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.

Civil Action No. 25-4987 (DEH)

PETITIONER'S REPLY IN SUPPORT OF THE PETITION FOR A WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

Petitioner J.M.P. is a young person who fled his native El Salvador as a teenager to escape violence and threats from gangs. Immigration and Custom Enforcement ("ICE") has detained him for six and a half months at Orange County Jail in Goshen, New York. He is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c) for providing a *de minimus* amount of money a few times to gang members in El Salvador under threat of violence when he was a minor. The Government argues that he should be denied a bond hearing, despite the fact his immigration proceedings are likely to last for many additional months, if not years. But under the analysis set forth in *Black v. Decker*, 103 F.4th 133, 152 (2d Cir. 2024), Petitioner has established that his prolonged confinement violates due process. *See also L.G.M. v. LaRocco*, No. 25-cv-2631, 2025 WL 2173577, at *2 (E.D.N.Y. July 31, 2025) (ordering a bond hearing before the district court for petitioner detained pursuant to 8 U.S.C. § 1226(c)).

FACTUAL BACKGROUND

A. J.M.P. Flees To The United States For His Safety

Petitioner is a 23-year-old from El Salvador. (ECF No. 1, Petition ("Pet.") ¶ 26.) Growing up in El Salvador, he was regularly harassed and assaulted by gang members who demanded money or assistance from him. (*Id.*) He repeatedly resisted pressure to join the gangs, and became a target. (*Id.*) When J.M.P. was a teenager, gang members extorted him and his family's bakery for money: "I grew up working with my family's bakery and MS-13 members in our town started charging me renta to keep our business open. I paid because I had no choice." (Pet. ¶ 31.) He gave MS-13 members small amounts of money (under $25 dollars each time) on a few occasions under threat of violence. (*Id.*)

When he was around 14 years old, he was physically attacked by several gang members and ended up in the hospital. (*Id.*) At the hospital, he learned he was under arrest. He was charged

with attempted aggravated homicide, resisting arrest, and gang affiliation in El Salvador. (ECF No. 13.)[1] The incident leading to these charges was a group of young people exchanging gun fire with two police officers. Neither officer was injured. Petitioner was tried as a minor and found guilty of attempted aggravated homicide and resisting arrest; the gang affiliation charge was dismissed. (*Id.*) He received a sentence of one and a half years, and served 14 months at a juvenile rehabilitation facility in El Salvador called Sendero de Libertad. (*Id.*)

J.M.P. attempted to move to another city in El Salvador for his safety, but the threats and violence from gangs continued. His only option was to leave El Salvador; in 2020, when J.M.P. was approximately 18 years old, he fled to the United States to escape the pressure, threats, and violence from gangs. (Pet. ¶ 27.) While in the United States, J.M.P. has lived a quiet life. Prior to ICE detention, he worked, lived with his father, and spent time with family in the United States. (*Id.* ¶ 48.) He has never been prosecuted for a crime while in the United States and, until January 2025, had never been arrested in the United States. (*Id.* ¶ 27; ECF No. 14-1 at 2 ("Subject has no criminal history").

B. ICE Detains J.M.P. Pursuant to 8 U.S.C. § 1226(c)

On January 28, 2025, J.M.P. was at home when agents from the Drug Enforcement Administration ("DEA") raided his home, pointed a gun to his head, and arrested him in his bedroom. (Pet. ¶ 28.)[2] On January 29, 2025, after no criminal charges were filed, the DEA turned

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[1] Petitioner's counsel submitted a letter to the Court on August 7, 2025 to clarify and correct statements made in paragraph 26 of the Petition, in light of information recently received after the filing of the Petition. (ECF No. 13.)

[2] The week prior to J.M.P.'s arrest, both the Acting Attorney General and Acting DHS Secretary issued memoranda to their respective staff authorizing law enforcement within the DOJ, including DEA agents, to conduct immigration-related enforcement actions that are usually reserved for DHS officers. *See* DOJ Mem., Interim Policy Changes Regarding Charging, Sentencing, and Immigration Enforcement (Jan. 21, 2025), *available at* https://www.aila.org/aila-files/75FE2DCB-6CC2-483A-841E-A7A856A7852B/25012912.pdf?1738188120; "Statement []

him over to ICE. (*Id.* ¶ 29.) His father was arrested the same day and placed in ICE custody. (*Id.* ¶ 48.)

