UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOHAMMED GHALEB,
Petitioner,

v.

WILLIAM P. JOYCE,
in his 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;

PAUL ARTETA,
in his official capacity as the Orange County, New York Sheriff.

Respondents.

Civil Action No. _____

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

INTRODUCTION

1. Petitioner, Mohammad Ghaleb ("Petitioner" or "Mr. Ghaleb"), has been detained by United States and Immigration and Customs Enforcement ("ICE") without independent review of his custody for thirteen months—since on or around January 22, 2024.
2. Even though he has no criminal record, and even though an immigration judge ("IJ") granted Mr. Ghaleb withholding of removal[1] under 8 U.S.C. § 1231(b)(3) on January 28, 2025, ICE continues to detain him, subjecting him to mandatory immigration detention without the possibility of a bond hearing.
3. Petitioner must therefore petition this Court for a writ of habeas corpus to remedy his unlawful immigration detention by Respondents, immigration enforcement officials.
4. Mr. Ghaleb's over one year of unreviewed, prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution and ICE's own policies favoring release after a grant of immigration relief.
5. To date, Mr. Ghaleb has never had a hearing before a neutral adjudicator to determine whether this detention is necessary. Absent intervention from this Court, his unreviewed civil detention—which is actually incarceration at a New York county criminal jail—will continue indefinitely.

PARTIES

[1] Like asylum, withholding of removal under 8 U.S.C. § 1231(b)(3) requires the applicant to show "that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.16(b)(2); *see also* 8 U.S.C. § 1101(a)(42) (definition of refugee for asylum purposes).

6. Petitioner Mr. Ghaleb is a thirty-six-year-old Yemeni national. *See* Ex. A, Decl. of Attorney Jessica Coffrin-St. Julien, Esq. ("Coffrin-St. Julien Decl."). He has been detained by ICE since on or about January 22, 2024, at Orange County Correctional Facility ("OCCF"). Mr. Ghaleb entered the United States on or about March 13, 2023, seeking asylum and related relief. Immigration officials shortly thereafter detained him. On or about June 26, 2023, ICE paroled Mr. Ghaleb after three months of immigration detention in California. On or about January 22, 2024, ICE, without notice or explanation, revoked his parole and redetained him. ICE incarcerated him at OCCF in Goshen, New York, where he remains. *See* Ex. C, Detention Address Notice. An immigration judge granted Mr. Ghaleb withholding of removal on January 28, 2025. *See* Ex. H, IJ Grant. Mr. Ghaleb remains detained, as DHS considers an appeal. *Id.*

7. Respondent William P. Joyce is named in his official capacity as the Acting Director of the New York ICE Field Office within the United States Department of Homeland Security ("DHS"). In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations for individuals under the jurisdiction of the New York Field Office. As such, he is the custodian of Petitioner. Respondent Joyce's office is located at 26 Federal Plaza, New York, NY 10278.

8. Respondent Kristi Noem is named in her official capacity as the Secretary of DHS. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the Southern District of New York; she supervises Respondent Joyce; and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is the legal custodian of Petitioner. Respondent Noem's

office is at the United States Department of Homeland Security, Washington, District of Columbia 20528.

9. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings. As such, she is the legal custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia, 20530.

10. Respondent Paul Arteta is named in his official capacity as the Orange County, New York Sheriff. In this capacity, he is responsible for the administration of OCCF and is its de facto warden. As such, he is the legal custodian of Petitioner. Respondent Arteta's office is located at Orange County Sheriff's Office, Goshen, New York 10924.

JURISDICTION

11. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (power to grant writ); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the Constitution (writ of habeas corpus); and the All Writs Act, 28 U.S.C. § 1651. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[] on [Petitioner's] individual liberty," as Petitioner is "subject to restraints not shared by the public generally," he "cannot come and go as he pleases," and

his "freedom of movement rests in the hands of" public officers. *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973) (internal quotation marks omitted).

12. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. §§ 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also Gutierrez v. Dubois*, No. 20 CIV. 2079 (PGG), 2020 WL 3072242, at *3 (S.D.N.Y. June 10, 2020) (noting in case of a petitioner held under 8 U.S.C. § 1225(b) at OCCF, that "[t]he jurisdiction conferred by [28 U.S.C. §] 2241 includes the power to grant a writ to non-citizens who are detained in violation of the Constitution"); *A.L. v. Oddo*, No. CV 3:24-302, 2025 WL 352471, at *2 (W.D. Pa. Jan. 6, 2025) ("[T]his Court finds that an arriving alien [detained under § 1225(b)] such as Petitioner has a constitutional due process right to a bond hearing once his detention becomes unreasonable to the same extent as an alien who is subject to removal under § 1226(c)."); *Padilla v. U.S. Immigration and Customs Enforcement*, 704 F. Supp. 3d 1163, 1169–73 (W.D. Wash. 2023) (finding jurisdiction over constitutional claims of non-citizens detained under § 1225(b) and *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019)).

13. The Supreme Court has found that it has jurisdiction to review statutory claims by noncitizens subject to mandatory detention pursuant to, *inter alia*, § 1225(b), concluding that neither 8 U.S.C. § 1252(b)(9) nor § 1226(e) deprived the federal courts of jurisdiction to review the noncitizens' claims. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).

VENUE

14. Pursuant to 28 U.S.C. § 2241(d), venue properly lies in the Southern District of New York. *See* 28 U.S.C. § 1391(b); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 952–53 (S.D.N.Y. 2018); *Araujo-Cortes v. Shanahan,* 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014). Petitioner is physically present within the district, as he is detained at OCCF located at 110 Wells Farm Road, Goshen, NY 10924. The material events leading to Mr. Ghaleb's detention and removal proceedings also occurred in the Southern District of New York: his immigration proceedings are venued in New York, NY, prosecuted by the Office of Chief Counsel for ICE in New York, NY, and presided over by an IJ located in New York, NY. And Mr. Ghaleb has New York City-based counsel.

15. The place of employment of Respondent Joyce is also located within the district, at 26 Federal Plaza, New York, NY. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973) (laying out traditional venue factors).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010). Moreover, no exhaustion requirement applies to the claims raised in this petition because the immigration judge and the Board of Immigration Appeals lack jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

17. Further action with the administrative agency is not necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g.*, *Araujo-Cortes*, 35 F. Supp. 3d at 538–39; *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456–57

(S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009); *L. v. Joyce*, No. 22-cv-06274 (KPF), at Dkt. Nos. 25, 26, 28 (S.D.N.Y. Oct. 17, 2022).

18. Regardless, Petitioner has exhausted any informal administrative remedies that are available to him. Mr. Ghaleb has submitted two parole requests—including one after the immigration judge granted relief from deportation—and remains detained. The first parole request was denied, and the second one remains pending. *See* Coffrin-St. Julien Decl. ¶¶ 25–31.

