UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.K.,

Petitioner,

v.

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

LADEON FRANCIS,
in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement;

TODD M. LYONS,

in his official capacity as Acting Director, United States Immigration and Customs Enforcement;

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

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

Respondents.

Civil Action No. 25-9918

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

INTRODUCTION

1. Petitioner M.K. ("Mr. K" or "Petitioner")[1] has been held in immigration detention by Respondents for over 16 months without a constitutionally adequate bond hearing while his removal proceedings are pending. Mr. K thus petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents.

2. Mr. K lives with profound disabilities that implicate the government's duties under Section 504 of the Rehabilitation Act. Despite having been found to be incompetent by a psychologist in a written evaluation and an immigration judge, he has not received the required accommodations due to him during his time in immigration detention.

3. Mr. K has no other remedy at law than to petition this Court and request the Court order Respondents to either immediately release him from immigration custody, or to issue an order that provides for Mr. K to have an individualized bond hearing that complies with due process, at which the government must bear the burden of proving by clear and convincing evidence that continued detention remains justified. To satisfy due process, an adjudicator must also consider Mr. K's 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. A bond hearing must also include necessary procedural safeguards as reasonable accommodations to ensure that Mr. K can meaningfully participate in the proceeding.

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

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

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).

VENUE

6. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over [the petitioner.]'" (citing 28 U.S.C. § 2242)).

7. 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).

EXHAUSTION

8. There is no statutory requirement for exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Beharry v. Ashcroft*, 329

F.3d 51, 56 (2d Cir.2003); *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010). 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).

9. 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 v. Shanahan*, 35 F. Supp. 3d 533, 538-39 (S.D.N.Y. 2014); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-7 (S.D.N.Y. 2010).

10. To the extent prudential exhaustion requirements apply, Mr. K requested release on bond on February 13, 2025, but was deemed to be mandatorily detained under 8 U.S.C. § 1225 pursuant to *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (noncitizens transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture are ineligible for release on bond). Mr. K appealed the bond denial, and that appeal was dismissed by the BIA.

PARTIES

11. Mr. K is a 44-year-old man from Uzbekistan who suffers from significant mental disabilities, including trauma disorder, hallucinations, memory loss, and severe competency issues. He has been detained at Orange County Correctional Facility ("Orange County Jail" or "OCJ") for over 16 months. The immigration court refused to hold a bond hearing because it found that it did not have jurisdiction to do so.

12. Respondent Paul Arteta is named in his official capacity as Sheriff of Orange County, New York and acts as the warden for OCJ, where Petitioner is detained. As such, he is the custodian of Petitioner. Respondent Arteta's office is located at 110 Wells Farm Rd, Goshen, NY 10924.

13. Respondent LaDeon Francis is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Francis's address is 26 Federal Plaza, 9th Floor, Suite 9-10, New York, New York 10278.

14. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is a legal custodian of Petitioner and is named in his official capacity. In this capacity, he is responsible for administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the Southern District of New York, he supervises Respondent Francis, and he is legally responsible for Petitioner's detention and removal. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20536.

15. 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 at the United States Department of Homeland Security, 2801 Nebraska Avenue, N.W., Washington, DC 20528.

16. Respondent Pam Bondi is named in her official capacity as the 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, 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, DC 20530.

STATEMENT OF FACTS

17. Mr. K was born in Samarkand, Uzbekistan and is ethnically Tajik. Neither he nor his parents were ever citizens of any other country besides Uzbekistan, formerly part of the Union of Soviet Socialist Republics (USSR). He began working as a taxi driver in his early 20s to support himself and later his family. He married and had two daughters.

