UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.M.P.,

Petitioner,

v.

PAUL ARTETA, in his official capacity as Sheriff of Orange County, New York and Warden of the Orange County Correctional Facility, *et al.*,

Respondents.

No. 25 Civ. 4987 (DEH)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

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The government respectfully submits this memorandum of law in opposition to the petition for a writ of habeas corpus filed by petitioner J.M.P., Dkt. No. 1.

PRELIMINARY STATEMENT

J.M.P., a native and citizen of El Salvador, challenges his detention by U.S. Immigration and Customs Enforcement ("ICE") during the pendency of his removal proceedings and seeks an order from this Court granting his petition for a writ of habeas corpus and requiring his immediate release or a bond hearing with certain criteria.

J.M.P. is subject to the Immigration and Nationality Act's ("INA") mandatory detention provision pertaining to certain criminal aliens, codified at 8 U.S.C. § 1226(c). That provision requires ICE to detain J.M.P. during the pendency of his removal proceedings and does not permit him to receive a bond hearing. J.M.P. asserts that his ongoing detention, which is now at 6.5 months, has become unduly prolonged in violation of his due process rights. As part of his due process challenge, J.M.P. takes issue with the application of § 1226(c) to him—an issue that he has also sought to raise with the immigration court and which is rightfully for the immigration court to decide in the first instance.

For the reasons set forth below, J.M.P.'s challenges to his detention are without merit. Removal proceedings for J.M.P. have moved swiftly; an immigration judge considered J.M.P.'s application for relief from removal and issued a removal order within roughly 3.5 months of J.M.P.'s detention by ICE. And there are additional procedural protections available to J.M.P. through the immigration courts, albeit ones of which J.M.P. has yet to properly avail himself—including an avenue for him to challenge the statutory authority for his detention. There is therefore no basis to conclude that J.M.P.'s detention has somehow become unconstitutional, and the Court should deny the habeas petition.

BACKGROUND

I. J.M.P.'s Immigration History and Detention by ICE

J.M.P., a native and citizen of El Salvador, unlawfully entered the United States on or about July 4, 2020, at or near McAllen, Texas. *See* Declaration of Deportation Officer William D. Morrow ("Morrow Decl.") ¶¶ 4, 6; Gov't Return Ex. 1 at 3.

On January 29, 2025, the Drug Enforcement Administration, which at the time had custody of J.M.P. after arresting him in connection with a money laundering investigation, transferred J.M.P. to ICE custody after federal prosecutors declined to prosecute J.M.P. Morrow Decl. ¶ 5; Gov't Return Ex. 1 at 2; Petition for Writ of Habeas Corpus, Dkt. No. 1 ("Pet."), ¶ 29. The same day, ICE served J.M.P. with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, which charged him as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled. Morrow Decl. ¶ 7; Gov't Return Ex. 2. ICE detained J.M.P. at the Orange County Jail in Goshen, New York, where he has remained since January 29. Morrow Decl. ¶ 8. He is housed in a unit solely for ICE detainees. *Id.*

On February 2, 2025, ICE served the NTA on the Varick Street Immigration Court (the detained docket) in New York, New York, thereby commencing removal proceedings against J.M.P. Morrow Decl. ¶ 7; Gov't Return Ex. 3.

II. Removal Proceedings

On February 6, 2025, J.M.P. appeared with counsel before an immigration judge for an initial master calendar hearing. Morrow Decl. ¶ 9. The immigration judge adjourned the case to February 20, 2025, so that J.M.P. would have time to consult with his counsel. *Id.*

On February 20, 2025, J.M.P. appeared with counsel before an immigration judge for the continued master calendar hearing. *Id.* ¶ 10. Counsel for J.M.P. requested an adjournment of the

hearing to allow them time to prepare the case and address the NTA's removability charge. *Id.* The immigration judge granted that request and adjourned the case to March 4, 2025. *Id.*

On March 4, 2025, J.M.P. appeared with counsel before an immigration judge for the continued master calendar hearing. *Id.* ¶ 11. At the hearing, J.M.P. denied the NTA's allegations and the charge of removability, and his counsel indicated that she would be filing a motion to suppress the government's evidence supporting removability. *Id.* The immigration judge adjourned the case to March 20, 2025. *Id.*

