UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
Columbus Division

CHAMINDA UDAYA KUMARA LIYANA PEDIGE *Petitioner*, v. TERRENCE DICKERSON, Warden, Stewart Detention Center, *in his official capacity*; *Respondent*.	Case No. 4:25-cv-00028-CDL-AGH

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

Petitioner Chaminda Udaya Kumara Liyana Pedige ("Mr. Liyana Pedige") is an asylum seeker from Sri Lanka who has been held in a civil immigration detention facility for over a year without any meaningful individualized review of his continued detention. Throughout this time, he has been repeatedly denied any opportunity for release with little to no explanation, despite posing no flight risk or danger to the community. Mr. Liyana Pedige wishes for his release so that he may pursue his asylum claim free of undue confinement.

On January 22, 2025, Mr. Liyana Pedige filed a petition for writ of habeas corpus challenging his prolonged unlawful detention. Doc. 1. On February 14, 2025, Respondent filed a Motion to Dismiss that petition. Doc. 5. Mr. Liyana Pedige hereby opposes the Motion to Dismiss.

Mr. Liyana Pedige requests that this honorable Court grant his habeas petition and order his release. In the alternative, he seeks a bond hearing where the government bears the burden of

proof by clear and convincing evidence that his continued detention is justified based on a flight risk or danger to the community.

FACTS AND PROCEDURAL HISTORY

I. Respondents Do Not Contest the Critical Facts

Most of the critical facts underlying Mr. Liyana Pedige's claims are undisputed. In its Motion to Dismiss, Respondent does not claim that Mr. Liyana Pedige is a danger to the community. *See* Doc. 5. Respondent does not contest that Mr. Liyana Pedige has established his identity. Respondent does not contest that Mr. Liyana Pedige has no criminal convictions, either in Sri Lanka or in the United States. And Respondent does not contest that Mr. Liyana Pedige has an adequate sponsor in the United States who has agreed to support him if he is released.

Respondent also does not contest the procedural facts. Mr. Liyana Pedige has been detained in federal custody since he sought asylum at the Miami International Airport on November 14, 2023. United States Citizenship and Immigration Services ("USCIS") determined that he had a credible fear of persecution and initiated removal proceedings before the immigration court. Mr. Liyana Pedige's asylum case is currently pending before the Immigration Court and there is no final order of removal in his case. Mr. Liyana Pedige has sought release via parole requests on several occasions to no avail. No Immigration Judge ("IJ") has ever independently reviewed his detention.

II. Recent Factual Developments

On February 13, 2025, Immigration and Customs Enforcement ("ICE") sent Mr. Liyana Pedige a Parole Advisal and Scheduling Notification informing him that he had a parole interview scheduled with an ICE officer on February 20, 2025 at 8:00 a.m. On February 20, 2025, Mr. Liyana Pedige attended his parole interview.

On February 24, ICE sent Mr. Liyana Pedige a Notification Declining to Grant Parole. *See* Exhibit 1. The notification was a standard form. *Id.* The form stated, "ICE has determined that parole is not appropriate in your case at this time based on the following reason(s)." *Id.* Respondent ticked the box stating, "You have not established to ICE's satisfaction that you are not a flight risk." *Id.* Within this category, ICE also ticked boxes stating, "You did not establish, to ICE's satisfaction, substantial ties to the community" and "Imposition of a bond or other conditions of parole would not ensure, to ICE's satisfaction, your appearance at required immigration hearings pending the outcome of your case." *Id.* Respondent has not raised any individualized facts about Mr. Liyana Pedige that would show a legitimate basis, based on flight risk or canger to the community, for his continued detention.

ARGUMENT

I. Legal Background

A. The Fifth Amendment

People in ICE detention have constitutional rights. The Fifth Amendment Due Process Clause "applies to all 'persons' within the United States, including non-citizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It applies to persons who arrive at a U.S. port of entry seeking asylum—like Mr. Liyana Pedige—who are subject to civil detention pending their immigration proceedings.

Civil detention must be carefully limited to avoid grave violations of individuals' due process rights, as the Supreme Court has recognized regarding civil confinement. *See Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (requiring individualized finding of mental illness and dangerousness to support civil confinement); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997)

(upholding civil commitment of sex offenders only after a jury trial on individuals' lack of volitional control and dangerousness to others).

