

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

M.P.L.,

Petitioner,

v.

PAUL ARTETA, in his official capacity
as Sheriff of Orange County, New York
and Warden of the Orange County
Correctional Facility, *et al.*,

Respondents.

Civil Action No. 25-5307 (VSB) (SDA)

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

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PRELIMINARY STATEMENT

Petitioner M.P.L. is a father and beloved community member who has lived in the United States for nearly twenty years after fleeing his native El Salvador. He is detained by Immigration and Customs Enforcement (“ICE”) because his forced recruitment into the Mara Salvatrucha (“MS-13”) decades ago when he was a young person in El Salvador has triggered the mandatory detention provision of 8 U.S.C. § 1226(c). The Government argues that he should be denied a bond hearing, despite the fact his immigration proceedings are likely to last for many additional months, if not years. But under the analysis laid out in *Black v. Decker*, 103 F.4th 133, 152 (2d Cir. 2024), Petitioner has established that his prolonged confinement violates due process. *See also L.G.M. v. LaRocco*, No. 25-cv-2631(PKC) 2025 WL 2173577, at *2 (E.D.N.Y. July 31, 2025) (ordering a bond hearing before the district court for petitioner detained pursuant to 8 U.S.C. § 1226(c)).

BACKGROUND

A. M.P.L. Is A Hard-Working Father and Contributing Member of His Community

M.P.L. was born in 1979 in El Salvador. (ECF No. 1, Petition (“Pet.”) ¶ 26.) He is a father of three children, and before being detained, lived in Queens, New York with his wife and youngest son who is 12 years old. (Ex. B, Declaration of Erika Arias, LMSW (“Arias Decl.” ¶ 4.) As a young person in El Salvador who was too poor to go to school, M.P.L. was forcibly recruited by MS-13 members, who beat him if he refused their demands. (Pet. 26; Ex. A, Declaration of Petitioner M.P.L. (“M.P.L. Decl.”) ¶¶ 5-8.)

He fled to the United States in 2007 and has lived quietly in Queens, New York with his family over the last 18 years. (Pet. ¶ 27.) He describes his life here in the United States as one filled with peace, love, financial stability, and hope. (Arias Decl. ¶ 7; *see also* M.P.L. ¶¶ 9, 12.)

His wife and daughter describe him as a hardworking and dedicated family man, who provides for his family in the United States and in El Salvador. (Arias Decl. ¶ 10; Pet. ¶ 45.) Before being detained, he worked as a porter and maintenance man in a building in Midtown Manhattan for over a decade, gaining the trust and friendship of his bosses and the employees in the building. (Pet. ¶ 27; M.P.L. Decl. ¶ 9 (“I became very close with my employees and they have provided me so much support through the years.”) Through his work, he became close with the Orthodox Jewish community in Queens with whom he spent his free time, volunteering at the Beth Gavriel Community Center in Forest Hills by helping with a food pantry and assisting in setting up for religious services. (Pet. ¶ 27; M.P.L. Decl. ¶ 9 (“I have done volunteer work at their synagogue and learned about Judaism. They’ve been really welcoming to me and are like my second family.”).) Despite having extremely limited literacy in any language, M.P.L. even began trying to understand Hebrew. (Pet. ¶ 27.)

Members of this community have attended M.P.L.’s hearings before the immigration court, have visited him at the Orange County Jail, and have written numerous letters to demonstrate to the immigration court their unwavering support of M.P.L. (Pet. ¶ 27; M.P.L. ¶ 9.) The letters of support highlight his dedication, good character, and his positive impact on those around him. (Arias ¶ 12.) For example, the coordinate of the Beth Gavriel Community Center wrote that M.P.L.’s “willingness to help, no matter the task, has been a testament to his generosity and strong work ethic. He has never hesitated to step up when needed, always bringing a positive attitude and a selfless spirit to his volunteer work.” (*Id.* ¶ 9.) The coordinator concluded that M.P.L. “is an upstanding individual who has built strong relationships, contributed meaningfully, and shown himself to be a hardworking and compassionate person.” (*Id.*)