19. On December 10, 2024, Mr. Ghaleb submitted his first parole request. He sought parole due to his declining health and, additionally, because his continued detention was not in the public interest. The request detailed Mr. Ghaleb's need for podiatric and dental care, persistent flank pain, a hospitalization while in detention in May 2024, and recent abnormal lab results. The request also described his positive credible fear determination, eligibility for Temporary Protected Status based on DHS's redesignation of Yemen in July 2024, history of consistent attendance at immigration court hearings, and relationship with a sponsor able to support him in fulfilling his responsibilities to ICE and the immigration court. The request additionally noted that Mr. Ghaleb did not have any criminal convictions anywhere in the world. *See* Coffrin-St. Julien Decl. ¶ 26.

20. On January 7, 2025, ICE denied Mr. Ghaleb's parole request, stating that he had failed to establish that he was not a flight risk and that his detention was not in the public interest. *See* Ex. D, ICE Parole Denial. There was no individualized assessment; ICE merely checked off boxes on a boilerplate form. *Id.* The denial also incorrectly stated that ICE had previously provided Mr. Ghaleb with a written decision declining to authorize parole, and that he had failed to provide additional documentation demonstrating changed circumstances. Mr. Ghaleb had not previously sought release on parole while detained at OCCF. Mr. Ghaleb's

immigration counsel requested clarification regarding this language from his deportation officer. One week later, on January 14, 2025, ICE provided a decision letter amended to reflect that Mr. Ghaleb had not previously sought parole at OCCF. *See* Ex. E, Amended ICE Parole Denial.

21. Following ICE's denial of Mr. Ghaleb's parole request, on January 10, 2025, his immigration counsel submitted a case review request to ICE, a process that provides for review of decisions made by local field offices. On January 16, 2025, counsel supplemented the case review request with urinalysis results showing that Mr. Ghaleb had blood and protein in his urine, both of which can be indicative of kidney problems—a particular concern for Mr. Ghaleb, who has reported flank pain throughout his detention. *See* Coffrin-St. Julien Decl. ¶ 28.

22. On January 21, 2025, the Office of the Senior Reviewing Official sent Mr. Ghaleb's immigration counsel two emails indicating that the official "concur[red] with the Field Office's decision to continue detention" without further explanation. The first email did not include counsel's correct name, instead referring to counsel Jessica Coffrin-St. Julien as "Attorney Coffrin-St. Brooks," nor did it include the correct date on which she had submitted the above-described supplemental information. *See* Ex. F, ICE Parole Denial Appeal Email 1. The second email corrected these two errors. *See* Ex. G, ICE Parole Denial Appeal Email 2.

23. On January 28, 2025, the Immigration Judge issued a decision granting Mr. Ghaleb withholding of removal pursuant to 8 U.S.C. § 1231(b)(3). *See* Ex. F. On the same day, Mr. Ghaleb's immigration counsel submitted a renewed parole request, arguing that this grant of humanitarian protection established that he was not a flight risk and, further, that his ongoing detention was an inefficient use of public resources. *See* Coffrin-St. Julien Decl. ¶ 30.

24. As of the filing of his habeas petition, immigration counsel has not yet received a response from ICE to Mr. Ghaleb's renewed parole request. *Id.* ¶ 31.

25. Petitioner therefore has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

26. Mr. Ghaleb is a thirty-six-year-old Yemeni citizen who was born and raised in Saudi Arabia. Although Mr. Ghaleb was born in Saudi Arabia, he has no claim to permanent status there, as Saudi law does not automatically confer citizenship upon people born in the country. Coffrin-St. Julien Decl. ¶ 6.

27. As a child and young adult, Mr. Ghaleb was able to lawfully reside in Saudi Arabia through his father's work and residence permit, which was tied to his employment as a bus driver. *Id.* ¶ 7.

28. Around 2019, Saudi immigration authorities forced Mr. Ghaleb to leave. He was unable to return to Yemen due to an ongoing civil war and fear of political persecution. Mr. Ghaleb resided briefly in Brazil before entering the United States to seek asylum and related relief. *Id.* ¶ 8.

29. Prior to Mr. Ghaleb's detention at OCCF, he was living peacefully at liberty with roommates in New Jersey and working as a cashier at a clothing store. In his time in the United States, he has never been arrested by the police or charged with any crime. *Id.* ¶ 9.

A. Mr. Ghaleb's Detention History

30. Upon first arriving in the United States on or about March 13, 2023, Mr. Ghaleb was detained at Otay Mesa Detention Center in California. The same day, he was placed in expedited removal proceedings and ordered removed pursuant to 8 U.S.C. § 1225(b)(1). Coffrin-St. Julien Decl. ¶ 16.

31. On or about April 4, 2023, while detained, Mr. Ghaleb expressed fear of return to Yemen. He underwent a credible fear interview on or about April 14, 2023. The reviewing officer found that Mr. Ghaleb had established that there was a significant possibility he would be persecuted and tortured in Yemen on account of an imputed political opinion. *Id.* ¶ 17.

32. Following Mr. Ghaleb's positive credible fear determination, his expedited removal order was vacated. On or about May 9, 2023, DHS filed a Notice to Appear with EOIR, commencing full immigration removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 18; *see also* Ex. B, Notice to Appear. The Notice to Appear classified Mr. Ghaleb as an "arriving alien" and charged him with inadmissibility due to lacking valid entry documents to the United States as described in 8 U.S.C. § 1182(a)(7)(A)(i)(I). Ex. B.

33. Mr. Ghaleb was detained at Otay Mesa Detention Center for approximately three months. He was released on parole pursuant to 8 U.S.C. § 1182(d)(5) on or about June 26, 2023. Upon release, Mr. Ghaleb moved to San Jose, California, where a family friend lived. Around September 2023, he relocated to the New York area. Coffrin-St. Julien Decl. ¶ 19.

34. On or about January 22, 2024, ICE arrested Mr. Ghaleb at the Port Authority Bus Terminal in Manhattan. It is unclear why Mr. Ghaleb was redetained. Mr. Ghaleb relayed to immigration counsel that prior, he had received a call from immigration officers directing him to come to the bus terminal on that date. A Form I-213 in Mr. Ghaleb's immigration file,

which immigration counsel obtained through a Freedom of Information Act request, states that "ICE Officers noticed a subject fitting Ghaleb's description" at the bus terminal. *Id.* ¶ 20.

35. A record in Mr. Ghaleb's immigration file indicates that, on January 22, 2024, Mr. Ghaleb's "case was reviewed in accordance with the reinstitution of . . . [Civil Enforcement Immigration Priorities] guidelines," and that "[t]his noncitizen falls within the parameters of the guidelines, specifically . . . Threat to Border Security . . . as he was apprehended in the United States after unlawfully entering after November 1, 2020." The document additionally indicates that Mr. Ghaleb does not have a criminal history. *Id.* ¶ 21.

