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, *et al.*, Respondents.	No. 25 Civ. 9916 (MKV)

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

JAY CLAYTON
United States Attorney for the
Southern District of New York
Attorney for Respondents
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel: (212) 637-2525

ILAN STEIN
Assistant United States Attorney
– Of Counsel –

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Respondents 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; and Pam Bondi, in her official capacity as Attorney General, U.S. Department of Justice (together, the "Government") respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, ECF No. 1 (the "Petition" or "Pet."), filed on behalf of petitioner Agapito Acosta ("Petitioner").

PRELIMINARY STATEMENT

Petitioner is an El Salvadorean national who entered the United States illegally at an unknown time and an unknown place. In May 2001, Petitioner applied for temporary protected status with the U.S. Citizenship and Immigration Services ("USCIS"). USCIS denied his application in May 2003. Petitioner was convicted of criminal offenses in October 2000 and April 2004. He was arrested by officers of the U.S. Immigration and Customs Enforcement ("ICE") on June 11, 2025, and has since been detained pursuant to 8 U.S.C. § 1225(b)(2)(A), or in the alternative, pursuant to 8 U.S.C. § 1226(c)(1)(A).

On November 26, 2025, counsel for Petitioner filed the Petition on his behalf, wherein he asserts that his detention violates the Petitioner's Fifth Amendment due process rights. ECF No. 1. He further claims that his detention violates the Rehabilitation Act of 1974 and asserts that his release constitutes the only reasonable accommodation of his disability.

The Petition should be denied. Because Petitioner is an applicant for admission in removal proceedings, he is detained under Section 1225(b)(2)(A) and thus subject to mandatory detention and potential release only on discretionary parole, as this Court recently recognized in *Chen v. Almodovar*, No. 25 Civ. 8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025), and *Liang v.*

Almodovar, No. 25 Civ. 9322 (MKV), 2025 U.S. Dist. LEXIS 261243 (S.D.N.Y. Dec. 15, 2025). Petitioner's detention is also justified under 8 U.S.C. § 1226(c), in light of his conviction for third degree assault under New York Penal Law § 120.00(1). Finally, Petitioner's claim under Rehabilitation Act fails because (1) there is no private right of action against a federal agency in this context, (2) Petitioner has not exhausted the applicable administrative remedies, and (3) Petitioner has failed adequately to plead a Rehabilitation Act claim.

Accordingly, the Court should deny the Petition in its entirety.

LEGAL BACKGROUND

The immigration laws have long authorized immigration officials to arrest aliens subject to removal and detain them during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 233-34 (1960). In the Immigration and Nationality Act ("INA"), Congress enacted a statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

As this Court recently explained in *Chen*, before 1996, the INA treated aliens differently based on whether they had physically "entered" the United States. 2025 WL 3484855, at *3 (citing *Judulang v. Holder*, 565 U.S. 42, 45-46 (2011); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025); 8 U.S.C. § 1101(a)(13) (1994)). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2011).

An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). By contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Judulang*, 565 U.S. at 45. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

The INA's prior framework distinguishing between aliens based on physical "entry" had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection . . . were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). IIRIRA replaced the focus on physical "entry" with a focus on lawful "admission." IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens according to whether they managed to evade detection and enter the country without permission. Instead, the "pivotal factor

in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep. at 226 (emphasis added). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

Post-IIRIRA, pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is "deemed . . . an applicant for admission." All applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. *See* 8 U.S.C. § 1225(a)(3). The term "admission" is defined by the INA as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

Section 1225(b)(1) provides for the inspection of aliens arriving in the United States who are applicants for admission, and it provides for "expedited removal proceedings" in certain circumstances. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020). Section 1225(b)(2)(A) provides for the inspection of all "other" applicants for admission, and it states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section [8 U.S.C. §] 1229a." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