18. In 2018, in Uzbekistan, Mr. K was arrested by police and falsely accused of purchasing a small amount of marijuana. *See* Exhibit A, November 20, 2024 Letter of John Victor Sena Alencar, LMSW, at 2 ("Alencar Letter"). [redacted]. *Id.*

19. After returning to the community, he got a job driving a fuel truck, but was fired after several months. His boss accused him of stealing missing fuel and threatened that if he did

not pay back thousands of dollars, he would face severe consequences. Associates of his boss, including a local government official, began coming to his home demanding money and he received threatening phone calls and texts. Mr. K felt he had no choice but to flee Uzbekistan for his own safety.

20. Mr. K entered the United States on or about December 19, 2021, after fleeing torture, extortion, and death threats aimed at him and his family in Uzbekistan. Upon entering the United States, he was taken into immigration custody. On December 25, 2021, DHS issued him a Notice and Order of Expedited Removal – Determination of Inadmissibility. The notice was apparently not served on Mr. K until February 22, 2022.

21. On February 4, 2022, Mr. K was given a credible fear interview. On February 22, 2022, Mr. K was notified of the negative credible fear finding and requested review by an immigration judge. Mr. K was scheduled for a court appearance on March 8, 2022.

22. On March 3, 2022, however, prior to the scheduled March 8, 2022 hearing, Mr. K was released on an Order of Release on Recognizance "in accordance with section 236 of the Immigration and Nationality Act."

23. Upon his release, he moved to New York City and resided and worked in Brooklyn.

24. On June 28, 2022, counsel for M.K. appeared for an immigration court hearing at 26 Federal Plaza, New York, NY. His counsel noted that he had been erroneously issued an order to file written pleadings even though no Notice to Appear ("NTA") had been filed or served.

25. Mr. K has been arrested twice in the United States. The charges stemming from one arrest in May 2024 were fully dismissed, and his other arrest in March 2024 resulted in a non-criminal disposition, a violation for driving without a license, *see* N.Y. Veh. & Traf. Law § 509(1).

Other than the arrest and conviction in Uzbekistan for which he was tortured in prison, *see supra* ¶ 18, Mr. K has not been convicted of any crime anywhere in the world.

26. On July 10, 2024, ICE re-detained Mr. K at a check-in, following the May 2024 criminal arrest. As with the documentation that originally released him, the re-detention paperwork explicitly cited "INA 236," *i.e.*, 8 U.S.C. § 1226, as the basis of his detention. Mr. K has been detained at OCJ since ICE arrested him on July 10, 2024.

27. Per a DHS memo to his A-file dated July 12, 2024, DHS explained that it had exercised its discretion to place Mr. K in full removal proceedings under 8 U.S.C. § 1229a and that he is "no longer in the expedited removal process."

28. On July 16, 2024, DHS served Mr. K an NTA—the charging document in removal proceedings under 8 U.S.C. § 1229a and filed it with the immigration court. The NTA charged him with removability pursuant to Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i), *i.e.*, 8 U.S.C. § 1182(a)(6)(A)(i). The NTA does not indicate that it was issued after an order under § 1225(b)(1) was vacated or pursuant to a credible fear finding.

29. On July 29, 2024, pro bono counsel from Brooklyn Defender Services began representing Mr. K in his removal proceedings.

30. On September 3, 2024, Mr. K filed his Form I-589, Application for Asylum, with the immigration court, indicating that he was seeking asylum, withholding of removal under the INA, and protection under the Convention Against Torture ("CAT").

31. On September 30, 2024 and October 9, 2024, Dr. Karen Cort conducted psychological testing of Mr. K *See* Exhibit B, Psychological Evaluation of Dr. Karen A. Cort, Ph.D ("Cort Psych. Eval."). Dr. Cort noted Mr. K's extensive history of physical and psychological trauma as well as severe memory issues affecting his ability to engage in the

evaluation. *Id.* at 7. Dr. Cort also noted that Mr. K's medical records indicated a history of hospitalizations and suicidality. *Id.* at 3. Based on those symptoms, Dr. Cort diagnosed Mr. K with Major Depressive Disorder.