The Fifth Amendment "does not permit indefinite detention." *Zadvydas*, 533 U.S. at 689. Detention violates the Due Process Clause unless it is reasonably related to a government purpose, which in the civil immigration context includes preventing danger to others and ensuring persons' presence at immigration proceedings. *Id.* at 690-91. Courts have held that ICE detention is presumptively unreasonable after one year. *See Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1217 (11th Cir. 2016); *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015). *Cf. Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (27-month detention of arriving person without bond hearing violated due process); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 850 (E.D. Va. 2020) (same, regarding 22-month detention); *Banda v. McAleenan*, 385 F Supp. 3d 1099, 1177 (W.D. Wash. 2019) (same, regarding 17-month detention); *Lett v. Decker*, 346 F. Supp. 3d 379, 387 (S.D.N.Y. 2018), *vacated on other grounds*, No. 18-3714, 2020 WL 13558956 (2d Cir. 2020) (same, regarding 10-month detention).

B. 8 U.S.C. § 1225(b)

The "Arriving Persons" Statute, 8 U.S.C. § 1225(b), governs the detention of noncitizens seeking admission into the United States. While the default under § 1225(b) is to detain arriving persons, the government also has the authority to parole arriving persons when "humanitarian" reasons arise or for "significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole directives and implementing agency regulations establish that arriving persons seeking asylum who establish a credible fear of persecution are generally entitled to a favorable parole determination when they can establish their identity and that they pose neither a flight risk nor a danger to the community. *See* U.S. Immigr. & Customs Enf't, Dir. No. 11002.1, Parole of Arriving Aliens Found to Have a

Credible Fear of Persecution or Torture 6.1-6.2 (2009) (hereinafter "2009 Parole Directive"); 8 C.F.R. § 212.5.

The Supreme Court has left open the question of whether arriving persons have due process rights to a bond hearing. In *Jennings v. Rodriguez*, 583 U.S. 281, 302-03 (2018), the Supreme Court held that as a matter of statutory interpretation, § 1225(b) authorizes detention until the conclusion of removal proceedings without a bond hearing. As for whether the Constitution authorizes detention under § 1225(b) without a bond hearing, the Court explicitly reserved that question, remanding the constitutional arguments to the Ninth Circuit Court of Appeals. *Id.* at 312 ("[W]e do not reach [the constitutional] arguments."). *Jennings* therefore does not preclude Mr. Liyana Pedige from challenging his prolonged detention under the Due Process Clause. *Id.*; *see also Leke v. Hott*, 521 F. Supp. 3d 597, 602 (E.D. Va. 2021) (concluding that *Jennings* did not control in a case involving arriving persons' due process rights because *Jennings* "involved statutory interpretation and did not address the precise constitutional question presented"); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *3 (S.D.N.Y. Aug. 20, 2018) ("[The Supreme Court] left it to lower courts to determine whether lengthy detention would violate an individual's constitutional Due Process rights.").

II. Mr. Liyana Pedige's Prolonged Detention Violates the Due Process Clause

A. Section 1225 is subject to constitutional limits.

Arriving persons have Fifth Amendment due process rights to be free from unreasonably prolonged detention.[1] Here, the government attempts to apply precedent from a completely

[1] *See, e.g., Leke*, 521 F. Supp. 3d at 601-03; *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 850 (E.D. Va. 2020); *Kydyrali*, 499 F. Supp. at 772; *Lett*, 346 F. Supp. 3d at 384-86; *da Silva v. Nielsen*, No 5:18-MC-00932, 2019 WL 13218461, at *10 (S.D. Tex. Mar. 29, 2019); *Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 805 (W.D. Tex. 2015); *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172-74 (W.D. Wash. 2023); *Banda*, 385 F. Supp. 3d at 1117; *Mancia-Salazar v. Green*, No. 17-147 (JMV), 2017 WL

different context to convince this Court otherwise. Respondent's argument rests entirely on an unpublished opinion; it has no binding authority for its position that arriving persons do not receive protection from the Due Process Clause.

Courts across the country have recognized that a statute mandating detention is not the end of the inquiry regarding arriving persons' due process rights in detention. In *Leke v. Hott*, the court began its analysis by recognizing that "the conclusion that Petitioner is detained as an arriving alien under § 1225(b) is not central to the constitutional question presented": whether an arriving person already detained pending review of an asylum application has a Fifth Amendment Due Process right to a bond hearing given that the asylum applicant's detention "has no certain end in sight." 521 F. Supp. 3d at 602. In the same way that persons detained pursuant to § 1226 who have effected entry into the United States "possess due process rights that supersede any contradictory statutory provisions," so, too do persons detained under § 1225. *da Silva v. Nielsen*, No. 5:18-MC-00932, 2019 WL 13218461, at *10 (S.D. Tex. Mar. 29, 2019). *See also Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018).

