³⁰ However, since being detained, he has not been able to pay his bills and has lost his house and car.³¹

38. On February 26, 2020, Mr. Dubon Miranda had a bond hearing in the Baltimore Immigration Court in front of Immigration Judge Elizabeth Kessler.³² He was represented by counsel and filed substantial documents for the hearing in support of his request for bond, including

²⁴ *Id.* ¶ 7.

²⁵ *Id.*

²⁶ *Id.* ¶ 4.

²⁷ *Id.*

²⁸ *Id.* ¶ 5.

²⁹ *See* Ex. 10 (Dubon Miranda Bond Motion), at 6.

³⁰ Ex. 9 (Dubon Miranda Decl.) ¶ 6.

³¹ *Id.* ¶ 19.

³² *Id.* ¶ 12.

letters from Patty, his son, his ex-wife, and his friends that all account for his strong sense of responsibility and the positive impact he has on all of their lives.³³

39. Despite this thorough filing, which provided evidence of the fact that he is not a danger nor a flight risk, Mr. Dubon Miranda was denied bond outright because the IJ found he had failed to prove he was not a danger to the community.³⁴

40. Because Mr. Dubon Miranda remains detained, his partner, Patty, continues to struggle with her terminal illness alone, uncertain about how she will pay the bills for her medical treatment. His son Jason is without his father, and Mr. Dubon Miranda has lost his house and car.

II. Petitioner Ajibade Thompson Adegoke is not dangerous, does not present a flight risk, and was prejudiced by a flawed bond hearing.

41. Ajibade Thompson Adegoke is a 42-year old man from Nigeria who came to the United States in 2017 on a tourist visa.³⁵ He is seeking asylum after members of a political party, still in power today, attacked his hotel and threatened him and his family.³⁶ His wife and five children are back in Nigeria, but since he was detained, Mr. Thompson has not been able to contact them to determine whether they are safe.³⁷ Mr. Thompson is a devout Jehovah's Witness who has strong ties to the Jehovah's Witness community in Baltimore.³⁸

42. In October 2019, Mr. Thompson was charged with theft after a misunderstanding with a supermarket employee, who mistakenly thought he was stealing items from the store.³⁹ The

³³ See Ex. 10 (Dubon Miranda Bond Motion).

³⁴ See Ex. 11 (February 26, 2020 Order of the IJ Denying Mr. Dubon Miranda Bond).

³⁵ Ex. 12 (Declaration of Ajibade Thompson Adegoke ("Thompson Decl.")) ¶¶ 1, 3.

³⁶ *Id.* ¶¶ 5-8.

³⁷ *Id.* ¶¶ 2, 18.

³⁸ *Id.* ¶ 4.

³⁹ *Id.* ¶ 9.

police issued him a citation and sent him home to appear for court at a later date.⁴⁰ Mr. Thompson did not know the court date and missed his court appearance.⁴¹ When he realized that he had missed his court date, Mr. Thompson responsibly went to the courthouse on October 19, 2019 to turn himself in and avail himself to authorities because he wanted to be an upstanding citizen.⁴² The theft charge was dropped on November 15, 2019, but he was held until November 18, 2019 when Baltimore ICE agents took him into custody.⁴³

43. Mr. Thompson is not a danger to the community. Mr. Thompson has *no* criminal convictions besides minor traffic violations, all of which resulted in a traffic citation.⁴⁴ He is a loving husband and father who was a prominent community member in Nigeria. Mr. Thompson is a devout Jehovah's Witness, who practices the tenants of neutrality, pacifism, and honesty.

44. Mr. Thompson is not a flight risk. He has a meritorious asylum claim and intends to continue to pursue that claim. He cannot return to Nigeria because he has been attacked and threatened by members of the current ruling political party.⁴⁵ After coming to the United States, Mr. Thompson started working as a driver for a company in Baltimore and maintained this employment until he was detained.⁴⁶ Moreover, Mr. Thompson has community ties, as he joined a Jehovah's Witness congregation in Baltimore to help him continue to practice his faith.⁴⁷ Most

⁴⁰ *Id.*

⁴¹ *Id.* ¶ 10.

⁴² *Id.*

⁴³ *Id.* ¶¶ 11-12.

