UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.M.P.,
Petitioner,

v.

PAUL ARTETA
in his official capacity as Sheriff of Orange County, New York and Warden of the Orange County Correctional Facility;

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

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

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

Civil Action No. 25-4987

PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner J.M.P. ("J.M.P." or "Petitioner")[1] petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents. Respondents have detained him in immigration custody for over four months without the opportunity to seek release at a bond hearing.

[1] Petitioner has filed a Motion For Leave To Proceed Under Pseudonym concurrently with the instant Petition.

2. Petitioner has no other remedy at law than to petition this Court and request the Court order Respondents either to immediately release him from immigration custody, or to order an individualized bond hearing before an immigration judge at which the government must bear the burden of proving by clear and convincing evidence that continued detention remains justified. In such a bond hearing, to satisfy due process, an adjudicator must also consider the ability to pay bond and the availability of alternatives to detention, including conditions of supervision, that would mitigate any concerns as to flight risk and danger.

3. J.M.P. is a young man who has lived in the United States for nearly five years after fleeing his native El Salvador. His arrest and subsequent detention by Immigration and Customs Enforcement ("ICE") is his only arrest in the United States. He has been detained by ICE since January 2025 in a county jail where he is unable to work and provide for his family.

JURISDICTION

4. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution; and the All Writs Act, 28 U.S.C. § 1651. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that he is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

5. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or

constitutionality of their detention by ICE. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

6. The Supreme Court held that it had jurisdiction to review statutory claims by noncitizens subject to mandatory detention pursuant to, *inter alia*, § 1226(c), concluding that neither 8 U.S.C. § 1252(b)(9) nor § 1226(e) deprived the federal courts of jurisdiction to review the noncitizens' claims. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).

VENUE

7. Pursuant to 28 U.S.C. § 2241(d), venue properly lies in the Southern District of New York. *See* 28 U.S.C. §§ 1391(e), 2241. Petitioner is currently detained within this district at Orange County Correctional Facility located at 110 Wells Farm Road, Goshen, NY 10924, and so he is physically present within the district.

8. The place of employment of Respondent Joyce is also located within the district, at 26 Federal Plaza, New York, NY. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493-94 (1973) (laying out traditional venue factors).

LEGAL FRAMEWORK

Statutory authority for Petitioner's detention

9. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings*, 138 S. Ct. at 833; *Demore*, 538 U.S. 510; *Zadvydas*, 533 U.S. at 690. Detention is either discretionary and provides for a bond hearing pursuant to the statute, *see* 8 U.S.C. § 1226(a), or is "mandatory," in that the statute does not provide for a bond hearing, *see* §§ 1225(b), 1226(c), 1231(a).

10. Under the discretionary detention statute, a noncitizen may request a bond hearing at any time to contest whether he is a danger or a flight risk and thus properly detained during

the pendency of his removal proceedings. *See* § 1226(a). Conversely, § 1226(c) authorizes DHS to indefinitely detain noncitizens without the opportunity to request that the immigration judge review whether detention is necessary. *See Jennings*, 138 S. Ct. at 833, 846 (holding that nothing in the statutory language of § 1226(c) limits "the length of detention" authorized by the statute). The Supreme Court, however, has left open the question of whether the Constitution requires bond hearings for noncitizens subject to mandatory, prolonged detention. *Id.* at 851.

11. As an Immigration Judge ("IJ") found he is currently detained under the mandatory provisions of § 1226(c) due to alleged material support of a terrorist group, Petitioner has not been afforded a bond hearing. This finding was based on his being forced to provide people associated with MS-13 small amounts of money on two or three occasions under the threat of violence when he was a minor in El Salvador.

12. Section 1226(c)(1) of title 8 of the United States Code provides, in relevant part: "The Attorney General shall take into custody any [noncitizen] who . . . is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title," 8 U.S.C. § 1226(c)(1)(D), "when the [noncitizen] is released, without regard to whether the [noncitizen] is released on parole, supervised release, or probation, and without regard to whether the [noncitizen] may be arrested or imprisoned again for the same offense." *Id.*

13. Sections 1182(a)(3)(B) and 1227(a)(4)(B) in turn describe noncitizens who "engage" in "terrorist activities," which includes affording material support to terrorism under Section 1182(a)(3)(B)(iv)(VI)." (Terrorism-Related Inadmissibility Grounds). This provision is known as the TRIG Bar.