36. Since ICE arrested Mr. Ghaleb on January 22, 2024, he has been detained at OCCF.

37. Mr. Ghaleb is not eligible for a bond hearing because he is categorized as an "arriving alien." *See* 8 U.S.C. § 1225(b)(1); 8 C.F.R. § 1003.19(h)(2)(i)(B). He is additionally ineligible because he has been transferred from expedited removal proceedings to full removal proceedings. *See Matter of M-S-*, 27 I. & N. Dec. 509, 519 (A.G. 2019) (an Attorney General-referred case, overruling previous Board of Immigration Appeals precedent to conclude that "all aliens transferred from expedited to full proceedings after establishing a credible fear are ineligible for bond").

38. Because Mr. Ghaleb is ineligible for bond due to the manner of his immigration processing, he has not been afforded a hearing since he was detained over a year ago.

39. Mr. Ghaleb has filed two parole requests, as detailed *supra* ¶¶ 17–23. The first was summarily denied. His second parole request, filed after the IJ granted relief, remains pending.

B. *Mr. Ghaleb's Removal Proceedings History*

40. After ICE filed Mr. Ghaleb's Notice to Appear with the immigration court on May 9, 2023, Mr. Ghaleb appeared, pro se and detained, for his first hearing on May 18, 2023, at the Otay Mesa Immigration Court in California. The IJ adjourned proceedings to allow Mr. Ghaleb time to find an attorney. Coffrin-St. Julien Decl. ¶ 32.

41. On June 6, 2023, Mr. Ghaleb again appeared, pro se and detained, at the Otay Mesa Immigration Court for a hearing. Mr. Ghaleb reported to the court that he had retained an attorney, but that she was not present. Mr. Ghaleb declined an adjournment to allow his attorney to enter an appearance on his behalf, and the IJ proceeded with taking pleadings. The IJ sustained the charge of removability against Mr. Ghaleb under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and reset proceedings for June 28, 2023. *Id.* ¶ 33.

42. Mr. Ghaleb was released from detention on or about June 26, 2023, and his next hearing was rescheduled to November 27, 2023, at the San Diego Immigration Court. He appeared pro se at this hearing. DHS moved to change venue, as Mr. Ghaleb was living near San Francisco by that time. The IJ granted the motion, transferring proceedings to the San Francisco Immigration Court. On November 28, 2023, EOIR issued a Notice of Hearing indicating that Mr. Ghaleb's next hearing was scheduled for February 1, 2027, at the San Francisco Immigration Court. *Id.* ¶ 34.

43. On January 22, 2024, following Mr. Ghaleb's re-detention at OCCF, DHS filed a motion to change venue to the Varick Street Immigration Court in New York City. The IJ granted the motion on January 24, 2024. *Id.* ¶ 35.

44. On January 30, 2024, Mr. Ghaleb appeared, pro se and detained, for his first hearing at the Varick Street Immigration Court. The IJ adjourned proceedings to allow Mr. Ghaleb time to find an attorney. *Id.* ¶ 36.

45. On February 13, 2024, Mr. Ghaleb appeared with previous counsel, Ines Ati, for a hearing. The IJ adjourned proceedings to allow Ms. Ati time to prepare. *Id.* ¶ 37.

46. On February 28, 2024, Mr. Ghaleb appeared with Ms. Ati for his next hearing. Ms. Ati moved to withdraw representation due to a disagreement regarding the type of services she could provide, as Mr. Ghaleb wanted her to visit him in-person at OCCF and she was unable to do so. The IJ granted the motion and informed Mr. Ghaleb that he was now free to retain another attorney. She adjourned proceedings for two weeks. *Id.* ¶ 38.

47. After conducting an intake with Mr. Ghaleb through the New York Immigrant Family Unity Project, Mr. Ghaleb's current immigration counsel Jessica Coffrin-St. Julien at the Bronx Defenders filed a motion to substitute counsel on March 1, 2024. On March 11, 2024, within one year of his arrival in the United States, Mr. Ghaleb filed an application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). *Id.* ¶ 39.

48. On March 13, 2024, Mr. Ghaleb appeared for his next hearing. The IJ scheduled a pre-hearing conference for April 17, 2024, with an evidentiary filing deadline of April 10, 2024. *Id.* ¶ 40.

49. On April 9, 2024, Mr. Ghaleb timely filed a witness list and evidence in support of his applications for asylum, withholding of removal, and CAT protection. *Id.* ¶ 41.

50. On April 17, 2024, Mr. Ghaleb appeared for the pre-hearing conference. The IJ scheduled a merits hearing for April 22, 2024. *Id.* ¶ 42.

51. On April 20, 2024, immigration counsel Jessica Coffrin-St. Julien went into labor earlier than expected and was thus unable to appear at Mr. Ghaleb's merits hearing as planned. Her supervisor, Otilda Colón Pinilla, appeared before the Immigration Court on April 22, 2024,

and requested an adjournment to afford her time to enter her appearance and prepare with Mr. Ghaleb. The IJ adjourned proceedings for this purpose. *Id.* ¶ 43.

52. On May 1, 2024, Mr. Ghaleb appeared with Ms. Colón Pinilla for a hearing. The IJ rescheduled Mr. Ghaleb's merits hearing for May 13, 2024. *Id.* ¶ 44.

53. On May 13, 2024, Mr. Ghaleb testified in support of his applications for relief. The IJ stated that he would issue a written decision. *Id.* ¶ 45.

54. On May 22, 2024, the IJ scheduled a hearing for that same day. He informed Mr. Ghaleb that his testimony was "garbled" in the digital audio recording of his merits hearing and scheduled another merits hearing date to take Mr. Ghaleb's testimony a second time. *Id.* ¶ 46.

55. On June 4, 2024, Mr. Ghaleb again testified in support of his applications for relief. *Id.* ¶ 47.

56. On June 13, 2024, the IJ issued a written decision granting Mr. Ghaleb asylum based on his well-founded fear of future persecution in Yemen due to his imputed political opinion. *Id.* ¶ 48.

57. On June 24, 2024, DHS filed a Notice of Appeal with the Board of Immigration Appeals. On August 14, 2024, both DHS and Mr. Ghaleb timely filed briefing in connection with the appeal. *Id.* ¶ 49.

58. On November 8, 2024, DHS granted DHS's appeal and remanded proceedings to the Immigration Court for further consideration of whether the firm resettlement bar—which bars asylum for people who resettled in a third country before arriving in the United States—applied to Mr. Ghaleb. *Id.* ¶ 50.