Later on March 4, J.M.P. filed a motion for a custody redetermination (i.e., bond) hearing. *Id.* ¶ 12. A hearing took place on March 11, 2025, at which time J.M.P. withdrew his request for the bond hearing in light of a RAP sheet that the government had filed the day before, which reflected that J.M.P. had been arrested in El Salvador on September 24, 2016, on homicide charges. *Id.* ¶ 13. Pet. ¶ 30; Gov't Return Ex. 4. Following the hearing, J.M.P. filed a motion to suppress the government's evidence and terminate removal proceedings. Morrow Decl. ¶ 14; Pet. ¶ 30.[1] The government opposed the motion on March 18, 2025. Morrow Decl. ¶ 14. The following day, the immigration judge issued an order denying the motion and sustaining the removability charge. *Id.*

On March 20, 2025, J.M.P. appeared with counsel before an immigration judge for the continued master calendar hearing. *Id.* ¶ 15. The immigration judge ordered that J.M.P. file any applications for relief from removal by the end of the month, and scheduled an individual (i.e., merits) hearing on any such application for May 13, 2025. *Id.* On March 31, 2025, J.M.P. filed

[1] In his Petition, J.M.P. states that "the homicide charge against him had been dismissed in El Salvador." Pet. ¶ 30. On August 7, 2025, J.M.P.'s counsel submitted a letter to the Court "clarif[ying] and correct[ing]" that J.M.P. was, in fact, "found guilty of attempted aggravated homicide," though a gang affiliation charge against him was dismissed. *See* Dkt. No. 13.

with the immigration court a Form I-589, Application for Asylum and Withholding of Removal, including protection under the Convention Against Torture ("CAT"). *Id.* ¶ 16.

On May 13, 2025, J.M.P. appeared with counsel for an individual merits hearing. *Id.* ¶ 17. At the conclusion of the hearing, and after considering all the evidence submitted by and testimony from J.M.P. and the testimony of an expert who testified on J.M.P.'s behalf, the immigration judge issued an oral decision denying J.M.P.'s application for relief on the ground that he had provided material support to MS-13, and ordering him removed from the United States to El Salvador. *Id.*

On May 16, 2025, J.M.P. uploaded to the immigration court's electronic case filing system a "Motion for an Order Deciding the Statutory Authority for [Petitioner's] Custody and if Eligible, Scheduling a Bond Hearing." *Id.* ¶ 18. Because the motion was filed in the bond proceeding and the bond hearing request had already been withdrawn, the immigration court marked the motion as moot. *Id.*

On June 11, 2025, J.M.P. filed an appeal of the immigration judge's May 13, 2025, merits decision with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 19. The BIA has not yet set a briefing schedule for the appeal. *Id.*

III. J.M.P.'s Habeas Petition

On June 12, 2025, J.M.P. filed a habeas petition under 28 U.S.C. § 2241 in this Court. *See* Dkt. No. 1. J.M.P. challenges his detention as unlawful and seeks an order from this Court requiring ICE to immediately release him or, in the alternative, provide him with a bond hearing with certain criteria. He asserts that his detention pursuant to 8 U.S.C. § 1226(c) without a bond hearing violates his due process rights under a case-by-case analysis. Pet. ¶¶ 46–55.

LEGAL FRAMEWORK FOR ICE'S DETENTION AUTHORITY UNDER 8 U.S.C. § 1226

ICE generally has the discretionary authority to detain an alien during removal proceedings. 8 U.S.C. § 1226(a); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."); *accord Demore v. Kim*, 538 U.S. 510, 523 (2003) ("[D]etention during deportation proceedings [is] a constitutionally valid aspect of the deportation process."). An alien whom ICE detains as a matter of discretion may be released on bond, either by an ICE officer or by an immigration judge at a bond hearing. 8 U.S.C. § 1226(a)(2); 8 C.F.R. §§ 236.1, 1003.19, 1236.1(d)(1). In contrast, for some aliens, Congress made detention during removal proceedings mandatory. As relevant here, Congress provided in 8 U.S.C. § 1226(c) that aliens who have committed certain criminal or terrorist offenses must be detained during removal proceedings. *See* 8 U.S.C. § 1226(c); *Demore*, 538 U.S. at 517–18. Congress enacted § 1226(c) in response to evidence that immigration authorities were unable to remove many criminal aliens because they failed to appear for removal hearings and that criminal aliens released on bond often committed additional crimes before they could be removed. *See Demore*, 538 U.S. at 518–20; *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (detention during removal proceedings prevents an alien from absconding or reoffending pending a decision).