Respondent argues that arriving persons are entitled to lesser due process protections than persons who have effected entry into the United States, but the Supreme Court has only drawn a distinction in the due process rights of these two groups when it comes to their *admission* into the country. *See Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 216 (1953). The Court has said nothing about there being a difference in their due process rights to be free from undue confinement. *Leke*, 521 F. Supp. 3d at 604 ("To be sure, [persons] already present in the United States may have some greater rights than those available to arriving [persons]. *But no case*

2985392, at *4 (D.N.J. Jul. 13, 2017); *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 857 (D. Minn. 2019)

persuasively holds that an arriving [person] subject to prolonged and indefinite detention has no right to a bond hearing.") (emphasis added).

The case *D.A.V.V. v. Warden, Irwin County Detention Center* does not foreclose Mr. Liyana Pedige's constitutional claims either. No. 7:20-cv-159-CDL-MSH, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020). This Court is not bound by the unpublished decision in *D.A.V.V.*, which was based on an unduly broad reading of the Supreme Court's holding in *Thuraissigiam*, 591 U.S. at 140, and which is not supported by the case law cited in the *D.A.V.V.* opinion. In *D.A.V.V.*, the court denied habeas relief and held that arriving persons have no due process right to a bond hearing even after their detention has become unreasonably prolonged, on the grounds that *Thuraissigiam* foreclosed habeas relief. 2020 WL 13240240, at *5-6.

But *Thuraissigiam* addressed a wholly separate issue. In *Thuraissigiam*, the Supreme Court held that an arriving asylum seeker could not seek judicial review of a negative credible fear determination, nor could he claim that the statute violated his due process rights by precluding judicial review. 591 U.S. at 138-39. The *Thuraissigiam* court held that a person "in respondent's position has only those rights *regarding admission* that Congress has provided by statute." *Id.* at 140. Because the asylum seeker received a statutorily-assured credible fear determination, he was not entitled to any additional rights under the Due Process Clause *Id.* In essence, *Thuraissigiam* is only about due process rights regarding *admission*. It says nothing about due process rights regarding *detention*. For this reason, the cases Respondent cites to support its argument that arriving persons do not have a due process right to a bond hearing are unavailing in resolving the case before this Court to the extent they rely on *Thuraissigiam*. *See* Doc. 5 at 9.

Thuraissigiam narrowly considered the constitutionality of a statutory scheme governing admissibility, and the Court "did not consider directly the constitutionality of [petitioner's] indefinite detention that resulted from that final determination." *Mbalivoto*, 527 F. Supp. 3d at 846. *Thuraissigiam*'s holding relied on the government's "plenary authority to decide which [noncitizens] to *admit*" and "the power to set the procedures to be followed in determining whether a [noncitizen] should be *admitted*." *Thuraissigiam*, 591 U.S. at 139 (citing *Nishimura Ekiu, v United States*, 142 U.S. 651, 659 (1892); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)) (emphasis added). To derive a broader rule restricting arriving persons' due process right to be free from unreasonable detention would run contrary to basic principles of due process and obviate the cognizable distinctions between admission and detention. Justice Breyer highlighted the alarming implications of the "legal fiction" distinguishing between those who have been admitted into the United States and those who have not in his dissenting opinion in *Jennings*:

> [H]ow can the Constitution authorize the Government to imprison arbitrarily those who, whatever we might pretend, are in reality right here in the United States? The answer is that the Constitution *does not authorize arbitrary detention*. And the reason that is so is simple: Freedom from arbitrary detention is as ancient and important a right as any found within the Constitution's boundaries.

583 U.S. at 332 (Breyer, J., dissenting) (emphasis added).

The *D.A.V.V.* opinion conflates admission with detention. Although the court acknowledged in *D.A.V.V.* that *Thuraissigiam* "concerned arriving [persons'] rights in a context *unrelated to immigration detention or bond therefrom*," *D.A.V.V.* justified applying *Thuraissigiam* to the detention context because "in describing the extent of arriving aliens' due process rights, the [*Thuraissigiam*] Court relied on decisions which did concern immigration detention." 2020 WL 1324240, at *5 (emphasis added). However, all of the cases *D.A.V.V.* cited

on this point were cases about admission, not detention. *Id.*; *see Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (characterizing petitioner's claim as "challenging her exclusion"); *Mezei*, 345 U.S. at 216 (characterizing claim as asserting the "right to enter the United States"); *Knauff*, 338 U.S. at 542 ("[A] [person] who seeks *admission* to this country may not do so under any claim of right") (emphasis added); *Nishimura Ekiu*, 142 U.S. at 664 (considering "petitioner's right to land in the United States").