In contrast, aliens who are not applicants for admission may (but need not) be detained at the Government's discretion. Pursuant to 8 U.S.C. § 1226(a), "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The Attorney General and DHS thus have broad discretionary authority to

detain an alien during removal proceedings.[1] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings). Under Section 1226(a)(1), "[t]o secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

FACTUAL BACKGROUND

I. Petitioner's Immigration and Detention History

Petitioner is a native and citizen of El Salvador who entered the United States illegally at an unknown time and place. *See* Declaration of Deportation Officer John Carey ("Carey Decl.") ¶ 1. On May 21, 2001, Petitioner filed a Form I-821, Application for Temporary Protected Status ("TPS"), with the U.S. Citizenship and Immigration Services ("USCIS"). *Id.* ¶ 4. His application was denied on May 19, 2003. *Id.*

On October 5, 2000, Petitioner was convicted of criminal possession of a weapon in the fourth degree in violation of New York Penal Law ("NYPL") 265.01. *Id.* ¶ 6. On April 13, 2004, Petitioner was convicted of attempted assault in the third degree, in violation of NYPL 120.00(1). *Id.* ¶ 7.

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[1] 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 few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain or authorize bond for aliens under § 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

On June 11, 2025, ICE arrested Petitioner. *Id.* ¶ 8. That day, ICE issued a Notice to Appear ("NTA"), charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at a time or place other than as designated by the Attorney General. *Id.* ¶ 10. The NTA was subsequently served on the Executive Office of Immigration Review, and the Varick Immigration Court in New York, NY, thereby commencing removal proceedings against Petitioner. *Id.* ¶ 11. The following day, on June 12, 2025, ICE transferred Petitioner to Orange County Jail in Goshen, New York, where he is still detained. *Id.* ¶¶ 8-9.

On June 18, 2025, Petitioner appeared *pro se* for his first master calendar hearing before an Immigration Judge at the Varick Immigration Court. *Id.* ¶ 11. On June 25, 2025, he appeared for his second master calendar hearing, this time with an attorney. *Id.* ¶ 12. The case was adjourned at Petitioner's request to afford his counsel an opportunity to assess potential competency issues. *Id.* Additional hearings were scheduled for—and adjourned to allow Petitioner time to undergo psychological evaluation—July 7, July 14, July 21, August 6, August 20, September 8, and September 22. *Id.* ¶¶ 13-19. On October 28, 2025, Petitioner appeared for a mental-competency hearing before an Immigration Judge, who found Petitioner not competent and implemented a series of safeguards, including (1) permitting Petitioner's counsel to ask leading questions if necessary, (2) allowing counsel to reference the record to refresh Petitioner's recollection, (3) allowing testimony from family and friends to be proffered, and (4) allowing Petitioner to take breaks as needed. *Id.* ¶ 20. On November 12, 2025, Petitioner appeared for his tenth master calendar hearing, *id.* ¶ 21, during which a further hearing was scheduled for December 10, 2025, *id.* Petitioner's counsel appeared for the hearing on December 10, but the hearing was rescheduled to January 15, 2026, due to scheduling conflicts on the court's docket. *Id.* ¶ 25.

II. The Habeas Petition and Procedural Background

On November 26, 2025, Petitioner filed his Petition, wherein he asserts that his ongoing detention without a bond hearing violates his due process rights under the Fifth Amendment. *See* Pet. ¶¶ 47-48. He further asserts that his continued detention prevents him from accessing necessary medical care and therefore violates the Rehabilitation Act. *Id.* ¶ 59. As ultimate relief, Petitioner requests that the Court enjoin the Government from transferring him outside of this District, order the Government to release him from custody on his own recognizance or alternatively order a constitutionally adequate bond hearing, declare that his detention violates the Fifth Amendment and the Rehabilitation Act, and award Petitioner attorney's fees and costs. *Id.*, Prayer for Relief.

