

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

L.G.M.,

Petitioner,

v.

ANTHONY J. LaROCCA, 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 and 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.
25-cv-2631

(Chen, J.)

**MEMORANDUM OF LAW IN OPPOSITION TO
PETITIONER'S MOTION FOR BAIL HEARING OR IMMEDIATE RELEASE**

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PRELIMINARY STATEMENT

Respondents WILLIAM P. JOYCE, in his official capacity as Acting Field Office Director, New York City Field Office, United States Immigration and Customs Enforcement (“ICE”); KRISTI NOEM, in her official capacity as Secretary, United States Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General, United States Department of Justice, (collectively, “Federal Respondents¹”), by their attorney Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, James H. Knapp, Assistant United States Attorney, of counsel, respectfully submit this memorandum of law in opposition to Petitioner’s Motion for Bail Hearing or Immediate Release (“P’s Motion”).

Petitioner L.G.M.² (“Petitioner” or “L.G.M.”) seeks an Order from this Court granting either: 1) a writ of habeas corpus pursuant to 28 U.S.C. §§ 2241, 2243; or 2) “a prompt, individualized bond hearing before an impartial adjudicator (this Court, or, in the alternative, an Immigration Judge) at which [Federal] Respondents bear the burden of establishing by clear and convincing evidence that [his] continued detention is justified” *See* Dkt. 1, Petition at 3, 11.

As the Federal Respondents have acknowledged almost from the outset of this litigation, and reiterated to the Court, and to Petitioner on more than one occasion, the facts and law set forth in *Black v. Decker*, 103 F.4th 133, 155-59 (2d Cir. 2024), would likely lead this Court to order that Petitioner receive a bond hearing before the immigration court. *See e.g.*, Dkt. 12, 22. The Federal Respondents’ position remains unchanged. Additionally, it is noteworthy that Petitioner did not consider his detention constitutionally infirm until ICE transferred him out of the Orange County

¹ Respondent Anthony J. LaRocco has yet to appear in this action.

² By Order dated May 16, 2025, the Court granted Petitioner’s application to proceed under a pseudonym. *See* Unnumbered Docket Entry, dated May 16, 2025.

Jail, where he had been detained for more than eight months. Indeed, had Petitioner not decided to engage in posturing before this Court, he could have already received the “prompt, individualized bond hearing” in immigration court that he requested 45 days ago when he commenced this case on May 9, 2025. Instead, Petitioner has again prolonged his own detention.³

As the Federal Respondents will demonstrate, the “most efficient use of resources – for all parties [and this Court],” contrary to L.G.M.’s contention, would be, as the Second Circuit described in *Black*, an “individualized bond hearing by an IJ” Compare P’s Motion at 12 with *Black*, 103 F.4th at 155. This is particularly so in this case because the immigration court is already intimately familiar with the issues relating to L.G.M. For example, the IJ in L.G.M.’s removal proceedings conducted a competency hearing, heard from L.G.M.’s forensic psychology expert, Dr. Macarena Corral, and implemented safeguards to ensure L.G.M.’s rights in those proceedings were secured. L.G.M. gave input on those safeguards and ultimately agreed with the government on the measures adopted by the IJ. Significantly, nowhere in his petition or in his motion does Petitioner take issue with any aspect of his removal proceedings before the immigration court. That is because Petitioner received due process and fundamental fairness during his removal proceedings and there is no reason to speculate that an IJ will not afford him the same in a bond hearing. In any event, the process that would be due under *Black* is not any process, it is a bond hearing before the IJ, who is intimately familiar not only with this case but the relevant authorities. Thus, consistent with *Black* and the practice in this Circuit, the immigration court, with its history and familiarity with Petitioner, is uniquely positioned to conduct Petitioner’s bond hearing.

³ The Federal Respondents note that for two months, between mid-September and mid-November 2024, Petitioner sought adjournments of his removal proceeding because he had changed counsel and counsel required time to prepare. And since May 16, 2025, Petitioner has again prolonged his detention by declining to agree to a bond hearing before the immigration court. Dkt. 12.

