IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

B.S.,	)	
	)	Civil Action No. 3:25-cv-211
Petitioner,	)	
	)	KEITH A. PESTO
v.	)	United States Magistrate Judge
	)	
LEONARD ODDO, WARDEN, *et al.*,	)	(Electronic filing)
	)	
Respondents.	)	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner B.S. is a native and citizen of India. Exh. No. 1 at 1. He unlawfully entered the United States and was served with a Notice to Appear charging that he was removable pursuant to 8 U.S.C. § 1182(a)(6)(i) for being an alien present in the United States without being admitted or paroled. *Id.* Petitioner was initially released on a $15,000 bond in late January 2018. *Id.*

Petitioner violated his bond by committing assault when he grabbed a sword and slashed another person with it. *Id.* On September 2, 2021, Petitioner pleaded guilty to committing assault in the second degree in violation of New York law. *Id.* His bond was revoked, and he was placed in DHS custody on or about September 13, 2021. *Id.*

Subsequently, the United States District Court for the Southern District of New York entered a habeas order directing that Petitioner was to receive a bond hearing pursuant to 8 U.S.C. § 1226(a). *Id.* A hearing was held and on February 8, 2023, the Immigration Court in New York denied Petitioner bond. *Id.* Petitioner appealed this decision to the Board of Immigration Appeals ("BIA"), which remanded the matter directing that a bond redetermination hearing be conducted. *Id.* This hearing occurred on August 28, 2024. *Id.* at 2.

An Immigration Judge ("IJ") denied Petitioner's request, holding that he failed to present sufficient evidence that he did not pose a danger to the community based on the facts underlying the state conviction and his conduct at the Buffalo Federal Detention Facility. *Id.* The latter conduct consisted of "altercations involving physical violence with other detainees." *Id.* The IJ further found that Petitioner also "failed to demonstrate that he would not pose a risk of flight if released[.]" *Id.* at 6.

Meanwhile in May 2024, Petitioner's application for asylum and withholding of removal, and protection under the Convention Against Torture were denied. Exh. No. 2. at 2. Petitioner filed another appeal with the BIA and on September 9, 2025, the BIA denied the appeal. *Id.* Specifically, the BIA affirmed: the IJ's discretionary denial of asylum, *id.* at 2-3; the IJ's finding that Petitioner failed to establish past persecution; *id.*, at 4; the determination that Petitioner had failed to demonstrate a clear probability of future persecution were he to be returned to India, *id.* at 7; and the finding that Petitioner failed to establish that it would be more likely than not that he would be tortured if returned to India. *Id.*, at 8; *See also* Exh. No. 3. On September 5, 2025, Petitioner filed petition for review with Court of Appeals for the Second Circuit. Exh. No. 4. Petitioner is housed at the Moshannon Valley Processing Center ("MVPC").

II. Petitioner's claim

Petitioner has filed a petition for writ of habeas corpus claiming that ICE's purportedly failure to accommodate his "mental disabilities" has unreasonably prolonged his detention. ECF No. 1. At 18. He claims that he entitled to an individualized bond hearing before either this Court "or another neutral arbiter[.]" *Id.* at 18. He further maintains his release is warranted under the Rehabilitation Act of 1973 because release "is the reasonable accommodation" for the afflictions from which he suffers, e.g., metal health issues. *Id.* at 20. He raises an ancillary argument under

the Administrative Procedure Act ("APA") to this claim maintaining that his continued detention by ICE is arbitrary and capricious given his mental health issues. *Id.* at 21. As recourse, he seeks his immediate release. *Id.* at 21-22.

Nonetheless, the Court should dismiss.

I. Petitioner's detention is lawful

As it stands, the record establishes that Petitioner had an individualized bond hearing and a bond redetermination hearing. Aside from implying that the most recent bond proceeding was held before a non-neutral judge, he presents the Court with no proof that the previous proceedings were violative of due process or otherwise constitutionally infirm. And while his "subjective disagreement with the ultimate conclusions of the immigration judge and BIA" concerning the propriety of release pursuant to a bond, those conclusions "are not subject to review by this Court." *K.A. v. Green*, 2019 WL 3001242, at *4 (D.N.J. July 10, 2019) (citing *Pena v. Davies*, 2016 WL 74410, at *2 (D.N.J. Jan. 6, 2016); 8 U.S.C. § 1226(e)).

The Court lacks jurisdiction over Petitioner's claim that MVPC has violated the Rehabilitation Act, 29 U.S.C. § 794 et seq., and as a result he is entitled to a bond hearing or his immediate release. "Congress passed the Rehabilitation Act in 1973 to make certain that no individual with a disability would 'be subjected to discrimination under any program or activity receiving Federal financial assistance.'" *Fowler v. UPMC Shadyside*, 578 F.3d 203, 206-07 (3d Cir. 2009) (quoting 29 U.S.C. § 794(a)). Habeas petitions asserting a violation of the Rehabilitation Act are not cognizable under § 2241. *See e.g., Stickney v. Paul*, 2024 WL 3286913, at *1 (E.D. Ky. June 14, 2024) (Rehabilitation Act claim not cognizable under § 2241); *Gorrell v. Hastings*, 541 F. App'x 943, 945 (11th Cir. 2013) (affirming denial Rehabilitation Act claim improperly brought pursuant to § 2241); *Paige v. Jamison*, 2022 WL 2292004, at *3 (M.D. Pa. June 24, 2022).