32. Dr. Cort also noted that Mr. K had a complex experience of trauma, in that he reported experiencing several severe traumas which were corroborated by documentation, but struggled to remember details of those traumas. He reported trauma-related symptoms, such as a constant fear that someone in the jail might try to "beat him up and choke him," and paranoia and insomnia due to a fear of being attacked in his sleep. *Id.* at 3. Mr. K reported hearing threatening voices and "stated that he was uncertain if he was awake or asleep/dreaming when he heard these voices because he often woke up in a daze, feeling confused and dizzy, and unable to stand on his feet," a sensation he recalled from waking up in the hospital on various occasions. *Id.* Dr. Cort characterized these symptoms as derealization and also explained that memory loss, which Mr. K reported, is characteristic of trauma as well. *Id.* at 5. Mr. K also experienced physical symptoms as a result of the [redacted], including difficulty sitting for long periods. *Id.* Dr. Cort diagnosed him with Unspecified Trauma and Stressor-Related Disorder. *Id.* at 8. Importantly, she noted that "although Mr. K does not meet full criteria for a trauma-related disorder, his trauma history is quite significant, particularly because he acutely experiences and is quite distressed by the physical manifestations/symptoms from these events." *Id.* Based on a review of Mr. K's extensive medical records, Dr. Cort also diagnosed Mr. K with Unspecified Opioid-Related Disorder.

33. Dr. Cort also conducted a competency evaluation of Mr. K on December 2, 2024. *See* Exhibit C, Competency Evaluation by Dr. Karen A. Cort, Ph.D. ("Cort Comp. Eval."). In this evaluation, Dr. Cort diagnosed Mr. K with Unspecified Depressive Disorder, Posttraumatic Stress

Disorder (Provisional), and Unspecified Opioid-Related Disorder. *Id.* at 5. The Posttraumatic Stress Disorder (Provisional) diagnosis was based on the trauma-related symptoms that were connected to the [redacted] Mr. K suffered. *Id.* at 6. The diagnosis was "provisional" because there was not, at the time of the evaluation, sufficient information to conclude that Mr. K met all the full criteria for the diagnosis, but there was a "strong presumption that the information will become available to allow this determination." *Id.* Additionally, Dr. Cort modified her previous diagnosis of Major Depressive Disorder, Mild, Recurrent Episode, *see* Cort Psych Eval. at 7, to Unspecified Depressive Order because Mr. K was experiencing "fewer depressive symptoms" during the competency evaluation, Cort Comp. Eval. at 6. Dr. Cort noted, however, that Mr. K still experienced some depressive symptoms. *Id.* at 7.

34. Dr. Cort concluded that Mr. K could not fully participate in his legal proceedings and recommended various safeguards. *Id.* at 7-8.

35. Due to Mr. K's significant mental health diagnoses, the immigration judge held a hearing pursuant to *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011)[2] on November 25, 2024 and December 19, 2024 to determine whether procedural safeguards were necessary to ensure that Mr. K could meaningfully access and participate in his immigration proceedings. The immigration judge found that Mr. K was not competent to participate in his immigration proceedings without significant procedural safeguards. The immigration judge ordered a number of safeguards including regulating the government's cross-examination, the potential to ask leading questions on direct if necessary, reliance on corroborating and written evidence, breaks during testimony, and

[2] *M-A-M-* provides a framework for immigration judges to follow when hearing cases involving noncitizens with mental competency issues, including setting forth a test to assess a noncitizens ability to particular in a removal hearing and what procedural safeguards may be necessary to ensure a fair hearing in immigration court.

in-person production of M.K. DHS filed two motions to reconsider the immigration judge's production order. Both motions were denied.

36. Mr. K's merits hearing was scheduled for January 22, 2025, but this hearing was rescheduled because the immigration judge denied Mr. K's counsel's request to proceed virtually due to being positive for COVID-19 and because DHS failed to produce Mr. K in person.

37. On February 10, 2025, Mr. K requested that the immigration court schedule a custody redetermination hearing, *i.e.*, a bond hearing, so he could seek release on bond.