FACTUAL BACKGROUND

Because Petitioner was an aggravated felon⁴, ICE detained Petitioner on August 16, 2024, as a removable alien pursuant to 8 U.S.C. § 1226(c). *See* Dkt. 14-1, Declaration of Joseph T. Pujol, dated May 19, 2025 (“Pujol Decl.”), ¶ 18. Between August 16, 2024 and May 7, 2025, ICE detained Petitioner at the Orange County Jail in Goshen, New York (“OCJ”). *Id.* ¶¶ 18, 39.

During the course of Petitioner’s removal proceedings, the IJ conducted a competency hearing. *See* Dkt. 14-1, Exhibit A, “In Removal Proceedings, Decision and Orders of the Immigration Judge,” Charles Conroy, U.S. Immigration Judge, “In the Matter of: [L.G.M.]”, dated April 1, 2025 at 7 (“IJ Removal Decision”). Specifically, the IJ accepted that L.G.M. lacked the ability to “examine and present evidence and cross-examine witnesses.” *Id.* In response the IJ “found that safeguards could be implemented to ensure [L.G.M.’s] rights . . . were secured.” *Id.* The safeguards included: (1) the ability of counsel to repeat questions posed to [L.G.M.] to help ensure comprehension to the best of his abilities; (2) [L.G.M. was] provided extra time and leeway to ask clarifying questions; (3) [L.G.M.] was permitted to refer to his declaration; (4) [L.G.M.’s] diagnoses were considered when assessing credibility; and (5) breaks in testimony were permitted if [L.G.M.] appeared overwhelmed or fatigues [sic].” *Id.* at 3-4, 7. The parties discussed the proposed safeguards, agreed upon them, and the IJ adopted and implemented them during L.G.M.’s removal proceedings. *Id.* at 7. The IJ found that L.G.M.’s “removability was established by clear and convincing evidence.” *Id.* at 1-2. The IJ also stated that “[L.G.M.], through counsel clarified that [L.G.M.] would only be seeking deferral of removal under [the United Nations] C[onvention] A[gainst] T[orture]. The [IJ] therefore deems [L.G.M.’s] applications for asylum and withholding of removal waived and abandoned.” *Id.* The IJ granted L.G.M.’s application for deferral of removal under CAT. *Id.* at 2.

⁴ Prior to August 16, 2024, Petitioner had been serving a one-year sentence following two felony convictions in Nassau County, New York. *Id.* ¶¶ 16-17.

During his removal proceeding, in which he achieved this favorable outcome, Petitioner appeared virtually, and ICE records show that L.G.M.'s counsel never visited him in person until after the decision issued; rather they visited him and otherwise conducted all consultations and preparation with him virtually. Pujol Decl. ¶¶ 23-26, 28-29, 31-32, 34.

On May 7, 2025, ICE transferred Petitioner out of OCJ at OCJ's request because he had committed a series of disciplinary infractions and acts of violence against other OCJ detainees. *Id.* ¶¶ 36-37, 39. At that time, ICE was in the midst of appealing the IJ's determination that deferred Petitioner's removal under CAT. *Id.* ¶ 38. ICE transferred Petitioner to the Nassau County Correctional Center on May 7, 2025, a staging facility suitable to accommodate detainees for no more than 72-hours, while ICE awaited a flight to transport Petitioner to an ICE facility in Louisiana. *Id.* ¶ 39. On May 10, 2025, ICE transferred L.G.M. to its Pine Prairie Processing Center in Louisiana, where he remained until on or about May 21, 2025. *Id.* ¶ 46. ICE made Petitioner's counsel aware of his transfers as they made inquiries. *Id.* ¶¶ 40-43. ICE will not remove L.G.M. until the conclusion of his removal proceedings. *Id.* ¶ 55; *see also* Minute Entry for Proceedings, May 13, 2025. During this time period, ICE did not have detention facilities in the Eastern District of New York suitable to accommodate immigration detainees for more than 72 hours. *Id.* ¶ 45.