⁴⁴ *Id.* ¶ 15.

⁴⁵ *Id.* ¶¶ 5-8.

⁴⁶ *Id.* ¶ 3.

⁴⁷ *Id.* ¶ 4.

tellingly, Mr. Thompson *turned himself in* to criminal court when he realized that he had missed his court date and wanted to follow the law.⁴⁸

45. On December 2, 2019, Mr. Thompson had a bond hearing at the Baltimore Immigration Court in front of Immigration Judge Elizabeth Kessler.⁴⁹ When Mr. Thompson appeared for court *pro se* via video conferencing, he did not even know that he would be having a bond hearing that day.⁵⁰ His bond hearing lasted approximately five minutes.⁵¹ The IJ did not ask him to tell the court why he was neither a danger or a flight risk, and he had no idea what was expected of him during the hearing.⁵² The IJ did not ask him what his financial situation was and ultimately set his bond at \$15,000, which he is unable to pay.⁵³ Mr. Thompson remains detained because of a flawed bond hearing, where he was required, without counsel, to prove he is neither a danger nor a flight risk, and where the IJ did not consider his ability to pay in setting his bond.

46. When Mr. Thompson later processed what happened at his bond hearing, he realized he would never be able to pay a \$15,000 bond. He wrote a letter to the IJ on December 22, 2019, asking the IJ to reconsider, informing her that he could not pay the high bond and requested a reduction to a \$5,000 bond.⁵⁴ Mr. Thompson did not receive a response from the court.⁵⁵

47. Mr. Thompson's detention has taken a serious toll on him. He has not been able to sleep, often lying awake until 4:00 or 4:30 in the morning, even after taking prescribed sleep

⁴⁸ *Id.* ¶ 10.

⁴⁹ *Id.* ¶ 14.

⁵⁰ *Id.* ¶ 14.

⁵¹ *Id.* ¶ 15.

⁵² *Id.*

⁵³ *Id.* ¶¶ 14, 16–17; Ex. 13 (December 2, 2019 Bond Order of the IJ for Mr. Thompson).

⁵⁴ *See* Ex. 14 (December 22, 2019 Letter from Mr. Thompson to IJ Kessler).

⁵⁵ Ex. 12 (Thompson Decl.) ¶ 16.

medication.⁵⁶ He is often so depressed because of his detention that he stays in his cell for four or five days without leaving.⁵⁷

48. Mr. Thompson's detention is made worse by the uncertainty of his family's safety back in Nigeria. The persecutors who targeted him have also stalked his wife and vandalized Mr. Thompson's hotel after he fled to the United States.⁵⁸ Mr. Thompson has had no way of contacting his family members since he was taken into ICE custody because he does not have their phone numbers or a way to acquire them.⁵⁹ Mr. Thompson is plagued by the thought that his family members may be dead, and he has no way of knowing.⁶⁰

III. Petitioner Jose de la Cruz Espinoza is not dangerous, does not present a flight risk, and was prejudiced by a flawed bond hearing.

49. Jose de la Cruz Espinoza is a 25-year old Mexican man who came to the United States in 2008, when he was just 14 years old.⁶¹ He and his wife, Karla, have raised four children together, all of whom are U.S. citizens.⁶² Before he was detained, he ran a landscaping company with his wife, residing in Georgetown, Delaware.⁶³ He is currently seeking Cancellation of Removal relief ("42B Cancellation") and asylum.⁶⁴

50. Mr. de la Cruz Espinoza came into ICE custody as a result of pending criminal charges for two counts of Second Degree Assault and Malicious Destruction of Property Valued <\$1,000, which arose from a verbal dispute between Mr. de la Cruz Espinoza and his brother while

⁵⁶ *Id.* ¶ 17.

⁵⁷ *Id.* ¶ 19.

⁵⁸ *Id.* ¶ 8.

⁵⁹ *Id.* ¶ 18.

⁶⁰ *Id.*

⁶¹ Ex. 15 (Declaration of Jose de la Cruz Espinoza ("de la Cruz Espinoza Decl.)) ¶ 1.

⁶² *Id.* ¶ 2.

⁶³ *Id.* ¶¶ 3-4.