M.P.L. has no criminal record in the United States (ECF No. 11-2, Rap Sheet), and has spent his life in the United States focused on his family and work. (M.P.L. Decl. ¶ 9 (“I spent my life here working hard for my family. I covered up my tattoos the best I could and focused on my family and my work.”) M.P.L.’s detention by ICE separated him from his family and impeded his ability to provide financially for them, as he was their sole financial provider. (Pet. ¶ 45.) His family is relying on help to pay their bills and are struggling to keep their home. (*Id.*) The separation is particularly difficult for his 12-year-old son, who cries for his father and whose school performance has been negatively impacted by the separation. (Arias ¶ 11.) Before being detained, M.P.L. was active in his son’s life, ensuring he did homework, playing sports with him, and teaching him life skills. (*Id.*)

B. ICE Detains Petitioner Pursuant to 8 U.S.C. § 1226(c)

After nearly 20 years of living in the United States, on February 27, 2025, ICE arrested M.P.L. and detained him at the Orange County Jail. ICE deems Petitioner’s detention pursuant to 8 U.S.C. § 1226(c), mandatory detention, due to his past forced membership in MS-13. (ECF No. 12, Gov’t Opposition Br. (“Opp.”) at 1.) When Petitioner’s immigration counsel reached out to ICE for confirmation of M.P.L.’s detention status via email on March 19, 2025, ICE responded on June 19, 2025, “Our position is that the respondent is not eligible for a bond redetermination by an immigration judge due to his membership in MS-13.” Counsel also filed a request with ICE for M.P.L.’s release on April 2, 2025. Counsel did not receive a response. (Pet. ¶ 29.)

On March 24, 2025, M.P.L. filed his application for immigration relief in immigration court. On May 8, 2025, M.P.L. had an individual merits hearing on his request for protection under the Convention Against Torture (“CAT”). (*Id.* ¶ 30.) On May 23, 2025, the immigration court denied M.P.L.’s request for relief, finding he did not meet his burden of proof. M.P.L. timely

appealed that denial to the Board of Immigration Appeals (“BIA”) on June 17, 2025 and, therefore, the immigration court’s merits decision is not final. No briefing schedule has been issued on the merits appeal. (ECF No. 13 ¶ 16.) A BIA appeal can take six to nine months or more from the notice to appeal to when the appeal is decided. If Petitioner is successful, a likely outcome is that the case is remanded back to the immigration court with instructions. Thus, Petitioner’s detention could last months or even years before his removal proceedings are completed.

ARGUMENT

I. M.P.L.s Detention Without a Bond Hearing Violates Due Process

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).

A. Petitioner’s Ongoing Detention Deprives him of Substantial Private Interests

As to the first factor, the Government does not contest that Petitioner’s liberty interest is at stake. (Opp. at 7; *see also* Pet. ¶¶ 44-45.) The Government, instead, bases its opposition to Petitioner’s prolonged detention claim and the first factor of the *Mathews* analysis predominantly on the Supreme Court’s decision in *Demore v. Kim*, which upheld § 1226(c) detention against a facial due process challenge. 538 U.S. 510 (2003); *see* Opp. at 4-5, 7. But *Demore* does not support the Government’s attempt to equate § 1226(c)’s facial constitutionality with a wholesale endorsement of mandatory detention. Rather, in *Demore*, the Supreme Court expressly held that § 1226(c) detainees may “be detained for the *brief* period necessary for their removal proceedings.” 538 U.S. at 526 (emphasis added).¹ Courts considering due process challenges to § 1226(c) post-

¹ Indeed, the Court’s focus on the brevity of detention authorized by § 1226(c) is evident throughout the opinion. *See, e.g., id.* at 522-23 (“[T]he Government may constitutionally detain deportable aliens during the *limited period* necessary for their removal proceedings.”) (emphasis added)); *id.* at 529 (“[I]n the majority of cases, [detention under § 1226(c)] lasts for less than 90

Demore have recognized the limits of that opinion—namely, that it upheld mandatory detention that lasted, at most, a matter of a months, “including any time taken for appeal by the detainee.” *Reid v. Donelan*, 819 F.3d 486, 499 (1st Cir. 2016), affirming grant of individual habeas but remanding class-action, No. 14-1270, 2018 WL 4000993 (1st Cir. May 11, 2018) (emphasis added) (“The *Demore* majority disclaimed any suggestion that its decision somehow sanctioned categorical custody beyond a matter of months.”).

