

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION

ANDRANIK GRIGORYAN,
Petitioner,

v.

JAMAL L. JAMISON, in his official capacity as Warden of Federal Detention Center, Philadelphia; BRIAN MCSHANE, in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Philadelphia Field Office; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAM BONDI, in her official capacity as Attorney General of the United States.

Respondents.

PETITION FOR A WRIT
OF HABEAS CORPUS

Case No.

INTRODUCTION

1. For more than 15 months, Respondents have held Petitioner Andranik Grigoryan (“Mr. Grigoryan” or “Petitioner”) in civil immigration detention without ever providing him a bond hearing—first at Moshannon Valley Processing Center (“Moshannon”) and now at the Federal Detention Center, Philadelphia (“FDC”). An Immigration Judge (“IJ”) granted Mr. Grigoryan relief from deportation in the form of deferral of removal under the Convention Against Torture (“CAT”) on September 20, 2024, finding that as an Armenian and a Christian, he would likely be tortured in his native Uzbekistan. However, since the Government appealed the IJ’s CAT grant to

the Board of Immigration Appeals (“BIA”) nearly five months ago, Respondents have continued to needlessly detain Mr. Grigoryan.

2. Mr. Grigoryan, who has epilepsy, has experienced seven seizures while detained by Respondents, and has consistently received grossly inadequate medical care in conditions that are totally indistinguishable from criminal punishment. Indeed, FDC, where Mr. Grigoryan is currently detained, is quite literally a federal prison operated by the Bureau of Prisons (“BOP”) that has only recently taken in immigration detainees such as Mr. Grigoryan.

3. Mr. Grigoryan’s prolonged detention without bond violates due process under well-established Third Circuit precedent. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203 (3d Cir. 2020). To remedy his unlawful detention, Mr. Grigoryan requests that this Court order the Government to promptly schedule a bond hearing before an IJ, at which Respondent bear the burden of proving by clear and convincing evidence that he is a flight risk or danger to the community, and at which the IJ considers Mr. Grigoryan’s ability to pay and alternatives to detention, such as conditional release.¹

JURISDICTION AND VENUE

4. This case arises under the United States Constitution. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution, 28 U.S.C. § 2241, and 28 U.S.C. § 1331.

5. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See German Santos*, 965 F.3d at 208; *Zadvydas*, 533 U.S. at 687. Administrative exhaustion is unnecessary as it would be futile. There is no statutory requirement

¹ In addition to the instant petition, Mr. Grigoryan is also filing a Temporary Restraining Order and Preliminary Injunction seeking his immediate release during the pendency of the petition.

to exhaust administrative remedies where a noncitizen challenges the lawfulness of detention. *Pujalt-Leon v. Holder*, 934 F. Supp. 2d 759, 773 (M.D. Pa. 2013).

6. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained in Philadelphia County, within the jurisdiction of the Eastern District of Pennsylvania.

PARTIES

7. Petitioner Andranik Grigoryan is a native and citizen of Uzbekistan who has been detained in Immigration and Customs Enforcement (“ICE”) custody without a bond hearing since December 7, 2023.

8. Respondent Jamal L. Jamison is the Warden of Federal Detention Center, Philadelphia. In his capacity as Warden, he oversees the administration and management of FDC. Accordingly, Mr. Jamison is the immediate custodian of Petitioner. Respondent Jamison is sued in his official capacity.

9. Respondent Brian McShane is the Field Office Director of the ICE Enforcement and Removal Operations (“ERO”) Philadelphia Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Pennsylvania, Delaware, and West Virginia and has the authority to make custody determinations regarding individuals detained there. Mr. McShane is a legal custodian of the Petitioner. Respondent McShane is sued in his official capacity.

10. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“DHS”). She supervises ICE, an agency within DHS which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Ms. Noem is the ultimate legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

11. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office of Immigration Review (“EOIR”), including all IJs and the BIA, and has authority over immigration detention and bond matters. Respondent Bondi is sued in her official capacity.

STATEMENT OF FACTS

Mr. Grigoryan’s Background and Immigration Proceedings

12. Mr. Grigoryan was born in 1986, in Tashkent, the capital of the Uzbek Soviet Socialist Republic, a union republic of the former Soviet Union that became the independent Republic of Uzbekistan in 1991. Ex. A, Declaration of Andranik Grigoryan at ¶¶ 1,3,5.

13. As ethnic Armenians and Christians, Mr. Grigoryan and his family repeatedly experienced severe religious and ethnic persecution from Uzbek nationalists in an overwhelmingly Uzbek and Muslim country. *Id.* at ¶¶ 4,6. Mr. Grigoryan, as well as his grandfather, parents, and sisters, each suffered violent public attacks at the hands of Muslim Uzbek nationalists throughout the 1990s. *Id.* at ¶ 6. As a result of these attacks, and the police’s repeated failure to protect them, the family realized that they could not remain in Uzbekistan any longer without risking further violence or death. *Id.* at ¶¶ 5–6. Seeking to flee this persecution, Mr. Grigoryan’s father came to the U.S. on his own, where he was tragically shot in the head and murdered in 1998. *Id.* at ¶ 8.

14. Mr. Grigoryan, his sisters, and mother successfully applied for U.S. tourist visas in order to attend his father’s funeral in the U.S. and return twice a year to visit his grave. Ex. A at ¶ 9. After arriving for such a visit in 1999, Mr. Grigoryan, his mom, and sisters subsequently applied for asylum status in the U.S., which was granted on May 17, 2000. *Id.*; Ex. B, Mr. Grigoryan’s Original Asylum Grant, dated May 17, 2000. Mr. Grigoryan has been here ever since and retained

his asylum status, until it was terminated when he was placed in removal proceedings more than two decades later. Ex. A at ¶ 9.