⁶⁴ *Id.* ¶¶ 15, 22.

Mr. de la Cruz Espinoza's wife was present.⁶⁵ Mr. de la Cruz Espinoza and his wife were at his brother's house when they got into a heated verbal argument. Mr. de la Cruz Espinoza's daughter was startled by the yelling and called the police.⁶⁶ Both his brother and his wife want the charges dropped and have tried repeatedly to contact the State's Attorney to request they be dropped.⁶⁷ Mr. de la Cruz Espinoza did not harm anyone the night he was arrested and was taken into custody because he could not explain to the police what had happened due to a language barrier.⁶⁸ In fact, he was initially given a \$1,500 criminal bond—much lower than his immigration bond—which was later reduced at a bail review hearing before a judge, and he was ordered to be released on his own recognizance.⁶⁹ However, before he could be released, ICE picked him up from criminal custody and brought him to ICE custody at the Howard County Detention Center.⁷⁰

51. Mr. de la Cruz Espinoza is not a danger to the community. He has no criminal convictions besides traffic violations.⁷¹

52. Nor is Mr. de la Cruz Espinoza a flight risk. He is a devoted father and husband who works hard to support his wife and four U.S. citizen children and is not a threat to community safety. He has been in the United States since 2008, when he was 14 years old.⁷² He founded a landscaping company with his wife and both of them earn between \$2,000 and \$4,000 per month,

⁶⁵ *Id.* ¶ 5.

⁶⁶ *Id.*

⁶⁷ *Id.* ¶ 8.

⁶⁸ *Id.* ¶ 5.

⁶⁹ Ex. 16 (February 11, 2020 Release from Commitment for Mr. de la Cruz Espinoza).

⁷⁰ Ex. 15 (de la Cruz Espinoza Decl.) ¶ 6.

⁷¹ *Id.* ¶ 9.

⁷² *Id.* ¶ 1.

depending on the time of year.⁷³ They work hard but have little left to save after monthly expenses.⁷⁴

53. Furthermore, Mr. de la Cruz Espinoza is seeking 42B Cancellation of Removal relief and fear-based relief from removal, and he has every reason to see those pursuits through to the end.

54. On February 19, 2020, Mr. de la Cruz Espinoza had a bond hearing in the Baltimore Immigration Court in front of Immigration Judge Elizabeth Kessler.⁷⁵ He was represented by counsel and requested a bond of \$5,000.⁷⁶ Mr. de la Cruz Espinoza's bond hearing lasted approximately five to ten minutes, and he did not know it was his burden to prove that he is not a danger to the community nor a flight risk.⁷⁷

55. Mr. de la Cruz Espinoza's counsel explained to the IJ his tight financial circumstances, including that he was the primary breadwinner for his family and that his wife could no longer work since she was the sole caregiver while he is detained.⁷⁸ Mr. de la Cruz Espinoza had a hard time understanding what was happening, because his primary language is Spanish, and very little during the hearing was interpreted for him.⁷⁹ The IJ set the bond at \$20,000 solely on the basis of his pending charge, despite the fact that Mr. de la Cruz Espinoza's attorney alerted the court that he was released on his own recognizance at his criminal bail hearing one

⁷³ *Id.* ¶ 4.

⁷⁴ *Id.*

⁷⁵ *Id.* ¶ 12.

⁷⁶ *Id.* ¶ 11.

⁷⁷ *Id.* ¶¶ 13-14.

⁷⁸ *Id.* ¶ 13.

⁷⁹ *Id.* ¶ 14.

week prior.⁸⁰ Mr. de la Cruz Espinoza remains detained because neither he nor his family can pay such a high bond.⁸¹

56. On March 4, 2020, Mr. de la Cruz Espinoza had another Master Calendar Hearing before Judge Kessler. He told the judge that he was proceeding *pro se* because he could no longer afford an attorney.⁸² He tried to ask the judge to reconsider his bond because he was not able to pay but was interrupted before he could explain.⁸³ She denied his request, stating that she could only reduce his bond if he filed a motion showing changed circumstances.⁸⁴ Without counsel, Mr. de la Cruz Espinoza did not understand what was required to file such a motion. Also, at that hearing, the government introduced a form I-213 into evidence, which stated that Mr. de la Cruz Espinoza accepted voluntary departure and returned to Mexico in 2011, which is not true.⁸⁵ The government argued that this made him ineligible for 42B Cancellation of Removal relief.⁸⁶ Mr. de la Cruz Espinoza did not have a chance to review the document before or during the hearing.⁸⁷ The I-213 was sprung upon him without notice for him to prepare to meet his burden.⁸⁸

