UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOHAMMED GHALEB,
Petitioner,

v.

WILLIAM P. JOYCE,
in his official capacity as Acting Field Office Director, New York City Field Office, U.S. Immigration & Customs Enforcement;

KRISTI NOEM,
in her official capacity as Secretary, U.S. Department of Homeland Security;

PAMELA BONDI,
in her official capacity as Attorney General, U.S. Department of Justice.
Respondents.

No. 25 Civ. 1505 (MMG)

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

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INTRODUCTION

Respondents have detained Mohammed Ghaleb—who has no criminal convictions or any national security allegations, and who has been granted withholding of removal, 8 U.S.C. § 1231(b)(3), by an immigration judge—at Orange County Jail for nearly fifteen months without proper justification or a bond hearing before a neutral adjudicator. In response to Mr. Ghaleb's plea for a constitutionally-adequate bond hearing, Respondents take the extreme and incorrect position that a non-citizen like Mr. Ghaleb has no due process rights at all and can be detained indefinitely by Immigration and Customs Enforcement ("ICE").

This Court can and should find Mr. Ghaleb is entitled to a constitutionally-adequate bond hearing or immediate release if not afforded such. Mr. Ghaleb recognizes that he is detained pursuant to 8 U.S.C. § 1225(b)(2), which does not statutorily permit a bond hearing. Mr. Ghaleb, however, brings a viable as-applied constitutional challenge. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 842, 846 (2018) (holding that nothing in the statutory language of Sections 1225(b) and 1226(c) limit "the length of detention" authorized by the statute but leaving open whether indefinite detention under the statutes is constitutionally sound).

Mr. Ghaleb's detention has become unconstitutionally prolonged. The government must now justify by clear and convincing evidence the continued detention, and at any bond hearing, the immigration judge must consider ability to pay and alternatives to detention regarding both dangerousness and flight risk. *See Black v. Decker*, 103 F.4th 133, 155–59 (2d Cir. 2024).

ARGUMENT

I. Mr. Ghaleb Has Due Process Rights to be Free from Unlawful Detention

Respondents argue that an individual detained under § 1225(b) "does not have a due process right to a bond hearing." Resp. Opp. at 13. Essentially, Respondents argue that they can

detain Mr. Ghaleb indefinitely, for any period, with no right to bond.

Courts within this district have repeatedly rejected such an extreme argument, finding noncitizens detained pursuant to § 1225(b) have a due process right to be free from unreasonably prolonged detention. *See* Pet. ¶ 11 (citing *Gutierrez v. Dubois*, No. 20 CIV. 2079 (PGG), 2020 WL 3072242, at *3, 8 (S.D.N.Y. June 10, 2020) (collecting cases, and finding in the case of a petitioner held under 8 U.S.C. § 1225(b) at Orange County Jail, that "[t]he jurisdiction conferred by [28 U.S.C. §] 2241 includes the power to grant a writ to non-citizens who are detained in violation of the Constitution"); *see also Bermudez Paiz v. Decker*, No. 18-cv-4759 (GHW) (BCM), 2018 WL 6928794, at *12 (S.D.N.Y. Dec. 27, 2018) ("I therefore join my colleagues who have held—both before and after *Jennings*—that there comes a time when the government can no longer rely on the mandatory language of § 1225(b) to keep an arriving alien behind bars with no individualized showing that he or she presents a flight risk or a danger to the public."); *Lett v. Decker*, 346 F. Supp. 3d 379, 384 (S.D.N.Y. 2018) ("Although an arriving alien's Due Process rights may be limited in certain respects, this Court agrees with those courts that have found that such individuals have Due Process rights that require courts to consider challenges to the length of their detentions.") (internal quotation marks and citation omitted), *vacated and remanded*, No. 18-3714, 2020 WL 13558956 (2d Cir. July 30, 2020); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *4 (S.D.N.Y. Aug. 20, 2018) ("Accordingly, as this and other courts have previously decided, individuals detained pursuant to § 1225(b) possess sufficient Due Process rights that they can challenge their mandatory, unreviewed detention."); *Birch v. Decker*, No. 17-cv-6769 (KBF), 2018 WL 794618, at *1 (S.D.N.Y. Feb. 7, 2018) (finding that due process requires bond hearing where petitioner was asylum seeker arriving alien convicted of narcotics smuggling, and stating "it should also be obvious that the United

States Government, whether ostensibly effecting removal or considering an application for asylum, cannot permanently detain anyone without justification"); *Alberto v. Decker*, No. 17-cv-2604 (PKC), 2017 WL 6210785, at *7 (S.D.N.Y. Nov. 21, 2017), *remanded,* 18-162 (2d Cir. July 10, 2018) ("[T]he indefinite detention without a hearing is a deprivation of due process of law" for arriving alien asylum seeker.).