L.G.M. filed his petition for a writ of habeas corpus on May 9, 2025, during the less than 72-hour period he was detained at the Nassau County Correctional Center in East Meadow, New York while awaiting travel to the ICE facility in Louisiana. *Id.* ¶¶ 39-43; Dkt. 1. On or about May 21, 2025, consistent with the Court's Order to attempt to move L.G.M. closer to the E.D.N.Y., ICE transferred Petitioner to its Buffalo Service Processing Center in Batavia, New York ("Batavia"), where he is presently detained. Dkt. 15. <https://www.ice.gov/detain/detention-facilities/buffalo-batavia-service-processing-center>. (Last checked June 23, 2025).

LEGAL BACKGROUND

Section 1226(c) of the Immigration and Nationality Act provides that the Secretary of Homeland Security “shall take into custody any alien who” is removable on specified criminal or national-security grounds during the pendency of removal proceedings, and “may release” such a noncitizen “only” as part of a witness-protection program. 8 U.S.C. § 1226(c). In *Demore v. Kim*, the Supreme Court upheld the constitutionality of § 1226(c) against a facial challenge, finding that Congress was “justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers.” 538 U.S. 510, 513 (2003). In *Jennings v. Rodriguez*, the Supreme Court held that noncitizens detained under § 1226(c) do not have a statutory right to a bond hearing even when their detention exceeds six months. 583 U.S. 281, 286 (2018).

Subsequently, in *Black*, the United States Court of Appeals for the Second Circuit concluded that “due process bars the Executive from detaining . . . individuals for an unreasonably prolonged period under [8 U.S.C. §] 1226(c) without a bond hearing.” 103 F.4th at 143. The Second Circuit further held that the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), governs an alien’s challenge to his 8 U.S.C. § 1226(c) detention without a bond hearing pending his removal proceedings. *Black*, 103 F.4th at 147. These 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.’” *Id.* at 151 (quoting *Mathews*, 424 U.S. at 335). The court then applied this test to two aliens detained under 8 U.S.C. § 1226(c) who had never received bond hearings -- one who had been detained for seven months, the other for 21 months -- and found that all three factors weighed in their favor. *Id.* at 151-

55. The court thus concluded that “due process entitled [the noncitizens] to individualized bond hearings by an [IJ] once their detentions became prolonged.” *Id.* at 155. Then, again applying the *Mathews* balancing test, the court approved one district court’s determination that “[t]he burden at the bond hearing is on the Government to justify by clear and convincing evidence that Petitioner poses a risk of flight or a danger to the community.” *Id.* Lastly, the court also required that, if an IJ determines at a bond hearing that the alien does not pose a danger to the community, then the IJ must consider the detainee’s “ability to pay” and “alternatives to detention” when setting a bond amount. *Id.* at 158-59.

Significantly, “a bond amount would be at issue only once the IJ has determined the noncitizen does not pose a danger to the community.” 103 F.4th at 158 (citing *Carlson v. Landon*, 342 U.S. 524, 539-42 (1952)). In this Circuit, IJ’s rather than district courts routinely conduct 1226(c) bond hearings when a district court orders such a hearing after determining in an as-applied due process challenge that one is constitutionally required under the particular facts and circumstances of the case under review. *See, e.g., Cabral v. Decker*, No. 18-cv-4823, 331 F. Supp. 3d 255 (S.D.N.Y. Sept. 21, 2018); *Rodriguez-Figueroa v. Barr*, No. 6:19-cv-6366, 442 F. Supp. 3d 549 (W.D.N.Y. Feb. 28, 2020); *Diaz v. Genalo*, No. 22-cv-3063, 2023 WL 5322180 (S.D.N.Y. July 6, 2023); *Toussaint v. Garland*, No. 21-cv-10904, 2022 WL 2354547 (S.D.N.Y. June 30, 2022); *Doe v. Decker*, No. 21-cv-5257, 2021 WL 5112624 (S.D.N.Y. Nov. 3, 2021); *Black v. Decker*, No. 20-cv-3055, 2020 WL 4260994 (S.D.N.Y. July 23, 2020); *Doe v. Decker*, No. 20-cv-4232, 2020 WL 4937395 (S.D.N.Y. Aug. 21, 2020); *Hernandez v. Decker*, No. 18-cv-5026, 2018 WL 3579108 (S.D.N.Y. July 25, 2018); *Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266 (S.D.N.Y. May 28, 2018); *Sophia v. Decker*, No. 19-cv-9599, 2020 WL 764279 (S.D.N.Y. Feb. 14, 2020).

