**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

**JOSE MARTINEZ DE LA CRUZ,**
***Petitioner-Plaintiff,***
**v.**

**FRANCIS J. RUSSO**
**in his official capacity as Director of Field Operations for U.S. Customs and Border Patrol, New York Field Office;**

**JUDITH ALMODOVAR,**
**in her official capacity as Acting Field Office Director, New York City Field Office, U.S. Immigration & Customs Enforcement;**

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

**PAMELA BONDI,**
**in her official capacity as Attorney General, U.S. Department of Justice.**

***Respondents-Defendants.***

**Civil Action No. 1:26-cv-629**

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

## INTRODUCTION

1. Petitioner-Plaintiff, Jose Martinez de la Cruz is a 63-year-old Lawful Permanent Resident ("LPR") of nearly three decades. Mr. Martinez de la Cruz suffers from severe dementia. He can no longer reliably perform basic daily tasks such as cooking, using a phone, or going places without getting confused or lost. His deteriorating cognitive function has also led to severe anxiety and depression. He suffers from myriad other chronic health

conditions including high blood pressure, obesity, high cholesterol, cataracts, and, potentially, diabetes.

2. Mr. Martinez de la Cruz brings this petition because the Department of Homeland Security ("DHS") is detaining him under the incorrect statute of detention, unlawfully refusing to adjudicate his parole request, violating the Rehabilitation Act by failing to take into consideration his disabilities and by failing to release him as a reasonable accommodation necessary for his ability to access his immigration proceedings, and violating the Administrative Procedure Act ("APA") for flouting the Rehabilitation Act and the Immigration and Nationality Act ("INA").

3. DHS placed Mr. Martinez de la Cruz into removal proceedings over 10 years ago, in January 2014. At that time, Mr. Martinez de la Cruz was returning to the United States after a brief trip and DHS treated him as an "applicant for admission" and charged him as inadmissible under 8 U.S.C. § 1182(a)(2), based on a 2008 Florida drug conviction. DHS did not detain Mr. Martinez de la Cruz and instead paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5). In January 2024, following another brief trip to the Dominican Republic, DHS again did not detain Mr. Martinez de la Cruz and instead paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5).

4. Mr. Martinez de la Cruz's removal proceedings remain pending. An immigration judge has found that he is eligible for a form of relief called cancellation of removal pursuant to 8 U.S.C. § 1229(b), but during the pendency of his removal proceedings, Mr. Martinez de la Cruz's neurocognitive functioning deteriorated. In 2022, an immigration judge found him incompetent to participate in removal proceedings and ordered safeguards to protect

his rights. Since that time, his dementia has rapidly degenerated and he is currently scheduled for a second competency hearing next Wednesday, February 11, 2026.

5. This morning, February 4, 2026, Mr. Martinez de la Cruz returned to the United States after a brief stay in the Dominican Republic and flew into John F. Kennedy Airport in Jamaica, New York. Upon information and belief because his legal team cannot reach him as of the time of this filing, DHS detained him shortly thereafter.

6. Despite being aware of his serious disabilities, Respondents-Defendants unlawfully detained and are continuing to unlawfully detain Mr. Martinez de la Cruz, failing to take into consideration his disabilities and failing to release him as a reasonable accommodation necessary for his ability to access his ongoing immigration proceedings. They also inexplicably now purport to detain him pursuant to 8 U.S.C. § 1226(c) and refuse to adjudicate his properly filed parole request. Under 8 U.S.C. § 1182(d)(5), DHS has the authority to parole noncitizens "on a case-by-case basis for urgent humanitarian reasons."

7. Mr. Martinez de la Cruz has no other remedy at law than to petition this Court. He respectfully asks that the Court order Respondents-Defendants to immediately release him or to order a bond hearing where Respondents-Defendants bear the burden to prove by clear and convincing evidence that detention is justified.

8. He also asks this Court to enjoin his transfer outside this District. *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of,

and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up).

9. Alternatively, Petitioner-Plaintiff respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Mr. Martinez de la Cruz detention violates federal law and (2) order his immediate release.

10. Finally, Mr. Martinez de la Cruz asks that the Court order Respondents to produce the Form I-213, "Record of Deportable/Inadmissible Alien," generated in his case as part of its consideration of the legality of his arrest.

## PARTIES

11. Mr. Martinez de la Cruz is a 63-year-old Lawful Permanent Resident of nearly three decades who is suffering from severe dementia. Upon information and belief, he has been detained at the John F. Kennedy Airport in Jamaica, New York since his arrival this morning, February 4, 2026.

12. Respondent-Defendant Francis J. Russo is the Director of Field Operations for U.S. Customs and Border Patrol, New York Field Office. He has immediate custody of Mr. Martinez de la Cruz. He is sued in his official capacity.

13. Respondent-Defendant Judith Almodovar is named in her 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, she is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Mr. Martinez de la Cruz.

14. Respondent-Defendant Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is a legal custodian of Mr. Martinez de la Cruz 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 Eastern District of New York, and he is legally responsible for Mr. Martinez de la Cruz's detention and removal.

15. Respondent-Defendant Kristi Noem is the Secretary of DHS. She routinely transacts business in the Eastern District of New York and is responsible for administering and enforcing immigration laws, including the portions of the Immigration and Nationality Act that govern detention. She is Mr. Martinez de la Cruz's ultimate legal custodian. She is sued in her official capacity.

16. Respondent-Defendant Pamela Bondi is the United States Attorney General. As the Attorney General, Respondent-Defendant Pamela Bondi heads the Department of Justice which contains the Executive Office of Immigration Review ("EOIR") and the Board of Immigration Appeals ("BIA"). She routinely transacts business in the Eastern District of New York and is legally responsible for administering Petitioner-Plaintiff's removal proceedings and the standards used in those proceedings. As such, she is a legal custodian of Mr. Martinez de la Cruz. She is sued in her official capacity.

## JURISDICTION

17. Jurisdiction is proper under 28 U.S.C. § 1331 (Federal question), 28 U.S.C. § 2241 (Power to grant writ), Art. 1 § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act).

18. This action arises under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., the Rehabilitation Act, 29 U.S.C. § 794, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 700 et seq.

**VENUE**

19. Venue properly lies with this Court under 28 U.S.C. §§ 1391(b)(2) and (3) because a substantial part of the events giving rise to these claims took place in this District.

20. Additionally, venue properly lies with this Court under 28 U.S.C. § 2241(d) because Mr. Martinez de la Cruz is physically present and in the custody of Respondents-Defendants at the John F. Kennedy International Airport, 14 S Service Rd Bldg., Jamaica, NY 11430, within this District.