Courts in other districts overwhelmingly agree. *See A.L. v. Oddo*, No. CV 3:24-302, 2025 WL 352471, at *2 (W.D. Pa. Jan. 6, 2025) ("[T]his Court finds that an arriving alien [detained under § 1225(b)] such as Petitioner has a constitutional due process right to a bond hearing once his detention becomes unreasonable to the same extent as an alien who is subject to removal under § 1226(c)."); *Padilla v. U.S. Immigration and Customs Enforcement*, 704 F. Supp. 3d 1163, 1169–73 (W.D. Wash. 2023) (finding jurisdiction over constitutional claims of non-citizens detained under § 1225(b)); *Leke v. Hott*, 521 F. Supp. 3d. 597, 603 (E.D. Va. 2021) ("There can be no doubt here that the Fifth Amendment's Due Process Clause affords Petitioner [detained pursuant to § 1225(b)] the right to a prompt bond hearing."); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772–73 (S.D. Cal. 2020) ("[T]he majority of courts across the country . . . . [have] conclud[ed] that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process."); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 442 (D.N.J. 2019) ("[Section] 1225(b) detainees still possess some rights under the Due Process Clause which may be impugned should detention under the statute become unduly and unreasonably prolonged.") (internal quotation marks and citation omitted); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019) ("[U]nreasonably prolonged detention under § 1225(b) without a bond hearing violates due process.") (internal quotation marks and citation omitted); *Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018) ("[T]he Court agrees with the

weight of authority finding that arriving aliens detained pre-removal pursuant to § 1225(b) have a due process right to an individualized bond consideration once it is determined that the duration of their detention has become unreasonable.") (internal quotation marks and citation omitted); *Ahad v. Lowe*, 235 F. Supp. 3d 676, 687 (M.D. Pa. 2017) (same); *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 396 (3d Cir. 1999) ("Even an excludable alien is a 'person' for purposes of the Fifth Amendment and is thus entitled to substantive due process as to the nature of his detention.").

This near-consensus agreement among the courts stems from the bedrock principle that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent" and that civil immigration detention must bear a reasonable relation to ensuring appearance at hearings and community safety. *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001).[1]

Nonetheless, Respondents urge the Court to arrive at a different conclusion by arguing that non-citizens seeking admission to the United States do not have the same constitutional protections as individuals who have been admitted to the United States. Resp. Opp. at 8, 12. But this distinction does not extinguish the due process right of people detained pursuant to § 1225(b) to be free of unreasonable detention. The constitutional protections afforded to people detained under § 1225(b) include the freedom from unreasonable detention. *See, e.g.*, *Leke*, 521 F. Supp. 3d. at 604 ("To be sure, aliens already present in the United States may have some greater rights than those available to arriving aliens. But no case persuasively holds that an

[1] In *Zadvydas*, the Supreme Court held that non-citizens with a final order of removal (i.e., who have no right to remain in the United States) cannot be detained indefinitely without a bond hearing. 533 U.S. at 702. It follows that non-citizens like Petitioner, who do have a right to be present in the United States, even if provisionally during the pendency of their immigration proceedings, have the same constitutional protection.

arriving alien subject to prolonged and indefinite detention has no right to a bond hearing.").

There is no reason for this Court to arrive at a different conclusion from the many courts that have addressed the issue. Respondents nonetheless urge the Court to do so, relying primarily on *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 208 (1953), a Cold War era case about exclusion under an emergency wartime statute that no longer exists (The Passport Act of 1918), and *United States Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), a more recent case about expedited removal. Resp. Opp. at 8–12. Both are inapposite to unreasonable detention challenges. Although these cases concern the constitutional rights of noncitizens "on the threshold of initial entry" to the United States, *Mezei*, 345 U.S. at 212, they are limited in scope to challenges of decisions denying *admission* to the country—not challenges to unreasonable detention. Respondents similarly couch their arguments in terms of sovereign power at the border, Resp. Opp. at 7, 9, confusing Congress's plenary power over the admission of noncitizens with unreasonable detention of those noncitizens, which remains subject to meaningful constitutional restraints.[2]

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[2] Because Mr. Ghaleb only challenges the constitutionality of his prolonged detention without review, the cases Respondent cite for its plenary power argument do not control. *See* Resp. Opp. at 7–8.