14. DHS can exempt the application of the material support bar in certain circumstances under its waiver authority from § 1182(d)(3)(B)(i), but the Immigration Court does not. *Id.* at 308-309.

15. Paragraph (c)(4) of § 1226 provides that the Attorney General may only release a noncitizen "described in paragraph (1)" under narrow circumstances not applicable here.

Designation of MS-13 as a terrorist organization

16. The Department of State designated Mara Salvatrucha (MS-13) a Foreign Terrorist Organization on February 20, 2025. *See* https://www.state.gov/foreign-terrorist-organizations/.

17. Prior to the 2025 designation, the United States government chose to refer to MS-13 as a "criminal gang" and did not classify the group as a terrorist organization. The United States Department of State ("DOS") is required by law to issue yearly "full and complete" country reports on terrorism to Congress. 22 U.S.C. § 2656f. The reports must include "detailed assessments" and "all relevant information about the activities during the preceding year of any terrorist group." *Id.* The country of El Salvador and MS-13 are not mentioned in the most recent 2023 report. *See DOS, Country Reports on Terrorism 2023, 2023*, available at available at https://www.state.gov/reports/country-reports-on-terrorism-2023/.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 341 (W.D.N.Y. 2018). No exhaustion requirement applies to the claims raised in this petition because the Immigration Court and Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter*

of Valdovinos, 18 I&N Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

19. Nor is further action with the agency necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g., Araujo-Cortes*, 35 F. Supp. 3d at 538-39; *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-7 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009).

20. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

PARTIES

21. Petitioner has been detained for over four months at Orange County Correctional Facility associated with his pending removal proceedings. He continues to seek fear-based protection, and his appeal of the IJs denial of relief is pending before the BIA.

22. Respondent Paul Arteta is named in his official capacity as Sheriff of Orange County, New York and acts as the warden for Orange County Correctional Facility, where Petitioner is detained. Respondent is an agent of United States Immigration and Customs Enforcement, a component of the United States Department of Homeland Security ("DHS"). As such, he is the custodian of Petitioner. Respondent Arteta's office is located at 110 Wells Farm Rd, Goshen, New York 10924.

23. Respondent William Joyce is named in his official capacity as the Acting Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations for individuals under

the jurisdiction of the New York Field Office. As such, he is the custodian of Petitioner. Respondent Joyce's office is located at 26 Federal Plaza, New York, NY 10278.

24. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. She is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the Southern District of New York; she supervises Respondent Joyce; and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is a legal custodian of Petitioner. Respondent Noem's office is located in the United States Department of Homeland Security, Washington, District of Columbia 20528.

25. Respondent Pamela Bondi is named in his official capacity as the Acting Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings. As such, she is a legal custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia, 20530.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

26. J.M.P. was born on March 25, 2002 in El Salvador. Growing up, he worked at his family's bakery and tried to maintain his distance from the gangs in his hometown. Despite his efforts, J.M.P. was regularly assaulted and harassed by gang members that demanded money or assistance from J.M.P. After repeatedly resisting pressure to join their gang, J.M.P. became a target. Frustrated by his continued refusal, when he was a minor, several gang members surrounded

him, forcibly took him to a secluded location, and proceeded to rob, beat, and stab him. This attack left J.M.P. unconscious. Upon waking up in the hospital, police arrested him and accused him of being a gang member. The police ultimately charged him with homicide. J.M.P. unequivocally declares that he is not a gang member nor did he ever harm anyone, let alone kill someone. A judge dismissed the homicide charges against J.M.P. but instead of being released, he was sent to a juvenile rehabilitation facility, Sendero de Libertad, based on missing supervision appointments for a prior minor offense. The reason he missed those appointments was because he was hospitalized.

27. After the incident, J.M.P. moved to another city in El Salvador for a fresh start away from gang activity. Despite being in a new place, gang members continued to look for J.M.P. Even though he moved to different homes throughout this new city, J.M.P. still received threats. J.M.P. knew he had to leave El Salvador. On January 4, 2020, at the age of 18, J.M.P. entered the United States. Since his arrival, J.M.P. has lived a quiet life. He has never been prosecuted for a crime while in the United States and, until January of 2025, he had never been arrested.

