

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

OLEG KACHALOV

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; **PATRICIA H. HYDE**, Acting Field Officer Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Boston Field Office; **CHRISTOPHER BRACKETT**, Superintendent of the Strafford County Department of Corrections

Respondents.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

Petitioner Oleg Kachalov is an asylum seeker from Russia who is being subjected to unreasonably prolonged detention by Respondents without being afforded the most basic of procedural protections – namely, a bond hearing. While pursuing his humanitarian claims for asylum, statutory withholding of removal, and protection under the Convention Against Torture (“CAT”), he has been detained in Respondents’ custody for more than twelve (12) months under 8 U.S.C. § 1225(b) since February 12, 2024. Throughout this time, Mr. Kachalov has never received the basic due process of a bond hearing before a neutral decision-maker at which he could contest his imprisonment. By the time of this Court’s adjudication of the instant petition, his detention could even exceed eighteen (18) months.

Mr. Kachalov's prolonged detention violates the Due Process Clause of the Fifth Amendment because he has been and will be subject to such detention for an unreasonable period of time. Therefore, this Court should order a bond hearing before an Immigration Judge (IJ), where the Department of Homeland Security (DHS) bears the burden of justifying by clear and convincing evidence that Mr. Kachalov's detention is necessary to prevent his flight or to protect public safety. Other courts have granted similar relief. *See A.L. v. Oddo*, Civil Action No. 3:24-302, 2025 U.S. Dist. LEXIS 19683, at *5-9 (W.D. Pa. Jan. 6, 2025) (granting a bond hearing for an arriving alien at which DHS bears the burden of justifying his detention under clear and convincing evidence because his ten months detention was unconstitutionally unreasonable under the Due Process Clause, and his detention would continue); *Alberto v. Decker*, Case No. 1:17-cv-2604 (PKC), 2017 U.S. Dist. LEXIS 202630, at *18-19 (S.D.N.Y. Nov. 21, 2017) (same for 7 months of detention); *Lett v. Decker*, 346 F. Supp. 3d 379, 385-87 (S.D.N.Y. 2018) (same for 10 months of detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 601-605 (E.D. Va. 2021) (same for 24 months of detention); *De Ming Wang v. Brophy*, No. 17-CV-6263-FPG, 2019 U.S. Dist. LEXIS 1826, at *6-7 (W.D.N.Y. Jan. 3, 2019) (same for 24 months of detention); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 443- (D.N.J. 2019) (same for 20 months of detention and collecting cases).

Petitioner further alleges as follows:

PARTIES

1. Petitioner Oleg Kachalov lawfully presented himself at the port of entry in San Ysidro, California, to apply for asylum on July 19, 2021. He was subsequently released on parole. On or about February 12, 2024, Respondents arrested Mr. Kachalov in New England

after a traffic stop by a local authority. He remains in Respondents' custody at the Strafford County Department of Corrections in Dover, New Hampshire.

2. Respondent Kristi Noem is the Secretary of the Department of Homeland Security and is Mr. Kachalov's legal custodian. In this capacity, she directs DHS and Immigration and Customs Enforcement (ICE). As a result, Respondent has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103. She is sued in her official capacity.

3. Respondent Patricia H. Hyde is the Acting Field Office Director of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operation, of the Boston Field Office, which maintains authority over immigration detention in New Hampshire. She is sued in her official capacity.

4. Respondent Christopher Brackett is the Superintendent of the Strafford County Department of Corrections and is Petitioner's immediate custodian. He is sued in his official capacity.


JURISDICTION AND VENUE

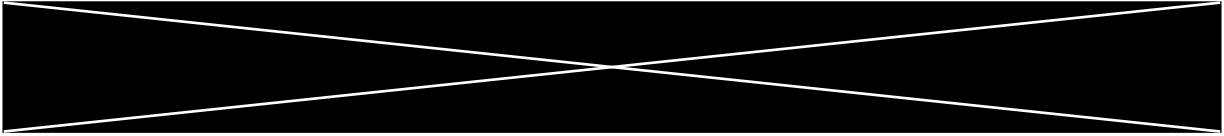
5. This Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").

