UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MEHDI ESMAEILI GOLLOO

Petitioner,

v.

Dkt. No.: 26-cv-401-MAD

FREDERICK J. AKSHAR II, in his official capacity as Sheriff of Broome County, New York; PHILIP L. RHONEY, in his official capacity as Acting Field Office Director, Buffalo ICE Field Office; MARKWAYNE MULLIN,[1] in his official capacity as Secretary of Homeland Security; TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; and TODD BLANCHE,[2] in his official capacity as Acting Attorney General of the United States,

Respondents.

PETITIONER'S REPLY MEMORANDUM OF LAW IN SUPPORT OF THE PETITION

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[1] Kristi Noem was the Secretary of DHS when this Petition was filed, but she has since been replaced by Markwayne Mullin. Accordingly, pursuant to Fed. R. Civ. P. 25(d), Mr. Mullin is automatically substituted as a party.

[2] Pamela Bondi was the Attorney General when this Petition was filed, but she has since been replaced by Todd Blanche, as Acting Attorney General. Accordingly, pursuant to Fed. R. Civ. P. 25(d), Mr. Blanche is automatically substituted as a party.

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PRELIMINARY STATEMENT

Mr. Golloo filed this Petition for a Writ of Habeas Corpus on March 16, 2026. ECF No. 1. The Petition seeks release from Department of Homeland Security ("DHS") custody or, in the alternative, a bond hearing. *Id.* at 9-10. Respondents filed their opposition to the Petition on March 30, 2026. ECF No. 6. This memorandum of law is submitted in reply to Respondents' opposition and in further support of the Petition.

ARGUMENT

I. PETITIONER'S UNREASONABLY PROLONGED DETENTION GIVES RISE TO AT LEAST *SOME* DUE PROCESS RIGHTS AND THIS COURT SHOULD EXTEND THE REASONING OF *BLACK v. DECKER* TO NONCITIZENS DETAINED PURSUANT TO 8 USC §1226 (b)(1).

> No one can claim, nor since the time of slavery has anyone to my knowledge successfully claimed, that persons held within the United States are totally without constitutional protection. Whatever the fiction, would the Constitution leave the Government free to starve, beat, or lash those held within our boundaries? If not, then, whatever the fiction, how can the Constitution authorize the Government to imprison arbitrarily those who, whatever we might pretend, are in reality right here in the United States? The answer is that the Constitution does not authorize arbitrary detention. And the reason that is so is simple: Freedom from arbitrary detention is as ancient and important a right as any found within the Constitution's boundaries.

Jennings v. Rodriguez, 583 U.S. 281, 332 (2018) (Breyer, J., dissenting)

As Respondents correctly point out, Petitioner concedes that he is being detained pursuant 8 U.S.C. § 1225(b)(1) and that, as a result, he has no statutory right to a bond hearing[3]. But what

[3] In a footnote (ECF No. 6, fn. 4), Respondent suggests that Petitioner has an administrative remedy that he has not availed himself of, i.e., discretionary parole by the Secretary of Homeland Security pursuant to 8 U.S.C. § 1182(d)(5)(A). However, as pointed out in the Petition, Petitioner is not required to exhaust administrative remedies when seeking judicial review of his prolonged detention based on constitutional due process grounds. *See* ECF No. 1 at ¶18. Moreover, given that DHS is the very same agency that is detaining Petitioner, and opposing this Petition, this remedy provides no genuine opportunity for relief.

Petitioner does not concede is that he has no constitutional due process rights whatsoever, irrespective of how prolonged and unreasonable Respondents' detention of him becomes.

Petitioner is asking that this Court extend the reasoning of the Second Circuit in *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024) to noncitizens detained pursuant to § 1225(b)(1). In *Black*, the court ruled that due process dictated that noncitizens detained pursuant to 8 U.S.C. § 1226(c), another provision of the INA that provides no statutory mechanism for a bond hearing, are entitled to a bond hearing when their detention becomes unreasonably prolonged. *Id.* Nowhere in their opposing brief do Respondents explain why the reasoning in *Black v. Decker* should not apply to § 1225(b)(1) detainees subject to unreasonably prolonged detention or what the government's compelling interest is in detaining noncitizens for unreasonably prolonged periods of time while their removal proceedings move through the procedures provided by statute and regulations. Instead, Respondents' opposition consists primarily of efforts to navigate around the clear meaning and of this Court's recent decision in *Martins v. Akshar,* Case No. 9:26-cv-00095-MAD, Dkt. # 16 (Feb. 3, 2026), and to hamstring the Court with the Supreme Court's decision in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). Both efforts are discussed in more detail below.

A. *Thuraissigiam* Does Not Preclude the Court from Recognizing Petitioner's Due Process Challenge to his Prolonged Detention.

