IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CRISTIAN DE JESUS CARDENAS BRAVO,

Petitioner,

v.

PAUL PERRY, *in his official capacity as Warden of the Caroline Detention Facility*; RUSSELL HOTT, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security;* and PAM BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No.

INTRODUCTION

1. Petitioner Cristian de Jesus Cardenas Bravo ("Mr. Cardenas"), a 30-year-old citizen of Mexico who has lived in the United States since he was five years old and as a lawful permanent resident ("LPR") since he was fifteen, has been detained in Immigration and Customs Enforcement ("ICE") custody for over fourteen months without receiving a bond hearing and despite crippling mental illness that prevents him from participating in his removal proceedings. Mr. Cardenas petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful detention by Respondents at the Caroline Detention Facility.

2. Mr. Cardenas is allegedly detained under 8 U.S.C. § 1226(c), which governs the detention of noncitizens deemed ineligible for bond pending their removal proceedings. *See Bah*

v. Barr, 409 F. Supp. 3d 464, 467–68 (E.D. Va. 2019). Mr. Cardenas' mandatory detention has become unconstitutionally prolonged in violation of his due process rights. *See Portillo v. Hott*, 322 F. Supp. 3d 698 (E.D. Va. 2018). Respondents' prolonged detention of Mr. Cardenas has exacerbated his mental health symptoms, including provoking persistent suicidal ideation and visual hallucinations, and he is struggling to assist his immigration counsel and participate in his ongoing immigration proceedings.

3. Section 504 of the Rehabilitation Act requires Mr. Cardenas' immediate release for mental health treatment as a reasonable accommodation to ensure equal meaningful access to his proceedings. For his due process claim, Mr. Cardenas seeks a bond hearing before this Court at which the Department of Homeland Security ("DHS") bears the burden of proving by clear and convincing evidence that he is a present flight risk or danger to the community. Moreover, Mr. Cardenas asks that this Court consider his ability to pay a monetary bond and the suitability of alternative conditions of supervision that could mitigate any perceived flight risk or danger. *See, e.g., Black v. Decker*, 103 F. 4th 133, 138 (2d Cir. 2024). Alternatively, Mr. Cardenas requests that this Court order the immigration court to conduct the bond hearing under the same procedures. *See Abreu v. Crawford,* No. 1:24-cv-01782, 2025 WL 51475, at *5 (E.D. Va. Jan. 8, 2025) (ordering the immigration court to conduct a bond hearing within fourteen days with the burden on the Government by clear and convincing evidence).

JURISDICTION & VENUE

4. This case arises under the United States Constitution. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution ("the Suspension Clause"); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2201 (Declaratory Judgment Act); and 28 U.S.C. § 1361 (mandamus).

5. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

6. Administrative exhaustion is unnecessary, as it would be futile. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542 (E.D. Va. 1999). The Government has not afforded, and will not afford, Mr. Cardenas a bond hearing because he is allegedly detained under § 1226(c). Likewise, Section 504 does not require the exhaustion of administrative remedies. *Cannon v. Univ. of Chicago*, 441 U.S. 677, 708 (1979); *Ott v. Maryland Dep't of Pub. Safety & Corr. Servs.*, 909 F.3d 655, 661 (4th Cir. 2018) ("[T]he Rehabilitation Act does not require exhaustion of administrative remedies prior to filing suit.").

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Cardenas is physically detained in this district and events or omissions giving rise to this action occurred in this district.

PARTIES

8. Petitioner Cristian de Jesus Cardenas Bravo is a native and citizen of Mexico who has been in ICE custody since January 4, 2024. He is currently detained at the Caroline Detention Facility in Bowling Green, Virginia ("Caroline").

9. Respondent Paul Perry is the Warden of the Caroline Detention Facility. Respondent Perry is responsible for overseeing the administration and management of Caroline. Though Respondent Perry does not have the legal authority to release Mr. Cardenas without ICE's permission, he is nominally considered Mr. Cardenas' immediate custodian. Respondent Perry is sued in his official capacity.

10. Respondent Russell Hott is the Field Office Director of the ICE Enforcement and Removal Operations ("ERO") Washington Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Virginia, including Caroline, and has the authority to make custody determinations regarding individuals detained there. Respondent Hott is a legal custodian of Mr. Cardenas. Respondent Hott is sued in his official capacity.

11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. She supervises ICE, an agency within DHS that is responsible for the administration and enforcement of immigration laws. She has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Mr. Cardenas. Respondent Noem is sued in her official capacity.

12. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office for Immigration Review ("EOIR"), including the immigration judges ("IJ"), the Board of Immigration Appeals ("BIA"), and the National Qualified Representative Program ("NQRP"), and has authority over immigration detention. Respondent Bondi is sued in her official capacity.

STATEMENT OF FACTS

13. Mr. Cardenas was born in Mexico in 1994 and entered the United States when he was five. Exhibit A, Mr. Cardenas' Declaration, at ¶ 1. Mr. Cardenas never knew his father, and though his mother left him just months after birth, he reunited with her and her new partner, his stepfather, once he arrived in the United States and settled in Virginia. *Id.* at ¶ 3, 5.

14. Mr. Cardenas' mother and stepfather abused and neglected him. His mother beat him "any way you can imagine" with metal and wooden cooking utensils, cables, and shoes, and would tell him "I birthed you. I could kill you if I wanted to." *Id.* at ¶ 4, 6. His stepfather would also beat him, get drunk, scream at him, and abuse his mother in front of him. *Id.* at ¶ 5, 12. As a

result of prolonged abuse and neglect, his mental health struggles began at a tender age when he was "taken out of kindergarten because [he] was depressed." *Id.* at ¶ 6. His mother "didn't like that," grabbed him, and hit his "head against a drawer a few times." *Id.*

15. When he was nine years old, Mr. Cardenas was sexually abused. *Id.* at ¶ 8-10. When he was fourteen years old, his parents yelled at him to leave home, and his stepfather put him in a headlock that "felt like he almost pulled [Mr. Cardenas'] spine out." *Id.* at ¶ 11-12. The young Mr. Cardenas retreated to a small, dark, dirty boiler room in their basement where he lived for several years, avoiding his parents at all costs. *Id.* at ¶ 13. Mr. Cardenas recalls that "they didn't come check on me or call me up for dinner. Honestly now that I am thinking about it, I don't think they cared if I ate or not." *Id.* at ¶ 14.

16. When he was twenty years old, Mr. Cardenas stepped in to protect his sister Yesenia from her partner Brian's abuse. *Id.* at ¶ 17; Exhibit B, Evidence of Prima Facie U Visa Eligibility. Brian assaulted Mr. Cardenas, and the police arrested Brian on two counts of domestic assault and battery. Ex. B at 3. Mr. Cardenas was taken to the Fauquier Hospital after complaining of dizziness and blurry vision. *Id.* He was left with permanent eye damage. Ex. A at ¶ 17. Mr. Cardenas worked with the police and Brian was ultimately convicted of assaulting Mr. Cardenas. Ex. B at 7. The police signed the U Visa certification, confirming Mr. Cardenas' cooperation. *Id.* at 14-18. Mr. Cardenas' immigration attorney Ms. Hyde plans to file his U Visa application with the U.S. Citizenship and Immigration Services soon. Exhibit C, Declaration of Katie Hyde at ¶ 15.

