UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AGAPITO ACOSTA,
Petitioner,

v.

PAUL ARTETA
in his official capacity as Sheriff of Orange County, New York and Warden of the Orange County Correctional Facility;

LADEON FRANCIS,
in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement;

TODD M. LYONS,

in his official capacity as Acting Director, United States Immigration and Customs Enforcement;

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

PAM BONDI,
in her official capacity as Attorney General, U.S. Department of Justice.
Respondents.

Civil Action No. 25-9916

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

INTRODUCTION

1. Petitioner Agapito Acosta ("Mr. Acosta" or "Petitioner") petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents. Respondents have detained him in immigration custody for nearly six months without the opportunity to seek release at a bond hearing.

2. Mr. Acosta is a 61-year-old man with limited competency who is recovering from a stroke he had in May 2025. He has lived in the United States for almost forty years and, prior to his detention, lived in Long Island. He has been detained by Immigration and Customs Enforcement (ICE) since June 2025 in a county jail where he is unable to access his regular healthcare or support of his family.

3. Petitioner has no other remedy at law than to petition this Court and request the Court order Respondents either to immediately release him from immigration custody, or to order an individualized bond hearing at which the government must bear the burden of proving by clear and convincing evidence that continued detention remains justified. In such a bond hearing, to satisfy due process, an adjudicator must also consider the ability to pay bond and the availability of alternatives to detention, including conditions of supervision, that would mitigate any concerns as to flight risk and danger. A bond hearing must also include necessary procedural safeguards as reasonable accommodations to ensure that Mr. Acosta can meaningfully participate in the proceeding.

JURISDICTION

4. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution; and the All Writs Act, 28 U.S.C. § 1651. Additionally, the Court has jurisdiction to grant injunctive relief in this case

pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that he is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

5. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

6. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over [the petitioner.]'" (citing 28 U.S.C. § 2242)).

7. The place of employment of Respondent Joyce is also located within the District, at 26 Federal Plaza, New York, NY. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493-94 (1973) (laying out traditional venue factors).

EXHAUSTION

8. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Beharry v. Ashcroft*, 329 F.3d 51, 56 (2d Cir.2003); *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010). No

exhaustion requirement applies to the claims raised in this petition because the immigration court and Board of Immigration Appeals (BIA) lack jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Valdovinos*, 18 I&N Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

9. Nor is further action with the agency necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538-39 (S.D.N.Y. 2014); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-7 (S.D.N.Y. 2010).

10. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

PARTIES

11. Petitioner is a 61-year-old man from El Salvador who has lived in the United States for nearly 40 years. He has been detained by Respondents at Orange County Correctional Facility in Goshen, NY since June 2025. Petitioner's removal proceedings are venued at the Varick Immigration Court in New York, NY.

12. Respondent Paul Arteta is named in his official capacity as Sheriff of Orange County, New York and acts as the warden for Orange County Correctional Facility, where Petitioner is detained. As such, he is the custodian of Petitioner. Respondent Arteta's office is located at 110 Wells Farm Rd, Goshen, NY 10924.

13. Respondent LaDeon Francis is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, he is also responsible for the

administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Francis's address is New York ICE Field Office Director, 26 Federal Plaza, 9th Floor, Suite 9-10, New York, New York 10278.

14. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is a legal custodian of Petitioner and is named in his official capacity. In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the Southern District of New York, he supervises Respondent Francis, and he is legally responsible for Petitioner's detention and removal. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, DC 20536.

15. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. She is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the Southern District of New York; she supervises Respondent Joyce; and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is a legal custodian of Petitioner. Respondent Noem's office is located in the United States Department of Homeland Security, 2801 Nebraska Avenue, N.W., Washington, DC 20528.

16. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings. As such, she is a legal custodian of Petitioner. Respondent Bondi's office is located

at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

17. Mr. Acosta entered the United States in or around 1986 and for almost 40 years has lived mostly in New York. Before his detention, he lived on and off with family on Long Island, and worked as a day laborer in construction and landscaping.

