

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

L.G.M.,

Petitioner,

v.

ANTHONY J. LAROCCO,

**in his official capacity as Sheriff of the
Nassau County Correctional Center;**

WILLIAM P. JOYCE,

**in his official capacity as Acting Field
Office Director, New York City Field
Office, U.S. Immigration & Customs
Enforcement;**

KRISTI NOEM,

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

PAMELA BONDI,

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

Respondents.

Civil Action No. 2:25-cv-02631

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

PRELIMINARY STATEMENT

1. Petitioner, L.G.M.,¹ is detained in the custody of the Department of Homeland Security, Immigration and Customs Enforcement (“ICE”). He has been in ICE detention since on or about August 16, 2024. Upon all recent information and belief, L.G.M. is currently held by ICE at the Nassau County Correctional Center (“Nassau”) in East Meadow, New York.²

¹ Motion to Proceed Under Pseudonym to be filed forthwith.

² Prior to his temporary transfer on May 8, 2025 to Nassau, L.G.M. was held for the entirety of his ICE detention, since August 16, 2024, at the Orange County Jail (“OCJ”) in Goshen, New York. Undersigned counsel understands that Nassau is only a temporary ICE holding facility at

2. L.G.M. fled El Salvador to the United States as a minor in 2016 after suffering persecution and threats on his life. He was granted relief in removal proceedings and protection in the form of deferral of removal under the Convention Against Torture by an Immigration Judge on April 21, 2025. Nonetheless, during the entirety of his nearly nine-month detention, L.G.M. has not had his custody reviewed by an impartial adjudicator. Rather, Respondents are detaining L.G.M. pursuant to the mandatory detention statute, 8 U.S.C. § 1226(c). As a result, L.G.M. has never been provided an individualized review of his immigration detention nor an opportunity for a bond hearing. ICE refuses to release L.G.M. despite the grant of relief from removal and his prolonged detention will continue absent intervention by this Court.
3. L.G.M. has no other remedy at law other than to petition this Court and request that this Court order Respondents to either immediately release him from ICE custody, or, issue an order that provides for L.G.M. to have an individualized bond hearing-either before this Court or another impartial adjudicator-at which the government must bear the burden of proving by clear and convincing evidence that continued civil detention remains justified.
4. In *Black v. Decker*, the Second Circuit recently clarified that the three-factor *Mathews v. Eldridge*, 424 U.S. 319 (1976), test guides determinations of whether immigration detention under 8 U.S.C. § 1226(c) remains constitutionally sound. 103 F.4th 133, 150-51. 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,

this time. Counsel has been informed, in writing, that ICE intends to imminently transfer L.G.M. to Louisiana tomorrow. Therefore, Petitioner seeks the Court to immediately enjoin transfer to preserve the status quo - as requested in Petitioner’s prayer for relief. Undersigned counsel understands that Nassau is currently a temporary holding facility, therefore if L.G.M. cannot remain in his current position in Nassau, an order from this Court should only permit L.G.M. to be transferred back to OCJ until final resolution of this case.

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.

5. As is discussed *infra*, L.G.M. possesses the same liberty interest as *Black* and a bond hearing is required where the government bears the burden of proof by clear and convincing evidence, with considerations of alternatives to detention and ability to pay when determining bond.

PARTIES

6. Petitioner L.G.M. is a 21-year-old citizen of El Salvador. He has resided in the United States since August 9, 2016 at the age of 16. Prior to his ICE detention, L.G.M. lived with his family on Long Island, New York and his absence is greatly felt by his mother, step-father, and sister. Respondents initiated removal proceedings against L.G.M. upon his arrival to the United States as an unaccompanied minor. *See* Exh A, Notice to Appear. L.G.M. applied for, and was granted on October 25, 2019, Special Immigrant Juvenile Status (“SIJS”) and deferred action in conjunction with that status. *See* Exh B, Declaration of Gwyneth Hesser, Esq. (“Hesser Decl.”) ¶ 17. He also filed an application for asylum in or around September 24, 2017. *Id.* His removal proceedings were administratively closed. However, before his SIJS priority date became current and he could apply to adjust status, USCIS revoked the deferred action subsequent to a 2023 conviction, and L.G.M.’s removal proceedings were re-calendared. He was transferred from Nassau County Correctional Center (“Nassau”), where he had completed his sentence, directly to ICE custody at Orange County Jail (“OCJ”) on August 16, 2024, and has remained in ICE custody since that date. *Id.* at 18. Very recently, in or around May 8, 2025, Respondents transferred L.G.M. to Nassau where, upon all information and belief, he remains at the time of this filing. *See supra*, fn. 2.