57. Despite going before the IJ twice, explaining his limited financial circumstances the first time and informing the judge that he could no longer afford counsel the second time, Mr. de la Cruz Espinoza remains detained and separated from his family, leaving his wife to raise their children and support them financially on her own. Without Mr. de la Cruz Espinoza to help

⁸⁰ *Id.* ¶ 13; Ex. 17 (February 19, 2020 Bond Order of the IJ for Mr. de la Cruz Espinoza).

⁸¹ Ex. 15 (de la Cruz Espinoza Decl.) ¶ 16.

⁸² *Id.* ¶ 15.

⁸³ *Id.* ¶ 15.

⁸⁴ *Id.*; see Ex. 5 (Perino Decl.) ¶ 11.

⁸⁵ Ex. 15 (de la Cruz Espinoza Decl.) ¶ 15.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*; see Ex. 5 (Perino Decl.) ¶ 16.

financially and with the landscaping business, his wife has to rely on tax returns and food banks to make ends meet and feed their family.⁸⁹ His children have suffered in school, and visibly suffer from the emotional trauma of being separated from their father.⁹⁰

IV. COVID-19 has infiltrated Maryland detention facilities and makes constitutionally and statutorily adequate bond hearings all the more important to reduce risk of exposure to COVID-19.

58. COVID-19 has become a global pandemic. As of April 29, 2020, there were over 3 million confirmed cases and 207,900 deaths worldwide, with more than 980,000 confirmed cases and 50,000 deaths in the United States.⁹¹ In Maryland, over 21,000 people have tested positive for COVID-19 and over 1,000 people have died from the disease as of April 30, 2020.⁹² The Governor of Maryland issued a stay-at-home order on March 30, 2020.⁹³ The coronavirus has spread dramatically in Maryland jails and prisons. As of April 23, 2020, there have been 180 confirmed cases, including one death in the state's correctional system.⁹⁴ On April 18, 2020, Maryland's Governor issued an executive order allowing for the potential release of hundreds of incarcerated individuals who are especially vulnerable to serious illness or death if they contract COVID-19.⁹⁵

⁸⁹ Ex. 15 (de la Cruz Espinoza Decl.) ¶ 19.

⁹⁰ *Id.* ¶¶ 20–21.

⁹¹ Ex. 18 (Coronavirus Disease (COVID-19) Situation Report - 99, World Health Org. (Apr. 29, 2020)), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200429-sitrep-100-covid-19.pdf?sfvrsn=bbfbf3d1_6.

⁹² Ex. 19 (Coronavirus Disease 2019 (COVID-19) Outbreak, Maryland Dep't of Health (accessed Apr. 30, 2020)), available at <https://coronavirus.maryland.gov/>.

⁹³ See Ex. 20 (Order of the Governor of the State of Maryland § II, No. 20-03-30-01 (Mar. 30, 2020)), available at <https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf>.

⁹⁴ Ex. 21 (Tiffany Watson, *180 Confirmed COVID-19 Cases in Maryland Correctional Facilities*, Fox5News (Apr. 23, 2020)), available at <https://foxbaltimore.com/news/local/180-confirmed-covid-19-cases-in-maryland-correctional-facilities>.