18. On May 4, 2025, Mr. Acosta was admitted to Northwell Health Glen Cove Hospital. After reporting numbness in right arm and right leg and his inability to walk, his treating physician diagnosed Mr. Acosta as having suffered from a stroke. *See* Exhibit A, Letter from John Victor Sena Alencar, LMSW, dated Oct. 22, 2025, at 2 ("Alencar Letter"). Following MRI scans, he was found to have had an "acute infarct in the left thalamus and midbrain." *Id.* He was also diagnosed with high blood pressure, which must be controlled to prevent a future stroke. Exhibit B, Medical Letter by Dr. Bui dated Oct. 23, 2025, at 3 ("Dr. Bui Letter"). Mr. Acosta was hospitalized for two days and released on May 6, 2025 with a prescription regimen and follow-up appointments with family health, cardiology, and neurology specialists. Alencar Letter at 2.

19. After nearly 40 years of living in the United States, on June 11, 2025, ICE arrested Mr. Acosta and detained him at the Orange County Correctional Facility ("Orange County Jail" or "OCJ"). ICE charged him as removable from the United States under INA § 212(a)(6)(A)(i) (presence in the United States without being admitted or paroled). The Notice to Appear identified Petitioner as an "alien present in the United States who has not been admitted or paroled."

20. At Petitioner's first master calendar hearing on June 18, 2025, Petitioner appeared pro se. The immigration judge noted that Petitioner may have difficulties understanding the nature of proceedings and expressed concern, suggesting Petitioner speak to an attorney before

proceeding. At Mr. Acosta's second master calendar hearing on, June 25, 2025, the immigration judge indicated to Petitioner's immigration counsel that he noticed competency issues, and in light of those issues, provided counsel with extra time to screen client for relief. *See Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).[1] A *M-A-M-* hearing was ultimately scheduled for October 28, 2025 to determine whether procedural safeguards were necessary to ensure that Petitioner can meaningfully participate in his removal proceedings.

21. A clinical and forensic neuropsychologist, Dr. Gonzalo Vazquez-Casals, Ph.D., met with Petitioner in August and September 2025, in person, and conducted various tests and neuropsychological evaluations. *See* Exhibit C, Neuropsychological Evaluation of Dr. Vazquez-Casals dated Oct. 22, 2025 ("Dr. Vazquez-Casals Eval."). Dr. Vazquez-Casals diagnosed Mr. Acosta with Mild Neurocognitive Disorder and Borderline Intellectual Functioning. According to Dr. Vazquez-Casals' evaluation, Mr. Acosta has "cognitive deficits, involving most areas of his cognitive profile," which presents in "moderate to significant cognitive difficulties, including borderline-level intellectual functioning." *Id.* at 15, 16. Dr. Vazquez-Casals thus concluded that Mr. Acosta is of "limited or marginal competency." *Id.* at 11. Dr. Vazquez-Casals also found that Mr. Acosta's intellectual function fell below 96% of his age peers and that he had a "deficient" working memory and "limited expressive receptive verbal ability." *Id.* at 13.

22. Dr. Vazquez-Casals further explained in his report that while it is likely that Mr. Acosta had a "low IQ from the start," some of his performance on the cognitive testing "are also consistent with expectations for a stroke or brain infraction." *Id.* at 15. As a result, he suffers from

[1] *M-A-M-* provides a framework for immigration judges to follow when hearing cases involving noncitizens with mental competency issues, including setting forth a test to assess a noncitizens ability to particular in a removal hearing and what procedural safeguards may be necessary to ensure a fair hearing in immigration court.

impairments in language, verbal memory, conceptional and reasoning ability, and difficulties in attention and slowed information processing speed. *Id.* As Dr. Vazquez-Casals explained, this is cause for concern as Mr. Acosta has been receiving inconsistent treatment for his stroke since he has been detained and is at high risk of future strokes, which could worsen the severity of his cognitive impairments. *Id.* Dr. Vazquez-Casals recommended that Mr. Acosta be released given his increased risk of having a stroke. *Id.* at 17.