**EXHAUSTION**

21. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of their detention. *See 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 Judge ("IJ") and the Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *Khan v. United States A.G.*, 448 F.3d 226, 228 (3d Cir. 2006); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

22. To the extent that exhaustion is required, Mr. Martinez de la Cruz has submitted a parole request that DHS is refusing to adjudicate.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

### A. Mr. Martinez de la Cruz is a long-term lawful permanent resident who is eligible for and merits Cancellation of Removal for Certain Lawful Permanent Residents

23. Mr. Martinez de la Cruz became a lawful permanent resident ("LPR") almost 30 years ago, on March 22, 1999. Ex. A. On January 8, 2014, upon returning from a short trip to the Dominican Republic to visit his mother, CBP served Mr. Martinez de la Cruz with a Notice to Appear ("NTA"), charging him with inadmissibility pursuant to 8 USC §§ 1182(a)(2)(A)(i)(I) (crime involving moral turpitude), (a)(2)(A)(i)(II) (controlled substance offense), and (a)(2)(C) (controlled substance traffickers) on the basis of a conviction under Florida Statute Section 893.13(1)(A)(1), for possession of a controlled substance. Ex. B. DHS did not detain Mr. Martinez de la Cruz and instead paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5).

24. In the mid-2000s, Mr. Martinez de la Cruz was living in Miami and working as a professional boxer. *See generally* Ex. E. As a boxer, he suffered many blows to the head. To ease the pain and confusion caused by these blows, he started using drugs. *Id.* During this time, he was arrested for drugs twice: on February 8, 2007, and on June 9, 2008. He was convicted on June 30, 2008, of two counts of Fl. Stat. § 893.13(1)(A)(1) and two counts of Fl. Stat. § 893(6)(A). *Id.,* Ex. B. He has not been convicted of any other crime.

25. Following his convictions, Mr. Martinez de la Cruz took four short trips outside of the country before DHS served with the NTA in 2014. Each time, DHS did not detain him upon his return. On information and belief, each time he was admitted as an LPR.

26. Around 2014, Mr. Martinez de la Cruz moved to New York City, leaving his life in Miami, boxing career, and addiction behind. *See generally* Ex. E. In New York City, Mr.

Martinez de la Cruz joined a church, became sober, maintained his sobriety, worked steadily, consistently filed income taxes, and built a community, including many close friends and his U.S. citizen cousin. *Id.*

27. Mr. Martinez de la Cruz is eligible for Cancellation of Removal for Certain Lawful Permanent Residents, under 8 U.S.C. § 1229b(a). On October 4, 2018, the immigration court found that he had not been convicted of an aggravated felony and was therefore eligible for such relief.

28. Despite his eligibility for Cancellation of Removal for Certain Lawful Permanent Residents, Martinez de la Cruz's case was not set for a final hearing until June 29, 2022– over eight years after DHS served him with the NTA in 2014. This delay occurred through no fault of Mr. Martinez de la Cruz, but was instead a result of DHS's failure to promptly file the NTA with the Immigration Court, the Immigration Court's docket availability, and a long period of time in which Mr. Martinez de la Cruz was provided ineffective assistance of counsel by an unlicensed attorney (a "notario").

**B. By 2022, Mr. Martinez de la Cruz had developed "Minor Neurocognitive Disorder Due to Head Trauma" and the Immigration Court found him incompetent to proceed**

29. In the time that elapsed between service of the NTA and his scheduled June 2022 individual hearing, Mr. Martinez de la Cruz had begun to exhibit signs of short-term memory loss and limited cognitive functioning. In November 2021, Dr. Gonzalo Vasqez-Casals, a forensic and clinical neuropsychologist, conducted a neurocognitive evaluation of Mr. Martinez de la Cruz and diagnosed him with "Minor Neurocognitive Disorder due to Head Trauma." Ex. E. Dr. Vasqez-Casals found that his neurocognitive disorder was

likely caused by dementia pugilistica, otherwise known as chronic traumatic encephalopathy ("CTE"), a type of dementia caused by a history of trauma to the head. *Id.*

30. In the Spring of 2022, his attorneys noticed that he increasingly struggled to remember appointments, could not aid in collecting records relevant to his case due to apparent memory loss, and was often confused about immigration proceedings or their advice.

31. On June 28, 2022 the immigration judge held a competency hearing under *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011). Mr. Martinez de la Cruz's testimony at that hearing demonstrated that he was unable to remember basic facts about his life in the past few years and was confused about the nature of immigration proceedings. Dr. Vaquez-Casals testified to the neurodegenerative nature of his condition, how his limited cognitive ability and memory deficit affected his ability participate in removal proceedings. He also explained how safeguards such as appearing in-person, ass opposed to via video, and being allowed to testify in a less pressured environment (with the benefit of leading questions and without adversarial cross examination) would reduce Mr. Martinez de la Cruz's confusion and jog his memory.

32. After consideration of Mr. Martinez de la Cruz's testimony, Dr. Vasquez-Casal's testimony and report, and attorney affidavits as to Mr. Martinez de la Cruz's ability to assist in his own defense, the immigration judge found Mr. Martinez de la Cruz incompetent. She ordered the following safeguards: 1) his attorneys may ask limited leading questions; 2) his attorneys may make proffers; 3) the Court will consider testimony in light of his cognitive disorders; 4) DHS may not engage in adversarial cross

examination; 5) Mr. Martinez de la Cruz will be provided an in-person hearing; and 6) the Court will allow the Mr. Martinez de la Cruz flexibility in filing deadlines.

**C. From the date of his 2022 competency hearing to present, Mr. Martinez de la Cruz's memory, cognitive functioning, mental health, and physical health have rapidly deteriorated such that he now suffers from multiple disabilities**

33. At his competency hearing, the immigration judge scheduled Mr. Martinez de la Cruz's individual hearing for December 15, 2022. However, again due to no fault of his own, Mr. Martinez de la Cruz's individual hearing was rescheduled six times (four of which were due to EOIR's docket constraints), and it still has not occurred. Mr. Martinez de la Cruz and his attorneys submitted numerous evidentiary filings demonstrating that he merits cancellation of removal.

34. In the approximately three-and-half years that elapsed since his June 2022 *M-A-M-* hearing, Mr. Martinez de la Cruz's health and cognitive functioning have rapidly deteriorated, such that he can no longer manage basic daily tasks or care for himself. In March 2025, he had diagnoses of major neurocognitive disorder, anxiety, depression, high blood pressure, obesity, benign prostatic hyperplasia (enlarged prostate), and high cholesterol. Ex. D. On January 23, 2026, a doctor made a referral for cataracts surgery in both eyes, and prescribed him SymlinPen Plus, indicating that he has diabetes.

35. Mr. Martinez de la Cruz's neurocognitive functioning has precipitously declined, due to the progression of his dementia. He is now diagnosed "major neurocognitive disorder," based on "evidence of significant cognitive decline from a previous level of performance in one or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-motor, or social cognition)." Ex. D. He scored a 6/30 on

the Montreal Cognitive Assessment (a test of cognitive functioning) indicating "severe cognitive impairment." Ex. F. On June 12, 2024, his doctor prescribed him memantine, a drug to treat "moderate to severe dementia," and on March 19, 2025, his doctor increased his dosage to the maximum recommended dosage. *See* Ex. D.

36. Mr. Martinez de la Cruz's mental health has also deteriorated, such that on June 17, 2024, a psychologist diagnosed him with "severe" depression and anxiety. Ex. D. His medical records from the spring of 2024 to present contain multiple descriptions of his distress, anxiety, and hopelessness, resulting from his memory loss and resulting confusion. *Id.* He also developed some paranoia and expressed suicidal thoughts to his doctor. Ex. F.