These cases do not involve a noncitizen's liberty interest from unlawful detention during proceedings. *Landon v. Plasencia* concerned whether a noncitizen was statutorily entitled to have her admissibility status determined in a deportation hearing rather than an exclusion hearing. 459 U.S. 21, 34 (1982). *United States v. Flores-Montano* involved a criminal defendant's claim that a border vehicle search violated the Fourth Amendment as it was not based on reasonable suspicion. 541 U.S. 149 at 149, 155 (2004). *United States ex rel. Kordic v. Esperdy* concerned the legal status of crewmen and whether they were entitled to formal asylum hearings. 386 F.2d 232, 235 (2d Cir. 1967). *Leng May Ma v. Barber* was about whether, statutorily, a noncitizen who had been paroled but subsequently ordered excluded was "within" the U.S. 357 U.S. 185, 188 (1958). *Ascencio-Rodriguez v. Holder* concerned whether a person's conviction for illegal reentry had implications for his eligibility for cancellation of removal relief. 595 F.3d 105, 108 n.3 (2d Cir. 2010).

Respondents first attempt to rely on *Mezei*, 345 U.S. 206, *see* Resp. Opp. at 8–9, which upheld the summary exclusion and detention of a non-citizen denied entry in 1953. *Mezei* must be read in light of its circumstances: an exclusion resting on national security. 345 U.S. at 208–09. As the Court explained, "to admit a[] [noncitizen] barred from entry on security grounds nullifies the very purpose" of the exclusion order because it could unleash the very threat that the order sought to avoid. *Id.* at 216.

That rationale does not apply here. As in other cases that have found "*Mezei* inapposite," Mr. Ghaleb "is not alleged to present national security concerns, has not been permanently excluded from the United States, and seeks a bond hearing prior to a conclusive decision on his application." *Kydyrali*, 499 F. Supp. at 772; *see also Lett*, 346 F. Supp. 3d at 386 ("*Mezei* does not compel the categorical conclusion that all arriving aliens may be subject to prolonged confinement without a bond hearing."); *Osias v. Decker*, 273 F. Supp. 3d 504, 510 (S.D.N.Y. 2017), *vacated*, No. 17-CV-02786 (VEC), 2017 WL 3432685 (S.D.N.Y. Aug. 9, 2017) ("*Mezei* is inapposite because the statutory scheme considered in *Mezei* is no longer in force and effect."); *Leke*, 521 F. Supp. at 604 ("*Mezei* does not alter the result reached here."); *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003) (finding *Mezei* inapplicable as the Court "explicitly grounded" its decision in the special circumstances of a national emergency and Mr.

Though these cases are not applicable, the Supreme Court's statement sixty years ago in *Leng May Ma*, cited by Respondents, should give us pause today: "Physical detention of aliens is now the exception, not the rule, and is generally employed only as to security risks or those likely to abscond. Certainly this policy reflects the humane qualities of an enlightened civilization." 357 U.S. at 190 (internal citation omitted).

And regardless—though Respondent's plenary power argument is not unpersuasive—plenary "power is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).

Mezei's exclusion on national security grounds).[3]

Respondents attempt to argue that *Thuraissigiam* reinforced *Mezei*. Resp. Opp. at 11. It did not.[4] In *Thuraissigiam*, it was crucial for the Supreme Court that the petitioner did *not* challenge "unlawful executive detention." 591 U.S. at 119. Rather, the petitioner there requested "the opportunity to remain lawfully in the United States" through judicial review of a determination that he did not have a credible fear of persecution and could therefore be removed expeditiously. *Id.* The Court held that neither the Suspension Clause nor the Due Process Clause provided for such review because an applicant for admission found not to have credible fear "has only those rights *regarding admission* that Congress has provided by statute." *Id.* at 140

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[3] In addition, even in *Mezei*, the Court underscored that once a person is standing on U.S. soil—regardless of the legality of his or her entry—he or she is entitled to due process protections. *Id.* ("[Noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.").