23. Petitioner's immigration counsel also obtained a review of Mr. Acosta's extensive medical records by Dr. Thuy Bui, M.D. *See* Dr. Bui Letter. Dr. Bui confirmed that Mr. Acosta "had an acute ischemic stroke in 2025," and upon "examination by the neurology team revealed significant deficits," which "indicate substantial neurological impairment." *Id.* at 2. Dr. Bui found that Mr. Acosta is "at an extremely high risk for recurrent stroke, heart attacks, [and] damage to major organs including kidneys, eyes, and blood flow to lower limbs." *Id.* at 2. Dr. Bui also concluded that Mr. Acosta's medical needs cannot be adequately met in detention. *Id.* at 3.

24. At Mr. Acosta's October 28, 2025 *M-A-M-* hearing, Petitioner's counsel moved for termination of the removal proceedings or alternate safeguards for the proceedings under *Matter of M-A-M-* and Section 504 of the Rehabilitation Act. The immigration judge found that Mr. Acosta was not competent. The immigration judge denied the motion to terminate without prejudice and granted agreed upon safeguards. These safeguards include: deferring to the evidentiary record, particularly when issues related to memory arise; relying on testimony and evidence from third parties; if and when available, allowing for leading questions on direct examination, as needed; refraining from requiring detailed statement and limiting testimony; and allowing for breaks and extra time as needed.

25. Since being detained by ICE in June, Mr. Acosta missed many of his medical appointments essential to monitoring his health and protecting him from future strokes. It is unclear if he has received the medications he was prescribed in detention.

26. Due to Mr. Acosta's neurocognitive disorders and limited competency, he has difficulty understanding what the implications of his stroke are on his health, wellbeing, and his ability to accurately recall information. Mr. Acosta's BDS social worker provided a letter to the immigration judge in support of termination, noting that if Mr. Acosta is released, the social worker would assist Mr. Acosta in reconnecting to his medical care at Northwell Health which will help him prevent the onset of another more dangerous stroke, and noted that Mr. Acosta has lived in Long Island for many years and has family there who could further help him in his recovery. *See* Alencar Letter.

27. On November 12, 2025, Petitioner's immigration counsel filed an application for asylum and withholding of removal. The immigration judge held another master calendar hearing on that date and scheduled the merits hearing for December 10, 2025.

28. As proceedings drag on, Petitioner continues to languish in detention at Orange County Jail, as he has been since June 11, 2025. Orange County Jail has been the subject of an extensive complaint to DHS's Office of Civil Rights and Civil Liberties for flagrant civil rights violations including medical neglect, lack of access to food available that is not rotten or expired, and abuse, harassment, and retaliation by facility personnel.[2] Currently, Petitioner is under

---

[2] *See* CRCL Complaint Regarding Ongoing Abuse at Orange County Jail (Mar. 21, 2023), https://www.law.nyu.edu/sites/default/files/2023.March_.21.%20CRCL%20Complaint%20re%20OCCF.pdf; *see also* New York Lawyers for the Public Interest, Denied Care, Denied Dignity: Systemic Medical Failures in Immigration Detention at Orange County Jail (2025), www.nylpi.org/wp-content/uploads/2025/09/English-OCJ-Health-in-Detention-Report_FINAL.pdf.

conditions equivalent to criminal incarceration. Moreover, Petitioner is unable to access the healthcare he needs at Orange County Jail, putting him at further risk of a stroke.

29. As a result, without access to a bond hearing, Petitioner will soon have endured over six months of detention without any individualized review by a neutral fact finder as to whether his custody in a county jail is warranted. In addition, ICE has a practice of keeping individuals detained while they appeal decisions through the invocation of automatic and discretionary stays of grants of bond.