⁹⁵ See Ex. 22 (Order of the Governor of the State of Maryland, No. 20-04-18-01 (Apr. 18, 2020)), available at <https://governor.maryland.gov/wp-content/uploads/2020/04/Prisoner-Release-4.18.20.pdf>; Ex. 23 (Danielle E. Gaines, *Hogan Issues Order to Guide Speedier Inmate Releases*

59. As this Court has found, “[p]risons, jails, and detention centers are especially vulnerable to outbreaks of COVID-19.”⁹⁶ Jails and prisons are prime settings for the rapid spread of highly contagious infectious diseases like COVID-19.⁹⁷ Mitigation strategies to effectively address an outbreak require extensive testing, medical isolation in negative pressure rooms, and social distancing practices.⁹⁸ It is harder for individuals to practice social distancing in detention centers and easier for the disease to spread through droplets in these often poorly ventilated facilities.⁹⁹ On April 25, 2020, government officials confirmed that one person in Howard County Detention Center, where Marvin Dubon Miranda and Jose de la Cruz Espinoza (as well as numerous members of the putative class) are detained, has tested positive for COVID-19.¹⁰⁰ In Howard County Detention Center, the dormitory-style housing structure makes social distancing impossible.¹⁰¹ In Howard County Detention Center and Worcester County Detention Center, individuals are housed in shared cells, rendering social distancing is impossible.¹⁰² It is likely that the unconfirmed cases in Maryland ICE facilities are far more numerous, given the inadequate numbers of tests being administered.¹⁰³ Data suggests that serious illness occurs in up to 16% of

During COVID-19 Outbreak, Maryland Matters (Apr. 19, 2020)), available at <https://www.marylandmatters.org/2020/04/19/hogan-issues-order-to-guide-speedier-inmate-releases-during-covid-19-outbreak/>.

⁹⁶ Ex. 24 (Memorandum Opinion, ECF No. 56, *Coreas, et al. v. Bounds, et al.*, No. 8:20-cv-00780-TDC (D. Md. Apr. 3, 2020)), at 4; *see also*, Ex. 25 (Declaration of Dr. Jaimie Meyer (“Dr. Meyer Decl.”)) ¶¶ 9–10 (stating that the risk posed by infectious diseases in jails and prisons as significantly higher than in the community)).

⁹⁷ Ex. 25 (Dr. Meyer Decl.) ¶¶ 11, 22.

⁹⁸ *Id.* ¶¶ 16, 29–30.

⁹⁹ *Id.* ¶ 11.

¹⁰⁰ *See* Ex. 1 (Notice).

¹⁰¹ Ex. 25 (Dr. Meyer Decl.) ¶ 29.

¹⁰² *Id.*

¹⁰³ *See* Ex. 24 (Memorandum Opinion), at 27 (recognizing that detention facilities in Maryland “are currently unable or unwilling to test for the Coronavirus”); Ex. 25 (Dr. Meyer Decl.) ¶ 32.

those infected.¹⁰⁴ As a result, individuals who are statutorily eligible for bond but arbitrarily denied bond or burdened by an amount he or she cannot pay are now not only having their due process rights violated, but also being subjected to heightened risk of serious illness or, possibly, death.

CLASS ALLEGATIONS

60. The foregoing allegations are re-alleged and incorporated herein.

61. Petitioners seek to represent a class defined as people who, now or at any future time, are detained pursuant to 8 U.S.C. § 1226(a), and either had or will have a bond hearing in the Baltimore Immigration Court in Baltimore, Maryland. The members of the class are readily ascertainable through Respondents' records.

62. Petitioners bring this action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), and as a representative habeas class action, on behalf of themselves and all other similarly-situated persons.

63. The class is so numerous that joinder of all members is impracticable. Publicly available information concerning the number of ICE detainees in Maryland indicates that the portion of the class consisting of current detainees under 8 U.S.C. § 1226(a) consists of at least several hundred individuals. From October 2018 to September 2019, over 600 individuals had bond hearings in the Baltimore Immigration Court.¹⁰⁵ The class is substantially larger when all future potential detainees under § 1226(a) are included.

64. There are multiple questions of law common to the members of the proposed class. These common questions include, but are not limited to, the following:

¹⁰⁴ Ex. 25 (Dr. Meyer Decl.) ¶ 23.

¹⁰⁵ See Ex. 26 (Immigration Court Bond Hearings and Related Case Decisions, Transactional Records Access Clearinghouse (TRAC) of Syracuse University), *available at* <https://trac.syr.edu/phptools/immigration/bond/>.