Petitioner’s ongoing civil detention in a correctional facility without a bond hearing constitutes a “substantial deprivation of his liberty.” See *J.C.G. v. Genalo*, No. 24-cv-08755 (JLR), 2025 WL 88831, at *8 (S.D.N.Y. Jan. 14, 2025). M.P.L. has been detained for five and a half months without a bond hearing and without a foreseeable end to that detention. As such, he will prospectively exceed the time periods found to be presumptively impermissible as he litigates the appeal of his application for deferral of removal under CAT. See *Black v. Decker*, No. 20 CIV. 3055 (LGS), 2020 WL 4260994, at *8 (S.D.N.Y. July 23, 2020), aff’d, 103 F.4th 133 (2d Cir. 2024). There is no briefing schedule issued in that appeal (ECF No. 13 ¶ 16), and the BIA will take several months to adjudicate his appeal (Pet. ¶ 44). Should he prevail at the BIA, 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.

Moreover, Petitioner’s detention has already caused serious financial difficulties for his family, who is struggling to pay their bills and keep their home. Pet. ¶ 45; cf. *Black*, 103 F.4th at

days”). Since *Demore*, it came to light that these statistics were incorrect. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 869 (2018) (Breyer, J., dissenting) (“The Government now tells us that the statistics it gave the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government said it did then.”).

151. Petitioner was the sole financial provider for his family before detention, including providing and caring for his 12-year-old U.S. citizen son, and he was also providing financial support to his sick mother and siblings in El Salvador. (Pet. ¶ 45; Arias Decl. ¶¶ 10-11.) For these reasons, the first *Mathews* factor weighs heavily in favor of Petitioner.

B. Petitioner's Confinement Presents a High Risk of an Erroneous Deprivation of His Interests

The Second Circuit found the “nonexistent procedural protections in place for section 1226(c) detainees markedly increased the risk of an erroneous deprivation of Petitioners’ private liberty interests.” *Black*, 103 F.4th at 152. The Government’s arguments that there are fair procedures and safeguards over section 1226(c) have already been rejected in *Black*, and miss the point.

First, the Government points to Petitioner’s pending merits appeal as an avenue providing procedural safeguards. However, Petitioner’s merits appeal concerns his application for immigration relief, and does not bear on his release from immigration detention. (Pet. ¶ 30.) It is fundamental that removal and bond proceedings are separate in immigration court. *Second*, the Government raises the availability of a hearing under *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999); however, this mechanism was assessed and rejected in *Black*. See 103 F.4th at 152. Specifically, a *Joseph* hearing is not “a mechanism for a detainee’s release, nor for *individualized* review of the need for detention.” *Black*, 103 F.4th at 152 (emphasis added); (Pet. ¶ 39.) The Government suggests that Petitioner’s central claim is that the TRIG bar is subjecting him to an erroneous deprivation of his liberty (Opp. at 8), but this is not what the Petition states. Rather, Petitioner argues that the use of the TRIG bar to categorically deprive Petitioner of a bond hearing—just like the use of petitioners’ criminal convictions in *Black*—means there is no individualized review over his continued detention or means to request release. (Pet. ¶¶ 47-49.)

And, thus, that his ongoing, prolonged detention constitutes an erroneous deprivation of his liberty. *See Black*, 103 F.4th at 153.

