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

FIRST AMENDED 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. He has been detained in the hold room at 26 Federal Plaza, New York, NY 10278 since February 4, 2026, where he cannot go outside, sleeps on a mattress on the floor with up to twenty other detainees, cannot meet

with counsel or loved ones in-person or via video, has not met with any mental health provider and has not received his required medications.

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, and not following its own policies, designed to protect the due process rights of noncitizens deemed incompetent in removal proceedings. For these reasons DHS is violating his procedural Due Process Rights. He also brings this petition because the Government is: 1) violating his substantive Due Process Rights by holding him in conditions which pose an undue risk to his health; 2) 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; 3) and violating the Administrative Procedure Act ("APA") for flouting the Rehabilitation Act, the Immigration and Nationality Act ("INA"), and their own agency directives.

3. DHS placed Mr. Martinez de la Cruz into removal proceedings over 12 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 at that time 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 has not been convicted of any crime since 2008.

5. Mr. Martinez de la Cruz's removal proceedings remain pending. Mr. Martinez de la Cruz 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 and 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. He was scheduled for a second competency hearing on Wednesday, February 11, 2026, but Respondents'-Defendants did not produce him from detention. Respondents-Defendants are refusing to file the form required for his case to be docketed, and as such there is no future hearing date in his case.

6. On February 4, 2026, when 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, unlawfully detained him upon entry under 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. Despite the fact ICE was aware of Mr. Martinez de la Cruz's dementia and the fact he had previously been deemed incompetent, the agency has failed to follow its own procedures designed to protect the due process rights of mentally incompetent noncitizens and failed to release him as a reasonable accommodation in light of his disabilities.

8. Mr. Martinez de la Cruz is being held at 26 Federal Plaza, temporary hold room, under conditions that will undoubtedly worsen the symptoms of his dementia. ICE has not

engaged in an individualized review of his parole request and requests for reasonable accommodations, or granted him a reasonable accommodation.

9. 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.

10. 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.

11. 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 and any other documents related to his custody determinations as part of its consideration of the legality of his arrest.

PARTIES

12. Mr. Martinez de la Cruz is a 63-year-old Lawful Permanent Resident of nearly three decades who is suffering from severe dementia. He is currently detained in the ICE hold room at 26 Federal Plaza, New York, NY 10278, where he has been detained since the either the night of February 4, 2026, or February 5, 2026. ECF. No. 8-1 at ¶¶ 33-34. CBP arrested him at the John F. Kennedy Airport in Jamaica, New York the morning of February 4, 2026, maintained custody over him until he was transferred to 26 Federal Plaza. ECF. No. 8-1 at ¶¶ 31-32.

13. 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.

14. 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.

15. Respondent-Defendant Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He was 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.

16. 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.

17. 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

18. 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).

19. This action arises under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., the Fifth Amendment of the United States Constitution (Due Process Clause), the Rehabilitation Act, 29 U.S.C. § 794, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 700 et seq.

VENUE

20. 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.

21. Additionally, venue properly lies with this Court under 28 U.S.C. § 2241(d) because Mr. Martinez de la Cruz was 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, when this petition was filed on February 4, 2026. ECF. No. 8-1 at ¶ 32.

EXHAUSTION

22. 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).

23. To the extent that exhaustion is required, Mr. Martinez de la Cruz submitted a parole request on February 4, 2026, which CBP either denied or refused to adjudicate. He also submitted a release request to ICE on February 5, 2026, which has not adjudicated.

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

24. 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, CBP served Mr. Martinez de la Cruz with a Notice to Appear ("NTA"), designating him as "an arriving alien" and 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).

25. 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. In this period of time, he developed an addiction to cocaine. *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 Acounts of Fl. Stat. § 893(6)(A). *Id.*, Ex. B. He has not been convicted of any other crime.

26. In 2010, Mr. Martinez de la Cruz took a brief trip out of the country and returned to the United States on August 14, 2010. Despite his convictions, DHS did not detain him upon entry.