37. Reports from his doctors, family, and friends describe the extent to which his disabilities impact his everyday life. He can no longer work, is constantly confused, cannot go places by himself without getting lost, and can no longer care for himself. His doctors report that he displays "significant memory deficit . . . can no longer "cook, is unable to get home on his own if/when he leaves his building, forget[s] to flush [the] toilet, frequently wear[s] the same clothes, can't use a phone . . ." such that "there is danger to him living alone." Ex. D; *see also,* Ex. F. He is also not able to consistently communicate with counsel via phone, is unable to remember conversations with counsel, and is often confused regarding what is happening in his removal proceedings.

38. Due to the overwhelming evidence of Mr. Martinez de la Cruz's cognitive decline since the 2022 competency hearing, on January 10, 2026, immigration attorney, one of undersigned attorneys, Anne Mathews, moved the immigration court to hold a second competency hearing in lieu of his scheduled January 20, 2025 individual hearing.

**D. On January 18, 2026, Mr. Martinez de la Cruz sought to return to the United States following a brief trip to the Dominican Republic, but was not allowed to board his flight due to his dementia**

39. Sometime in the fall of 2025, Mr. Martinez de la Cruz went to temporarily visit his brother, Olivo Antonio de la Cruz, ("Mr. Antonio de la Cruz") in the Dominican Republic. Mr. Martinez de la Cruz had not realized that leaving the country could subject him to immigration detention, since he had travelled to the Dominican Republic to mourn his mother's death in January of 2024, and when he returned, CBP had paroled him into the country.

40. Mr. Martinez de la Cruz planned to return to the United States to attend his scheduled January 20, 2026, individual hearing, which was venued at the 290 Broadway New York Immigration Court. Family members helped Mr. Martinez de la Cruz to book a ticket on Delta Flight 1863, scheduled to arrive at John F. Kennedy Airport in New York, at 11:53pm, on January 18, 2026. On that date, his brother brought him to the airport in Santo Domingo and around 6:15pm, ensured that Mr. Martinez de la Cruz passed through security. At around the time the plane was scheduled to depart, Mr. Antonio de la Cruz received a call from a Delta attendant at the airport. The attendant stated that Mr. Martinez de la Cruz was disoriented and that the airline would not permit him to board the flight out of concern that they might have to divert the flight, were something to happen in the air. It is not exactly clear how Mr. Martinez de la Cruz was behaving in the airport that caused the airline concern, because he cannot remember and none of his family members had been permitted to accompany him through security.

41. At his scheduled January 20, 2026 individual hearing, Mr. Martinez de la Cruz's counsel, Anne Mathews, appeared via WebEx. Mr. Martinez de la Cruz also attempted to appear via WebEx via his brother's phone from Santo Domingo, but they were unable to connect. In light of the record evidence and the events at the airport, the immigration judge scheduled a second competency hearing for February 11, 2026. Ex. C. Mr. Martinez de la Cruz planned to return to the United States to attend this hearing.

**E. On January 19, 2026, undersigned attorneys filed petition for a writ of habeas corpus on Mr. Martinez de la Cruz's behalf, because they mistakenly believed that he had been detained by DHS upon arrival**

42. Prior to Mr. Martinez de la Cruz's scheduled flight, on January 15, 2026, Ms. Mathews had emailed CBP requesting that they parole him in pursuant to 8 U.S.C. § 1182(d)(5)(A). Ex. I. On January 16, CBP Chief Officer Jonathan Hernandez called Ms. Mathews, stated that he had received the parole request and explained that he wanted to make arrangements such that Mr. Martinez de la Cruz would be able to pay the new $1,000 parole fee, should CBP decide to parole him in on arrival. *See* "USCIS Implements New Immigration Parole Fee Required by H.R. 1," https://www.uscis.gov/newsroom/alerts/uscis-implements-new-immigration-parole-fee-required-by-hr-1. Given his understanding of Mr. Martinez de la Cruz's circumstances and the late hour of his arrival, Officer Hernandez told Ms. Mathews that he "wanted to get ahead of this," because if no one could pay the fee, they would have to detain Mr. Martinez de la Cruz "which we can all agree no one wants." He advised Ms. Mathews that she should go to the airport at the time Mr. Martinez de la Cruz was scheduled to

arrive and that the inspecting officer would call or text her, should Mr. Martinez de la Cruz be granted parole, such that Ms. Mathews could facilitate payment of the fee.

43. However, in a call the evening of Sunday, January 18, 2026, Officer Hernandez informed Ms. Mathews he had reviewed Mr. Martinez de la Cruz's file with another CBP Officer, and that CBP had now determined that, due to his criminal history, he was subject to mandatory detention under 8 U.S.C. § 1226(c) and as such, that CBP would not release him on parole. Ms. Mathews explained that CBP's determination was incorrect, and that CBP did, in fact, have authority to parole him into the country under 8 U.S.C. § 1182(d)(5). Officer Hernandez stated that that was the agency's determination, and if that changed when Mr. Martinez de la Cruz arrived and was inspected, that an officer would reach out to her.

44. Ms. Mathews emailed CBP reiterating that Mr. Martinez de la Cruz was not subject to mandatory detention under 8 U.S.C. § 1226(c) and that CBP had the authority to parole him into the country and should do so. Ex. I. To date, CBP has not respond to that email. *Id.*

45. Delta Flight 1863 arrived at JFK around midnight on January 18, 2026. As of 7am on January 19, 2026, undersigned attorneys had not heard from Mr. Martinez de la Cruz or from CBP. Petition for Writ of Habeas Corpus, *Martinez de la Cruz v. Russo*, No. 1:26-cv-303 (E.D.N.Y. Jan. 19, 2026). As such, they assumed he had been detained and filed the petition for habeas corpus. *Id.* Upon discovering that Mr. Martinez de la Cruz had not been able to board his flight, undersigned attorneys moved to withdraw the petition and this Court closed the case on January 21, 2026.

**D. On February 4, 2026, DHS decided to Mr. Martinez de la Cruz upon his arrival, despite knowledge of disabilities and urgent humanitarian and public interest reasons justifying parole**

46. On information and belief, this morning, February 4, 2026, Mr. Martinez de la Cruz returned to the United States on Delta Flight 1942, scheduled to arrive at John F. Kennedy Airport in New York at 10:29am.

47. On February 3, 2024, Ms. Mathews, emailed CBP to renew Mr. Martinez de la Cruz's request that they parole him in pursuant to 8 U.S.C. § 1182(d)(5)(A). Ex. I. She reiterated that Mr. Martinez de la Cruz has severe dementia, anxiety, and depression, as shown by the evidence attached to her January 15, 2026 email. She informed CBP that due to the severity of his disabilities, he was unable to board his previously scheduled flight and the immigration judge had scheduled a competency hearing for February 11, 2026. She also reiterated that CBP had the authority to parole Mr. Martinez de la Cruz in under 8 U.S.C. § 1182(d)(5)(A) and highlighted the fact that CBP had paroled Mr. Martinez de la Cruz into the country after serving him the NTA in 2014, and at least one other time, in January of 2024. She requested that the inspecting officer call or text her if CBP decides to parole him in, so that she could pay the parole fee. *Id.*

48. On February 3, 2026, CBP responded to Ms. Mathews's renewed parole request stating only "[y]our message has been received; the case will be reviewed." *Id.*

49. As of this filing, Ms. Mathews has heard from Mr. Martinez de la Cruz nor has anyone one from CBP contacted her. Around 5pm today Mr. Martinez de la Cruz's brother and another family reported that he was being held by ICE at JFK. He does not yet not appear on ICE's detainee locator. *See* https://locator.ice.gov/odls/; Ex. J.