As particularly relevant to this case, the Second Circuit in *Black* noted with concern that section 1226(c)'s "broad reach" would sweep in people, like Petitioner, based on very old alleged conduct. *Black*, 103 F.4th at 152. As to Petitioner, Mr. Black, the Second Circuit found that minimal procedures led to unwarranted detention, because he was denied a bond hearing even though "for almost twenty years since his criminal conviction in March 2000, he led a peaceful life, helping to support his family." *Black*, 103 F.4th at 153. Thus, the court concluded that "rather than worrying of a 'risk' of erroneous deprivation, we can be virtually certain that his prolonged detention was unjustified." *Id.*

As described in the Statement of Facts *supra*, Petitioner's Declaration (Ex. A), and the Declaration of Ms. Arias (Ex. B), for nearly 20 years since arriving in the United States, Petitioner has lived peacefully with his family in Queens, New York. (*See also* Pet ¶ 27.) He provides for his family and has a U.S. citizen son. He has not only held long-term steady employment, but gained the trust and friendship of his employers and the employees of the building he works in. (*Id.*; Arias Decl. ¶¶ 8,12.) Over nearly 20 years, he has not been subject to criminal arrest or charges, and—quite the opposite—has demonstrated dedication, compassion, built strong relationships in his community, and made a positive impact on the people around him. (*See* Pet. ¶ 27; Arias Decl. ¶¶ 9-13.) Nonetheless, the Section 1226(c) inquiry is solely focused on the fact that Petitioner was a member of MS-13 (Pet. ¶ 29), regardless of the fact that he was forcibly recruited as a young person in El Salvador, (*id.* ¶ 26).

C. The Government's Interest In Preventing Petitioner From Receiving A Bond Hearing is Minimal

The Government fails to establish that ICE maintains any interest in preventing Petitioner

from a bond hearing based on his ongoing detention. In citing *Black* for recognizing the legitimate government interests in mandatory detention (Opp. at 8), the Government omits that the Second Circuit found that allowing additional procedural safeguards of a bond hearing would “do nothing to undercut those interests.” *Black*, 103 F.4th at 153. And that the interests shift as the detention is prolonged: “While the government’s legitimate interests justify a relatively short-term deprivation of liberty, the balance of interests shifts as the noncitizen’s detention is prolonged without any particularized assessment of need.” *Id.* at 154.

The Government also mischaracterizes the facts, but these attempts are belied by the record and exemplify the broad brush with which ICE paints people subject to 1226(c). *First*, the Government claims that Petitioner admitted to being part of a “notoriously violent gang.” (Opp. at 9). Petitioner acknowledged that he was a member of MS-13, and explained the circumstances under which he was forced to join and how he learned by being subjected to physical harm that refusing MS-13 demands was not an option. (Pet. ¶ 26; M.P.L. Decl. ¶¶ 5-8.) However, there is nothing “notorious” or “violent” about M.P.L.; up until his ICE arrest, his life in the United States for nearly two decades was peaceful, productive, and community oriented. (See Pet. ¶ 27; Arias Decl. ¶¶ 9-13.)

Second, the Government states that Petitioner’s claim regarding his criminal history is “misleading” (Opp. at 10 (citing Pet. ¶ 52).)² But the Government concedes he has no criminal history in the United States (Opp. at 9), *i.e.*, for nearly twenty years, and references 2006 charges from El Salvador. Notably, both petitioners in *Black* had criminal convictions in the United States,

² Notably, Paragraph 51 of the Petition—immediately above that cited by the Government—clearly states “the lack of criminal history *in the United States*.” Pet. ¶ 52 (emphasis added); see also *id.* ¶ 27 (same). The implication that the Petition attempts to mislead falls flat.

unlike Petitioner here.³ *Black*, 103 F.4th at 138, 139.

Lastly, the Government argues that because Petitioner had a merits hearing and his removal proceedings are “accommodating” his appeal to the BIA, the government’s interests continue to be served. (Opp. at 9.) Courts in this district have previously explained, “to conclude that [Petitioner’s] voluntary pursuit of [legal] challenges renders the corresponding increase in time of detention reasonable, would ‘effectively punish [him] for pursuing applicable legal remedies.’” *Giron v. Shanahan*, No. 15-cv-2951 LGS, 2015 WL 5334046, at *4 (S.D.N.Y. Sept. 11, 2015 (quoting *Leslie v. Attorney Gen. of the U.S.*, 678 F.3d 265, 271 (3d Cir.2012)). That Petitioner is pursuing a merits appeal has no bearing on the likely length of his detention, nor is it relevant to this Petition. Whatever the outcome of the appeal, proceedings will continue to last at least many additional months if not years in light of the possibility his case is remanded to the immigration court.