Courts have held that *Thuraissigiam* is not a bar to finding that arriving persons have a due process right to a bond hearing after their detention has become unreasonably prolonged. *See Mbalivoto*, 527 F. Supp. 3d at 846; *Leke*, 521 F. Supp. at 604 (finding that *Thuraissigiam* did not govern in case involving arriving persons' due process right to a bond hearing); *Padilla v. United States Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170-71 (W.D. Wash. 2023) (finding that *Thuraissigiam*'s "narrow holding presents no bar" to arriving persons' due process claim).

Section 1225(b) does not authorize the indefinite and unjustified detention of arriving persons. To the extent that arriving persons' right to admission is circumscribed by statute, their right to be free from unconstitutional detention is not. In so holding, this Court would join the weight of authority holding that arriving persons subject to prolonged, unreasonable detention are entitled to a bond hearing.

B. Finding that people detained under § 1225 are not entitled to the Fifth Amendment's due process protections would lead to absurd results.

If this Court finds that the Fifth Amendment Due Process Clause imposes no limits on the length of time arriving persons may be constrained of their liberty in an immigration detention center—which Respondent concedes is functionally a prison (Doc. 5 at 12)—it would lead to results contrary to basic due process.

In its motion to dismiss, Respondent repeats the refrain, "Petitioner's due process rights are limited to those provided by statute," Doc. 5, but the operative statutes impose no limits on the length of arriving persons' detention. 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 302-03. As an initial matter, Respondent's argument ignores the weight of authority finding that people detained pursuant to § 1225 are entitled to additional due process protections once their detention has become unreasonably prolonged. *See supra* note 1. But consider for a moment what *no* constitutional limits on § 1225(b) detention—the conclusion Respondent is asking this Court to make—might look like in practice.

Around the time the Immigration and Nationality Act ("INA") was amended in 1996 to establish mandatory detention for asylum seekers, the average amount of time that asylum seekers in removal proceedings spent in ICE detention was about 145 days. Bill Frelick, *U.S. Detention of Asylum Seekers and Human Rights*, Migration Policy Inst. (Mar. 1, 2005), https://www.migrationpolicy.org/article/us-detention-asylum-seekers-and-human-rights (providing data on average length of detention in 1999); *see* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546, 580-81 (1996) Since the 1996 amendment, asylum seekers' realities have changed; asylum seekers now experience even more egregious restrictions on their liberty for lengthier periods of time. As of the date of filing, Mr. Liyana Pedige has been in detention for 425 days. It is not uncommon for asylum seekers detained pursuant to § 1225(b) to be detained for upwards of 600 days. *See Kydyrali*, 499 F. Supp. 3d at 773 (petitioner detained for over 820 days); *Mbalivoto*, 527 F. Supp. 3d at 850 (petitioner detained for over 669 days).

Arriving persons detained pursuant to § 1225(b) often face considerable delays in the adjudication of their claims and even still may face detention *after* the Immigration Court

adjudicates their claims. An arriving person diligently pursuing their good-faith asylum claims could be subject to detention for years while they await final adjudication of their case, even though they pose no flight risk or danger. *Leke*, 521 F. Supp. 3d at 603 (arriving persons "may very well have [their] detention extended simply because [they have] pursued [their] right to appeal."). And while post-removal detention is outside of the scope of this Petition, it is worth noting that even if Mr. Liyana Pedige exhausts all possible appeals to no avail, he will also face detention as ICE determines whether and when it can effectuate his removal. *See id.* Such a detention scheme cannot be considered "constitutionally appropriate." *Id.* at 602.

The logical conclusion of Respondent's analysis is that detention under § 1225(b) has the potential to go on forever. "[A]s other courts have found, § 1225(b) contains no limitation on how long detention may last, and therefore the duration of Petitioner's detention is indefinite." *Perez*, 2018 WL 3991497 at *4 (citing *Sing Fon Pan v. Sessions*, 290 F. Supp. 3d 250, 253 (S.D.N.Y. 2018)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects, *Zadvydas*, 533 U.S. at 690, and the "[i]ndefinite, mandatory detention of any person on U.S. soil, regardless of immigration status, offends basic notions of fairness, justice, and liberty protected by the Fifth Amendment." *Perez*, 2018 WL 3991497, at *4 (citation omitted).