ICE charged J.M.P. as removable from the United States under the Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i) (presence in the United States without being admitted or paroled, *i.e.,* entering without inspection), and placed him in removal proceedings at the Varick Street Immigration Court in New York, NY. (ECF No. 14-2 at 1.) When ICE questioned him about any affiliation with gangs or terrorist organizations, he stated he was not affiliated with any such organizations. (ECF No. 14-1 at 3.) ICE has detained J.M.P. at Orange County Jail since January 29, 2025. (ECF No. 15 ¶ 8.)

On March 4, 2025, J.M.P. requested a custody determination which was scheduled for March 11, 2025. (ECF No. 15 ¶¶ 12-13.) On March 10, 2025, DHS filed a RAP sheet in the bond record and J.M.P.'s removal counsel withdrew the request for a custody determination. (Pet. ¶ 30.) On March 11, 2025, J.M.P. submitted a motion to suppress and terminate his removal proceedings. (*Id.*) The Immigration Court denied that motion on March 19, 2024. (ECF No 15 ¶ 14.)

On March 31, 2025, J.M.P. filed his Form I-589 application for asylum, withholding of removal, and protection under the convention against torture ("CAT"). On May 13, 2025, J.M.P.

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on Directive Expanding Immigration Law Enforcement to Some Department of Justice Officials," DHS (Jan. 23, 2025), https://www.dhs.gov/news/2025/01/23/statement-dhs-spokesperson-directive-expanding-immigration-law-enforcement. Since these directives, DEA agents have conducted multiple immigration-related arrests on behalf of DHS. These arrests were for the purpose of "immigration-related investigations" and "immigration enforcement efforts," and resulted in detention of numerous people without criminal records. *See, e.g.,* Reuven Blau and Gwynne Hogan, "One Hundred NYC Immigrants Arrested in Week One of Trump ICE Raids," The City, Feb. 5, 2025, *available at* https://www.thecity.nyc/2025/02/05/ice-arrests-trump-immigrant-crackdown/ (describing how the DEA special agent in charge acknowledged that joint-agency teams do not "exclusively arrest people suspected of criminal activity"); "DEA in Los Angeles helping feds with immigration enforcement efforts," Fox11 (Jan. 26, 2025), https://www.foxla.com/news/dea-la-helping-feds-immigration-enforcement-efforts.

had an individual merits hearing on his Form I-589 application. Before going on the record, the Immigration Judge stated that J.M.P. was subject to mandatory detention due to him providing "material support to a terrorist organization," specifically by giving MS-13 members small amounts of money on two or three occasions under the threat of violence when he was a minor in El Salvador. (Pet. ¶ 31.) By oral decision that day, the immigration judge denied his application for relief and ordered J.M.P. removed. (*Id.*) On May 16, 2025, J.M.P. filed a motion asking the Immigration Judge to issue an order explaining which statutory authority he was detained under and, if eligible, scheduling a bond hearing. (*Id.* ¶ 32.) No decision on that motion was issued.

On June 11, 2025, J.M.P. timely appealed the removal order and denial of his Form I-589 application to the Board of Immigration Appeals ("BIA") and, therefore, the immigration court's merits decision is not final. (*Id.* ¶ 33.) No briefing schedule has been issued on the merits appeal. (ECF No. 15 ¶ 19.) A BIA appeal can take six to nine months or more from the notice of appeal to when the appeal is decided. If Petitioner is successful, a likely outcome is that the case is remanded back to the immigration court with instructions. Thus, Petitioner's detention could last months or even years before his removal proceedings are completed.

J.M.P.'s detention by ICE not only separates him from his family, but he and his father lost the home they had lived in for several years, along with most of their possessions, which were discarded after their arrest. (Pet. ¶ 48.) J.M.P. is also being prevented from financially supporting his family in the United States and El Salvador. Petitioner's detention of four months without a bond hearing has already had the effect of depriving him of property, his home, an income, and the ability to spend time with and support his family. (*Id.*)

LEGAL FRAMEWORK FOR J.M.P.'S MANDATORY DETENTION

8 U.S.C. § 1182 sets forth various categories of noncitizens that are considered "inadmissible" under the INA. A finding of inadmissibility under section 1182 could have a

number of repercussions for a noncitizen beyond a charge of inadmissibility, including *inter alia* what immigration relief he is eligible for and what detention statute applies.

