UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AGAPITO ACOSTA,

Petitioner,

v.

PAUL ARTETA, *et al.*,

Respondents.

Civil Action No. 25-9916 (MKV)

PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

ARGUMENT 1

I. Petitioner's prolonged detention under § 1225(b)(2) or § 1226(c) violates his procedural due process rights under the Fifth Amendment 1

II. Petitioner is detained under § 1226(c), not § 1225(b)(2) 7

III. Petitioner's detention violates the Rehabilitation Act of 1974 9

CONCLUSION 10

TABLE OF AUTHORITIES

Cases

Al-Thuraya v. Warden,
No. 25-cv-2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025) 2

Barco Mercado v. Francis,
No. 25-cv-6582 (LAK), 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2026) 7, 8, 9

Black v. Decker,
103 F.4th 133 (2d Cir. 2024) ..... passim

Bryan v. Koch,
627 F.2d 612 (2d Cir. 1980) 10

Campbell v. Almodovar,
No. 25-cv-9509 (JLR), 2025 WL 3538351 (S.D.N.Y. Dec. 10, 2025) 7, 8

Cardenas v. Almodovar,
No. 25-cv-9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025) 7

Chen v. Almodovar,
No. 25-cv-8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) 7

Demore v. Kim,
538 U.S. 510 (2003) 2, 5

Goorakani v. Lyons,
Nos. 25-cv-9456 (DEH), 25-cv-9551 (DEH), 25-cv-9592 (DEH), 25-cv-9952 (DEH), 2025 WL 3632896 (S.D.N.Y. Dec. 15, 2025) 8

J.G.O. v. Francis,
No. 25-cv-7233 (AS), 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025) 7, 8

Liang v. Almodovar,
No. 25-cv-9322 (MKV), 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) 2

Lopez Benitez v. Francis,
795 F. Supp. 3d 475 (S.D.N.Y. 2025) 7, 8, 10

Moya v. U.S. Dep't of Homeland Sec.,
975 F.3d 120 (2d Cir. 2020) 9

Plyer v. Doe,
457 U.S. 202 (1982) 6

Preiser v. Rodriguez,
411 U.S. 475, 484 (1973) 9

Romero v. Francis,
No. 25-cv-8112 (JGK), 2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025) 7

Shaughnessy v. United States ex rel. Mezei,
345 U.S. 206 (1953) 5, 6

Tumba v. Francis, No. 25-cv-8110 (LJL),
2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) 7, 8

Velasco Lopez v. Decker,
978 F.3d 842 (2d Cir. 2020) ..... passim

Walizada v. Trump,
No. 25-cv-768, 2025 WL 3551972 (D. Vt. Dec. 11, 2025) 2, 6

Yao v. Almodovar,
No. 25-cv-9982 (PAE), 2025 WL 3653433 (S.D.N.Y. Dec. 17, 2025) 8

Zadvydas v. Davis,
533 U.S. 678 (2001) 2, 5, 6

Statutes

29 U.S.C. § 794(a) 9

29 U.S.C. § 794a(a)(2) 10

Regulations

6 C.F.R. § 15.70 9

PRELIMINARY STATEMENT

The Government has detained Petitioner Agapito Acosta ("Petitioner" or "Mr. Acosta") in immigration custody for nearly seven months without a bond hearing. Petitioner's ongoing detention is unlawful because it has become unconstitutionally prolonged under *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), *reh'g en banc denied*, 156 F.4th 171 (2d Cir. 2025), and *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020). While Petitioner respectfully disagrees that he is lawfully detained under 8 U.S.C. § 1225(b)(2), his continued mandatory detention without a bond hearing violates the Fifth Amendment whether he is detained under § 1225(b)(2) or § 1226(c). Petitioner also asserts that his detention violates the Rehabilitation Act of 1974.

This Court should grant his Petition for Writ of Habeas Corpus ("Petition"), ECF No. 1, and order his immediate release or, in the alternative, order 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.[1]

ARGUMENT

I. Petitioner's prolonged detention under § 1225(b)(2) or § 1226(c) violates his procedural due process rights under the Fifth Amendment

Irrespective of the statute governing Petitioner's detention, Petitioner's prolonged detention violates the procedural due process protections of the Fifth Amendment. The Due

[1] Additionally, this Court should release Mr. Acosta during the pendency of these proceedings under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), *see* Pet. ¶¶ 68-72, a claim that the Government failed to address in its Opposition. *See* Resps.' MOL in Opp. to Pet. for Writ of Habeas Corpus ("Opp."), ECF No. 8.

