UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.K.,
Petitioner,

v.

PAUL ARTETA, *et al.*,

Respondents.

Civil Action No. 25-9918 (LAK)

PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

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PRELIMINARY STATEMENT

The Government has detained Petitioner M.K. ("Petitioner" or "Mr. K") in immigration custody for over 17 months without a bond hearing. During his detention, Mr. K's mental and physical health have significantly deteriorated. He has a severe dental problem that might require the removal of all his teeth, and as recently as this past November has reported hearing voices, having hallucinations, and suffering from insomnia. *See* Ex. A, Decl. of John Victor Sena Alencar, LMSW ¶¶ 13-14, 19, 23-27 ("Alencar Decl."). Mr. K's detention is unlawful because (i) he is being detained under a statute—8 U.S.C. § 1225(b)(1)(B)(ii)—that does not apply to him and despite documentation repeatedly treating him as subject to 8 U.S.C. § 1226(a); (ii) his detention is unconstitutionally prolonged; and (iii) his detention violates the Rehabilitation Act of 1974.

This Court should grant his Petition for Writ of Habeas Corpus ("Petition"), ECF No. 1, and order his immediate release or, in the alternative, order 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.[1] Additionally, this Court should release Mr. K during the pendency of these proceedings under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), *see* Pet. ¶¶ 97-101, a claim that the Government failed to address in its Opposition. *See* Resps.' MOL in Opp. to Pet. for Writ of Habeas Corpus ("Opp."), ECF No. 15.

[1] The Government submitted that a hearing is not necessary given the purely legal issues in this case. *See* Opp. 9 n.4. Petitioner agrees that the Court can grant the Petition on the purely legal issues. However, Petitioner remains ready to appear for a hearing on January 7, 2026 should the Court decide a hearing is necessary or helpful.

ARGUMENT

I. Petitioner is detained under 8 U.S.C. § 1226(a), not § 1225(b)(1)(B)(ii)

A. As a matter of law, Mr. K cannot be detained under § 1225(b)(1)(B)(ii) because he is not "arriving in the United States"

The Government cannot detain Mr. K under § 1225(b)(1)(B)(ii) as a matter of law because Mr. K does not meet the statutory requirements of that section: when he was detained by ICE in 2024, he was not "arriving in the United States." As relevant here, § 1225(b)(1) authorizes the expedited removal of noncitizens who are "arriving in the United States" and inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or (a)(7).[2] *See* 8 U.S.C. § 1225(b)(1)(A)(i); *see also Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *6 (S.D.N.Y. Nov. 26, 2025). Noncitizens in expedited removal are subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Additionally, if a noncitizen in expedited removal proceedings establishes a credible fear of persecution, the noncitizen "shall be detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). Therefore, a noncitizen can only be detained under § 1225(b)(1)(B)(ii) if the noncitizen falls under § 1225(b)(1)(A)(i), *i.e.*, is eligible for expedited removal, and has a credible fear of persecution.

Petitioner cannot be detained under § 1225(b)(1)(B)(ii) for the simple reason that he was not, when detained in 2024, a noncitizen "arriving in the United States" subject to expedited removal under § 1225(b)(1)(A)(i). "Put simply, someone arriving in the United States is someone who has reached the border or a port of entry." *Qasemi v. Francis*, No. 25-cv-10029 (LJL), 2025 WL 3654098, at *6 (S.D.N.Y. Dec. 17, 2025); *see also Rodriguez-Acurio v. Almodovar*, No. 25-cv-6065 (NJC), 2025 WL 3314420, at *20 (E.D.N.Y. Nov. 28, 2025) ("an 'arriving alien' is one

[2] The Government does not argue that Petitioner was subject to expedited removal due to being a noncitizen designated under 8 U.S.C. § 1225(b)(1)(A)(iii).

who is in the process of reaching the United States"). When Mr. K was arrested and detained in 2024, he was not "arriving" in the United States; rather, he had been continuously residing in the United States for over two years after having been released on his own recognizance. Therefore, Mr. K "can no longer be classified as a noncitizen 'who is arriving in the United States' even though [he] was initially detained as such in" 2022. *Rodriguez-Acurio*, 2025 WL 3314420, at *21.