7. Respondent Anthony J. LaRocco is named in his official capacity as the Sheriff of the Nassau County Correctional Center. In this capacity, he is the physical custodian of L.G.M. at the direction of the government Respondents. Respondent LaRocco's office is located at 100 Carman Avenue, East Meadow, NY 11554.
8. Respondent William P. Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations. As such, he is the legal custodian of Petitioner. Respondent Joyce's office is located at 26 Federal Plaza, New York, NY 10278.
9. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the Eastern District of New York, and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is the legal custodian of Petitioner. Respondent Noem's office is located in the United States Department of Homeland Security, Washington, DC 20528.
10. Respondent Pamela 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 ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Eastern District of New York and is legally responsible for administering Petitioner's removal and bond proceedings and the standards used in those proceedings. As such, she is the 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.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. §§ 1331 and 2241, and Article I, § 9, cl. 2 of the United States Constitution and the All Writs Act, 28 U.S.C. § 1651.
12. Additionally, the Court has jurisdiction to grant any declaratory and 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 Petitioner 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; *see also Fay v. Noia*, 372 U.S. 391, 430-31 (1963).
13. Venue is proper in the U.S. District Court for the Eastern District of New York under 28 U.S.C. § 1391 because L.G.M. is currently detained within this District and a substantial part of the events giving rise to the claims in this action took place in this District.

EXHAUSTION

14. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of their detention. *See 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 Judge ("IJ") and the Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *Khan v. United States A.G.*, 448 F.3d 226, 228 (3d Cir. 2006); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

STATEMENT OF FACTS

15. Petitioner L.G.M. is a 21-year-old citizen of El Salvador who has lived in the United States since he was 16 years old. *See* Exh A, NTA. He came to the United States on or about August 9, 2016 and was placed into removal proceedings at the border in Weslaco, Texas on that date. *Id.*
16. L.G.M.'s mother was abandoned by L.G.M.'s father during her pregnancy, and L.G.M. has never met his father. Due to his mother's need to provide for him, she relocated for work and L.G.M. was raised primarily by his maternal grandparents.
17. Early on, L.G.M. began to show developmental delays in walking and speech and had difficulties in school. L.G.M. has been diagnosed with an intellectual disability and multiple mental health diagnoses. *See* Exh B, Hesser Decl. ¶¶ 7, 16. In removal proceedings, the Immigration Judge found L.G.M. not competent under the applicable immigration definitions. *Id.* at 22.
18. L.G.M. has an approved petition for Special Immigrant Juvenile Status. *Id.* ¶17. However, he was unable to seek adjustment of status based on that petition due to a conviction on September 29, 2023, for violating New York Penal Law ("NYPL") § 110-120.05(2), attempted assault in the second degree; NYPL § 110-160.05, attempted robbery in the third degree; and NYPL § 240.20(7), disorderly conduct.
19. L.G.M. served his criminal sentence, but upon completion was transferred directly into ICE custody at OCJ on August 16, 2024. *Id.* at 18. He has remained in ICE detention since that date.
20. After the conclusion of a merits hearing on February 27, 2025, the Immigration Judge granted L.G.M. deferral of removal under the Convention Against Torture ("CAT") by issuing a

written decision on April 1, 2025. *Id.* at 22. The Department of Homeland Security (“DHS”) reserved appeal, and on April 24, 2025, DHS filed an appeal with the BIA.

21. Respondents continue to detain L.G.M. under 8 U.S.C. § 1226(c). L.G.M. has never had an opportunity to seek release on bond or to otherwise have an individualized assessment before an immigration judge or other neutral arbiter of his dangerousness or risk of flight. Upon all information and belief, Respondents intend to imminently transfer L.G.M. to Louisiana, away from his family, counsel and location of his immigration proceedings for the past nine months.

LEGAL FRAMEWORK

22. “In our society liberty is the norm,” and detention is the “carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). “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 v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).
23. The Fifth Amendment accordingly requires— “[a]t the least”—that detention be “reasonabl[y] relat[ed]” to a valid governmental purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha*, 504 U.S. at 79; *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).
24. The constitutional constraints on civil detention are even higher than in the criminal context. *See Zadvydas*, 533 U.S. at 690; *see also Addington v. Texas*, 441 U.S. 418, 425 (1979) (“civil commitment for any purpose constitutes a significant deprivation of liberty”); *Rosales-Garcia v. Holland*, 322 F.3d 386, 414 (6th Cir. 2003) (applying *Salerno* line of cases to civil immigration detention).
25. To ensure that civil detention does not become impermissible punishment, the Supreme Court has carefully limited its use, insisting that civil detention be used only in “special and narrow

nonpunitive circumstances,” *Zadvydas*, 533 U.S. at 690, and that it must “bear[] [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (*quoting Jackson*, 406 U.S. at 738). Absent a reasonable relation to these governmental objectives, civil detention becomes impermissible punishment. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). In the immigration context, the Supreme Court has recognized only two valid purposes for civil immigration detention—to mitigate a risk of danger to the community and to prevent flight. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