One of the categories of inadmissibility in section 1182 is noncitizens found to have "engaged in terrorist activities," 8 U.S.C. § 1182(a)(3)(B)(i), also known as Terrorist-Related Inadmissibility Ground ("TRIG"). Engaging in terrorist activities is defined as including the provision of material support to a "terrorist organization." *Id.* § 1182(a)(3)(B)(iv)(VI). The definition of a "terrorist organization" consist of three tiers: "(I) designated under section 1189 of this title; (II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or (III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv)." *Id.* § 1182(a)(3)(B)(vi). The Department of State designated Mara Salvatrucha ("MS-13") a Tier I terrorist organization on February 20, 2025 pursuant to 8 U.S.C. § 1189, INA 219.[3] There is neither a duress exception, nor a *de minimus* support exception for the provision of material support under TRIG. *See Matter of A-C-M-,* 27 I&N Dec. 303 (BIA 2018). As relevant here, if a noncitizen falls into the TRIG provision of section 1182, they are not eligible for asylum or withholding of removal, 8 U.S.C. § 1158(b)(2)(A)(v) and their detention is mandatory under 8 U.S.C. § 1226(c)(1)(D).

The Immigration Judge found that J.M.P. providing small amounts of money to gang members under threat of violence when he was a minor, constituted material support to a terrorist

[3] *See* Dep't of State, List of Foreign Terrorist Organizations, https://www.state.gov/foreign-terrorist-organizations/; Dep't of State, Designation of International Cartels, Feb. 20, 2025, https://www.state.gov/designation-of-international-cartels/.

organization and, thus, that J.M.P. fell under the TRIG provision of section 1182. (Pet. ¶ 31.) This finding meant that, in terms of relief, he was barred from both asylum and withholding of removal[4] and, separately that, in terms of detention, he is being held pursuant to section 1226(c). The TRIG finding was based on information that J.M.P. affirmatively shared in good faith on his Form I-589 application.

As discussed below, *infra* Section I.B, while the Government attempts to conflate Petitioner's claims in the instant habeas as being about the merits of his removal proceedings, it is only due to the cross-referral structure of the INA that, in this instance, the application of section 1182 has multiple, separate, severe consequences for Petitioner.

ARGUMENT

I. J.M.P.'s DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS

In *Black v. Decker*, the Second Circuit recently clarified that the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319 (1976) guides determinations of whether immigration detention remains constitutionally sound. *See* 103 F.4th 133, 150-51 (2d Cir. 2024); *see also* Pet. ¶¶ 39-40.

A. J.M.P.'s Ongoing Detention Deprives Him of Substantial Private Interests

As to the first *Mathews* factor, Petitioner's ongoing detention in a correctional facility under section 1226(c) has substantially deprived him of his private interests, of which his liberty interest is the most salient. (Pet. ¶¶ 47-48.) The Government does not contest that Petitioner's liberty interest is at stake. (Opp. at 8; *see also* Pet. ¶ 41.) The Government, instead, bases its opposition to Petitioner's prolonged detention claim and the first factor of the *Mathews* analysis predominantly on the Supreme Court's decision in *Demore v. Kim*, which upheld section 1226(c)

[4] The TRIG provision in section 1182 does not pose as a bar to protection under the Convention Against Torture, which J.M.P. also applied for in removal proceedings.

detention against a facial due process challenge. 538 U.S. 510 (2003); *see* Opp. at 5-6, 8. But *Demore* does not support the Government's attempt to equate section 1226(c)'s facial constitutionality with a wholesale endorsement of mandatory detention. Rather, in *Demore*, the Supreme Court expressly held that noncitizens held subject to section 1226(c) may "be detained for the *brief* period necessary for their removal proceedings." 538 U.S. at 526 (emphasis added).[5] Courts considering due process challenges to section 1226(c) post-*Demore* have recognized the limits of that opinion—namely, that it upheld mandatory detention that lasted, at most, a matter of a months, "*including* any time taken for appeal by the detainee." *Reid v. Donelan*, 819 F.3d 486, 499 (1st Cir. 2016), *affirming grant of individual habeas but remanding class-action*, No. 14-cv-1270, 2018 WL 4000993 (1st Cir. May 11, 2018) (emphasis added) ("The *Demore* majority disclaimed any suggestion that its decision somehow sanctioned categorical custody beyond a matter of months.").