6. Venue is proper in the District of New Hampshire because Petitioner is currently detained at the Strafford County Department of Corrections in Dover, New Hampshire, in the territorial jurisdiction of this Court. 28 U.S.C. § 1391. *Vasquez v. Reno*, 233 F. 3d 688, 696 (1st Cir. 2000).

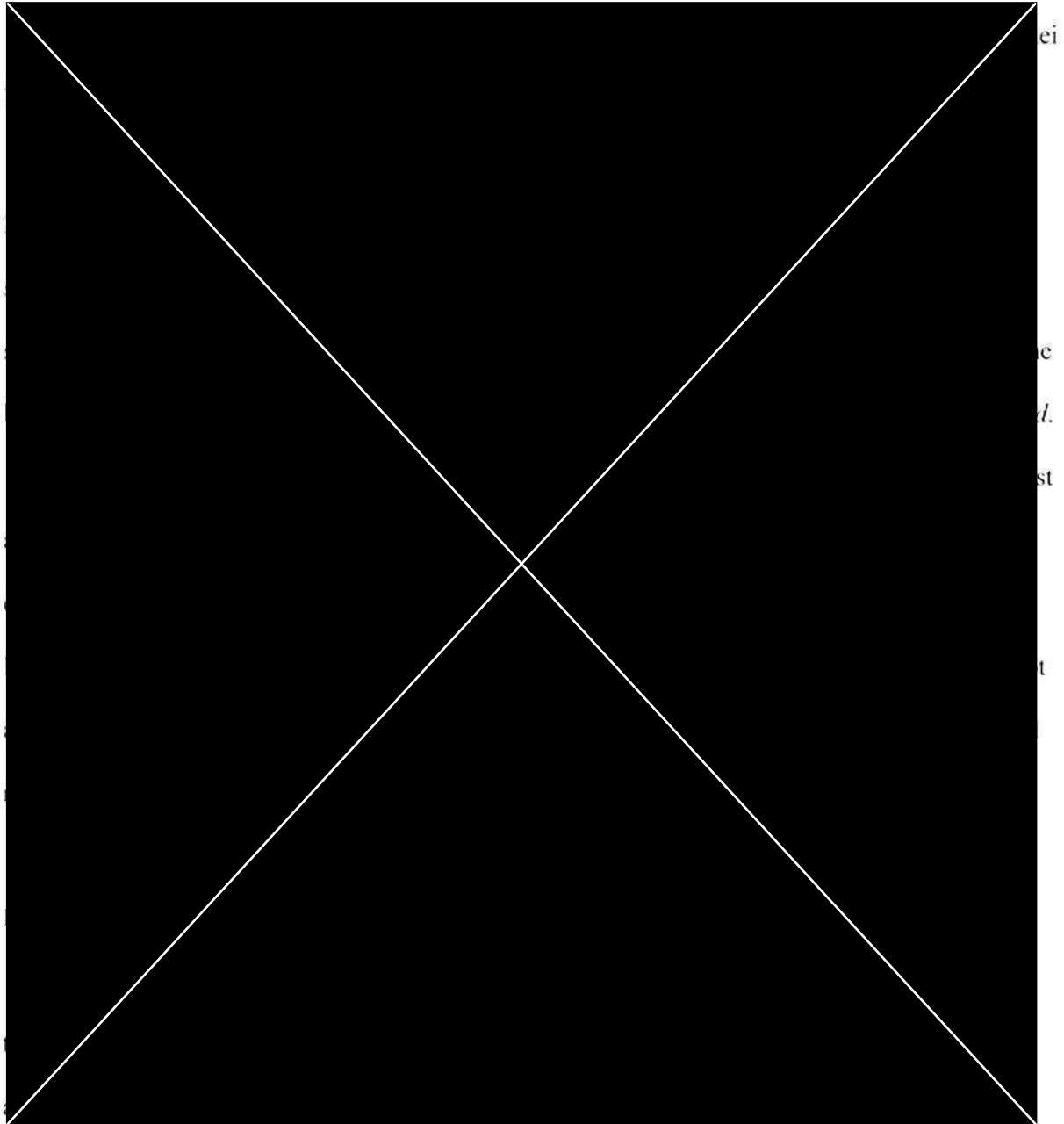
FACTS

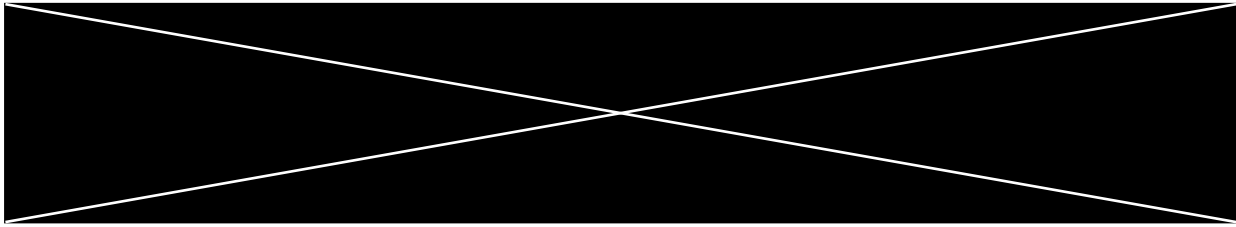
Petitioner's flight from Russia

7. Mr. Kachalov is a 26-year-old asylum seeker from Russia. Ex. 1 (IJ Decision) at 1. He fled Russia because of fear that he would be harmed, tortured, and killed 



Ex. 1 at 2.





14. When Mr. Kachalov “fled Russia,” he “changed his phone number and social media accounts” before “moving to the United States.” Ex. 1 at 3.

Petitioner’s entry to the United States and apprehension

15. On or about July 19, 2021, Mr. Kachalov presented himself to the port of authority in San Ysidro, California, and applied for asylum. Ex. 1 at 4; Ex. 3 (Notice to Appear) at 1.

16. Mr. Kachalov was paroled into the United States and moved to the New York City area. Ex. 16 (Parole Request Letter) at 1.

17. On December 2, 2022, Mr. Kachalov was arrested by a local authority in Brooklyn, New York, and charged with Rape, Forcible Sexual Abuse in the first degree, Larceny, Assault, Forcible Touch Intimate Parts, Possession of Stolen Property, Attempted Assault to Cause Physical Injury, Menacing, and Harassment. Ex. 16 at 3, 10. This criminal case was initiated based on the complaint of his ex-girlfriend. Ex. 16 at 3; Ex. 9 (July 30, 2024 Transcript) at 52.