30. Mr. Acosta's only criminal convictions occurred over two decades ago. In 1999, he pled guilty to criminal possession of a weapon in the fourth degree with intent to use, N.Y. Pen. Law § 265.01(2). In 2003, he pled guilty to attempted assault in the third degree with intent to cause physical injury, *id.* §§ 110; 120.00(1). Since 2003, Mr. Acosta's only criminal history has been five guilty pleas for violations that arose from his housing instability, include failing to present a valid LIRR ticket, urinating in a public space, and possessing an open container of alcohol in public, and one arrest in May 2025 for a trespass violation and failure to present a LIRR ticket, for which the charges were ultimately dismissed in August 2025.[3]

[3] Additionally, in 1995, Mr. Acosta pled guilty to a trespass violation, N.Y. Pen. L. § 140.05.

LEGAL FRAMEWORK

A. Respondents Are Detaining Petitioner Under Mandatory Detention Statute

31. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018); *Demore*, 538 U.S. at 523; *Zadvydas*, 533 U.S. at 690. Detention is either discretionary and provides for a bond hearing pursuant to the statute, *see* 8 U.S.C. § 1226(a), or is "mandatory," in that the statute does not provide for a bond hearing, *see id.* §§ 1225(b), 1226(c), 1231(a).

32. Under the discretionary detention statute, a noncitizen may request a bond hearing at any time to contest whether he is a danger or a flight risk and thus properly detained during the pendency of his removal proceedings. *See id.* § 1226(a). Conversely, § 1226(c) authorizes DHS to indefinitely detain noncitizens without the opportunity to request that the immigration judge review whether detention is necessary. *See Jennings*, 583 U.S. at 303 (holding that nothing in the statutory language of § 1226(c) limits "the length of detention" authorized by the statute). The Supreme Court, however, has left open the question of whether the Constitution requires bond hearings for noncitizens subject to mandatory, prolonged detention. *Id.* at 321.

33. As Mr. Acosta is currently being detained under the mandatory provisions of § 1226(c) due to his past criminal convictions, he has not been afforded a bond hearing.[4] The convictions triggering mandatory detention occurred over 20 years ago.

---

[4] To the extent that Respondents intend to rely on 8 U.S.C. § 1225(b)(2)(A) as the basis of Mr. Acosta's detention, that statute does not apply to him because he was arrested inside the United States and is not "seeking admission" as the statute requires. In nearly 300 cases across the country, district courts have held that § 1225(b)(2)(A) does not apply to noncitizens like Mr. Acosta, who entered without inspection and are subsequently arrested within the United States. *See, e.g.*, *Lopez Benitez v. Francis*, No. 25-cv-5937 (DEH), 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025); *J.G.O. v. Francis*, No. 25-cv-7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025); *Huamani v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *3-*4

34. Section 1226(c)(1) of title 8 of the United States Code provides, in relevant part: "The Attorney General shall take into custody any [noncitizen] who . . . is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title," *id.* § 1226(c)(1)(A), "when the [noncitizen] is released, without regard to whether the [noncitizen] is released on parole, supervised release, or probation, and without regard to whether the [noncitizen] may be arrested or imprisoned again for the same offense," *id.*

35. Section 1182(a)(2), in turn, provides "criminal and related grounds" of inadmissibility and includes a conviction of "a crime involving moral turpitude." *See id.* § 1182(a)(2)(A)(i)(I).

36. Paragraph (c)(4) of § 1226 provides that the Attorney General may only release a noncitizen "described in paragraph (1)" under narrow circumstances not applicable here.

B. Mandatory Detention is Subject to Constitutional Safeguards

37. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

38. Detention pursuant to immigration proceedings—which are civil, not criminal—is constitutionally permissible only in "certain special and 'narrow' nonpunitive circumstances.'" *Id.* (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement

---

(S.D.N.Y. Nov. 4, 2025); *Romero Perez v. Francis*, No. 25-cv-8812 (JGK), 2025 WL 3110459, at *3 (S.D.N.Y. Nov. 6, 2025).

"outweighs the [detained] individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal citation omitted). This is especially apparent in civil detention settings. *See, e.g., Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.").