15. Mr. Grigoryan struggled to adjust to life in the U.S. because of ongoing grief over the death of his father, as well as his initial lack of proficiency in English. *Id.* at ¶ 10. His mother also had a very hard time making ends meet as an immigrant single mother of three children in a new country. *Id.* Regrettably, Mr. Grigoryan was forced to drop out of high school in order to work and support his mom and siblings, although he began classes to obtain his GED years later and hopes to finally complete his GED in the near future. *Id.*

16. Despite these challenges, Mr. Grigoryan did his best to help his family and has also been an active member of the St. Vartan Armenian Cathedral in New York City. *Id.* at ¶ 11. He also became a father in September 2023, when his girlfriend Anya gave birth to their daughter S-. *Id.* at ¶ 13.

17. Dealing with economic setbacks during the pandemic, Mr. Grigoryan allowed himself to get caught up in a gift card scheme in 2021 in California, actions that he now deeply regrets. Ex. A at ¶ 12. Mr. Grigoryan was convicted of Possession of Fifteen or More Unauthorized Access Devices in violation of 18 U.S.C. § 1029(a)(3) on September 12, 2022, in the U.S. District Court for the Central District of California, and subsequently sentenced to 16 months in federal prison, although this was later reduced to around 12 months for good behavior. *Id.*

18. As Mr. Grigoryan was finishing his prison sentence, DHS issued him a Notice of Intent to Terminate his asylum status on November 27, 2023, as well as a Notice to Appear placing him in removal proceedings due to his criminal conviction. *Id.* at ¶ 14. Through counsel, Mr. Grigoryan contested the Government's attempts to remove him to Uzbekistan and filed an I-589, Application

for Asylum and Withholding of Removal with the Elizabeth Immigration Court on March 13, 2024. *Id.* at ¶¶ 14–15.

19. At his individual merits hearing before the Elizabeth Immigration Court on September 20, 2024, Mr. Grigoryan, as well as his mother, testified about the harm that they had suffered in Uzbekistan and the reasons why he was afraid to return there. *Id.* at ¶ 16. With the help of his attorney, Mr. Grigoryan also presented objective country conditions evidence regarding current persecution of Christians and Armenians in Uzbekistan. *Id.* At the conclusion of the hearing, the IJ issued an oral decision finding Mr. Grigoryan removable, but granting him deferral of removal under the CAT because it is more likely than not that he will be tortured in Uzbekistan. *Id.* at ¶ 17; Ex. C, Immigration Judge’s Decision Granting Mr. Grigoryan Deferral of Removal Under the Convention Against Torture (“CAT”), dated September 20, 2024.

20. The DHS subsequently filed an appeal of the IJ’s decision with the BIA on October 18, 2024; that appeal is still pending now. Ex. D, BIA Notice of Appeal Filed by DHS, dated November 6, 2024; Ex. E, EOIR Case Status Info Page Showing DHS Appeal Is Still Pending, dated March 14, 2025. As a result, Mr. Grigoryan’s detention has continued for nearly six months since winning his case and will likely continue for many more months.

Mr. Grigoryan’s experiences in ICE detention

21. Mr. Grigoryan has remained in ICE detention throughout the duration of his immigration proceedings, ever since ICE detained him immediately as he was leaving the federal prison where he completed his sentence on December 7, 2023. Ex. A at ¶ 20. After holding Mr. Grigoryan for one day at the Elizabeth Detention Center in New Jersey, ICE brought Mr. Grigoryan to Moshannon on December 8, 2023. *Id.*

22. At Moshannon, Mr. Grigoryan was confined to a semi-communal “pod” or dormitory with dozens of other people for all but a few hours a day. *Id.* Mr. Grigoryan remained at Moshannon for more than 14 months until his transfer to FDC, the BOP-operated federal prison contracting with ICE, where he is currently detained, on February 18, 2025. *Id.*

23. The conditions that Mr. Grigoryan has experienced at FDC have been wholly indistinguishable from incarceration in a criminal jail or prison. At FDC, Mr. Grigoryan is forced to wear a uniform and detained in a small single-person cell for more than 16 hours each day. *Id.* at ¶ 25. The overwhelming majority of people detained at FDC are federal prison inmates being held in pre-trial detention there. *Id.*

24. At both Moshannon and FDC, Mr. Grigoryan has consistently received inadequate medical care—a situation that could prove life threatening for him, given the fact that he has epilepsy and must take his medication in exact doses at the same times twice a day. *Id.* at ¶¶ 22–24. While in ICE detention, Mr. Grigoryan has already experienced seven seizure episodes, which have involved intense muscle spasms, spitting out water, swallowing his tongue, his eyes going back in his head, being unable to stand up, and losing consciousness. *Id.* at ¶¶ 22–23; Ex. F, Medical Records from Moshannon Documenting Mr. Grigoryan’s Seizures. Every day at FDC, Mr. Grigoryan remains terrified that because he has been unable to see a neurologist while detained, and FDC staff have consistently failed to give his proper dosages of his medications at the correct times, he will imminently have another seizure, experience irreversible neurological damage, or worse. Ex. A at ¶ 24.

25. While detained at FDC, Mr. Grigoryan is also unable to work or earn any money to support his family. *Id.* at ¶ 26. Mr. Grigoryan must also pay exorbitantly high fees of six cents a minute for phone calls to keep in touch with his lawyer and other family members, with only 300 minutes

allotted per month. *Id.* He has struggled with being detained for nearly a year and a half, with no clear end in sight, and the prolonged separation from his family—especially from his one-year-old daughter and elderly mother—has taken a severe emotional toll on Mr. Grigoryan. *Id.* at ¶¶ 26–27.

26. If released, Mr. Grigoryan will return to New York, where his mother, girlfriend, and daughter live, and he has a strong social support network. Mr. Grigoryan will plan to live with his mother and get a job as soon as possible in order to support her, as well as his daughter and girlfriend. *Id.* at ¶¶ 29–30. Mr. Grigoryan will also look forward to getting involved in his church again more directly, and to hopefully completing his GED soon to open up even more new doors. *Id.* at ¶ 30. Out of ICE detention, Mr. Grigoryan is unlikely to pose a flight risk or danger to the community, given his lack of violent criminal history and family ties.