ARGUMENT

I. Petitioner Is Lawfully Detained Pursuant to Section 1225(b), and His Ongoing Detention Does Not Violate the Fifth Amendment

The Court should deny the Petition because Petitioner is being lawfully detained. Petitioner's detention is governed by 8 U.S.C. § 1225, which mandates that he remain in detention during the pendency of his removal proceedings. Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a."

As this Court has twice recently concluded, the detention of individuals like Petitioner, who unlawfully enter the United States and are not then admitted or paroled after inspection, falls within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement. *Chen*, 2025 WL 3484855, at *4; *Liang*, 2025 U.S. Dist. LEXIS 261243, at *8-9. Petitioner is an "applicant for admission" to the United States because he is an alien present in the United States who has not

been admitted. 8 U.S.C. § 1225(a)(1). And Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Nor could Petitioner demonstrate as much, given that, as charged in his removal proceedings, he is present in the United States without being admitted or paroled, or arrived in the United States at a time and place other than as designated by the Attorney General, and is therefore inadmissible under 8 U.S.C. § 1182(a)(6). Under these circumstances, Petitioner is detained pursuant to Section 1225(b)(2)(A), which mandates that he "shall be" detained pending removal proceedings.

This reasoning is not only consistent with this Court's decisions in *Chen* and *Liang*, but it also comports with Supreme Court precedent. As explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), applicants for admission fall into one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). *Id.* at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2)—the provision relevant here—is "broader" and "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. And Section 1225(b) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See id.* at 302 ("[Section] 1225(b)(2) . . . mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.").

The Petition does not meaningfully engage with Section 1225(b). Instead, the entire discussion is confined to a single footnote that assumes that Section 1225(b) does not apply

because "[i]n nearly 300 cases across the country, district courts have held that § 1225(b)(2)(A) does not apply to noncitizens . . . who entered without inspection and are subsequently arrested within the United States." Pet. 11 (citations omitted). That may be, but *this* Court correctly concluded in *Chen* and *Liang* that Section 1225(b) governs. Indeed, in *Chen*, this Court observed that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Id.* at *5. It further recognized that "nothing in the text of Section 1225 or the logic of the immigration system supports a ruling that 'seeking admission' is an *additional requirement* for mandatory detention." *Id.* And it ultimately rejected the flawed proposition "that someone who is physically present in the country cannot also be 'seeking admission' to the United States," *id.* at *6, explaining that it "decline[d] to participate in that alchemy," *id.*

Petitioner's ongoing detention pursuant to Section 1225(b) does not violate his due process rights. Because arriving aliens have not been admitted to the United States, their constitutional rights are truncated: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). As mentioned, the procedure authorized by Congress in Section 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Instead, for an applicant for admission, "if the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a." 8 U.S.C. § 1225(b)(2)(A). That is, the statute provides that Petitioner shall be detained for removal proceedings before an immigration judge, which afford the alien a host of procedural

protections. *See* 8 U.S.C. § 1229a. The exclusive means of release for an applicant for admission such as Petitioner is DHS's discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for "urgent humanitarian reasons or significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).

In *Mezei*, the Supreme Court held that an alien's detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. Mezei arrived at Ellis Island seeking admission into the United States; although he had resided in the United States previously, he had since been "permanently excluded from the United States on security grounds." *Id.* at 207. His home country would not accept him, and he had been detained for more than a year and a half to effectuate his exclusion when he filed a habeas petition seeking release into the United States. *Id.* at 207-08. The Supreme Court held that Mezei's detention did not "deprive[ ] him of any statutory or constitutional right." *Id.* at 215. The Court recognized that "once passed through our gates, even illegally," aliens "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at 212. "But an alien on the threshold of initial entry stands on a different footing." *Id.* For aliens seeking admission, "[w]hatever the procedure authorized by Congress is, it is due process." *Id.* (quoting *Knauff*, 338 U.S. at 544).