[4] The cases Respondent cite to support its *Thuraissigiam* argument are either inapplicable or unpersuasive. *Guzman v. Tippy* involved individuals who had already been ordered excluded from the United States. 130 F.3d 64, 66 (2d Cir. 1997).

The court in *Poonjani v. Shanahan* denied relief based on concessions counsel made in that specific case, and it did not read *Mezei* in the context of wartime national security and sovereign prerogative on who to admit into the United States. 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018). Other courts in this district have distinguished *Poonjani* or noted that is it an outlier in this district. *See Bermudez Paiz v. Decker*, No. 18-cv-4759 (GHW) (BCM), 2018 WL 6928794, at *11 (S.D.N.Y. Dec. 27, 2018); *Lett v. Decker*, 346 F. Supp. 3d 379, 385 n.10 (S.D.N.Y. 2018), *vacated and remanded*, No. 18-3714, 2020 WL 13558956 (2d Cir. July 30, 2020); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *3 (S.D.N.Y. Aug. 20, 2018) ("*Poonjani* relied, however, on *Mezei*, a 1953 Supreme Court case that this Court has found inapposite because the statutory scheme [it] considered . . . is no longer in force and effect.") (internal quotation marks omitted and citation modified).

The courts in *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 333–36 (W.D.N.Y. 2021) and *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 7:20-cv-159 (WLS) (MSH), 2020 WL 13240240, at *4–6 (M.D. Ga. Dec. 7, 2020), also failed to contextualize *Mezei*, and they overextend the import of *Thuraissigiam*, which was explicitly not about unlawful executive detention, 591 U.S. at 119.

(emphasis added).

Drawing on a line of cases concerning admission rather than detention, the *Thuraissigiam* Court explained that "the Constitution gives 'the political department of the government' plenary authority to decide which [noncitizens] to admit," *id.* at 139 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)), "and a concomitant of that power is the power to set procedures to be followed in determining whether [a noncitizen] should be admitted." *Id.* (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). Mr. Ghaleb does not challenge the determination that he is inadmissible, but rather the reasonableness of his prolonged detention without a bond hearing—now nearly 15 months and counting, despite an immigration judge granting him withholding of removal. The Supreme Court did not—and has never—stated that the Due Process Clause is inapplicable in determining the reasonableness of detention pursuant to § 1225(b).[5]

Post-*Thuraissigiam*, numerous courts have rejected Respondents' arguments that the Due Process Clause does not apply to individuals in § 1225(b) detention. As those courts have recognized, *Thuraissigiam* is simply not a case that deals with challenges to detention. In *Leke v. Hott*, for example, the district court considered largely the same caselaw cited by Respondents here and rejected it as a group of "cases which many courts have already distinguished as inapplicable to the question of whether an arriving alien has a Fifth Amendment Due Process

[5] Indeed, throughout its decision in *Thuraissigiam*, the Supreme Court repeatedly emphasized that the respondent did not challenge his detention or seek release from detention, which it explained would have been proper claims in habeas. *See, e.g.*, 591 U.S. at 122 ("[T]he legality of his detention is not in question."); *see also id.* at 193 n.12 (Sotomayor, J., dissenting) (explaining that majority's decision does not apply to "a challenge to the length or conditions of confinement pending a hearing before an immigration judge" because "respondent only sought promised asylum procedures").

right to a bond hearing." 521 F. Supp. at 604.[6] Other recent cases have arrived at the same conclusion. *See, e.g.*, *A.L.*, 2025 WL 352471, at *2 ("Nowhere in [*Thuraissigiam*] did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever."); *Padilla*, 704 F. Supp. 3d at 1172 ("Defendants ask the Court to extract from *Thuraissigiam* a broad rule that any inadmissible noncitizen possesses only those due process rights afforded to them by statute, regardless of the nature of their status or the relief they seek. But such a conclusion is untethered to the claim in *Thuraissigiam* and the Court's reasoning . . . . Nothing in *Thuraissigiam* suggests Plaintiffs lack . . . a due process right [to seek an opportunity to apply for release on bond]."); *Arechiga v. Archambeault*, No. 23 Civ. 600 (CDS) (VCF), 2023 WL 5207589, at *3 (D. Nev. Aug. 11, 2023) ("The respondents misread the authority on which they rely . . . . The majority of courts across the country . . . [have] conclud[ed] that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.'") (quotation omitted).