39. In the immigration context, the Supreme Court has recognized only two valid purposes for detaining noncitizens: to mitigate the risk of danger to the community and to prevent flight. *Zadvydas*, 533 U.S. at 690-91; *see also Demore*, 538 U.S. at 515, 527-28. While the Supreme Court upheld mandatory detention under § 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding that detention under § 1226(c) is typically "brief" and lasts a "very limited time." 538 U.S. at 513, 529 & n.12. The Court cited government-provided data that purported to show that "in the majority of cases [detention under § 1226(c)] lasts for less than the 90 days we considered presumptively valid in *Zadvydas*," and that "in the minority of cases in which the alien chooses to appeal," detention lasts "about five months." *Id.* at 529-30. However, those statistics were inaccurate even when *Demore* was decided.[5] In Petitioner's case, his detention—nearly six months as of today, without a foreseeable end date—will prospectively exceed the time periods held to be presumptively permissible as he litigates his appeal. *Cf. id.*

[5] The statistical information provided by the Government and relied upon by the Supreme Court in *Demore* was in 2016 revealed by the Solicitor General to be inaccurate, and the true average length of immigration detention was shown to be much longer. *See Jennings*, 583 U.S. at 343 (Breyer, J., dissenting) ("The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did… thousands of people here are held for considerably longer than six months without an opportunity to seek bail.").

40. 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), *reh'g en banc denied*, 156 F.4th 171 (2d Cir. 2025).

41. The three factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

42. First, the Second Circuit explained that the interest that 1226(c)-detained noncitizens hold "is the most significant liberty interest there is—the interest in being free from imprisonment." *Black*, 103 F.4th at 151 (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). The court noted that noncitizens detained under 8 U.S.C. § 1226(c) possess the same liberty interest as noncitizens detained under any other statute. *See id.* It further highlighted that 1226(c)-detained noncitizens lack any administrative mechanisms by which they could challenge their detention.

43. Second, the Second Circuit found that there is a high risk of erroneous deprivation of rights for § 1226(c)-detained noncitizens because there are "almost nonexistent procedural protections in place for section 1226(c) detainees[.]" *Id.* at 152. The court observed that while § 1226(c)-detained noncitizens possess due process protections in other adjacent domains—such as the ability to ask for *Matter of Joseph* hearings, which resolve whether they may be subjected to mandatory detention in the first place—those mechanisms are insufficient because they do not apply to requesting release. *See id.* The Court thus concluded that § 1226(c)-detained noncitizens

are faced with even higher "risk[s] of erroneous deprivation" of their private liberty interests than § 1226(a)-detained noncitizens. *See id.*

44. Third, the Second Circuit determined that the competing government interest in preventing a § 1226(c)-detained noncitizen from receiving a bond hearing is minimal. The court outlined that the government possesses two primary interests in denying mandatorily detained noncitizens from receiving a bond hearing at this stage: ensuring the noncitizen's appearance at proceedings and protecting the community from danger. *See id.* at 153-54. The court, however, indicated these interests are not undercut by the relief *Mathews* provides in a procedural sense. It assessed "at any ordered bond hearing, the IJ would assess on an individualized basis whether the noncitizen presents a flight risk or a danger to the community, as IJs routinely do for other noncitizen detainees." *Id.* Since the procedural protection that flows out of the first two *Mathews* factors does not overburden the government's interest at the third factor, the court found relief reasonable and necessary.

45. The court reiterated its principle from *Velasco Lopez* that the government can possess no valid interest in detaining a noncitizen who is neither dangerous nor a risk of flight. *See id.* at 154.