Section § 2241 confers federal jurisdiction over habeas petitions that challenge "not the validity but the execution of [a] sentence." *See Cardona v. Bledsoe*, 681 F.3d 533, 535 (3d Cir. 2012) (citations omitted); *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 241 (3d Cir. 2005). While "the precise meaning of 'execution of the sentence' is hazy[,]" *see id.* at 242, the United States Court of Appeals for the Third Circuit has defined this phrase to mean "put into effect" or "carry out" *see id.* at 243." (citation and internal quotation marks omitted). What is clear, however, is that detainee claims based on the Rehabilitation Act are concerned with the conditions of confinement as opposed to the execution of a sentence and are beyond the ambit of § 2241. *See Stickney v. Paul*, 2024 WL 3286913, at *1 (E.D. Ky. June 14, 2024) (collecting cases); *Wragg v. Ortiz*, 469 F. Supp. 3d 476, 503 (D.N.J. 2020) (under Third Circuit precedent "conditions of confinement claims are not cognizable under § 2241) (emphasis in original); *Lopez v. Wetzel*, 2012 WL 345215, at *3 (W.D. Pa. Feb. 1, 2012) ("challenges to 'unconstitutional conditions of confinement,' are not habeas claims"); *Ademola v. Oddo*, 2025 WL 2597430, at *1-2 (W.D. Pa. Aug. 13, 2025) (dismissing habeas petition concerning conditions of confinement due to lack of jurisdiction). In addition to being non-cognizable, it is doubtful that Petitioner could even file a claim against MVPC because detention centers do not fall within the Act's definition of "public entity." *Hurtado v. Reno*, 34 F. Supp. 2d 1261, 1264 (D. Colo. 1999) (holding that detainee could not bring a Rehabilitation Act claim against Immigration and Naturalization Services, ICE's predecessor); *see also Acha v. Wolf*, 2021 WL 537101, at *7 (W.D. La. Jan. 28, 2021); *Roark v. Flanery*, 2014 WL 4447451, at *27 (E.D. Tex. Sept. 9, 2014) ("[T]he Bureau of Prisons does not fit within the definition of 'programs or activities' governed by § 794(a).").

Equally unavailing is Petitioner's claim that he is entitled to relief under the APA. Unlike § 2241, which permits challenges resulting in one's release, "a civil action under the APA

challenges only the rules used to decide a person's right to release." *Johnson v. Lammer*, 2022 WL 2294168, at *2 (S.D. Ind. Feb. 7, 2022) (citing *Richmond v. Scibana*, 387 F.3d 602, 605 (7th Cir. 2004). Here, Petitioner's APA claim hinges on his Rehabilitation Act claim; he claims that the regulations ICE purportedly violated in his case were adopted to implement Section 504 of the Rehabilitation Act. ECF No. 1 at 19-20. Given this, the APA claim is inextricably intertwined with the Rehabilitation Act claim and it is not cognizable and the Court lacks jurisdiction. *Fuentes v. Choate*, 2024 WL 2978285, at *12 (D. Col. June 13, 2024). In rejecting an identical claim to the one raised here, the court in *Fuentes*, *id.*, held that it was a "repackaged habeas request" challenging the conditions of confinement.

Also, APA review of a final agency action is only appropriate only where "there is no other adequate remedy in a court [ ] subject to judicial review." 5 U.S.C.§ 704. As noted, reduced to their essence, Petitioner's Rehabilitation Act and APA claims are concerned with the conditions of his confinement and such claims are improperly brought pursuant to habeas. *See McGee v. Martinez*, 627 F.3d 933, 936 (3d Cir. 2010) (citation omitted). Accordingly, the Court should dismiss this claim. *See e.g., Wise v. Samuels*, 2014 WL 1280975, at *6 (E.D. Vir. Mar. 26, 2014).

Finally, Petitioner presents the Court with no authority establishing that it has the authority to order his immediate release based on the alleged grievances. In fact, "[t]he only remedy for an alien challenging their mandatory detention is a bond hearing." *Davis v. Warden of Pike County Correctional Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022) (citing *Hernandez T. v. Wolf*, 2020 WL 634235, at *2-3 (D.N.J. Feb. 11, 2020)). And here, Petitioner has had an unsuccessful bond hearing and an unsuccessful bond redetermination hearing. Petitioner can seek further by presenting evidence that his circumstances have materially changed since the prior redetermination. See 8 C.F.R. § 1003.19(e).

Nevertheless, "[t]he determination of whether bond should be granted is left to the discretion of immigration officials, and '[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.'" *J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331, 1343 (M.D. Ga. Nov. 16, 2020) (quoting 8 U.S.C. § 1226(e)); *see also Jenning v. Rodriguez*, 583 U.S. 28, 295 (2018) ("As we have previously explained, § 1226(e) precludes an alien from 'challeng[ing] a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding his detention or release.'") (quoting *Denmore v. Kim*, 538 U.S. 501, 516 (2003)).

WHEREFORE, for the foregoing reasons, the Petition should be dismissed.

Respectfully submitted,

TROY RIVETTI
Acting United States Attorney

/s/ Michael Leo Ivory
MICHAEL LEO IVORY (PA ID 59296)
Assistant U.S. Attorney
Western District of PA
Joseph F. Weis, Jr., U.S. Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 644-3500
Fax: (412) 644-6995
michael.ivory@usdoj.gov

Counsel for Respondents