59. On November 20, 2024, Mr. Ghaleb appeared for a hearing with counsel. The IJ scheduled Mr. Ghaleb for a merits hearing on December 4, 2024, to allow him to present evidence regarding why the firm resettlement bar should not apply to him. *Id.* ¶ 52.

60. On November 26, 2024, Mr. Ghaleb timely filed additional evidence and a witness list in anticipation of his new merits hearing date. *Id.* ¶ 53.

61. On December 4, 2024, the IJ rescheduled Mr. Ghaleb's merits hearing to December 9, 2024, due to delays in the hearing scheduled before Mr. Ghaleb's case that day. *Id.* ¶ 54.

62. On December 9, 2024, Mr. Ghaleb again testified in support of his applications for his relief. Following testimony, the IJ instructed Mr. Ghaleb to file any additional evidence and a written summation by December 16, 2024; DHS to file a written summation by December 23, 2024; and Mr. Ghaleb to file any reply by December 30, 2024. Mr. Ghaleb and DHS timely filed briefing as instructed. *Id.* ¶ 55.

63. On January 28, 2024, the IJ issued a written decision finding that the firm resettlement bar rendered Mr. Ghaleb ineligible for asylum and instead granting Mr. Ghaleb withholding of removal pursuant 8 U.S.C. § 1231(b)(3). DHS has thirty days from the date of the decision to appeal. Mr. Ghaleb intends to appeal the denial of asylum. *Id.* ¶ 56.

C. Detention Conditions and Mr. Ghaleb's Deteriorating Health

64. ICE is detaining Mr. Ghaleb at OCCF in conditions akin to those in criminal pretrial custody. *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (stating that ICE detainees at OCCF are "incarcerated under conditions indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes"). OCCF is the subject of a 2022 complaint filed with the Department of Homeland Security's Office for Civil Rights and Civil Liberties "over alleged racist and retaliatory abuse, violence, unsafe conditions, and medical neglect of detainees at the site amidst the pandemic," and was also the subject of an oversight hearing by the New York City Council. *See* Daniel Parra, City Council Hearing Probes Conditions for ICE Detainees in New York,

City Limits (Feb. 28, 2022), https://citylimits.org/2022/02/28/city-council-hearing-probes-conditions-for-ice-detainees-in-new-york.[2] Mr. Ghaleb has endured these conditions in the hopes of remaining safe in the United States.

65. Prior to his detention, Mr. Ghaleb suffered from chronic flat feet, as well as back and flank pain. These conditions have worsened throughout his detention at OCCF. He has also developed rashes, urinary pain, and tooth pain. *See* Coffrin-St. Julien Decl. ¶ 11.

66. On or about February 23, 2024, Mr. Ghaleb received written authorization from the Orange County Sheriff's Office, which operates OCCF, to use custom orthotic inserts. On March 11, 2024, Mr. Ghaleb informed his immigration counsel that officers had conducted a search of several cells in his unit and confiscated his insoles. The following day, counsel contacted Mr. Ghaleb's deportation officer to attempt to arrange for the insoles to be returned. On March 22, 2024, the deportation officer informed counsel that the jail was "trying to locate" the insoles. *Id.* ¶ 12.

67. To date, the insoles have not been returned. Mr. Ghaleb has continued to report foot pain that hinders his ability to walk. OCCF agreed to arrange an appointment with an outside podiatrist for Mr. Ghaleb, but he did not feel comfortable undergoing the strip search required to leave the facility due to his religious beliefs. As such, he has been unable to obtain replacement custom orthotics. *Id.* ¶ 13.

68. Mr. Ghaleb has repeatedly sought medical care at OCCF due to foot pain, back pain, flank pain in the kidney area, urinary pain, rashes, and tooth pain. On or about May 14, 2024, he

[2] *See also* Multi-Organization DHS CRCL Complaint and Index, NYU Law (last accessed Nov. 14, 2024), https://www.law.nyu.edu/sites/default/files/OCCF%20Multi-Organization%20DHS%20CRCL%20Complaint%20and%20Index_2%2017%202022.pdf ("Multi-Organization DHS CRCL Complaint").

was hospitalized at the Garnet Health Medical Center Emergency Department in Middletown, New York, due to hypoglycemia, flank pain, and dehydration. On November 14, 2024, he was diagnosed with pulpitis at a dental visit but received no follow-up treatment. *Id.* ¶ 14.

69. Labs conducted by OCCF's medical care provider have shown abnormal results. On October 15, 2024, Mr. Ghaleb received lab results indicating that he had high LDL cholesterol and high thyroid hormone. On January 4, 2025, a urinalysis showed that he had blood and protein in his urine. *Id.* ¶ 15.

D. Mr. Ghaleb's Release Plan

70. Upon release, Mr. Ghaleb will have the support of a U.S. citizen sponsor who will ensure that he has housing, is connected to social services and medical care, and is surrounded by a supportive community. Additionally, the social work and benefits teams at The Bronx Defenders will assist Mr. Ghaleb with enrolling in health insurance so that he is able to access much-needed medical care. *See* Coffrin-St. Julien Decl. ¶ 57.

STATUTORY & LEGAL FRAMEWORK

A. Authority to Detain Certain Asylum Seekers

71. 8 U.S.C. § 1225(b)(1) outlines the inspection, processing, and detention of a non-citizen like Mr. Ghaleb who is classified as an inadmissible "arriving alien"; placed in expedited removal proceedings; expresses a credible fear of persecution if removed to his home country; and applies for asylum and related fear-based relief. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (discussing 8 U.S.C. § 1225(b)(1)).

72. Section 1225(b)(1)(B)(ii) provides that:

> If the [asylum] officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien *shall be detained for further consideration of the application for asylum.*

(emphasis added).

An immigration officer found that Mr. Ghaleb had a credible fear of persecution, which allowed him to file for asylum and related relief. Coffrin-St. Julien Decl. ¶¶ 17–18.

73. Until 2019, non-citizens like Mr. Ghaleb were routinely eligible for bond hearings before an IJ. *See Matter of X-K-*, 23 I. & N. Dec. 731 (BIA 2005) (holding that non-citizens initially screened for expedited removal under § 1225(b) but then placed in full removal proceedings were eligible for custody redeterminations before an IJ).

74. This changed in 2019, when the Attorney General overruled *Matter of X-K-* and interpreted the above statutory scheme to find that "unless paroled, an alien must be detained until his asylum claim is adjudicated." *Matter of M-S-*, 27 I. & N. Dec. 509, 510 (2019). The Attorney General noted that "[t]his opinion does not address whether detaining transferred aliens for the duration of their removal proceedings poses a constitutional problem, a question that Attorney General Sessions did not certify and that is the subject of ongoing litigation." *Id.* at 510 n.1.