Petitioner's ongoing civil detention in a correctional facility without a bond hearing constitutes a "substantial deprivation of his liberty." *See J.C.G. v. Genalo*, No. 24-cv-08755, 2025 WL 88831, at *8 (S.D.N.Y. Jan. 14, 2025). J.M.P. has been detained for six and a half months without a bond hearing and without a foreseeable end to that detention. As such, under Second Circuit case law, his time in detention equals and will soon exceed the time periods found to be presumptively impermissible as he litigates the appeal of his application for asylum. *See Velasco*

[5] Indeed, the Supreme Court's focus on the brevity of detention authorized by § 1226(c) is evident throughout the opinion. *See, e.g., id.* at 522-23 ("[T]he Government may constitutionally detain deportable [noncitizens] during the *limited period* necessary for their removal proceedings.") (emphasis added); *id.* at 529 ("[I]n the majority of cases, [detention under § 1226(c)] lasts for less than 90 days"). Since *Demore*, it came to light that these statistics were incorrect. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 869 (2018) (Breyer, J., dissenting) ("The Government now tells us that the statistics it gave the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government said it did then.").

Lopez v. Decker, 978 F.3d 842, 855 n.13 (2d Cir. 2020) (noting that "a presumptively constitutional period of detention does not exceed six months") (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)); *see also Black*, 103 F.4th at 151-52, 157-58 (concluding that seven months was sufficiently lengthy to trigger special protections against arbitrary detention, including a bond hearing where ICE had to bear the burden by clear and convincing evidence). There is no briefing schedule issued in J.M.P.'s BIA appeal (ECF No. 15 ¶ 19), and the BIA will take several months to adjudicate his appeal (Pet. ¶ 47). Should J.M.P. prevail at the BIA, a likely outcome would be remand to the immigration court for further adjudication. Thus, J.M.P.'s immigration proceedings will continue for months or years while he is detained without a bond hearing, and he will continue to be deprived of his liberty interest.

Moreover, Petitioner's detention has already caused serious financial difficulties for him and his family, who lost their home of numerous years in Queens, NY, and most of their possessions, which were discarded after ICE detained Petitioner and his father. (Pet. ¶ 48); *cf. Black,* 103 F.4th at 151. J.M.P. has lost his income, leaving him unable to help support his family in the United States and El Salvador, and the ability to spend time with his family. (Pet. ¶ 48.) For these reasons, the first *Mathews* factor weighs heavily in favor of Petitioner.

B. J.M.P.'s Confinement Presents a High Risk of an Erroneous Deprivation of His Interests

As to the second *Mathews* factor, Petitioner's confinement presents a high risk of an erroneous deprivation of his interests. (Pet. ¶¶ 49-53.) The Government's arguments that there are fair procedures and safeguards over section 1226(c) have already been rejected in *Black* and misconstrue Petitioner's claims. The Second Circuit found the "nonexistent procedural protections in place for section 1226(c) detainees markedly increased the risk of an erroneous deprivation of Petitioners' private liberty interests." *Black*, 103 F.4th at 152.

First, the Government claims that the Petition takes issue with the Immigration Judge's denial of J.M.P.'s *application for relief from removal* (Opp. at 8-9), but that is a misreading of the Petition. J.M.P. is clearly challenging his detention under section 1226(c) without the opportunity for an individualized review of the need for that ongoing detention. (Pet. ¶¶ 1, 35.)

The Immigration Judge found that J.M.P. had afforded material support to a terrorist organization 8 U.S.C. § 1182(a)(3)(B)(i), (iv)(VI) and TRIG applied. (Pet. ¶ 31.) This finding applying section 1182 to Petitioner meant *both* that J.M.P. was not eligible for asylum or withholding of removal relief, *and* that he was subject to mandatory detention and the Immigration Judge did not have the ability to redetermine his custody status. This Petition is clearly focused on the consequences of TRIG subjecting him to mandatory detention and prolonged and indefinite detention. (Pet. ¶¶ 31 ("Before going on the record, the IJ stated that J.M.P. *was subject to mandatory detention due to him providing 'material support to a terrorist organization,'* specifically by giving MS-13 members small amounts of money on two or three occasions under the threat of violence when he was a minor in El Salvador."), 50 ("[T]he IJ decided that *she did not have the ability to redetermine his custody status* because MS-13 forced him to pay a small amount of money under threat of death when he was a young teenager . . . The IJ's application of the TRIG Bar to *deny jurisdiction for bond* amounts to an erroneous deprivation of J.M.P.'s liberty interest.") (emphasis added).) It is for this reason that the Petition explains the lack of procedural protections in place, including those specifically related to TRIG. (*Id.* ¶¶ 51-53).