26. In addition, a noncitizen's liberty cannot be infringed upon without “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690-91.
27. In *Black v. Decker*, the Second Circuit recently clarified that the three-factor *Mathews v. Eldridge*, 424 U.S. 319 (1976), test guides determinations of whether immigration detention under 8 U.S.C. § 1226(c) remains constitutionally sound. *See* 103 F.4th 133, 150-51.
28. 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.
29. First, the Court explained that the interest Section 1226(c)-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 § 1226(c) possess the same liberty interest as noncitizens detained under any other statute. *See id.* And, it highlighted that noncitizens detained under § 1226(c) lack any administrative mechanisms by which they could challenge their detention. *See id.* Here, because L.G.M. has been detained in civil immigration detention since on or about August 16, 2024, so he, too, possesses the same liberty interest as the petitioners in *Black*.

30. Second, the *Black* Court found that there is a high risk of erroneous deprivation of rights for noncitizens detained under § 1226(c) because there are “almost nonexistent procedural protections in place for section 1226(c) detainees[.]” *Id.* at 152. The court observed that while 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—those mechanisms are insufficient to address the deficient processes for requesting their physical release. *See id.* The court thus concluded that noncitizens detained under § 1226(c) are faced with even higher “risk[s] of erroneous deprivation” of their private liberty interests than 1226(a)-detained noncitizens. *See id.* Here, L.G.M. is without any mechanism that would ensure an impartial adjudication of his continued detention. Therefore, the risk of erroneous deprivation of L.G.M.’s liberty interest is markedly high.

31. Third, the Second Circuit determined that the competing government interest in preventing a noncitizen detained under § 1226(c) 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. “[A]t 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.

32. Importantly, the Second Circuit reiterated its principle from *Velasco Lopez* that the government has no valid interest in detaining a noncitizen who is neither dangerous nor a risk of flight. *See id.* at 154.

33. Here, because the government possesses only the same interests it possessed in *Black*—ensuring petitioner does not pose a danger or flight risk—providing L.G.M. a bond hearing at which those interests may be considered is appropriate.

34. 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. Here, should this Court agree that L.G.M. is due process, it should—in line with *Black*—provide him with a bond hearing at which the government must carry a clear and convincing burden of demonstrating continued detention is justified.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

PETITIONER’S PROLONGED DETENTION VIOLATES THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

35. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
36. The Supreme Court has repeatedly recognized that civil detention must be carefully limited to avoid due process concerns. *See, e.g., Addington*, 441 U.S. at 425 (1979); *see also Salerno*, 481 U.S. at 755.; *Foucha*, 504 U.S. at 80.
37. Under a three-factor *Mathews* analysis, as required by the Second Circuit in *Black*, L.G.M.’s detention has become unreasonably prolonged and continuing to detain him without a constitutionally adequate bond hearing will erroneously deprive him of his “strong interest in liberty.” *Id.* at 750.
38. As a result of this deprivation, L.G.M. has suffered, and is at risk of continuing to suffer, actual and substantial harm.
39. L.G.M. has no other adequate remedy at law.

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing Respondents to release Petitioner from further unlawful detention;
- 3) In the alternative, issue a conditional writ of habeas corpus requiring Respondents to provide a prompt, individualized bond hearing before an impartial adjudicator (this Court, or, in the alternative, an Immigration Judge) at which Respondents bear the burden of establishing by clear and convincing evidence that continued detention is justified with consideration of (1) alternatives to detention as to dangerousness and flight risk, and (2) the ability to pay a bond; and
- 4) Use its authority under 28 U.S.C. § 2243 to:
 - a. **Order the Respondent to file an Answer and Return by May 16, 2025, unless Respondent can show good cause for an extension of time;**

- b. Order Petitioner's reply be filed by May 23, 2025;**
 - c. Order that the Respondents must not transfer Petitioner outside the physical jurisdiction of the New York Field Office of Immigration and Customs Enforcement or outside the jurisdiction of the Eastern District of New York, to preserve the status quo, during the pendency of this petition;**
- 5) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and
 - 6) Grant any other and further relief that this Court deems just and proper.

Dated: May 9, 2025
Bronx, New York

Respectfully submitted,

/s/ Nhu-Y Ngo

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**EDNY Reciprocal Admission pending*

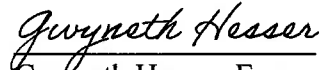
EXHIBITS

- A. Petitioner's Notice to Appear**
- B. Declaration of Gwyneth Hesser, Esq.**

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Gwyneth Hesser, Esq., hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: May 9, 2025



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