

Olivia Kaplan, Esq.
Rebecca Hufstader, Esq.
Emily Thornton, Esq.
LEGAL SERVICES OF NEW JERSEY
100 Metroplex Drive, Suite 101
Edison, New Jersey 08817
(732) 529-8323
okaplan@lsnj.org

Attorneys for Petitioner

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Alex SANCHEZ-BENITEZ,

Petitioner,

v.

Tammy MARICH, et al.

Respondents.

Case No. 6:25-CV-6624

Wolford, C.J.

**ANSWERING MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS**

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Alex SANCHEZ-BENITEZ,

Petitioner,

v.

Tammy MARICH, et al.

Respondents.

Case No. 6:25-CV-6624

Wolford, C.J.

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS

Respondents' Motion to Dismiss entirely fails to respond to Mr. Sanchez Benitez's as-applied constitutional challenge to his prolonged detention under 8 U.S.C. § 1231(a)(6), despite precedent from the Second Circuit and this Court making clear that he may bring such a challenge. Therefore, as discussed below, the Court should deny the motion. Mr. Sanchez Benitez respectfully submits that it should also deny Respondents' request for additional time to respond to the petition for habeas corpus. The motion to dismiss is essentially a response on the merits to the petition. *See* Mem. of Law in Support of Mot. to Dismiss (Doc. No. 7-1). It does not cite any subsection of Federal Rule of Civil Procedure 12(b) that warrants a motion instead of a responsive pleading. Thus, Respondents' request that the Court rule on the motion to dismiss, allow Respondents to respond, and then rule again on the merits of the habeas petition would cause unnecessary delay in light of Mr. Sanchez Benitez's already prolonged detention and create unnecessary work for the Court. Therefore, the Court should deny the motion, grant the petition, and hold a bond hearing.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Alex Sanchez Benitez was born in El Salvador in 1989 and first entered the United States as a child in 2003. Pet. (Doc. No. 1) at ¶ 15. He was placed in removal proceedings in December 2017 and ordered removed to El Salvador on June 6, 2018. Graf Dec. (Doc. No. 7-

2), at ¶¶ 7, 9. Mr. Sanchez Benitez later returned to the United States. On July 6, 2024, the Department of Homeland Security (DHS) reinstated Mr. Sanchez Benitez's 2018 removal order and he was detained by ICE at Moshannon Valley Processing Center (Moshannon) in Pennsylvania. Pet. at ¶ 16. Mr. Sanchez Benitez claimed fear of returning to his country of origin, El Salvador, passed a reasonable fear interview, and was placed in withholding-only proceedings before the Elizabeth Immigration Court. On March 27, 2025, the Immigration Court granted Mr. Sanchez Benitez deferral under the Convention Against Torture (CAT). *Id.* at ¶ 17.

Mr. Sanchez Benitez remained in detention following the Immigration Court's decision, but was transferred from Moshannon to Buffalo Federal Detention Facility (BFDF) in New York on April 7, 2025. *Id.* at ¶ 17. On June 23, 2025, the DHS provided notice of its intent to deport Mr. Sanchez Benitez to Mexico and he moved to reopen his withholding-only proceedings to seek protection from removal to Mexico on June 27, 2025. *Id.* at ¶ 18. On July 17, 2025, the Immigration Court granted Mr. Sanchez Benitez's motion to reopen his withholding-only proceedings and he applied for CAT deferral of removal to Mexico. The Immigration Court denied his application for CAT deferral on September 29, 2025 and Mr. Sanchez Benitez has filed a timely appeal of this decision to the Board of Immigration Appeals (BIA). *Id.* at ¶ 18. The appeal remains pending and the BIA has yet to issue a briefing schedule. Graf Dec. at ¶ 15.