This interpretation of the statute is consistent with a neighboring detention provision, § 1225(b)(2). *See Qasemi*, 2025 WL 3654098, at *7. As courts have recently explained when analyzing detention under § 1225(b)(2)(A), "DHS has long understood the term 'applicant seeking admission' to be synonymous with 'arriving alien.'" *Id.* (citing *Tumba v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *4 (S.D.N.Y. Nov. 4, 2024)); *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025). And as this Court has held, "seeking admission" limits § 1225(b)(2)'s reach "to those noncitizens actively seeking 'lawful entry . . . into the United States after inspection and authorization by an immigration officer.'" *Barco Mercado*, 2025 WL 3295903, at *5 (quoting 8 U.S.C. § 1101(a)(13)(A)). Accordingly, in *Barco Mercado*, "[b]ecause Mr. Barco already had arrived in the United States and had been living here for three years, he was not an 'arriving alien[ ]' when he was redetained." *Id.* at *6. The same is true here: because Mr. K arrived in the United States in 2022 and has been living here for over two years, he is not an "arriving alien."

The Government elides § 1225(b)(1)(A)(i)'s "arriving in the United States" requirement. Instead, the Government asserts that Mr. K falls within the statue because he is an "applicant for admission." Opp. 11. But as this Court has already explained, being an "applicant for admission" is different from "seeking admission" or being an "arriving alien." *See Barco Mercado*, 2025 WL 3295903, at *5-6 (rejecting the government's argument that "applicant for admission" is

synonymous with "seeking admission"). The Government puts forward no explanation that Mr. K was "arriving in the United States" when he was detained in 2024. There is none.

The Government also relies on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), for its position that a noncitizen in asylum proceedings after expedited removal are thereafter always subject to mandatory detention even if DHS previously released them. Opp. 12. "The Government reads far too much from" *Jennings*. *Quinteros Moran v. Joyce*, No. 25-cv-9645 (GBD), 2025 WL 3632895, at *3 (S.D.N.Y. Dec. 15, 2025). "*Jennings* says nothing about whether the Government may release a noncitizen on bond pursuant to § 1226(a) and then, years later, without a demonstrated change of circumstances, re-detain that same individual under § 1225(b)(1)(B)(ii)." *Id.* In short, as a matter of law, Mr. K cannot be detained under § 1225(b)(1)(B)(ii) and therefore is subject to detention under § 1226(a).[3]

B. The Government consistently treated Mr. K as subject to § 1226(a) when he was released on recognizance in 2022 and arrested and detained in 2024

Notably, the "immigration authorities' previous actions in [this] case are inconsistent with the argument respondents now make as to" § 1225(b)(1)(B)(ii). *Barco Mercado*, 2025 WL 3295903, at *10. When the Department of Homeland Security ("DHS") released Mr. K on his own recognizance, he was released "[i]n accordance with section 236 of the Immigration and Nationality Act," *i.e.*, 8 U.S.C. § 1226. *See* ECF No. 18-4. When ICE arrested Mr. K in 2024, Immigration and Customs Enforcement ("ICE") also cited § 1226 "as the detaining authority when it issued [him] a warrant." *Barco Mercado*, 2025 WL 3295903, at *10; *see* ECF No. 18-7; *Quinteros Moran*, 2025 WL 3632895, at *3 (noting that the "the Government has exclusively invoked § 1226(a) in its dealings with" the petitioner, including when it released him on bond and

[3] The Government's erroneous detention of Mr. K under § 1225(b)(1)(B)(ii) also violates the Administrative Procedure Act. *See* Pet. ¶ 84.

when it arrested him years later). The Notice to Appear ("NTA") identifies Mr. K as "an alien present in the United States who has not been admitted or paroled," rather than an "arriving alien." *See* ECF No. 18-8, at 2. The NTA also does not indicate that it was issued after a § 1225(b)(1) order, *i.e.*, expedited removal order, was vacated. *See id.* Even more, the Form I-213 that was generated shortly after Mr. K's 2024 arrest notes that he was given a "Velesaca Advisal Form."[4] *See* ECF No. 18-6, at 3. The Advisal Form issued to Mr. K is titled "Important Information About Section 236(a) Initial Detention Decisions." Ex. B.