LEGAL BACKGROUND

27. The Third Circuit has long held that the Fifth Amendment’s Due Process Clause limits prolonged immigration detention without bond. *See Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 475–78 (3d Cir. 2015). Following the Supreme Court’s decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), which declined to read 8 U.S.C. § 1226(c) as automatically requiring bond hearings for all noncitizens after six months of detention, the Third Circuit in *German Santos* reaffirmed the reasoning in *Diop* and *Chavez-Alvarez* and held that when detention becomes unreasonably prolonged, due process requires a bond hearing where the Government bears the burden of proving by clear and convincing evidence that continued detention is necessary to prevent flight or danger to the community. 965 F.3d at 210, 213–14.

28. In *German Santos*, the Third Circuit articulated a four-factor, non-exhaustive, case-by-case balancing test for determining whether a noncitizen's mandatory detention has become unreasonably prolonged. The four factors, which borrow from *Diop* and *Chavez-Alvarez*, see *Diop*, 656 F.3d at 234; *Chavez-Alvarez*, 783 F.3d at 474, are (1) the "duration of detention" (2) "whether the [noncitizen]'s detention is likely to continue"; (3) the reasons for any delay, particularly "whether either party made careless or bad-faith errors in the proceedings that cause[d] unnecessary delay"; and (4) "whether the [noncitizen]'s conditions of confinement are meaningfully different from criminal punishment." *Id.* at 211.

29. The first factor—the length of detention without a bond hearing—is the "most important." *German Santos*, 965 F.3d at 211. The Third Circuit has held that mandatory detention without bond "becom[es] unreasonable sometime between six months and one year." *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478); see also *Diop*, 656 F.3d at 234 (holding that mandatory detention "becomes more and more suspect" after five months). Applying Third Circuit law, the Western and Middle Districts of Pennsylvania have repeatedly found detention periods between 12 and 18 months to be unreasonably prolonged, warranting a bond hearing consistent with due process. See, e.g., *Abioye v. Oddo*, 704 F. Supp. 3d 625, 631 (W.D. Pa. 2023) (18 months); *Rivas v. Oddo*, No. 3:22-cv-223, 2023 WL 4361140 at *2 (W.D. Pa. June 27, 2023) (15 months); *Nyameke v. Oddo*, No. 3:22-cv-240, 2023 WL 9271879, at *2 (W.D. Pa. May 4, 2023) (14 months); *Malede v. Lowe*, No. 1:22-CV-01031, 2022 WL 3084304, at *5 (M.D. Pa. Aug. 3, 2022) (18 months); *Davydov*, 2020 WL 969618, at *8 (14 months); *Kleinauskaite v. Doll*, No. 4:17-CV-02176, 2019 WL 3302236, at *6 (M.D. Pa. July 23, 2019) (12 months).

30. The second factor focuses on the likelihood of continued detention. If a petitioner's detention is "unlikely to end soon," continued detention without a bond hearing grows more

suspect. *German Santos*, 965 F.3d at 211. The Third Circuit and district courts within it have repeatedly held that this factor favors the petitioner where the petitioner’s immigration case remains pending after an extended period, particularly when it is currently on appeal. *See, e.g., id.* at 212 (noting that petitioner would “stay in prison as long as it takes the [appellate court] to issue its decision.”); *Chavez-Alvarez*, 783 F.3d at 477–78 (concluding that the parties “could have reasonably predicted that [the petitioner’s] appeal would take a substantial amount of time, making his already length detention considerably longer.”)

31. The third factor considers whether either party caused unnecessary delay by “carelessness or bad faith” in petitioner’s underlying immigration case. *German Santos*, 965 F.3d at 211. On this factor, courts cannot “hold a[] [noncitizen]’s good-faith challenge to his removal against him, even if his appeals or applications for relief have drawn out the proceedings,” *id.*, nor does seeking reasonable continuances amount to bad faith. *See Rad v. Lowe*, No. 1:21-cv-00171, 2021 WL 1392067, at *4 (M.D. Pa. Apr. 13, 2021); *Davydov*, 2021 WL 1392067, at *4. This factor often favors neither side. Yet detention “can still grow unreasonable even if the Government handles removal proceedings reasonably.” *German Santos*, 965 F.3d at 211. The Middle District of Pennsylvania has repeatedly found detention unreasonable in the absence of governmental bad faith. *See, e.g., Clarke v. Doll*, 481 F. Supp. 3d 394, 397–98 (M.D. Pa. 2020); *Davydov*, 2020 WL 969618, at *5.

32. The fourth and final *German Santos* factor compares the conditions of the petitioner’s ICE detention to conditions of criminal custody. This factor favors the petitioner where the conditions of confinement are not “meaningfully different” from criminal punishment. *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478) (cleaned up). Courts have exclusively found that this factor favors the petitioner where they are held in a prison that contracts with ICE. *See,*

e.g., *id.* at 213 (finding that ICE detention at Pike County Correctional Facility in Pennsylvania resembles criminal custody where individuals held for ICE alongside individuals with criminal convictions); *Buleishvili v. Hoover*, No. CV 1:20-1694, 2021 WL 674226, at *4 (M.D. Pa. Feb. 22, 2021) (same finding for Clinton County Correctional Facility in Pennsylvania).

33. If a petitioner's mandatory detention is deemed unreasonable under *German Santos*, the petitioner is entitled to a bond hearing at which the Government bears the burden of justifying continued detention by clear and convincing evidence. *German Santos*, 965 F.3d at 213–14. To do so, the Government must provide sufficient evidence that the petitioner *presently* poses a danger to the community or a flight risk. *Id.* at 214; *see also German Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *3 (M.D. Pa. Aug. 6, 2020) (noting that past criminal history does not place petitioner “forever beyond redemption” and that due process does not permit the decision-maker to “presume dangerousness to the community...based solely on [petitioner's] past record”).

