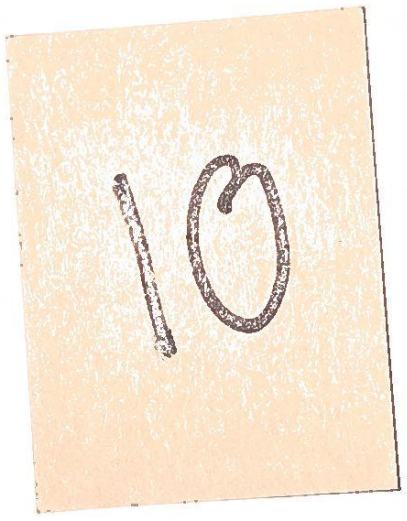
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRISTIAN DE JESUS CARDENAS BRAVO, Petitioner, v. PAUL PERRY, *et al.*, Respondents.	No. 1:25-cv-463 (RDA/WEF)

RESPONDENTS' RESPONSE IN OPPOSITION TO
THE PETITION FOR THE WRIT OF HABEAS CORPUS



Petitioner Cristian de Jesus Cardenas Bravo, a lawful permanent resident ("LPR") and native of Mexico convicted of possessing child pornography, is currently in mandatory immigration detention while his removal proceedings are pending. Petitioner, a sex offender, is mandatorily detained under 8 U.S.C. § 1226(c) for committing a serious criminal offense making him deportable or inadmissible to the United States. Petitioner now challenges that his mandatory detention violates the Due Process Clause of the Fifth Amendment and the Rehabilitation Act. Petitioner seeks to be immediately released, or at the minimum, asks this Court to conduct its *own* bond hearing where the government must prove by clear and convincing evidence that Petitioner is not a flight risk or danger to the community.

The Petitioner is not entitled to immediate release or a bond hearing. The Supreme Court in *Demore v. Kim*, 538 U.S. 510 (2003), made clear that detaining a criminal noncitizen under § 1226(c) without a bond hearing is a constitutionally permissible part of removal proceedings because of the government's legitimate interest in ensuring that criminal noncitizens appear for their removal proceedings and do not endanger the community by committing additional crimes. This is exactly Immigration and Customs Enforcement's ("ICE's") purpose in detaining Petitioner, who is removable or inadmissible because of his criminal conviction. This Court should thus find that Petitioner's detention satisfies the *Demore* standard.

Moreover, if the Court were nevertheless to analyze whether additional due process is warranted, this Court should apply the three-factor test the Supreme Court outlined in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine what process is due. In weighing all three factors, it is clear that no additional due process is warranted. If the Court—instead of applying *Demore*'s purpose-based standards or the *Mathews* test—were to apply the five-factor test that several jurists of this Court have previously applied in similar circumstances, Petitioner's detention satisfies that

test as well. However, if the Court were to determine that due process requires that Petitioner obtain additional relief here, the Court should at most order an Immigration Judge ("IJ") to hold an individualized bond hearing under existing regulations, where Petitioner bears the burden of proof. This is consistent with this Court's previous Orders, Fourth Circuit case law, and a long line of Supreme Court precedent.

Petitioner's Rehabilitation Act claim likewise does not warrant the relief he seeks. As an initial matter, the gravamen of his claim is that he is not receiving adequate mental health treatment while in immigration detention. Accordingly, his claim is actually based on the conditions of his confinement, which is not cognizable under habeas. Even assuming he properly presented a Rehabilitation Act claim, Petitioner has not plausibly alleged that he has been denied access to any benefit or program to which he is entitled due to his disability. As such, he has also failed to state a claim for relief and his Rehabilitation Act claim merits dismissal on this alternative ground.

For all these reasons, Respondents respectfully request that the Court deny Petitioner's Petition for a Writ of Habeas Corpus.

BACKGROUND

A. Statutory and Regulatory Background.

The statutory authority for detaining a noncitizen during and after removal proceedings has been the subject of extensive judicial discussion, especially in recent years. *See generally Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018). Stated briefly, 8 U.S.C. § 1225 governs the Department of Homeland Security's ("DHS") authority to detain a noncitizen *during* the pendency of administrative removal proceedings. *See* 6 U.S.C. § 251(2). That provision establishes two types of detention authority: (1) discretionary detention pursuant to 8 U.S.C. § 1225(a); and (2) mandatory detention pursuant to 8 U.S.C. § 1225(b). A third type of detention authority, 8 U.S.C.

§ 1226(c), mandates detention of noncitizens convicted of specific criminal offenses listed in 8 U.S.C. § 1227 or who are inadmissible under certain provisions in 8 U.S.C. § 1182. *See generally Guzman Chavez v. Hott*, 940 F.3d 867, 873 (4th Cir. 2019) ("*Guzman Chavez I*"), *rev'd in other part by Johnson v. Guzman Chavez* ("*Guzman Chavez II*"), 594 U.S. 523 (2021). Relevant here, detention is mandatory for a noncitizen who "is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title." 8 U.S.C. § 1226(c)(1)(B); *see also* 8 C.F.R. § 236.1(c). These provisions specifically include the criminal offense of which Petitioner has been convicted.

Noncitizens who are subject to § 1226(c) mandatory detention may be released on bond "only if the Attorney General decides . . . that release of the [noncitizen] from custody is necessary to provide protection to a witness . . . and the [noncitizen] satisfies the Attorney General that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(2); *see* 8 C.F.R. § 236.1(c)(1)(i). The noncitizen bears this burden. 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8).

B. Petitioner's Criminal and Immigration History.

Petitioner, who was born in 1994, is a native of Mexico and an LPR of the United States. Pet. ¶¶ 1, 8, 13, Dkt. 1; Ex. 1, Declaration of James A. Mullan ¶¶ 5, 7. Before the underlying conviction that resulted in his current detention, Petitioner was arrested and/or convicted on several occasions in various Virginia jurisdictions. *See* Decl. ¶¶ 8–11. In February 2014, Petitioner was convicted of and paid a fine for misdemeanor disorderly conduct in Fauquier County Circuit Court. *Id.* ¶ 8. In June 2016, Petitioner was arrested on a charge of assault and battery of a family member by the Rappahannock County Sheriff's Office, but the charge was later dismissed. *Id.* ¶ 9. In September 2020, Petitioner was convicted of misdemeanor sexual battery in Fauquier County

Circuit Court and served twenty days of a ninety days' sentence (the rest being suspended). *Id.* ¶ 10. Finally, on August 20, 2021, Petitioner was arrested by the Warrenton Police Department on six counts of possession of child pornography. Pet. ¶ 18. On March 9, 2023, Petitioner was convicted in Fauquier County Circuit Court for six counts of felony possession of obscene material with a minor and sentenced to two years' imprisonment on each count (with a year and six months suspended for each). Decl. ¶ 11; Pet. ¶ 18. Petitioner served a total of two years and four months in criminal detention. Pet. ¶ 18.

On January 4, 2024, ICE issued Petitioner a Notice to Appear, charging him as removable as a noncitizen convicted of an aggravated felony under INA § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii). Decl. ¶ 12; *see also* 8 U.S.C. § 1101(a)(43)(I) (defining aggravated felony as including an offense relating to child pornography); Pet. ¶ 19. That same day, Petitioner entered DHS custody at the Farmville Detention Center in Farmville, Virginia. Decl. ¶ 13; Pet. ¶ 19.

