UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.P.L.,

Petitioner,

-against-

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

Respondents.

1:25-cv-05307 (VSB) (SDA)

REPORT AND RECOMMENDATION

STEWART D. AARON, UNITED STATES MAGISTRATE JUDGE.

TO THE HONORABLE VERNON S. BRODERICK, UNITED STATES DISTRICT JUDGE:

Petitioner M.P.L. ("Petitioner" or "M.P.L.") has been detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") since February 27, 2025. (Pet., ECF No. 1, ¶¶ 3, 28; Resps.' Mem., ECF No. 12, at 1-2.) On June 25, 2025, M.P.L. filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, seeking his immediate release from custody or an individualized bond hearing. (Pet. ¶¶ 1-2.) On August 1, 2025, Respondents[1] opposed the Petition (*see* Resps.' Mem.) and on August 8, 2025, M.P.L. filed a reply. (Pet.'s Reply, ECF No. 14.)

For the reasons that follow, it is respectfully recommended that M.P.L. be released from detention unless he is provided an individualized bond hearing before a neutral adjudicator, as set forth below.

[1] The Respondents named in the Petition are 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; and Pam Bondi, in her official capacity as Attorney General, U.S. Department of Justice. (Pet. ¶¶ 22-25.)

BACKGROUND

M.P.L. was born in 1979 and is a native and citizen of El Salvador. (M.P.L. Decl., ECF No. 15, ¶ 1; Morrow Decl., ECF No. 13, ¶ 4.) While in El Salvador, M.P.L. participated as a member of MS-13, although he claims to have been coerced to do so. (Pet. ¶ 26; M.P.L. Decl. ¶¶ 5-6; Morrow Decl. ¶ 6.) M.P.L. has MS-13-related tattoos on his skin. (Pet. ¶ 26; M.P.L. Decl. ¶ 7.)

M.P.L. entered the United States unlawfully in 2007. (Pet. ¶ 27; M.P.L. Decl. ¶¶ 8-9; Morrow Decl. ¶ 6.) Since he arrived in the United States, M.P.L. has no criminal record. (Pet. ¶ 27.) However, his Record of Arrests and Prosecutions ("RAP") sheet shows that he was arrested in October 2006 in El Salvador for, among other things, aggravated homicide. (RAP Sheet, ECF No. 11-2, at 1-3.)

On February 27, 2025, M.P.L was arrested by the U.S. Drug Enforcement Administration on immigration charges and transferred to ICE custody. (Morrow Decl. ¶ 5; RAP Sheet at 3.) The same day, ICE served M.P.L. with a Notice to Appear, charging him as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled. (Morrow Decl. ¶ 8.) On February 28, 2025, ICE transferred M.P.L. to the Orange County Jail in Goshen, New York, where he has remained since. (*Id.* ¶ 9.)

On March 24, 2025, M.P.L. filed an application for asylum and withholding of removal, including protection under the Convention Against Torture ("CAT"). (Morrow Decl. ¶ 13.) On May 8, 2025, M.P.L. withdrew his request for asylum and withholding of removal with prejudice after conceding he was ineligible for that relief, and stated that he only wished to pursue deferral of removal under the CAT. (*Id.* ¶ 14.) A merits hearing was held on May 8, 2025, and on May 23,

2025, the Immigration Judge issued a written decision denying M.P.L.'s application for deferral of removal under the CAT and ordering M.P.L. removed to El Salvador. (*Id.* ¶¶ 14-15.)

On June 17, 2025, M.P.L. filed an appeal of the Immigration Judge's May 23, 2025 merits decision with the Board of Immigration Appeals ("BIA").[2] (Morrow Decl. ¶ 16.) M.P.L. filed the Petition commencing this action on June 25, 2025. (*See* Pet.) This action was referred to the undersigned on July 2, 2025. (Order of Ref., ECF No. 10.) Following briefing by the parties, the Court held oral argument on September 3, 2025.[3]

LEGAL STANDARDS

28 U.S.C. § 2241 authorizes federal district courts "to grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the Constitution or laws or treaties of the United States,'" *Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003) (quoting 28 U.S.C. § 2241(c)(3)), including claims by non-citizens challenging their detention without bail. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003).