34. To ensure that the burden of proof is properly applied by the IJ at the court-ordered bond hearing, courts in this circuit have retained jurisdiction to review the IJ's custody determination for consistency with the court's order and, if necessary, conduct their own bond hearings. *See, e.g., Clarke*, 481 F.3d at 399 (“The parties shall report to the court the outcome of the individualized bond hearing within seven days of the date of the immigration judge's hearing...If the immigration judge fails to convene an individualized bond hearing within 30 days of the date of this order, the court will reopen this case and conduct its own individualized bond hearing under the standards governing bail in habeas corpus proceedings.”); *Vega v. Doll*, No. 3:17-CV-01440, 2018 WL 3765431, at *13 (M.D. Pa. July 11, 2018) (“[I]t is further recommended that the District Court retain the authority to conduct its own individual bond consideration, if necessary”), *report and recommendation adopted*, No. 3:17-CV-01440, 2018 WL 3756755 (M.D. Pa. Aug. 8, 2018).

ARGUMENT

I. MR. GRIGORYAN'S PROLONGED DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS AND HE IS ENTITLED TO A PROMPT BOND HEARING.

a. Mr. Grigoryan's detention is unreasonably prolonged under *German Santos*.

35. Mr. Grigoryan is currently detained under 8 U.S.C. § 1226(c) due to his criminal conviction for Possession of Fifteen or More Unauthorized Access Devices in violation of 18 U.S.C. § 1029(a)(3), which the IJ found rendered him removable for having been convicted of an aggravated felony. *See* Ex. C at 3 (finding that Mr. Grigoryan is removable under 8 U.S.C. § 1227(a)(2)(A)(iii)); 8 U.S.C. § 1226(c)(1)(B) (“The Attorney General shall take into custody any [noncitizen] who . . . is deportable by reason of having committed any offense covered in under Section 1227(a)(2) . . . (A)(iii) . . . of this title.”). As a result, Mr. Grigoryan has never been afforded a bond hearing at any point during his prolonged detention, and therefore, the *German Santos* factors squarely apply to his case.

36. The first and “most important” factor—the length of detention without a bond hearing—favors Mr. Grigoryan because he has been detained for more than 15 months, since December 7, 2023. *See German Santos*, 965 F.3d at 211; Ex. A at ¶ 20. Mr. Grigoryan’s length of detention far exceeds the six-month to one-year timeframe laid out in *Chavez-Alvarez* and reaffirmed in *German Santos*. *See* 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478). Furthermore, Mr. Grigoryan has been detained for nearly as long or longer than numerous habeas petitioners granted relief by courts in this circuit. *See, e.g., Rivas*, 2023 WL 4361140 at *2 (W.D. Pa. June 27, 2023) (applying *German Santos* factors and granting bond hearing after 15 months); *Davydov*, 2020 WL 969618, at *8 (applying *Chavez-Alvarez* factors and granting bond hearing after 14 months); *Kleinauskaite*, 2019 WL 3302236, at *6 (finding detention became unreasonable after 12 months).

37. The second factor focuses on the likelihood of continued detention. The Government's appeal of the IJ's CAT grant remains pending before the BIA more than five months later, and nearly six months since the IJ's decision. Ex. D; Ex. E. If the BIA sustains the Government's appeal, it will likely remand Mr. Grigoryan's case back to the IJ for a new decision. Even if the BIA sustains the Government's appeal without remanding the case back down to the IJ, Mr. Grigoryan can appeal the BIA's negative decision to the Third Circuit. And even if the BIA dismisses the Government's appeal, the Government will likely attempt to continue to detain Mr. Grigoryan through the pendency of the 90-day removal period under 8 U.S.C. § 1231(a)(2)(A)—even though removal to a third country is highly unlikely, given Mr. Grigoryan's lack of ties to any other countries and the fact that he does not hold and has never held a passport in his own name. Ex. A at ¶ 18. As a result, there is no clear end in sight to Mr. Grigoryan's detention anytime soon.

38. The third factor—the reason for delays in the proceedings—favors Mr. Grigoryan or is at least neutral. Mr. Grigoryan has not sought any delays or continuances in the adjudication of his immigration case, and it is the Government that chose to appeal that grant, a decision fully outside of Mr. Grigoryan's control. Indeed, had DHS not appealed the IJ's CAT grant, Mr. Grigoryan would almost certainly have already been released. Instead, Mr. Grigoryan has been deprived of his liberty for months longer, through no fault of his own. Even if this Court determines that the Government has acted reasonably in Mr. Grigoryan's removal proceedings, it can and should find continued detention unreasonable. *See German Santos*, 965 F.3d at 211 (finding detention unreasonable where third factor favored neither party); *Clarke*, 481 F. Supp. 3d at 397–98 (rejecting Government's contention that petitioner's pursuit of immigration relief and absence of governmental bad faith precluded relief).

39. The fourth factor clearly favors Mr. Grigoryan because the conditions of his confinement—previously at Moshannon and now at FDC—are not “meaningfully different from criminal punishment.” *German Santos*, 965 F.3d at 211. FDC, which first opened in 2000, is a federal prison located in Center City, Philadelphia and operated by the Bureau of Prisons. The BOP’s own materials describe FDC as “an administrative security level facility, housing pretrial incarcerated individuals” in 628 cells.² In February 2025, FDC Philadelphia agreed to house up to 125 male noncitizens in immigration detention, according to an agreement between ICE, the BOP, the DHS, and the DOJ, and the first detainees—including Mr. Grigoryan—arrived later that month. Ex. G, “Philadelphia’s Federal Detention Center will house ICE detainees,” *Philadelphia Inquirer* Article, dated February 21, 2025, at 2; Ex. H, Copy of Agreement Between ICE, BOP, DHS, and DHS on Immigration Detention at BOP, dated February 6, 2025. Discussing the noncitizens held in immigration detention at FDC, an official with the union representing FDC employees, the American Federation of Government Employees’ (AFGE) Council of Prison Locals 33, explicitly stated that, “[t]hey’ll get treated just like any other person that would go to a federal prison.” Ex. G at 2, 4. While ICE has agreed to provide two officers to assist with supervising the new immigration detention population at FDC, essentially all staffing and day-to-day administration at FDC remains in the hands of BOP employees, who were already seriously understaffed, even before Mr. Grigoryan and the other people in immigration detention arrived there. *Id.* at 2, 6.