Mr. Liyana Pedige's only statutory recourse for relief from the confines of detention is through an unreviewable, discretionary parole process with "highly restrictive criteria and limited transparency." *Mbalivoto*, 527 F. Supp. 3d at 848. Courts have found that ICE's parole process "is not constitutionally adequate" in guaranteeing arriving persons' right against prolonged detention. *Id.* at 849; *see also Padilla*, 704 F. Supp. 3d at 1174 ("[The parole] process is not an adequate substitute for a bail hearing to test the legitimate need for continued

detention."); *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549, 564 (W.D.N.Y. 2020) (concluding that the parole process "provides no actual due process protection") (quoting *Bermudez Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *12 n.14 (S.D.N.Y. Dec. 27, 2018); *Cf. da Silva*, 2019 WL 13218461, at *10 (holding that arriving persons detained under § 1225(b) have a due process right to an individualized bond hearing).

Recognizing the Fifth Amendment's proper reach in § 1225 cases resolves an inconsistency in courts' application of the Due Process Clause to people in ICE detention. In deciding what process is due to arriving persons detained under § 1225(b), courts have considered the due process rights of persons detained under § 1226. In *Mbalivoto*, the court recognized that by statute, persons detained under § 1226 are entitled to "an immediate bond hearing." 527 F. Supp. 3d at 849. When met with the government's asserted distinction between those who have effected entry into the country (§ 1226) and those who have not (§ 1225), the *Mbalivoto* court reasoned, "That distinction quickly becomes constitutionally suspect as the dispositive operative principle when one considers the arbitrary results it produces when applied to immigration detention, as opposed to admissibility." *Id.*; *see also Lett*, 346 F. Supp. 3d at 386 ("[W]hen it comes to prolonged detention, the Court sees no logical reason to treat individuals at the threshold of entry seeking asylum under § 1225(b), like Petitioner, differently than other classes of detained [persons].")

To hold that § 1225(b) does not require additional process to safeguard against indefinite and unreasonable detention would create clearly unconstitutional results for individuals who have never been convicted of a crime. "Consider that, if the Fifth Amendment did not apply to protect against prolonged and indefinite detention, then an arriving [person] could thus be held without a bond hearing for 5 years, 10 years, or even life. Surely, no one would argue that

prolonged and indefinite detention of this sort is constitutionally appropriate." *Leke*, 521 F. Supp. 3d at 602. Finding that the Due Process Clause requires additional process for persons detained under § 1225(b) is not only supported by case law from courts around the country; it comports with common sense.

C. Mr. Liyana Pedige's detention is unreasonable.

For the last 14 months, Mr. Liyana Pedige has been languishing inside the Stewart Detention Center—where facilities are so crowded that people are sleeping on the floor in rooms with clogged toilets—with no end to detention in sight. This Court should find that Respondent's detention of Mr. Liyana Pedige, an asylum seeker who has never been convicted of a crime, has become unreasonable under the Fifth Amendment Due Process Clause.

The Eleventh Circuit has set forth factors to determine when ICE detention without a bond hearing has become unreasonably prolonged in violation of the Fifth Amendment. In *Sopo*, 825 F.3d at 1221, where the court held that individuals detained pursuant to § 1226(c) have a due process right to avoid unreasonably prolonged detention without a bond hearing, it weighed factors such as: the length of detention; whether the time spent in detention exceeds the time spent in jail or prison; and whether the facility for civil immigration detention is meaningfully different from a penal institution, among other factors. *Id.* at 1217-19. The court noted that the list of factors was not exhaustive and that the factors considered should hinge on individualized determinations. *Id.* While *Sopo* was later vacated, in *D.A.F. v. Warden, Stewart Detention Center*, the court applied the *Sopo* factors to a § 1225 case, describing *Sopo* as "persuasive author[ity]" and finding "the Court must determine on a case-specific basis whether Petitioner's detention has become unreasonably prolonged." No. 4:20-cv-79-CDL-MSH, 2020 WL 9460467, at *10-11 (M.D. Ga. May 8, 2020).