27. Around 2011, 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.

28. Mr. Martinez de la Cruz is eligible for Cancellation of Removal for Certain Lawful Permanent Residents, under 8 U.S.C. § 1229b(a), but despite his status as a Lawful Permanent Resident status and eligibility for relief from removal, his case was not set for a final hearing until June 29, 2022– almost eight years and a half years after DHS served him with the NTA. Ex. B. This inordinate delay occurred through no fault of Mr. Martinez de la Cruz. First, DHS delayed in filing the NTA with EOIR for over 10

months. The immigration court then set Mr. Martinez de la Cruz's first master calendar hearing ("MCH") for a year and a half after the NTA was filed, and two and half years after CBP served him the NTA: for June 2, 2016. For one and half years, from June, 2016 until January, 2018 Mr. Martinez de la Cruz was represented an unlicensed attorney (a "notario") who the immigration judge later ruled provided him ineffective assistance of counsel, delayed proceedings during this time. On October 4, 2018, the immigration court found that he was therefore eligible for Cancellation of Removal for Certain Lawful Permanent Residents, under 8 U.S.C. § 1229b(a).

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 developed dementia. He 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 at 15. Dr. Vasqez-Casals found that his neurocognitive disorder was likely caused by head trauma. *Id.*

30. 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 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, as 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.

31. 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.

32. 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 to date, it still has not occurred. Mr. Martinez de la Cruz and his attorneys submitted numerous evidentiary filings demonstrating that he merits Cancellation of Removal.

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 deteriorated

33. 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, and high cholesterol. Exs. D, F.

34. 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.

35. Dr. Boylan, a neurologist evaluated Mr. Martinez de la Cruz via video on February 11, 2026. Ex. H. She found that he "is unable to represent himself in court proceedings of any kind due to major neurocognitive disorder." *Id.* at 2. Her evaluation confirmed the extent of his memory loss and confusion. *Id.* ("He did not understand why he was detained.")

36. Mr. Martinez de la Cruz's mental health 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,* Exs. F, H.

D. On August 17, 2026, Mr. Martinez de la Cruz travelled to the Dominican Republic to temporarily stay with his brother

38. On August 17, 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. ECF 8-2; Ex. M.

39. He had travelled to the Dominican Republic in January of 2024 to mourn his mother's passing. Ex. M. Prior to that trip, he had sought the advice of counsel. Ms. Mathews had advised him that there some risk of detention upon return but that in in recent years, Bronx Defenders' other clients in similar circumstances had not been detained upon return at JFK. On January 13, 2024, Mr. Martinez de la Cruz travelled to the Dominican Republic and was not detained when he returned on January 27, 2024. ECF No. 8-1 at 4; see also, Ex. M. His next immigration court hearing date (which was later *sua sponte* adjourned) was in April 2024.

40. In early August of 2025 undersigned counsel reached out to Mr. Martinez de la Cruz and his primary care-taker at the time, his friend, Ms. Hidalgo, because she was going on a leave from work and would return in mid-October. Mr. Martinez de la Cruz's individual hearing was set for January 20, 2025. She reminded him and Ms. Hidalgo of the upcoming hearing and provided contact information for the attorney at Bronx Defenders they could reach out to in her absence. She also reached out to a social worker at Bronx

Defenders to line up a new neurocognitive evaluation in advance of his individual hearing.

41. Ms. Mathews learned of Mr. Martinez de la Cruz's trip after she returned from leave. Mr. Martinez de la Cruz had not called anyone at Bronx Defenders before leaving. When she spoke with him on the phone, Mr. Martinez de la Cruz said that did not understand why he might be detained upon return when he had just travelled in 2024.

42. Family members helped Mr. Martinez de la Cruz to book a flight back to New York, so that he could attend his scheduled January 20, 2026, individual hearing, which was venued at the 290 Broadway New York Immigration Court.

43. On that January 18, 2026, his brother brought Mr. Martinez de la Cruz to the airport in Santo Domingo, helped him check in, and ensured that he passed through security. However, Mr. Martinez de la Cruz became disoriented in the airport and the airline did not allow Mr. Martinez de la Cruz to board out of concern that they might have to divert the flight, were something to happen in the air. *See also,* ECF 8-2 at 4. 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. Ex. M.

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

44. In advance of his return, on Thursday January 15, 2026, Ms. Mathews sent an email to CBP, requesting that they parole Mr. Martinez de la Cruz into the country, rather than detaining him, in pursuant to INA § 212(d)(5). In that email, Ms. Mathews alerted CBP

and attached evidence as to his dementia (and prescription for memetime), anxiety and depression, upcoming individual hearing date, eligibility for relief from removal, and the inappropriateness of detention for someone with his disabilities. Ex. K.