- a. Whether the Due Process Clause requires that individuals detained pursuant to § 1226(a) receive a bond hearing at which both (1) the government must prove dangerousness and flight risk by clear and convincing evidence; and (2) the IJ is required to consider the noncitizen's ability to pay in setting the bond amount and to consider the noncitizen's suitability of release on alternative conditions of supervision; and
- b. Whether the Immigration and Nationality Act requires that IJs consider a § 1226(a) noncitizen's ability to pay in setting a bond amount and that IJs consider the noncitizen's suitability for release on alternative conditions of release

65. Petitioners' claims are typical of the claims of the proposed class, and Petitioners will fairly and adequately protect the interests of the proposed class. Petitioners' interests do not conflict with those of other members of the proposed class, and Petitioners have retained competent counsel experienced in class actions and immigration law.

66. Moreover, certification is appropriate under Federal Rule of Civil Procedure 23(b)(2) because class members are subject to a common practice by Respondents: detention based upon an inadequate bond hearing at which the detainee bears the burden of establishing that they are not a flight risk and does not pose a danger to the community, with no requirement that the immigration judge consider their eligibility for release on non-monetary conditions, or their ability to pay when setting a bond amount.

CLAIMS FOR RELIEF

Count One – Detention in Violation of the Due Process Clause of the Fifth Amendment

67. The foregoing allegations are re-alleged and incorporated herein.

68. The Fifth Amendment to the U.S. Constitution prohibits the government from depriving individuals of their liberty without due process of law.

69. Due process prohibits the detention of individuals under 8 U.S.C. § 1226(a) absent a bond hearing where the government bears the burden to justify continued detention by proving by clear and convincing evidence that the individual is a flight risk or danger to others, and that no condition or combination of conditions will reasonably assure the detainee's future appearance and the safety of the community.

70. Due process also requires that the government consider the individual's ability to pay in selecting the amount of any bond and suitability for release on alternative conditions of supervision.

71. Petitioners, and all members of the proposed class, are or will be detained without receiving a bond hearing with these basic requirements. For this reason, their detention violates their rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

Count Two – Detention in Violation of the Immigration and Nationality Act

72. The foregoing allegations are re-alleged and incorporated herein.

73. Petitioners, and all members of the proposed class, are or will be detained in violation of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). That statute states that Respondents are authorized to release civilly detained individuals on a monetary bond of at least \$1,500 or on conditional parole.

74. Section 1226(a), as correctly interpreted, requires that the bond or other conditions of release for detained individuals be reasonably calculated to secure the individual's appearance at future proceedings.

75. A reasonable bond or reasonable conditions of release cannot be determined without adequately considering detained individuals' financial circumstances and whether alternative nonmonetary conditions of release would sufficiently mitigate flight risk.

76. Respondents' detention of Petitioners and the proposed class members on bonds and conditions of release that are not reasonably calculated or necessary to mitigate flight risk violates the Immigration and Nationality Act.

PRAYER FOR RELIEF

Wherefore, Petitioners asks this Court to grant them the following relief:

1. Enter an order compelling the release of each named Petitioner unless, within seven days of this Court's order, he is provided with an adequate bond hearing as described in paragraph 4 below, before an Immigration Judge in the Baltimore Immigration Court;
2. Certify a class defined as: All people who, now or at any future time, are detained pursuant to 8 U.S.C. § 1226(a), and either had or will have a bond hearing in the Baltimore Immigration Court in Baltimore, Maryland;
3. Name the individually named Petitioners as representatives of the class, and appoint Petitioners' counsel as class counsel;
4. Declare that each class member is entitled to a bond hearing at which the government bears the burden to justify continued detention by proving by clear and convincing evidence that the detainee is a danger to others or a flight risk and that no condition or combination of conditions will reasonably assure the detainee's future appearance and the safety of the community, and which includes consideration of the detainee's ability to pay in selecting the amount of any bond and suitability for release on alternative conditions of supervision;
5. Order that each class member currently detained be released unless provided with a new bond hearing in the Baltimore Immigration Court consistent with paragraph 4 within a reasonable period as determined by the Court;
6. Grant attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*, if applicable; and
7. Grant any other and further relief that this Court may deem fit and proper.

Dated: April 30, 2020
Baltimore, MD

Respectfully Submitted,

/s/

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*Application for admission pro hac vice
forthcoming

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