On November 20, 2024, the government petitioned for rehearing *en banc* in *Black*. See No. 20-3224 (2d Cir.), Dkt. 190. Petitioners filed a response on March 7, 2025. No. 20-3224 (2d Cir.), Dkt. 203. The government’s petition for rehearing remains pending. The government acknowledges, however, that the Second Circuit’s decision in *Black* binds this Court unless and until that precedent is abrogated.

ARGUMENT

I. Petitioner Is Not Entitled To Immediate Release

Petitioner is ineligible for immediate release. The appropriate remedy here is for the Court to grant Petitioner conditional habeas relief and order the immigration court to conduct an individualized bond hearing consistent with *Black*. The Federal Respondents acknowledge that this Court may, upon considering Petitioner’s habeas petition, “‘order [his] release’ when granting a petition for writ of habeas corpus,” however, courts in this Circuit “ordinarily favor ‘conditional grants’ of the writ.” *Fernandez Aguirre v. Barr*, No. 19-cv-7048, 2019 WL 4511933 at *7-8 (S.D.N.Y. Sept. 18, 2019) (Caproni, J.) citing *Gentry v. Deuth*, 456 F.3d 687, 691-92 (6th Cir. 2006). Petitioner dismisses *Fernandez Aguirre* and intimates that the immigration court is incompetent in support of his claim for immediate release. But this suggestion is belied by Petitioner’s own experience before the immigration court.

As Judge Caproni observed, “[a] conditional grant occurs when a court finds that ‘a constitutional infirmity justifies [the] petitioner’s release’ but, as an ‘accommodation[]’ to the Government, the court ‘provides the [Government] with a window of time’ to ‘cure the constitutional error’ before release is ordered.” *Id.* at *3. (Citations omitted). This is wholly consistent with the Second Circuit’s approach in *Black* and is the appropriate course of action here. Again, Petitioner cannot escape the fact that he did not consider his detention constitutionally

infirm until ICE transferred him out of OCJ. Accordingly, the appropriate remedy is for this Court to order the immigration court to conduct an individualized bond hearing consistent with *Black*.

Petitioner's reliance on *Boumediene v. Bush*, 553 U.S. 723, 732-33 (2008) and *Mapp v. Reno* 241 F.3d 221, 223 (2d Cir. 2001), in support of his claim that he is entitled to immediate release is misplaced.⁵ Neither *Boumediene*, nor *Mapp* authorize Petitioner's immediate release; they authorize a District Court to *consider* whether a habeas petitioner is entitled to release on bail. As the Supreme Court stated, “[w]e hold that [the Guantanamo Bay detainee] petitioners do have the habeas corpus privilege. [W]e *do not hold* that the writ *must* issue.” *Boumediene*, 553 U.S. at 732-33 (emphasis added). The Second Circuit in *Mapp* similarly held, “[w]e conclude, therefore, that the district court *acted within its power when it considered* whether petitioner was entitled to release on bail.” *Id.* at 230 (Emphasis added). Thus, Petitioner's demand for immediate release lacks merit and the Court should decline to grant it.⁶

In the lone Second Circuit case Petitioner addressed, *Elkimya v. Department of Homeland Security*, the court raised *sua sponte* “the question of whether [it has] the power to consider [a] motion for bail pending consideration of [a petition for a writ of habeas corpus that had been

⁵ In further support of his claim for release on bail, Petitioner cites several cases from the Middle District of Pennsylvania, including *Leslie v. Holder*, 865 F. Supp. 2d 627 (M.D. Pa. 2012), which Federal Respondents discuss below, and *Thaxter v. Sabol*, No. 1:14-cv-2413, 2016 WL 3077351 (M.D. Pa. 2016). However, at least some the cases upon which Petitioner relies may no longer be good law. See *Borbot v. Warden Hudson County Correctional Facility*, 906 F. 3d 274 (3rd Cir. 2018) (following an IJ's denial of bond, the Third Circuit affirmed the lower court's dismissal of 1226(a) detainee's writ of habeas corpus as facially insufficient following 15 months of detention and declined to decide when due process might entitle a 1226(a) detainee to a new bond hearing).