As particularly relevant to this case, the Second Circuit in *Black* noted with concern that section 1226(c)'s "broad reach" would sweep in people, like Petitioner, based on old, alleged conduct. *See Black*, 103 F.4th at 152. That is precisely what has happened here. J.M.P.'s "material support to a terrorist organization," is based on conduct that occurred approximately ten years ago,

when J.M.P. was a child, and was being targeted by gang members: specifically, the Government seeks to hold a young man in prolonged detention, potentially indefinitely, for giving MS-13 members small amounts of money on a few occasions under the threat of violence when he was a 14-year-old and before MS-13 was designated a Tier I terrorist organization. (Pet. ¶ 31.)[6] Neither section 1182 nor section 1226 provide for any consideration that J.M.P. was a minor, was being extorted and under duress, or that the amount of money was *de minimus.* TRIG categorically deprives Petitioner of a bond hearing—just like the petitioners' criminal convictions in *Black*—meaning there is no individualized review over his continued detention or means to request release. And, thus, his ongoing, prolonged detention constitutes an erroneous deprivation of his liberty. *See Black*, 103 F.4th at 153.

The Second Circuit in *Black* found that minimal procedures led to unwarranted detention for Mr. Black, because he was denied a bond hearing even though "for almost twenty years since his criminal conviction in March 2000, he led a peaceful life, helping to support his family." *Id.* Thus, the court concluded that "rather than worrying of a 'risk' of erroneous deprivation, we can be virtually certain that his prolonged detention was unjustified." *Id.* Here, for the last five years, J.M.P. has lived peacefully with his father in New York and was working. J.M.P. has not been arrested or convicted of any crimes as an adult or while living in the United States. (*Id.*).

Second, the Government raises the availability of a hearing under *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999) (Opp. 9-10); however, this mechanism was assessed and rejected in *Black. See* 103 F.4th at 152. Specifically, a *Joseph* hearing is not "a mechanism for a detainee's

[6] Similarly, J.M.P.'s juvenile conviction arose from an incident nearly ten years ago where no one was injured and there was a group of young people involved, from which only he was arrested. (ECF No. 13.) Moreover, it occurred when he was just 14 years old and he was tried as a juvenile, serving 14 months at a juvenile facility. (*Id.*).

release, nor for *individualized* review of the need for detention." *Black*, 103 F.4th at 152 (emphasis added); (Pet. ¶ 42.)[7]

C. The Government's Interest In Preventing J.M.P. From Receiving a Bond Hearing is Minimal

As to the third *Mathews* factor, the competing government interest in preventing Petitioner from receiving a bond hearing is minimal. The Government fails to establish that ICE maintains any interest in preventing Petitioner from a bond hearing based on his ongoing detention. In citing *Black* for recognizing the legitimate government interests in immigration detention (Opp. at 10), the Government omits that the Second Circuit found that allowing additional procedural safeguards of a bond hearing would "do nothing to undercut those interests." *Black*, 103 F.4th at 153. And that the interests shift as the detention is prolonged: "While the government's legitimate interests justify a relatively short-term deprivation of liberty, the balance of interests shifts as the noncitizen's detention is prolonged without any particularized assessment of need." *Id.* at154.

Petitioner maintains that he is neither a danger, nor a flight risk. (Pet. ¶¶ 54-55.) As explained *supra* Section I.B, the section 1226(c) inquiry does not consider the individualized circumstances of providing money to gangs or his juvenile conviction. Further, a bond hearing with the burden on the Government would allow a neutral arbiter to consider the individualized factors of J.M.P.'s fitness for release, which would support the government's interest in preventing dangerous absconders from being released into the community. (*Id.*). Thus, the Government's interest would not be eroded if Petitioner received a bond hearing. Notably, both petitioners in

[7] The Government makes hay of J.M.P.'s May 16, 2025 motion that filed in immigration court asking for the Immigration Judge to issue an order explaining which statutory authority he was detained. However, that motion was not a request for an individualized review of his detention, but rather an attempt to have the Immigration Judge memorialize in writing the decision she made orally. That motion, thus, would not provide an adequate mechanism under *Black* for an individualized review over his continued detention.

Black had criminal convictions in the United States, unlike Petitioner here.[8] *See Black*, 103 F.4th at 138, 139.