28. On January 28, 2025, J.M.P. was at home resting when he heard knocking at the front door. After deciding not to open the door and retreating to his bedroom, he heard the front door being unlocked and then numerous voices inside his home. A group of unidentified men without badges opened his bedroom door and one of them immediately pointed a gun directly up against J.M.P.'s head. The officers, who were eventually identified as being from the Drug Enforcement Administration ("DEA") raided his bedroom and home without identifying themselves or giving any explanations.

29. On January 29, 2025, after no criminal charges were filed, the DEA turned over J.M.P. to ICE, which placed him in removal proceedings.

30. On March 10, 2025, J.M.P. requested a custody redetermination; however, ICE filed a RAP sheet showing that the homicide charge from El Salvador is still on his criminal record. J.M.P.'s counsel was taken by surprise by the contents of the RAP sheet, which appeared to misrepresent his criminal history, as the homicide charge against him had been dismissed in El Salvador. In light of this discrepancy, counsel elected to withdraw the request for a custody redetermination in order to obtain proof of the dismissal. On March 11, 2025, J.M.P. submitted a motion to suppress and terminate his removal proceedings on the basis that the federal government committed egregious violations of J.M.P.'s constitutional rights when he was arrested, and all fruits of that unconstitutional arrest should be suppressed. On March 17, 2025, an IJ at the Varick Street Immigration Court denied the motion.

31. On May 13, 2025, the IJ denied J.M.P.'s applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") and ordered J.M.P. removed. Before going on the record, the IJ stated that J.M.P. was subject to mandatory detention due to him providing "material support to a terrorist organization," specifically by giving MS-13 members small amounts of money on two or three occasions under the threat of violence when he was a minor in El Salvador. This information was disclosed on J.M.P.'s application for asylum, withholding, and protection under the Convention Against Torture ("CAT") as part of articulating his claim for relief.[2]

32. On May 16, 2025, J.M.P., through his counsel, requested a ruling on the statutory basis of his custody and, if applicable, a bond hearing. J.M.P. asserted that his detention should

[2] From J.M.P.'s application: "I grew up working with my family's bakery and MS-13 members in our town started charging me renta to keep our business open. I paid because I had no choice." Form I-589, filed March 31, 2025, at 6. J.M.P. testified in immigration court that he provided $25/month to the gang members as extortion payments when he was around 15 years old for approximately three or four months.

fall under INA §1226(a), rather than the mandatory detention provision of §1226(c), as the alleged material support occurred under duress and prior to MS-13's designation as a terrorist organization by the United States government.[3] As of this Petition. the Court has not ruled on this motion.

33. J.M.P. timely appealed the removal order on June 11, 2025.

34. As proceedings drag on, Petitioner continues to languish in detention at Orange County Jail, as he has been since January 28, 2025. Orange County Jail has been the subject of an extensive complaint to DHS's Office of Civil Rights and Civil Liberties for flagrant civil rights violations including medical neglect, lack of access to food available that is not rotten or expired, and abuse, harassment, and retaliation by facility personnel.[4] Currently, Petitioner is under conditions equivalent to criminal incarceration.

35. As a result, without access to a bond hearing, Petitioner will soon be subject to over six months of detention without any individualized review by a neutral factfinder as to whether his custody in a county jail is at all warranted. In addition, ICE has a practice of keeping individuals detained while they appeal decisions.

A. Constitutional Framework

36. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507

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[3] At the time of these payments to MS-13 members, the United States government did not categorize MS-13 as a terrorist organization, rather the gang was defined as a criminal organization primarily motivated by financial gain. There are extensive examples of cases involving asylum seekers who were forced to do tasks for or pay extortion fees to MS-13, but no material support bar was ever raised by DHS. *See, e.g., Rivas-Aparicio v. Whitaker*, 754 Fed.Appx. 53, 55 (2d Cir. 2019); *Hernandez Hernandez v. Barr*, 789 Fed.Appx. 898, 900-01 (2d Cir. 2019).

[4] *See* Mar. 21, 2023 CRCL Complaint Regarding Ongoing Abuse at Orange County Jail, https://www.law.nyu.edu/sites/default/files/2023.March_.21.%20CRCL%20Complaint%20re%20OCCF.pdf.