## LEGAL FRAMEWORK

### A. DHS is detaining Mr. Martinez de la Cruz under the wrong immigration statute and refuses to adjudicate his parole request

50. On information and belief, CBP is detaining Mr. Martinez de la Cruz at John F. Kennedy Airport pursuant to 8 U.S.C. § 1226(c). Yet DHS's own NTA charges Mr. Martinez de la Cruz as an "arriving [non-citizen]" who is inadmissible under 8 U.S.C. § 1182(a)(2) and therefore subject to a different statute of detention, 8 U.S.C. § 1225(b). Ex. B. Under 8 U.S.C. § 1225(b), CBP must consider any parole requests under 8 U.S.C. § 1182(d)(5)(A), which they refused to do here, in violation of the INA. *See e.g., Lamarche v. Mayorkas*, 691 F. Supp. 3d 274, 279 (D. Mass. 2023) (DHS has a "non-discretionary duty to act on and process" parole applications parole applications pursuant to 8 U.S.C. § 1182(d)(5)(A) before USCIS).

51. Ordinarily, a returning lawful permanent resident like Mr. Martinez de la Cruz cannot be deemed an "applicant for admission" under the INA except under certain enumerated circumstances. One such circumstance is if the LPR has committed a crime referenced in 8 U.S.C. § 1182(a)(2). 8 U.S.C. § 1101(a)(13)(C)(v). DHS has alleged that Mr. Martinez de la Cruz has convictions that make him inadmissible under 8 U.S.C. § 1182(a)(2). Ex. B. The Immigration Judge has also ruled that he is inadmissible based on those convictions. Given this agency interpretation, Mr. Martinez de la Cruz should be detained under 8 U.S.C. § 1225(b) as an "applicant for admission," and not 8 U.S.C. § 1226(c).

52. CBP has broad discretion under 8 U.S.C. § 1182(d)(5)(A) to parole in individuals, like Mr. Martinez de la Cruz, who are detained under 8 U.S.C. § 1225(b), "on a case-by-case basis for urgent humanitarian reasons." There are no criminal bars to that limit DHS's

authority to grant parole to inadmissible non-citizens under 8 U.S.C. § 1182(d)(5)(A). The statute only proscribes parole for refugees subject to 8 U.S.C. § 1182(d)(5)(B) and crewmen, subject to 8 U.S.C. § 1182(f). Neither exception applies to Mr. Martinez de la Cruz. Indeed, Respondents-Defendants have paroled Mr. Martinez de la Cruz into the country pursuant to 8 U.S.C. § 1182(d)(5)(A) at least two times in the period of time that he has been in removal proceedings: on January 8, 2014 and in January, 2024. Mr. Martinez de la Cruz has not been convicted of any crime following his 2008 convictions.

53. Upon information and belief, CBP refused to consider paroling Mr. Martinez de la Cruz because of its mistaken belief that he is subject to detention pursuant to 8 U.S.C. § 1226(c). Officer Hernandez unequivocally stated that this was the CBP's position on January 18, 2026. To date, CBP has provided no indication that they have reconsidered this determination. CBP did not respond to Ms. Mathews's January 18 email explaining that CBP did, in fact, have discretion under 8 U.S.C. § 1182(d)(5)(A) to parole in Mr. Martinez de la Cruz. Ex. I. CBP acknowledged receipt of Mr. Martinez de la Cruz's February 3, 2026 renewed parole request, but made no representations the agency had modified its determination as to Mr. Martinez de la Cruz's statute of detention or their authority to parole him in. *Id.*

54. There is also no indication that CBP is providing Mr. Martinez de la Cruz's renewed parole request meaningful review, or that his request has been adjudicated. Previously, Officer Hernandez responded to Ms. Mathew's January 15, 2026, parole request within 24 hours and sought to arrange for payment of the parole fee. In contrast, as of this filing,

no one from CBP has reached out to Ms. Mathews regarding the renewed parole request or payment of the parole fee. *Id.*

55. Because Respondents-Defendants have misclassified Mr. Martinez de la Cruz's statute of detention, his continued detention pursuant to 8 U.S.C. § 1226(c) is contrary to statute and *ultra vires*. As a result of Respondent-Defendants' misclassification of Mr. Martinez de la Cruz, they did not even consider whether to exercise their discretion to parole him in, and he faces the prospect of months, or even years, in immigration custody, without adequate access to medical care for his worsening dementia.

**B. Respondents-Defendants' decisions to detain Mr. Martinez de la Cruz and the to continue his detention violate the Rehabilitation Act**

56. Mr. Martinez de la Cruz's detention also violates federal disability law. Section 504 of the Rehabilitation Act of 1974 "prohibits programs and activities receiving federal financial assistance from excluding, denying benefits to, or discriminating against otherwise qualified' disabled individuals." *McElwee v. Cnty. of Orange*, 700 F.3d 635, 640 (2d Cir. 2012) (quoting 29 U.S.C. § 794(a). *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 196 (2d Cir. 2014) (internal citations and quotations omitted); 29 U.S.C. § 794(a). An agency discriminates against an otherwise qualified disabled individual when it fails to provide "meaningful access" to its benefits, programs or services. *Alexander v. Choate*, 469 U.S. 287, 301 (1985). To ensure "meaningful access," an agency may be required to make "reasonable accommodations" to its programs or services and failure to do so violates the Rehabilitation Act. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273 (2d Cir. 2003).

57. Section 504 is violated if the following factors are met: "(1) [the individual] is a qualified individual with a disability; (2) the defendant [receives federal funding such that it] is subject to [] the Act[]; and (3) [the individual] 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." *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 196-97 (quoting *McElwee*, 700 F.3d at 640) (footnote omitted). Here all three factors are met: 1) Mr. Martinez de la Cruz is a qualified individual with a disability; 2) Respondents-Defendants are subject to the Act; and 3) Respondents-Defendants' decisions to detain Mr. Martinez de la Cruz and continue his detention deny him meaningful access to his removal proceedings because of his disabilities, and thus constitute disability discrimination.