45. On January 16, Chief CBP Officer Hernandez at JFK called Ms. Mathews, stated that CBP had received and were reviewing Mr. Martinez de la Cruz's parole request. The officer stated that given his understanding of Mr. Martinez de la Cruz's dementia, he wanted to make arrangements such that Mr. Martinez de la Cruz would be able to pay the new $1,000 parole fee, were he to be granted parole. *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. Ms. Mathews and the Officer spoke on the phone a total of three times regarding Mr. Martinez de a Cruz from January 16 to 17.

46. However, in a call the evening of Sunday, January 18, 2026, Officer Hernandez informed Ms. Mathews 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.

47. 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. Ex. K.

48. 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.

49. 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 he was 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.

D. On February 4, 2026, DHS detained Mr. Martinez de la Cruz upon his arrival at JFK Airport

50. Mr. Martinez de la Cruz's family again helped him to book a plane ticket, for February 4, 2026, to return to New York City, such that he could attend his February 11, 2026 hearing. Ex. M. On February 3, 2024, Ms. Mathews, email CBP to renewed Mr. Martinez de la Cruz's request that they parole him in pursuant to 8 U.S.C. § 1182(d)(5)(A). Ex. K. She incorporated his prior parole requests and informed CBP that he was unable to board his previously scheduled flight and the immigration judge had scheduled a competency hearing for February 11, 2026. *Id.*

51. On February 4, 2026, Mr. Martinez de la Cruz returned to the United States on Delta Flight 1942 and was detained upon his arrival to JFK . ECF. No. 8-2 at 4. Despite its

acknowledged receipt of Mr. Martinez de la Cruz's renewed parole request, CBP referred him to secondary inspection and took custody of him "pending an ICE custody determination." ECF No. 8-1 at ¶ 31. CBP maintained custody of him until sometime after 8pm that night, when he was transferred to ICE custody. *Id.* at ¶ 32.

52. According to Deputy Field Director Joyce, in its custody determination, ICE "determined that Petitioner suffers from severe dementia and was aware that an Immigration Judge declared him incompetent" and requested a "Fit for Confinement Letter." *Id.* Mr. Martinez de la Cruz was transported to Jamaica Hospital Medical Center where, a doctor found that his "only medical problem [is] forgetfulness." *Id.* at ¶ 32. He was discharged from Jamaica Hospital at 7:43pm and returned to JFK. *Id.* Upon his return, on the basis of the Jamaica Hospital doctor's finding, ICE determined that he was "fit for confinement" and assumed custody from CBP. ECF No. 8-1 at ¶ 32.

53. On February 4 at approximately 8pm, Mr. Martinez de la Cruz's attorneys filed his original habeas petition with this Court. ECF 1.

E. Mr. Martinez de la Cruz has been detained at 26 Federal Plaza since February 4, 2026

1. At around 11pm on February 4, 2026, ICE transferred Mr. Martinez de la Cruz to the hold room 26 Federal Plaza, where he has been detained since that time. ECF No. 8-1 ¶¶ 33-34. Respondents-Defendants' are detaining him pursuant to 8 U.S.C § 1226(c)(1)(A). *Id.*; ECF No. 7.

2. Following his detention the morning of February 4, Mr. Martinez de la Cruz was not able to speak with loved ones or his legal team until February 7. On February 5, February 6,

and 7, Ms. Mathews made multiple requests to CBP and ICE ascertain Mr. Martinez de la Cruz's location and to arrange with him, as she was concerned that he was unable to reach out to her due to his cognitive challenges. Exs. K, I. Respondents-Defendants did not respond. Over the course of these three days, she received numerous alarmed calls from Mr. Martinez de la Cruz's family and friends. On February 7, 2026, Ms. Mathews asked the AUSA to help facilitate a legal call, and that afternoon Mr. Martinez de la Cruz called Ms. Mathews from 26 Federal Plaza.

3. Since his detention at 26 Federal Plaza, ICE has not afforded Mr. Martinez de la Cruz an in-person or video visit with his attorney, despite Ms. Mathews's repeated requests explaining the necessity of such a visit, due to his dementia. Exs. K, I. Mr. Martinez de la Cruz also has also not been afforded a video or in-person visit with friends or family members.
4. ICE has also not permitted a neurological expert to conduct an in-person evaluation of Mr. Martinez de la Cruz, despite Ms. Mathews's repeated requests. Exs. K, I.
5. On February 16, ICE agreed to allow neurological expert to conduct a virtual evaluation of Mr. Martinez de la Cruz. The evaluation confirmed the extent of his impairment and found that he was not competent. Ex. H.
6. Since his detention at 26 Federal Plaza, Mr. Martinez de la Cruz has not been able to go outside. There is no television or reading materials. There is no exercise equipment. He sleeps on a mattress on the floor in a room with up to 20 people. *See Barco Mercado v. Noem*, 1:25-cv-06568, (S.D.N.Y. Sep 17, 2025) ECF No. 97.