Respondent asserts that this Court is not bound to consider the factors outlined in *Sopo*. Respondent is right. The Court is not limited to considering the *Sopo* factors, even though the Eleventh Circuit's framework is similar to those used in courts across the country.[2] In *Mbalivoto v. Holt*, a § 1225 case, the court considered a slightly different set of factors. 527 F. Supp. 3d at 850. The *Mbalivoto* court cited *Jamal A. v. Whitaker*, 358 F. Supp. 3d 838, 858 (D. Minn. 2019), for its finding that courts analyzing § 1225(b) "seem to apply pretty much the same factors" as those analyzing § 1226(c), "regardless of whether the court agrees that [arriving persons] receive less protection than [persons] detained under other provisions."

Factor 1: Length of Detention

At the time of filing, Mr. Liyana Pedige has now been in detention for almost 14 months. Courts have held that this is an unreasonable amount of time. *Sopo*, 825 F.3d at 1217; *Chavez-Alvarez*, 783 F.3d at 478 ("[B]eginning sometime after the six-month timeframe considered by *Demore*, and certainly by the time [petitioner] had been detained for one year, the burdens to [petitioner's] liberties outweighed any justification for ... detain[ing] him without bond to further the goals of the statute.") (discussing *Demore v. Kim*, 538 U.S. 510 (2003)). This 14-month period far exceeds the one month Mr. Liyana Pedige spent in jail for a non-violent offense that he was unanimously acquitted of. Accordingly, this factor weighs in favor of finding that Mr. Liyana Pedige's detention is unreasonable.

Factor 2: Party Responsible for Delays in Proceedings

While detained, Mr. Liyana Pedige has faced considerable delays due to a lack of language interpretation, which is necessary for the full and fair adjudication of his asylum

[2] *See Kydyrali*, 499 F. Supp. 3d at 773-74 (applying multi-factor test to determine whether detention had become unreasonably prolonged); *Rodriguez-Figueroa*, 442 F. Supp. 3d at 562-69 (same); *Banda*, 385 F. Supp. 3d at 1117-18 (same); *Whitaker*, 358 F. Supp. 3d at 858-60 (same); *Lett*, 346 F. Supp. 3d at 384-89 (same, citing to *Sopo*).

claim. Respondent contends that these delays in Petitioner's proceedings are not attributable to ICE, but rather to the IJ, because the IJ is responsible for providing interpreters to people with limited English proficiency. In *Sopo*, the Eleventh Circuit expressly identified "[e]rrors by the immigration court or the BIA" that cause delay as "relevant" in determining the reasonableness of detention. *Sopo*, 825 F.3d at 1218. Courts in this district have previously considered procedural delays attributable to immigration courts in analyzing this *Sopo* factor, which Respondent acknowledges. *See S.C. v. Warden, Stewart Detention Ctr.*, No. 4:23-CV-64-CDL-MSH, 2024 WL 796541, at *5 (M.D. Ga. Jan. 5, 2024); Doc. 5 at 15 n.6. These delays are not attributable to Mr. Liyana Pedige, nor should they be: "where the fault is attributable to some entity other than the [noncitizen], the factor will weigh in favor of concluding that continued detention without a bond hearing is unreasonable." *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018). The Court should not deviate from its precedent on this *Sopo* factor, and should consider delays attributable to the Immigration Court in its analysis of whether Mr. Liyana Pedige's detention is constitutionally unreasonable.

Respondent additionally argues that Mr. Liyana Pedige has prolonged his own detention by requesting continuances to seek counsel and prepare applications for immigration relief. A person in immigration detention should not be punished for the good faith exercise of their right to seek legal relief. *See Sopo*, 825 F.3d at 1218; *Chavez-Alvarez*, 783 F.3d at 476-77 (3d Cir. 2015) (concluding that challenges to removal, absent a showing of bad faith, do not "undermine [noncitizens'] ability to claim that [their] detention is unreasonable."). In *Sopo*, the court held that courts can examine "whether the [noncitizen] sought repeated or unnecessary continuances, or filed frivolous claims and appeals" to determine whether delay should be attributable to the

noncitizen. *Sopo*, 825 F.3d at 1218. Mr. Liyana Pedige has not engaged in any dilatory tactics to delay his proceedings. Any perceived delay caused by Mr. Liyana Pedige's good-faith effort to secure legal representation and prepare his asylum application should not be considered against him in assessing the reasonableness of his continued detention. Accordingly, this factor favors Mr. Liyana Pedige or is neutral.