**1. Mr. Martinez de la Cruz is a "qualified individual" with a disability**

58. First, Mr. Martinez de la Cruz is a "qualified individual" with a disability. The term "qualified individual" as used in the ADA, simply means someone who is eligible for the programs, benefits or services provided by the public entity. *Disabled in Action,* 752 F.3d at 196 n. 6 (quoting 42 U.S.C. § 12131). Mr. Martinez de la Cruz is in removal proceedings, which as elaborated in part B.2 *infra*, is a benefit provided by Respondents-Defendants. A "qualifying disability" for the purposes of the Rehabilitation Act is any "physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A); *accord* 29 U.S.C. § 705(20)(B). Mr. Martinez de la Cruz has been diagnosed with Major Neurocognitive Disorder (ie dementia), severe

anxiety, and depression. Exs. E, D, F. These conditions "substantially limit" many life activities: he is unable to work, care for himself, go places without getting lost, use his phone, remember what he did or what the subject of a conversation was that occurred even an hour before, or board an airplane. *Id.*

**2. Respondents-Defendants are subject to the Rehabilitation Act**

59. Second, Respondents-Defendants are subject to the Act. *See* 29 U.S.C. § 794(a) ("Executive Agencies" are covered by the Act); 6 C.F.R. § 15.30 (regulations pertaining to DHS, which includes CBP and ICE, as sub-agencies of DHS); 28 C.F.R. § 39.130 (regulations pertaining to DOJ, which includes EOIR). Thus, Respondents-Defendants must provide noncitizens with disabilities meaningful access to their benefits, services, and programs. See 6 C.F.R. § 15.30(b)(vi) (DHS may not "limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service"); 28 C.F.R. § 39.130(b)(vi) (same as applied to DOJ).

**3. Respondents-Defendant's decisions to detain Mr. Martinez de la Cruz and continue his detention deny him meaningful access to his removal proceedings because of his disabilities**

60. Third, DHS's decision to detain Mr. Martinez de la Cruz and Respondents-Defendants' continuing detention deny him meaningful access to his ongoing removal proceedings, because of his disabilities, in violation of the Rehabilitation Act.

i. ***Respondents-Defendants are required to provide disabled people meaningful access to the benefits of removal proceedings, in other access equal to that provided to a non-disabled person***

61. Participation in removal proceedings constitutes a "benefit" within the meaning of the Act, and as such Respondents must provide disabled respondents reasonable accommodations to ensure that they have meaningful access to their removal proceedings. *See Fraihat v. U.S. Immigr. & Customs Enf't*, 445 F. Supp. 3d 709, 747–48 (C.D. Cal. 2020) (finding that Section 504 covered immigration proceedings and noting no counterargument from ICE), *rev'd on alternate grounds*, 16 F.4th 613, 650 (9th Cir. 2021); *Franco-Gonzales v. Holder,* 767 F. Supp. 2d 1034, 1053, 1056 (C.D. Cal. 2010) (finding that immigration agencies must provide mentally incompetent respondents with "qualified representatives" such that they could have meaningful access to their removal proceedings).

62. The Due Process Clause of the Fifth Amendment and the INA provide all respondents in removal proceedings the "right to a full and fair hearing," which includes the right to examine evidence against them and present evidence in their own defense. *Reid v. Bondi*, 132 F.4th 109, 121 (2d Cir. 2024); 8 U.S.C. § 1229a(b)(4)(B). All respondents bear the burden of proof to demonstrate that they are eligible for relief from removal, and, when applicable, that a favorable exercise of discretion is warranted, and in determining if a respondent has met their burden, the immigration judge will consider the respondent's credible testimony along with other record evidence. 8 U.S.C. §§ 1299a(c)(4)(A) –(B); 8 CFR §1240.8(d). Further, all respondents in removal proceedings have the right to counsel of their choosing. U.S. Const. amend. VI.; 8 U.S.C. § 1229a(b)(4)(A).

63. Meaningful access means that disabled persons must be provided the "*equal opportunity* to obtain the same result, to gain the same benefit, or to reach the same level of

achievement" as non-disabled persons. *Alexander v. Choate*, 469 U.S. 287, 305 (1985) (internal quotations omitted). Thus, Respondent-Defendants must ensure that disabled respondents have the same opportunity to seek relief from removal, meaningfully consult with counsel, and effectively present testimonial and other evidence in support of relief from removal. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 278 (2d Cir. 2003) (Section 504 requires that public entities provide disabled persons meaningful access to "benefits to which they are facially entitled" by law); *see also,* 6 C.F.R. § 15.30(b)(1) (EOIR must provide equal access to participation in benefits or services, and equal opportunities to "obtain the *same result*, to gain the *same benefit*, or to reach the *same level of achievement* as that provided to others") (emphasis added); 28 C.F.R. § 39.130(b)(1)(iii) (same as applied to DHS).

64. The safeguards provided to non-citizens deemed incompetent under the INA do not ensure that disabled respondents are provided meaningful access to removal proceedings, to satisfy the requirements of Rehabilitation Act. Under *Matter of M-A-M,* 25 I&N Dec. 474 (BIA 2011), the test for competency is whether the non-citizen has the ability to understand the nature of removal proceedings, work with their attorney, and present evidence. *See also,* 8 U.S.C. § 1229a(b)(4). Upon a finding of incompetency, proceedings may continue so as the immigration judge prescribes safeguards sufficiently tailored to the "character, scope, and severity of the noncitizen's incompetency" such that their statutory and due process rights are protected. *Reid v. Bondi*, 132 F.4th 109, 124 (2d Cir. 2024). Thus, while an immigration judge's competency findings might shed light on a disabled respondent's need for an accommodation to meaningfully participate in removal

proceedings under Section 504, the safeguards prescribed do not ensure that a disabled respondent is provided the *same* opportunities to benefit from removal proceedings as a non-disabled respondent, as required by the Act. *See Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034, 1053 (C.D. Cal. 2010) (finding that regulatory safeguards afforded to plaintiffs who had been found incompetent did not constitute the "more robust accommodations required under the Rehabilitation Act").

***ii. Respondents-Defendants' detention decisions deny Mr. Martinez de la Cruz meaningful access to his removal proceedings, because of his disabilities***

65. Mr. Martinez de la Cruz's detention denies him meaningful access to removal proceedings because of his disabilities. Mr. Martinez de la Cruz suffers from Major Neurocognitive Disorder, dementia, anxiety and depression. Exs. D, F, G. Mr. Martinez de la Cruz's neurocognitive disorder means that he "has borderline intellectual functioning and . . . impairment in all the areas of his cognitive profile, including . . .difficulties in aspects of attention/concentration, language, memory …and executive functions (i.e., verbal and nonverbal reasoning, setshifting/divided attention, [and] conceptual ability). Ex. G; *see also,* Ex. D, Medical Records (impairment in the cognitive domains of "complex attention, executive function, learning and memory, language, perceptual-motor, or social cognition"). The medical records show that the symptoms of his disabilities, taken together, include severe memory loss, poor comprehension of events, continuous confusion, and paranoia, which at times distorts his understanding of reality. *See e.g.* Ex. D (describing Mr. Martinez de la Cruz's ongoing belief that people were entering his apartment and stealing his clothes and medications because he

continuously misplaced them). As the immigration judge found in his 2022 competency hearing, the confusion and disorientation caused by his disabilities, hinder Mr. Martinez de la Cruz's ability to understand the nature of his removal proceedings, consult with counsel, or provide testimony or other evidence in his own defense. Thus, DHS, is required to provide reasonable accommodations to enable Mr. Martinez de la Cruz meaningful access to his removal proceedings. *Cf, Palamaryuk by & through Palamaryuk v. Duke*, 306 F. Supp. 3d 1294, 1300–02 (W.D. Wash. 2018) (holding that ICE's decision to transfer disabled plaintiff's outside of area where he could meet with his attorney in-person would deny him meaningful access to counsel, a benefit provided to all respondents in removal proceedings, and therefore, under Section 504, ICE must provide plaintiff the reasonable accommodation of halting his transfer).