7. He has not seen any mental health provider, he did not timely receive any medication until for his high cholesterol and or dementia and still has not received medication for his high blood pressure. Exs. I, J.

8. Since his detention at 26 Federal Plaza, Mr. Martinez de la Cruz has filed multiple release requests. On February 5, 2026, Ms. Mathews emailed ICE and to request that they release him on humanitarian parole, stating that ICE had authority to release him under 8 U.S.C. § 1182(d)(5)(A), and incorporating the same evidence as to his disabilities and the immigration judge's prior incompetency finding that she had included in the prior parole requests made to CBP. Ex. L. On February 11, 2026, Ms. Mathews emailed ICE to renew the release request. To date, ICE has not responded this request. *Id.*

9. ICE instead requests to transfer Mr. Martinez de la Cruz to Krome Detention Center, in Miami. ECF No. 7.

10. If Mr. Martinez de la Cruz is released, his social worker, Ms. Guzman will escort him to NYU Langone Medical Center. Ex. J. Admission to the hospital will allow for a comprehensive evaluation and referral to an appropriate assisted living facility in New York City, that has dementia care and twenty-four hour supervision. *Id.*

LEGAL FRAMEWORK

A. Mr. Martinez de la Cruz's Detention is Unlawful Under the INA

11. Under the INA, civil immigration detention is authorized under 8 U.S.C. § 1225 and 8 U.S.C. § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 287-89 (2018). These provisions are mutually exclusive: § 1226 authorizes the Government to detain certain noncitizens

"already in the country," whereas 8 U.S.C. § 1225 authorized the Government to detain certain noncitizens "seeking admission." *Id.*

12. Under § 1226(a) (discretionary detention) permits the Government to release a non-citizen already present in the country, in removal proceedings on "bond" or "conditional parole." § 1226(c) (mandatory detention), in turn, carves out certain categories of non-citizens that the government "shall take into custody" and may not release under the provisions § 1226(a). Non-citizens present in the country who are inadmissible due to criminal conduct are subject to mandatory detention, under § 1226(c)(1)(A) ("inadmissible by reason of having committed any offense covered in section 1182(a)(2)"). Noncitizens subject to mandatory detention under § 1226(c) may not request a bond hearing under the INA, nor may they seek release under any other statutory mechanism.

13. In turn, § 1225(b) requires the Government to detain "applicants for admission" who are "seeking admission" to the country. 8 U.S.C. § 1225(b)(2). ("[I]f 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 . . . ."). Like noncitizens subject to mandatory detention under § 1226(c), noncitizens subject to § 1225(b) may not request a bond hearing under the INA. But unlike those detained under § 1226(c), noncitizens subject to § 1226(b) make seek release on parole for "urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

14. The Government may not ordinarily consider LPRs to be "seeking admission" and thus may not generally subject to mandatory detention under § 1225(b)(2). *Brissett v. Decker*,

324 F. Supp. 3d 444, 449 (S.D.N.Y. 2018) (citing 8 U.S.C.S. § 1101(a)(13)(C)). However, there are six statutorily defined exceptions to this rule, under which LPRs attempting to enter the country will be deemed "seeking admission" and properly detained under § 1225(b)(2). 8 U.S.C.S. § 1101(a)(13)(C). Under the statute, returning LPRs who are inadmissible due to criminal convictions are subject to both removal on the grounds of inadmissibility and subject to § 1225(b)(2). *See Vartelas v. Holder*, 566 U.S. 257, 260 (2012); Perez v. Aviles, 188 F. Supp. 3d 328, 332 (S.D.N.Y. 2016) (collecting cases). 8 U.S.C.S. § 1101(a)(13)(C)(i) ("has committed an offense identified in section 1182(a)(2)").