Lastly, the Government argues that because Petitioner had a merits hearing and his removal proceedings are "accommodate[ing]" his appeal to the BIA, the government's interests continue to be served. (Opp. at 9.) Courts in this district have previously explained, "to conclude that [Petitioner's] voluntary pursuit of [legal] challenges renders the corresponding increase in time of detention reasonable, would 'effectively punish [him] for pursuing applicable legal remedies.'" *Giron v. Shanahan*, No. 15-cv-2951, 2015 WL 5334046, at *4 (S.D.N.Y. Sept. 11, 2015) (*quoting Leslie v. Attorney Gen. of the U.S.*, 678 F.3d 265, 271 (3d Cir. 2012)). The fact that Petitioner is pursuing a merits appeal has no bearing on the likely length of his detention, nor is it relevant to this Petition. Whatever the outcome of the appeal, proceedings will continue to last at least many additional months if not years in light of the possibility his case is remanded to the immigration court.

Petitioner's ongoing, prolonged detention without any particularized assessment of need is not justified by any legitimate government interest. *See Black*, 103 F.4th at 154 (citing *Velasco Lopez*, 978 F.3d at 854-55 (all the government does in requiring detention is "separate[ ] families and remove[ ] from the community breadwinners, caregivers, parents, siblings and employees."); *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (observing that "any amount of actual jail time . . . has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration" (internal quotation marks and alterations

[8] *See also L.G.M.*, 2025 WL 2173577, at *1 (ordering a bond hearing held before the district court, where petitioner was recruited by a gang in the United States, which led to several arrests and convictions in New York State court, for disorderly conduct, attempted assault in the second degree, and attempted robbery).

omitted)); *Mathews*, 424 U.S. at 347 (instructing that "the public interest" drives analysis of the third factor). ICE's detention of Petitioner is contrary to the public interest: it has separated him from his family, prevented him from financially supporting them, and deprived him and his father of their home.

II. Due Process Requires That J.M.P. Receive Procedural Protections at His Bond Hearing

Should this Court order a bond hearing, the Government concedes that under *Black* the burden will be on ICE to prove the necessity of J.M.P.'s detention by clear and convincing evidence, but argues that *Black* provided that Petitioner's ability to pay and alternatives to detention should only be considered with respect to the assessment of flight risk and not as to the assessment of danger. (Opp. at 12-13.) This interpretation is inconsistent with *Black.*

The portion of *Black* quoted by the Government concerns the process for setting the *amount* of bond, and not the *availability* of bond. *See Black*, 103 F.4th at 158. Further, the Second Circuit found no issue if the district court's decision obligated a fact finder to consider ability to pay and alternatives to detention in assessing dangerousness, because a showing of dangerousness by clear and convincing evidence would foreclose any possibility of bond. *Id.* at 159.

The Government's reading of *Black* has been rejected most recently in *L.G.M. v. Larocco*,

> The government's "legitimate interests" include "protecting the community" and "ensuring the noncitizen's appearance at proceedings." [*Black*, 103 F.4th] at 153. "[A]ny detention incidental to such interests must 'bear a reasonable relation to' those interests," *id.* at 158 (quoting *Zadvydas*, 533 U.S. at 690) (cleaned up), and depriving a detained individual of their liberty interest would be "erroneous[ ]" if there were any available alternatives to that deprivation that would ensure the community is protected and the noncitizen appears at subsequent proceedings, *id.* (*citing Mathews*, 424 U.S. at 335)). Thus, the Court does not find that *Black* precludes the Court's consideration of mitigating measures in determining whether Government Respondents have shown by clear and convincing evidence that Petitioner poses a risk of danger to the community.

2025 WL 2173577, at *3 (ordering a bond hearing be held before the district court for a petitioner from El Salvador, who had been a gang member, and had criminal convictions, detained under section 1226(c)); *see also Molina Cantor v. Freden et al.*, No. 24-cv-764, 2025 WL 39789 (W.D.N.Y. Jan. 7, 2025) (explaining that due process required consideration of alternatives to detention with respect to dangerousness, and that *Black* had not held otherwise).

CONCLUSION

Petitioner respectfully requests that this Court order Respondents to release Petitioner immediately on his own recognizance or under parole, bond, or reasonable conditions of supervision, or, in the alternative, order a constitutionally adequate, individualized hearing before an impartial adjudicator at which the Government bears 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.

Dated: August 22, 2025
Brooklyn, New York

Respectfully Submitted,

/s/ Lucas Marquez

Lucas Marquez, Esq.
Melinda Katherine Sheild, Esq.
BROOKLYN DEFENDER SERVICES
177 Livingston Street, 7th Floor
Brooklyn, NY 11201
(718) 254-0700
lmarquez@bds.org