Approximately 90 days after Mr. Sanchez Benitez was detained at Moshannon in 2024, he completed a form in English as part of ICE's post-order custody review process. Exhibit A, Declaration of Alex Sanchez Benitez. ICE decided to continue his release because his 2015 arrest for driving under the influence, for which he was not convicted, made him a danger. Exhibit A, Sanchez Benitez Dec., at ¶ 1; Exhibit B, Virginia Judiciary Case Summary. He is not aware of any subsequent custody reviews and has never been interviewed by ICE. Sanchez Benitez Dec. at ¶ 2.

On approximately November 1, 2025, ICE transferred Mr. Sanchez Benitez to Miami Correctional Facility (MCF) in Indiana. Graf Dec. at ¶ 16.

II. ARGUMENT

Even when an immigration statute requires detention without a bond hearing, “the Constitution does not permit the Executive to detain a noncitizen for an unreasonably period . . . without a bond hearing.” *Black v. Decker*, 103 F.4th 133, 145 (2d Cir. 2024). Courts in this Circuit apply the *Mathew v. Eldridge* balancing test to as-applied procedural due process challenges to immigration detention. *See* 424 U.S. 319, 335 (1976). Applying that test, Mr. Sanchez Benitez’s prolonged detention with almost no process has become unconstitutional. Therefore, the Court should hold a bond hearing at which Respondents bear the burden of showing that continued detention is necessary by clear and convincing evidence. *See Black*, 103 F.4th at 155.

A. *The Court Should Deny Respondents’ Motion to Dismiss*

Both the Second Circuit and this Court have repeatedly reaffirmed that Courts can adjudicate as-applied procedural due process challenges to prolonged detention without a bond hearing. *Black*, 103 F.4th at 133; *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020); *Chavez-Gonzalez v. Bell*, No. 6:23-cv-6238, 2024 WL 1268282 (W.D.N.Y. Mar. 26, 2024). This is such a challenge, so the Court should apply the familiar *Mathews v. Eldridge* balancing test to determine whether more process is due. Respondents’ arguments to the contrary are unavailing.

Respondents’ Motion to Dismiss fails to address Petitioner’s actual claim. Mem. of Law in Support of Mot. to Dismiss (Resp. Mem.) (Doc. No. 7-1) at 4-5. Petitioner argues that while *the statute* of his detention does not entitle him to a bond hearing—where Respondent believes the inquiry ends—*the constitution* requires a bond hearing. Pet. (Doc. No. 1), at ¶¶ 41-55. Respondents’ motion attempts to rely on *Johnson v. Arteaga-Martinez*, however, that was a

statutory decision, and the Supreme Court clearly stated that as-applied constitutional challenges are still available to noncitizens. 596 U.S. 573, 575, 583 (2022) (“Constitutional challenges to prolonged detention under § 1231(a)(6) were not addressed... The Court leaves these arguments for the lower courts to consider in the first instance... The Government also notes that as-applied constitutional challenges remain available to address “exceptional” cases.”); *see* Resp. Mem. at 4.

Respondents do not challenge, or even acknowledge, Petitioner’s constitutional claim. Instead, they seek to distinguish the Second Circuit’s decision in *Black v. Decker*, which authorizes constitutional challenges to prolonged detention without a bond hearing, based on the fact that Mr. Sanchez Benitez is detained under 8 U.S.C. § 1231(a)(6) rather than 8 U.S.C. § 1226(c), as well as on the details of his removal case before the agency. Doc. No. 7-1, at 5; *see Black*, 103 F.4th at 145. This is a distinction without a difference. Both statutes authorize detention without a bond hearing. *Arteaga-Martinez*, 596 U.S. at 582; *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). Yet in both contexts, noncitizens have due process rights that protect them against indefinite detention without any procedural protections. *Zadvydas v. Davis*, 533 U.S. 678, 693-96 (2001) (holding that noncitizens in the United States with final orders of removal have due process rights); *Guerrero-Sanchez v. Warden York C’ty Prison*, 905 F.3d 208, 221 (3d Cir. 2018) (stating that there is “no substantial distinction between the liberty interests of [noncitizens] detained under § 1226(a) § 1231(a)(6)”), *abrogated in part and on other grounds by Arteaga-Martinez*, 596 U.S. at 573. The unique procedural posture of Mr. Sanchez Benitez’s removal case—appeal pending of a withholding claim for a third country after a CAT deferral grant to his designated country of removal—does not change the fact that he has constitutional rights that, after sixteen months, demand a bond hearing. *See Black*, 103 F.4th at 145 (holding that unreasonably prolonged detention without adequate procedural protections violates due process); *Chavez-Gonzalez*, 2024