C. Petitioner's Immigration Proceedings.

On February 27, 2024 Petitioner appeared via video for a hearing before the Annandale Immigration Court in Virginia. Decl. ¶ 15. The IJ sustained ICE's charge of removability as laid out in the Notice to Appear and designated Mexico as the country of removal. *Id.* On March 26, 2024, Petitioner appeared via video for another hearing before the IJ. *Id.* ¶ 16. Based on information submitted by a third party (CAIR Coalition, a non-profit immigration defense organization now known as Amica Center for Immigration Rights), the IJ scheduled a mental competency inquiry for Petitioner. *Id.*; Pet. ¶ 20. That inquiry was held on April 2, 2024 before an IJ. Decl. ¶ 17. At the inquiry, at which Petitioner appeared via video, the IJ questioned Petitioner about why he was in removal proceedings, the allegations and charges asserted against him by ICE, his desire to remain in the U.S., why he was afraid of returning to Mexico, and his

efforts to secure an attorney. *Id.* The IJ determined that Petitioner understood the nature of his removal proceedings and was mentally competent to represent himself. *Id.*

At another hearing on April 16, 2024, an individual from CAIR requested a second mental competency inquiry. *Id.* ¶ 18. On May 9, 2024, the IJ ordered a forensic competency evaluation and report for Petitioner. *Id.*; Pet. ¶ 21. On July 9, 2024, Petitioner appeared before an IJ for a second mental competency inquiry, at which the IJ determined that Petitioner was *not* mentally competent to represent himself. Decl. ¶ 23; Pet. ¶ 24. The IJ ordered that that a qualified representative be provided for him. Decl. ¶ 23. Accordingly, counsel for Petitioner entered her appearance on Petitioner's behalf on July 16, 2024. Pet. ¶ 24.

In September 2024, Petitioner—now represented by counsel—filed a motion to terminate his removal proceedings, arguing that the charge of removability against him could not be sustained. Decl. ¶ 25; Pet. ¶ 26. In October 2024, DHS filed a Form I-261, Additional Charges of Inadmissibility/Deportability, which added another basis for removing Petitioner under INA § 237(a)(2)(E)(i), 8 U.S.C. § 1227(a)(2)(E)(i), as a noncitizen convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, neglect, or abandonment. Decl. ¶ 27. Petitioner filed another motion to terminate, which the IJ denied on November 19, 2024. *Id.* ¶¶ 28–29. On November 19, 2024, Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, arguing that he was entitled to relief under CAT. *Id.* ¶¶ 30–31.

On April 10, 2025, Petitioner, represented by counsel, appeared before an IJ for a hearing on his entitlement to relief from removal. *Id.* ¶ 31. The IJ denied Petitioner's application and ordered him removed to Mexico. *Id.* Petitioner reserved his right to appeal. *Id.*

D. Petitioner's Detention and Mental Health.

While detained at Farmville, Petitioner received treatment in the form of mental health and

substance abuse counseling, mental health observations, psychiatric clinical appointments and prescription medication for his depression and anxiety. Decl. ¶¶ 32–41.

On September 12, 2024, Petitioner was transferred to Caroline Detention Facility in Bowling Green, Virginia. Decl. ¶¶ 26, 42. At his own request, Petitioner was placed within the Special Management Unit ("SMU"), where he was seen daily by medical staff. *Id.* ¶¶ 43–44. Within five days of his arrival, Petitioner underwent an initial psychiatric evaluation and had an individual treatment plan created for him, which included him remaining on his prescribed antidepressants. *Id.* ¶ 46. During his time in detention at Caroline, Petitioner attended psychiatric evaluations almost once a month and behavior health therapy sessions at least once every two weeks (but often more). *Id.* ¶¶ 51–54. Petitioner's treatment plan, including his medication, was adjusted as needed to accommodate his own preferences, as well as his symptoms, the medication's side-effects and its effectiveness. *Id.* ¶ 51. Petitioner was placed on suicide watch several times while at Caroline, after he expressed suicidal ideations. *Id.* ¶ 45, 48. Each time Petitioner was referred immediately for additional mental health services. *Id.* ¶ 48. He also has undergone weekly suicide risk evaluations throughout his detention at Caroline. *Id.* ¶¶ 47, 49. Petitioner continues to undergo weekly visits with a behavior health provider, receive cognitive behavioral therapy, take his prescribed medication, and express his desire to stay in the SMU. *Id.* ¶¶ 53–57. At his most recent mental health review, on April 14, 2025, Petitioner denied any plans, intentions, or thoughts of suicide. *Id.* ¶ 54.

As of the date the Petition for a Writ of Habeas Corpus was filed, Petitioner has been continuously detained by ICE for fourteen months. Pet. ¶ 1.

E. The Instant Habeas Petition.

On March 14, 2025, Petitioner filed the instant petition for a writ of habeas corpus,

asserting that his continued detention without a bond hearing violates due process clause. Pet. ¶¶ 35–48. Petitioner also argues that this Court should conduct his bond hearing, consider Petitioner's ability to pay and alternative to detentions, and require the Government to bear the burden of proving that his continued detention is justified by clear and convincing evidence. *Id.* ¶¶ 49–57. Moreover, Petitioner claims that he is entitled to the reasonable accommodation of immediate release from immigration detention under the Rehabilitation Act due to his mental health problems. *Id.* ¶¶ 58–73.

ARGUMENT

I. Petitioner's Continued Detention Does Not Violate the Due Process Clause.

A. Under *Demore*, the Appropriate Standard is Whether the Continued Detention Carries Out the Purpose of 8 U.S.C. § 1226(c) By Ensuring the Protection of the Community from Serious Criminal Offenders.

The Due Process Clause does not place an outer temporal limit on a noncitizen's mandatory detention (pursuant to 8 U.S.C. §§ 1225(b), 1226(c)) without a bond hearing. *See McDougall v. Crawford*, 1:24-cv-00124, Order (Dkt. No. 16) at 3 (E.D. Va. Sept. 20, 2024) (Hilton, J.) ("The Supreme Court held that [noncitizens] under 1226(c) are *not* entitled to release or an individualized bond hearing.") (emphasis added); *but see Bah v. Barr*, 409 F. Supp. 3d 464, 467–68 (E.D. Va. 2019) (holding that a bond hearing was required because petitioner's two-year plus detention under § 1226(c) without one violated due process).[1] Petitioner's due process challenge to the length of his detention without a bond hearing is subject to well-established Supreme Court caselaw holding that detention of a criminal noncitizen under §§ 1225(b), 1226(c) *without* a bond hearing is a

[1] This Court is not bound to decisions from other jurists in this Court. *See Castaneda v. Perry*, 2022 WL 4624832, at *4 n.7 (E.D. Va. Sept. 30, 2022), *affirmed*, 95 F.4th 750 (4th Cir. 2024) ("The Court does not consider the application of *Portillo* here because it is not binding on this Court."); *Bah*, 409 F. Supp. 3d at 471 n.10 (cases within this Court by other jurists "provide persuasive rather than binding authority").

constitutionally permissible part of removal proceedings.