38. On February 13, 2025, Mr. K was scheduled for his individual merits hearing to continue and a bond hearing to be held.

39. At the merits hearing on February 13, 2025, DHS again failed to produce Mr. K in person for his testimony. Counsel for Mr. K moved to terminate proceedings based on DHS's failure to abide by the necessary and court-ordered safeguards, but the immigration judge denied the motion. Counsel for Mr. K agreed to move forward with Mr. K's testimony rather than adjourn again because of his lengthy detention.

40. At the bond hearing on February 13, 2025, the immigration judge found Mr. K to be subject to mandatory detention under *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) and, thus, ineligible for bond. Exhibit D, IJ Written Bond Decision. In *Matter of M-S-*, the Attorney General held that a noncitizen who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Ex. D at 2-3. The immigration judge found this applied to M.K and denied bond. *Id.* at 3. Mr. K appealed this finding to the BIA. The BIA dismissed the bond appeal on June 20, 2025.

41. Mr. K's merits hearing concluded on March 5, 2025, with testimony from his family members and a country conditions expert. Mr. K was not produced in-person nor by video

to his hearing due to an alleged quarantine at the jail but consented to the hearing proceeding in his absence. The immigration judge indicated that he would issue a written decision within 30 days.

42. On April 11, 2025, the immigration judge issued a written decision denying all relief. Mr. K appealed that decision to the BIA. Mr. K filed his appeal brief on July 17, 2025. DHS did not file a brief. The appeal remains pending.

43. Mr. K has been detained for approximately one year and four months. Counsel for Mr. K has submitted several release requests to ICE, all of which have been denied.

44. Mr. K has physical and mental health conditions that have made his prolonged detention particularly difficult.

45. Prior to detention, Mr. K was hospitalized several times while living in Brooklyn. On one occasion, he attempted suicide in the police station and was admitted to a hospital for one week for suicidal ideation and plan. Cort Psych. Eval. at 4. Mr. K was also assaulted and robbed in Brooklyn and injured in a car accident. *Id.* at 4. These injuries continue to impact his daily functioning, including headaches, dizziness, confusion, and memory loss. Alencar Letter at 4.

46. He was also hospitalized when he was first detained by ICE because he was banging his head against the wall asking for medication and said if he did not get it he would kill himself. *See* Cort Psych. Eval. at 3.

47. In detention, he has an infection in his teeth that has been only minimally treated at the jail. During his time at OCJ, Mr. K has had several teeth removed. Medical staff at OCJ want to remove many others, but Mr. K is concerned that he will not be able to eat.

48. M.K.'s history of being [redacted] makes his detention in immigration custody especially challenging. In addition to the lingering

physical symptoms of these events, he experiences extreme psychological distress in detention. He is afraid to sleep at night and sleeps only a few hours at a time during the day. Cort Psych. Eval. at 3. He is scared of the guards and other detainees. *See id.* He frequently experiences dissociation and derealization. *Id.* at 7. He has also reported being afraid to take medications he is given in jail. Due to his mental health issues, Mr. K has had several outbursts in jail that have caused him to be disciplined by OCJ staff and harassed by other detainees. Throughout his time in detention, Mr. K has also expressed suicidal ideation to staff at OCJ and his legal team and has been put on suicide watch by OCJ. *See id.* at 3.

LEGAL FRAMEWORK

A. Respondents Are Detaining Petitioner Under A Mandatory Detention Statute

49. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018); *Demore*, 538 U.S. at 523; *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 id.* §§ 1225(b), 1226(c), 1231(a).