WL 1268282, at *4 (analyzing a due process challenge to detention under § 1231(a)(6)). Respondents' motion fails to address Petitioner's claim, and should be denied.

B. The Court Should Analyze the Adequacy of the Procedural Protections Mr. Sanchez-Benitez Has Received Under the Mathews v. Eldridge Test

Mr. Sanchez Benitez's detention under § 1231 has become unreasonably prolonged under *Black v. Decker* and *Mathews v. Eldridge*. While *Black v. Decker* considers a noncitizen's detention under another statute, the relevant holding is that unreasonably prolonged detention without adequate procedural protections violates due process. 103 F.4th at 145. Pursuant to *Black v. Decker*, the Court should apply the *Mathews v. Eldridge* test to determine whether additional procedural protections are necessary. *Black*, 103 F.4th at 183-84 (citing *Mathews*, 424 U.S. at 335). *Mathews* delineates three factors to consider:

(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.'

424 U.S. at 335.

The first factor, the private interest, "is the most significant liberty interest there is...[because] in this country liberty is the norm and detention 'is the carefully limited exception.'" *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *United States v. Salerno*, 481 U.S. 739, 755 (1987)). The conditions of confinement are relevant to Mr. Sanchez Benitez's liberty interest: whether "the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention" factors into the reasonableness of detention. *Alvarado v. Garland*, 608 F. Supp. 3d 32, 39-40 (W.D.N.Y. 2022); *see also Application of Gault*, 387 U.S. 1, 27 (1967) (considering the conditions of juvenile confinement when deciding

what process is due in juvenile court); *German Santos v. Warden Pike County Corr. Facility*, 965 F.3d 203, 210-11 (3d Cir. 2020) (requiring considering of “whether the alien's conditions of confinement are meaningfully different from criminal punishment” in determining whether detention is reasonable).

Mr. Sanchez Benitez was previously detained at BFDF from April to November 2025. Courts in this district have already found that “[b]ecause of the restrictions imposed on detainees at the BFDF and the possibility of disciplinary segregation, conditions at the BFDF certainly ‘resemble penal confinement’ for at least some of the persons detained there.” *Alvarado*, 608 F. Supp. 3d at 40; *see also Mycoo v. Warden of Batavia Fed. Det. Facility*, No. 6:20-cv-6405, 2020 WL 5800920, at *7 (W.D.N.Y. Sept. 29, 2020) (“[B]ecause BFDF houses individuals against their will with various restrictions on their freedom of movement . . . the facility does not seem meaningfully different from at least a low-security penal institution for criminal detention.”) (quoting *Gonzales Garcia v. Barr*, No. 6:19-cv-6327, 2020 WL 525377, at *15 (W.D.N.Y. Feb. 3, 2020)); *Barrie v. Barr*, No. 20-cv-171, 2020 WL 1877706, at *5 (W.D.N.Y. Apr. 15, 2020) (“the government has not shown that Barrie's detention [at BFDF] is ‘meaningfully different from [detention in] a penal institution.’”); *Ranchinskiy v. Barr*, 422 F. Supp. 3d 789, 799 (W.D.N.Y. 2019) (finding that detention at the BFDF is akin to criminal incarceration).