In addition, Mr. Ghaleb is not similarly situated to the petitioner in *Thurassigiam*. He stands in a very different procedural posture than an individual presenting himself at the border with no statutory right to further process. Mr. Ghaleb was inspected and paroled into the country. He actually lived at liberty within the physical borders of this country until his parole was revoked without explanation. Resp. Opp. at 3 (providing no explanation as to why Mr. Ghaleb's parole was revoked). He is no longer in expedited removal proceedings like the petitioner in *Thurassigiam*. He is in full removal proceedings under 8 U.S.C. § 1229a. In fact, he has been

[6] *See also id.* ("Quite clearly, *Thuraissigiam* does not govern here, as the Supreme Court there addressed the singular issue of judicial review of credible fear determinations and did not decide the issue of an Immigration Judge's review of prolonged and indefinite detention.").

granted relief. Respondents' invocations of cases emphasizing different due process rights for individuals seeking admission with no or limited ties to the United States or any available relief from removal, *see* Resp. Opp. at 8, are thus inapposite.

Accordingly, Mr. Ghaleb, has a due process right to be free from unreasonably prolonged detention. And for the reasons stated below, his detention has become unreasonably prolonged.

II. Under the *Mathews* Test, Mr. Ghaleb is Entitled to Release or a Bond Hearing

Mr. Ghaleb is entitled to release or a bond hearing under the three-prong test in *Mathews v. Eldrige*, 424 U.S. 319 (1976). *See* Pet. ¶¶ 111–20; *see A.L.*, 2025 WL 352471, at *3 ("In assessing whether detention [under § 1225(b)] has become unreasonable, this Court sees no reason not to apply the same factors laid out [for § 1226(c) cases]."). In a footnote, Respondents barely contest this framework, which the Second Circuit has adopted in other immigration detention contexts. Resp. Opp. at 11 n.6; *See* Pet. ¶¶ 95–98.[7]

First, Mr. Ghaleb has a profound private interest in liberty from detention; the fact that he is in § 1225(b) detention does not diminish its gravity. *See* Pet. ¶¶ 114–15. Freedom from detention "lies at the heart of the liberty that [the Due Process] Clause protects," and immigration detention is therefore justified only "where a special justification outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (quotation marks and citation omitted); *see also Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (describing freedom from imprisonment as "the most significant liberty interest there is").

[7] Courts in the Second Circuit have used the *Mathews* test to evaluate prolonged detention under three different immigration detention statutes. *See Black v. Decker*, No. 20 CIV. 3055 (LGS), 2020 WL 4260994, at *7–9 (S.D.N.Y. July 23, 2020), *aff'd*, *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024) (mandatory detention under 8 U.S.C. § 1226(c)); *Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *7 (S.D.N.Y. Feb. 6, 2023) (mandatory detention under section 1231(a), post-removal order detention); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (discretionary detention under section 1226(a)).

Even though "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process," *Demore v. Kim*, 538 U.S. 510, 523 (2003), that does not suggest that freedom from detention is a less important interest for immigration detainees. Moreover, nowhere has the Supreme Court approved of *prolonged* detention without a bond hearing. *See id.* at 513 (permitting mandatory detention pursuant to § 1226(c) "for the *brief period* necessary for [noncitizens'] removal proceedings.") (emphasis added); *id.* at 529–30 (noting that mandatory detention lasted about 47 days in 85% of cases and about four months in those 15% of cases with an appeal). And detention must be accompanied by adequate procedural safeguards to ensure its purposes are served. *See Zadvydas*, 533 U.S. at 690–92.

Second, the parole process, which is the only mechanism available for Mr. Ghaleb to seek release under the statute, creates an unacceptable risk of the erroneous deprivation of liberty. *See* Pet. ¶¶ 116–17. "[Parole] is not an adequate substitute for a bail hearing to test the legitimate need for continued detention." *Padilla*, 704 F. Supp. 3d at 1174; *see also Clevereaux v. Searls*, 397 F. Supp. 3d 299, 314–15 (W.D.N.Y. 2019) ("[T]here is indeed a risk of erroneous deprivation of Clevereaux's liberty interest under the [parole] procedures used thus far and available to him.").