U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

37. Detention pursuant to immigration proceedings—which are civil, not criminal—is constitutionally permissible only in "certain special and 'narrow' nonpunitive circumstances.'" *Zadvydas* at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [detained] individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal citation omitted). This is especially apparent in civil detention settings. *See, e.g., Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purposes constitutes a significant deprivation of liberty that requires due process protection.") (internal citations omitted).

38. In the immigration context, the Supreme Court has recognized only two valid purposes for detaining noncitizens: to mitigate the risk of danger to the community and to prevent flight. *Id.* at 690-91; *see also Demore*, 538 U.S. at 515, 527-28. While the Supreme Court upheld mandatory detention under § 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding that detention under § 1226(c) is typically "brief" and lasts a "very limited time." 538 U.S. at 513, 529 & n.12. The Court cited government-provided data that purported to show that "in the majority of cases [detention under § 1226(c)] lasts for less than the 90 days we considered presumptively valid in *Zadvydas*," and that "in the minority of cases in which the alien chooses to appeal," detention lasts "about five months." *Id.* at 529-30.

However, those statistics were inaccurate even when *Demore* was decided;[5] in Petitioner's case, his detention—over four months as of today, without a foreseeable end date—will prospectively exceed the time periods held to be presumptively permissible as he litigates his appeal. *Cf. Demore*, 538 U.S. at 529-30.

39. In *Black v. Decker*, the Second Circuit recently clarified that the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), guides determinations of whether immigration detention remains constitutionally sound. *See* 103 F.4th 133, 150-51 (2d Cir. 2024).

40. The three factors are: (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 requirement would entail." *Mathews*, 424 U.S. at 335.

41. First, the Second Circuit explained that the interest that 1226(c)-detained noncitizens hold "'is the most significant liberty interest there is—the interest in being free from imprisonment.'" *Black*, 103 F.4th at 151 (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). The court noted that noncitizens detained under 8 U.S.C. § 1226(c) possess the same liberty interest as noncitizens detained under any other statute. *See id.* It further highlighted that 1226(c)-detained noncitizens lack any administrative mechanisms by which they could challenge their detention.

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[5] The statistical information provided by the Government and relied upon by the Supreme Court in *Demore* was in 2016 revealed by the Solicitor General to be inaccurate, and the true average length of immigration detention was shown to be much longer. *See Jennings*, 138 S. Ct. at 869 (Breyer, J., dissenting) ("The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did… thousands of people here are held for considerably longer than six months without an opportunity to seek bail.").

42. Second, the Second Circuit found that there is a high risk of erroneous deprivation of rights for § 1226(c)-detained noncitizens because there are "almost nonexistent procedural protections in place for section 1226(c) detainees[.]" *Id.* at 152. The court observed that while 1226(c)-detained noncitizens possess due process protections in other adjacent domains—such as the ability to ask for *Matter of Joseph* hearings, which resolve whether they may be subjected to mandatory detention in the first place—those mechanisms are insufficient because they do not apply to requesting release. *See id.* The Court thus concluded that 1226(c)-detained noncitizens are faced with even higher "risk[s] of erroneous deprivation" of their private liberty interests than 1226(a)-detained noncitizens. *See id.*

43. Third, the Second Circuit determined that the competing government interest in preventing a § 1226(c)-detained noncitizen from receiving a bond hearing is minimal. The court outlined that the government possesses two primary interests in denying mandatorily detained noncitizens from receiving a bond hearing at this stage: ensuring the noncitizen's appearance at proceedings and protecting the community from danger. *See id.* at 153-54. The court, however, indicated these interests are not undercut by the relief *Mathews* provides in a procedural sense. It assessed "at any ordered bond hearing, the IJ would assess on an individualized basis whether the noncitizen presents a flight risk or a danger to the community, as IJs routinely do for other noncitizen detainees." *Id.* Since the procedural protection that flows out of the first two *Mathews* factors does not overburden the government's interest at the third factor, the court found relief reasonable and necessary.

44. The court reiterated its principle from *Velasco Lopez* that the government can possess no valid interest in detaining a noncitizen who is neither dangerous nor a risk of flight. *See Black,* 103 F.4th at 154.