18. On December 3, 2022, at the arraignment, Mr. Kachalov was released by the Judge of the Kings Criminal Court (120 Schermerhorn St., Brooklyn, New York). Ex. 16 at 3.

19. After the release from the criminal custody, Mr. Kachalov did not receive any notice to appear for the criminal court hearing. Ex. 16 at 3; Ex. 10 (October 22, 2024 Transcript) at 71 (“I had no documents about that. . . . I thought the case was closed[.]”).

20. Mr. Kachalov believed that his criminal case was closed. Ex. 10 at 71. Because Mr. Kachalov did not attend his criminal hearing based on his lack of knowledge about the hearing date and time, the Judge of the Kings Criminal Court presumably issued a bench warrant.

21. During Mr. Kachalov's travel to New England to visit his friend, he was stopped by police for speeding, and during the background check, the police learned that he had a pending criminal case in New York. Ex 16 at 3.

22. Thereafter, on or about February 13, 2024, Respondents detained Mr. Kachalov under immigration law. Ex. 16 at 3; Ex 4 (DHS Custody Decision) at 1.

23. On June 11, 2024, the criminal charges were dismissed. Ex 16 at 10-11. The certificate of disposition from the Kings Criminal Court shows as "Dismissed (Speedy Trial (CPL 170.30(1)(e)), Sealed 160.50)" with a disposition date of June 11, 2024. *Id.* Under New York CPL § 160.50, which directs the record to be sealed upon "the termination of a criminal action or proceeding against a person in favor of such person," Mr. Kachalov's criminal case has been sealed.