40. Indeed, at FDC, Mr. Grigoryan is confined to his single-person cell for at least 16 hours every day, and often longer, given the frequent lockdowns that occur throughout the entire facility. Ex. A at ¶ 25. His isolation, inadequate medical care, and limited ability to communicate with his

² See Bureau of Prisons, *FDC PHILADELPHIA 2025-2026, Psychological Doctoral Internship Brochure*, 4–5, available at: https://www.bop.gov/jobs/docs/phl_internship_brochure.pdf.

loved ones and attorneys are wholly indistinguishable from the experiences of other people interned in criminal detention in a federal prison such as FDC. *Id.* at ¶¶ 24–26.

41. To the extent that the Court considers the conditions at Moshannon where Mr. Grigoryan was previously detained, those conditions are clearly punitive as well. As the Middle District of Pennsylvania has recognized, Moshannon Valley Processing Center was “once a private facility [called Moshannon Valley Correctional Center] that contracted with the Federal Bureau of Prisons to house federal prisoners,” and “has since been repurposed as an immigration detention facility” beginning in September 2021. *Miller v. Mannion*, 1:22-CV-00840, 2022 WL 3044650, at *1 n.1 (M.D. Pa. July 11, 2022). The private company that owns and manages Moshannon, GEO Group, continues to operate the 1,878-bed facility on behalf of ICE in largely the same way as it did on behalf of the Bureau of Prisons, including keeping many of the same people employed at the facility.³ Detained noncitizens such as Mr. Grigoryan are held in the same “pods” that formerly housed federal prisoners and wear differently colored prison garb depending on their security classification. *See* Ex. A at ¶ 20. The Western District of Pennsylvania found that “the physical facility at Moshannon . . . is unlikely to have changed much since it expressly was a criminal detention center.” *Rivas*, 2023 WL 4361140 at *2.

42. In May 2023, DHS’s Office for Civil Rights and Civil Liberties (“CRCL”) concluded that Moshannon’s after-action reviews following several use of force incidents failed to “identif[y] or address[] unsafe and avoidable takedown techniques,” that Moshannon staff “did not have sufficient training” in the Prison Rape Elimination Act (“PREA”), and that staff regularly relied

³ *See* Casey Tolan, *Biden vowed to close federal private prisons, but prison companies are finding loopholes to keep them open*, CNN (Nov. 12, 2021), available at: <https://www.cnn.com/2021/11/12/politics/biden-private-prisons-immigration-detention-centers-invs/index.html>.

on noncitizens to interpret instead of using appropriate language line services.⁴ In July 2024, Moshannon was the subject of a CRCL complaint providing “pervasive accounts of retribution and the prison-like environment reported by individuals detained at Moshannon.”⁵ The complaint described how ICE consistently failed to abide by its constitutional obligations as well as its own internal detention standards.⁶ For example, the complaint describes the experiences of noncitizens detained at Moshannon to whom ICE and GEO consistently denied required translation and interpretation services, sometimes leading to inappropriate disciplinary action, including transfers to solitary confinement and lock-ins.⁷ The complaint also details how ICE falls short of its requirements to provide timely, comprehensive, and appropriate medical care to detained noncitizens at Moshannon, including delays in scheduling health services⁸ and the use of chemical agents against people in mental health crises, who are moreover frequently not referred for medical treatment.⁹

43. In summary, all four of the *German Santos* factors, including the most heavily weighted first factor, are squarely in Mr. Grigoryan’s favor. Therefore, Mr. Grigoryan’s more than 15-month detention without a bond hearing has become unreasonably prolonged in violation of due process. *See German Santos*, 965 F.3d at 213 (finding detention unreasonable where three of four factors

⁴ CRCL, *Summary of CRCL’s Recommendations and ICE’s Response: Moshannon Valley Processing Center*, June 23, 2023, https://www.dhs.gov/sites/default/files/2023-09/23_0620_crcl-close-summary-ice-moshannon-valley-processing-center-06-20-23.pdf.

⁵ Complaint Regarding Egregious and Unconstitutional Conditions of Confinement at the Moshannon Valley Processing Center, at 58, July 10, 2024, https://www.aclupa.org/sites/default/files/field_documents/2024.07.10_crcl_complaint_-_moshannon.pdf.

⁶ ICE, 2011 Operations Manual ICE Performance-Based National Detention Standards, (rev. 2016) <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

⁷ Complaint Regarding Egregious and Unconstitutional Conditions of Confinement at the Moshannon Valley Processing Center, *supra* note 5, at 16–25.

⁸ *Id.* at 36–43.

⁹ *Id.* at 45–48.

favored petitioner); *Buleishvili*, 2021 WL 674226, at *3–4 (finding detention unreasonable where two of four factors favored petitioner).

- b. **This Court should order a bond hearing for Mr. Grigoryan with the burden on the Government by clear and convincing evidence, and with consideration of ability to pay and alternatives to detention, and it should further retain jurisdiction to conduct its own bond hearing if necessary.**

44. Because Mr. Grigoryan’s detention has become unreasonably prolonged in violation of due process, he is entitled to a prompt bond hearing at which the Government bears the burden of proof of justifying his continued detention by clear and convincing evidence. *See German Santos*, 965 F.3d at 214. If the Government cannot provide “individualized” evidence “to support a finding that continued detention is needed to prevent him from fleeing or harming the community,” then “it must release him.” *Id.*

45. This Court has the authority to conduct the bond hearing itself in the first instance. *See Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) (“[T]he authority to conduct [a bond] hearing has long been recognized as an essential ancillary aspect of [the Court’s] federal habeas corpus jurisdiction.”); *Thaxter v. Sabol*, No. 1:14-CV-02413, 2016 WL 3077351, at *3 (M.D. Pa. June 1, 2016) (ordering magistrate to conduct bond hearing in first instance). Nonetheless, district courts in the Third Circuit have generally opted for ordering an IJ to conduct the bond hearing in the first instance. *See, e.g., Malede*, 2022 WL 3084304, at *7 (ordering bond hearing in immigration court).