⁶ L.G.M.'s reliance in any respect on *Ozturk v. Trump*, No. 2:25-cv-374, 2025 WL 1420540 (D. Vt. May 16, 2025) is misplaced. Among other things, L.G.M. is an aggravated felon whom an IJ has found, by clear and convincing evidence, to be removable from the United States. See IJ Removal Decision at 1-2. The IJ's decision came at the conclusion of removal proceedings in which L.G.M. made no claim that he had been deprived due process. The factual and legal background in *Ozturk* bear no semblance to that of L.G.M.

transferred to the appeals court under the Real ID Act of 2005 and converted to a] petition for review.” 484 F.3d 151, 153 (2d Cir. 2007). In deciding in the affirmative the court nevertheless declined to grant the non-violent petitioner’s motion for bail, “[w]e see no reason, and [petitioner] has proffered none other than convenience, why his continued detention . . . would affect the Court’s ultimate consideration of the legal issues presented in his petition for review.” *Id.* at 154.

More fundamentally, L.G.M. does not satisfy the *Mapp* factors vis à vis *Black* to warrant immediate release, as he summarily contends. While this Court may grant bail, the Second Circuit has cautioned and “emphasized that this power is a limited one, to be exercised in special cases only.” *Mapp*, 241 F.3 at 226. Moreover, “the standard for bail pending habeas litigation is a difficult one to meet: The petitioner must demonstrate that the habeas petition raise[s] substantial claims and that extraordinary circumstances exist[] that make the grant of bail necessary to make the habeas remedy effective.” *Id.* Significantly, and “[a]s an initial matter, a bond amount would be at issue only once the IJ has determined that the noncitizen does not pose a danger to the community.” *Black*, 103 F.4th at 158. L.G.M. cannot satisfy this standard.

L.G.M. submits that his claim for relief is substantial “because he is likely to win on the merits of his prolonged detention claim, under . . . *Black*.” P’s Motion 19. But he conveniently overlooks his criminal history (and the disturbing series of events that led to his transfer out of the OCJ). His optimism is misplaced because, as an aggravated felon, he is a danger to the community. And an IJ has found him to be removable from the United States which makes him a flight risk. In March 2023, Petitioner was arrested in Nassau County and charged with two felonies: attempted murder in the second degree and robbery in the third degree in violation of N.Y. Penal Law §§ 125.25 and 160.05, respectively. Pujol Decl. ¶ 16. In September 2023, Petitioner was convicted of two felonies: attempted assault with intent to cause physical injury with a weapon and attempted

robbery in violation of N.Y. Penal Law §§ 110-105.05 and 110-160.05, respectively. *Id.* ¶ 17.

Petitioner's recent felony convictions, unlike the petitioners in *Black*, undercut his contention that he has a substantial claim for relief and is likely to win on the merits. *Compare Black*, 103 F.4th at 139 (Black's 1226(c) mandatory detention for a 20 year old conviction did "not take into account when the prior crime was committed, suggesting that the prior conviction may be a poor proxy for a finding of dangerousness."). In addition, unlike L.G.M., the court found that petitioners in *Black* showed that they had "led a peaceful life, helping to support . . . family" and had "maintained steady employment." *Id.* at 153. L.G.M. can make no such claim. Far from leading a peaceful life, L.G.M. compiled a disciplinary record during his eight months at OCJ that includes: engaging in verbal disputes with other detainees, destroying county property, concealing contraband in his cell and fighting other detainees. Pujol Decl. ¶ 37. And there is no evidence he has ever provided support for his family, or that he has maintained anything other than sporadic, short-term employment. P's Motion Exhibit B at 5. L.G.M. is not a "breadwinner" or "caregiver" and can point to no meaningful contribution that he has ever made to his community. Put simply, L.G.M.'s recent history of aggravated felonies makes him a danger to the community and that should end the inquiry.