45. Finally, in *Black*, the Second Circuit, drawing from *Velasco Lopez* and from other cases in the civil detention context, concluded that the government must be required to bear the burden of proving the need for continued detention. *See id.* at 155. Such proof must be made by clear and convincing evidence, *see id.* at 157-58, and must include considerations of ability to pay and alternatives to detention in setting any bond amounts, *see id.* at 158. *See also Molina Cantor v. Freden et al.,* No. 24-cv-764, 2025 WL 39789 (W.D.N.Y. Jan. 7, 2025) (explaining that due process required consideration of alternatives to detention with respect to dangerousness, and that *Black* had not held otherwise).

B. Petitioner's Detention Without an Individualized Bond Hearing Violates Due Process

46. J.M.P. is being detained without access to a bond hearing under § 1226(c), and so his arguments sound within *Black v. Decker*, the Second Circuit's case law for that statute. Petitioner does not concede his ineligibility under the INA for bond, but he is entitled to a constitutionally adequate bond hearing under either § 1226(a) or (c). Under *Mathews* factors as used in *Black*, the Respondents' ongoing detention of Petitioner without a bond hearing violates due process.

Petitioner's private interests

47. Petitioner's ongoing detention in a correctional facility under § 1226(c) has substantially deprived him of his private interests, of which his liberty interest is the most salient. *See J.C.G. v. Genalo*, No. 24-cv-08755 (JLR), 2025 WL 88831, at *8 (S.D.N.Y. Jan. 14, 2025) (Finding that a petitioner's confinement in a correctional facility without a criminal adjudication constituted a "substantial deprivation of liberty"). He has already spent over four months confined in a jail setting analogous to criminal incarceration. The BIA will take several additional months to adjudicate his appeal. If he were to prevail, a likely outcome would be remand to the

Immigration Court for further adjudication. Thus, his immigration proceedings will continue for months or years while he is detained without a bond hearing, and he will continue to be deprived of his liberty interest prospectively.

48. Moreover, his detention deprives him of private interests beyond his liberty. While detained, he is unable to work and provide for his family. Prior to being detained, J.M.P. lived with his father in a basement apartment in Queens. Once both J.M.P. and his father were detained in ICE custody, they also lost their home of numerous years along with most of their possessions, which were discarded in their absence. Petitioner's detention of four months without a bond hearing has already had the effect of depriving him of property, his home, an income, and access to his family.

Risk of erroneous deprivation

49. Second, Petitioner's confinement presents a high risk of an erroneous deprivation of his interests. The Second Circuit in *Black v. Decker* recognized that detention under § 1226(c) "markedly increased the risk of erroneous deprivation of Petitioners' private liberty interests" because there are "almost nonexistent procedural protections in place." 103 F.4th at 152. There are no mechanisms for release or individualized review of the need for detention by the immigration court. *Id.* Furthermore, § 1226(c) proscribes bond on the basis of nonviolent and old past conduct.

50. Petitioner's present confinement directly stems from the inadequacy of protective procedures against erroneous deprivation of his liberty interest. He has never been prosecuted for a crime in the United States. Nevertheless, the IJ decided that she did not have the ability to redetermine his custody status because MS-13 forced him to pay a small amount of money under threat of death when he was a young teenager. Based on the bare fact that MS-13 had extracted money from him, she found J.M.P. had materially supported a terrorist group and therefore was

barred from bond under § 1226(c) for falling under the TRIG Bar, § 1182(a)(3)(B). The IJ's application of the TRIG Bar to deny jurisdiction for bond amounts to an erroneous deprivation of J.M.P.'s liberty interest.

51. The IJ's decision followed BIA precedent that there is no implied duress exception in the statute for victims of terrorist organizations who force them to provide material support. *See Matter of A-C-M-*; *see also Matter of M-H-Z-*, 26 I&N Dec. 757, 760-61 (BIA 2016). The agency's interpretation of the TRIG Bar to exclude an exception for duress effectively cuts off the factual inquiry as to whether an applicant for bond is actually a terrorist or materially supporting terrorists. The IJ articulated no rational connection between J.M.P.'s past encounters with MS-13 and his unfitness for release on bond, but instead declined to adjudicate the individualized factors of his bond application at all. The consequence of the agency's TRIG Bar framework is the punishment of victims of coercion and robbery by terrorists. This perverse outcome makes plain the inadequacy of the procedural protections available, as there was no opportunity for J.M.P. to argue against this finding. *See Velasco Lopez*, 978 F.3d at 852 (citing *Mathews* at 344, 96 S.Ct. 893) ("Procedural due process rules are shaped by the risk of error inherent in the truth-finding process"). The procedural protections afforded to J.M.P. so far have already failed to prevent the erroneous deprivation of liberty.