46. If this Court orders an IJ to conduct the bond hearing in immigration court, this Court should also retain jurisdiction to conduct its own bond hearing or order other appropriate remedies, should the Government fail to comply with this Court’s requirements. Such retention of jurisdiction “reconcile[s] the deference which should be accorded in the first instance to agency decision-making processes . . . with the District Court’s concurrent jurisdiction stemming from the

responsibility to address federal habeas corpus petitions filed by immigration detainees.” *Vega*, 2018 WL 3765431, at *13. Furthermore, explicitly retaining jurisdiction will help ensure that Mr. Grigoryan’s due process rights are fully vindicated, consistent with this Court’s order. *See Luciano-Jimenez v. Doll*, 547 F. Supp. 3d 462, 466 (M.D. Pa. 2021) (conducting district court bond hearing and ordering release after determining court-ordered *German Santos* hearing conducted by IJ was inadequate).

47. If this Court orders a bond hearing, due process also requires that the bond adjudicator consider Mr. Grigoryan’s ability to pay bond and alternatives to detention in addition to or in lieu of monetary bond, such as release with conditions of supervision. *See Leslie*, 865 F. Supp. 2d at 641-42 (ordering non-citizen’s release on conditions “that will reasonably ensure both the safety of the community” and “appearance at future immigration proceedings”). When the Government fails to consider a non-citizen’s financial circumstances when setting bond or fails to take in account alternatives to detention that would reasonably mitigate flight risk or danger, it runs the risk of impermissibly continuing detention without sufficient justification and based solely on an individual’s inability to pay. *See Curry v. Yachera*, 835 F.3d 373, 376 (3d Cir. 2016); *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). A prohibitively high bond that Mr. Grigoryan cannot pay is the practical equivalent of no bond at all.

48. Not only do alternatives to detention place far less of a burden on noncitizens like Mr. Grigoryan, but they have also proven to be highly effective. For example, the Intensive Supervision Appearance Program (“ISAP”)—one of ICE’s principal monitoring programs—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez*, 872 F.3d at 991 (observing that ISAP “resulted in a 99% attendance rate at all [immigration court] hearings and a 95% attendance rate at final hearings.”).

CLAIM FOR RELIEF

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO
THE U.S. CONSTITUTION**

49. Mr. Grigoryan realleges and incorporates by reference the paragraphs above.

50. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend. V.

51. Mr. Grigoryan's detention without a bond hearing violates due process, which demands that he receive a bond hearing before a neutral adjudicator at which Respondents bear the burden of justifying continued detention by clear and convincing evidence and at which the adjudicator considers appropriate alternatives to detention and Mr. Grigoryan's ability to pay.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Declare that Petitioner's prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;
- b. Order Respondents to, within 14 days, itself conduct or order that Petitioner receive an individualized bond hearing before a District Court Judge or Immigration Judge at which, to continue Petitioner's detention, the Government must prove by clear and convincing evidence that Petitioner poses a flight risk or danger the community, and at which the adjudicator must consider Petitioner's ability to pay and whether conditions of release might mitigate any risk of danger or flight.
- c. Retain jurisdiction over this matter to conduct its own bond hearing or order other appropriate remedies should the Government fail to comply with this Court's order;

- d. Award Petitioner all costs incurred in maintaining this action, including attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and on any other basis justified by law; and
- e. Grant any other further relief this Court deems just and proper.

Dated: March 14, 2025

Respectfully submitted,

/s/ Ellyn Elizabeth Jameson

Ellyn Jameson

PA Bar No. 328987

Amica Center for Immigrant Rights

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peter@caircoalition.org

Pending pro hac vice admission

Pro bono counsel for Mr. Grigoryan

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

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 14, 2025

Respectfully submitted,

/s/ Peter Cameron Alfredson

Peter Alfredson

Amica Center for Immigrant Rights
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Washington, DC 20036

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f. (202) 331-3341

peter@amicacenter.org

Pro bono counsel for Mr. Grigoryan

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I or my co-counsel will furthermore send a courtesy copy via email to the office of the United States Attorney for the Eastern District of Pennsylvania and send true copies by USPS Certified Priority Mail to the following individuals:

Jamal L. Jamison, Warden
Federal Detention Center, Philadelphia
700 Arch St.
Philadelphia, PA 19106

Brian McShane, Field Office Director
U.S. Immigration and Customs Enforcement, Philadelphia Field Office
114 North 8th St.
Philadelphia, PA 19107

Kristi Noem, Secretary
U.S. Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave., SE
Washington, DC 20528

Pam Bondi, Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

David Metcalf, U.S. Attorney
U.S. Department of Justice
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

Dated: March 14, 2025

Respectfully submitted,

/s/ Ellyn Elizabeth Jameson
Ellyn Jameson

Pro bono counsel for Mr. Grigoryan

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)
PTF DEF Citizen of This State
PTF DEF Citizen of Another State
PTF DEF Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Click here for: Nature of Suit Code Descriptions.
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other.
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157.
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016.
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)).
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609.
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

CIVIL COVER SHEET SUPPLEMENT

McShane, Brian, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Philadelphia Field Office;

Noem, Kristi, Secretary of the U.S. Department of Homeland Security;

Bondi, Pam, Attorney General of the United States.

EXHIBIT A

DECLARATION OF ANDRANIK GRIGORYAN

I, Andranik Grigoryan, declare under the penalty of perjury that the following is true and correct to the best of my ability:

1. My name is Andranik Grigoryan. I was born in 1986, in the former Soviet Union (in what is now the Republic of Uzbekistan) and I am currently 38 years old.
2. I am currently detained in Immigration and Customs Enforcement (“ICE”) custody at the Federal Detention Center, Philadelphia (“FDC”) and before that, I was detained at the Moshannon Valley Processing Center (“Moshannon”) in Philipsburg, Pennsylvania. ICE has now detained me for over 15 months, and I have never received a bond hearing during that time.