B. <u>Authority to Parole Certain Asylum Seekers</u>

75. 8 U.S.C. § 1182(d)(5)(A) provides that the Attorney General may parole individuals like Mr. Ghaleb who are detained under 8 U.S.C. § 1225(b):

> The Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]

76. The Attorney General recognized this in *Matter of M-S-*, noting that "parole may be considered" for such persons. 27 I. & N. Dec. at 512 (quotation marks, alterations, and citations omitted); *see also Jennings*, 583 U.S. at 288.

77. Agency regulations further provide that the DHS Secretary "may invoke" the authority to parole an individual who has "serious medical conditions," provided they are "neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(a), (b)(1).

C. ICE Policies Favoring Release After a Grant of Relief

78. Long-standing ICE policy favors the prompt release of noncitizens who have been granted protected relief irrespective of any appeals. A 2004 ICE memorandum, ICE Directive 16004.1, states that "it is ICE policy to favor the release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain." *See* Ex. I, ICE Policies on Post-Relief Release at 1, 3.

79. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2004 ICE memorandum is "still in effect and should be followed" and that "[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period." *Id.* at 2.

80. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the "longstanding policy" that "absent exceptional circumstances, . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge ***should be released*** pending the outcome of any DHS appeal of that decision." *Id.* at 3 (emphasis added). Director Johnson clarified that "in considering whether

exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community." *Id.*

81. Contrary to its national policies, ICE continues to detain Petitioner who has no criminal convictions at all and no evidence of being a danger or national security risk. Petitioner was granted withholding of removal by an immigration judge, who determined that Mr. Ghaleb's life is at risk if removed to Yemen.

82. In addition, under the policy "the Field Office Director must approve a decision to keep a [] [non-citizen] granted protection relief in custody." Ex. I at 1; *see also id.* at 3–4 ("Field Office Director approval is required to continue detention for those affected noncitizens"). There is no evidence that the Philadelphia ICE Field Office Director approved the continued detention of Petitioner after his grant of withholding of removal, as required.

D. Immigration Detention Authority Generally

83. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See, e.g., Demore v. Kim*, 538 U.S. 510, 513 (2003) (upholding the government's authority under 8 U.S.C. § 1226(c) to detain noncitizens [removable for certain criminal offenses] without an initial bond hearing "for the brief period necessary for their removal proceedings"); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("The proceedings at issue here [post-removal order immigration detention under 8 U.S.C. § 1231(a)] are civil, not criminal, and we assume that they are nonpunitive in purpose and effect.").

84. In the immigration context, the Supreme Court has recognized only two valid purposes for detaining noncitizens: (1) to mitigate the risk of danger to the community, and (2) to prevent flight. *Zadvydas*, 533 U.S. at 690–91; *see also Demore*, 538 U.S. at 515, 527–28.

85. Generally, detention is either discretionary, *see* 8 U.S.C. § 1226(a), or in-effect mandatory, *see* §§ 1225(b) (non-citizens seeking admission), 1226(c) (non-citizens inadmissible or deportable for certain offenses), 1231(a) (non-citizens ordered removed). At issue in this petition is mandatory detention under Section 1225(b) (non-citizens seeking admission).

86. Under the discretionary detention statute, 8 U.S.C. § 1226(a), a noncitizen may request a bond hearing at any time to contest whether he is a danger or a flight risk and thus properly detained during the pendency of his removal proceedings. But for Mr. Ghaleb's manner of immigration processing under the immigration agency's current interpretation, he would be detained under § 1226(a) and eligible for a bond hearing before an IJ. *See Matter of M-S-*, 27 I. & N. Dec. 509, 510 (2019).

87. Noncitizens detained under the mandatory provisions, like 8 U.S.C. § 1225(b) at issue here, are not provided bond hearings. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 842, 846 (2018) (holding that nothing in the statutory language of Sections 1225(b) and 1226(c) limit "the length of detention" authorized by the statute but leaving open whether indefinite detention under the statutes is constitutionally sound).

E. Due Process Protections Against Prolonged Detention Generally

88. "It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *see also Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) ("The Supreme Court long ago held that the Fifth Amendment entitles noncitizens to due process in removal proceedings."). In immigration habeas petitions, the "procedural and substantive due process inquiries overlap." *Black*, 103 F.4th at 142 n.12.

89. "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 (holding that 8 U.S.C. § 1231(a)(6), the post-order mandatory detention statute, has an implicit reasonable time limitation and does not permit indefinite detention). "The Constitution establishes due process rights for 'all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.'" *Black*, 103 F.4th at 143 (quoting *Zadvydas*, 533 U.S. at 693).

90. As such, detention pursuant to immigration proceedings—which are civil, not criminal—is constitutionally permissible only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). "Due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

91. "A statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Zadvydas*, 533 U.S. at 690. Due process thus also requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [detained] individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal citation omitted).

92. In 2015, the Ninth Circuit in *Rodriguez v. Robbins*, relied on the canon of constitutional avoidance and read the mandatory detention statutes of §§ 1225(b) and 1226(c) as containing an implicit 6-month time limit. 804 F.3d 1060, 1082 (9th Cir. 2015), *rev'd sub nom. Jennings*, 138 S. Ct. at 1082. The Ninth Circuit held that after six months, the detention statute shifts to § 1226(a), the discretionary statute that requires a bond hearing. *Id.* The

Ninth Circuit found "that detention beyond the initial 6-month period is permitted only if the Government proves by clear and convincing evidence that further detention is justified." *Jennings*, 138 S. Ct. at 839.

93. Also in 2015, the Second Circuit similarly held in *Lora v. Shanahan*, that section 1226(c) has "an implicit temporal limitation" requiring that detainees be afforded a bond hearing after six months. 804 F.3d 601, 606 (2d Cir. 2015), *cert. granted, judgment vacated*, 138 S. Ct. 1260.

94. In 2018, the Supreme Court in *Jennings v. Rodriguez* reversed the Ninth Circuit and vacated the Second Circuit, finding that the statutory text of §§ 1225(b) and 1226(c) did not impose a limit on detention or mandate a bond hearing. 138 S. Ct. at 834.

95. However, "[t]he Court's reversal of [the] statutory holding[s] in *Lora* [and *Rodriguez*] did not resolve the constitutional concerns" of indefinite prolonged, mandatory detention. *Black*, 103 F.4th at 144–45. The Supreme Court in *Jennings* "did not answer the question whether due process places *any* limits on the government's detention authority." *Id.* at 144 (emphasis in original).

96. In 2020, the Second Circuit—observing that the Supreme Court in *Jennings* "expressly declined to reach the constitutional issues" of prolonged, indefinite detention—held on constitutional grounds in *Velasco Lopez v. Decker* that a non-citizen's "prolonged incarceration [under section 1226(a), the discretionary detention statute], which had continued for fifteen months without an end in sight or a determination that he was a danger or flight risk, violated due process." 978 F.3d 842, 857 (2d Cir. 2020). To determine when a non-citizen's detention has become unconstitutionally prolonged, the Second Circuit in *Velasco Lopez* used the three-factor *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test. *Id.* at 851.