From July 2024 to April 2025, Mr. Sanchez Benitez was detained at Moshannon. Many district courts have found that “the conditions at Moshannon are penal in character.” *Grigoryan v. Jamison*, No. CV 25-1389, 2025 WL 1257693, at *5 (E.D. Pa. Apr. 30, 2025) (citing *Rivas v. Oddo*, No. 22-223, 2023 WL 4361140, at *1 (W.D. Pa. June 27, 2023); *Morgan v. Oddo*, No. 24-221, 2025 WL 1134979, at *4–5 (W.D. Pa. Apr. 17, 2025); *Akhmadjanov v. Oddo*, No. 25-35,

2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *Michelin v. Oddo*, No. 23-cv-22, 2023 WL 5044929, at *7 (W.D. Pa. Aug. 8, 2023)).

For approximately one month, Mr. Sanchez Benitez has been detained at MCF in Indiana, a state criminal correctional facility that has only recently begun detaining noncitizens for ICE.¹ MCF is run by the Indiana Department of Correction and is a “Level 4 high medium security correctional facility.”² As Mr. Sanchez Benitez explains in his declaration,

We don’t have access to the commissary... The facility denies us soap, basic hygiene products. They don’t give us razors or nail clippers. I have not been able to shave or cut my nails in the month I have been here... The dorm where we sleep often floods with dirty water, it smells like its water from the toilet... They only give us one pair of Croc sandals. We have to shower in these shoes and walk outside in the snow in the same shoes.

The food is bad, we get very little... It is hard for me to sleep at night, its hard to sleep when you’re hungry.... Almost every day someone is taken out of cafeteria in handcuffs because they try to take extra food. We are all so hungry.

Sanchez Benitez Dec. at ¶¶ 4-6.

Without an individualized bond hearing, Mr. Sanchez Benitez is unlikely to be released from detention soon. While Mr. Sanchez Benitez has already been detained for 16 months, it is unlikely that the DHS will be able to remove him in the foreseeable future. He cannot be removed to the only country he has citizenship or any ties, El Salvador, due to an Immigration Judge’s grant of CAT deferral. The DHS later noticed his removal to Mexico, without showing any proof that Mexico would accept him. Mr. Sanchez Benitez applied for withholding of removal to Mexico, a

¹ Jade Jackson, Kayla Dwyer, & Kristine Phillips, ‘Speedway Slammer’ Miami Correctional Facility gets first ICE detainees, *Indy Star* (Oct. 2, 2025), <https://www.indystar.com/story/news/crime/2025/10/02/first-15-ice-detainees-are-brought-to-the-miami-correctional-facility-speedway-slammer-prison/86473854007/>.

² Miami Correctional Facility, Indiana Department of Correction (accessed Dec. 3, 2025), https://www.in.gov/idoc/facilities/adult/miami-correctional-facility/#tab-599418-2-Community_Advisory_Board.

claim which remains on appeal before the Board of Immigration Appeals. He cannot be removed to Mexico while his case is on appeal before the agency, and DHS has not indicated an intention to remove him to any other country. He filed a notice of appeal with the BIA on October 29, 2025 and has not yet received a briefing schedule. If Mr. Sanchez Benitez wins on appeal, his case may be remanded for further proceedings before an immigration judge. If his appeal is dismissed by the BIA, he may petition for review of the withholding claim.³

The second *Mathews* factor also weighs significantly in Mr. Sanchez Benitez's favor. The risk of erroneous deprivation of Mr. Sanchez Benitez's liberty is high due to the inadequate procedures in place. The Second Circuit has explained that "[p]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process." *Velasco Lopez*, 978 F.3d at 852. Moreover, when considering the second factor, the primary interest is not that of the Government but the interest of the detained individual." *Id.*

Mr. Sanchez Benitez is ineligible to pursue release on bond from an immigration judge while detained post-order under § 1231. The only procedure available is post-order custody review by ICE. 8 C.F.R. § 241.4. The regulations provide for an initial custody determination within 90 days of detention under § 1231. 8 C.F.R. § 241.4(k)(1)(i). An ICE officer conducts this review based only on the records. 8 C.F.R. § 241.4(c)(1), (h)(1), (h)(5). As Mr. Sanchez Benitez explains in his declaration, 90 days after he was detained at Moshannon in 2024, he was given a form to fill