Process Clause protects noncitizens in discretionary and mandatory detention from prolonged detention during removal proceedings. *See Black*, 103 F.4th at 150-51 (mandatory detention under 8 U.S.C. § 1226(c)); *Velasco Lopez*, 978 F.3d at 855 (discretionary detention under § 1226(a)).

While this Court has held that noncitizens detained under § 1225(b)(2) are not entitled to a bond hearing or due process beyond what the statute provides, *see Liang v. Almodovar*, No. 25-cv-9322 (MKV), 2025 WL 3641512, at *5-6 (S.D.N.Y. Dec. 15, 2025), the petitioner in that case was not "seeking 'a bond hearing based on the duration of his detention.'" *Id.* at *6 (quoting *Al-Thuraya v. Warden*, No. 25-cv-2582 (AS), 2025 WL 2858422, at *4 (S.D.N.Y. Oct. 9, 2025)). Here, Mr. Acosta is challenging his ongoing detention on the basis that it has become unconstitutionally prolonged and seeks a bond hearing on that basis. *See* Pet. ¶¶ 47-54. Assuming *arguendo* that Petitioner is detained under § 1225(b)(2) and that due process does not require a bond hearing at the outset of his detention, his mandatory prolonged detention under that statute nevertheless violates the Fifth Amendment. *See, e.g.*, *Al-Thuraya*, 2025 WL 2858422, at *6; *Walizada v. Trump*, No. 25-cv-768, 2025 WL 3551972, at *16-17 (D. Vt. Dec. 11, 2025).

"[T]he Due Process Clause covers noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Velasco Lopez*, 978 F.3d at 850 (citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). Consistent with this bedrock principle, both the Supreme Court and the Second Circuit have made clear that indefinite immigration detention without a bond hearing is constitutionally problematic. *See Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem."); *Demore v. Kim*, 538 U.S. 510, 528 (2003) (distinguishing *Zadvydas* because the period of detention there was "indefinite" and "potentially permanent"); *Black*, 103 F.4th at 145 ("we nonetheless read *Zadvydas*, *Demore*,

Jennings, and *Velasco Lopez* to suggest strongly that due process places *some* limits on detention under section 1226(c) without a bond hearing"); *Velasco Lopez*, 978 F.3d at 846.

Velasco Lopez and *Black* are directly applicable here. In *Velasco Lopez*, the Second Circuit held that a noncitizen's continued detention under 8 U.S.C. § 1226(a) without a constitutionally adequate bond hearing was unconstitutionally prolonged. *Id.* Critically, the petitioner in *Velasco Lopez* was also charged with being present in the United States without having been admitted or paroled, like Mr. Acosta. *See* Corrected Brief for Petitioner-Appellee at 11, *Velasco Lopez*, 978 F.3d 842. Even though Mr. Velasco Lopez was an applicant for admission, like Mr. Acosta, the Due Process Clause protected him against prolonged detention without a bond hearing. *See Velasco Lopez*, 978 F.3d at 855. In *Black*, the Second Circuit held that the petitioners' mandatory detention under § 1226(c) based on their criminal history was also unconstitutionally prolonged. *See Black*, 103 F.4th at 145. In both cases, the Second Circuit applied the *Mathews v. Eldridge* tripartite framework to determine whether prolonged immigration detention is unconstitutional. *See id.* at 145-46; *Velasco Lopez*, 978 F.3d at 851.

The *Mathews* analyses in both *Velasco Lopez* and *Black* are materially indistinguishable to prolonged detention under § 1225(b)(2). On the private interest factor, the Second Circuit explained that the interest in being free from imprisonment is the most significant liberty interest there is. *See Black*, 103 F.4th at 151; *Velasco Lopez*, 978 F.3d at 851. That interest is identical here. Also, like detention under § 1226, there is "no administrative mechanism by which [a noncitizen can] challenge[] his detention on the ground that it reached an unreasonable length." *Velasco Lopez*, 978 F.3d at 852; *Black*, 103 F.4th at 151. And as with detention under § 1226(a), detention under § 1225(b)(2) is "not the result of a criminal adjudication." *Velasco Lopez*, 978 F.3d at 851. Finally, the effects of the deprivation of liberty are the same under § 1225(b)(2) as

§ 1226: the inability to "maintain employment" and "see . . . family or friends," *id.* at 851, and experiencing "health difficulties" in detention, *Black*, 103 F.4th at 151. And on the particular facts here, the length of Petitioner's mandatory detention (almost seven months) is nearly identical to Mr. Black. *See id.* (detained for seven months); *id.* at 150 ("[A]ny immigration detention exceeding six months without a bond hearing raises serious due process concerns."). Additionally, Petitioner suffers from significant cognitive disabilities, *see* ECF No. 1-3, at 12-17, and, due to suffering a stroke in May 2025, is at a very high risk of suffering another stroke or cardiovascular event. *See* ECF No. 1-2, at 4. Thus, the private factor analysis in *Velasco Lopez* and *Black* rests on features that also describe § 1225(b)(2) detention and Mr. Acosta's detention specifically.