To address these problems, § 1226(c) provides that "[t]he Attorney General shall take into custody any alien who" committed offenses listed in the statute.[2] 8 U.S.C. § 1226(c)(1). Section 1226(c) further provides that the Attorney General "may release" that alien "only" under narrow circumstances not applicable here, *id.* § 1226(c)(2). In short, § 1226(c) makes clear Congress'

[2] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with very few exceptions, to the Secretary of Homeland Security. *See also* 8 U.S.C. § 1551 note.

intent that "aliens detained under [§ 1226(c)] are not entitled to be released under any circumstances other than those expressly recognized by the statute." *Jennings*, 583 U.S. at 303. The "termination point" of detention under § 1226(c) is thus usually "the conclusion of removal proceedings," and no earlier. *Id.* (quoting *Demore*, 538 U.S. at 529).

The Supreme Court has upheld § 1226(c) as facially constitutional. *Demore*, 538 U.S. at 531. The Court reasoned that "Congress, 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, may require that persons such as [the lawful permanent resident in that case] be detained for the brief period necessary for their removal proceedings." *Id.* at 513. "The Supreme Court has also ruled that section 1226(c) itself authorizes prolonged detention." *Black v. Decker*, 103 F.4th 133, 141–42 (2d Cir. 2024) (citing *Jennings*, 583 U.S. at 303).

An alien who is detained under § 1226(c) may request a hearing before an immigration judge to assess whether he fits into one of the categories of aliens set out in § 1226(c)(1)(A)–(D). *See* 8 C.F.R. §§ 1003.19(a), (b), & (h)(2)(ii); *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999). Such custody redetermination hearings are commonly referred to as "*Joseph* hearings." The initial burden at a *Joseph* hearing is on ICE to establish that there is "reason to believe" that the detained alien is deportable or inadmissible under a ground listed in § 1226(c)(1)(A)–(D). *Matter of Joseph*, 22 I. & N. Dec. at 803. Once ICE has carried its initial burden, an alien "may avoid mandatory detention by demonstrating [at a *Joseph* hearing] that he is not an alien, was not convicted of the predicate crime, or that [ICE] is otherwise substantially unlikely to establish that he is in fact subject to mandatory detention." *Demore*, 538 U.S. at 514 n.3 (citing 8 C.F.R. § 3.19(h)(2)(ii), *Matter of Joseph*, 22 I. & N. Dec. 799). If the alien carries his burden at a *Joseph* hearing and demonstrates that he is not properly subject to detention under § 1226(c), he will then be eligible to receive a

bond hearing under § 1226(a). If the immigration court finds that he has not carried his burden, the alien can appeal that determination to the Board of Immigration Appeals ("BIA").

ARGUMENT

THE HABEAS PETITION SHOULD BE DENIED

I. J.M.P.'s Continued Detention Comports with Due Process

J.M.P. does not contest that § 1226(c), as a statutory matter, unambiguously requires that he be detained without a bond hearing for the duration of his removal proceedings. Instead, he argues that his mandatory detention without a bond hearing violates his due process rights because it has become unconstitutionally prolonged. But J.M.P.'s removal proceedings have moved swiftly and there is nothing in the record to support J.M.P.'s contention that his removal proceedings, and incident detention, have been unreasonably prolonged, whether by unreasonable governmental delay or otherwise. Simply put, J.M.P.'s detention during his ongoing removal proceedings—at this point, during J.M.P.'s appeal from his removal order—continues to serve the statutory purpose of § 1226(c) and is not otherwise unconstitutional. Thus, the Court should deny J.M.P.'s petition.

The Second Circuit has held that while due process does not require a bond hearing in the ordinary course for those detained under § 1226(c), there are certain instances in which detention under § 1226(c) might become unreasonably prolonged so as to necessitate "additional procedural protections," such as a bond hearing. *Black*, 103 F.4th at 145. The Second Circuit further held in *Black* that due process challenges under § 1226(c) should be reviewed under the case-by-case analysis set forth by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which takes into consideration: (i) the private liberty interest affected, (ii) the risk of erroneous deprivation of that interest and the probable value of additional procedural safeguards, and (iii) the government's interest, including the function involved and the burdens that additional procedural requirements

would create. *Id.* at 147. Evaluating the *Mathews* factors in the current case, the Court should conclude that J.M.P. is not entitled to any additional process at this time.

Regarding the first factor—the nature of the private interest that will be affected—the government does not dispute that an alien's liberty is at issue. That liberty interest, however, is not absolute: aliens charged with being removable or inadmissible have no fundamental right to be released during removal proceedings. *See, e.g.*, *Jennings*, 583 U.S. at 289 (recognizing that the INA authorizes the detention of both aliens seeking admission to the country, as well as those already in the country pending the outcome of removal proceedings); *Demore*, 538 U.S. at 523 ("[While the] Fifth Amendment entitles aliens to due process of law in deportation proceedings, detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process."). Any assessment of the private interests at stake must therefore account for the fact that the Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and has in fact held precisely the opposite. *Demore*, 538 U.S. at 530; *Carlson*, 342 U.S. at 538. And there is a category of aliens who Congress has already determined are ineligible for release during their removal proceedings. *See* 8 U.S.C. § 1226(c).