Petitioner's Removal Proceedings

24. On February 13, 2024, Mr. Kachalov was placed in removal proceedings. Ex. 3.

25. On March 11, 2024, Mr. Kachalov had his first Master calendar hearing before the Boston Immigration Court. Ex. 5 (March 11, 2024 Transcript). During this hearing, Mr. Kachalov asked for a bond hearing, which was denied by the IJ because the IJ had no jurisdiction over a bond hearing of an arriving alien. The Immigration Judge (IJ) continued the case to allow him to find counsel. *Id.* at 4.

26. On March 28, 2024, Mr. Kachalov had his second Master calendar hearing. Ex. 6 (March 28, 2024 Transcript). Although Mr. Kachalov found pro bono counsel, he requested another continuance to allow his attorney to appear in the case. *Id.* at 9. The IJ granted his request and continued the case. *Id.*

27. On April 15, 2024, Mr. Kachalov had his third Master calendar hearing before the Chelmsford Immigration Court.¹ Ex. 7 (April 15, 2024 Transcript). Mr. Kachalov's counsel appeared for the hearing and requested an extension to prepare his case. *Id.* at 12-13.

28. On May 2, 2024, Mr. Kachalov had his fourth Master calendar hearing. During the hearing, Mr. Kachalov admitted to the factual charges and conceded to the removability legal charge contained in the Notice to Appear (charging document). Ex. 8 at 17. After the removability, the IJ continued the case to July 30, 2024, for Mr. Kachalov's Individual hearing for his application for asylum, statutory withholding of removal, and protection under the CAT. *Id.* at 17-18.

29. On July 30, 2024, Mr. Kachalov had his first Individual hearing. Because the IJ could not complete the Individual hearing on that day, the IJ continued the case for a future date. Ex. 9 at 58-59.

30. On October 22, 2024, Mr. Kachalov had his second and last Individual hearing. Ex. 10. At the end of the hearing, the IJ granted Mr. Kachalov's asylum. Because the Immigration Judge granted asylum, the Judge declined to address Mr. Kachalov's statutory withholding of removal and protection under the CAT.

31. On November 8, 2024, DHS timely appealed the Immigration Judge's decision granting Mr. Kachalov's asylum to the Board of Immigration Appeals (BIA). Ex. 11 (DHS

¹ Chelmsford Immigration Court is a new immigration court established in Chelmsford, Massachusetts in 2024.

Notice of Appeal); Ex. 12 (DHS Appeal Receipt). The scope of DHS's appeal was limited to the last element of asylum, which is the discretionary component. Ex. 11. Nonetheless, DHS did not dispute other elements of asylum. *Id.* DHS requested that the BIA remand the case to the IJ to address statutory withholding of removal and protection under the CAT after reversing the IJ's decision on asylum. *Id.*

32. On December 26, 2024, the BIA issued a briefing schedule directing both parties, DHS and Mr. Kachalov, to submit their briefs by January 16, 2025. Ex. 13 (BIA Briefing Schedule).

33. On January 13, 2025, DHS filed its appeal brief to the BIA. Ex. 14 (DHS Brief). The scope of DHS's brief was limited to the discretionary element of asylum, as DHS explained in the notice of appeal. *Id.*

34. On January 16, 2025, Mr. Kachalov filed his answering appeal brief to the BIA. Ex. 15.

35. On February 21, 2025, the BIA vacated the IJ's asylum decision and remanded the case to the IJ to readdress asylum and, if needed, statutory withholding of removal and protection under the CAT. Ex. 17 (the BIA Decision).

36. In light of the BIA's remand decision, it is unclear how long Petitioner's removal proceedings will last.

Petitioner's Immigration Detention Status

37. Since Respondents' arrest of Mr. Kachalov on or about February 12, 2024, he has been in Respondents' immigration custody under 8 U.S.C. § 1225(b)(2)(A).

38. Respondents initially detained Mr. Kachalov at the Plymouth County House of Corrections in Plymouth, Massachusetts.

39. On or about April 23, 2024, Respondents transferred Mr. Kachalov to the Strafford County Department of Corrections in Dover, New Hampshire.