Consistent with these documents, in 2024, DHS itself exercised discretion to remove Mr. K from the expedited removal process.[5] *See* Pet. ¶ 27; Ex. C. Therefore, it makes sense that the NTA in immigration court was *not* a referral to immigration court due to reversal of the negative credible fear finding under § 1225(b)(1). *See* ECF No. 18-8, at 2. Simply put, DHS took Mr. K out of the expedited removal framework altogether when it initiated removal proceedings against him in 2024, so he cannot be subject to § 1225(b)(1)(B)(ii) detention.

The administrative record thus makes clear that from his release on his own recognizance in 2022 to his arrest and detention in 2024, Mr. K was treated as subject to § 1226(a). The Government asserts that Mr. K must be subject to § 1225(b)(1)(B)(ii), however, because after he appealed the negative credible fear finding, an immigration judge vacated the expedited removal

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[4] This refers to *Velesaca v. Decker*, a class action brought on behalf of individuals detained under § 1226(a), who argued the New York Field Office failed to conduct individualized custody determinations as required by statute and regulation. 458 F. Supp. 3d 224, 227 (S.D.N.Y. 2020). As a result of that litigation, the New York Field Office must provide a form describing the right to individualized review and a bond hearing to all individuals it detains under 1226(a). *See Velesaca v. Decker* No. 20-cv-1803 (AKH) (S.D.N.Y.), ECF No. 175-2 (Settlement Agreement, Ex. B (Advisal Notice)).

[5] *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) ("DHS has discretion to put aliens in section 240 removal proceedings even though they may also be subject to expedited removal . . . .").

order and placed him in full removal proceedings. *See* Opp. 13. But this ignores the fact that *before* Mr. K appeared before an immigration judge on his appeal of the negative credible fear finding, DHS released Mr. K on his own recognizance under § 1226(a), *see* ECF No. 18-4, and thereafter treated him as subject to § 1226(a). It also ignores that DHS elected in its discretion to remove Mr. K from the expedited removal process in 2024. *See* Pet. ¶ 27; Ex. C. Essentially, the Government argues that it is "empower[ed]. . . to re-detain Petitioner at its leisure, regardless of how it has previously treated Petitioner."[6] *Quinteros Moran*, 2025 WL 3632895, at *3. This Court should not countenance the Government's "novel legal theory." *Id.*

II. Petitioner's prolonged detention violates his procedural due process rights

Irrespective of the statute governing Petitioner's detention, Petitioner's prolonged detention violates the procedural due process protections of the Fifth Amendment. The Due Process Clause protects noncitizens in discretionary and mandatory detention from prolonged detention during removal proceedings. *See Black v. Decker*, 103 F.4th 133, 150-51 (2d Cir. 2024), *reh'g en banc denied*, 156 F.4th 171 (2d Cir. 2025) (mandatory detention under 8 U.S.C. § 1226(c)); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (discretionary detention under § 1226(a)). The *Mathews v. Eldridge* tripartite framework governs determinations of whether prolonged immigration detention is unconstitutional. *See Black*, 103 F.4th at 145-46; *Velasco Lopez*, 978 F.3d at 851.

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[6] The Government points to the Board of Immigration Appeals' (BIA) decision dismissing Mr. K's bond appeal, *see* ECF No. 18-11, which relied on *Matter of M-S-*, 27 I&N Dec. 509 (AG 2019). *See* Opp. 13-14. Of course, this Court has no obligation to defer to *Matter of M-S-*. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024); *see, e.g.*, *Quinteros Moran*, 2025 WL 3632895, at *3 n.1 (finding that *Matter of M-S-* has "minimal persuasive value"); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326, 2025 WL 2639390, at *6 n.7 (D.N.H. Sept. 8, 2025) (finding *Matter of M-S-* "not persuasive"). In any event, *Matter of M-S-* does not speak to the facts here, where DHS released a noncitizen on his own recognizance under § 1226(a) *before* an immigration judge reviewed the negative credible fear finding and where DHS elected to remove a noncitizen from expedited removal proceedings.