For mandatory detention under 8 U.S.C. § 1226(c), *Demore v. Kim*, 538 U.S. 510 (2003), is controlling. In *Demore*, an LPR subject to mandatory detention challenged the constitutionality of § 1226(c), asserting that his detention during removal proceedings for more than six months without a bond hearing violated the Due Process Clause. 538 U.S. at 523, 531. *Demore* rejected this challenge and held that "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Id.* at 531. In upholding the constitutionally of § 1226(c), the *Demore* Court reasoned that Congress—"[i]n the exercise of its broad power over naturalization and immigration" and in an effort to address legitimate concerns that "deportable criminal [noncitizens] who remained in the U.S. often committed more crimes before being removed"—was justified in legislating that certain noncitizens must be detained, without bond hearings, during their removal proceedings. *Id.* at 513, 518–22. The Court also observed that a noncitizen placed in § 1226(c) detention, though not entitled to receive a bond hearing, is entitled to request an individualized hearing at which to challenge her or his categorization as a noncitizen subject to mandatory detention. *Id.* at 514; *see also id.* at 531–32 (Kennedy, J., concurring) (noting the availability of a hearing provides due process).

The *Demore* Court also reasoned that, because the mandatory detention required by § 1226(c) has a "definite termination point"—the end of a noncitizen's removal proceeding—and does not require "indefinite" or "potentially permanent" detention, detention without a bond hearing until that definite termination point does not violate due process. *Id.* at 528–31. This definite-termination-point, the Court reasoned, distinguished *Demore* from *Zadvydas v. Davis*, 533 U.S. 678 (2001). In *Zadvydas*, the Court addressed post-removal-proceeding-but-pre-removal detention under 8 U.S.C. § 1231(a)(6)—not applicable here—and concluded that after a

presumptively reasonable six-month period, continued detention under § 1231 could raise due process concerns. 533 U.S. at 701. *Zadvydas* also stated that "[a] statute permitting indefinite detention of a[] [noncitizen] would raise a serious constitutional problem" under the Due Process Clause. *Id.* at 690. In *Demore*, the Court found *Zadvydas* "materially different from the present case in two respects." *Demore*, 538 U.S. at 527. First, the Court reasoned that, unlike detention under § 1231, detention under § 1226(c) "necessarily serves the purpose of preventing deportable criminal [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed." *Id.* at 528. Second, the Court found that, unlike detention under § 1231—which "was 'indefinite' and 'potentially permanent'"—detention under § 1226(c) "ha[s] a definite termination point." *Id.* at 529.[2] The *Demore* Court thus found no need to adopt a presumptive six-month limitation as it did in *Zadvydas*. *Id.* at 528–31. Indeed, Congress enacted mandatory detention precisely out of concern that such individualized [bond] hearings could not be trusted to reveal which "deportable criminal [noncitizens] who are not detained" might "continue to engage in crime [or] fail to appear for their removal hearings." *Nielsen v. Preap*, 586 U.S. 392, 412 (2019) (quoting *Demore*, 538 U.S. at 513 (internal quotations omitted)).

B. Under the *Demore* Standard, Petitioner Has Received the Process He is Due.

Because Petitioner's removal proceedings have a *definite* termination point and there is no evidence that ICE is detaining him for any purpose other than to protect against risk of flight or

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[2] The *Demore* Court cited statistics the government had provided calculating that, for noncitizens in immigration detention under § 1226(c), "removal proceedings are completed in an average time of 47 days and a median of 30 days" and that an appeal takes "an average of four months, with a median that is slightly shorter." *Demore*, 538 U.S. at 529. These statistics are outdated and while the government cannot provide current processing times of removal proceedings, removal proceedings now take significantly longer.

dangerousness, Petitioner is awarded the appropriate due process protections. Under *Demore*, mandatory detention under § 1226(c) is constitutional so long as it continues to serve its purpose of preventing the risk of flight or dangerousness, two concerns that are present throughout removal proceedings. 538 U.S. at 528; *id.* at 526 (noting the "longstanding view that the Government may constitutionally detain deportable [noncitizens] during the limited period necessary for their removal proceedings"). As the Supreme Court has emphasized, "having thus required the Secretary to impose mandatory detention without bond hearings immediately, for safety's sake, Congress could not have meant for judges to 'enforce' this duty in case of delay by—of all things—forbidding its execution." *Nielsen*, 586 U.S. at 412–13.

In *Jennings v. Rodriguez*, the Supreme Court considered whether § 1226(c) itself contains an implicit limit on the length of detention before a noncitizen is entitled to an individualized bond hearing. The Ninth Circuit, like several other Circuit Courts and courts within this district, had relied on the canon of constitutional avoidance to read a time limit into the statute. 583 U.S. at 286; *see also Rodriguez v. Robbins*, 804 F.3d 1060, 1074 (9th Cir. 2015), *rev'd sub nom by Jennings*, 583 U.S. at 305–06; *Mauricio-Vasquez v. Crawford*, 2017 WL 1476349, at *4 (E.D. Va. Apr. 24, 2017) (Trenga, J.), *abrogated by Jennings*, 583 U.S. at 305–06; *Haughton v. Crawford*, 2016 WL 5899285, at *4 (E.D. Va. Oct. 7, 2016) (Brinkema, J.), *abrogated by Jennings*, 583 U.S. at 305–06. In *Jennings*, the Supreme Court foreclosed using the constitutional-avoidance canon on § 1226(c) and rejected any statutory limit because the "only if" language in § 1226(c)(2) clearly states that "[noncitizens] detained under its authority are not entitled to be released under any circumstances other than those expressly recognized by the statute"—for witness protection purposes when the [noncitizen] does not pose a danger or flight risk. 583 U.S. at. 303; *see also id.* at 304 (stating that "the statute expressly and unequivocally imposes an affirmative prohibition on

releasing detained [noncitizens] under any other conditions").

The *Jennings* Court also emphasized that it could not read a time limit into § 1226(c) simply because it is "silent" as to the length of the mandatory detention, and instead held that § 1226(c) "is *not* 'silent' as to the length of detention." *Id.* at 304. Specifically, the Court concluded that § 1226(c) "mandates detention 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Id.* (quoting 8 U.S.C. § 1226(a)); *see also id.* (noting that 1226(c) has "a definite termination point") (citing *Demore*, 538 U.S. at 529). In other words, the mandatory detention required by § 1226(c) terminates at the conclusion of a noncitizen's removal proceedings. *See id.* The Court thus held that § 1226(c) "mandates detention of any [noncitizen] falling within its scope and that detention may end prior to the conclusion of removal proceedings 'only if' the [noncitizen] is released for witness-protection purposes." *Id.* at 305–06. The Court then remanded the case to the Ninth Circuit to determine in the first instance, among other issues, whether the Constitution requires that a noncitizen detained under § 1226(c) receive a bond hearing before removal proceedings have concluded. *Id.* at 312–14.

Although the Fourth Circuit has not addressed whether the Due Process Clause requires release or bond hearings for noncitizens detained under § 1226(c), it stated—in a case analyzing a constitutional challenge to bond procedures for those detained under § 1226(a)—that "[t]he Supreme Court has determined that several statutory procedures that presume detention categorically do not offend the Constitution," citing § 1226(c). *Miranda v. Garland*, 34 F.4th 338, 363 (4th Cir. 2022) (citing *Demore*, 538 U.S. at 531). The Fourth Circuit further noted that detention under § 1226(c) is limited and *not* indefinite. *Id.* at 360 (citing *Demore*, 538 U.S. at 521).