17. As a result of his trauma, Mr. Cardenas fell into a deep depression "plagued by thoughts of self-hatred and suicide." Ex. A at ¶ 14-15. He stopped working. *Id.* at ¶ 16. He was "haunted by nightmares of a demonic being" and tried to kill himself "by letting the car run in the garage, but it didn't work." *Id.* On a separate occasion, Mr. Cardenas woke up in a Washington,

DC Emergency Trauma Center with blood all around his head after a traumatic event he does not remember. *Id.* at ¶ 18. He recalls waking up and asking the medical staff and the universe, "Why won't you just kill me[?]" *Id.*

18. On August 20, 2021, Mr. Cardenas was arrested on six counts of possession of child pornography in violation of Va. Code. Ann. § 18.2-374.1:1. He remained in pre-trial criminal custody for several years without bond. While awaiting his criminal trial, Mr. Cardenas received mental health treatment for the first time in his life at the Western State Hospital. *Id.* at ¶ 20. Mr. Cardenas was convicted of the child pornography charges on March 9, 2023. For each count, he was sentenced to two years with a year and six months suspended, and he ultimately served 10 months after his convictions. In total, he served two years and four months in pre-trial and post-conviction criminal detention. He was also ordered to be on probation for four years, a term that has not yet started.

19. ICE served Mr. Cardenas with a Notice to Appear ("NTA") on January 4, 2024. Exhibit D, Original NTA and Amended NTA at 1. In the original NTA, the Government alleged that although Mr. Cardenas was an LPR, one of his convictions was an aggravated felony that made him removable from the United States. *Id.* Mr. Cardenas was originally detained at the Farmville Detention Center in Farmville, Virginia. *Id.* He is now detained at the Caroline Detention Facility in Bowling Green, Virginia.

20. Mr. Cardenas' mental health quickly deteriorated in ICE detention as he struggled to understand the risk of returning to Mexico, a country he does not remember and to which he fears returning. He met staff from Amica Center's Legal Orientation Program ("LOP"), and on March 24, 2024, LOP sent a third-party notification to IJ Raphael Choi informing him of Mr. Cardenas' mental health diagnoses and symptoms. Despite the evidence of Mr. Cardenas' inability

to effectively represent himself, IJ Choi did not order a forensic competency evaluation. Instead, IJ Choi conducted a hearing and found Mr. Cardenas competent to represent himself on April 2, 2024. Mr. Cardenas remained detained and without an attorney for an additional three months.

21. Weeks later when LOP staff visited Caroline in late April 2024, Mr. Cardenas said that he did not understand what happened at his competency hearing. He said that he did not remember what happened and that he felt IJ Choi misunderstood him. LOP staff members talked to him about his rights and gave him time to fill out the form to apply for asylum, but Mr. Cardenas was unable to do so. The LOP Managing Attorney sent an affidavit to IJ Choi summarizing their conversations and provided supplemental medical records from the Western State Hospital. On May 9, 2024, IJ Choi ordered Licensed Clinical Psychologist Dr. Mary DeCruise-Oates to conduct a forensic competency evaluation.

22. Dr. Mary DeCruise-Oates concluded that Mr. Cardenas meets the diagnostic criteria for post-traumatic stress disorder (PTSD) and major depressive disorder (MDD), recurrent severe, with Psychotic Features. Exhibit E, Forensic Competency Evaluation at 5. "Mr. [Cardenas] Bravo's active symptoms [sic] include depression (feelings of worthlessness, hopelessness), anxiety, persecutory beliefs (that people are out to get and are against him), visual/auditory hallucination (voices discouraging him, telling him no one likes him, and to harm himself), and cognitive impairments (lack of focus, concentration) [which] collectively will likely negatively impact his motivation to engage in proceedings in a meaningful manner in relation presenting his case and his ability to participate in immigration court proceedings." *Id.* at 7. On May 17, 2024, Dr. DeCruise-Oates reported that Mr. Cardenas was incompetent to represent himself. *Id.* at 1, 8.

23. Dr. DeCruise-Oates's evaluation is consistent with the evaluation of the physicians at the Western State Hospital, where Mr. Cardenas resided from May to August 2022 for inpatient

competency restoration and psychotherapy. Exhibit F, Excerpts of Medical History at 1-5. Dr. Zapata opined that Mr. Cardenas was incompetent to stand trial for his criminal offenses, noting that "his psychiatric symptoms stemming from unresolved trauma and ongoing depressive symptoms related to his incarceration status are diminishing his ability to appreciate, reason, and make decisions in a complicated forum" and his "ability to assist counsel." *Id.* at 4-5. Mr. Cardenas was also later diagnosed with adjustment disorder with depressed mood. Ex. F at 7.

24. On July 9, 2024, six months after ICE detained him and three months after LOP staff sent the third-party notification to the court, IJ Choi found Mr. Cardenas to be legally incompetent. EOIR's NQRP is a nationwide program to provide legal representation to certain unrepresented, detained noncitizens who are found to be mentally incompetent to represent themselves. Pursuant to the NQRP, IJ Choi appointed a Qualified Representative, Katie Hyde, Esq., from Amica Center for Immigrant Rights, to be Mr. Cardenas' immigration attorney. Ms. Hyde entered her appearance on July 16. Ex. C. at ¶ 2-3, 6.

25. Despite Mr. Cardenas' over six-month detention at that point, IJ Choi had not yet required the Government to meet its burden by submitting evidence proving Mr. Cardenas' alienage or removability by clear and convincing evidence. *Id.* at ¶ 6. Ms. Hyde's supervisor, who substituted representation for her on August 6, 2024, requested that DHS counsel file the relevant evidence. *Id.* DHS counsel requested and received a three-week continuance to file the evidence by the next hearing on August 27 but failed to meet that deadline. *Id.* At the hearing, DHS counsel requested and received another continuance and filed the evidence on August 28 and 29. *Id.*

26. On September 3, 2024, Ms. Hyde filed a Motion to Terminate proceedings, arguing that the single conviction on Mr. Cardenas' original NTA under Virginia Code § 18.2-374.1:1 does not meet the definition of an aggravated felony and thus Mr. Cardenas, as an LPR, is not removable

because the sole charge of removability cannot be sustained. *Id.* at ¶ 7; Ex. D at 1. IJ Choi ordered DHS counsel to respond to the motion by September 25. Ex. C. at ¶ 7. DHS counsel missed that deadline. *Id.* On September 26, Ms. Hyde filed additional briefing and argued that DHS counsel had failed to respond, so the Motion to Terminate should be deemed unopposed and granted with prejudice. On October 10, more than two weeks after the missed September 25 deadline, DHS counsel filed an amended NTA which merely substituted the alleged grounds of removability, adding his additional convictions and alleging that his convictions were sexual abuse of a minor or domestic violence, stalking, child abuse, child neglect, or child abandonment offenses. *Id.*; Ex. D at 4. On November 1, Ms. Hyde filed a second Motion to Terminate arguing that the new charges cannot be sustained. IJ Choi denied the Motion to Terminate on November 19.

27. By then, Mr. Cardenas had been transferred to the Caroline Detention Facility on September 12, 2024, and was struggling to cope. Licensed Clinical Social Worker Ronnie Sidney reported that "[Mr. Cardenas] was placed on suicide watch a day after he arrived at [Caroline] due to reporting he had thoughts, plans, and intentions of hanging himself with a bedsheet." Ex. F at. 9. "Things are going to get bad if I don't get out of here," Mr. Cardenas told Behavioral Health Provider and Licensed Clinical Social Worker Alysa Ward on October 9. *Id.* at 7. He did not take medication or eat for his first five days a Caroline, and he told Physician Assistant Hyun Jin that he wanted to be transferred back to "Farmville, his previous facility, where he was in the [medical unit] (sic) with other accommodations." *Id.* at 9. The ICE Health Service Corps ("IHSC") Eastern Regional Clinical Director Abelardo Montalvo recommended that Mr. Cardenas be placed in a medical unit. *Id.* Caroline does not have a medical unit, so instead, the Respondents effectively placed him in solitary confinement in the Special Management Unit. *Id.* at 6.