46. Finally, in *Black*, the Second Circuit, drawing from *Velasco Lopez* and from other cases in the civil detention context, concluded that the government must be required to bear the burden of proving the need for continued detention. *See id.* at 155. Such proof must be made by clear and convincing evidence, *see id.* at 157-58, and must include considerations of ability to pay and alternatives to detention in setting any bond amounts, *see id.* at 158. *See also Beltran Marroquin v. Genalo*, No. 24-cv-6376 (MMG), 2025 WL 3241161, at *3-*5 (S.D.N.Y. Nov. 20,

2025); *G.F.F. v. Francis*, No. 25-cv-7368 (JGK), 2025 WL 3141735, at *6 (S.D.N.Y. Nov. 10, 2025); *M.P.L. v. Arteta*, No. 25-cv-5307 (VSB), 2025 WL 2938993, at *6 (S.D.N.Y. Oct. 16, 2025).

C. Petitioner's Detention Without an Individualized Bond Hearing Violates Due Process

47. ICE is detaining Mr. Acosta without access to a bond hearing under § 1226(c), so *Black v. Decker* governs his prolonged detention due process claim. Petitioner does not concede his ineligibility under the INA for bond, but he is entitled to a constitutionally adequate bond hearing under either § 1226(a) or (c). Under *Mathews* factors as used in *Black*, the Respondents' ongoing detention of Petitioner without a bond hearing violates due process.

Petitioner's private interests

48. Petitioner's ongoing detention in a correctional facility under § 1226(c) has substantially deprived him of his private interests, of which his liberty interest is the most salient. *See J.C.G. v. Genalo*, No. 24-cv-08755 (JLR), 2025 WL 88831, at *8 (S.D.N.Y. Jan. 14, 2025) (finding that a petitioner's confinement in a correctional facility without a criminal adjudication constituted a "substantial deprivation of liberty"). He has already spent nearly six months confined in a jail setting analogous to criminal incarceration. His 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 prospectively.

49. Moreover, his detention deprives him of private interests beyond his liberty. Petitioner cannot access his regular healthcare while in detention, and due to his limited competency, he is unable to self-advocate for the medical care he needs while he is in detention. Also, while detained, he is unable to work to support himself. Petitioner's detention of nearly six months without a bond hearing has already had the effect of depriving him of his freedom, an income, and access to his regular healthcare.

Risk of erroneous deprivation

50. Petitioner's confinement presents a high risk of an erroneous deprivation of his interests. The Second Circuit in *Black v. Decker* recognized that detention under § 1226(c) "markedly increased the risk of erroneous deprivation of Petitioners' private liberty interests" because there are "almost nonexistent procedural protections in place." 103 F.4th at 152. There are no mechanisms for release or individualized review of the need for detention by the immigration court. *Id.* Furthermore, § 1226(c) proscribes bond on the basis of nonviolent and old past conduct.

51. Petitioner's present confinement directly stems from the inadequacy of protective procedures against erroneous deprivation of his liberty interest. Mr. Acosta is being held under § 1226(c) based on criminal convictions that occurred over two decades ago. The use of mandatory detention to deny jurisdiction for bond amounts to an erroneous deprivation of Mr. Acosta's liberty interest.

The government's interest

52. Third, as in *Black*, the competing government interest in preventing Petitioner from receiving a bond hearing is minimal. DHS's basis for subjecting Petitioner to mandatory detention—his decades-old criminal convictions—is not a meaningful indicator of flight risk or dangerousness. The government's interest in preventing dangerous absconders from leaving detention is therefore not furthered by Mr. Acosta's exclusion from bond.

53. This is elucidated by the numerous factors showing Mr. Acosta is neither a danger nor a flight risk. The criminal convictions triggering his mandatory detention are decades old. He has lived in New York for over four decades where members of his family live, and he is eager to stay with his community.

54. The government's interest is not served in keeping a noncitizen who is in removal proceedings, like Mr. Acosta, detained in a carceral setting without a bond hearing at the expense of taxpayers, as no indication of flight risk. *See Black,* 103 F.4th at 154. A bond hearing with the burden on DHS would allow a neutral arbiter to consider the individualized factors of Mr. Acosta's fitness for release, which would support the government's interest in preventing dangerous absconders from release into the community. The government's interest would not be eroded if Petitioner received a bond hearing.