Here, as in *Demore*, the government has not unreasonably delayed Petitioner's removal

proceedings, and there is no indication that the government's purposes in detaining him are punitive, in bad faith, or for any other purpose other than those for which § 1226(c) was enacted and held constitutional: avoiding risk of flight and the commission of additional crimes while immigration proceedings are pending. Again, Congress enacted § 1226(c) in response to evidence that immigration authorities were unable to remove many criminal noncitizens because they failed to appear for removal hearings and that criminal noncitizens released on bond often committed additional crimes before they could be removed. *See Demore*, 538 U.S. at 518–20. ICE took Petitioner into custody after his serious criminal conviction requiring him to be mandatorily detained under § 1226(c). Decl. ¶¶ 11–13, 27.

As other courts have concluded following *Jennings*, detention for the legitimate purposes of ensuring attendance at removal proceedings, protecting the community from further crimes, and ensuring attendance at the time of removal, is constitutional. *See, e.g.*, *Dryden v. Green*, 2018 WL 3062909, at *5 (D.N.J. June 21, 2018) (denying habeas petition because "it fully appears that Petitioner's detention stills serves the purposes of § 1226(c)" in light of the noncitizen's "self-inflicted delays, and the lack of any bad faith or unreasonable action on the part of the Government"); *Coello-Udiel v. Doll*, 2018 WL 2198720, at *4 (M.D. Pa. May 14, 2018) (denying habeas relief under similar reasoning); *see also Misquitta v. Warden Pine Prairie ICE Processing Ctr.*, 353 F. Supp. 3d 518, 527 (W.D. La. 2018) ("Where removal proceedings are delayed solely by a party's good faith exercise of its procedural remedies—whether by the petitioner or the government—continued detention is unlikely to trigger due process concerns."); *Manley v. Delmonte*, 2018 WL 2155890, at *2 (W.D.N.Y. May 10, 2018) (denying habeas relief under similar reasoning). Petitioner's continued detention carries out the purpose of § 1226(c) by ensuring attendance at removal proceedings and protecting the community from any more crimes and thus

is permissible under the Due Process Clause. Accordingly, *Demore* provides the appropriate due process protections for the Petitioner and this Court should dismiss the Petition.

C. Even Apart from *Demore*, Petitioner is Not Entitled to the Additional Process.

1. Under the Mathews *factors, the length of Petitioner's detention is reasonable.*

Even if Supreme Court precedent did not squarely govern Petitioner's Fifth Amendment claim (though it does), Petitioner would not be entitled to immediate release and the specialized bond hearing that he seeks. The analytical framework established in *Mathews v. Eldridge* generally controls the analysis of claims seeking additional procedural protections under the Constitution, though the doctrine has already been applied in this context (*i.e.*, noncitizen subject to an order of removal) when the Supreme Court examined the constitutionality of these detention statutes. *See Demore*, 538 U.S. at 527–28; *Zadvydas*, 533 U.S. at 699.

Under *Mathews*, a court must consider three factors in assessing whether a given procedural framework affords due process: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. 424 U.S. at 335. Any analysis of these factors in the immigration context must "weigh heavily" the fact that "control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). A correct application of the *Mathews* test weighs against ordering the specialized bond hearing and immediate release the Petitioner requests.

1. With respect to the first factor—the private interest at stake—it is true that freedom from

physical restraint "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. But if "an illegal [noncitizen] [is] present within the United States," Petitioner may claim only a "limited liberty interest." *Wilson v. Zeithern*, 265 F. Supp. 2d 628, 635 (E.D. Va. 2003) (detention of inadmissible noncitizen pending removal did not violate due process); *see Demore*, 538 U.S. at 522 (explaining noncitizens' "liberty rights . . . are subject to limitations and conditions not applicable to citizens" (quoting *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting))).

The Supreme Court has emphasized that "detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that noncitizens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Indeed, "when the Government deals with deportable [noncitizens], the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Miranda*, 34 F.4th at 360 (quoting *Demore*, 538 U.S. at 528) (internal quotations omitted).

Petitioner also contends that the length of his detention alone bears on the strength of his liberty interest and "is given significant weight." Pet. ¶ 39. Even assuming, *arguendo*, that this is an accurate statement of the *law*, it does not significantly aid Petitioner. Courts have upheld periods of mandatory detention much longer than Petitioner's as constitutional. *See, e.g.*, *Luna-Aponte v. Holder*, 743 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (noncitizen's three-plus-year detention was constitutional). Petitioner alleges that he will be in detention for many more months unless this Court intervenes because "his next hearing is April 10, 2025, it is unclear how many

more hearings will occur and how long [the IJ] will take to issue a decision" on his pending application for relief from deportation under the Convention Against Torture ("CAT"), and "either party is likely to appeal to the BIA, which would likewise take many more months to issue a decision." Pet. ¶ 41. However, the IJ has *already* issued a decision on Petitioner's CAT application—denying his request and ordering him removed. Dec. ¶ 31. In any event, "[w]here removal proceedings are delayed solely by a party's good faith exercise of its procedural remedies—whether by the petitioner or the government—continued detention is unlikely to trigger due process concerns." *Misquitta*, 353 F. Supp. 3d at 526–27.

2. Regarding the second *Mathews* factor, applicable statutes and regulations already provide extensive protections to all noncitizens detained pursuant to § 1226(c), including those in withholding-only proceedings. There is no basis in law for imposing yet more procedures that neither Congress nor the relevant agencies have adopted, nor has Petitioner offered any idea on *what* new procedures are needed.

Section 1226(c) provides that ICE *may* release noncitizens if certain requirements are met. *See* 8 U.S.C. § 1226(c)(2). And federal regulations reemphasize that "no [noncitizen] described in section 236(c)(1) [8 U.S.C. § 1226(c)(1)] of the [INA] *may* be released from custody during removal proceedings *except* pursuant to section 236(c)(2) [8 U.S.C. § 1226(c)(2)] of the [INA]." 8 C.F.R. § 236.1 (emphasis added). Under this statutory and regulatory framework, ICE may release the noncitizen only if it is necessary to provide protection to a witness *and*, in DHS's *discretion*, the noncitizen will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. 8 U.S.C. § 1226(c)(2) (emphasis added). Therefore, Petitioner could be released only for narrow, witness-protection purposes. *Id.*; *see Demore*, 538 U.S. at 513–14. Indeed, the Supreme Court concluded in *Demore* that the statutorily

established process overcomes *any* constitutional concerns the applicable procedures might raise. *See Demore*, 538 U.S. at 513; *see also Nielson v. Preap*, 586 U.S. 392, 412–13 (2019) (emphasizing that Congress did not intend for judges to enforce releasing noncitizens due to delays); *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (rejecting claim for bond hearing to justify continuing detention).

3. Regarding the third *Mathews* factor, the government's interests in maintaining the existing procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Accepting Petitioner's position would flout this directive by injecting that very rigidity into the discretionary detention regime adopted by Congress.