15. While a conviction that falls in the criminal inadmissibility grounds both subjects an LPR to mandatory detention under § 1226(c), and allows the Government to treat him as an "applicant for admission" and thus subject him to mandatory detention under § 1225(b)(2), the Government is not free to pick and choose which statute to detain him under. The Government may only subject LPRs inadmissible by virtue of a criminal act to § 1226(c) if they are already within the country. If the LPR is seeking to enter the country, that person subject to detention under § 1225(b)(2), *not* § 1226(c). *Salim v. Tryon*, No. 13-CV-6659-JTC, 2014 WL 1664413, at *1 (W.D.N.Y. Apr. 25, 2014) (returning LPR, inadmissible by virtue criminal conviction "is an arriving alien placed in removal proceedings, [and] *his detention is governed by 8 U.S.C. § 1225(b)(2)(A), not by section 1226[c]*") (emphasis added); *De Ming Wang v. Brophy*, No. 17-CV-6263-FPG, 2019 WL 112346, at *3 (W.D.N.Y. Jan. 4, 2019) (same).

16. Respondents'- Defendants indefensibly argue that Mr. Martinez de la Cruz is subject to 8 U.S.C. § 1226(c). § 1226(c) does not authorize DHS to detain "applicants for admission who are "seeking admission." CBP detained Mr. Martinez de la Cruz during his inspection -- while he was in the process of "seeking admission" -- before was already present United States. ECF. 8-1. § 1226(c). *See Occivil v. Doll*, No. 1:17-CV-01258, 2017 WL 5158630, at *2 (M.D. Pa. Nov. 7, 2017) ("arriving alien" immediately detained at a port of entry subject to § 1225(b) and *not* § 1226(c), despite criminal convictions).
17. Respondents'- Defendants claim that he is subject to § 1226(c) because he has been convicted of an offense that falls within the criminal inadmissibility grounds, without specifying the conviction. ECF 8 at 2; ECF 8-1 at § 34. Mr. Martinez de la Cruz has not been convicted of any crime for 18 years—his last conviction was in 2008. Since 2008, he has entered the country three times, and each time CBP released him, presumably pursuant to § 1182(d)(5)(A). Respondents-Defendants provide no explanation for why they are now departing from their previous lawful detention determinations that he was subject to § 1225(b), to misclassify him as subject to § 1225(c).
18. DHS's own language on Mr. Martinez de la Cruz 2014's Notice to Appear indicate that he is properly deemed "an applicant for admission" subject to § 1225(b). First, DHS classified him as an "arriving" non-citizen, as opposed to a non-citizen "present in" or "admitted to the United States.")). Second, DHS charged him as inadmissible, and the immigration judge sustained the charge. LPRs may only be subject to the inadmissibility grounds of removability if they fall into one of the categories listed in 8 U.S.C.S. § 1101(a)(13)(C)(i)(v), which would also subject him to treatment as an "applicant for

admission" upon arrival. *Vartelas v. Holder*, 566 U.S. 257, 260 (2012); *Brissett v. Decker*, 324 F. Supp. 3d 444, 451 (S.D.N.Y. 2018) ("[s]ection 1226(c) applies to aliens present in the country who may be removed if they are classified as "deportable alien[s]" under 8 U.S.C. Section 1227(a)."). Under Respondent-Defendants' own determinations, 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).

19. DHS has a non-discretionary duty to adjudicate parole requests under § 1182(d)(5)(A).. *See Lamarche v. Mayorkas*, 691 F. Supp. 3d 274, 279 (D. Mass. 2023) (USCIS has a "non-discretionary duty to act on and process" parole applications pursuant to 8 U.S.C. § 1182(d)(5)(A) before USCIS). On information and belief, Respondents'-Defendants refused are refusing to consider, Mr. Martinez de la Cruz's parole request because of their legally incorrect belief that he is subject to detention pursuant to 8 U.S.C. § 1226(c).
20. On January 18, 2026, Officer Hernandez unequivocally stated that CBP's determination was that they would not parole him, and instead would detain him, because he was subject to 8 U.S.C. § 1226(c). CBP did not respond to Ms. Mathews's January 18 email and provided only a cursory response to her February 3, 2026 renewed parole request. *Id.* ICE has also not responded to Mr. Martinez de la Cruz's pending request for release on parole under § 1182(d)(5)(A). Ex. L.
21. 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 have not even considered whether to exercise their discretion to parole

him in or release him, and he faces the prospect of months, or even years, in immigration custody, without adequate access to medical care for his worsening dementia.