66. Detention will exacerbate the impairment he suffers on account of these disabilities: it will cause Mr. Martinez de la Cruz's neurocognitive functioning to precipitously deteriorate and the symptoms of his anxiety and depression to precipitously increase, such that he will not be able to participate in his removal proceedings. Ex. G ("Mr. Martinez de la Cruz' neurocognitive functioning would rapidly decline if he were to be detained."); Ex. F ("detention likely accelerates dementia progression").

67. Being in a custodial setting would cause Mr. Martinez de la Cruz's cognitive functioning to decline rapidly. As Dr. Boylan explains, "[s]tressful detention environments, social isolation, limited family contact, overcrowding, and exposure to violence are associated with worsening cognitive and psychological outcomes" and as such, "detention, can

precipitate rapid cognitive and functional decline, delirium, behavioral destabilization, and medical emergencies." Ex. F.

68. The custodial setting would also cause the symptoms of Mr. Martinez de la Cruz's anxiety and depression to worsen. Detention staff often misunderstand detention-related behaviors and subject people who suffer from dementia to punishment, including "inappropriate restraint [and] segregation," which "exacerabate[s] confusion and distress." *Id.* Mr. Martinez de la Cruz has already displayed disorientation and dementia-related behaviors, most recently in the Santo Domingo airport. Detention is also associated with increased risk of premature death, and for Mr. Martinez de la Cruz, who has already expressed suicidal thoughts, detention would increase his risk of suicide. Exs. F, H. Given his previous indications of paranoia, Dr. Boylan states that "[d]etention would increase the likelihood that [Mr. Martinez de la Cruz's paranoia] would progress to a full-blown psychosis."

69. Furthermore, in detention, Mr. Martinez de la Cruz is unlikely to receive the medication, behavioral support, or other medical treatment necessary to minimize the symptoms of his disabilities. *Id.* ("[d]etention poses significant risks for individuals with dementia, primarily due to systemic deficiencies in access to appropriate healthcare.") Appropriate treatment currently includes medication for his hypertension (untreated hypertension leads to cognitive decline) and medication that directly targets his memory loss. *Id.* To ensure that he is receiving appropriate treatment, he requires ongoing medical monitoring and period neurological or psychiatric evaluations. *Id.;* Ex. G, Letter from Neuropsychologist ("[a]dults suffering from . . . major neurocognitive disorder[] need to

be monitored over time to identify the impact of any treatments recommended and track the progression of the disease."). *See also,* Ex. H.

70. Additionally, detention would prevent the immigration judge from assessing Mr. Martinez de la Cruz's *current* level of competency with enough depth to fashion safeguards that are adequate to protect his due process and statutory rights and thus enable him to participate in his removal proceedings. *See Reid v. Bondi*, 132 F.4th 109, 124 (2d Cir. 2024). To enable the judge to make such a competency assessment, Mr. Martinez de la Cruz must obtain a new, in-person, neurocognitive evaluation. Ex. F, Neuropsychologist Letter ("it is my professional opinion that another neurocognitive evaluation of Mr. Martinez de la Cruz, as well as review of his medical records, is required in order to accurately diagnosis, if any, cognitive conditions that Mr. Martinez de la Cruz suffers from, and to provide the Court with an assessment of Mr. Martinez de la Cruz's current competence and functioning."). As described above, the custodial setting would hinder Mr. Martinez de la Cruz from participating in such an assessment.

71. Further, if Mr. Martinez de la Cruz were transferred to a detention facility outside of the New York City Area, he would not be able to adequately consult with counsel. *Cf Palamaryuk by & through Palamaryuk v. Duke*, 306 F. Supp. 3d 1294, 1300¬02 (W.D. Wash. 2018) (petitioner required reasonable accommodation of in-person meeting with counsel to ensure meaningfully access removal proceedings.). Transfer would also mean that Dr. Vasquez-Casals could not conduct the required in-person, neurocognitive evaluation.

72. In sum, given Mr. Martinez de la Cruz's disabilities, detention will cause him to become more disoriented, confused, and distressed, to potentially lose his grip on reality as his paranoia increases, and will hasten his memory loss – inhibiting him from understanding his removal proceedings, consulting with counsel, providing evidence, or obtaining safeguards adequate to protect his statutory rights.

73. Thus, Respondent-Defendant's decisions to detain Mr. Martinez de la Cruz and continue his detention denies him meaningful access to his removal proceedings, by "reason of his disability," such that they are required to provide him with a reasonable accommodation. A violation of the Rehabilitation Act does not require showing that Respondent-Defendant chose to detain Mr. Martinez de la Cruz because of his disabilities, or that their actions were the sole cause of his inability to meaningfully access removal proceedings. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 277 (2d Cir. 2003) ("the Rehabilitation Act requires affirmative accommodations to ensure that facially neutral rules do not in practice discriminate against individuals with disabilities").

***iii. Parole and release constitute reasonable accommodations required to enable Mr. Martinez de la Cruz to meaningfully access his removal proceedings***

74. Parole and release constitute "reasonable accommodations" which required to enable Mr. Martinez de la Cruz to meaningfully access his removal proceedings. As Dr. Boylan explains, while there is no treatment for dementia, "many symptoms of [the disease] can be mitigated by optimization of environmental factors" such as a calm environment, and caregiver support. Ex. F. Mitigation of his cognitive and psychological symptoms also requires ongoing evaluations and treatment by a comprehensive medical care team, which

he could only receive in the community. *Id.* Further, at 2022 competency hearing, the immigration judge ordered the safeguard of an "in-person hearing" because he would be less disoriented and more able to understand his removal proceedings if he were in the room with the immigration judge, his attorney, and the ICE attorney, rather than over video. *See also,* ex. D (video visits are inappropriate for him). Allowing Mr. Martinez de la Cruz to live in the community while his immigration proceedings are pending would allow him to meet in-person with counsel and his doctors. Release, prohibition of transfer, and modification of conditions of confinement are all reasonable accommodations contemplated by the statute. *Cf. Palamaryuk by & through Palamaryuk v. Duke*, 306 F. Supp. 3d 1294, 1300–02 (W.D. Wash. 2018) (petitioner required accommodation of prohibition on transfer away from counsel); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) (ordering release to community-based treatment facility as a reasonable accommodation); *see also,* ICE Directive 6000 (allowing for release as a reasonable accommodation under Section 504).

75. An accommodation is reasonable so long as it neither places "undue financial and administrative burdens" on the agency nor fundamentally alters the nature of the program. *Southeastern Community College v. Davis*, 442 U.S. 397, 410–12 (1979); *School Board of Nassau County, Florida v. Arline*, 480 U.S. 273, 287 n. 17 (1987). Granting Mr. Martinez de la Cruz parole under 8 U.S.C. § 1182(d)(5)(A) and releasing him are reasonable accommodations.