The Supreme Court has held that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. "The Immigration and Nationality Act ('INA') has provided for discretionary detention pending removal proceedings since it was enacted in 1952." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020); *see also* 8 U.S.C. § 1226(a). In 1996, Congress, amended the INA to expand a carve-out "that mandated detention during removal proceedings for 'criminal aliens' with certain triggering

[2] As of August 1, 2025, the BIA had not yet set a briefing schedule for the appeal. (Morrow Decl. ¶ 16.) During oral argument, the parties advised the Court that appeal briefs are due September 23, 2025.

[3] The oral argument initially had been scheduled for August 20, 2025, but was adjourned on consent. (8/14/25 Order, ECF No. 19.)

convictions." *Velasco Lopez*, 978 F.3d at 848. That provision, now located at 8 U.S.C. § 1226(c), provides that aliens who have committed certain criminal or terrorist offenses "shall [be] take[n] into custody" during removal proceedings. *See* 8 U.S.C. § 1226(c). In *Demore*, the Supreme Court upheld the facial constitutionality of detention under § 1226(c) without a bond hearing and in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), rejected the Ninth Circuit's reading of § 1226(c) to include an implicit time limit. *See Demore*, 538 U.S. at 527-31; *Jennings*, 583 U.S. 296-97. However, "*Demore* and *Jennings* leave open the question whether prolonged detention under section 1226(c) without a bond hearing will *at some point* violate an individual detainee's due process rights." *Black v. Decker*, 103 F.4th 133, 142 (2d Cir. 2024) (emphasis in original).

As the Second Circuit explained in *Black*, "[t]he Supreme Court long ago held that the Fifth Amendment entitles noncitizens to due process in removal proceedings." *Black*, 103 F.4th at 143 (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "The Constitution establishes due process rights for all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)) (cleaned up). "Accordingly, and as the Supreme Court recognized in *Zadvydas*, a statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.* (quoting *Zadvydas*, 533 U.S. at 690) (cleaned up). The Second Circuit thus read "*Zadvydas*, *Demore*, *Jennings*, and *Velasco Lopez* to suggest strongly that due process places *some* limits on detention under section 1226(c) without a bond hearing" and held that "[t]he Constitution does not permit the Executive to detain a noncitizen for an unreasonably prolonged period under

section 1226(c) without a bond hearing." *Black*, 103 F.4th at 145 (emphasis in original).[4] However, the Circuit rejected a bright-line constitutional rule requiring a bond hearing after a fixed period of detention. *See id.* at 150. Instead, the Circuit held that courts should apply the balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), "to assess, case by case, whether an individual's prolonged section 1226(c) detention violates due process." *Id.* District courts must "determin[e] when and what additional procedural protections are due" by applying to the petitioner's unique situation the three factors from *Mathews*: "(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.'" *Black*, 103 F.4th at 138, 151 (quoting *Mathews*, 424 U.S. at 335).

DISCUSSION

I. Whether Due Process Requires A Bond Hearing

In the present case, there is no dispute that ICE is detaining Petitioner pursuant to 8 U.S.C. § 1226(c). (*See* Pet. ¶ 43.[5]) Thus, in determining whether to grant M.P.L.'s Petition, the Court applies the three *Mathews* factors.

[4] In opposition to the Petition, the Government notes its disagreement with the *Black* decision and that it has petitioned the Second Circuit for rehearing of that decision. (Resps.' Mem. at 10 n.3.) The Government also "acknowledges that, unless and until the Second Circuit's decision is vacated, overruled, or abrogated, it remains good law." (*Id.*)

[5] Petitioner does not concede his ineligibility for a bond under the INA, but argues that he is entitled a bond hearing under either §1226(a) or § 1226(c). (Pet. ¶ 43.)