³ The Supreme Court's decision in *Riley v. Bondi*, 606 U.S. 259 (2025) held that the 30 days to file a petition for review of a withholding-only claim begins not with the BIA's decision, but with the DHS's prior removal order. Because Mr. Sanchez Benitez was issued a reinstated removal order by the DHS in 2024 and to preserve his right to judicial review, he filed a petition for review of the reinstatement order to the Third Circuit Court of Appeals on July 25, 2025. *See Sanchez Benitez v. Att'y Gen. of the U.S.*, No. 25-2417 (3d Cir. July 25, 2025). Mr. Sanchez Benitez has moved to hold the case in abeyance pending the BIA's decision on the withholding of removal to Mexico claim.

out in English, a language he is not fluent in, and then received a denial of release based on an old driving under the influence charge for which he was not convicted. Sanchez Benitez Dec.; Exhibit B, Virginia Judiciary Case Summary.

If detention continues, as it did for Mr. Sanchez Benitez, a second administrative review of the noncitizen's detention occurs around 180 days of detention. 8 C.F.R. § 241.4(c)(2), (k)(2)(ii), (k)(2)(iv). The authority to conduct the 180-day review is transferred from the local ICE official to a particular unit at ICE headquarters. *See* 8 C.F.R. § 241.4 (c)(2), (i). If the noncitizen is not released after a review of the record, a panel of ICE officers should conduct an interview of the noncitizen. A majority of the panel must find that the noncitizen is currently and will likely remain non-violent, will likely not pose a danger to the community or a flight risk, and will likely comply with conditions of release. 8 C.F.R. § 241.4(e). Regulations also provide a list of factors the panel should consider. 8 C.F.R. § 241.4(f).

Even if the DHS had followed the custody review procedure outlined above in the regulations, it would not have been sufficient process. *See Cabrera Galdamez v. Mayorkas*, No. 22-cv-9847, 2023 WL 1777310, at *6 (S.D.N.Y. Feb. 6, 2023) (finding the POCR process insufficient because the burden is on the individual noncitizen, ICE is the decisionmaker rather than an immigration judge or other neutral adjudicator, and there is no “in-person hearing, where Petitioner can present his argument, call witnesses and confront the Government's evidence”).

However, as Mr. Sanchez Benitez has explained in his declaration, ICE only conducted the 90-day custody review, which he had to navigate in a language he does not speak. Sanchez Benitez Dec. at ¶ 1. He has never been interviewed by an ICE officer and certainly not a panel of officers. *Id.* at ¶ 2. According to the regulations, the individual noncitizen is allowed to have an attorney present and to present evidence, however, neither was available to Mr. Sanchez Benitez as this

second review never occurred. 8 C.F.R. § 241.4(d)(3), (i)(3). For over a year, ICE has not followed regulations outlining its custody review procedure. Respondents had an opportunity to present evidence of any procedural protections it has provided to Mr. Sanchez Benitez since he has been detained in its response to his habeas petition, but the declaration they submitted about his immigration and detention history does not contain any indication that they ever reviewed his custody status. Graf Dec. Therefore, this case is distinguishable from *Chavez-Gonzalez*, in which the respondents provided evidence about the custody review proceedings and about the evidence that ICE considered in making its decisions to continue to detention. 2024 WL 1268282, at *5.