50. Noncitizens arrested at the border may be mandatorily detained under § 1225. Section 1225(b)(1) mandates detention for noncitizens subject to expedited removal. *Id.* § 1225(b)(1)(B)(iii)(IV); § 1225(b)(1)(B)(ii). Expedited removal may be applied to noncitizens who either lack entry documentation or seek admission through fraud or misrepresentation. *Id.* § 1225(b)(1)(A)(i) (referring to 8 U.S.C. § 1182(a)(6)(C), (a)(7)). In addition, the noncitizen must either be "arriving in the United States" or within a class that the Secretary of Homeland Security has designated for expedited removal. *Id.* "The Secretary may designate 'any or all [noncitizens]' who have 'not been admitted or paroled into the United States' and also have not 'been physically

present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.'" *Matter of M-S-*, 27 I&N Dec. at 511 (discussing § 1225(b)(1)(A)(iii)).

51. Section § 1225(b)(2) governs the detention of other noncitizens at the border who are "seeking admission" into the country. 8 U.S.C. § 1225(b)(2)(A). If a noncitizen is an "applicant for admission" and "the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted," that noncitizen shall be detained during the removal proceedings. *Id.*

52. Noncitizens arrested within the United States and placed in removal proceedings are detained under § 1226 on either a discretionary or mandatory basis. 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 id.* § 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*, 583 U.S. at 303 (holding that nothing in the statutory language of § 1226(c) limits "the length of detention" authorized by the statute).

B. Mandatory Detention is Subject to Constitutional Safeguards

53. "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 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.

54. Detention pursuant to immigration proceedings—which are civil, not criminal—is constitutionally permissible only in "certain special and 'narrow' nonpunitive circumstances.'" *Id.* (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.* (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 purpose constitutes a significant deprivation of liberty that requires due process protection.").

55. 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. *Zadvydas*, 533 U.S. 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.[3] In Mr. K's case, his detention—over 16 months as of today, without a foreseeable

[3] 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*, 583 U.S. at 343 (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

end date—will prospectively exceed the time periods held to be presumptively permissible as he litigates his appeal. *Cf. id.*

56. In *Black v. Decker*, the Second Circuit clarified that the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), guides determinations of whether prolonged mandatory immigration detention remains constitutionally sound. *See* 103 F.4th 133, 150-51 (2d Cir. 2024), *reh'g en banc denied*, 156 F.4th 171 (2d Cir. 2025).

57. 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.

58. First, the Second Circuit explained that the interest that mandatorily 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.

59. 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

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did… thousands of people here are held for considerably longer than six months without an opportunity to seek bail.").

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.*

60. 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.

61. 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 id.* at 154.

62. 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 Beltran Marroquin v. Genalo*, No. 24-cv-6376 (MMG), 2025 WL 3241161, at *3-*5 (S.D.N.Y. Nov. 20, 2025); *G.F.F. v. Francis*, No. 25-cv-7368 (JGK), 2025 WL 3141735, at *6 (S.D.N.Y. Nov. 10, 2025); *M.P.L. v. Arteta*, No. 25-cv-5307 (VSB), 2025 WL 2938993, at *6 (S.D.N.Y. Oct. 16, 2025).

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

63. ICE is detaining Mr. K without access to a bond hearing under the mandatory detention provision of § 1225, so *Black v. Decker* governs his prolonged mandatory detention due process claim. While *Black* addressed § 1226(c)-detention specifically, its reasoning applies with equal force to all mandatory detention, including that under § 1225(b)(1). *See Al-Thuraya v. Warden*, No. 25-cv-2582 (AS), 2025 WL 2858422, at *6 (S.D.N.Y. Oct. 9, 2025) (holding that "the due-process framework recognized by the Second Circuit in *Black* applies to" a petitioner detained under § 1225(b)(1)). Petitioner does not concede his ineligibility under the INA for bond, but he is entitled to a constitutionally adequate bond hearing given his prolonged detention. Under the *Mathews* factors as used in *Black*, the Respondents' ongoing detention of Petitioner without a bond hearing violates due process.

Petitioner's private interests

64. Petitioner's ongoing detention in a correctional facility 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-8755 (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 16 months confined in a jail setting analogous

to criminal incarceration. 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.