My traumatic childhood in Uzbekistan and persecution because I am an Armenian and a Christian

3. I was born and raised in Tashkent, which at the time was the capital of the Uzbek Soviet Socialist Republic (“Uzbek SSR”), a union republic within the former Soviet Union, which is now the Republic of Uzbekistan.
4. Most people in the Uzbek SSR and the Republic of Uzbekistan are ethnic Uzbeks and Muslims. However, my family and I are ethnic Armenians and Christians who belong to the Armenian Apostolic Church.
5. In 1991, the Soviet Union collapsed, and the Uzbek SSR became the newly independent Republic of Uzbekistan. Unfortunately, the situation for my family and other ethnic Armenians living in independent Uzbekistan quickly deteriorated even further.
6. Throughout the 1990s, my family and I, including my parents, sisters, and grandfather, were subject to a series of terrifying violent attacks and threats by Muslim Uzbek nationalists, including public beatings that resulted in serious injuries and hospitalization—simply because we were Armenians and Christians. The police consistently failed to protect us from this violence.
7. My family began to understand that there was no way for us to continue living in Uzbekistan without risking our lives and remaining constantly terrified of the next attack.

My life in the U.S

8. Seeking to escape this persecution, my father came by himself to the U.S. by himself, but was tragically shot in the head and murdered in New York in 1998.
9. My mom, siblings, and I obtained tourist visas to travel to the U.S. so that we could attend the funeral and visit his grave twice a year. Later in 1999, after arriving in the U.S. for a visit, we applied for asylum here. The U.S. government granted our applications for asylum on May 17, 2000, and I have been here ever since. I kept my asylum status until 2023 and never became a lawful permanent resident.

10. I was still just a teenager when we came to the U.S. and I really struggled with adjusting to life here. At first, I had a really hard time because I couldn't speak English, and it took me some time to learn the language. It was also really difficult for my mom, raising three young kids in the U.S. on her own as an immigrant single mother and widow. I also missed my dad, and his murder left a big void in my life. While I did attend high school for a time, I dropped out before I was able to graduate, in order to work and help support my mom and siblings. I later took some classes to get my GED but have never been able to finish all of them.
11. Throughout this time, I did my best to help my family and be a positive member of my community. I have been very involved in my church, the St. Vartan Armenian Cathedral in New York City. I regularly attend mass there on Sundays and try to volunteer and contribute there as often as I can, such as by carrying the incense during services. I feel so fortunate that in the U.S., my family and I can practice our religion freely and not have to worry about people trying to hurt us, simply because we are Christians and Armenians.
12. Like many people, I struggled to find work during the COVID-19 pandemic and fell upon hard times financially. Unfortunately, I let myself get caught up in a gift card scam when I was living in California a few years ago. I really regret my actions now and wish I could go back and do things differently. I was convicted of Possession of Fifteen or More Unauthorized Access Devices in violation of 18 U.S.C. § 1029(a)(3) on September 12, 2022 in the U.S. District Court for the Central District of California. I was sentenced to 16 months in federal prison, although this was reduced to around 12 months for good behavior.
13. I also became a father in September 2023, when my girlfriend Anya gave birth to our child, Sona. Sadly, it has been very difficult to be a dad and spend time with my daughter while I have been in prison or immigration detention, and I have only been able to meet her once since she was born.

My immigration proceedings

14. ICE issued me a Notice of Intent to Terminate my asylum status on November 27, 2023. As soon as I finished serving my federal prison sentence, on December 7, 2023, I was detained by ICE and have been ever since. ICE also filed a Notice to Appear placing me in removal proceedings. I appeared in immigration court soon afterward and contested the government's attempts to deport me back to Uzbekistan.
15. On March 13, 2024, with the help of an attorney, I submitted an I-589 application to the immigration court to seek humanitarian relief that would allow me to remain in the U.S. My attorney submitted evidence about how I would once again face threats of torture and persecution in Uzbekistan if deported there, because the conditions facing Christians and Armenians are still horrible.
16. I had a merits hearing in my immigration case before an Immigration Judge ("IJ") at the Elizabeth Immigration Court on September 20, 2024. At the hearing, I and several of my family members testified about our prior experiences in Uzbekistan and the reasons why I

am afraid to return there, and I submitted other country conditions evidence on the dangerous situation that Armenians and Christians currently face in Uzbekistan.

17. At the conclusion of the hearing, the IJ granted my application for deferral of removal under the Convention Against Torture (“CAT”), meaning I cannot be deported back to Uzbekistan. The government subsequently appealed the IJ’s decision granting CAT relief to the Board of Immigration Appeals (“BIA”) on October 18, 2024, claiming that the IJ had erred in finding me credible and that I had not shown I would be tortured in Uzbekistan. Nearly five months later, the government’s appeal is still pending.
18. It has been very hard to find any information or updates about the status of my immigration case while detained. ICE has also told me that they want to look into alternative countries of removal, and I gave them three countries at random, since I have only ever had any kind of status in Uzbekistan or the U.S., and I have never had an Uzbek passport in my own name. They have not given me any specific news or information about any attempts to facilitate my removal to a third country.

My difficult experiences in ICE detention, including dangerously inadequate medical care

19. I have now been detained by ICE for more than 15 months, ever since the government started trying to deport me when my federal prison sentence ended. During this time, I have suffered so much every day, especially because of my untreated epilepsy and repeated seizures in detention. I am incredibly worried that if I am not released soon, I may not ever make it out of here alive.
20. When ICE initially detained me on December 7, 2023, they brought me to the Elizabeth Detention Center in New Jersey for a day, then transferred me on December 8, 2023 to the Moshannon Valley Processing Center (“Moshannon”) in Philipsburg, Pennsylvania. I stayed at Moshannon for more than 14 months. Being detained at Moshannon felt just like being in jail or prison, since I was forced to wear a uniform and confined to a dormitory or “pod” with several other dozen people there for all but a few hours a day. However, the conditions at Moshannon were better than those at the Federal Detention Center, Philadelphia (“FDC”), where I have been detained since February 18, 2025.
21. I have a number of serious health conditions, some of which proceeded my time in ICE detention. I experienced a traumatic head injury in 2018, which doctors have since told me likely caused me to develop epilepsy. In 2021, while I was living in California, I also experienced a collapsed lung and had to have emergency surgery.
22. Most critically, I have epilepsy, which can lead to grand mal seizures, especially if I’m not able to receive the correct dosage of medication at exact times twice each day. These seizures can be life-threatening and involve symptoms such as intense muscle spasms, spitting out water, swallowing my tongue, my eyes going back in my head, being unable to stand up, and losing consciousness. When I have a seizure, I need medical attention

immediately and if left untreated, I could experience permanent neurological damage or even die.