On the second factor, risk of erroneous deprivation, *Black* is decisive. "[T]he almost 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. Like § 1226(c) detention, noncitizens detained under § 1225(b)(2) are not entitled to a bond hearing. In fact, there are even fewer procedural protections for § 1225(b)(2) detainees; whereas § 1226(c) detainees may contest whether they have "committed a crime that makes them subject to mandatory detention," *id.*, § 1225(b)(2) detainees have no administrative process by which to challenge their detention under that statute. Moreover, the Second Circuit observed that § 1226(c)'s "broad reach means that many noncitizens are detained" who may not be dangerous and are not flight risks. *Id.* Section 1225(b)(2) sweeps even more widely and does not include any proxy for dangerousness or flight risk at all, making the risk of erroneous deprivation all the more certain. *Cf. id.* at 153 (finding that it is "virtually certain that [the petitioner's] prolonged detention was unjustified" when he had, "[f]or the almost twenty years since his criminal conviction . . . led a peaceful life"). Simply put, "'as the period of . . . confinement grows,' so do

the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Velasco Lopez*, 978 F.3d at 854 (quoting *Zadvydas*, 533 U.S. at 701). The second *Mathews* factor heavily favors Petitioner and constitutional protections against prolonged detention under § 1225(b)(2).

Lastly, the Government's interests in prolonged detention here are identical to those in *Velasco Lopez* and *Black*. The Government does not have an interest in the prolonged detention of noncitizens "who are neither dangerous nor a risk of flight." *Id.* at 854; *Black*, 103 F.4th at 154. While the Government in *Black* "contend[ed] that these concerns persist unaltered until the noncitizen's removal proceedings are complete," *Black*, 103 F.4th at 153, the Second Circuit rejected this argument, explaining that "the additional procedural safeguards we would allow here under *Mathews* do nothing to undercut those interests." *Id.* "[W]hile 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.* at 154 (citing *Demore*, 538 U.S. at 513). Like § 1226 detention, noncitizens detained under § 1225(b)(2) are detained during the pendency of their removal proceedings. Therefore, just as the Government has no interest in the prolonged detention under § 1226 of noncitizens who are not a danger nor a flight risk during removal proceedings, the Government has no interest in the detention of the same noncitizens under § 1225(b)(2). Thus, following the analyses in *Black* and *Velasco Lopez*, the *Mathews* factors as applied to detention under § 1225(b)(2) decisively favor Petitioner and entitle him to a burden-shifted bond hearing.

The Government's reliance on *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) is misplaced. *See* Opp. 10. There, notwithstanding "his presence on Ellis Island," Mr. Mezei had not entered the United States and "was 'treated,' for constitutional purposes, 'as if

stopped at the border." *Zadvydas*, 533 U.S. at 693 (quoting *Mezei*, 345 U.S. at 213). The Supreme Court was clear, however, that "aliens who have once passed through our gates, *even illegally*, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Mezei*, 345 U.S. at 212 (emphasis added). In other words, *Mezei*'s constitutional holding rested on the fact that Mr. Mezei had never entered the United States at all and did not concern those who enter unlawfully. Here, while Petitioner unlawfully entered the United States and was not admitted, he still *entered* the United States and therefore has due process rights as a person within the United States. *Cf. Plyer v. Doe*, 457 U.S. 202, 210 (1982) ("Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments"). Notably, the *Zadvydas* Court did not distinguish between lawful and unlawful entry when it declared that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

In sum, the "Constitution does not permit the Executive to detain a noncitizen for an unreasonably prolonged period under section [1225(b)] without a bond hearing; at some point, additional procedural requirements—like a bond hearing—become necessary." *Walizada*, 2025 WL 3551972, at *17 (quoting *Black*, 103 F.4th at 145). As explained in the Petition and *supra*, Mr. Acosta's nearly seven-month detention without a bond hearing is unconstitutionally prolonged, and he is entitled to a constitutionally adequate bond hearing. *See* Pet. ¶¶ 47-54.