Each factor weighs heavily in favor of Mr. K. Mr. K has been detained for over 17 months without a bond hearing to assess whether he is a danger or a flight risk, *see* Pet. ¶¶ 64-67, and the Government has no interest in the prolonged detention of a noncitizen who is not a danger or a flight risk, *see id.* ¶ 68-70; *Black,* 103 F.4th at 154. Notably, the Government does not contest Petitioner's arguments as to the *Mathews* analysis. *See* Opp. 15-20.

Instead, the Government asserts that because, in its view, Mr. K is detained under § 1225(b), he has no constitutional due process rights beyond the process provided under the statute. *See* Opp. 15. Assuming *arguendo* that Mr. K is subject to § 1225(b), *but see supra* I, the Government is wrong that Mr. K has no due process rights, as many courts in this Circuit have recently concluded. *See, e.g.*, *Al-Thuraya v. Warden*, No. 25-cv-2582 (AS), 2025 WL 2858422, at *6 (S.D.N.Y. Oct. 9, 2025) (applying *Black* to prolonged mandatory detention under § 1225(b)); *Walizada v. Trump*, No. 25-cv-768, 2025 WL 3551972, at *16-17 (D. Vt. Dec. 11, 2025) (same); *see also Savane v. Francis*, No. 25-cv-6666 (GHW), 2025 WL 2774452, at *8 (S.D.N.Y. Sept. 28, 2025) (an applicant for admission has due process rights); *Munoz Materano v. Arteta*, No. 25-cv-6137 (ER), 2025 WL 2630826, at *12 (S.D.N.Y. Sept. 12, 2025) (same); *Rojas v. Almodovar*, No. 25-cv-7189 (LJL), 2025 WL 3034183, at *8 (S.D.N.Y. Oct. 30, 2025) (same).

The Government's reliance on *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), is misplaced. *See* Opp. 15-16. As Judge Subramanian recently explained in rejecting this same argument, "[u]nlike Mezei and Thuraissigiam, [Mr. K] has not been definitively 'denied entry.'" *Al-Thuraya*, 2025 WL 2858422, at *4. Additionally, when he was arrested, Mr. K "was not 'on the threshold,' except in only the most metaphysical way." *Rojas*, 2025 WL 3034183, at *5. Mr. K was released from detention at the border on his own recognizance and at liberty for years before his arrest; "his condition can

hardly be compared to that of Mezei, who remained in detention from his arrival, or to Thuraissigiam, who entered the country without detection for only the briefest moment." *Id.* And critically, Mr. K is not challenging here the denial of his asylum application or the Government's decision to put him in removal proceedings; instead, he is challenging "the legality of his detention." *Al-Thuraya*, 2025 WL 2858422, at *4; *Walizada*, 2025 WL 3551972, at *16.

Because *Mezei* and *Thuraissigiam* are "inapplicable" here, "what's left is the general rule: '[A]ll persons, aliens and citizens alike, are protected by the Due Process Clause.'" *Al-Thuraya*, 2025 WL 2858422, at *4 (quoting *Mathews v. Diaz*, 526 U.S. 67, 78 (1976)). Accordingly, the "Constitution does not permit the Executive to detain a noncitizen for an unreasonably prolonged period under section [1225(b)] without a bond hearing; at some point, additional procedural requirements—like a bond hearing—become necessary." *Walizada*, 2025 WL 3551972, at *17 (quoting *Black*, 103 F.4th at 145). For the reasons explained in the Petition, Mr. K's detention is unconstitutionally prolonged under the *Mathews* factors. *See* Pet. ¶¶ 63-70.