D. The Rehabilitation Act of 1974's Prohibition of Discrimination Against People With Disabilities Applies to Immigration Detention

55. Section 504 of the Rehabilitation Act of 1974 provides that "[n]o . . . qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination . . . under any program or activity conducted by any Executive agency," 29 U.S.C. § 794(a), including DHS and the Executive Office for Immigration Review (EOIR), *see* 6 C.F.R. § 15.30 (regulations pertaining to DHS); 28 C.F.R. § 39.130 (regulations pertaining to EOIR). "A public entity discriminates against a qualified individual with a disability when it fails to provide 'meaningful access' to its benefits, programs, or services." *Disabled in Action v. Bd. of Elections in City of N.Y.*, 752 F.3d 189, 197 (2d Cir. 2014) (quoting *McElwee v. County of Orange*, 700 F.3d 635, 640 (2d Cir. 2012)). "To assure meaningful access, reasonable accommodations" may be necessary. *Id.* (internal quotation marks omitted).

56. Section 504 is violated if the following factors are met: "(1) [the individual] is a qualified individual with a disability; (2) the defendant is subject to one of the Acts; and (3) he was denied the opportunity to participate in or benefit from the defendant's services, programs, or

activities, or was otherwise discriminated against by the defendant because of his disability." *Id.* at 196-97 (quoting *McElwee*, 700 F.3d at 640) (footnote omitted). Each factor is met here.

57. First, Petitioner is a person with a disability. He has been diagnosed with Mild Neurocognitive Disorder and Borderline Intellectual Functioning and has limited competency. *See supra* ¶ 22. Additionally, he is at heightened risk of suffering another stroke due to hypertension and other factors.

58. Second, DHS and EOIR are subject to the Act. *See* 6 C.F.R. § 15.30 (regulations pertaining to DHS); 28 C.F.R. § 39.130 (regulations pertaining to EOIR).

59. Third, Petitioner's continued confinement is exacerbating Petitioner's medical disabilities and preventing him from accessing the immigration benefits he seeks for several reasons. Petitioner's limited mental capacity inhibits his ability to self-advocate for the medical care he needs to prevent him from suffering a future stroke. Furthermore, the extensive healthcare Petitioner requires cannot be provided to him in detention. If Petitioner continues to be detained untreated, he may suffer irreparable harm.

60. Immediate release from detention is a necessary reasonable accommodation to ensure that Petitioner can meaningfully participate in his immigration proceedings.

CLAIM FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment (Procedural Due Process) – Prolonged Detention Without a Bond Hearing

61. Petitioner realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

62. Petitioner's prolonged incarceration without a bond hearing—which has lasted nearly six months already and is certain to extend much longer—violates the Due Process Clause. *See Black*, 103 F.4th at 151.

58. Taken together, the individual factors in Petitioner's case overwhelmingly demonstrate the unreasonableness of continued detention and require either a constitutionally adequate bond hearing or immediate release.

SECOND CAUSE OF ACTION
Violation of the Rehabilitation Act of 1974

59. Petitioner realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

60. The Rehabilitation Act defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1). This definition includes chronic illness, as well as physical, intellectual, developmental, psychiatric, visual, and auditory disabilities. Margo Schlanger et al., *Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act*, 17 Harv. Law & Pol. Rev. 1, 237–48 (2022).

61. Under Section 504, "[n]o qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity . . . conducted by any Executive

agency." 29 U.S.C. § 794. ICE adopted binding regulations to ensure that Section 504 is implemented within the agency. 6 C.F.R. § 15.30, *et seq*.

62. Section 504 forbids not only facial discrimination against individuals with disabilities, but also requires that executive agencies and departments, such as DHS and EOIR, alter policies and practices to prevent discrimination on the basis of disability.

63. The terms "benefit, programs, and services" are construed broadly. *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) ("Modern prisons provide [people who are incarcerated] with many recreational 'activities,' medical 'services,' and educational and vocational 'programs,' all of which at least theoretically 'benefit'" the people imprisoned); *see also Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (recognizing the "familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes").