28. On October 18, 2024, two days after an immigration hearing, Licensed Clinical Social Worker Melody Wilson wrote that Mr. Cardenas needed to be "transferr[ed] to another IHSC facility with more resources. Referral process pending." Ex. F at 8. Ms. Hyde urgently requested that ICE transfer Mr. Cardenas to a facility that can provide mental health care, and on October 23, 2024, Supervisory Detention and Deportation Officer James Mullan responded that ICE was "currently working on finding a suitable location" and that "once that facility is located, ICE will coordinate the transfer." Yet five months later, Mr. Cardenas remains detained at Caroline despite IHSC's and Caroline's medical staff stressing that they cannot adequately care for him.

29. Due to the lack of adequate mental health care, Mr. Cardenas was unable to participate in legal calls with Ms. Hyde on September 16 and October 8 because he was on suicide watch. On October 10, 2024, six days before an immigration hearing, Mr. Cardenas asked Ms. Hyde if IJ Choi could order his execution. Ex. C at ¶ 10. ("I don't know if I can make it too far. It seems too difficult to try. I would rather put an end to everything, you know? Take my life or ask them to do it for me."). Mr. Cardenas has told his attorney and medical staff on several occasions that he wants IJ Choi to order his execution or end his own life because he feels he "[is] being tortured in detention." *Id.* at ¶ 10; *see generally* Ex. F. On December 17, he told Ms. Hyde he was "suffering from nearly daily auditory and visual hallucinations of demons who are trying to end his life." Ex. C at ¶ 12.

30. Mr. Cardenas applied for relief from deportation in the form of asylum, withholding of removal, and protection under the Convention Against Torture. In support of his application, he has submitted over 500 pages of evidence, including a declaration by country conditions expert Dr. Whitney Duncan, which states that "I predict that – if removed to Mexico – Mr. Cardenas Bravo's psychiatric conditions and related symptoms would cause him to come to the attention of

the Mexican authorities, who would commit him to a psychiatric institution, where he would be the victim of violence and abuse in the institutional context." Exhibit G, Declaration of Dr. Whitney Duncan at 3. Dr. Duncan summarized the disturbing reports of sexual and physical abuse, overmedication/chemical restraints, forced sterilization, psychosurgery, prolonged physical restraints, and generally unhygienic conditions that are prevalent in Mexican psychiatric institutions and the Mexican government's willingness to allow these abuses to continue. *Id.* at 5.

31. Mr. Cardenas fears that if removed, the Mexican police will target him and forcibly place him in jail or a state-run psychiatric facility. Ex. A at ¶ 29-31. Dr. Duncan's report explains that people like Mr. Cardenas – "los abandonados," the abandoned – "are at high risk of abuse" when they are confined to "underfunded" and "understaffed" institutions where physical and sexual abuse have "been extensively documented – for all their days." Ex. G at 4. If the IJ eventually denies Mr. Cardenas' application for relief, he plans to appeal to the BIA. Regardless of the outcome, either party is likely to appeal to the BIA, which would likewise take many months to issue a decision.

32. Mr. Cardenas is diligently trying to participate in his removal proceedings and to work with Ms. Hyde despite Respondents' failures to provide adequate mental health care. Ex. C at ¶ 13 ("Reviewing his draft declaration on January 23, 2025, triggered a crisis"). A hearing on Mr. Cardenas' application for relief was scheduled for February 7, 2025. For unexplained reasons, the immigration court rescheduled it at the last minute to April 10, 2025. When Ms. Hyde called Mr. Cardenas to let him know his hearing had been rescheduled, he told her "Maybe I don't deserve to live anymore. If they want to kill me, let's do it." *Id.* at ¶ 14.

33. On January 23, 2025, Ms. Hyde filed a Motion for Safeguards to request disability-based accommodations at his future immigration hearings, which remains pending. *Id.* at ¶ 16.

DHS counsel has refused to state their position until the day of the hearing on whether Mr. Cardenas should be required to testify. *Id.* Ms. Hyde cannot prepare Mr. Cardenas for what may be asked of him, since she is unaware of whether he will have to testify and what, if any, safeguards will be available to Mr. Cardenas at his upcoming hearings. *Id.*

34. In February 2025, Rafael Nieves-Figueroa, a Qualified Mental Health Professional, developed a plan for Mr. Cardenas to understand the resources available to him upon his potential release from ICE custody. Exhibit H, Post-Release Plan. They developed a comprehensive plan that includes housing, legal, medical, and community-based support systems. *Id.* Upon release, Ms. Hyde plans to continue representing Mr. Cardenas in his immigration case and Mr. Nieves-Figueroa plans to support Mr. Cardenas as he enrolls in various support systems. *Id.* at 2-3. Until then, in the absence of relief from this Court, Mr. Cardenas will languish at Caroline as he fights his immigration case with no clear end in sight.

ARGUMENT

I. MR. CARDENAS' PROLONGED DETENTION UNDER § 1226(c) WITHOUT A BOND HEARING VIOLATES DUE PROCESS UNDER THIS COURT'S *PORTILLO* FACTORS.

35. Mr. Cardenas is allegedly detained under 8 U.S.C. § 1226(c). *See* Ex. D at 1 (alleging that Mr. Cardenas is removable under § 1227(a)(2)(A)(iii) (removability ground for noncitizens with aggravated felony convictions) and under § 1227(a)(2)(E)(i) (removability ground for noncitizens convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment); 8 U.S.C. § 1226(c)(1)(B) ("The Attorney General shall take into custody any [noncitizen] who . . . is deportable by reason of having committed any offense covered in under Section 1227(a)(2) . . . (A)(iii) . . . of this title."). IJ Choi has sustained these grounds of removability. Accordingly, Mr. Cardenas has never had a bond

hearing at which an IJ evaluated whether he poses a danger to the community or a flight risk. Mr. Cardenas' prolonged detention under § 1226(c) without a bond hearing violates due process because it has become unreasonably prolonged under the five-factor test this Court laid out in *Portillo*, 322 F. Supp. 3d 698.

36. This Court has consistently held that ICE may not detain a noncitizen subject to mandatory detention for an unreasonably prolonged period without a bond hearing because it violates a noncitizen's due process rights. *See Abreu,* 2025 WL 51475, at *5; *Santos Garcia v. Garland*, No. 1:21-cv-742, 2022 WL 989019, at *9 (E.D. Va. Mar. 31, 2022); *Martinez v. Hott*, 527 F. Supp. 3d 824, 836 (E.D. Va. 2021); *Gutierrez v. Hott*, 475 F. Supp. 3d 492, 500 (E.D. Va. 2020); *Deng v. Crawford*, No. 2:20-cv-199, 2020 WL 6387326, at *1 (E.D. Va. Oct. 30, 2020); *Songlin v. Crawford*, No. 3:19-cv-895, 2020 WL 5240580, at *8 (E.D. Va. Sep. 2, 2020); *Urbina v. Barr*, No. 1:20-cv-325, 2020 WL 3002344, at *5 (E.D. Va. June 4, 2020); *Bah,* 409 F. Supp. 3d at 470; *Portillo*, 322 F. Supp. 3d at 709; *Mauricio-Vasquez v. Crawford*, No. 1:16-cv-01422, 2017 WL 1476349, at *1 (E.D. Va. Apr. 24, 2017).