Factor 3: Detention Center's Similarity to a Prison

Finally, Respondent does not contest that the ICE facility where Mr. Liyana Pedige is detained is the functional equivalent of a prison. Doc. 5 at 12. This factor weighs in favor of finding that his detention is unreasonable.

Because Mr. Liyana Pedige has now been detained in a prison-like facility for approaching 14 months while diligently pursuing immigration relief, the Court should hold that Mr. Liyana Pedige's continued detention violates Due Process and grant his Petition.

D. Mr. Liyana Pedige is entitled to a bond hearing.

Because Mr. Liyana Pedige's detention is unreasonable, due process requires that he receive a bond hearing where the government bears the burden of proof by clear and convincing evidence. *See Rodriguez-Figueroa*, 442 F. Supp. 3d at 559. Civil detention demands heightened procedural safeguards to ensure that the government's rationale for detention is balanced against detained persons' liberty interests. "When the Government seeks to take more than just money from a party, we typically hold the Government to a standard of proof higher than a preponderance of the evidence." *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213 (3d Cir. 2020) (applying clear and convincing standard to § 1226(c) detention). *see also Lett*, 346 F. Supp. 3d at 389 ("[A] clear and convincing standard . . . is 'most consistent with due process'" in § 1225(b) context) (quoting *Hernandez v. Decker*, No. 18-cv-5026, 2018 WL

3579108, at *11 (S.D.N.Y. Jul. 25, 2018)); *Mbalivoto*, 527 F. Supp. 3d at 852 (shifting burden to government to "show[] to the satisfaction of the Immigration Judge" flight risk or dangerousness, which is "equivalent to clear and convincing evidence in many cases").

Granting Mr. Liyana Pedige an individualized bond hearing is consistent with relief other courts provide based on a finding of unreasonably prolonged detention. *See German Santos*, 965 F.3d at 213-14; *Singh v. Saboi*, No. 1:16-cv-2246, 2017 WL 1659029, at *4-5 (M.D. Pa. Apr. 6, 2017), *appeal dismissed* No. 17-2383, 2018 WL 11438543 (3d Cir. 2018); *Mancia-Salazar*, 2017 WL 2985392 at *3-5; *Mbalivoto*, 527 F. Supp. 3d at 852.

Due process entitles Mr. Liyana Pedige to a bond hearing on an expedited basis. *Padilla*, 704 F. Supp. 3d at 1174 (holding that plaintiffs stated substantive and procedural due process claims for prolonged detention, entitling them to a bond hearing "in an expedited fashion."). Petitioner respectfully requests that this Court order the IJ to hold an individualized bond hearing, during which the government bears the burden of proof by clear and convincing evidence, within 21 days of the Court's order. *See German Santos*, 965 F.3d at 214 (Third Circuit ordering bond hearing within 10 days); *Padilla*, 704 F. Supp. 3d at 1174 (ordering hearing within seven days); *Mbalivoto*, 527 F. Supp. 3d at 852 (ordering bond hearing within 14 days).

An individualized bond hearing is necessary to safeguard Petitioner's due process rights because the parole process currently available to Petitioner does an inadequate job of doing so. "'[B]ecause the grant of parole pursuant to § 1182(d)(5)(A) is 'entirely discretionary,' with discretion vested in the same agency charged with removing inadmissible aliens, 'it provides no actual due process protection.'" *Rodriguez-Figueroa*, 442 F. Supp. 3d at 564 (quoting *Bermudez Paiz*, 2018 WL 6928794, at *12 n.14); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 807 (W.D. Tex. 2015) ("[T]he Ninth Circuit has found this reliance on parole to protect the liberty interests

of those detained under § 1225(b)(2)(A) to be insufficient") (citing *Rodriguez v. Robbins*, 804 F.3d 1060, 1081 (9th Cir. 2015), *rev'd Jennings*, 583 U.S. 281); *see also Zadvydas*, 533 U.S. at 692 ("[T]he Constitution may well preclude granting 'an administrative body the unreviewable authority to make determinations implicating fundamental rights.'") (quoting *Superintendent, Mass Corr. Inst. at Walpole v. Hill*, 472 U.S. 445, 450 (1985)). This makes an individualized hearing crucial to ensuring Petitioner receives the due process afforded to him by the Constitution.