Next, L.G.M. contends that he can demonstrate "extraordinary circumstances" that warrant his immediate release under *Mapp's* second prong because of his "extensive diagnoses" and "deteriorating . . . mental health." P's Motion 6, 16, 20-21. This claim fares no better because L.G.M. relies on several extreme and inapposite cases in this regard. For example, in *Leslie*, the 59 year old petitioner had been held without a bail hearing for more than 1,400 days. 865 F. Supp. 2d at 639. His medical conditions included "a cascading array of significant physical infirmities, including degenerative spine disease, gastrointestinal ailments, and high blood pressure." *Id.* at

638. Significantly, like the petitioners in *Black*, Leslie's criminal convictions were fairly remote in time, dating back more than more than 15 years, which the court found undercut the government's claim that he remained a danger to the community. *Id.* at 640.

L.G.M.s reliance on *D'Alessandro v. Mukasey*, No. 08-cv-914, 2009 WL 799957 (W.D.N.Y. Mar. 25, 2009), an outlier in this Circuit, is similarly misplaced. P's Motion 18, 20-21. *But see Khatiashvili v. Decker*, No. 16-cv-5214, 2016 WL 5793250 at *3 (S.D.N.Y. Oct. 3, 2016) (Court referred petitioner, who had been detained for 26 months, for an individualized bond hearing before the immigration court because petitioner "presented no evidence that the [district] Court must conduct the [bond] hearing to 'make the habeas remedy effective.'"). D'Alessandro was a 50 year old man with a "number of serious, potentially debilitating health problems" *Id.* Among them were prostate hypertrophy, renal cysts, significant varicose veins that posed a risk of deep vein thrombosis and the "pooling of blood in his legs." *Id.* at 4. Also, D'Alessandro's conviction, like Leslie's, dated back more than 15 years. *Id.* at *5. And D'Alessandro, unlike L.G.M., posed no flight risk and was not a danger to the community. *Id.* Finally, the court also noted that D'Alessandro's "disciplinary record while in immigration custody [was] unblemished. Notably, respondents do not contend at oral argument that D'Alessandro himself [was] dangerous or violent or a flight risk. Rather, [i]ndeed, respondent's attorney stated that she did not disagree with this Court's assessment of [D'Alessandro] as a 'poster child' for release." *Id.* L.G.M. can make no such claim and makes no showing that a hearing before this Court would make the habeas remedy effective.

And Petitioner's reliance on *Celestin v. Decker*, No. 17-cv-2419 (S.D.N.Y.) supports the Federal Respondents' position. P's Motion, Exhibit C. Celestin was an ICE detainee "with no criminal history." *Id.* at 2, ln. 19-20. The district court granted "conditional" habeas relief and

ordered a bond hearing before the immigration court. *Id.* at 3, ln 13-21; 4, ln. 18-23. After the IJ conducted the bond hearing, the district court, on review of “compliance with the terms of the conditional order,” *inter alia*, granted a preliminary injunction and reduced the bond amount set by the immigration court because the IJ had failed to make an “individualized determination” of Celestin’s ability to pay. *Id.* at 8-13. Of note, the court stated, “[i]n the normal course I would send this case back to the immigration judge for her to consider Celestin’s financial circumstances. But here, in light of the particular facts of the case and particularly the timing issues, given that Celestin’s asylum hearing is two weeks away, I’m inclined to hold the bond hearing, the bond hearing right now.” *Id.* at 13. (Emphasis added). However, as the Second Circuit stated, “a bond amount would be at issue *only* once the IJ has determined the noncitizen does not pose a danger to community.” *Black*, 103 F.4th at 158 (citing *Carlson*, 342 U.S. at 539-42).