65. Moreover, his detention deprives him of private interests beyond his liberty. Petitioner cannot access the medical and mental healthcare he needs while in detention. Also, while detained, he is unable to work to support himself. Petitioner's detention of over 16 months without a constitutionally adequate bond hearing has already had the effect of depriving him of his home, an income, and access to his regular healthcare.

Risk of erroneous deprivation

66. 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.* The same reasoning applies to mandatory detention under § 1225(b)(1).

67. Petitioner's present confinement directly stems from the inadequacy of protective procedures against erroneous deprivation of his liberty interest. Mr. K is being held under § 1225(b)(1) based solely on the fact that ICE argues that he was initially subject to expedited removal when he first entered the country. The use of mandatory detention to deny jurisdiction for bond amounts to an erroneous deprivation of Mr. K's liberty interest.

The government's interest

68. Third, as in *Black*, the competing government interest in preventing Petitioner from receiving a bond hearing is minimal. DHS's basis for subjecting Petitioner to mandatory

detention—his having been previously placed in expedited removal proceedings—is not an indicator of flight risk or dangerousness. The government's interest in preventing dangerous absconders from leaving detention is therefore not furthered by Mr. K's exclusion from bond.

69. This is underscored by the numerous factors showing Mr. K's is neither a danger nor a flight risk. Mr. K has one criminal conviction from Uzbekistan, when he was arrested, tortured, and incarcerated after being present when a friend of his allegedly sold a small amount of marijuana. Mr. K has been arrested twice in the United States. The charges stemming from one arrest were fully dismissed, and his other arrest resulted in a non-criminal disposition. He thus has no convictions in the United States and has never been charged with a crime of violence anywhere in the world. Moreover, there is no evidence to suggest that Mr. K is a flight risk.

70. The government's interest is not served in keeping a noncitizen who is in removal proceedings, like Mr. K, detained in a carceral setting without a bond hearing at the expense of taxpayers, as 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 Mr. K'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.

D. The Rehabilitation Act of 1974's Prohibition of Discrimination Against People With Disabilities Applies to Immigration Detention

71. Section 504 of the Rehabilitation Act of 1974 provides that "[n]o . . . qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination . . . under any program or activity conducted by any Executive agency," 29 U.S.C. § 794(a), including DHS and the Executive Office for Immigration Review (EOIR), *see* 6 C.F.R. § 15.30

(regulations pertaining to DHS); 28 C.F.R. § 39.130 (regulations pertaining to EOIR). "A public entity discriminates against a qualified individual with a disability when it fails to provide 'meaningful access' to its benefits, programs, or services." *Disabled in Action v. Bd. of Elections in City of N.Y.*, 752 F.3d 189, 197 (2d Cir. 2014) (quoting *McElwee v. County of Orange*, 700 F.3d 635, 640 (2d Cir. 2012)). "To assure meaningful access, reasonable accommodations" may be necessary. *Id.* (internal quotation marks omitted).

72. Section 504 is violated if the following factors are met: "(1) [the individual] is a qualified individual with a disability; (2) the defendant is subject to one of the Acts; and (3) he was denied the opportunity to participate in or benefit from the defendant's services, programs, or activities, or was otherwise discriminated against by the defendant because of his disability." *Id.* at 196-97 (quoting *McElwee*, 700 F.3d at 640) (footnote omitted). Each factor is met here.

73. First, Petitioner is a person with a disability. He has been most recently diagnosed with Unspecified Depressive Disorder, Unspecified Trauma and Stressor-Related Disorder, and Unspecified Opioid-Related Disorder.

74. Second, DHS and EOIR are subject to the Act. *See* 6 C.F.R. § 15.30 (regulations pertaining to DHS); 28 C.F.R. § 39.130 (regulations pertaining to EOIR).

75. Third, Petitioner's continued confinement is exacerbating Petitioner's disabilities and preventing him from accessing the immigration benefits he seeks. Petitioner's mental health needs cannot be met in detention. If Petitioner continues to be detained untreated, he will suffer irreparable harm. Additionally, without access to treatment at liberty, he cannot adequately prepare for his immigration court proceedings with his counsel and participating in his removal proceedings.