37. Though there is no Fourth Circuit precedent on this issue, this Court's well-established precedent is consistent with the precedent of the Second Circuit and Third Circuit. *See Black*, 103 F. 4th at 138 (2d Cir. 2024) ("[W]e conclude that a noncitizen's constitutional right to due process precludes his unreasonably prolonged detention under section 1226(c) without a bond hearing"); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F. 3d 203, 206 (3d Cir. 2020) ("Because his detention has become unreasonable, he has a due process right to a bond hearing . . .").

A. Mr. Cardenas' Prolonged Mandatory Detention Violates Due Process.

38. This Court has adopted a five-factor balancing test for determining whether prolonged mandatory detention violates Due Process ("the *Portillo* factors"). *See Portillo*, 322 F.

Supp. 3d at 707. The five factors are: "(1) the duration of detention, including the anticipated time to completion of the alien's removal proceedings; (2) whether the civil detention exceeds the criminal detention for the underlying offense; (3) dilatory tactics employed in bad faith by the parties or adjudicators; (4) procedural or substantive legal errors that significantly extend the duration of detention; and (5) the likelihood that the government will secure a final removal order." *Id.* This Court employed these factors as recently as two months ago. *See Abreu*, 2025 WL 51475, at *5.

39. The first *Portillo* factor, the duration of detention, is "the most important" factor and is given significant weight. 322 F. Supp. 3d at 708. When the *Portillo* factors are split, this Court has ruled for the petitioner when the first factor was in their favor. *Id.* at 708–09. Indeed, this Court has ruled for the petitioner even when only this first factor was in the petitioner's favor. *Songlin*, 2020 WL 5240580, at *21–22. In *Bah*, this Court focused almost exclusively on the length of detention, finding that detention becomes presumptively unreasonable when it exceeds both "*Demore*'s one-and-a-half to five-month period and *Zadvydas*'s presumptively reasonable six-month period." 409 F. Supp. 3d at 471–72. The first factor has been found to favor noncitizens detained for periods ranging from 11 to 25 months. *Abreu*, 2025 WL 51475, at *5 (three petitioners detained for 13, 17, and 25 months respectively); *Martinez*, 527 F. Supp. 3d at 836 (16 months); *Gutierrez*, 475 F. Supp. 3d at 497 (23 months); *Deng*, 2020 WL 6387010, at *18–19 (11 months); *Songlin*, 2020 WL 5240580, at *18–19 (16 months); *Urbina*, 2020 WL 3002344, at *14–15 (19 months); *Bah*, 409 F. Supp. 3d at 471 (24 months); *Portillo*, 322 F. Supp. 3d at 708 (14 months); *Mauricio-Vasquez*, 2017 WL 1476349, at *11 (15 months); *Haughton v. Crawford*, No. 1:16-cv-634, 2016 WL 5899285, *2 (E.D. Va. 2016) (12 months).

40. The first and most important *Portillo* factor, the duration of detention, overwhelmingly favors Mr. Cardenas. The Supreme Court assumed in *Demore*, based on statistics provided by the Government that were later determined to be inaccurate, that detention under § 1226(c) typically lasted between 30 days and five months. *See Demore v. Kim*, 538 U.S. 510, 529 (2003). In *Zadvydas*, the Court held that detention becomes, at the very least, constitutionally suspect when it exceeds six months. 533 U.S. at 701. At the time of this filing, Respondents have detained Mr. Cardenas for over fourteen months. Ex. D at 1. The length of his detention is "significantly longer than the one-, five-, and six-month boundaries described in *Zadvydas* and *Demore*," and therefore "weighs heavily in his favor as a prolonged and substantial burden on his liberty interest." *See Portillo*, 322 F. Supp. 3d at 708 (holding that petitioner's 14-month mandatory detention was unreasonable).

41. In the absence of relief from this Court, Mr. Cardenas will remain detained with no clear end in sight. Though his next hearing is April 10, 2025, it is unclear how many more hearings will occur and how long IJ Choi will take to issue a decision. Whether IJ Choi grants or denies relief, either party is likely to appeal to the BIA, which would likewise take many more months to issue a decision. During the months or years to come before his case is resolved, Mr. Cardenas' mental and physical health is likely to deteriorate further, as he will continue to be deprived of adequate mental health care and subjected to the stresses of ICE detention.

42. The second factor, which weighs the length of civil immigration detention against the length of criminal detention for the underlying offense that prompted immigration detention, is neutral and at worst, carries minimal negative weight. Mr. Cardenas spent two years and four months in criminal custody for pre-trial and post-sentencing detention, before his direct transfer to ICE custody on January 4, 2024. *Haughton*, 2016 WL 5899285, at *9 (examining the time that the

noncitizen spent in criminal custody rather than the length of the sentence imposed). To date, Mr. Cardenas has been detained for more than fourteen months in ICE custody, roughly half the length of his time in criminal custody. *See Mauricio-Vasquez*, 2017 WL 1476349, at *4 ("As to the second factor, while the fifteen months here do not exceed the three years of criminal detention Petitioner served for the underlying offense, it is already nearly half that time and so is therefore substantial."). Even if this Court concludes that this second factor favors the Government, this Court may still conclude that his detention has become unreasonably prolonged and order an individualized bond hearing. *Songlin*, 2020 WL 5240580, at *7 (ordering a bond hearing where the second, third, and fifth factors favored the Government, the first favored the noncitizen, and the fourth was neutral).

43. The third factor – dilatory tactics employed in bad faith by the parties or adjudicators – and the fourth factor – legal errors that extend the duration of detention – strongly weigh in Mr. Cardenas' favor. Even though Mr. Cardenas had already been detained for six months by his August 6, 2024, hearing and was suffering from severe mental crises, IJ Choi had yet to take pleadings or require DHS counsel to prove alienage and removability. Ex. C. at ¶ 6. DHS counsel requested and received a three-week continuance, failed to meet that deadline, and requested and received a second continuance. *Id.* DHS counsel also failed to meet another deadline to respond to the Motion to Terminate and instead merely filed an amended NTA two weeks after the missed deadline. *Id.* at ¶ 7; Ex. D at 4. While continuances may be requested in good faith, this factor favors Mr. Cardenas because the failures to meet deadlines were without explanation and in bad faith. *Abreu*, 2024 WL 51475 at *6 ("Because Respondents set forth no valid justification for these delays, the Court finds this factor weighs in favor of [the noncitizens]."); *Haughton*, 2016 WL 5899285 at *9 ("[T]he central constitutional concern is the reasonableness of detention and due process demands a better answer than 'we haven't gotten to it yet.'").

44. Meanwhile, Mr. Cardenas has diligently litigated his case and sought legal remedies to remain in the country he has lived in since he was five years old. Mr. Cardenas met with LOP staff members, was appointed an immigration attorney, and presented timely briefings, evidentiary submissions, and motions. Though Mr. Cardenas requested and received a continuance to respond to DHS counsel's brief on removability, he met that deadline in good faith. Likewise, he filed his asylum application the same day that IJ Choi denied his second Motion to Reopen. This Court may not "penalize" him for exercising his legal rights "to explore avenues of relief that the law makes available to him." *Bah*, 409 F. Supp. 3d at 471-472. The third and fourth factors weigh in Mr. Cardenas' favor.