This hypothetical possibility of release by ICE officials is insufficient to eliminate the serious constitutional problems presented by prolonged mandatory detention of an individual entitled to due process protections. *See, e.g.*, *Leslie v. Attorney General*, 678 F.3d 265, 267 n.2 (3d Cir. 2012) (noting that administrative custody review "at which neither [petitioner] nor counsel representing [him] was present" was insufficient to satisfy due process requirements). Multiple courts in this district have agreed, holding that the existence of parole does not vitiate the need for individualized bond hearings. *See Ahmed v. Decker*, No. 17 Civ. 478, 2017 WL

6049387, at *7 (S.D.N.Y. Dec. 4, 2017) (collecting cases).

The purely discretional parole process lacks many essential safeguards that the Supreme Court has long considered hallmarks of due process to justify a deprivation of physical liberty, including (1) no adversarial hearing, (2) no neutral decisionmaker, (3) no opportunity to call witnesses, (4) no right to review the government's evidence to support detention, and (5) no administrative appeal. *See generally* 8 C.F.R. § 212.5. Instead, low-level ICE detention officers make parole decisions by merely checking a box on a form that contains no factual findings, no specific explanation, and no evidence of deliberation. *See Clevereaux*, 397 F. Supp. 3d at 314; *see also Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *6 (S.D.N.Y. Feb. 6, 2023) (discussing inadequacy of similar release request process for persons detained under 8 U.S.C. § 1231). The Supreme Court has firmly held that "[w]hatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement." *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972); *see also Zadvydas*, 533 U.S. at 692 (criticizing government procedures to detain noncitizens that relied solely on "administrative proceedings . . . without . . . significant later judicial review").

A review of Mr. Ghaleb's two parole request denials demonstrates how inadequate the discretionary parole process is. In response to his first extensive request, ICE denied parole by checking off a few boxes on a boilerplate form that they later had to amend because they checked off a wrong box. *See* Exs. D, E; Pet. ¶ 116. There is no elaboration as to why parole was not sufficiently warranted. The document is devoid of meaningful reasoning. In a subsequent internal review of that denial, ICE reviewing officials provided no explanation as to why they "concur[red]" in judgment, and they referred to immigration counsel by the wrong name and misstated the date of the review request. *See* Exs. F, G; Pet. ¶ 116. The second denial is a single

page document of mostly boilerplate language. It concludes, without any explanation, that Mr. Ghaleb, who has no criminal convictions or any national security allegations, has "not demonstrated that they are not a flight risk nor a danger to the community." *See* Ex. J (Second Parole Denial, dated March 5, 2025).

Third, Respondents do not have an overriding interest in detaining Mr. Ghaleb without the opportunity for a bond hearing. On the contrary, "requiring Respondents to justify continued detention 'promotes the Government interest . . . in minimizing the enormous impact of detention in cases where it serves no purpose.'" *Black*, 103 F.4th at 154 (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020)). Moreover, conducting bond hearings does not impose undue administrative burdens because they are conducted by immigration courts as a matter of course and because the costs to Respondents of release on alternatives to detention are a fraction of the those of detention at jail-like facilities like Orange County. See *Alternatives to Detention*, ICE, https://www.ice.gov/features/atd; *see also Black*, 103 F.4th at 154–55 (concluding that "the additional resources the government will need to expend to justify continued detention [of mandatorily detained noncitizen petitioners] will be minimal—and will likely be outweighed by the costs saved by reducing unnecessary detention").

III. For the Bond Hearing to be Constitutionally Sound, the Government Must Bear the Burden of Proof, and the Immigration Judge Must Consider Alternatives to Detention as to Flight Risk and Dangerousness

Respondents do not respond to any of Mr. Ghaleb's constitutional arguments that Respondents bear the burden of proof at a bond hearing, and that the immigration judge must consider 1) alternatives to detention as to both flight risk and dangerousness, and 2) ability to pay. *See* Pet. ¶¶ 104–10. They cannot because the Second Circuit has made clear that those are the hallmarks of a constitutionally sound immigration bond hearing. *See Black*, 103 F.4th at 155–

59; *see also Cantor v. Freden*, No. 24-CV-764-LJV, 2025 WL 39789, at *9 (W.D.N.Y. Jan. 7, 2025).