40. On July 19, 2024, after the dismissal of Mr. Kachalov's criminal charges, he requested for release on bond to Respondents (DHS and ICE). Ex 16. Respondents denied this release request.

41. After the IJ granted Mr. Kachalov's asylum, his immigration counsel called and emailed a release request to Respondents (DHS and ICE). However, Respondents did not provide an answer to the request.

42. He remains in Respondents' immigration custody at the Strafford County Department of Corrections in Dover, New Hampshire.

LEGAL BACKGROUND

8 U.S.C. § 1225(b) – Mandatory Detention

43. 8 U.S.C. § 1225(b) provides procedures for the inspection of applicants for admission, including the expedited removal of individuals who present at ports of entry and are deemed inadmissible on specified grounds.

44. Mr. Kachalov is imprisoned pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). Section 1225(b)(1)(B)(ii) provides that these individuals "shall be detained for further consideration" of their application for asylum, which occurs at a removal hearing inside the United States.

45. Arriving aliens are ineligible for bond hearings before an IJ. *See* 8 C.F.R. § 1003.19(h)(2)(i) ("[A]n immigration judge may not redetermine conditions of custody . . . [for] [a]rriving aliens in removal proceedings.").

46. The statute provides that individuals in Mr. Kachalov's situation—those who presented themselves at ports of entry—can be considered for release only through the "parole"

process. 8 U.S.C. § 1182(d)(5)(A); *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018). ICE officers (i.e. the jailing authorities) informally conduct such reviews. Officers make parole decisions—decisions that result in months or years of additional incarceration—by checking boxes on a form that contains no explanation of the factual basis for the decision.

Due Process Limits on Mandatory Prolonged Detention

47. The Due Process Clause forbids prolonged arbitrary imprisonment. “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 v. Davis*, 533 U.S. 678, 690 (2001). Under due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *see also Ly v. Hanson*, 351 F. 3d 263, 269 (6th Cir. 2003) (“[T]he time of [immigration] incarceration is limited by constitutional considerations, and must bear a reasonable relation to removal”).

48. These basic due process protections apply to all noncitizens, including both removal and inadmissible noncitizens. *See Rosales-Garcia v. Holland*, 322 F. 3d 386, 409 (6th Cir. 2003) (en banc) (holding that “excludable aliens . . . are clearly protected by the Due Process Clause of the Fifth and Fourteenth Amendments.”); *see also Zadvydas*, 533 U.S. at 721 (Kennedy, J., dissenting) (noting that “both removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious”); *Chi Thon Ngo v. I.N.S.*, 192 F. 3d 390, 396 (3d Cir. 1999), amended (Dec. 30, 1999) (“Even an excludable alien is a ‘person’ for purposes of the Fifth Amendment and is thus entitled to substantive due process.”).

49. Under these principles, at a minimum, due process requires “adequate procedural protections” to ensure that the Government’s asserted justification for physical confinement

“outweighs the individual’s constitutionally protected interest in avoiding physical restraint.”

Zadvydas, 533 U.S. at 690 (internal quotation marks omitted).

50. Prolonged civil detention is impermissible without an individualized hearing before a neutral decision-maker that tests the Government’s justification for incarceration. *See United States v. Salerno*, 481 U.S. 739, 750-51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness); *Ly*, 351 F. 3d at 273 (holding, on constitutional avoidance grounds, that “the reasonableness of the length of detention is subject to review by federal courts in habeas proceedings” and affirming grant of habeas to non-citizen detained 18 months).

51. In *Jennings*, 138 S. Ct. at 845, the Supreme Court held that Section 1225(b) authorizes detention until the conclusion of removal proceedings without a bond hearing. However, the Supreme Court did not address the constitutionality of prolonged detention without a bond hearing. *Id.* at 851 (“[W]e do not reach [the constitutional] arguments.”).