With regard to the first *Mathews* factor—the private interest affected by the official action—the Government does not dispute that M.P.L.'s liberty interest in being free from imprisonment is at issue. (Resps.' Mem. at 7.) The Second Circuit described this interest as "the most significant liberty interest there is[.]" *Black*, 103 F.4th at 151. In *Black*, the Second Circuit concluded that the length of the two petitioners' detentions,[6] which were "far longer" than in *Demore*, resulted in the first factor weighing "heavily in favor of" the petitioners. *Id.* at 151-52. Similarly, in the present case, Petitioner already has been detained for over six months and, given the allotted time for any party to file objections to the recommendations contained herein, by the time the District Court decides whether to adopt such recommendations, M.P.L. likely will have been detained for more than seven months. The Court in *Black* also considered other ways that the petitioners' private interests were affected by their prolonged detention, such as causing financial difficulties for their families. *Id.* at 152. Here too, M.P.L.'s detention has led to serious financial difficulties for his family, since M.P.L. was the sole financial provider. (Pet. ¶ 45.) Thus, the first factor weighs heavily in favor of M.P.L.

The second *Mathews* factor is "the risk of an erroneous deprivation of such [private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. In considering the second *Mathews* factor, the Second Circuit in *Black* found that it weighed heavily in favor of the petitioners because "the almost nonexistent procedural protections in place for section 1226(c) detainees markedly

[6] At the time the petitioners in those cases had filed their Petitions, they had been detained for six months and approximately seven months, respectively. *See Black*, 103 F.4th at 140-41. At the time of the Second Circuit's decision, the first petitioner had been released after approximately seven months and the second spent approximately 21 months in detention before being released pursuant to a nationwide injunction. *See id.*

increased the risk of an erroneous deprivation of [the petitioners'] private liberty interests." *Black*, 103 F.4th at 152.[7] In addition to these "general concerns[,]" the Second Circuit found that the petitioners' circumstances suggested a high likelihood that they were being subjected to an erroneous deprivation of liberty as their § 1226(c) detention was prolonged. *See id.* at 153. Petitioner's circumstances also suggest a high likelihood that he is being subject to an erroneous deprivation of his liberty. M.P.L. has led a lawful life since he arrived in the United States, maintaining employment and providing for his family without any criminal issues. (*See* M.P.L. Decl. ¶ 9; Arias Decl., ECF No. 16, ¶¶ 8-13.) Moreover, here, as in *Black*, "[i]n the absence of any meaningful initial procedural safeguards . . . almost *any* additional procedural safeguards at some point in the detention would add value[,]" the "most obvious" being an individualized bond hearing. *See Black*, 103 F.4th at 153 (emphasis in original). For these reasons, the second factor also weighs heavily in favor of M.P.L.

With respect to the third *Mathews* factor, the Government certainly has legitimate and important interests in "ensuring [a] noncitizen's appearance at proceedings" and "protecting the community from noncitizens who have been involved in crimes that Congress has determined differentiate them from others." *Black*, 103 F.4th at 153. However, as in *Black*, the additional procedural safeguard of having an individualized bond hearing for M.P.L. "do[es] nothing to

[7] In their opposition memorandum, Respondents point to the procedural protections available in a so-called *Joseph* hearing. (Resps.' Mem. at 8.) During a *Joseph* hearing, "noncitizens can contest whether they in fact committed a crime that makes them subject to mandatory detention." *Black*, 103 F.4th at 152. However, in *Black*, the Second Circuit recognized that a *Joseph* hearing, the only procedural protection in place for §1226(c) detainees, did not include any "mechanism for a detainee's release, nor for individualized review of the need for detention." *Id.* Considering the broad sweep of § 1226(c), the Second Circuit reasoned that a determination that an individual committed a crime subject to § 1226(c) "may well be a poor proxy for a finding of dangerousness." *Id.* Accordingly, the Second Circuit rejected the notion that a *Joseph* hearing is sufficient to counter the risk of an erroneous deprivation of liberty.

undercut those interests." *Id.* Moreover, "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 (citation omitted). Accordingly, this factor also favors M.P.L.

In sum, applying the *Mathews* factors, the Court finds that due process entitles Petitioner to an individualized hearing by a neutral adjudicator. The Court next considers the procedural requirements for the bond hearing, which the parties dispute. (*See* Resps.' Mem. at 10-11; Pet.'s Reply at 10-11.)

II. Procedural Requirements

The Government concedes that, under *Black*, "ICE would have the burden of proving at [the] bond hearing by clear and convincing evidence the need for M.P.L.'s continued detention (i.e., that his is either a danger to the community or a flight risk)." (Resps.' Mem. at 10 (citing *Black*, 103 F.4th at 157-58).) However, the Government interprets *Black* to hold that Petitioner's ability to pay and alternatives to detention only should be considered with respect to the assessment of flight risk and not as to the assessment of danger. (*See id.* at 10-11.)