As to the second *Mathews* factor—the comparative risk of an erroneous deprivation of an alien's liberty interest with and without additional or substitute procedural safeguards—J.M.P. argues that his "present confinement directly stems from the inadequacy of protective procedures against erroneous deprivation of his liberty interest." Pet. ¶ 50. In particular, J.M.P. takes issue with the immigration judge's May 13, 2025, denial of his application for relief from removal on the ground that he had provided material support to MS-13; J.M.P. argues that the immigration judge's decision was grounded in an erroneous retroactive application of the terrorism-related

inadmissibility grounds ("TRIG") bar under 8 U.S.C. § 1182(a)(3)(B). *Id.* ¶¶ 50, 52; Morrow Decl. ¶ 17. But J.M.P. fails to meaningfully consider "the fairness and reliability of the existing . . . procedures, and the probable value if any, of additional procedural safeguards," *Mathews*, 424 U.S. at 343, which have been and remain available to address J.M.P.'s concerns with the May 13 decision. Indeed, on May 16, 2025, just three days after the immigration judge denied him relief from removal, J.M.P. attempted to file a motion in immigration court seeking a determination of the statutory authority governing his detention. Morrow Decl. ¶ 18; Pet ¶ 32. That the motion was incorrectly filed in the bond proceeding and, because the bond hearing request had already been withdrawn and the case file closed by the time the motion was made, subsequently marked by the immigration court as moot, Morrow Decl. ¶ 18, does not suggest—contrary to J.M.P.'s assertions, Pet. ¶ 53—that there has been any "erroneous deprivation" of liberty.

Moreover, an alien like J.M.P. who seeks to challenge the basis for his mandatory detention has an avenue to do so: he can file a motion before an immigration judge requesting an assessment of whether he fits into one of the categories of aliens set out in § 1226(c)(1)(A)–(D)—*i.e.*, a *Joseph* hearing. *See* 8 C.F.R. §§ 1003.19(a), (b), and (h)(2)(ii); *Matter of Joseph*, 22 I. & N. Dec. 799. If J.M.P. were to carry his burden at a *Joseph* hearing and demonstrate that he is not properly subject to detention under § 1226(c), he would then be eligible to receive a bond hearing under § 1226(a). And if he is unsuccessful before the immigration judge, he may also appeal that determination to the BIA. Thus, the *Joseph* hearing is a procedural mechanism available to J.M.P. and would address

the exact issue he claims subjects him to an erroneous deprivation of his liberty (i.e., whether he is properly subject to mandatory detention), which cuts strongly in the government's favor.[3]

Regarding the third *Mathews* factor, the government's interests in "ensuring the noncitizen's appearance at proceedings" and "protecting the community from noncitizens who have been involved in crimes that Congress has determined differentiate them from others . . . are legitimate and their importance well-established." *Black*, 103 F.4th at 153 (citing *Demore*, 538 U.S. at 518–21); *cf. Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (recognizing that the government's important interests in detaining aliens to ensure they do not abscond and do not commit crimes are "well-established and not disputed"). J.M.P. argues that those interests are minimal here because the application of the TRIG bar to him "is not a meaningful indicator of flight risk or dangerousness" since "the lack of a duress exception means there was no inquiry if Petitioner was in fact a supporter of terrorism or instead a victim." Pet. ¶ 54. But J.M.P. does not dispute that he was found guilty of attempted aggravated homicide, Dkt. No. 13, an indisputably serious crime. Further, as noted above, J.M.P.'s arguments regarding the application of the TRIG bar to him should be made in immigration court in the first instance, where his removal proceedings are pending. At present, J.M.P. has been detained for 6.5 months as his removal

[3] A *Joseph* hearing is not the only procedural safeguard in place to ensure fundamental fairness to aliens detained for immigration purposes and to safeguard against erroneous deprivations of liberty. For example, once an alien has been arrested without a warrant of arrest, an examining officer will determine if there is prima facie evidence that the arrested alien is in the United States in violation of the immigration laws. 8 C.F.R. § 287.3(a)–(b). The examining officer will advise the alien "of the reasons for his or her arrest and the right to be represented at no expense to the Government," provide the alien "a list of the available free legal services provided by organizations and attorneys . . . located in the district where the hearing will be held," and "advise the alien that any statement made may be used against him or her in a subsequent hearing." *Id.* § 287.3(c). Moreover, the regulations provide that "a determination will be made within 48 hours of the arrest, except in the event of an emergency or other extraordinary circumstance . . . whether the alien will be continued in custody or released on bond." *Id.* § 287.3(d).