B. Respondent-Defendants' Custody Determination Violates his Substantive Due Process Rights

22. Respondents-Defendants' custody determination regarding Mr. Martinez de la Cruz is unlawful and violates Mr. Martinez de la Cruz's Due Process Rights. It is unlawful on two bases. First, as described above, Mr. Martinez de la Cruz is subject to § 1225(b), not § 1226(c). Second, ICE failed to follow the procedures mandated by ICE Directive 11063.2 "Identification, Communication, Recordkeeping, and Safe Release Planning for Detained Individuals with Serious Mental Disorders or Conditions and/or Who Are Determined To Be Incompetent By An Immigration Judge," April 5, 2022.

23. ICE Directive 11063.2 sets out certain procedures that the agency must follow when deciding whether to detain a noncitizen with a "Serious Mental Disorders or Condition" or has "been declared [] incompetent by an immigration judge," and if they elect to detain him, throughout the course of his detention.

24. The Directive unequivocally applies to Mr. Martinez de la Cruz. He has been declared incompetent by an immigration judge and his dementia qualifies as a "serious mental disorder or condition." *See* Section ICE Directive 11063.2 § 3.4 (including dementia in the definition of "serious mental disorder or condition.")

25. Section 5.4 states that:

> "ICE [Field Office Directors] or their [or their supervisory-level desigees] will:
> 1) Consult with OPLA when questions arise regarding whether individuals with serious mental disorders or conditions and/or who are

> determined to be incompetent by an IJ may lawfully be released from ICE custody;
> 2) Consider the following factors when making such custody determinations. The existence of any of the below factors should weigh in favor of release:
> a) Whether an IJ has found the individual incompetent to represent themselves in removal proceedings ..."

ICE Directive 11063.2.

26. ICE violated there Directive in their initial determination to take Mr. Martinez de la Cruz into custody on February 4. ECF No. 81 at §§ 31-32 ("CBP assumed custody of Petitioner pending an ICE custody determination" at around 10am and ICE assumed custody at around 8pm).

27. Mr. Martinez de la Cruz stated that he was properly subject to § 1225(b), and thus eligible for release on parole pursuant to § 1182(d)(5)(A) in his February 3 parole requests. Ex. K. Thus, there was a "question" as to whether "may lawfully be released from ICE custody" such that ICE was required to reach out to OPLA. ICE Directive 11063.2 § 3.4(1). There is no indication that they did so. *See* ECF 8-1 at §§ 31-32.

28. ICE was aware that Mr. Martinez de la Cruz had been declared incompetent by an immigration judge, but there is no indication that ICE considered this fact in its custody determination, let alone "weighed it in favor" of his release as required. ICE Directive 11063.2 § 3.4(2). As argued in supra, ICE decided to detain him on February 4 on the basis of their erroneous conclusion that he was not eligible for release as he was subject to § 1226(c) and the "fit for confinement letter." *See* ECF 8-1 at §§ 31-32; 34.

29. If ICE made a subsequent custody determination that Mr. Martinez de la Cruz was ineligible for release solely on the basis of their erroneous determination that he is subject

to § 1226(c), the agency also violated Section § 3.4 ICE Directive. ICE Directive 11063.2 § 3.4(2).

30. ICE has not responded Mr. Martinez de la Cruz's release request. Ex. L.To the extent that they have denied this request or determined that they did not have to adjudication it on the ground that he is subject to § 1226(c), they also are in violation of ICE Directive 11063.2.

31. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *See Reno v. Flores*, 507 U.S. 292, 306 (1993). Returning lawful permanent residents retain their rights to Due Process. *Galo Espinal v. Decker*, 2017 WL 4334004, at *3 (S.D.N.Y. June 30, 2017) (returning LPRs "are entitled to the same due process rights as if they had never left the country").

32. The Second Circuit has adopted the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine what due process requires: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

33. This requires an individualized determination. *See, e.g., Singh*, 2026 WL 233216, at *9–10; *Minarcaja Concha*, 2026 WL 215417, at *17–18.

34. The Respondent-Defendants' unlawful determinations implicate Mr. Martinez de la Cruz of fundamental private interests. First, he has an interest in being free from confinement and to re-enter the country. *Zadvydas*, 533 U.S. at 690 (the interest in "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects."); Second, as a lawful permanent resident, he has an interest in re-entering and maintaining his lawful status in the country. *Brissett v. Decker*, 324 F. Supp. 3d 444, 450 (S.D.N.Y. 2018) (LPRs have "a liberty interest in being permitted to reenter this country"); *Reid v. Bondi*, 132 F.4th 109, 121 (2d Cir. 2024) (noncitizens have a Due Process rights in removal proceedings).