52. Furthermore, the agency misapplied the TRIG Bar against J.M.P. because its designation of MS-13 as a terrorist organization did not comply with applicable procedures. As noted *supra*, DOS did not issue the required annual reports that provided the basis for the designation of MS-13 currently or in 2015—approximately the year when J.M.P. was forced to make these extortion payments. Because the government did not take these steps prior to designation of MS-13 as a Tier I terrorist organization, it was inappropriate for the IJ to apply the

Tier I designation retroactively.[6] Additionally, the Tier III terrorism-related material support inadmissibility grounds do not subject J.M.P. to mandatory detention as he only resided in El Salvador when he was a minor. During that time, the U.S. government did not categorize MS-13 as a terrorist organization; rather, the gang was defined as a criminal organization primarily motivated by financial gain. To apply the Tier III categorization to MS-13 would ignore the purpose behind the statute and prior government classifications of the group. *See, e.g.*, *Hernandez Hernandez v. Barr*, 789 Fed.Appx. 898, 900-01 (2d Cir. 2019) (finding that the government did not adequately explain the nature of MS-13 and only describing it as a gang). The agency's process for determining that J.M.P. was a material supporter of terrorism was therefore founded on error, which resulted in the deprivation of his interests.

53. Lastly, the procedures are prone to error because there was no official record of the IJ's decision. The IJ only articulated her rationale to counsel off the record, but never on the bond record. The IJ has still not responded to J.M.P.'s May 16, 2025 motion requesting that she memorialize her rationale for denying bond eligibility. Without a decision on the bond record, J.M.P. has limited notice and ability to respond, which heightens the risk of erroneous deprivation.

The government's interest

54. Third, as in *Black*, the competing government interest in preventing Petitioner from receiving a bond hearing is minimal. The IJ's basis for denying bond—the TRIG bar for material supporters of terrorism—is not a meaningful indicator of flight risk or dangerousness, as the lack of a duress exception means there was no inquiry if Petitioner was in fact a supporter of terrorism

[6] There are different tiers of terrorist organizations. Tier I organizations are formally designated, while Tier III organizations are undesignated. 8 U.S.C. § 1182 (a)(3)(B)(vi).

or instead a victim. The government's interest in preventing dangerous absconders from leaving detention is therefore not furthered by J.M.P.'s exclusion from bond because of the TRIG Bar.

55. The government's interest is not served in keeping a noncitizen who is in removal proceedings, like J.M.P., detained in a carceral setting without a bond hearing at the expense of taxpayers, as he has no criminal history and no indication of flight risk. *See Black,* 103 F.4th at 154. A bond hearing with the burden on DHS would allow a neutral arbiter to consider the individualized factors of J.M.P.'s fitness for release, which would support the government's interest in preventing dangerous absconders from release into the community. The government's interest would not be eroded if Petitioner received a bond hearing.

CLAIM FOR RELIEF

FIRST CAUSE OF ACTION

PETITIONER'S PROLONGED MANDATORY DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE CONSTITUTION

56. Petitioner realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

57. Petitioner's prolonged incarceration without a bond hearing—which has lasted four months already and is certain to extend much longer—violates the Due Process Clause.

58. Taken together, the individual factors in Petitioner's case overwhelmingly demonstrate the unreasonableness of continued detention and require either a constitutionally adequate bond hearing or immediate release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the New York Field Office and the Southern District of New York pending the resolution of this case;

3. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on his own recognizance or under parole, bond, or reasonable conditions of supervision, or, in the alternative, ordering Respondents to provide Petitioner with a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered;

4. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: June 12, 2025
Brooklyn, New York

Respectfully Submitted,

/s/ Lucas Marquez

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