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## ***Legal Aid Wins Appellate Court Victory in Velasco Lopez v. Decker***

### ***Second Circuit Ruling Affirms ICE Bears the Burden of Justifying Prolonged Detention of Individuals During Removal Proceedings***

(NEW YORK, NY) – Today, the Second Circuit Court of Appeals [affirmed](#) a district court’s 2019 decision in *Velasco Lopez v. Decker* upholding that the Government bears the burden of justifying the detention of certain immigrants during removal proceedings by clear and convincing evidence that they represent a risk of flight or a danger to the community, and granting plaintiff Carlos Velasco Lopez’s petition for a writ of habeas corpus.

Velasco Lopez was detained by Immigration and Customs Enforcement (ICE) pursuant to 8 U.S.C. § 1226(a), which provides for discretionary detention of noncitizens during pending removal proceedings. His habeas petition challenged the procedures employed in his bond hearings, which required him to prove, to the satisfaction of an immigration judge, that he is neither a danger to the community nor a flight risk.

In its unanimous ruling, the three-judge panel of the appeals court wrote:

“We conclude that Velasco Lopez was denied due process because he was incarcerated for fifteen months (with no end in sight) while the Government at no point justified his

incarceration. We further conclude that the district court correctly ordered a new bond hearing where the Government bore the burden of proof. We therefore affirm the judgment of the district court.”

**Julie Dona, Supervising Attorney in the Immigration Law Unit at The Legal Aid Society,** said: “Although immigration enforcement is a civil matter, the Department of Homeland Security routinely incarcerates noncitizens for months on end, in county jails and other penal institutions, without ever having to demonstrate why incarceration is necessary. The Second Circuit correctly held that this practice violates basic constitutional principles, as it allows DHS to imprison thousands of individuals, like Carlos, who have deep ties to their community, will appear for court and do not present any danger to society. Today’s decision is an important check on the federal government, and we look forward to continuing to defend our clients against arbitrary deprivation of their freedoms.”

**Carlos Velasco Lopez,** said: “It’s impossible to describe what it’s like being incarcerated for 15 months. Every day you’re reminded that society rejects you – that your friends, family, and aspirations don’t matter. That feeling of rejection is difficult to shake. It’s been over a year since I was released, and although I’m grateful to be with my family again, I still feel it. I’m relieved by the court’s decision. This shouldn’t happen to anyone.”

*Velasco Lopez v. Decker* was litigated by The Legal Aid Society attorneys Julie Dona, Aadhithi Padmanabhan, and Katherine Kim; Delaney Rohan represents Velasco Lopez in his immigration case.

## **BACKGROUND:**

Carlos Alejandro Velasco Lopez was born in Oaxaca, Mexico, in 1995. He arrived in the United States at the age of four and has not left the country since his arrival. Since 2000, Velasco Lopez and his family have been living in Westchester County, New York. He was a member of the youth group at his family’s church, frequently placed on the honor roll, and received awards for perfect attendance at his school. In addition, he participated in numerous extracurricular activities, including band, track, and soccer. Since graduating high school, he has been a caretaker to his mother, who suffers from a number of health conditions. In 2012, during his last year of high school, Velasco Lopez applied for the Deferred Action for Childhood Arrivals (“DACA”) program; his application was approved in 2013, and he held that status until 2017. After completing courses at a culinary institute following high school, he began working as a sous chef for a local catering company.

In early 2018, ICE detained Velasco Lopez following contact with local law enforcement, which has never resulted in a conviction. He was incarcerated for three and half months before he received an initial bond hearing on May 14, 2018.

At various bond hearings, Velasco Lopez was unable to carry the burden, placed on him by immigration regulations, to prove that he was neither a danger to the community nor a flight risk. He was twice denied bail and remained incarcerated in Orange County Correctional Facility for

fourteen months before he filed a habeas petition challenging the procedures employed in his bond hearings.

In 2019, the district court granted Velasco Lopez's petition and ordered a new bond hearing at which the Government was required to show by clear and convincing evidence that he was either a flight risk or a danger to the community. When the Government failed to do so, the immigration judge granted Velasco Lopez release on the condition that he post a \$10,000 bond. He did so and was admitted to bail, and he was able to return to his family in Westchester.

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