35. Under the second *Mathews* factor, the risk of erroneous deprivation is high. The ICE Directive was promulgated in part to protect the due process of noncitizens in removal who are declared incompetent. ICE Directive 11063.2 § 1 (procedures mandated are "essential to …" avoid imped[] to due process); *Reid v. Bondi*, 132 F.4th 109, 121 (2d Cir. 2024); *Abdi v. Duke*, 280 F. Supp. 3d 373, 389 (W.D.N.Y. 2017), *vacated in part on other grounds sub nom. Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019) ("[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures). Further, by misclassifying Mr. Martinez de la Cruz as subject to §1226(c), they are depriving him of review of his applications for parole under § 1182(d)(5)(A).

36. The Government's interests are not impermissibly burdened by being required to follow their own regulations or adjudicate Mr. Martinez de la Cruz's parole request. Their interest in "efficient administration of the immigration laws at the border" is not

impermissibly burdened by following the INA, or its own rules. *O.F.B. v. Maldanado*, 25-CV-6336-HG (E.D.N.Y 2025) ECF. No. 19. (Nov. 25, 2025). Nor would it meaningfully prejudice the government's interest in mitigating danger and risk of flight during removal proceedings. *See* Zadvydas, 533 U.S. at 690.

37. Respondents deprived Mr. Martinez de la Cruz of his due process rights. He has been an lawful permanent resident for almost 30 years. Ex. A. He relies on his hard-earned social security benefits to support himself. Ex. K. He will not receive the care or treatment he requires for his dementia in detention or if he is deported to the Dominican Republic. Ex. M. He is unquestionably subject to ICE Directive 11063.2, which is designed to protect his procedural due process rights, as someone declared incompetent, in removal proceedings. He also demonstrated that his parole would be justified for "urgent humanitarian reasons." Exs. K. L. The Governments' misclassification of him as subject to § 1226(c) deprives him of individualized review of his parole request, required by law.

38. Respondent Defendant's violated his statutory and Constitutional rights. He has not been arrested in over 18 years and is not a flight risk, *see* Ex. J (social worker's Comprehensive release plan) – and therefore his detention is not related to the Government's only legitimate interests in continuing his detention. *See* Zadvydas, 533 U.S. at 690. Mr. Martinez de la Cruz could remain detained for an inordinately long amount of time because: he is subject to mandatory detention; his removal proceedings have already been pending for 14 years; if Respondent-Defendants transfer him to Krome in Miami as planned, proceedings will be yet more delayed as a new court will have to get up to speed in his case; and given that he could remain detained through any appeals.

39. at in this country liberty is the norm and detention 'is the carefully limited exception.'").

C. Respondents-Defendants' detention of Mr. Martinez de la Cruz Violates his Right to Substantive Due Process

40. The Eighth Amendment's Cruel and Unusual Punishment Clause prohibits the Government from treating the medical needs of incarcerated individuals with deliberate indifference. *See Estelle v. Gamble*, 429 U.S. 97, 103–04, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *accord Charles v. Orange Cty.*, 925 F.3d 73, 82 (2d Cir. 2019). The Eighth Amendment does not apply to civil detainees, but the Supreme Court has held that "persons in civil detention deserve at least as much protection as those who are criminally incarcerated." *Charles*, 925 F.3d at 82.

41. Immigration detainees can establish a substantive due process violation for unmet medical needs by showing that a government official "knew, or should have known" of a condition that "posed an excessive risk to health," and failed to take appropriate action. *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017).