The same is true if Petitioner is detained under § 1226(c). The Government asserts that Petitioner's detention under § 1226(c) is lawful, *see* Opp. 11, and Petitioner does not dispute here that he is rightfully subject to mandatory detention under § 1226(c). Instead, Petitioner asserts that

his detention under that statute has become unconstitutionally prolonged. The Government recognizes that "the balance of interests can shift towards an alien if 'detention is prolonged without any particularized assessment of need,'" *id.* at 12 (quoting *Black*, 103 F.4th at 153), but it claims that "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." *Id.* But that is irreconcilable with *Black*, where the petitioners were detained under § 1226(c) because they had committed aggravated felonies, *see Black*, 103 F.4th at 138-40, and the Second Circuit nevertheless held that their prolonged detention without a constitutionally adequate bond hearing violated the Fifth Amendment, *see id.* at 151. The Government makes no argument as to why Mr. Acosta is a danger or a flight risk that cannot be mitigated by bond.

II. Petitioner is detained under § 1226(c), not § 1225(b)(2)

The Government asserts that Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A). *See* Opp. 7. Petitioner acknowledges that this Court has held that noncitizens like Petitioner who are present in the United States without having been admitted are subject to mandatory detention under § 1225(b)(2). *See Chen v. Almodovar*, No. 25-cv-8350 (MKV), 2025 WL 3484855, at *1 (S.D.N.Y. Dec. 4, 2025). Petitioner respectfully disagrees with this Court's decision in *Chen* and agrees with the other judges in this District and across the country that have held that § 1225(b)(2) does not apply to noncitizens like Petitioner.[2]

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[2] *See, e.g.*, *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 486 (S.D.N.Y. 2025) (Ho, J.); *J.G.O. v. Francis*, No. 25-cv-7233 (AS), 2025 WL 3040142, at *5 (S.D.N.Y. Oct. 28, 2025); *Tumba v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025); *Romero v. Francis*, No. 25-cv-8112 (JGK), 2025 WL 3110459, at *2-3 (S.D.N.Y. Nov. 6, 2025); *Cardenas v. Almodovar*, No. 25-cv-9169 (JMF), 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025); *Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *6 (S.D.N.Y. Nov. 26, 2026); *Campbell v. Almodovar*, No. 25-cv-9509 (JLR), 2025 WL 3538351, at *6 (S.D.N.Y. Dec. 10, 2025); *Yao v. Almodovar*, No. 25-cv-9982 (PAE), 2025 WL 3653433, at *3 (S.D.N.Y. Dec. 17, 2025); *see also Barco Mercado*, 2025 WL 3295903, at app. A (collecting the 350 cases as of November 26, 2025, that have found the Government's novel application of § 1225(b) unlawful).

Because Petitioner cannot be detained under § 1225(b)(2), his detention is governed by § 1226(c). Accordingly, *Black*'s prolonged detention constitutional holding governs his detention. Petitioner nevertheless acknowledges that, if this Court adheres to its decision in *Chen*, then § 1225(b)(2) applies to Petitioner's detention. However, under § 1225(b)(2), Petitioner's detention is still unlawful because it is unconstitutionally prolonged. *See supra* I.

In the interest of preserving his arguments, Petitioner challenges his detention under § 1225(b)(2) as unlawful on several grounds, including but not limited to (1) he does not fall under the plain text of § 1225(b)(2) because he is not "seeking admission" into the United States,[3] *see Barco Mercado*, 2025 WL 3295903, at *4-5; *J.G.O.*, 2025 WL 3040142, at *3; *Campbell*, 2025 WL 3538351, at *6; *Lopez Benitez*, 795 F. Supp. 3d at 489; (2) applying § 1225(b)(2) to noncitizens like Petitioner is inconsistent and creates surplusage with the statutory scheme of immigration detention, *see Barco Mercado*, 2025 WL 3295903, at *6; *Tumba*, 2025 WL 3079014, at *4; *Campbell*, 2025 WL 3538351, at *7; (3) the Government's interpretation of § 1225(b)(2) renders Congress's recent amendment to § 1226(c) redundant, *see Barco Mercado*, 2025 WL 3295903, at *7; *Lopez Benitez*, 795 F. Supp. 3d at 489-90; *Tumba*, 2025 WL 3079014, at *4; *Campbell*, 2025 WL 3538351, at *7; *Yao*, 2025 WL 3653433, at *7; (4) the Government's interpretation is incompatible with the contemporaneous and longstanding agency interpretation of the statute, *see Barco Mercado*, 2025 WL 3295903, at *8; *Lopez Benitez*, 795 F. Supp. 3d at 490-91; and (5) the Government's interpretation is inconsistent with Supreme Court precedent, *see Barco Mercado*, 2025 WL 3295903, at *9.