In determining what process is due in immigration proceedings, "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon*, 459 U.S. at 34. "[A]ny policy toward [noncitizens] is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Diaz*, 426 U.S. at 81 n.17 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952)). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal [noncitizens]—to be a vital public interest." *Miranda*, 34 F.4th at 364. It is thus clear that, in the removal process, "the government interest includes detention." *Id.* And the Supreme Court has stated removal proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Wong Wing v. U.S.*, 163 U.S. 228, 235 (1896).

Finally, and particularly salient here, the government unquestionably has a vital interest in protecting public safety. *See Demore*, 538 U.S. at 518–19. And Petitioner fails to contend that he is not "a danger to the community" and is not a flight risk. Petitioner is clearly a risk to the public as he was convicted of possession of child pornography. Pet. ¶ 18. As *Demore* points out, the reason Congress enacted a provision requiring mandatory detention was to detain noncitizens convicted of aggravated felonies. *See* 538 U.S. at 517–18. And § 1226(c)(1)(B) specifically requires aggravated felons be mandatorily detained. *See also* 8 U.S.C. § 1227(a)(2)(A)(iii) (deportability ground for those convicted of an aggravated felony). Indeed, other circuits, though not within the immigration context, have found that sex offenders can pose a risk to the community, especially when it involves minors. *See, e.g., U.S. v. Tilley*, 105 F.4th 482 (1st Cir. 2024).

Therefore, it is clear from the *Mathews* factors that Petitioner is not entitled to additional process aside from what he has received here, as *Demore* provides, and this Court should dismiss the Petition for that reason.

2. *Even if the Court Were to Apply the Five-Factor Balancing Test from* Portillo v. Hott, *Petitioner's Detention is Reasonable.*

Several jurists in this district and this Court have, notwithstanding the above authority, adopted a five-factor test to determine whether continued detention without a bond hearing comports with due process. *See Portillo v. Hott*, 322 F. Supp. 3d 698 (E.D. Va. 2018) (Brinkema, J.); *Abreu v. Crawford*, 2025 WL 51475, at *5 (E.D. Va. Jan. 8, 2025) (Nachmanoff, J.) (adopting the *Portillo* factor-based test); *Martinez v. Hott*, 527 F. Supp. 3d 824, 836 (E.D. Va. 2021) (Alston, J.). Under the *Portillo* balancing test the five factors are: "(1) the duration of the detention, including the anticipated time to completion of the [noncitizen'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." *Portillo*, 322 F. Supp. 3d at 707; *see Martinez*, 527 F. Supp. 3d at 836 (same). As noted above, Respondents do not concede that the balancing test set forth in *Portillo* is the correct standard with which to assesses whether a noncitizen's continued detention is serving its intended purpose and thus outweighs the noncitizen's liberty interest. Nevertheless, applying those factors here warrants denial of the instant habeas petition.

As to the first factor—length of detention— other jurists from this Court have found this first factor as the "most important." *See Portillo*, 322 F. Supp. 3d at 707; *Martinez*, 527 F. Supp. 3d at 836. However, the Supreme Court's test in *Mathews* places an equal and even substantial weight on the *public's* interest, not just that of Petitioner. *See Mathews*, 424 U.S. at 349 ("In striking the appropriate due process balance the final factor to be assessed is the public interest."). As of the date of this filing, Petitioner has been detained for approximately sixteen-and-a-half months (fourteen months as of the date of his habeas petition). Pet. ¶ 1; Decl. ¶ 13. Although Petitioner's removal proceedings and resulting detention have exceeded the period of detention at issue in *Demore* ("a month and a half . . . to five months"), *Demore* did not set an outer limit for a permissible period of detention. *See Demore*, 538 U.S. at 523, 531.

Indeed, *Demore*'s "a month and a half . . . to five months" standard was based on ICE statistics at the time of such decision—in 2003. Over twenty years have passed since *Demore*, and there are significantly more noncitizens in removal proceedings today than in 2003. As the Fourth Circuit noted, detention under 8 U.S.C. § 1226(c) is *not* indefinite under *Demore*. *Miranda*, 34 F.4th at 360–61; *see also Hamama v. Adducci*, 946 F.3d 875, 879 (6th Cir. 2020) (citing *Jennings* and *Demore* and noting the existence of an endpoint for detention under § 1226(c) detention (removal) "allay[s] any constitutional concerns").

While Respondents recognize that courts have ordered bond hearings for detentions *much* longer than Petitioner's, *see Bah*, 409 F. Supp. 3d at 466 (ordering a bond hearing to noncitizen mandatorily detained under § 1226(c) for 26 months), this Court should place equal significance on the other *Portillo* factors. In addition, when addressing the constitutionality of § 1226(c) mandatory detention, other courts have upheld periods of detention that are far longer than Petitioner's detention. *See, e.g.*, *Sodhi v. Choate*, 2019 WL 3317293, at *9 (D. Colo. July 24, 2019) (holding that a noncitizen's 28-month long detention was constitutional); *Luna-Aponte v. Holder*, 743 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (holding that a noncitizen's detention which lasted longer than three years was constitutional).

The second factor—whether the civil detention exceeds the criminal detention for the underlying offense—clearly weighs in favor of the Respondents. Pet. ¶ 42. Petitioner attempts to say that this factor "is neutral and at worst, carries minimal negative weight," *id.* ¶ 42., but his fourteen-month detention comes *nowhere close* to the time he served in criminal detention (twenty-eight months) or *could have* served in criminal detention (a total of seventy-two months). *Id.* ¶ 18. And the INA instructs that, in defining a conviction, the term of imprisonment or sentence issued by a criminal court includes the period of incarceration or confinements "*regardless* of *any* suspension . . . of that imprisonment in whole or in part." 8 U.S.C. § 1101(a)(48)(B); *see Ramtulla v. Ashcroft*, 301 F.3d 202, 203 (4th Cir. 2002); *Laryea v. U.S.*, 300 F. Supp. 2d 404, 407 (E.D. Va. 2004). Accordingly, this Court should consider his *suspended* sentence—an additional forty-four months' imprisonment, Pet. ¶ 18—when weighing this factor. Thus, this factor weighs in favor of Respondents.

As to the third factor—dilatory tactics employed in bad faith by parties—and the fourth factor—procedural or substantive legal errors that significantly extend detention—Petitioner's

detention is lengthened here by the parties exercising options common in all immigration proceedings. Petitioner's application for withholding of removal pursuant to CAT was recently denied by the IJ and Petitioner reserved his right to appeal. Decl. ¶ 31. Any delay in the proceedings has therefore come only through the parties' litigation of Petitioner's efforts to obtain relief in his immigration proceedings, which does not implicate the second or fourth factor. *See Misquitta*, 353 F. Supp. 3d 526–27 ("Where removal proceedings are delayed solely by a party's good faith exercise of its procedural remedies—whether by the petitioner or the government—continued detention is unlikely to trigger due process concerns."); *see also Demore*, 538 U.S. at 530-31 & n. 14, 15 (noting that when noncitizens make choices during removal proceedings that delay removal, they bear the consequences for those decisions). Accordingly, there has been no bad faith by the government and the third and fourth factors are neutral. *See Martinez*, 527 F. Supp. 3d at 836–37.