III. Petitioner's detention violates the Rehabilitation Act of 1974

Mr. K's detention violates the Rehabilitation Act of 1974, 29 U.S.C. § 794(a). The Government's sole argument to the contrary is that Mr. K has not been denied meaningful access to his immigration proceedings and that Mr. K has failed to show that his mental health issues "correlate to his current detention whatsoever." Opp. 21. Not so. Due to Mr. K's mental health and competency issues, he cannot access the mental and physical care he needs in detention, which risks the further deterioration of his mental and physical health. *See* Alencar Decl. ¶ 4. Moreover,

[redacted] *See* Pet. ¶ 48; ECF No. 1-2, Psychological Evaluation of Dr. Karen A. Cort, Ph.D., at 4-5; Alencar Decl. ¶¶ 16-18. Additionally, despite receiving procedural safeguards from

the *Matter of M-A-M-* hearing due to his incompetency, the Government failed to comply with those safeguards throughout Mr. K's merits proceedings. *See* Pet. ¶¶ 36-41. The Rehabilitation Act's guarantee that people with disabilities be able to participate in their removal proceedings requires that Mr. K be released from detention as a reasonable accommodation for his disabilities.

IV. The appropriate remedy is release, including interim release under *Mapp v. Reno*

The appropriate remedy is release. In recent cases in which courts have found that a noncitizen's arrest and detention were deficient from the start, courts have ordered release as the remedy. *See, e.g.*, *Rojas*, 2025 WL 3034183, at *9; *Savane*, 2025 WL 2774452, at *10; *Tumba*, 2025 WL 3079014, at *9. Here, Mr. K is being improperly detained under § 1225(b), and the Government has not made any representation that it made an individualized assessment required under § 1226(a) that Mr. K's detention was warranted.[7] In the alternative, Petitioner requests that this Court order 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.

Moreover, this Court should grant immediate release pending adjudication of the habeas petition under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). Mr. K's claims are substantial, as explained above. Mr. K's deteriorating physical and mental health in detention, *see* Alencar Decl. ¶¶ 13-19, 23-27, is an extraordinary circumstance. *Coronel v. Decker*, 449 F. Supp. 3d 274, 289

[7] The Government discusses the 2024 Form I-213's references to Mr. K's recent arrests, but it does not state that it concluded from those arrests that Mr. K was a danger or a flight risk that could not be mitigated by bond. *See* Opp. 7. Other than the arrest and conviction in Uzbekistan for which he was tortured in prison, Mr. K has never been convicted of a crime anywhere in the world. Pet. ¶ 25.

(S.D.N.Y. 2020) ("Severe health issues have been the prototypical but rare case of extraordinary circumstances that justify release pending adjudication of habeas."). [redacted]

Also, release is necessary to make the remedy effective. If he is not released during the pendency of this action and later prevails, the habeas "remedy will be ineffective as it will have failed to prevent [him] from the very unlawful detention to which [he] is objecting." *Vasquez Salgado v. Francis*, No. 25-cv-6524 (VEC), 2025 WL 2806757, at *8 (S.D.N.Y. Oct. 1, 2025). Upon release, Mr. K's social worker will ensure that he is connected with mental health treatment [redacted] and work with him to find housing, enroll in health insurance, and access emergency dental care. *See* Alencar Decl. ¶¶ 29-32. Given the risk that Mr. K's health "will decompensate if [he] is held in custody as planned by the Government, release is necessary to make the habeas remedy effective." *Vasquez Salgado*, 2025 WL 2806757, at *8.

CONCLUSION

For the foregoing reasons, Mr. K respectfully requests that the Court grant his petition for a writ of habeas corpus and order Respondents to immediately release him or, in the alternative, order 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. Also, Mr. K respectfully requests that this Court release him during the pendency of these proceedings under *Mapp*.

Dated: December 22, 2025
Brooklyn, New York

Respectfully submitted,

/s/ Anna K. Jessurun
Lucas S. Marquez, Esq.
Anna K. Jessurun, Esq.
Brooklyn Defender Services
177 Livingston St, 7th Floor
Brooklyn, NY 11201
Tel: 718-254-0700
ajessurun@bds.org

Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(c), I certify that this brief complies with this Court's individual practices because this brief does not exceed 10 pages.

Dated: December 22, 2025
Brooklyn, New York

/s/ Anna K. Jessurun
Anna K. Jessurun

Counsel for Petitioner