45. The fifth factor – the likelihood the Government will secure a final removal order – also weighs in Mr. Cardenas' favor. Mr. Cardenas challenged his removability in two Motions to Terminate and intends to appeal the issue of his removability to the BIA if his remaining applications are denied. Mr. Cardenas has timely filed over 500 pages of evidence supporting his application for asylum and related fear-based relief, articulating his fear of persecution and torture in Mexico. Dr. Duncan will be providing expert testimony at his upcoming immigration hearing. Ex. G at 22 ("Mr. Cardenas Bravo could be subjected to physical and/or chemical restraints, isolation, physical/sexual abuse, and/or invasive psychiatric treatment, including electroconvulsive therapy as a form of punishment, in violation of his human rights."). Mr. Cardenas is entitled to a mandatory grant of protection under the Convention Against Torture if he can prove, as other noncitizens have, that he will more likely than not suffer torture by Mexican officials in a state psychiatric facility. *See, e.g., Guerra v. Barr*, 974 F.3d 909, 913 (9th Cir. 2020) ("The IJ found, and the BIA agreed, that there is evidence of regressive, primitive, and extremely harmful practices in Mexican mental health institutions."); *Temu v. Holder*, 740 F.3d 887 (4th Cir.

2014) (emphasizing that the BIA found it "more likely than not" that the noncitizen would be tortured because of his mental illness). Mr. Cardenas is also prima facie eligible for a U Visa. Ex. B. Thus, with three viable ways to avoid a final removal order, this fifth factor favors Mr. Cardenas.

46. Under the *Portillo* factors, Mr. Cardenas' detention has become unreasonably and unconstitutionally prolonged. Only the second factor is neutral. This Court has traditionally regarded the second factor – the comparison between the length of criminal and civil detention – as less significant than other factors, and this Court has found in favor of petitioners even when more than one factor weighed against them. *See Songlin*, 2020 WL 5240580, at *8; *Portillo*, 322 F. Supp. 3d at 708–09. Meanwhile, the third factor is often neutral, yet petitioners are still granted relief. *See, e.g., Martinez*, 527 F. Supp. 3d at 837. The *Portillo* factors demonstrate that Mr. Cardenas' continued detention violates his due process rights.

47. Furthermore, Mr. Cardenas' significant medical concerns, including his heightened risk of suicide, pose an additional concern regarding his continued detention. *See Gutierrez*, 475 F. Supp. 3d at 498 n.8 (acknowledging that medical issues are an "additional factor of legitimate concern . . . to incarcerated persons"). Medical staff at Caroline urgently stressed that he needs to be "transferr[ed] to another [ICE] facility with more resources" yet this has not occurred despite ICE's assurances months ago that they were looking for a suitable facility. Ex. F at 8. ICE's failures to provide sufficient mental health care elevate his liberty interests and the need for a bond hearing.

48. Due Process demands, at a minimum, an individualized hearing with adequate procedural safeguards to protect against the unconstitutional deprivation of Mr. Cardenas' liberty. In conducting or ordering a bond hearing, this Court should require that 1) the Government provide clear and convincing evidence that Mr. Cardenas is a flight risk and/or a danger to the community to justify his continued detention, and 2) the judge consider alternatives to detention and Mr.

Cardenas' ability to pay a monetary bond. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention conditional upon "full-blown adversary hearing" requiring "clear and convincing evidence" and a "neutral decision maker"); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (striking down civil detention scheme that placed the burden on the detained person); *Zadvydas*, 533 U.S. at 692 (finding post-order immigration custody review procedures deficient in part because they placed burden on detained noncitizen).

B. This Court Should Conduct Mr. Cardenas' Bond Hearing.

49. This Court has the authority to conduct Mr. Cardenas' bond hearing. *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) ("We are empowered to conduct bail proceedings in habeas corpus proceedings brought by immigration detainees. Indeed, the authority to conduct such hearing has long been recognized as an essential ancillary aspect of our federal habeas corpus jurisdiction."); *Luciano-Jimenez v. Doll*, 543 F. Supp.3d 69, 73 (M.D. Pa. 2021) (conducting an independent bond hearing after determining the hearing afforded by the immigration court was inadequate); *D'Alessandro v. Mukasey*, No. 08-914, 2009 WL 799957 at *4, 6 (W.D.N.Y. March 25, 2009) (ordering the immediate release of a noncitizen with "chronic and debilitating health conditions" with "a bond in a reasonable amount" and "subject to the conditions of supervision.")

50. The Fourth Circuit has not decided when a district court should exercise its authority to conduct a bond hearing as a habeas remedy in the first instance, but the Third Circuit offers at least two considerations for when doing so is appropriate: (1) when a hearing in the district court "provides justified protection of the [noncitizen's] liberty interest and conserves judicial resources," *Alli v. Decker*, 644 F. Supp. 2d 535, 542 (M.D. Pa. 2009), *rev'd in part, vacated in part on other grounds*, 650 F.3d 1007 (3d Cir. 2011); and (2) in "extraordinary circumstances,"

which "include[s] medical considerations relating to the petitioner's health, family and medical needs." *Deptula v. Lynch*, No. 1:15-cv-2228, 2016 WL 98152, at *4 (M.D. Pa. Jan. 8, 2016).

51. Both considerations counsel that this Court conduct Mr. Cardenas' bond hearing. In *Alli*, the Court held that "[if a noncitizen] detained pursuant to § 1226(c) makes a showing via a habeas petition that detention is no longer reasonable, the [noncitizen] must be afforded a hearing *before the habeas court*." 644 F. Supp. 2d at 541 (emphasis added). It did not order an initial bond hearing in immigration court because doing so would have only prolonged the petitioner's detention while expending additional judicial resources. A similarly "circuitous and potentially lengthy process" awaits Mr. Cardenas if this Court directs the immigration court to conduct a bond hearing first. *Alli*, 644 F. Supp. 2d at 542. As explained above, Mr. Cardenas is at heightened risk of committing suicide, and suicides are preventable deaths caused by ICE's failure to provide adequate mental health care. Delaying Mr. Cardenas' release endangers his life. *See Leslie*, 865 F. Supp. 2d at 638-39 (finding "extraordinary circumstances" in part based on "the cascading array of medical problems"). If this Court orders an IJ to conduct a bond hearing under the above procedures, Mr. Cardenas would have to make his case before an IJ, wait for a decision, and, if the IJ fails to comply with the court order, return to this Court to pursue habeas relief—all the while remaining detained at a facility that has insufficient mental health care resources. *Abreu v. Crawford*, 1:24-cv-1782, Dkt. No. 31 (E.D. Va. Feb. 14, 2025) (granting a Motion to Enforce after an IJ failed to comply with the district court's order to hold the Government to its burden).

C. The Government Must Bear the Burden of Justifying Mr. Cardenas' Ongoing Detention and the Adjudicator Must Consider His Ability to Pay and Alternatives to Detention.