This Court correctly concluded in *Liang* that, "[n]otwithstanding the fact that Petitioner did indeed cross into the United States frontier, or that he was thereafter permitted to go deeper into our country and begin to develop the ties that go with permanent residence, he did not effectuate a lawful entry, . . . and so remains on the threshold of initial entry . . . as a matter of law." *Liang*, 2025 U.S. Dist. LEXIS 261243 at *12 (citations omitted). It continued: "[w]hatever 'grace'

Congress and the Executive Branch have thus far bestowed upon Petitioner, including not only his initial parole but also his examination by an immigration officer under Section 1225(b)(2)(A) itself, 'bestows no additional rights.'" *Id.* at *12-13 (quoting *Mezei*, 345 U.S. at 215)). It concluded that the petitioner there "received all the process he is due[.]" *Id.* at *14.

Because Petitioner's detention under Section 1225(b)(2)(A) for the duration of his removal proceedings is statutorily mandated, subject only to the possibility of release on discretionary parole by ICE under Section1182(d)(5)(A), *see Jennings*, 583 U.S. at 298-301, Petitioner is not entitled to further process, *see Mezei*, 345 U.S. at 212. For that reason, and consistent with this Court's *Liang* decision, Petitioner's due process claim should be denied.

II. Petitioner's Detention Is Also Permissible Under Section 1226(c)(1)(A)

Alternatively, if the Court declines to follow its previous rulings in *Chen* and *Liang* and instead holds that Section 1225(b) does not apply here, it should instead conclude that Petitioner is lawfully detained under Section 1226(c)(1)(A). Section 1226 "generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal." *Jennings*, 583 U.S. at 288.

Petitioner is subject to mandatory detention under Section 1226 because he has been "convicted of . . . a crime involving moral turpitude . . . ." 8 U.S.C. § 1226(c)(1)(A). "Whether a prior conviction constitutes a CIMT [crime involving moral turpitude] turns on whether the crime is 'inherently base, vile, or depraved.'" *Efstathiadis v. Holder*, 752 F.3d 591, 595 (2d Cir. 2014) (quoting *Mendez v. Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008)). Because "it is in the intent that moral turpitude inheres, the focus of the analysis is generally on the mental state reflected in the statute." *Id.* (internal brackets and quotation omitted). In determining whether a crime is a CIMT, courts in this Circuit "apply a categorical approach that looks not to the facts of the particular case

but instead to whether the offense categorically fits within the definition of a CIMT." *Id.* (internal brackets and quotation omitted).

The CIMT analysis here is straightforward. Petitioner admits to having been convicted of a crime that both the BIA and the Second Circuit have held constitutes a CIMT. Petitioner pleaded guilty in 2004 to attempted assault in the third degree, N.Y.P.L. § 120.00(1). *See* Pet. ¶ 30. As the Second Circuit has observed, that crime "involves an intent to injure, and an action that causes physical impairment or substantial pain and goes beyond petty slaps, shoves, and kicks." *Guevara v. Holder*, 533 F. App'x 23, 26 (2d Cir. Aug. 23, 2013) (internal quotation omitted). In *Guevara*, the Second Circuit observed that "it can be difficult to define the boundaries of the amorphous concepts of 'moral turpitude,'" but it ultimately concluded that "a conviction under NYPL § 120.00(1) is a CIMT." *Id.* The BIA previously reached the same conclusion. *See In re Solon*, 24 I. & N. Dec. 239, 245 (BIA 2007). There is no reason for this Court to conclude otherwise.

Petitioner's mandatory detention under Section 1226(c) comports with due process. The Second Circuit has recognized that such detention is justified by two "legitimate" and "importan[t]" interests: "(1) ensuring the noncitizen's appearance at proceedings, and (2) protecting the community from noncitizens who have been involved in crimes that Congress has determined differentiate them from others." *Black v. Decker*, 103 F.4th 133, 153 (2d Cir. 2024). While it is true that the balance of interests can shift towards an alien if "detention is prolonged without any particularized assessment of need," that is not the case here where ICE has demonstrated a need to detain Petitioner, consistent with the Congressional mandate to detain individuals who commit crimes involving moral turpitude. Accordingly, Petitioner's detention is justified under Section 1226(c), in addition to Section 1225(b), for the reasons mentioned above.