proceedings move swiftly along, and "the government's legitimate interests justify a relatively short-term deprivation of liberty." *Black*, 103 F.4th at 154. In *Demore*, the alien had already "spen[t] six months" in immigration custody before the Supreme Court upheld the constitutionality of his mandatory detention without a bond hearing—and in that case, the alien had not yet had his merits hearing. *Demore*, 538 U.S. at 530–31. Additionally, at this point, the added time is needed only to accommodate relief requested by J.M.P.—his appeal to the BIA. The government's interests continue to be served while his removal proceedings run their course.

J.M.P. can therefore not show, under *Mathews*, that his immigration detention violates procedural due process.[4]

II. J.M.P.'s Requests for Additional Procedural Requirements at Any Bond Hearing Should Be Denied

For all of the reasons explained above, J.M.P.'s mandatory detention is both statutorily authorized and constitutional, and he is not entitled to receive a bond hearing. Even if he were to receive such a hearing, the additional requirements at any such bond hearing that J.M.P. seeks—that ability to pay bond and alternatives to detention be considered for both flight risk and danger, Pet. ¶ 2 & Prayer for Relief, ¶ 3—should be denied.

The government recognizes that, consistent with Second Circuit's decision in *Black*, should this Court find that J.M.P.'s detention without a bond hearing has become unconstitutionally prolonged and that he is entitled to receive a bond hearing, ICE would have the burden of proving

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[4] J.M.P. complains that he has been subjected to "conditions equivalent to criminal incarceration" at Orange County Jail, Pet. ¶ 34, where he is housed only with other ICE detainees. Morrow Decl. ¶ 8. But that complaint is not part of his *Mathews* analysis and has no impact on the Court's assessment of whether J.M.P.'s right to procedural due process has been violated. *See, e.g.*, *Gutierrez v. Dubois*, No. 20 Civ. 2079 (PGG), 2020 WL 3072242, at *10 (S.D.N.Y. June 10, 2020) (concluding that petitioner's detention at Orange County Jail "does not weigh heavily in favor of either side" in the due process analysis where petitioner was "housed in a separate unit at the Orange County Jail . . . and that unit contains only ICE detainees").

at that bond hearing by clear and convincing evidence the need for J.M.P.'s continued detention (i.e., that he is either a danger to the community or a flight risk). 103. F.4th at 157–58.[5] The government further recognizes that *Black* suggests that an immigration judge should consider an alien's ability to pay and alternatives to detention with respect to flight risk. *Id.* at 158. But there is no basis to require an immigration judge to consider ability to pay and alternatives to detention with respect to danger, and so the Court should reject J.M.P.'s request for such a requirement.

J.M.P.'s request is contrary to the Second Circuit's decision in *Black*. In considering whether and how an immigration judge should consider an alien's ability to pay and alternatives to detention, the Second Circuit squarely held that the ability to pay and alternatives were only to assure the alien's appearance (i.e., address flight risk), and such considerations are relevant "only once the IJ has determined that the noncitizen does not pose a danger to the community." *Black*, 103 F.4th at 158–59 (citing *Carlson*, 342 U.S. at 539–42 (finding no due process violation where there is cause to believe alien's release would pose a safety risk); *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006) ("An alien who presents a danger to persons or property should not be released during the pendency of removal proceedings.")). It is only "[a]t that point, [that] refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons." *Id.* at 158. Indeed, the court further "stress[ed] that a showing of dangerousness by clear and convincing evidence would foreclose any possibility of bond. The IJ would then have no reason to consider financial circumstances or alternatives to detention." *Id.* at 159. Put simply, the Second

[5] The government respectfully disagrees with the Second Circuit's decision in *Black*, including its determination concerning the quantum and allocation of the burden of proof, and the government has petitioned the Second Circuit for rehearing of that decision, which is still pending. *See Black v. Decker*, 2d Cir. No. 20-3224. Nonetheless, the government acknowledges that, unless and until the Second Circuit's decision is vacated, overruled, or abrogated, it remains good law.

Circuit recognized that dangerousness is different from flight risk, and due process does not require consideration of alternatives to detention when dangerousness is shown.

CONCLUSION

For the foregoing reasons, the petition for a writ of habeas corpus should be denied.

Dated: New York, New York
August 15, 2025

Respectfully submitted,

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