52. Where a noncitizen has been subjected to unconstitutionally prolonged § 1226(c) detention, this Court has previously ordered individualized bond hearings at which the

Government bears the burden of justifying continued detention by clear and convincing evidence. *See Abreu*, 2025 WL 51475 at *7; *Gutierrez*, 475 F. Supp. 3d at 499; *Deng*, 2020 WL 6387326, at *1; *Urbina*, 2020 WL 3002344, at *7; *Portillo*, 322 F. Supp. 3d at 709–10. Requiring Mr. Cardenas to prove "that he is neither a flight risk nor a danger would also logically mean that he is presumed validly and constitutionally detained unless he demonstrates otherwise." *Jarpa v. Mumford*, 211 F. Supp. 3d at 706, 722 (D. Md. 2016). Whether this Court conducts the bond hearing itself or orders an IJ to conduct the hearing, it must clearly order that the Government bear the burden of demonstrating Mr. Cardenas is a flight risk or danger to justify his prolonged and ongoing detention by clear and convincing evidence.

53. In the context of bond hearings for noncitizens subject to discretionary § 1226(a) detention – *not* mandatory detention under § 1226(c) – the Fourth Circuit held in *Miranda v. Garland* that placing the burden of proof on noncitizens at the outset of their detention is not *per se* unconstitutional, nor is the IJ's failure to consider alternatives to detention or ability to pay bond. 34 F.4th 338, 365–66 (4th Cir. 2022). However, these detained noncitizens had already received initial bond hearings and raised a facial due process challenge to their § 1226(a) bond procedures. In contrast, Mr. Cardenas is detained under § 1226(c) and has not received a bond hearing at any point during his more than fourteen-month detention. And unlike the petitioners in *Miranda*, Mr. Cardenas raises an as-applied due process challenge to his prolonged mandatory detention under § 1226(c) and a claim under the Rehabilitation Act.

54. Thus, the more on-point circuit court precedent to inform this Court's decision are from the Second Circuit and Third Circuit, both of which have held that the Government bears the burden of justifying detention by clear and convincing evidence at a court-ordered bond hearing remedying unconstitutional prolonged detention under § 1226(c). *Black*, 103 F. 4th 133 at 157

("[W]e conclude that once detention under section 1226(c) has become so prolonged that due process warrants a bond hearing, as in Black's case, the government must justify continued detention at such a hearing."); *German Santos*, 965 F. 3d at 214 ("[A]t German Santos's bond hearing, the Government bears the burden of persuasion by clear and convincing evidence.").

55. Likewise, the recent Second Circuit precedent endorses Mr. Cardenas' position that the adjudicator may consider his ability to pay and alternatives to detention. *Black*, 103 F. 4th 133 at 159 ("The IJ does indeed have broad discretion in setting terms and can exercise that discretion by considering a multitude of relevant factors. Requiring that two of those factors be alternatives to detention and the noncitizen's ability to pay does nothing to constrain its discretion . . ."). As a remedy to prolonged detention under § 1226(c), this Court recently ordered an IJ to consider "less restrictive alternatives to physical detention, including release on bond in an amount the Petitioners can reasonably afford, with or without conditions, that would also reasonably address any risk of flight." *Abreu*, 1:24-cv-1782, Dkt. No. 31; *see also Bah*, 409 F. Supp. 3d at 472 (ordering bond hearing at which government "must prove . . . [that] no condition or combination of conditions, including electronic monitoring, will reasonably assure the appearance of the person and the safety of any other person").

56. Whether this Court conducts the hearing itself or orders the IJ to conduct the hearing, Due Process also requires that the adjudicator consider Mr. Cardenas' ability to pay a monetary bond and alternatives to detention in addition to, or instead of, a monetary bond. When the Government fails to consider a noncitizen's financial circumstances when setting a bond or fails to consider alternatives to detention that would ensure compliance with the conditions of release, it runs the risk of impermissibly justifying detention based on an individual's inability to pay rather than the two legitimate purposes for detention: preventing flight and mitigating danger

to the community. *See Black*, 103 F. 4th 133 at 158 ("At that point, refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons"); *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). A prohibitively high bond that Mr. Cardenas cannot pay is the equivalent of no bond at all because he would remain indefinitely detained.

57. Alternatives to detention have proven to be highly effective. For example, the Intensive Supervision Appearance Program ("ISAP")—one of ICE's principal monitoring programs—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez*, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings") Mr. Cardenas will be subject to criminal probation in Virginia for four years upon his release from ICE detention, and his probation will also serve as "conditions of release that could reasonably secure his future appearance" at court hearings and immigration appointments. *Portillo*, 322 F. Supp.3d at 709. With highly effective alternatives to detention at ICE's disposal and his criminal probation, there is little to no justification for continuing to detain Mr. Cardenas.

II. THE REHABILITATION ACT REQUIRES THAT MR. CARDENAS BE IMMEDIATELY RELEASED AS A REASONABLE ACCOMMODATION TO ENSURE MEANINGFUL ACCESS TO IMMIGRATION PROCEEDINGS.

58. Courts have found that detained immigrants with disabilities have the right to safeguards, accommodations, and bond hearings. *See, e.g.*, *Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034, 1053, 1056 (C.D. Cal. 2010) (finding that plaintiffs with disabilities in immigration detention "were not provided with even the most minimal of existing safeguards under [8 C.F.R. §] 1240.4, let alone more robust accommodations required under the Rehabilitation Act," ordering

the appointment of a "qualified representative" for persons in detention with serious mental illness, and ordering bond hearings with the burden on the Government to justify their ongoing detention).

59. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § *794 et seq.*, ("Section 504") provides that "no otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive Agency." *See also* 45 C.F.R. § 85.21. As executive agencies, DHS and EOIR are covered entities under Section 504. 6 C.F.R. § 15.30(a); *accord* 28 C.F.R. § 39.130; *see also* 29 U.S.C. § 794 (applying to EOIR).

60. The Government's inaction, in the form of a willful refusal to transfer him or provide comprehensive mental health care, is a constructive denial and itself constitutes final agency action. *Sierra Club*, 828 F.2d 783, 793 (D.C. Cir. 2021) ("[W]hen administrative inaction has precisely the same impact on the rights of the parties as denial of relief, an agency cannot preclude judicial review by casting its decision in the form of inaction rather than in the form of an order denying relief."); *see also* 5 U.S.C. § 551(13) (defining agency "action" to include a "failure to act"). In *Friedman v. Federal Aviation Administration*, 841 F.3d 537 (D.C. Cir. 2016), for instance, the D.C. Circuit found the agency had constructively denied the plaintiff's application for a pilot's license based on his diabetes when it had "clearly communicated it will not reach a determination on a petitioner's submission" but "simultaneously refuses to deny the petitioner's submission." *Id.* at 542-43. When "the Agency has placed [petitioner] in a holding pattern—preventing him from obtaining any explicitly final determination on his application and thwarting the Court's interest in reviewing those agency actions that, in practical effect if not formal acknowledgement, constitute 'the consummation of the agency's decisionmaking process' and

determine 'rights or obligations,'" it "has engaged in final agency action subject to this Court's review." *Id.* at 542 (internal quotations omitted).

61. The requirements of Section 504 apply to the federal immigration benefits and proceedings that noncitizens may seek or in which they may participate. *See Galvez-Letona v. Kirkpatrick*, 54 F. Supp. 2d 1218, 1224–25 (D. Utah 1999), *aff'd on other grounds*, 3 F. App'x 829 (10th Cir. 2001). Section 504 requires that covered entities provide noncitizens with disabilities with equal access to participation in their removal proceedings. *Fraihat v. ICE*, 445 F. Supp. 3d 709, 748 (C.D. Cal. 2020), *rev'd on other grounds*, 16 F.4th 613 (9th Cir. 2021) ("[T]he programmatic 'benefit' in this context is shared by all class members and is best understood as participation in the removal process."). Though the Ninth Circuit later "rejected the district court's liability finding in *Fraihat*," that finding was "based on evidentiary insufficiency" and "the Ninth Circuit neither affirmed nor reversed" the court's determination that "'participation in the removal process' could fit within the statutory term 'benefit.'" Margo Schlanger, Elizabeth Jordan, Roxana Moussavian, *Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act*, 17 Harv. Law & Pol. Rev. 1, 263 (2022).