76. Parole or release is not a fundamental alteration to the nature of removal proceedings. CBP has the statutory authority under 8 U.S.C. § 1182(d)(5) to parole non-citizens

otherwise subject to 8 U.S.C. § 1225(b) for humanitarian or public benefit reasons. ICE has historically used its discretion to release people with certain vulnerabilities, including people who would otherwise be subject to mandatory detention under 8 U.S.C. § 1226(c). 8 CFR 212.5; *Fraihat v. U.S. Immigration and Customs Enforcement*,19-CV-01546, ECF No. 81-14, ¶¶ 5–7, 10–11 (Mar. 24, 2020) (explaining that ICE regularly exercises discretion to release people who are especially vulnerable, including those with serious illnesses or who are vulnerable to serious illness, even when individuals are subject to mandatory custody). There are millions of cases pending before the immigration courts for non-detained respondents, and continuing to adjudicate Mr. Martinez de la Cruz's case on the non-detained docket in no way constitutes a fundamental alteration to removal proceedings. *See U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report*, Enforcement and Removal Operations at 11. Parole or release therefore do not fundamentally alter the nature of removal proceedings and are appropriate accommodations even if a person is subject to 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226(c). *See Galvez-Letona v. Kirkpatrick*, 54 F. Supp. 2d 1218, 1225 (D. Utah 1999) (waiver of a statutory requirement is an appropriate accommodation when an exception does not fundamentally alter the program).

77. Parole and release also do not pose undue burdens on Respondents-Defendants. In 2024, the average daily cost of detaining an adult in ICE custody is $164.65 per day. American Immigration Council, "Featured Issue: Immigration Detention and Alternatives to Detention." (Apr. 16, 2024), https://www.aila.org/library/featured-issue-immigration-detention#:~:text=Daily%20Costs%3A%20Projected%20average%20daily,detention%2

C%20facility%20type%2C%20etc. Given inflation and Mr. Martinez de la Cruz's medical needs, his detention will cost Respondent-Defendants significantly more than his release.

***iv. Respondents-Defendants' decisions to detain Mr. Martinez de la Cruz, and his ongoing detention, despite Respondents-Defendants' prior knowledge of his disabilities, violate Section 504 of the Rehabilitation Act***

78. CBP was aware of Mr. Martinez de la Cruz's disabilities when they chose to detain him. In the January 16, 2026, phone call to Mr. Martinez de la Cruz's attorney, Chief CBP Officer Hernandez stated that he had received Mr. Martinez de la Cruz's January 15, 2026, parole request and attached medical documents regarding his disabilities. Ex. I. Further, CBP indicated receipt of Mr. Martinez de la Cruz's renewed parole request, sent on February 3, 2026, which included counsel's description of the incident in the airport and the February 11, 2026 scheduled competency hearing. *Id.* Given CBP's knowledge of Mr. Martinez de la Cruz's disabilities, the agency was obligated to consider how his disability might impact his access to immigration court proceedings and offer reasonable accommodations, including parole. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 275 (2d Cir. 2003) (Section 504 imposes an "affirmative obligation" to provide reasonable accommodations to address "known physical or mental limitations"). CBP did not consider his disabilities when the agency chose to detain him, nor did they provide him with any reasonable accommodation. The agency's erroneous conclusion that Mr. Martinez de la Cruz was subject to 8 U.S.C. § 1226(c) did not relieve them of their obligation to consider his disabilities and offer reasonable accommodations, such as parole. *See Galvez-Letona*, 54 F. Supp. at 1225.

79. CBP and ICE's obligation to accommodate Mr. Martinez de la Cruz's disabilities continues. The agencies remain aware of his disabilities, and as such, must offer reasonable accommodations to ensure that he can participate in his removal proceedings, regardless of the statute of detention. Reasonable accommodations include immediate release from custody or, in the alternative, release on reasonable conditions of supervision.

**4. To remedy these violations and provide him meaningfully access to his removal proceedings, Respondents-Defendants' must immediately release Mr. Martinez de la Cruz**

80. Immediate release from detention is a necessary reasonable accommodation to ensure that Petitioner-Plaintiff can meaningfully participate in his immigration proceedings. Absent an accommodation that permits Mr. Martinez de la Cruz to have adequate medical care in a non-carceral setting and to be in a familiar environment, Respondents-Defendants are unlawfully and discriminatorily excluding Mr. Martinez de la Cruz from his immigration proceedings.

**C. Respondents-Defendants violated the Administrative Procedures Act when it made detention determinations in Mr. Martinez de la Cruz's case that were not in accordance with federal law, namely the Rehabilitation Act**

81. In addition to violating The Rehabilitation Act in and of itself, Respondents-Defendants' detention decision in Mr. Martinez de la Cruz's case violates the APA. Under the APA, agency action that violates federal law is arbitrary and unlawful and may be set aside by federal courts. 5 U.S.C. § 702(2)(A), (C).

82. 5 U.S.C. § 702(2)(A) allows courts to set aside "arbitrary and capricious" agency action. Arbitrary and capricious agency action includes action "otherwise not in accordance with

law." As outlined above, Respondents-Defendants' initial decision to detain Mr. Martinez de la Cruz and their continual refusal to release him violate the Rehabilitation Act's nondiscrimination mandate. These agency decisions were thus "not in accordance" with the Rehabilitation Act and can be set aside by this Court.

83. Similarly, 5 U.S.C. § 702(2)(C) empowers courts to set aside agency action "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." In deciding to detain and refusing to release Mr. Martinez de la Cruz, despite his disability-related inability to access his removal proceedings while detained, Respondents-Defendants have taken agency action "short" of Mr. Martinez de la Cruz's statutory right to nondiscrimination under § 504. As such, this Court can require the agency to revisit its detention decision in light of Mr. Martinez de la Cruz's statutory rights.

**D. Respondents-Defendants violated the Administrative Procedures Act when they made detention determinations and failed to adjudicate Mr. Martinez de la Cruz's pending parole request in violation of the INA and its implementing regulations.**

84. In addition to violating the INA in and of itself by detaining Mr. Martinez de la Cruz under the wrong statute and refusing to adjudicate his parole request, Respondents-Defendants' detention decision violates the APA. Under the APA, agency action that violates federal law is arbitrary and unlawful and may be set aside by federal courts. 5 U.S.C. § 702(2)(A), (C). Under the APA, courts may also "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). Agency action is not "specified . . . to be in the discretion" of the official where the action "was not performed in accordance with the mandatory . . . procedures." *Sharkey v. Quarantillo*, 541 F.3d 75, 86 (2d Cir. 2008) (quotation marks omitted) (in the context of rescission of lawful

permanent resident status, noting that the regulations "require formal proceedings, and a hearing upon request"). The Supreme Court has stated that "immigration officials clearly have the authority to deny parole to unadmitted aliens *if they can advance a facially legitimate and bona fide reason for doing so.*" *Jean v. Nelson*, 472 U.S. 846, 853 (1985) (emphasis added and quotation marks omitted); *see also Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) ("a grant of parole requires an individualized review"), *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1138 (D. Or. 2025) ("In the context of granting parole, both the Supreme Court and the Ninth Circuit have acknowledged such mandatory procedures.").