III. This Court Has Jurisdiction to Hear Count II of Mr. Liyana Pedige's Claims

Respondent moves to dismiss Count II of the Petition challenging the adequacy of ICE's parole processes as applied to Mr. Liyana Pedige on the ground that the Court lacks subject matter jurisdiction to review ICE's parole determinations under 8 U.S.C. § 1252. *See* Doc. 5 at 17. Mr. Liyana Pedige has sought parole three times and has been denied each time with little or no explanation. Most recently, Mr. Liyana Pedige had a parole interview on February 19, 2025. ICE denied parole on February 24, 2025, with the only explanation being a checked box indicating that Mr. Liyana Pedige did not "establish[] to ICE's satisfaction that [he] is not a flight risk." *See* Ex. 1.

Mr. Liyana Pedige's claim is precisely the sort of constitutional claim that the INA preserves for judicial review. *See* 8 U.S.C. § 1252(a)(2)(D); *da Silva*, 2019 WL 13218461 at *4-5 (holding that arriving persons seeking asylum were not jurisdictionally barred from challenging INA detention statutes and the extent of DHS's discretion, and noting that *Jennings* clearly authorized "as-applied due process challenges to immigration detention"). *Cf. Jennings*, 583 U.S. at 294-95 (holding that § 1252(b)(9) did not present a jurisdictional bar where respondents did not seek review of an order of removal, a decision to detain them, or anything about the removal

proceeding process). 28 U.S.C. § 2241 authorizes judicial review of constitutional challenges, including discretionary authority, when challenging the government's authority to do something, rather than challenging the result. While § 1182(d)(5)(A) may commit parole decisions to ICE's discretion, ICE is not insulated from judicial review when exercising discretion in an unconstitutional manner.

Courts have concluded that the parole process provided by § 1182(d)(5)(A) is "not constitutionally adequate." *See Mbalivoto*, 527 F. Supp. 3d at 849. Mr. Liyana Pedige does not challenge the denial of his parole request, but rather the complete lack of any individualized determination of his custody status. ICE's "individualized determinations" are at best rote form letters that illustrate no individualized assessment of Mr. Liyana Pedige's flight risk or danger, as required by regulation. *See* 8 C.F.R. § 212.5(b).

Regardless of recent factual developments in Mr. Liyana Pedige's case, this Court retains jurisdiction to hear Count II of his Petition. On February 24, 2025, ICE provided Mr. Liyana Pedige with a Notification Declining to Grant Parole. *See* Ex. 1. The notification does not amount to an individualized assessment that comports with the 2009 Parole Directive or DHS's implementing regulations. 2009 Parole Directive at 6.1-6.7, 8.1-8.10; *see also* 8 C.F.R. § 212.5(b). But even if the Court finds that it does constitute an "individualized assessment" that would moot Count II of Mr. Liyana Pedige's claims, this Court retains jurisdiction to hear the claim because ICE's previous failures to provide individualized assessment constitute denials of due process that are capable of repetition, yet evading review.

Voluntary cessation of a challenged practice does not itself deprive a court of the power to determine a practice's legality. Voluntary cessation "will usually render a case moot if the defendant can demonstrate that (1) there is no reasonable expectation that an alleged violation

will recur; *and* (2) interim relief or events have completely, irrevocably eradicated the effects of the alleged violation." *See Abdi v. Duke*, 280 F. Supp. 3d 373, 394 (W.D.N.Y. 2017) (quoting *Granite State Outdoor Advert., Inc. v. Town of Orange*, 303 F.3d 450, 451 (2d Cir. 2002)). While ICE provided Mr. Liyana Pedige with a form letter providing *some* rationale for his continued detention after filing his Petition, there is no indication that ICE will continue to provide letters with any rationale for the denial of parole. On the previous two occasions that Mr. Liyana Pedige requested parole, counsel received two curt emails cursorily denying parole. As Respondent acknowledges, ICE has substantial discretion to deny parole at any point in time. This practice could reasonably be expected to continue.

CONCLUSION

For the aforementioned reasons, Mr. Liyana Pedige respectfully requests that this Court deny Respondent's motion to dismiss and grant the relief sought by the Petition in all respects.

Dated: March 20, 2025

Respectfully submitted,

/s/ Samantha C. Hamilton

Meredyth Yoon, GA Bar No. 204566
Samantha C. Hamilton, GA Bar No. 326618
Alexandra M. Smolyar, GA Bar No. 419582
Asian Americans Advancing Justice – Atlanta
5680 Oakbrook Parkway
Suite 148
Norcross, GA 30093