Even *Fernandez Aguirre* arguably weighs against Petitioner. 2019 WL 4511933 at *7-8. As Judge Caproni observed, *Fernandez Aguirre*’s “criminal history” and alleged danger to the community amounted to traffic violations and a conviction for resisting arrest. *Id.* at *2. Although the court ultimately granted his release, it was not until two inadequate hearings before the IJ. *Id.* at *7. But Petitioner’s fear of volleying back and forth to this Court is unfounded because the immigration court, unlike this Court, has an extensive record and experience with L.G.M., has extensive experience conducting bond hearings and, as discussed below, is already equipped to proceed. This Court, on the other hand, must essentially start from scratch and reinvent the wheel, which is an inefficient use of resources for all involved. The simple fact is that a conditional grant of the writ, by ordering a bond hearing before the immigration court, is consistent with *Black* and the appropriate remedy here.

II. The Immigration Court is Already Equipped, and Therefore Best-Positioned, to Preside Over Petitioner's Bond Hearing

Although Petitioner initially asked for a bond hearing before *either* this Court or the immigration court, he now insists that this Court is the appropriate venue. Compare Petition at 11 with P's Motion *passim*. He contends that his case presents "unique procedural and due process concerns" without elaborating about either. P's Motion at 16. To the extent there is anything unique about Petitioner's claim, it is that he raised absolutely no procedural or due process concerns while he was detained by ICE at OCJ from August 2024 through early May 2025. During this time an immigration judge found, by clear and convincing evidence, that L.G.M. should be removed from the United States. *See* IJ Removal Decision at 1-2. Indeed, it is undisputed that it was not until L.G.M., through his own misconduct, wore out his welcome at OCJ, that ICE was forced to transfer him to another facility. Only then did L.G.M. seek habeas relief.

Petitioner also submits, again without explanation, that "a hearing before this Court will protect fundamental fairness and serve the efficiency of all parties." *Id.* But nowhere does L.G.M. criticize or take issue with the fundamental fairness and due process that the IJ afforded him during L.G.M.'s removal proceedings. Nor could he. And any such claim would be undermined by the care with which the IJ conducted L.G.M.'s removal proceedings. The examples are many. The IJ evaluated Dr. Corral's testimony and concluded that L.G.M. was "not competent overall." *See* IJ Removal Decision at 7. Specifically, the IJ accepted that L.G.M. lacked the ability to "examine and present evidence and cross-examine witnesses." *Id.* In response the IJ "found that safeguards could be implemented to ensure [L.G.M.'s] rights . . . were secured." *Id.* Dr. Corral, presumably in conjunction with L.G.M.'s counsel, proposed five safeguards, all of which the IJ adopted and implemented. *Id.* Those safeguards included: (1) the ability of counsel to repeat questions posed

to [L.G.M.] to help ensure comprehension to the best of his abilities; (2) [L.G.M. was] provided extra time and leeway to ask clarifying questions; (3) [L.G.M.] was permitted to refer to his declaration; (4) [L.G.M.'s] diagnoses were considered when assessing credibility; and (5) breaks in testimony were permitted if [L.G.M.] appeared overwhelmed or fatigues [sic].” *Id.* at 3-4, 7. The parties discussed the proposed safeguards, agreed upon them, and the IJ adopted and implemented them during L.G.M.’s removal proceedings. *Id.* at 7. The primary evidence of the fundamental fairness and due process L.G.M. received from the immigration court during his removal proceedings is that he has never complained about it. And he cites to zero evidence as to how or why he would not receive the same in a bond hearing before the immigration court. He simply speculates about a parade of horrors that will follow if this Court adheres to the procedures the Second Circuit outlined in *Black*. That is insufficient reasoning to deviate from the standard practice in this Circuit. Petitioner wants “due process,” but due process is context-specific, and the process that is actually due to him under *Black* is not simply a bond hearing before anyone -- it is a burden shifted bond hearing before an IJ. *Black*, 103 F.4th at 155-59; *see also* p. 6 *supra*.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court follow the Second Circuit's precedential decision in *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024) and, assuming it finds that relief is warranted under that precedent, conditionally grant Petitioner's writ of habeas corpus and order the government, by the Department of Homeland Security and/or Department of Justice, Executive Office for Immigration Review, to provide Petitioner with an individualized bond hearing consistent with *Black* before an immigration judge at the Varick Street Immigration Court, New York, New York and dismiss this action and grant such other and further relief as this Court may deem just and proper.

Dated: Central Islip, New York
June 23, 2025

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