Petitioner’s ongoing, prolonged detention without any particularized assessment of need is not justified by any legitimate government interest. *See Black*, 103 F.4th at 154 (citing *Velasco Lopez*, 978 F.3d at 854-55 (all the government does in requiring detention is “separate[] families and remove[] from the community breadwinners, caregivers, parents, siblings and employees.”); *Rosales-Mireles v. United States*, 585 U.S. 129, 139, (2018) (observing that “any amount of actual jail time ... has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration” (internal quotation marks and alterations omitted)); *Mathews*, 424 U.S. at 347 (instructing that “the public interest” drives analysis of the

³ *See also L.G.M. v. LaRocco*, No. 25-CV-2631 (PKC), 2025 WL 2173577, at *1 (E.D.N.Y. July 31, 2025) (ordering a bond hearing held before the district court, where petitioner was recruited by a gang in the United States, which led to several arrests and convictions in New York State court, for disorderly conduct, attempted assault in the second degree, and attempted robbery).

third factor). Petitioner is neither a danger, nor a flight risk. (Pet. ¶¶ 51-52.) Further, ICE's detention of Petitioner is contrary to the public interest: it has separated him from his family, prevented him from financially supporting them, ripped him from the community he contributed to meaningfully for many years, and deprived his employer of a hardworking, dedicated, long-term employee.

II. Due Process Requires That Petitioner Receive Procedural Protections at His Bond Hearing

Should this Court order a bond hearing, the Government concedes that under *Black* the burden will be on ICE to prove the necessity of M.P.L.'s detention by clear and convincing evidence, but argues that *Black* provided that Petitioner's ability to pay and alternatives to detention should only be considered with respect to the assessment of flight risk and not as to the assessment of danger. (Opp. at 10-11.) This interpretation is inconsistent with *Black*.

The portion of *Black* quoted by the Government concerns the process for setting the *amount* of bond, and not the *availability* of bond. *See Black*, 103 F.4th at 158. Further, the Second Circuit found no issue if the district court's decision obligated a fact finder to consider ability to pay and alternatives to detention in assessing dangerousness, because a showing of dangerousness by clear and convincing evidence would foreclose any possibility of bond. *Id.* at 159.

The Government's reading of *Black* has been rejected most recently in *L.G.M. v. Larocco*, No. 25-cv-2631 (PKC), 2025 WL 2173577, at *3 (E.D.N.Y. July 31, 2025):

The government's "legitimate interests" include "protecting the community" and "ensuring the noncitizen's appearance at proceedings." [*Black*, 103 F.4th] at 153. "[A]ny detention incidental to such interests must 'bear a reasonable relation to' those interests," *id.* at 158 (quoting *Zadydas*, 533 U.S. at 690) (cleaned up), and depriving a detained individual of their liberty interest would be "erroneous[]" if there were any available alternatives to that deprivation that would ensure the community is protected and the noncitizen appears at subsequent proceedings, *id.* (citing *Mathews*, 424 U.S. at 335)). Thus, the Court does not find that *Black* precludes the Court's consideration of mitigating measures in determining whether

Government Respondents have shown by clear and convincing evidence that Petitioner poses a risk of danger to the community.

L.G.M. 2025 WL 2173577, at *3 (ordering a bond hearing be held before the district court for a petitioner from El Salvador, who had been a gang member, and had criminal convictions, detained under Section 1226(c)); *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).

CONCLUSION

Petitioner respectfully requests that this Court order Respondents to release Petitioner immediately on his own recognizance or under parole, bond, or reasonable conditions of supervision, or, in the alternative, ordering 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

Dated: August 8, 2025
Brooklyn, New York

Respectfully Submitted,

/s/ Lucas Marquez
Lucas Marquez, Esq.
Molly Lauterback, Esq.
BROOKLYN DEFENDER SERVICES
177 Livingston Street, 7th Floor
Brooklyn, NY 11201
(718) 254-0700
lmarquez@bds.org
mlauterback@bds.org