Turning to the third factor, the Government has no legitimate interest in continuing to detain an individual who does not pose a risk of danger or flight risk. The Government's interest entails "the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. An individualized bond hearing puts little fiscal or administrative burden on the Government, especially compared to the high cost of continued detention at the Government's expense. The Second Circuit has acknowledged that the Government has an important interest in "(1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes ... is well-established[.]" *Velasco Lopez*, 978 F.3d at 854. However, this interest is not defeated, but rather served by an individualized bond hearing at which a neutral arbiter will determine whether or not Mr. Sanchez Benitez is likely to abscond or commit a criminal offense in the future after reviewing evidence provided by both parties. *Black*, 103 F.4th at 154. Specifically, at a bond hearing the decisionmaker would consider that Mr. Sanchez Benitez has not been charged with a crime since 2017, and assess whether he is a danger going forward. Exhs. Supporting Mot. to Dismiss (Doc. No. 7-3), at 11. *See McDonald v. Feeley*, 535 F. Supp. 3d 128, 138 (W.D.N.Y. 2021) (noting that "the process due even to excludable [noncitizens] requires

an opportunity for an evaluation of the individual's current threat to the community and his risk of flight") (quoting *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 398 (3d Cir. 1999); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 240 (W.D.N.Y. 2019) (same). This final factor also weighs in favor of Mr. Sanchez Benitez.

In sum, all three factors of the *Mathews v. Eldridge* balancing test weigh in Mr. Sanchez Benitez's favor and show that his prolonged detention without a bond hearing violates due process. To remedy this violation, the Court should hold or order a bond hearing at which the Government bears the burden by clear and convincing evidence and the decisionmaker considers ability to pay and alternatives to detention. *See Black*, 103 F.4th at 155-159.

C. This Court Should Hold a Bond Hearing in the First Instance

"Ordering a petitioner's release is the very essence of habeas relief." *Hechavarria*, 358 F. Supp. 3d at 234; *accord Leslie v. Holder*, 865 F. Supp. 2d 627, 634-35 (M.D. Pa. 2012). Courts have exercised this authority by holding bond hearings in the first instance, "particularly where delay risks perpetuating the constitutional injury" and immigration court dockets are "exploding." *Centeno-Martinez v. Jamison*, 25-3593, 2025 WL 2157711, at *3 (E.D. Pa. Nov. 12, 2025); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 407 (E.D.N.Y. 2025). Since, as discussed above, noncitizens typically bear the burden in bond hearings, immigration judges are not used to allocating the burden to the government and may not do so correctly, necessitating further federal court proceedings. *See, e.g., Mathon v. Searls*, 623 F. Supp. 3d 203, 219 (W.D.N.Y. 2022) (granting a motion to enforce after an inadequate bond hearing conducted by an IJ); *Blandon v. Barr*, 434 F. Supp. 3d 30, 42 (W.D.N.Y. 2020) (same); *Hechavarria*, 358 F. Supp. 3d at 243 (same); *Enoh v. Sessions*, No. 16-cv-85, 2017 WL 2080278, at *10 (W.D.N.Y. May 15, 2017) (same). Moreover, since Mr. Sanchez-Benitez has been transferred to a different facility out of state, the immigration

judge that hears the bond hearing will likely have no familiarity with his case. Therefore, this Court should hold a constitutionally-adequate bond hearing in the first instance.

III. CONCLUSION

For the foregoing reasons, the Court should deny Respondents' motion to dismiss as well as its request for additional time to respond to the Petition for Writ of Habeas Corpus, and grant the petition.

Dated: December 5, 2025

Respectfully Submitted,

/s/Olivia Kaplan

Olivia Kaplan, Esq.

Rebecca Hufstader, Esq.

Emily Thornton, Esq.

LEGAL SERVICES OF NEW JERSEY

100 Metroplex Drive, Suite 101

Edison, New Jersey 08817

(732) 529-8323

okaplan@lsnj.org

Attorneys for Petitioner

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Wolford, C.J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on December 5, 2025, she served a copy of the attached

MEMORANDUM OF LAW

by electronic service to the following individual:

Marvin J. Muller
U.S. Attorney's Office – Rochester
100 State Street
Suite 500
Rochester, NY 14614
Marvin.muller@usdoj.gov

/s/ Olivia Kaplan
Olivia Kaplan, Esq.