IV. Mr. Ghaleb Has Named the Proper Respondent

As a final matter, in a footnote, Respondents argue that Mr. Ghaleb has failed to name the proper respondent, the Orange County Jail warden or other physical custodian. Resp. Opp. at 6 n.2. Respondent relies on *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004). But "[t]he *Padilla* Court explicitly reserved judgment on whether the immediate-custodian rule applies in the immigration context, *see id.* at 435 n.8 124 S.Ct. 2711, and the Second Circuit has not decided the issue either, *see Henderson v. I.N.S.*, 157 F.3d 106, 128 (2d Cir. 1998)." *Khalil v. Joyce*, No. 25-CV-1935 (JMF), 2025 WL 849803, at *6 (S.D.N.Y. Mar. 19, 2025). At the very least, Mr. Ghaleb is detained at the direction of the Acting Field Office Director of New York ICE, William Joyce, who is one of the named Respondents. Mr. Joyce signed the first parole denial, and he directed someone else to sign the second parole denial on his behalf. See Ex. E, J (Parole Denials). Mr. Joyce is the proper custodian of Mr. Ghaleb, as he has the power to hold or release him. *See* Pet. ¶ 7.

Moreover, in two recent precedential Second Circuit habeas decisions, the Court adjudicated the merits of the habeas petitions even though the Petitioners, detained at Orange County, did not name the warden or jail official but did name the New York ICE Field Office Director. *See Keisy G.M. v. Decker*, 103 F.4th 133 (2d Cir. 2024) (consolidated with *Black v. Decker*, who did name the warden, whereas Keisy G.M. did not, as noted in the respective captions); *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020). There is no reason, then, not to adjudicate the petition. *See, generally, Dunn v. U.S. Parole Commission*, 818 F.2d 742, 744

(10th Cir. 1987) ("So long as the petitioner names as respondent a person or entity with power to release him, there is no reason to avoid reaching the merits of his petition.").

Should the Court, however, disagree, and believes that Petitioner must name the warden of Orange County Jail, who Respondent does not actually name, and who does not appear on ICE's website or Orange County Jail's website,[8] Petitioner respectfully requests that the Court not dismiss the petition and instead take one of two routes in the interest of justice. First, it could, as an equitable matter, *sua sponte* add the Orange County warden as a Respondent, as other courts have done with similarly situated respondents. *See* Ex. J, Apr. 1, 2020 Order in *Durel. B. v. Decker*, No. 2:20-cv-03430 (KM), Dkt. No. 18 (D.N.J.) ("This Court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b), and determined that dismissal without receiving an answer and the underlying record is not warranted. The proper respondent to such a petition, however, is the Director of Hudson County Correctional Facility, presently Ronald P. Edwards. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). Consequently, Mr. Edwards will be added as a respondent in this matter."). As there is no Orange County Jail warden listed in any officials webpages, the alternative proper custodian presumably would be the Orange County Sheriff, Paul Arteta. *See* Orange County Sheriff's Office https://www.orangecountygov.com/2328/Sheriffs-Office (last checked Apr. 9, 2025).

Alternatively, Petitioner respectfully asks the Court to permit him to amend his petition to add the Orange County warden and/or sheriff in the interest of justice. *See* 28 U.S.C. § 2242

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[8] *See* ICE webpage for Orange County Jail, https://www.ice.gov/detain/detention-facilities/orange-county-jail, and Orange County webpage listing "Correctional Command Staff," https://www.orangecountygov.com/1320/Correctional-Command-Staff (both last checked Apr. 9, 2025).

(providing, under the civil habeas statute, for amendment or supplementation); Fed. R. Civ. P. 15(a)(B)(2) ("[A] party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.").

CONCLUSION

For these reasons, Mr. Ghaleb respectfully requests that this Court issue a writ of habeas corpus and order his immediate release or an individualized, constitutionally-adequate bond hearing.

Dated: 4/9/2025

Respectfully submitted,

/s/ Nhu-Y Ngo

Nhu-Y Ngo
The Bronx Defenders
360 East 161st Street
Bronx, New York 10451
Tel. 347-842-1320
nngo@bronxdefenders.org
Counsel for Petitioner

ADDITIONAL EXHIBITS

J. Second ICE Parole Denial, dated March 5, 2025

K. Order *sua sponte* adding correctional center administrator as respondent in *Durel. B. v. Decker*, No. 2:20-cv-03430 (KM), Dkt. No. 18 (D.N.J.)