97. The three *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "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 (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

98. In February 2023, a court in this District also used the *Mathews* test to find that a non-citizen's 16 months of mandatory detention under section 1231(a) (post-removal order detention) without a bond hearing violated due process. *Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *7 (S.D.N.Y. Feb. 6, 2023) ("As all three *Mathews* factors weigh in favor of Petitioner, as in *Velasco Lopez*, the Court finds that the Government has denied Petitioner due process by subjecting him to prolonged detention under § 1231(a)(6) without affording him a bond hearing at which the Government must carry the burden by clear and convincing evidence of justifying his detention.").

99. Recently in May 2024, the Second Circuit in *Black v. Decker* examined the constitutional concerns of the mandatory detention statute at section 1226(c) and, too, adopted the three-factor *Mathews* test in determining whether a non-citizen's mandatory detention violates due process. 103 F.4th at 147. The Court held that "[t]he Constitution does not permit the Executive to detain a noncitizen for an unreasonably prolonged period under section 1226(c) without a bond hearing; at some point, additional procedural protections—like a bond hearing—become necessary." *Id.* at 145. Mr. Ghaleb has been in detention for over 13 months, and one of the petitioners in *Black* had been detained for less than seven months when the district court ordered a bond hearing. *Id.* at 139; *see also Black v. Decker*, No. 20

CIV. 3055 (LGS), 2020 WL 4260994, at *7–9 (S.D.N.Y. July 23, 2020), *aff'd*, 103 F.4th 133 (2d Cir. 2024). The Second Circuit held that "the district court properly granted Black's petition, required a bond hearing be conducted, and further required the government to show at such a bond hearing, by clear and convincing evidence, the need for Black's continued detention." 103 F.4th at 159.

F. Due Process and Prolonged Detention of Asylum Seekers under Section 1225(b)

100. The Second Circuit has not addressed when additional protections become constitutionally necessary for non-citizens mandatorily detained under section 1225(b). But their decisions in *Velasco-Lopez* (Section 1226(a)) and *Black* (Section 1226(c)) are instructive as to the due process limits of such detention. *See Black*, 103 F.4th at 145 ("That *Velasco Lopez* dealt with section 1226(a) detention means only that the case is not directly binding here, not that its reasoning is irrelevant."). Under any detention statute, "[s]erious constitutional concerns would arise absent some procedural safeguard in place for immigrants detained for months without a hearing." *Id.* at 145. "At some point, additional procedural protections—like a bond hearing—become necessary." *Id.*

101. Although people classified as arriving aliens and placed in expedited removal proceedings do not have the same due process rights with respect to judicial review of their removal proceedings as those who have already entered the United States, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020), this distinction does not disturb their Fifth Amendment right to be free from unreasonable detention. *See, e.g.*, *Gutierrez v. Dubois*, No. 20 CIV. 2079 (PGG), 2020 WL 3072242, at *3 (S.D.N.Y. June 10, 2020) (noting in case of a petitioner held under 8 U.S.C. § 1225(b) at OCCF, that "[t]he jurisdiction conferred by [28 U.S.C. §] 2241 includes the power to grant a writ to non-citizens who are

detained in violation of the Constitution."); *A.L. v. Oddo*, No. CV 3:24-302, 2025 WL 352471, at *2 (W.D. Pa. Jan. 6, 2025); *Leke v. Hott*, 521 F. Supp. 3d 597, 603–05 (E.D. Va. 2021); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 770–73 (S.D. Cal. 2020); *Arechiga v. Archambeault*, No. 23 Civ. 600 (CDS) (VCF), 2023 WL 5207589, at *3 (D. Nev. Aug. 11, 2023). Moreover, Mr. Ghaleb's expedited removal order was vacated after he expressed a credible fear of persecution, and he has since won immigration relief. Coffrin-St. Julien Decl. ¶¶ 17, 56.

102. Further, district courts in this jurisdiction have held that non-citizens detained under § 1225(b) for less time than Mr. Ghaleb's 13 months should have access to bond hearings to avoid due process concerns. *See, e.g.*, *Lett v. Decker*, 346 F. Supp. 3d 379 (S.D.N.Y. 2018) (granting habeas petition and ordering constitutionally adequate bond hearing for noncitizen detained under § 1225(b), finding petitioner's 10-month detention unreasonable under multi-factor test), *vacated as moot by Lett v. Decker*, No. 18-3714, 2020 WL 13558956 (2d Cir. July 30, 2020); *Perez v. Decker*, No. 18-cv-5279, 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018) (granting habeas petition and ordering constitutionally adequate bond hearing for noncitizen held under § 1225(b), finding 9 months of detention violated due process); *Brissett v. Decker*, 324 F. Supp. 3d 444 (S.D.N.Y. 2018) (granting habeas petition for noncitizen held under § 1225(b) for 9 months, finding prolonged detention violated due process); *Birch v. Decker*, No. 17-CV- 6769 (KBF), 2018 WL 794618, at *7 (S.D.N.Y. Feb. 7, 2018) (granting habeas petition after 11 months and stating that "[t]o the extent that § 1225(b) could not be fairly read to include an implicit time limit on mandatory detention, the Court would alternatively have to conclude that it is unconstitutional. Congress' authority to make immigration law, though broad, is not completely unrestricted. . . . Indefinite,

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.") (citations omitted).

103. Even if a bond hearing is not required after six months in every case, at a minimum, due process requires a bond hearing after detention becomes unreasonably prolonged. *See Diop*, 656 F.3d at 234; *see also Black*, 103 F.4th at 145 (§ 1226(c)); *Velasco Lopez*, 978 F.3d at 846 (§ 1226(a)); *Cabrera Galdamez*, 2023 WL 1777310, at *4.