42. Petitioners do not need show that they have "actually suffered from serious injuries" to establish a due process violation; "showing that the conditions of confinement pose an unreasonable risk of serious damage to their future health is sufficient." *Basank v. Decker*, 613 F. Supp. 3d 776, 789 (S.D.N.Y. 2020)

43. The conditions at 26 Federal Plaza pose an unjustifiable risk to Mr. Martinez de la Cruz's health. As 26 Federal Plaza is a holding room only intended for temporary detention, it does not have spaces such that detainees may to receive in-person attorney or personal visits and detainees there do not have access to any sort of specialized medical services or neurological care. "Social isolation" and "lack specialist geriatric or dementia-specific

services" are two conditions that can lead to a dementia patient's rapid cognitive decline. Ex. F. Further, lack of proper medication, exercise and a stable environment (other detainees rotate in and out of 26 Federal Plaza) are also particular risk factors for dementia patients. *Id.* Respondents-Defendants knew of Mr. Martinez de la Cruz's condition and appear to acknowledge that 26 Federal Plaza is not appropriate for his detention. ECF No. 7. But transfer to Krome Detention Center is not an appropriate action. *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017). Krome is that is notorious for overcrowding, violence and abuse by guards, and where there are reports of improper use of solitary conferment and failure to provide medical care. *See* ECF no. 9. These are all conditions specifically that can "can precipitate rapid cognitive and functional decline, delirium, behavioral destabilization, and medical emergencies" for those with dementia. Exs. F, Ex. J (describing why transfer poses an acceptable risk to Mr. Martinez de la Cruz). Thus, Respondent-Defendants' detention of Mr. Martinez de la Cruz violates his procedural due process rights.

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

44. 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).

45. 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

46. First, Mr. Martinez de la Cruz is a "qualified individual" with a disability. 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

47. 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

48. 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***

49. 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).

50. 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).

51. 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).

52. 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

53. Mr. Martinez de la Cruz's detention denies him meaningful access to removal proceedings because of his disabilities. Dr. Boylan found that "Martinez de la Cruz is unable to represent himself in court proceedings of any kind due to major neurocognitive disorder". Ex. F. 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).

54. Prolonged ongoing 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").

55. 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."

56. 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.* 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.

57. 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.).

58. 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.

59. 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

60. 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).

61. 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.

62. 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.

63. 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).

64. 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%2C%20facility%20type%2C%20etc.

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

65. 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.

66. 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

67. 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.

E. 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

68. 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).

69. 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.

70. 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.

F. 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.

71. 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.").

72. 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.

73. 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.

74. *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.

75. 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).

G. Timeline Pursuant to 28 U.S.C. § 2243

76. 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.

77. 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.*

78. 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

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

80. 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.

81. 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

Violation of Procedural Due Process

1. Mr. Martinez de la Cruz realleges and incorporates by reference each and every allegation contained above.
2. 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.
3. In their custody determinations, Respondents-Defendants also failed to follow the procedures laid out in ICE Directive 11063.2, implicating the due process rights afforded to Mr. Martinez de la Cruz, a noncitizen declared incompetent by an immigration judge.
4. In these circumstances, Mr. Martinez de la Cruz's liberty interest, interest in being able to enter the country as a returning lawful permanent resident, and receive due process in his removal proceedings outweigh the government's interest in administering the law at the border, protecting the community from danger and ensuring attendance at removal proceedings.

COUNT TWO

Violation of Substantive Due Process

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

2. Respondent-Defendants knew that Mr. Martinez de la Cruz suffered from dementia and that detaining him at 26 Federal Plaza, a temporary holding cell, would mean that he was socially isolated, not able to see appropriate medical specialists, go outside, or exercise, potentially precipitating his rapid cognitive decline.
3. In response, they propose transfer to Krome Detention Center – a detention center reported to be overcrowded and violent and where there are reports of improper use of solitary confinement and denial of medical care. This is not an appropriate response.
4. Because Respondent-Defendants "knew" of a condition that "posed an excessive risk to health," and failed to take appropriate action, they have violated his substantive due process rights. *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017).

COUNT THREE

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

5. Mr. Martinez de la Cruz realleges and incorporates by reference each and every allegation contained above.
6. 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.
7. Release is the only reasonable accommodation that will allow Mr. Martinez de la Cruz to be able to meaningfully participate in his immigration proceedings.

8. 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 FOUR

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

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

10. 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).

11. 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 FIVE

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

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

13. 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).

14. 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 26, 2026

Respectfully submitted,
/s/ Nhu-Y Ngo
Nhu-Y Ngo
Anne Mathews (pro hac vice motion forthcoming)
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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. Supplemental Declaration from Neurologist (*motion for leave to file under seal forthcoming*)
I. ICE Medical Records (*motion for leave to file under seal forthcoming*)
J. Letter from Social Worker
K. Correspondence About Parole Request with CBP
L. Correspondence with ICE
M. Letter from Brother
N. 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 26, 2026

/s/ Annie Mathews
Annie Mathews