As to the fifth factor—the likelihood that the government will secure a final removal order—favors the government. Just last week the IJ denied Petitioner's request for relief from removal under CAT and ordered him removed to Mexico. Decl. ¶ 31. While Petitioner has reserved his right to appeal, the government has established it has a strong case. Thus, although neither party can predict the outcome of any potential appeal, this favor currently favors the Respondents.

In sum, if this Court were to find the *Portillo* factors apply here, they weigh in favor of the Respondents and merit denying the instant habeas petition.

D. In the Event the Court Finds Petitioner is Entitled to a Bond Hearing, the Only Relief the Court Should Consider is a Bond Hearing in Front of an IJ in which the Petitioner Bears the Burden of Proof.

Should the Court disagree and conclude that Petitioner is entitled to relief under *Portillo*,

immediate release from detention is not an appropriate remedy. Any relief should be limited to a bond hearing before an IJ that follows existing bond procedures.[3] *Martinez*, 527 F. Supp. 3d at 837-38; *Santos Garcia v. Garland*, 2022 WL 989019, at *7 (E.D. Va. Mar. 31, 2022) (Alston, J.).

Although Petitioner appear to focus principally on whether due process entitles him to a bond hearing (*see* Pet. ¶¶ 38–48), he also requests "immediate release" from detention, *id.* ¶¶ 82–83. Petitioner argues that this Court should order Petitioner's immediate release simply because of his mental health issues. *See id.* ¶ 3. As a threshold matter, to the extent Petitioner's claim for release is based on his health, *see id.*, it is a conditions-of-confinement claim disguised as a habeas claim. As this Court has recognized, "challenge[s] [to] the conditions of Petitioner's confinement[] are not cognizable under § 2241." *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 692 (E.D. Va. 2020) (Alston, J.); *see also Toure v. Hott*, 458 F. Supp. 3d 387, 399 (E.D. Va. 2020) (O'Grady, J.) ("§ 2241 is an improper vehicle for such a challenge."); *see infra* Part II. Moreover, Petitioner's due process challenge is procedural—specifically, that he is entitled to a specialized bond hearing to justify his continuing detention. *See* Pet. ¶¶ 49–51. Although no such hearing is necessary for the reasons explained above, the only appropriate remedy for the sort of violation Petitioner alleges would be a bond hearing. Ordering immediate release for an alleged failure to provide procedural protections would be "an extreme, and thus inappropriate remedy" when the Court could instead

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[3] Petitioner asks this Court to conduct its own bond hearing instead of an IJ. *See* Pet. ¶¶ 49–51. However, by prohibiting federal courts from reviewing an IJ's decision on bond, the INA indicates that only an IJ can conduct such bond hearings. *See* 8 U.S.C. § 1226(e). If this Court were to conduct its own bond hearing, it would be a waste of vital judicial resources as it is well within this Court's practice to order bond hearings in front of IJs. *See, e.g.*, *Martinez*, 527 F. Supp. 3d at 838; *Santos Garcia*, 2022 WL 989019, at *7. Indeed, another jurist of this Court recently declined to conduct its own bond hearing in another habeas action. *See Abreu v. Crawford*, 1:24-cv-1782, Order at 1–2, Dkt. 31 (E.D. Va. Feb. 14, 2025) (Nachmanoff, J.); *cf. Portillo*, 322 F. Supp. 3d at 709 (rejecting noncitizen's request to retain jurisdiction over a habeas claim to determine whether he was afforded an appropriate bond hearing). Moreover, Defendants are unaware of any court within this Circuit who has conducted such a bond hearing.

order that those protections be provided. *Ming Hui Lu v. Lynch*, 2016 WL 375053, at *8 (E.D. Va. Jan. 29, 2016) (denying release where ICE allegedly failed to conduct custody reviews); *see Clarke v. Kuplinski*, 184 F. Supp. 3d 255, 261 (E.D. Va. 2016) (similar).

Turning to the appropriate procedures, Petitioner would bear the burden of demonstrating that he does not pose a flight risk or danger to the community. *Martinez*, 527 F. Supp. 3d at 838; *see Guzman Chavez v. Hott*, 940 F.3d 867, 874, 882 (4th Cir. 2019) ("The petitioners *must carry their* burden of proving that they are eligible for conditional release, and agency officials enjoy broad discretion in making detention-related decisions."), *rev'd on other grounds*, *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021); *see also Jennings*, 583 U.S. at 306 (criticizing the Ninth Circuit's approach in ordering the government "to provide procedural protections that go well beyond the initial bond hearing established by existing regulations"). Indeed, this Court has already held that the noncitizen bears the burden by a preponderance of the evidence in accordance with "[e]xisting regulations and Fourth Circuit authority."[4] *Martinez*, 527 F. Supp. 3d at 838; *see Santos Garcia*, 2022 WL 989019, at *7 (same); *Palomares- Gastelum v. Barr*, 1:19-cv-1428, Order at 17–18, Dkt. 28 (E.D. Va. Feb. 19, 2020) (Alston, J.) (same); *see also Matter of Urena*, 25 I. & N. Dec. 140, 141 (BIA 2009); 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (relevant bond procedures).

Ordering a bond hearing that is consistent with well-established regulations, *i.e.*, which places the burden of persuasion on the noncitizen, is consistent with a long line of Supreme Court precedent. *See Demore*, 538 U.S. at 531 (detention of certain criminal noncitizens); *Reno v. Flores*, 507 U.S. 292, 306 (1993) (detention of unaccompanied juvenile noncitizens); *Carlson*, 342 U.S.

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[4] By contrast, Judge Brinkema in *Portillo* and Judge Ellis in *Bah* held that the government bears the burden in a bond hearing following successful habeas claim for a noncitizen detained pursuant to 8 U.S.C. § 1226(c). Even though these jurists resolved this issue differently from this Court and Judge Trenga, these cases also declined to follow *well-established* regulations. In addition, the Fourth Circuit's decision in *Guzman Chavez* now undermines their conclusions.

at 538 (detention of communist noncitizens); *cf. Zadvydas*, 533 U.S. at 701 (detention of certain noncitizens post-removal order). The Fourth Circuit recently reiterated this holding. *See Miranda*, 34 F.4th at 360 ("In *Demore*, a[] [noncitizen] argued that the Due Process Clause prevents the categorical placement of that burden on the [noncitizen]. The Supreme Court disagreed.").

Petitioner's arguments to the contrary are unpersuasive. For example, Petitioner points to the Fourth Circuit's decision in *Miranda v. Garland*. Pet. ¶ 53. However, that case lends no support to Petitioner's claims. In *Miranda*, the Fourth Circuit applied the *Mathews v. Eldridge* analysis to the bond procedures available to detainees under 8 U.S.C. § 1226(a), § 1226(c)'s so-called "sister section." 34 F.4th at 360. The court held that those procedures—including those which place the burden of proof on the noncitizen—are constitutionally adequate under the Due Process Clause. *Id.* at 365 ("Those procedures, for individuals already in the country unlawfully, do not violate the Constitution's Due Process Clause."). Moreover, in *Miranda*, the Fourth Circuit repeatedly cited *Demore* with approval and expressly "declined to follow" *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017)—the very out of district case law Petitioner cites in support of his argument. *See Miranda*, 34 F.4th at 360, 364, 366; Pet. ¶¶ 3, 48–49 (relying on *Hernandez*). Thus, the Fourth Circuit's *Miranda* decision undermines Petitioner's claims regarding appropriate bond hearing procedures.