62. Mr. Cardenas is protected by Section 504, 29 U.S.C. § 705(20)(B). He has a "disability" within the meaning of Section 504 because he has mental illness that "substantially limits one or more major life activities." 29 U.S.C. § 705(20)(B). Major life activities include, but are not limited to, communicating with others, focusing, reading, and learning. Mr. Cardenas has been diagnosed with post-traumatic stress disorder (PTSD), major depressive disorder (MDD), and adjustment disorder with depressed mood. *See supra para.* 22. Dr. Duncan expressed that "Mr. Cardenas Bravo's cognitive impairments and psychiatric symptoms – likely exacerbated by the

trauma of deportation and fear of Mexico – would interfere with his ability to function." *Id.* His current medical goals are to "stabilize anxiety and depression level while increasing ability to function on a daily basis." Ex. F. at 14.

63. Covered entities have an affirmative obligation under Section 504 to ensure that their benefits, programs, and services are accessible to people with disabilities, including by providing reasonable accommodations. *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 266 (D.D.C. 2015) ("[B]ecause Congress was concerned that '[d]iscrimination against [people with disabilities] was ... most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect[,]' the express prohibitions against disability-based discrimination in Section 504 and Title II include an affirmative obligation to make benefits, services, and programs accessible to disabled people.") Section 504 of the Rehabilitation Act requires federal agencies to provide reasonable accommodations to disabled individuals unless such accommodations would fundamentally alter the relevant program, service, or activity, or would impose an undue hardship. *See Sch. Bd. of Nassau Cty., Fla. v. Arline*, 480 U.S. 273, 288 n.17 (1987).

A. ICE's Prolonged Detention of, and Failure to Provide Adequate Mental Health Care to, Mr. Cardenas Prevents Him from Equal Access to Participation in his Removal Proceedings.

64. Respondents' continued detention of Mr. Cardenas is exacerbating his mental health symptoms, thus denying him "meaningful access" to counsel and his immigration proceedings. "Things are going to get bad if I don't get out of here," Mr. Cardenas told Licensed Clinical Social Worker Alysa Ward on October 9. Ex. F at 7. Mr. Cardenas suffers from frequent nightmares, trouble sleeping, dizziness, headaches, auditory and visual hallucinations, and recurring suicidal ideation and actions. *See generally* Exhibits A, E, F, and G.

65. Moreover, the lack of adequate mental health care at Caroline impedes Mr. Cardenas' ability to participate in his legal defense. He struggled to review his draft declaration on January 23, 2025, because it was a "waste of time, a waste of pain." *Id.* at ¶ 10. During that conversation with his immigration attorney, he said he wasn't sure if he wanted to file evidence or ask for a continuance, and ultimately resigned the decision-making to his immigration attorney. *Id.* On multiple occasions, legal calls between the two have been canceled because Mr. Cardenas was on suicide watch and unable to participate in the preparation of his case. They have not yet had the opportunity to adequately prepare for Mr. Cardenas' potential testimony at the hearing on April 10, in part because DHS counsel has not stated their position on what, if any, accommodations they would support and IJ Choi has not yet ruled on the Motion for Safeguards. *Id.* at ¶ 16.

66. The IHSC Eastern Regional Clinical Director Abelardo Montalvo provided guidance that Mr. Cardenas be admitted to a Mental Health Unit ("MHU"), but Licensed Clinical Social Worker Ronnie Sidney wrote that Caroline does not have an MHU, and that "in the absence of an MHU the patient is being housed in the Special Management Unit (SMU) for mental health reasons." Ex. F. at 6. On October 18, 2024, two days after a hearing, Licensed Clinical Social Worker Melody Wilson wrote that Mr. Cardenas needed to be "transferr[ed] to another IHSC facility with more resources. Referral process pending." Ex. F at 8. Mr. Cardenas told Physician Assistant Hyun Jin "that his condition prevents him from staying here and that he needs to be moved or released." Ex. F at 8. On November 19, 2024, Licensed Clinical Social Worker Ronnie Sidney "spoke with the patient [Mr. Cardenas] about a potential transfer to a facility that could provide him a higher level of mental health care. Patient supported the move." Ex. F. at 14. Despite Mr. Cardenas' cries for help, several medical staff members' recommendations, Ms. Hyde's

advocacy, and Supervisory Detention and Deportation Officer James Mullan's assurance that ICE was working on finding a suitable facility, Mr. Cardenas remains detained at Caroline, usually in solitary confinement or on suicide watch, without adequate mental health resources.

67. Dozens of detained noncitizens commit suicide every year due to ICE's failure to provide adequate mental health care. American Civil Liberties Union, American Oversight, and Physicians for Human Rights, *Deadly Failures: Preventable Deaths in U.S. Immigration Detention*, June 21, 2024, https://www.aclu.org/publications/deadly-failures-preventable-deaths-in-us-immigrant-detention. The overwhelming majority of deaths could have been prevented if ICE had provided clinically appropriate mental health care. *Id.* Among other failures, the report concluded that many "suicides [are] caused by [ICE's] failure to provide mental health care and proper medication management, lack of mental health staff, and use of solitary confinement." *Id.* at 34. Their top recommendation to reduce deaths in detention was for DHS to "issue a directive ensuring the prompt release of people with medical and mental health vulnerabilities." *Id.* at 54.

68. Mr. Cardenas' mental health will not improve as long as he remains detained because medical staff in ICE facilities are only focused on short-term interventions, not long-term care. Ex. F. at 16 ("Due to the unpredictable nature of the immigration process including length of detention stay, the purpose of psychological intervention [while detained] will be the stabilization of presenting symptoms, acute crisis intervention, and medically necessary brief supportive/solution-focused psychotherapy in addition to medication."). Mr. Nieves-Figueroa explains that Mr. Cardenas must be released to seek comprehensive mental health care and that he would "benefit from Cognitive Behavioral Therapy and Dialectical Behavior Therapy," available at the local Fauquier Free Clinic and Family Focus Counseling Services. Ex. H at 2.

69. A transfer to another ICE facility would not help Mr. Cardenas, because "even among those who ultimately received mental health care [in ICE detention,] interactions were often brief and inconsistent" and "psychotherapy and access to medications were limited." Physicians for Human Rights, "Endless Nightmare: Torture and Inhumane Treatment in Solitary Confinement in U.S. Immigration Detention," Feb. 6, 2024, https://phr.org/our-work/resources/endless-nightmare-solitary-confinement-in-us-immigration-detention/. Lengthy detention is associated with increased adverse mental health symptoms. Allen S. Keller, Barry Rosenfeld, Chau Trinh-Shevrin, Chris Meserve, Emily Sachs, Jonathan A. Leviss, Elizabeth Singer, Hawthorne Smith, John Wilkinson, Glen Kim, Kathleen Allden & Douglas Ford, *Mental Health of Detained Asylum Seekers*, 362 THE LANCET 1721–1723 (2003), https://doi.org/10.1016/s0140-6736(03)14846-5. These symptoms prevent him from reviewing significant filings, communicating with his immigration attorney, and making crucial decisions about his defense.