G. A Bond Hearing Must Have Adequate Procedural Safeguards

104. A bond hearing must include certain safeguards and meet certain standards for it to provide meaningful due process for an individual subject to prolonged detention. DHS must therefore demonstrate by "clear and convincing" evidence that an individual presents an unjustifiable risk of flight or danger to the community to continue detention beyond six-months, and the immigration judge must consider the non-citizen's ability to pay a bond and the alternatives to detention available as it relates to both dangerousness and flight risk. *See Black*, 103 F.4th at 155 ("We conclude that the district court properly directed the government to justify Black's continued detention by clear and convincing evidence and the IJ to consider both Black's ability to pay and any alternatives to detention."); *Velasco Lopez*, 978 F.3d at 856 (concluding the same, noting "[t]he Supreme Court has consistently held the Government to a standard of proof higher than a preponderance of the evidence where liberty is at stake, and has reaffirmed the clear and convincing standard for various types of civil detention." (internal citations omitted)); *Cantor v. Freden*, No. 24-CV-764-LJV, 2025 WL 39789, at *8 (W.D.N.Y. Jan. 7, 2025) (finding that an IJ must consider alternatives to detention as to dangerousness and flight risk, stating that "there is no conceptual or practical

reason to address conditions that might ameliorate danger when assessing dangerousness any differently than the risk-of-flight analysis requires for conditions that might ameliorate that risk").

a. The Burden of Proving Dangerousness and Flight Risk Must Be on the Government

105. The Second Circuit has consistently held that "[w]here the government seeks to continue depriving a person of their liberty—especially when a district court has already found that deprivation to be unconstitutionally prolonged—we must require the government to bear the burden [by clear and convincing evidence] of proving the need for continued detention." *Black*, 103 F.4th at 155 (holding that the government bears the burden of proving the need for continued detention under section 1226(c) once it has become unconstitutionally prolonged). As the Second Circuit observed in *Black*, "[w]here an individual's liberty is at stake, the Supreme Court has consistently used this evidentiary [clear and convincing] standard for continued detention." 103 F.4th at 157 (citing cases).

106. "Requiring that detainees [] prove that they are *not* a danger and *not* a flight risk—after the government has enjoyed a presumption that detention is necessary—presents too great a risk of an erroneous deprivation of liberty after a detention that has already been unreasonably prolonged." *Black*, 103 F.4th at 156. DHS must therefore demonstrate by "clear and convincing" evidence that an individual presents an unjustifiable risk of flight or danger to the community to continue detention beyond six-months. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020) (placing the burden on DHS by clear and convincing evidence at a § 1226(c) bond hearing because where a noncitizen "stands to lose his liberty, even temporarily, we hold the Government to a higher burden of proof").

107. Courts in this district, deciding on constitutional principles, support placing the burden on Respondents and imposing a clear and convincing evidentiary standard where habeas petitioners are subject to mandatory and/or prolonged detention. *See Villatoro v. Joyce*, No. 22 CIV. 6270 (AT), 2024 WL 68533, at *6 (S.D.N.Y. Jan. 5, 2024); *Garcia v. Decker*, No. 22 CIV. 6273 (PGG), 2023 WL 3818464, at *6 (S.D.N.Y. June 5, 2023); P.M. v. Joyce, No. 22-CV-6321 (VEC), 2023 WL 2401458, at *6 (S.D.N.Y. Mar. 8, 2023); *Cabrera Galdamez*, 2023 WL 1777310, at *9; *Toussaint v. Garland*, No. 21-CV-10904 (CS), 2022 WL 2354547, at *7 (S.D.N.Y. June 30, 2022) (T]he 'overwhelming majority' of courts have concluded, post-*Jennings*, that when unreviewed detention has become unreasonable, the government must bear the burden of proof at a bond hearing by clear and convincing evidence, to ensure the preservation of the detainees' fundamental liberty interests." (quoting *Joseph v. Decker*, No. 18-CV-2640 (RA), 2018 WL 6075067, at *12 (S.D.N.Y. Nov. 21, 2018)); *Rosario v. Decker*, No. 21 CIV. 4815 (AT), 2021 WL 3115749, at *5 (S.D.N.Y. July 20, 2021).

b. The Immigration Judge Must Consider Alternatives to Detention and Ability to Pay Bond

108. The Due Process Clause requires that detention "bear a reasonable relation to its purpose." *Zadvydas*, 533 U.S. at 690; *see also Velasco Lopez*, 978 F.3d at 854–55 (holding that the only legitimate purposes for immigration detention are to protect community safety and to ensure that noncitizens attend future hearings). To satisfy this requirement, a bond hearing must include additional procedural protections, specifically consideration of an individual's ability to pay and alternatives conditions of release. *See Black*, 103 F.4th at 158 ("The district court in Black's case also properly required the IJ to consider Black's ability to pay and alternatives to detention when setting any bond amount.").

109. A robust consensus of district courts in this Circuit agree that due process requires consideration of an individual's ability to pay and alternative conditions of release when setting a bond. *See Roman v. Decker*, No. 20-CV-6752 (AJN), 2020 WL 5743522, at *4 (S.D.N.Y. Sept. 25, 2020) ("Requiring that the adjudicator consider alternative conditions of release and the detainee's ability to pay in setting bond thus ensures that detention is not imposed arbitrarily."); *see also Rodriguez Sanchez v. Decker*, 431 F. Supp. 3d 310, 317 (S.D.N.Y. 2019) (collecting cases); *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *8 (S.D.N.Y. Dec. 14, 2020); *Hernandez-Aviles v. Decker*, No. 20 CIV. 7636 (ER), 2020 WL 5836519, at *2 (S.D.N.Y. Oct. 1, 2020); *Fernandez Aguirre v. Barr*, 19-CV-7048 (VEC), 2019 WL 4511933, at *4 (S.D.N.Y. Sept. 18, 2019); *Hernandez v. Decker*, No. 18-CV-5026 (ALC), 2018 WL 3579108, at *12 (S.D.N.Y July 25, 2018).

110. If the noncitizen's ability to pay is not considered after they have been deemed eligible for bond, they will continue to be detained not for a legitimate purpose but solely due to their indigency, accomplishing "little more than punishing a person for his poverty." *Hernandez v. Sessions*, 872 F.3d 976, 992 (9th Cir. 2017) (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)). "[A] bond determination that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests." *Id.* at 991.

111. Similarly, if the government can protect its regulatory interests through less restrictive means, detention is no longer reasonably related to a legitimate purpose. *See Salerno v. United States*, 481 U.S. 739, 755 (1987) (approving a pre-trial detention act that required the Government to show that no conditions of release could satisfy its interests); *Bell v. Wolfish*, 441 U.S. 520, 538 (1979); *Hernandez*, 872 F.3d at 991. Where an alternative condition of

release would reasonably safeguard the government's interest, the government has no legitimate interest in detaining that person. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 231 (W.D.N.Y. 2019) ("[T]he determination of whether detention was 'necessary to serve a compelling regulatory purpose' necessarily required the decisionmaker to consider whether 'a less restrictive alternative to detention' would suffice."). Accordingly, due process requires that the government, to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect their interests, and the immigration judge in turn must consider those alternatives. *See Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances).

CLAIM FOR RELIEF

FIRST CAUSE OF ACTION

PROLONGED DETENTION IS A CONSTITUTIONAL VIOLATION UNDER THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE

112. Petitioner hereby realleges and incorporates by reference the foregoing paragraphs.

113. Mr. Ghaleb's prolonged incarceration without a hearing—which has lasted 13 months and is certain to extend much further—violates his procedural and substantive due process rights. *See Black v. Decker*, 103 F.4th 133, 142 n.12 (2d Cir. 2024) (in immigration habeas petitions, "procedural and substantive due process inquiries overlap") (citations omitted); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("Due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.").