Finally, Petitioner asks this Court or the IJ to consider "[a]lternatives to detention." Pet. ¶¶ 55–57. Under existing regulations, the IJ may consider *all* relevant information. *See* 8 C.F.R. § 1003.19(d) ("The determination of the [IJ] as to custody status or bond may be based upon any information that is available to the [IJ] or that is presented to him or her by the [noncitizen] or the Service."). Courts in this District have consistently held that "[e]xisting regulations . . . guide the Court's determination" of the appropriate procedures for bond proceedings. *Martinez*, 527 F.

Supp. 3d at 838; *Santos Garcia*, 2022 WL 989019, at *7, *Palomares*, No. 1:19-cv-1428, Order at 18, Dkt. 28; *see also Mauricio-Vasquez*, 2017 WL 1476349 at *6 ("It is . . . not the place of a federal court to craft a new standard, and this Court will therefore instead defer to the agency's existing regulations in this regard."). Thus, while the Court should not order any bond hearing to be held in this case, any hearing the Court does order should be conducted in accordance with *well-established* bond regulations—meaning before the IJ with the burden of proof on Petitioner.

II. Petitioner Is Not Entitled to Immediate Release Under the Rehabilitation Act.

Next, Petitioner claims that he is entitled to the reasonable accommodation of being immediately released from immigration detention on account of his mental health problems under § 504 of the Rehabilitation Act. Pet. ¶¶ 58–73. However, his claim fails for two reasons. First, Petitioner's claim is actually one for conditions of confinement—which is not properly addressed through a writ of habeas corpus. Second, even assuming Petitioner has properly brought a Rehabilitation Act claim before the Court (which he has not), and such a claim can be brought through a habeas petition (which it cannot), Petitioner does not identify any benefit or program that he is being denied access to due to his disability. As such, he has failed to plausibly allege any such claim. These two independent grounds merit the dismissal of Petitioner's Rehabilitation Act claim.

A. Petitioner Brings a Conditions of Confinement Claim That is Not Cognizable Under Habeas.

While Petitioner styles his claim as one for relief under the Rehabilitation Act, the actual gravamen of his complaint is that he is not being provided adequate medical treatment while in immigration detention. As Petitioner alleges, it is "due to the lack of adequate mental health care" that he is unable to fully participate in his immigration proceedings. Pet. ¶ 29; *see also id.* ¶ 41 (alleging that he is "deprived of adequate mental health care" in detention); *id.* ¶ 60 (alleging

government failed to "provide comprehensive mental health care"); *id.* at ¶ 65 (alleging that "the lack of adequate mental health care at Caroline impedes Mr. Cardenas' ability to participate in his legal defense"); *id.* at ¶ 68 (alleging that ICE facilities cannot provide Petitioner with "long term care"); *id.* at 69 (alleging that even a transfer to a different ICE facility "would not help" Petitioner). As such it is clear that Petitioner's claim is one based on the conditions of his confinement—i.e., his lack of adequate mental health treatment—not on a denial of access to a specific program or benefit to which he is entitled because of his disability.

Petitioner's claim therefore cannot be brought pursuant to a habeas petition. A writ of habeas may only issue when a petitioner challenges the "validity of any confinement or [the] particulars affecting its duration" and is not permitted for "[a]n inmate's challenge to the circumstances of his confinement." *Hill v. McDonough*, 547 U.S. 573, 579 (2006); *Preiser v. Rodriguez*, 411 U.S. 475, 498–99 (1973). For this reason, federal courts lack jurisdiction over habeas proceedings involving challenges to the conditions of the prisoner's confinement. *Wilborn v. Mansukhani*, 795 F. App'x 157, 164 (4th Cir. 2019) ("[Petitioner's] claim seeking to have the BOP reconsider where he is being housed is one that would not fall within the scope of habeas corpus."); *Lee v. Winston*, 717 F.2d 888, 892 (4th Cir. 1983) (habeas "is primarily a vehicle for attack by a confined person on the legality of his custody" and "the traditional remedial scope of the writ has been to secure absolute release").

Recognizing these very principles, courts in this Circuit have repeatedly held that a habeas claim brought by a noncitizen alleging inadequate healthcare while detained is not appropriate for habeas proceedings as it does not "result in a definite reduction in the length of confinement." *Olajide v. B.I.C.E.*, 402 F. Supp. 2d 688, 694–95 (E.D. Va. 2005); *see also Quick v. O'Brien*, 2009 WL 2175632, at *3 (W.D. Va. 2009) ("As the core of [petitioner's] complaint is clearly not

concerning the fact or duration of his incarceration, his claim is not properly before the court as a habeas claim under § 2241."); *McCain v. Garrity*, 2002 WL 32362032, at *2 (E.D. Va. July 16, 2002) ("An action regarding the quality of medical care while incarcerated challenges a prisoner's conditions of confinement and therefore properly lies in . . . a *Bivens* action."). Until binding authority clearly establishes otherwise, health concerns—while undoubtably serious—do not justify departing from these foundational principles.

Following this clear line of authority, courts in this District have denied habeas petitions brought by civil immigration detainee, who like Petitioner, sought immediate release based on inadequate medical treatment. *See Toure v. Hott*, 458 F. Supp. 3d 387, 397 (E.D. Va. 2020) (holding that § 2241 did "not provide Plaintiffs with either a vehicle to present their claims or a remedy" where civil immigration detainees sought immediate release due to risk of COVID-19 in detention); *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 691 (E.D. VA. 2020) (same); *but see Coreas v. Bounds*, 451 F. Supp. 3d 407, 419 (D. Md. 2020) (holding that civil immigration detainees could bring habeas claim "seeking release because of unconstitutional conditions or treatment" due to COVID-19 pandemic). Although here Petitioner seeks the remedy of release, he does not challenge the *authority* by which he is detained but the *conditions* in which he is detained. Accordingly, Petitioner is not challenging the fact of his confinement—meaning his claim is not cognizable under habeas. *See Toure*, 458 F. Supp. 3d at 399 (explaining why seeking release does not convert claim into one under habeas where petitioners challenged medical treatment given in civil immigration detention). Accordingly, Petitioner's claim for immediate release under the Rehabilitation Act must be dismissed because it is not a cognizable habeas claim.

B. Petitioner Fails to State a Claim for Relief Under the Rehabilitation Act.

Assuming that Petitioner's claim falls properly under the Rehabilitation Act—which it does

not—and he can bring a Rehabilitation Act claim within a habeas petition—which he cannot—he has failed to state a plausible claim. Section 504 of the Rehabilitation Act mandates that "[n]o otherwise qualified individual with a disability . . .!solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination . . . under any program or activity conducted by any Executive agency." 29 U.S.C. § 794(a). To state a prima facie claim for relief under § 504 Petitioner must show that:

> (1) he is an individual with a disability as defined by the Act,
> (2) he is otherwise qualified,
> (3) he is being excluded from the participation in, being denied the benefits of, or being subjected to discrimination under the program solely by reason of his disability, and
> (4) the relevant program or activity receives federal financial assistance.