B. This Court Should Order ICE to Immediately Release Mr. Cardenas So He May Seek Adequate Mental Health Care and Receive Equal Access to His Immigration Proceedings.

70. A single reasonable accommodation – release from detention – would allow Mr. Cardenas to access his immigration proceedings on non-discriminatory terms. Earlier this year, Mr. Nieves-Figueroa, a Qualified Mental Health Professional, developed a plan for how Mr. Cardenas may reintegrate into his community and gain access to critical care. Ex. H. Namely, he plans to work with the Fauquier Free Clinic to access Cognitive Behavioral Therapy and Cognitive Behavior Therapy, both of which have been found effective at reducing symptoms and are unavailable to those in ICE custody. *Id.* at 2-3. The Free Clinic provides free and comprehensive mental health support to Fauquier County and Rappahannock County residents. *Id.* He also plans to enroll in Family Focus Counseling Services' substance abuse treatment and violence

intervention program. *Id.* at 2. Mr. Cardenas' Post-Release Plan also includes information on accessing housing, legal, religious, and resources. Therefore, Mr. Cardenas has a plan in place for long-term mental health care.

71. Once released, Ms. Hyde intends to continue representing Mr. Cardenas, and if she is unable to, Amica Center will seek to place his case with another *pro bono* attorney. Ex. H at 4. Mr. Nieves-Figueroa expressed that "[Mr. Cardenas] is committed to ensuring his successful reintegration into the community while upholding public safety. Mr. Cardenas Bravos may require additional legal services to assist during his parole status. We have added legal resources aimed at assisting Mr. Cardenas Bravo should the need arise." *Id.*

72. The accommodation Mr. Cardenas seeks is reasonable and would not impose a fundamental alteration to federal immigration programs. *See Alexander v. Choate*, 469 U.S. 287, 299–300, 302 n.21 (1985); *see also* 28 C.F.R. § 35.130(b)(1)(7) (i) and § 35.150(a)(3); 6 C.F.R. § 15.30 and § 15.50; *cf. PGA Tour, Inc. v. Martin*, 532 U.S. 661, 661–63 (a fundamental alteration is one that changes an "essential aspect" of the program). Given that approximately 98 percent of people subject to removal proceedings are not incarcerated by DHS, Mr. Cardenas' release would not alter an essential aspect of the immigration court process. *See* Congressional Research Service, "Immigration: Alternatives to Detention (ATD) Programs," (July 8, 2019), available at: https://fas.org/sgp/crs/homesec/R45804.pdf. The Government has extensive experience ensuring that people with pending cases appear for future hearing dates. *Hernandez*, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). Another study found that community-based alternatives to detention achieved a compliance rate of 90 % or better. National Immigrant Justice Center, "A Better Way: Community-Based Programming as an Alternative To Immigrant Incarceration," at 4 (Apr. 22

2019), available at: https://immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration.

73. ICE may grant Mr. Cardenas' release as a reasonable accommodation despite him allegedly being subject to mandatory detention. DHS has wide discretion, despite 8 U.S.C. § 1226(c), to release noncitizens from its custody for humanitarian reasons. 8 C.F.R. § 212.5; ICE Enforcement and Removal Operations, "Directive 11071.1: Assessment and Accommodations for Detainees with Disabilities" (Dec. 15, 2016), at 9 (providing for release as an option for persons with disabilities). Moreover, in other contexts, courts found exceptions to statutory language appropriate to prevent disability discrimination. *See Galvez-Letona*, 54 F. Supp. 2d at 1225. Release from ICE custody is widely available to people in immigration proceedings before EOIR. *Mark H. v. Hamamoto*, 620 F.3d 1090, 1098 (9th Cir. 2010) (finding an accommodation reasonable where it was "available"). Respondents may release Mr. Cardenas, and Section 504 requires that they release him so he may seek adequate mental health care and receive equal access to his removal proceedings.

CLAIMS FOR RELIEF

COUNT ONE

Violation Of the Due Process Clause of The Fifth Amendment to The U.S. Constitution

74. Mr. Cardenas realleges and incorporates by reference the paragraphs above.

75. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const. Amend. V.

76. Civil immigration detention violates Due Process if its continuation is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690.

77. Mr. Cardenas' detention of over fourteen months without a bond hearing will likely span many more months while his case remains pending with the immigration court. This detention, particularly when considered in the light of Mr. Cardenas' mental health concerns, is no longer related to the statutory purpose of ensuring his appearance for removal proceedings therefore has become unreasonable under this Court's *Portillo* factors. *See Portillo*, 322 F. Supp. 3d at 707.

78. To remedy Mr. Cardenas' prolonged detention, Due Process requires that the Government be obligated to establish at an individualized bond hearing before a District Court judge or IJ that Mr. Cardenas' detention is justified by clear and convincing evidence, taking into consideration his ability to pay and whether conditions of release might mitigate any risk of flight.

COUNT TWO

Violation Of the Rehabilitation Act, 29 U.S.C. § *794 et seq.*

79. Mr. Cardenas realleges and incorporates by reference the paragraphs above.

80. Respondents' continued detention of Mr. Cardenas, an individual with disabilities, denies him equal access to his immigration proceedings. He requires a reasonable accommodation in the form of immediate release under Section 504 and its implementing regulations. 29 U.S.C. § 794; 6 C.F.R. § 15.30, *et seq.;* 28 C.F.R. § 39.130, *et seq*.

81. Respondents' continued detention of Mr. Cardenas without allowing him the reasonable accommodation of release to obtain a recommended course of psychiatric treatment violates Section 504 and its implementing regulations.

PRAYER FOR RELIEF

WHEREFORE, Mr. Cardenas respectfully requests that this Court:

a. Declare that Mr. Cardenas' prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;

b. Declare that Mr. Cardenas' prolonged detention without reasonable accommodation violates the Rehabilitation Act;

c. Issue a writ of habeas corpus and order Respondents to immediately release Mr. Cardenas from their custody; or,

d. Alternatively, conduct, or order Respondents to schedule within 14 days, an individualized bond hearing with the burden of proof on the Government to establish by clear and convincing evidence that Mr. Cardenas currently poses a flight risk or danger to the community, and considering Mr. Cardenas' ability to pay and alternatives to detention; and

e. Grant any other further relief this Court deems just and proper.

Dated: March 14, 2025

Respectfully submitted,

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. My co-counsel has discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 14, 2025

Respectfully submitted,

/s/ Sam Hsieh
Sam Hsieh

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system, which will send a notice of electronic filing (NEM) to all counsel of record. I will send true copies by USPS Certified Priority Mail with electronic return receipt to the following individuals:

Paul Perry, Warden
Caroline Detention Facility
11093 SW Lewis Memorial Dr.
Bowling Green, VA 22427

Russell Hott, Field Office Director
U.S. Immigration and Customs Enforcement, Washington Field Office
c/o DHS Office of the General Counsel
2707 Martin Luther King Jr. Ave., SE
Washington, DC 20528-0485

Kristi Noem, Secretary
U.S. Department of Homeland Security
Office of the General Counsel
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Pam Bondi, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Maya D. Dong, Acting U.S. Attorney
Eastern District of Virginia, Alexandria Division
c/o Civil Process Clerk
2100 Jamieson Avenue
Alexandria, VA 22314

Dated: March 14, 2025

Respectfully submitted,

/s/ Samantha Hsieh
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