76. Immediate release from detention is a necessary reasonable accommodation to ensure that Petitioner can meaningfully participate in his immigration proceedings.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Immigration and Nationality Act and the Administrative Procedure Act

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

78. Respondents are detaining Petitioner without a bond hearing under § 1225(b)(1) pursuant to *Matter of M-S-*. *See* Exhibit D, IJ Written Bond Decision.

79. Section 1225(b)(1) provides that noncitizens subject to expedited removal must be mandatorily detained. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Noncitizens detained under § 1225 may be released by DHS upon the grant of humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). In *Matter of M-S-*, the Attorney General held that noncitizens "who are originally placed in expedited proceedings and then transferred to full proceedings" are ineligible for bond. 27 I&N Dec. at 515.

80. Section 1225(b)(1) and *Matter of M-S-* do not apply to Petitioner. Mr. K was not "transferred" to full removal proceedings. DHS exercised its discretion to remove him from expedited removal proceedings entirely and issue an NTA pursuant to regular removal proceedings under 8 U.S.C. § 1229a. The NTA does not indicate that it was issued after an order under § 1225(b)(1) was vacated or pursuant to a credible fear finding.

81. Additionally, Respondents have consistently treated Mr. K as subject to 8 U.S.C. § 1226. When Mr. K was released from detention in 2022, DHS issued an Order of Release on Recognizance that was made "in accordance with section 236 of the Immigration and Nationality Act," *i.e.*, 8 U.S.C. § 1226. If Mr. K had been detained under § 1225, he would have been released

on humanitarian parole under § 1182(d)(5). Additionally, when Mr. K was arrested and detained in 2024, the arrest warrant was issued under § 1226.

82. Because Mr. K cannot be detained under § 1225(b)(1), he must be detained under § 1226(a)'s discretionary detention authority. Section § 1226(a) requires DHS to make an individualized assessment about dangerousness and flight risk before deciding whether to detain a noncitizen. *See Lopez Benitez v. Francis*, No. 25-cv-5937 (DEH), 2025 WL 2371588, at *10 (S.D.N.Y. Aug. 13, 2025).

83. Because Respondents did not make an individualized determination before detaining him under § 1226(a), Mr. K's detention violates the Immigration and Nationality Act.

84. Mr. K's detention also violates the Administrative Procedure Act because his detention by Respondents is "not in accordance with law," "in excess of statutory . . . authority," and "without observance of procedure required by law." 5 U.S.C. § 706(2).

85. Because Mr. K's detention has been unlawful from the start, the appropriate remedy is release. *See Huamani v. Francis*, No 25-cv-8110 (LJL), 2025 WL 3079014, at *9 (S.D.N.Y. Nov. 4, 2025).

SECOND CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment (Procedural Due Process) – Prolonged Detention Without a Bond Hearing

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

87. Petitioner's prolonged incarceration without a constitutionally adequate bond hearing—which has lasted over 16 months already and is certain to extend much longer—violates the Due Process Clause. *See Black*, 103 F.4th at 151.

88. 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.

THIRD CAUSE OF ACTION
Violation of the Rehabilitation Act of 1974

89. Petitioner repeats and realleges the foregoing allegations as if fully set forth herein.

90. The Rehabilitation Act defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1). This definition includes chronic illness, as well as physical, intellectual, developmental, psychiatric, visual, and auditory disabilities. Margo Schlanger et al., *Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act*, 17 Harv. Law & Pol. Rev. 1, 237–48 (2022).

91. Under Section 504, "[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity . . . conducted by any Executive agency." 29 U.S.C. § 794. ICE adopted binding regulations to ensure that Section 504 is implemented within the agency. 6 C.F.R. § 15.30, et seq.

92. Section 504 forbids not only facial discrimination against individuals with disabilities, but also requires that executive agencies and departments, such as DHS, alter policies and practices to prevent discrimination on the basis of disability.