Lewin v. Medical College of Hampton Rds., 910 F. Supp. 1161, 1171 (E.D. Va. 1996).

Petitioner's claim fails because he has identified no benefit or program to which he is entitled to participate in that he has been denied access to as a result of his disabilities. Petitioner asserts that he is disabled due to his post-traumatic stress disorder, major depressive disorder, and adjustment disorder with depressed mood. Pet. ¶ 62.[5] Petitioner alleges that he suffers from "frequent nightmares, trouble sleeping, dizziness, headaches, auditory and visual hallucinations, and recurring suicidal ideation and actions." *Id.* ¶ 64. He claims that his continued detention is exacerbating these symptoms and "denying him 'meaningful access' to counsel and his immigration proceedings." *Id.*

Yet, Petitioner identifies no right or benefit that he is entitled to that he is prevented from exercising or accessing. Noncitizens are permitted representation at their own expense in removal proceedings. *See* 8 U.S.C. § 1229a(b)(4). Mentally incompetent noncitizens are also entitled to

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[5] For purposes of this response, Respondents assume, without conceding, that Petitioner qualifies as an "individual with a disability" under the Rehabilitation Act.

several additional safeguards to protect their "rights and privileges." 8 U.S.C. § 1229a(b)(3). These include that: (1) an IJ may not accept an admission of removability from an unassisted mentally ill noncitizen, *see* 8 C.F.R. § 1240.10(c); (2) the Government must serve a mentally incompetent noncitizen's representative with a notice to appear, 8 C.F.R. § 103.5a(c)(2)(ii); and (3) a noncompetent noncitizen may have a "attorney, legal representative, legal guardian, near relative, or friend" appear on their behalf at immigration hearings, *see* 8 C.F.R. § 1240.4; *see also Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034, 1053 (C.D. Cal. 2010) (explaining safeguards provided to mentally incompetent noncitizens in removal proceedings).

Petitioner does not allege that any of these safeguards were absent in his own case. Instead, he broadly proclaims that he is not being granted "equal access" to his counsel or his immigration proceedings. Pet. ¶¶ 64, 80. As evidence of this, Petitioner identifies two instances where legal calls between him and his immigration attorney were cancelled because he was on suicide watch. *Id.* ¶ 29 (alleging that Petitioner was "unable to participate" in calls with his counsel on September 6 and October 8, 2024); *id.* ¶ 65 (referring to legal calls being cancelled on "multiple occasions" because Petitioner was on suicide watch). Other than these two cancelled phone calls in 2024, Petitioner identifies no other instances where his access to counsel was limited. Nor does Petitioner allege that he was unable to reschedule those calls, let alone that missing those calls caused any harm.

Petitioner also claims to have struggled to review his own draft declaration and make decisions regarding his own immigration proceedings. *Id.* Yet, Petitioner submitted a declaration along with the instant petition. *See* Dkt.1-2. And, in July 2024, Petitioner was found by an IJ to be legally incompetent following a forensic competency evaluation by a licensed clinical psychologist. Pet. ¶¶ 21–25. Accordingly, the IJ appointed Petitioner a qualified representative to

act as his immigration attorney. *Id.* ¶ 24. As such, Petitioner's legal decisions are being handled by a qualified attorney appointed by the IJ to act on his behalf. *See* Pet. ¶ 65 (noting that Petitioner "resigned the decision-making to his Petitioner attorney"). Thus, Petitioner's own Petition and its attachments contradict his claims that he is being denied access to counsel or his proceedings.

In addition, the reasonable accommodation Petitioner seeks—his immediate release—does not, on its face, appear to be the cure Petitioner allege it will be. Petitioner claims that he cannot meaningfully access his immigration proceedings due to his mental health symptoms, which are exacerbated by his detention. But Petitioner's medical records (and his own declaration) set forth a long and troubled history of these same mental health problems—predating his immigration detention by years. *See* Dkt. 1-2 at ¶¶ 15–21. It stands to reason that if Petitioner continues to have mental health problems, he may have difficulties participating in his legal proceedings regardless of his detention status.

Tellingly, Petitioner identifies no specific mental health treatment that he is being denied. While Petitioner complains that he was placed in a "Special Management Unit" ("SMU") rather than "a medical unit"—Pet. ¶ 27—he does not identify what care he would receive in a medical unit that he is not currently receiving. And Petitioner was placed in the SMU at his own request, because he did not want to be housed with others. Decl. ¶ 43. His continued housing in the SMU is, again, at his own request. *Id.* ¶¶ 55–57. While detained at Caroline, Petitioner was prescribed regular medications for his depression and anxiety, received regular therapy, and medical staff responded promptly when Petitioner expressed suicidal thoughts. *See* Dkt. 1-7 at 7–17; Decl. ¶¶ 43–54. Petitioner's desire to be transferred back to Farmville also appears to stem from not his desire to resume any specific mental health treatment he received there, but because at Farmville he had "a private TV and other accommodations." Dkt. 1-7 at 10; *see also id.* at 11 ("Patient asked

if he could have a personal tv in his room").

Petitioner's claim boils down to his belief that he will receive better mental health treatment outside of detention, which may, in turn, improve his mental health and allow him to participate fully in his legal proceedings. *See* Pet. ¶ 65, 67–69. This argument reveals Petitioner's claim for what it actually is—one based on conditions of confinement, *i.e.*, a challenge to the adequacy of the medical treatment he has received in detention. *See supra* Part II.A. And to the extent Petitioner is claiming he is not receiving adequate mental health treatment, that does not create a Rehabilitation Act claim. *See Goodman v. Johnson*, 524 F. App'x 887 (4th Cir. 2013) (affirming dismissal of Americans with Disabilities Act ("ADA") claim based on state prisoner's allegedly inadequate medical);[6] *Fleurival v. Carolina Detention Facility*, 2022 WL 188135, at *3 (E.D. Va. Jan 19, 2022) (Rehabilitation Act could not be used to pursue claim that immigration detention facility "did not provide adequate safeguards against contracting COVID-19"); *Baxley v. Jividen*, 508 F. Supp. 3d 28, 62 (S.D. W. Va. 2020) ("ADA cannot be used to assert a claim of inadequate medical care".); *Blankumsee v. Md.*, 2020 WL 5076051, at *3 (D. Md. Aug. 27, 2020) ("[A] prisoner may not state a claim under the ADA or RA for a lack of medical treatment."); *McCoy v. Stouffer*, 2013 WL 4451079, at *17 n.10 (D. Md. Aug. 15, 2013) (citing cases). In sum, Petitioner's Rehabilitation Act claim merits dismissal because he has failed to state a plausible claim for relief.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny Petitioner's Petition for Writ of Habeas Corpus.

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[6] Rehabilitation Act claims are analyzed under the same standards as those applied to claims under the ADA, *see Reyazuddin v. Montgomery Cty., Maryland*, 789 F.3d 407, 413 (4th Cir. 2015), except as to the causation element, *see Williams v. Va. Polytechnic Inst. & State Uni.*, 451 F. Supp. 3d 467, 474 (E.D. Va. 2020).

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Respectfully submitted,

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