Respondents lean heavily on the Supreme Court's decision in *Thuraissigiam*, 591 U.S. at 103, as support for their argument that Petitioner is not entitled to a bond hearing based on his unreasonably prolonged detention. Respondents argue that, under *Thuraissigiam,* the "Petitioner's statutory and due process rights are coterminous." ECF No. 6, at 12. In other words, Respondents' position is that the boundaries or extent of all Petitioners due process rights are no broader than that process provided by the INA. This is simply not true. As the Second Circuit observed in *Black*:

> The Supreme Court long ago held that the *Fifth Amendment* entitles noncitizens to due process in removal proceedings. *Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993)*. The Constitution establishes due process rights for "all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001)*. Accordingly, and as the Supreme Court recognized in *Zadvydas*, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id. at 690*.

103 F.4th 143.

In addition, *Thuraissigiam*, 591 U.S. at 103, is distinguishable from this case in two important ways and is, therefore, not controlling. First, unlike the Petitioner here, the noncitizen in *Thuraissigiam* had been definitively denied entry into the United States. He was ineligible for asylum or other removal relief, that determination had been affirmed by an immigration judge on *de novo* review, and the noncitizen had been returned to DHS for removal. Here, Petitioner has not been definitively denied entry into the United States. He was initially found by an immigration officer to have a credible fear of persecution. And although the agency denied his asylum application, he has appealed that determination to the BIA and, if he gets no relief there, he may petition the Second Circuit for review.

Second, the noncitizen in *Thuraissigiam* was not seeking the mere ability to challenge his arbitrary detention; rather, he was seeking "vacatur of his 'removal order' and 'an order directing [the Department] to provide him with a new …opportunity to apply for asylum and other relief from removal.'" *Id.* at 117. This, the Court found, was relief that fell "outside the scope of the common-law habeas writ." *Id.* More importantly, the Court found that granting the relief sought would be a usurpation of the power of "the political department of the Government" to legally admit or exclude noncitizens and to set the rules for doing so. *Id.* at 139. Finally, *Thuraissigiam* does not address whether, in the post *Black v. Decker* era, a noncitizen detained pursuant 8 U.S.C. § 1225(b)(1) has any procedural due process rights when their detention becomes unreasonably

prolonged. The majority of other federal district courts that have addressed this issue have concluded that these noncitizens are entitled to a bond hearing. *See Al-Thuraya v. Warden, Orange Cty. Corr. Facility,* 809 F. Supp. 3d 135, 143-44 (S.D.N.Y. 2025) (collecting cases).

B. This Court's Reasoning in Martins Applies to the Petitioner.

This Court's recent Decision and Order on a petition for habeas corpus in *Martins v. Akshar,* Case No. 9:26-cv-00095-MAD, Dkt. No. 16 (Feb. 3, 2026), is almost directly on point and the Court's reason there applies equally to this case. In *Martins*, like here, the Petitioner raised a due process challenge to his prolonged DHS detention. Both the Petitioner here and in *Martins* had entered the United States lacking valid entry documents, were processed for expedited removal but were put in regular removal proceedings based on positive credible fear interviews and subsequent asylum applications. Both the Petitioner here and in *Martins* had their asylum applications denied by the immigration court and were appealing the determination to the BIA. The only factual difference between the Petitioner here and in *Martins* is that the Petitioner in *Martins* was paroled into the United States for a time before being re-detained, whereas the Petitioner here has been detained since he encountered CBP near the border after entering without inspection.

In *Martins*, the Petitioner argued that because he had been paroled into the United States and then re-detained that he was being detained pursuant to 8 U.S.C. §1226 (a) and was, therefore, not subject to mandatory detention under §1225(b).[4] Addressing the issue, the Court reasoned that it "need not decide whether § 1225(b)(1)(B)(ii) or § 1226 applies, because Petitioner retains certain due process rights. *Id.* at 10. Therefore, an examination of the petition's merits is necessary, and

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[4] There was also discussion in the decision about whether Petitioner was being detained pursuant to §1225(b)(1)(B)(ii) or §1225(b)(2); however, that issue is not pertinent to the issues raised in this case, and Petitioner concedes he is being detained pursuant to §1225(b)(1)(B)(ii)

even if a bond hearing is not statutorily guaranteed, one may still be warranted." *Id.* at 10. Ultimately, the Court concluded that while it acknowledged "Respondents' argument that Petitioner's limited due process rights do not *require* a bond hearing, the Court is satisfied that it may still choose to order one." *Id.* at 11. The Court went on to apply the due process framework set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and ruled that a bond hearing where the Government bore the burden of justifying continued detention was warranted. That same result should apply here as DHS has detained Petitioner for considerably longer than Martins.

CONCLUSION

Petitioner has now been detained by Respondents for over nineteen months. Accordingly, Petitioner respectfully requests the Court grant his Petition and order that Respondents provide him with a bond hearing.

DATED: Batavia, New York
April 6, 2026

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