114. The *Mathews v. Eldridge*, 424 U.S. 319 (1976), three-factor test confirms that procedural due process entitles him to an individualized hearing. All three *Mathews* factors cut sharply in his favor.

115. First, the private interest implicated with mandatory immigration detention is "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). The Supreme Court has repeatedly held that "commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States*, 463 U.S. 354, 361 (1983) (quoting *Addington v. Texas*, 441 U.S. 418, 425, (1979)). Most importantly, "[t]he longer the duration of incarceration, the greater the deprivation." *Velasco Lopez*, 978 F.3d at 852; *see also Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) ("The consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships.").

116. For Mr. Ghaleb, his prolonged detention of over a year is a substantial deprivation of his liberty and has worsened his physical health, resulting in one hospitalization. District courts in this jurisdiction have ordered bond hearings for non-citizens detained under § 1225(b) for less time than Mr. Ghaleb's thirteen months. *See, e.g.*, *Lett v. Decker*, 346 F. Supp. 3d 379 (S.D.N.Y. 2018) (10 months), *vacated as moot by Lett v. Decker*, No. 18-3714, 2020 WL 13558956 (2d Cir. July 30, 2020); *Perez v. Decker*, No. 18-cv-5279, 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018) (9 months); *Brissett v. Decker*, 324 F. Supp. 3d 444 (S.D.N.Y. 2018) (9 months); *Birch v. Decker*, No. 17-CV- 6769 (KBF), 2018 WL 794618, at *7 (S.D.N.Y. Feb. 7, 2018) (11 months).

117. The second *Mathews* factor—the risk of erroneous deprivation of the private interest and probable value of additional safeguards—also weighs heavily in Mr. Ghaleb's favor. Under § 1225(b), there is no independent opportunity to assess whether a detained individual poses a danger to the community or risk of flight. The only process available to Petitioner to seek release from detention is to file a request for discretionary parole. 8 U.S.C. § 1182(d)(5)(A). Mr. Ghaleb has submitted to ICE two humanitarian parole requests. In response to Mr. Ghaleb's first parole request that was accompanied by extensive documentation, ICE denied with no explanation or individualized assessment; ICE merely checked off a few boxes on a boilerplate form that they later had to amend because they checked off a wrong box. *See* Exs. D and E. In a subsequent internal review of that denial, ICE reviewing officials provided no explanation as to why they "concur[red]" in judgment, and they referred to immigration counsel by the wrong name and misstated the date of the review request. *See* Exs. F, G.

118. The second parole request remains pending. As a result, many noncitizens like Mr. Ghaleb are detained under § 1225(b) without meaningful consideration as to whether they are dangerous or likely to abscond. *See, e.g., Lora*, 804 F.3d at 616 (noting that habeas petitioner had been detained for nearly six months even though "[n]o principled argument has been mounted for the notion that he is either a risk of flight or is dangerous"); *Faure v. Decker*, No. 15-cv-5128 (JGK), 2015 WL 6143801, at *3 (S.D.N.Y. Oct. 19, 2015) (finding "no evidence" that the habeas petitioner "poses a danger to the public or would flee during the pendency of the removal proceedings"). The proposed procedural safeguard—an individualized hearing where an immigration judge may consider a range of factors related to dangerousness and flight risk and consider alternatives to detention—would significantly reduce the risk of erroneous deprivations of liberty.

119. The third factor in the *Mathews* analysis also weighs in favor of providing bond hearings, which will not harm the government's interests in preventing flight and danger to the community, reducing fiscal and administrative burdens, or promoting the broader public interest. *See Mathews*, 424 U.S. at 347 ("In striking the appropriate due process balance the final factor to be assessed is the public interest. This includes the administrative burden and other societal costs[.]"). In fact, ICE's own internal policies encourage the release of individuals like Mr. Ghaleb who have been granted relief. *See* Ex. I; *see also supra* ¶¶ 77–81.

120. Providing bond hearings will not undermine the government's interest in preventing flight and danger to the community because an immigration judge will assess these risks on an individual basis in the hearing and will decline to release those noncitizens who present individualized risks of absconding or threats to public safety. Providing bond hearings will not cause undue administrative burden on the immigration courts because they routinely conduct such hearings for individuals detained under § 1226(a), and prior to 2019, did so routinely for many non-citizens detained under § 1225(b). *See Matter of M-S-*, 27 I. & N. Dec. 509, 510 (2019) (overruling *Matter of X-K-*, 23 I. & N. Dec. 731 (BIA 2005)). Nor will it be unduly burdensome for ICE to justify continued detention when an individual is dangerous or a flight risk, in light of the government's access to relevant sources of information. Finally, unnecessary prolonged detention does not serve the broader public interest—rather, it imposes substantial costs on society. *See Velasco Lopez*, 978 F.3d at 854 ("[T]he Government has not articulated an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight. On the contrary, shifting the burden of proof to the Government to justify continued detention promotes the Government's interest—one we

believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.").

121. Respondents have already stripped Mr. Ghaleb of his freedom for thirteen months. DHS must now bear the burden of establishing by clear and convincing evidence that this ongoing deprivation of liberty is constitutionally permissible.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the New York Field Office and the Southern District of New York pending the resolution of this case;

3. Issue a writ of habeas corpus directing Respondents to release Petitioner or provide Petitioner, within fourteen days, a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing by clear and convincing evidence that continued detention is justified and that no alternative to detention will suffice as to dangerousness and flight risk, and at which ability to pay is considered, and to immediately release Petitioner from custody on his own recognizance or on reasonable conditions of supervision if such hearing is not provided;

4. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

5. Grant any other and further relief that this Court deems just and proper.

Dated: 4/14/2025

Respectfully submitted,

/s/ Nhu-Y Ngo
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Counsel for Petitioner

EXHIBITS

A. Declaration of Jessica Coffrin-St. Julien, Esq., dated 2/20/2025

B. Notice to Appear, dated 5/9/2023

C. Notice of Custody Determination, dated 1/22/2024

D. ICE Parole Denial, 1/7/2025

E. Amended ICE Parole Denial, dated 1/10/2025

F. ICE Parole Appeal Denial Email, dated 1/21/2025 (5:19 AM)

G. Corrected ICE Parole Appeal Denial Email, dated 1/21/2025 (5:40 AM)

H. Excerpt of Immigration Judge Decision Granting Withholding of Removal, dated 1/28/2025

I. ICE Policies Favoring Release Upon Grant of Relief

VERIFICATION

I, Nhu-Y Ngo, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

/s/ Nhu-Y Ngo

Nhu-Y Ngo
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