64. In *Choate*, the Supreme Court created the "meaningful access" standard: that "otherwise qualified" people with disabilities must be granted reasonable modifications to ensure they are "provided with meaningful access" to the program at issue. *Alexander v. Choate*, 469 U.S. 287, 300-02 & n.21 (1985). Namely, under Section 504 covered entities must afford persons with disabilities "equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement." *Id.* at 305 (citing 45 C.F.R. § 84.4(b)(2)). Meaningful access means equal access.

65. Mr. Acosta is unquestionably a "qualified individual with a disability," because his intellectual disability "substantially limit[s]" his "major life activities." *See* 42 U.S.C. § 12102 (1)-(2).

66. Mr. Acosta's continued detention by Respondents without any consideration of his mental health disability or reasonable accommodation violates the Rehab Act.

67. Release is the only reasonable accommodation to ensure that Mr. Acosta can meaningfully access his immigration proceedings.

THIRD CAUSE OF ACTION
Release Pending Adjudication; 28 U.S.C. § 2241

68. Petitioner realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

69. "[F]ederal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in the criminal habeas cases." *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001); *see, e.g.*, *Salgado v. Francis*, No. 25-CV-6524 (VEC), 2025 WL 2806757 (S.D.N.Y. Oct. 1, 2025).

70. In assessing whether to release a petitioner during the pendency of their habeas petition, courts consider whether the petition raises "substantial claims" and whether "extraordinary circumstances exist" that make the "grant of bail necessary to make the [habeas] remedy effective." *Mapp*, 241 F.3d at 230.

71. Mr. Acosta has raised substantial claims, namely that his due process rights and rights under Section 504 of the Rehabilitation Act of 1974 are being violated by his prolonged detention by Respondents without a bond hearing. Additionally, extraordinary circumstances are present in this case. Petitioner is a 61-year-old man with limited competency who suffered a stroke just one month before he was detained. He is unable to advocate for himself to receive the healthcare he needs in detention. *Salgado*, 2025 WL 2806757 at *4 ("When it is reasonable to conclude that detention would worsen a petitioner's health, extraordinary circumstances are present.").

72. Finally, release is necessary to make the habeas remedy effective. Petitioner is at a heightened risk of having another stroke, and while he remains in detention, he is unable to access

the healthcare he needs to prevent that. If Petitioner remains detained, his health will continue to deteriorate such that any future remedy will not be able to remedy the harm he suffered due to his detention. *See id.* (finding health issues, prolonged detention absent a bond hearing, and lack of an individualized assessment of dangerousness and flight risk when detained render release necessary to make habeas remedy effective).

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the New York Field Office and the Southern District of New York pending the resolution of this case;

3. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on his own recognizance or under parole, bond, or reasonable conditions of supervision, or, in the alternative, ordering a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear 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, and at which necessary procedural safeguards are put in place as reasonable accommodations to ensure that Mr. Acosta can meaningfully participate in the proceeding;

4. Enjoin Respondents from invoking an automatic stay under 8 C.F.R. § 1003.19(i)(2) in the event that an immigration judge grants Petitioner bond after a constitutionally adequate bond hearing, *see Rueda Torres v. Francis*, No. 25-cv-8408 (DEH), 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2023);

5. Release Petitioner pending the adjudication of this petition under *Mapp v. Reno*;

6. Declare that Petitioner's prolonged mandatory detention without a bond hearing violates the Fifth Amendment;

7. Declare that Petitioner's detention violates the Rehabilitation Act of 1974;

8. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

9. Grant any other and further relief that this Court deems just and proper.

Dated: November 26, 2025
Brooklyn, New York

Respectfully Submitted,

/s/ Anna K. Jessurun

Lucas Marquez, Esq.
Anna K. Jessurun, Esq.
BROOKLYN DEFENDER SERVICES
177 Livingston Street, 7th Floor
Brooklyn, NY 11201
(718) 254-0700
lmarquez@bds.org
ajessurun@bds.org