93. The terms "benefit, programs, and services" are construed broadly. *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) ("Modern prisons provide [people who are incarcerated] with many recreational 'activities,' medical 'services,' and educational and vocational 'programs,' all of which at least theoretically 'benefit'" the people imprisoned); *see also Tcherepnin v. Knight*,

389 U.S. 332, 336 (1967) (recognizing the "familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes").

94. In *Choate*, the Supreme Court created the "meaningful access" standard: that "otherwise qualified" people with disabilities must be granted reasonable modifications to ensure they are "provided with meaningful access" to the program at issue. *Alexander v. Choate*, 469 U.S. 287, 300-02 n. 21 (1985). Namely, under Section 504 covered entities must afford persons with disabilities "equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement." *Id.* at 305 (citing 45 C.F.R. § 84.4(b)(2)). Meaningful access means equal access.

58. Mr. K is unquestionably a "qualified individual with a disability," because his substantial mental health conditions "substantially limit" his "major life activities." *See* 42 U.S.C. § 12102 (1)-(2).

95. Mr. K's continued detention by Respondents without any consideration of his mental health disability or reasonable accommodation violates the Rehab Act.

96. Release is the only reasonable accommodation to ensure that Mr. K can meaningfully access his immigration proceedings.

FOURTH CAUSE OF ACTION
Release Pending Adjudication; 28 U.S.C. § 2241

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

98. "[F]ederal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in the criminal habeas cases." *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001); *see, e.g.*, *Salgado v. Francis*, No. 25-CV-6524 (VEC), 2025 WL 2806757 (S.D.N.Y. Oct. 1, 2025).

99. In assessing whether to release a petitioner during the pendency of their habeas petition, courts consider whether the petition raises "substantial claims" and whether "extraordinary circumstances exist" that make the "grant of bail necessary to make the [habeas] remedy effective." *Mapp*, 241 F.3d at 230.

100. Mr. K has raised substantial claims, namely that his due process rights and rights under the Immigration and Nationality Act., the Administrative Procedure Act, and Section 504 of the Rehabilitation Act of 1974, are being violated by his prolonged detention by Respondents without a bond hearing. Additionally, extraordinary circumstances are present in this case. Petitioner has significant mental health issues that cannot be treated in detention. Without proper healthcare, his mental health has deteriorated rapidly, including his suffering from hallucinations and inability to sleep. *Salgado*, 2025 WL 2806757 at *4 ("When it is reasonable to conclude that detention would worsen a petitioner's health, extraordinary circumstances are present.").

101. Finally, release is necessary to make the habeas remedy effective. If Petitioner remains in detention, his mental health will continue to deteriorate such that any future remedy will not be able to remedy the harm he suffered due to his detention. *See id.* (finding health issues, prolonged detention absent a bond hearing, and lack of an individualized assessment of dangerousness and flight risk when detained render release necessary to make habeas remedy effective).

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from removing Petitioner from the United States and 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 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, and at which necessary procedural safeguards are put in place as reasonable accommodations to ensure that Mr. K can meaningfully participate in the proceeding;

4. Enjoin Respondents from invoking an automatic stay under 8 C.F.R. § 1003.19(i)(2) in the event that an immigration judge grants Petitioner bond after a constitutionally adequate bond hearing, *see Rueda Torres v. Francis*, No. 25-cv-8408 (DEH), 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2023);

5. Release Petitioner pending the adjudication of this petition under *Mapp v. Reno*;

6. Declare that Petitioner's detention violates the Immigration and Nationality and the Administrative Procedure Act;

7. Declare that Petitioner's prolonged mandatory detention without a bond hearing violates the Fifth Amendment;

8. Declare that Petitioner's detention violates the Rehabilitation Act of 1974;

9. 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

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

Dated: November 26, 2025
Brooklyn, New York

Respectfully Submitted,

/s/ Anna K. Jessurun

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