52. Outside the national security context, the Supreme Court has not authorized prolonged civil confinement without the bedrock protection of an individualized hearing addressing the need for incarceration under the Due Process Clause. *See Toyosaburo Korematsu v. United States*, 323 U.S. 214 (1944); *Ludecke v. Watkins*, 335 U.S. 160 (1948); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953); *see also Castro v. U.S. Dep’t of Homeland Security*, 835 F.3d 422, 449 n.32 (3d Cir. 2016) (“We doubt . . . that Congress could authorize, or

that the Executive could engage in, the indefinite, hearingless detention of an alien simply because the alien was apprehended shortly after clandestine entrance.”).

53. Several district courts have analyzed prolonged detention for arriving aliens on due process grounds. *See, e.g., A.L. v. Oddo*, Civil Action No. 3:24-302, 2025 U.S. Dist. LEXIS 19683, at *5-9 (W.D. Pa. Jan. 6, 2025) (granting a bond hearing for an arriving alien at which DHS bears the burden of justifying his detention under clear and convincing evidence because his 10 months detention was unconstitutionally unreasonable under the Due Process Clause, and his detention would continue); *Alberto v. Decker*, Case No. 1:17-cv-2604 (PKC), 2017 U.S. Dist. LEXIS 202630, at *18-19 (S.D.N.Y. Nov. 21, 2017) (same for 7 months of detention); *Lett v. Decker*, 346 F. Supp. 3d 379, 385-87 (S.D.N.Y. 2018) (same for 10 months of detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 601-605 (E.D. Va. 2021) (same for 24 months of detention); *De Ming Wang v. Brophy*, No. 17-CV-6263-FPG, 2019 U.S. Dist. LEXIS 1826, at *6-7 (W.D.N.Y. Jan. 3, 2019) (same for 24 months of detention); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 443- (D.N.J. 2019) (same for 20 months of detention and collecting cases). Therefore, arriving aliens have due process rights to a bond hearing when detention has become unreasonably prolonged.

CLAIMS FOR RELIEF

COUNT 1

DUE PROCESS — RIGHT TO BOND HEARING

54. The foregoing allegations are realleged and incorporated herein.

55. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend V.

56. To justify Mr. Kachalov's ongoing prolonged detention, due process requires that Respondents establish, at an individualized hearing before a neutral decision-maker, that Petitioner's detention is justified by clear and convincing evidence of flight risk or danger.

57. *First*, Mr. Kachalov's detention has been and will be unreasonably prolonged, as it is currently approaching 13 months and is likely to exceed approximately 18 months when this matter is adjudicated.

58. *Second*, Mr. Kachalov's proceedings are unlikely to be completed in the near future. As explained above, it is unclear how long Mr. Kachalov's removal proceedings will last.

59. *Third*, Mr. Kachalov has not engaged in any dilatory tactic other than exercising the rights afforded to him by statute.

60. *Fourth*, Mr. Kachalov has been at the Strafford County Department of Corrections, "which is a penal facility." *Rocha v. Barr*, 422 F. Supp. 3d 472, 482 (D.N.H. 2019); *id.* at 481 (considering "whether the immigration detention facility is meaningfully different from a penal institution for criminal detention").

61. For these reasons, Mr. Kachalov's ongoing prolonged detention without a bond hearing violates due process, and the Court should order a prompt bond hearing where DHS bears the burden of showing by clear and convincing evidence that his detention is necessary.

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

- (1). Assume jurisdiction over this matter;
- (2). Order a constitutionally adequate, individualized bond hearing at which the government will bear the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention is justified;

- (3). Enjoin Respondents from transferring Petitioner from New Hampshire pending this petition;
- (4). Award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. §504, if applicable; and
- (5). Order any further relief this Court deems just and proper.

Respectfully submitted this 24th day of February 2025.

Oleg Kachalov,

By and through his Counsel,

/s/ SangYeob Kim

Gilles R. Bissonnette (NH Bar: 265393)

SangYeob Kim (NH Bar: 266657)

Chelsea Eddy (NH Bar: 276248)

AMERICAN CIVIL LIBERTIES UNION OF

NEW HAMPSHIRE

18 Low Avenue

Concord, NH 03301

Phone: 603.333.2081

gilles@aclu-nh.org

sangyeob@aclu-nh.org

chelsea@aclu-nh.org