The Court agrees with Petitioner that *Black* does not preclude the Court from considering mitigating measures in assessing dangerousness. (*See* Pet.'s Reply at 10-11 (discussing *L.G.M. v. LaRocco*, No. 25-CV-02631 (PKC), 2025 WL 2173577, at *3 (E.D.N.Y. July 31, 2025)).) The Court finds Eastern District of New York Judge Chen's analysis in *L.G.M.* to be persuasive:

> The Court disagrees with Government Respondents' reading of *Black*. The discussion Government Respondents cite to in *Black* is focused on the process for setting the *amount* of bond and not the *availability* of bond. That is, setting a bond amount does not come into play unless and until the Court finds that the petitioner does not present a risk of danger to the community. That holding does not say anything about what the Court may consider in determining whether the

> petitioner poses such a risk. Similarly, *Black*'s subsequent language that a "showing of dangerousness" precludes a bond says nothing about what the Court may consider in determining whether dangerousness has been *shown* as a threshold matter. Indeed, it appears that in *Black*, the government argued—and the Black panel "agree[d]"—that [Immigration Judges] enjoy "broad discretion . . . in determining a noncitizen's *eligibility* for release on bond," and that "[a]n [Immigration Judge] . . . may consider financial circumstances and alternatives to detention" in making that determination. [*Black*, 103 F.4th at 159] (emphasis added). "[T]he private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment." *Id.* at 151 (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)). The government's "legitimate interests" include "protecting the community" and "ensuring the noncitizen's appearance at proceedings." *Id.* at 153. "[A]ny detention incidental to such interests must 'bear a reasonable relation to' those interests," *id.* at 158 (quoting *Zadvydas*, 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.

Indeed, the Court in *Black* reiterated that an Immigration Judge "has discretion to consider many different factors and 'may choose to give greater weight to one factor over others, as long as the decision is reasonable.'" *Black*, 103 F.4th at 159 (quoting *In Re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)). *In Re Guerra*, in turn, makes clear that Immigration Judges may look to multiple factors "in determining whether an alien merits release from bond, as well as the amount of bond that is appropriate." *In Re Guerra*, 24 I. & N. Dec. 40. The Court, thus, declines to constrain an Immigration Judge's exercise of discretion in the manner suggested by the Government, which the Court finds is not compelled by *Black*. *See Cantor v. Freden*, 761 F. Supp. 3d 630, 640 (W.D.N.Y. 2025) (finding "no reason to analyze the two risks [of risk of flight and

dangerousness] any differently" and disagreeing with argument that "the panel in *Black* intended to suggest otherwise").

CONCLUSION

For the reasons set forth above, it is respectfully recommended, as follows:

1. Within a reasonable period of time as prescribed by the Court, the Government must release M.P.L. from detention unless a neutral adjudicator[8] conducts an individualized hearing to determine whether M.P.L.'s continued detention is justified.
2. At any such hearing, ICE has the burden to justify M.P.L.'s continued detention by clear and convincing evidence, as set forth above.

Dated: September 4, 2025
New York, New York

Stewart D. Aaron

STEWART D. AARON
United States Magistrate Judge

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NOTICE OF PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

The parties shall have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. A party may respond to another party's objections within fourteen days after being served with a copy. Fed. R. Civ. P. 72(b)(2). Such

[8] During oral argument, Petitioner argued that the bond hearing should be held before District Judge Broderick. Although the Government contended during oral argument that any bond hearing should take place before an Immigration Judge, there is recent authority for a District Judge to hold the bond hearing. *See L.G.M. v. LaRocco*, 25-CV-02631 (PKC), 2025 U.S. Dist. LEXIS 144418, at *8-12 (E.D.N.Y. Jun. 25, 2025). The Court defers to Judge Broderick on whether, if he adopts the recommendation herein to require a bond hearing, to hold the hearing himself or to order a hearing before an Immigration Judge.

objections, and any response to objections, shall be filed with the Clerk of the Court. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Any requests for an extension of time for filing objections must be addressed to Judge Broderick.

THE FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); *Thomas v. Arn,* 474 U.S. 140 (1985).