85. In the related context of parole applications pursuant to 8 U.S.C. § 1182(d)(5)(A) before USCIS, courts have found that DHS has a "non-discretionary duty to act on and process" parole applications. *Lamarche v. Mayorkas*, 691 F. Supp. 3d 274, 279 (D. Mass. 2023); *see also Roe v. Mayorkas*, 2023 WL 3466327, at *9, 17 n.11 (D. Mass. May 12, 2023) (relying on *Biden v. Texas*, 597 U.S. 785, 806-07 (2022) for proposition that DHS' exercise of discretion under § 212(d)(5) [8 U.S.C. § 1182(d)(5)] "must be reasonable"). Mr. Martinez de la Cruz has a properly pending parole request before Respondents-Defendants, and they have unlawfully withheld a decision on that request.

86. 5 U.S.C. § 702(2)(A) allows courts to set aside "arbitrary and capricious" agency action. Arbitrary and capricious agency action includes action "otherwise not in accordance with law." As outlined above, Respondents-Defendants' initial decision to detain Mr. Martinez de la Cruz and their continuing decision to detain him, without consideration of his parole

request, is based on a misclassification of his detention statute. As such, their decisions are "not in accordance" with the INA.

87. *In Department of Homeland Security, et al. v. Regents of the University of California, et al*, the Supreme Court found that DHS's decision to revoke the DACA memo, without consideration of DACA recipient's reliance interests, was "arbitrary and capricious" in violation of the APA. 140 S. Ct. 1891, 1913, 207 L. Ed. 2d 353 (2020). The Court found that even though a grant of parole provided DACA recipients with "no substantive rights," the fact that petitioners had relied on the memo to make life decisions generated a reliance interest that the government was required to consider. *Id.* Mr. Martinez de la Cruz travelled to the Dominican Republic in reliance on DHS's prior decisions to parole him in twice, following the issuance of the NTA. Thus, Respondents-Defendants' failure to consider any reliance interest Mr. Martinez de la Cruz may have, when they detained him is arbitrary and capricious.

88. Similarly, 5 U.S.C. § 702(2)(C) empowers courts to set aside agency action "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." In deciding to detain and refusing to release Mr. Martinez de la Cruz, Respondents-Defendants took agency action "in excess of statutory authority" from the INA because they detained and are detaining Mr. Martinez de la Cruz under an incorrect statutory provision and failing to consider his parole request under 8 U.S.C. § 1182(d)(5).

**E. Timeline Pursuant to 28 U.S.C. § 2243**

89. Courts considering petitions for writs of habeas corpus are directed to either issue a writ "forthwith," or to direct the Respondents-Defendants to show cause why the writ should

not be granted within three days, or, with good cause, within twenty days. 28 U.S.C. § 2243.

90. Once the government has responded, the statute directs the Court to schedule a hearing on the petition "not more than five days after the return unless for good cause additional time is allowed." *Id.*

91. Because Petitioner's liberty remains heavily burdened during their continued detention, we ask the Court to adhere to the clear schedule set forth in § 2243 and order the Government to Show Cause within three days as to why the Petition should not be granted.

## CLAIMS FOR RELIEF

### COUNT ONE

**Statutory Violation of the Immigration and Nationality Act**

92. Mr. Martinez de la Cruz realleges and incorporates by reference each and every allegation contained above.

93. Respondents-Defendants are unlawfully detaining Petitioner-Plaintiff pursuant to 8 U.S.C. § 1226(c). Based on this misclassification, Respondents-Defendants have also failed to adjudicate Mr. Martinez de la Cruz's pending parole request.

94. However, Mr. Martinez de la Cruz is a returning LPR who has been charged as an applicant for admission. Therefore, the proper statutory authority for his detention 8 U.S.C. 1225(b), and his continuing detention violates the INA and its implementing regulations.

## COUNT TWO

**Failure to Provide a Reasonable Accommodation in Violation of the Rehabilitation Act of 1974**

95. Mr. Martinez de la Cruz realleges and incorporates by reference each and every allegation contained above.

96. Respondents-Defendants' decision to detain, and continued detention of, Mr. Martinez de la Cruz, an individual with disabilities, denies him equal access to immigration proceedings and requires a reasonable accommodation under Section 504 and its implementing regulations. 29 U.S.C. § 794; 6 C.F.R. § 15.30, et seq.; 28 C.F.R. § 39.130, et seq.

97. Release is the only reasonable accommodation that will allow Mr. Martinez de la Cruz to be able to meaningfully participate in his immigration proceedings.

98. Respondents-Defendants' continued detention of Mr. Martinez de la Cruz without allowing him the reasonable accommodation of release violates Section 504 and its implementing regulations.

## COUNT THREE

**Failure to Comply with the Rehabilitation Act and its Implementing Regulations in Violation of the Administrative Procedure Act**

99. Mr. Martinez de la Cruz realleges and incorporates by reference each and every allegation contained above.

100. The Administrative Procedure Act empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

101. Respondents-Defendants violated the APA when they failed to consider Mr. Martinez de la Cruz's disability in their initial detention determination and continued to detain him despite his disability, in violation of a binding federal statute, the Rehabilitation Act.

## COUNT FOUR

**Failure to Comply with INA and its Implementing Regulations in Violation of the Administrative Procedure Act**

102. Mr. Martinez de la Cruz realleges and incorporates by reference each and every allegation contained above.

103. The Administrative Procedure Act empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). It also allows courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

104. Respondents-Defendants violated the APA when they detained Mr. Martinez de la Cruz and continue to detain him under an incorrect statute and when they failed to consider his properly pending parole request.

## PRAYER FOR RELIEF

**Wherefore, Petitioner-Plaintiff prays that this Court grant the following relief:**

1. Assume jurisdiction over this matter;
2. Order that Respondents-Defendants must not transfer Mr. Martinez de la Cruz out of the physical jurisdiction of the New York Field Office of Immigration and Customs

Enforcement or outside the Eastern District of New York, to preserve the status quo during the pendency of this petition;

3. Issue a writ of habeas corpus ordering Mr. Martinez de la Cruz's release 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-Defendants bear the burden of establishing that Petitioner-Plaintiff'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. Martinez de la Cruz can meaningfully participate in the proceeding;
4. Declare that Mr. Martinez de la Cruz's continuing detention violates the Immigration and Nationality Act and its implementing regulations, the Rehabilitation Act and its implementing regulations, and the Administrative Procedure Act, and order his immediate release;
5. Release Mr. Martinez de la Cruz during the pendency of this petition under *Mapp v. Reno*;
6. Award Petitioner-Plaintiff his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and
7. Any other relief this Court deems just and proper.

Dated: February 4, 2026

Respectfully submitted,
/s/ Nhu-Y Ngo
Nhu-Y Ngo
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*Attorneys for Petitioner-Plaintiff*

**Exhibits**

A. Proof of Lawful Permanent Residency
B. DHS Notice to Appear
C. Immigration Court Hearing Notice
D. Medical Records (*motion for leave to file under seal forthcoming*)
E. Neuropsychiatric Evaluation (*motion for leave to file under seal forthcoming*)
F. Declaration from Neurologist (*motion for leave to file under seal forthcoming*)
G. Letter from Neuropsychiatrist
H. Letter from Social Worker
I. Correspondence About Parole Request with CBP
J. Detainee Locator Screenshot

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 4, 2026

*/s/* Annie Mathews
Annie Mathews