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[3] Petitioner respectfully disagrees with this Court's conclusion in *Chen* that his pending application for asylum constitutes seeking admission. *See Yao*, 2025 WL 3653433, at *9; *Goorakani v. Lyons*, Nos. 25-cv-9456 (DEH), 25-cv-9551 (DEH), 25-cv-9592 (DEH), 25-cv-9952 (DEH), 2025 WL 3632896, at *9 & n.11 (S.D.N.Y. Dec. 15, 2025).

III. Petitioner's detention violates the Rehabilitation Act of 1974

Mr. Acosta's detention violates the Rehabilitation Act of 1974, 29 U.S.C. § 794(a). The Government makes two threshold arguments against this claim. First, the Government asserts that there is no private right of action under the Rehabilitation Act against a federal agency for its non-funding activities. *See* Opp. 13. But the Second Circuit case it cites, *Moya v. U.S. Department of Homeland Security*, is inapposite; there, the court addressed a Rehabilitation Act challenge to the agency's regulations and whether there was a "private right of action against executive agencies acting in their regulatory capacity." 975 F.3d 120, 128 (2nd Cir. 2020). Here, Petitioner is petitioning for a writ of habeas corpus challenging the lawfulness of his detention under the Rehabilitation Act, which applies to the Department of Homeland Security ("DHS"). The core of habeas corpus is "an attack by a person in custody upon the legality of that custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). DHS has an obligation under law to not discriminate against people with disabilities in its activities, including immigration detention, so noncitizens like Petitioner whose mental disabilities prevent them from accessing urgent healthcare in detention and whose release from detention would place them in a similar position to others who do not suffer from the same mental disabilities may challenge the lawfulness of their detention through habeas as unlawful under the Rehabilitation Act.

The Government further contends that Petitioner failed to exhaust his administrative remedies. *See* Opp. 13-14. However, the Government points to no statutory requirement that Petitioner exhaust the remedies available in 6 C.F.R. § 15.70 before he can challenge his detention in habeas under the Rehabilitation Act. *Cf.* 6 C.F.R. § 15.70(c) ("complaints alleging violations of section 504 *may* be sent to the Officer for Civil Rights and Civil Liberties" (emphasis added)). There is no statutory requirement for exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Lopez Benitez*, 795 F. Supp. 3d at 496.

Moreover, the Rehabilitation Act incorporates the remedies from Title VI of the Civil Rights Act, *see* 29 U.S.C. § 794a(a)(2), and Title VI does not require administrative exhaustion, *see Bryan v. Koch*, 627 F.2d 612, 620 (2d Cir. 1980). In any event, Petitioner has pursued administrative remedies: he moved to terminate his removal proceedings at the *Matter of M-A-M-* hearing based on his incompetency (the motion was denied), *see* Pet. ¶ 24, and submitted a release request to DHS on December 16, 2025 based on his medical issues and incompetency.

Finally, the Government argues that Petitioner fails to state a claim under the Rehabilitation Act. *See* Opp. 14. But as the Petition explains, Mr. Acosta has significant cognitive disabilities and has been found not competent by an immigration judge. *See* Pet. ¶¶ 20-24. He does not understand that he suffered from a stroke in May 2025. *See* ECF No. 1-3, at 2. He is currently at a "very high risk for recurrent stroke and cardiovascular events." ECF No. 1-2, at 4. But given his cognitive disabilities, he is unable to self-advocate for the care that he needs to protect against a future stroke or understand that his "needs cannot be adequately met in the detention setting," *id.* at 3. This is sufficient to plead a claim under the Rehabilitation Act.

CONCLUSION

For the foregoing reasons, Mr. Acosta respectfully requests that the Court grant his petition for a writ of habeas corpus and order Respondents to immediately release him or, in the alternative, order 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. Also, Mr. Acosta respectfully requests that this Court release him during the pendency of these proceedings under *Mapp*.

Dated: January 5, 2026
Brooklyn, New York

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(c), I certify that this brief complies with this Court's individual practices because this brief does not exceed 10 pages.

Dated: January 5, 2026
Brooklyn, New York

/s/ Anna K. Jessurun
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