III. Petitioner's Rehabilitation Act Claim Fails

Petitioner's Rehabilitation Act claim fails for several reasons. First, that statute does not create a private right of action that applies here. True, Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability "under any program or activity conducted by any Executive agency." 29 U.S.C. § 794(a). But Section 505 of the Rehabilitation Act provides express causes of action for only (i) disability discrimination in employment, and (ii) disability discrimination by "any recipient of Federal [financial] assistance or Federal provider of such [financial] assistance." 29 U.S.C. § 794a(a)(1), (2); *see also* 29 U.S.C. § 794(a), (b) (referring to "Federal financial assistance"). Absent from the express terms of Section 505 is any private right of action against a federal agency for its non-funding activities. That is because the Rehabilitation Act does not provide a standalone, private right of action to challenge such activities. *See, e.g.*, *Moya v. DHS*, 975 F.3d 120, 127–29 (2d Cir. 2020); *Pereira v. USDOJ*, No. 16 Civ. 2599 (NRB), 2016 WL 2745850, at *19 (S.D.N.Y. May 11, 2016); *see also Clark v. Skinner*, 937 F.2d 123, 126 (4th Cir. 1991) (holding that the district court lacked jurisdiction because "§ 504 of the Rehabilitation Act does not afford [plaintiff] a private cause of action against the Secretary of Transportation" and holding that plaintiff's "proper avenue of appeal is from a final administrative decision to this court"). Thus, Petitioner may not proceed directly under the Rehabilitation Act.

Second, even if the Rehabilitation Act did create a private right of action that applies here, which it does not, Petitioner would still need to timely exhaust the relevant administrative remedies under DHS's regulations implementing the Rehabilitation Act. *See* 6 C.F.R. § 15.70. Notably, Petitioner here does not allege exhaustion of administrative remedies under the detailed remedial process set forth in 6 C.F.R. § 15.70. He has failed to allege any final agency decision pursuant to 6 C.F.R. § 15.70(i) on Petitioner's allegations of discrimination in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, that would be reviewable by this Court. Thus, even if this

Court were to imply a private right of action under the Rehabilitation Act, Petitioner's claim should still be dismissed for failure to exhaust administrative remedies. *See Pereira*, 2016 WL 2745850, at *19 n.17.

Petitioner's claim also fails because he has not adequately alleged a violation of the Rehabilitation Act. To assert a claim under the Rehabilitation Act, a plaintiff must demonstrate, in relevant part, that the defendant denied or is denying the plaintiff "the opportunity to participate in or benefit from the defendant's services, programs, or activities, or [that plaintiff] was otherwise discriminated against by the defendant because of [their] disability." *See McElwee v. Cnty. of Orange*, 700 F.3d 635, 640 (2d Cir. 2012). Here, Petitioner fails to explain how the Government denied him a benefit or discriminated against him on account of a disability. The petition is devoid of any facts that would give rise to a plausible inference of discrimination or exclusion for any reason. Instead, Petitioner advances conclusory allegations that his "continued confinement is exacerbating [his] medical disabilities," which "inhibit[] his ability to self-advocate for the medical care he needs." Pet. ¶ 59. He asserts that "the extensive healthcare [he] requires cannot be provided to him in detention," and he therefore "may suffer irreparable harm." *Id.* But those conclusory allegations do not give rise to an inference of discrimination or a valid Rehabilitation Act claim.

Petitioner's Rehabilitation Act claim therefore fails.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of habeas corpus.

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Respectfully submitted,

JAY CLAYTON
United States Attorney for the
Southern District of New York
Attorney for Respondents

By: */s/ Ilan Stein*
ILAN STEIN
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2525
E-mail: ilan.stein@usdoj.gov

Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c) and Section III.D of the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 5,189 words.