23. It has been a serious challenge to receive proper medical care, first at Moshannon and now at FDC. When I was at Moshannon, I had trouble getting the correct dosage of my medication and was never permitted to see a neurologist in the entire 14 months I was there. I have had seven grand mal seizures while in ICE detention—one roughly every three months—which has been terrifying. In one of the seizures at Moshannon, I hit my head and was brought to the hospital. I also had a seizure while I was in the shower at Moshannon and lost consciousness, but thankfully someone found me and was able to help me get medical attention quickly.
24. At FDC, the level of medical care has been even worse than it was at Moshannon. They give out medication twice a day, at 8 AM and 2 PM, and those are the only times you can receive your medications. However, I am supposed to take my epilepsy medication in two doses, timed 12 hours apart. I am afraid that by taking the second dose six hours early, I will risk having another seizure soon. Also, when they give out medicine here, they announce it is time for meds at the end of the hallway where everyone's cells are located and call your name. But because it's very hard to hear from the other end of the hallway, sometimes it's simply impossible to hear my name and I miss a dosage of my medication. I am always afraid I am going to miss my meds on a given morning or afternoon and not get a dosage I need. I am also afraid that I will have a seizure while I am locked by myself in my single-occupancy cell, and no one will see or find me until it is too late and I suffer permanent neurological damage or even die.
25. Otherwise, life is very difficult at FDC. Since it is a literal federal prison, the vast majority of the other people here are serving criminal sentences or in transit between other federal prisons. Only a little over 100 of the roughly 1,000 people currently here are in immigration detention. One consequence of this situation is that there are frequent lockdowns, because whenever there is a lockdown on another floor of the building, they institute a lockdown on all the other floors at the same time. We have to wear uniforms like in any jail or prison. We also have to spend the overwhelming majority of our time—at least 16 hours every day—confined to small, one-person cells. It is extremely isolating and difficult to experience this every day without end.
26. While I am allowed to speak with my family and attorneys, this communication is also very limited. I am able to talk to my family and lawyers for only 300 minutes in total for an entire month. There are also only 7 phones for all 100 people in the immigration unit, which we are only allowed to use at specific, limited times of the day when we are not locked in our cells. It is also very expensive to use the phones here, since all calls cost 6 cents a minute, and I have been unable to work since being in prison and immigration detention. It has been very hard being separated from my family like this and unable to see or communicate with them easily.

27. I have now been in ICE custody for more than 15 months—14 months at Moshannon and the past month here at FDC. In that entire time, I’ve never had a bond hearing and the government has never had to explain or justify why they are detaining me. I don’t want to have to choose between staying trapped here in detention indefinitely, and giving up on fighting my deportation—and being sent back to torture or death in Uzbekistan, far away from my family.

My post-release plan

28. If the Court grants my petition and I am able to receive a bond hearing, it will mean so much to me. I have suffered so much in detention and just want to be with my family again and have the chance to get my life back on track.
29. Upon release, I will return to Brooklyn and stay with my mom and help support her. I will also really appreciate the opportunity to spend more time with my girlfriend and young daughter and focus on supporting my family as a good partner, dad, and son.
30. I will look forward to working and getting a job as soon as I am able to do so. I also hope to complete my GED so I can finally get up to speed on my education, after having to drop out of high school all those years ago. I also look forward to getting to go back to church again regularly and get more involved in practicing my religion which is so important to me. Finally, if released, I will go to a hospital to see a neurologist and hopefully learn some more information about my epilepsy and how to treat it, so that my symptoms stay under control and I stop having seizures.
31. I really hope that I am able to get a bond hearing and am able to get out of detention soon. I will comply with any rules or conditions of my release and am committed to being an upright member of the community and family man. I am scared that if I don’t get out of FDC soon, my health issues might otherwise mean that I never have a chance to leave this horrible place alive or without serious disabilities. I ask for the Court’s assistance in granting this petition and ordering that I finally receive a bond hearing after these horrific 15 months in ICE detention.

I declare under penalty of perjury that the following is true and correct to the best of my knowledge:

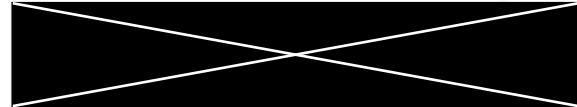
Dated: 03/12/2025

Signed: /s/ Andranik Grigoryan

EXHIBIT B

Admission Number

Welcome to the United States



I-94 Arrival/Departure Record - Instructions

This form must be completed by all persons except U.S. Citizens, returning resident aliens, aliens with immigrant visas, and Canadian Citizens visiting or in transit.

Type or print legibly with pen in ALL CAPITAL LETTERS. Use English. Do not write on the back of this form.

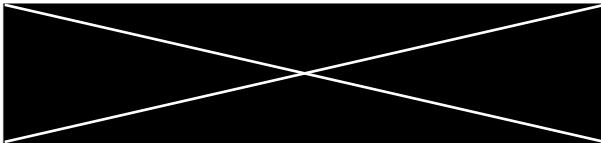
This form is in two parts. Please complete both the Arrival Record (Items 1 through 13) and the Departure Record (Items 14 through 17).

When all items are completed, present this form to the U.S. Immigration and Naturalization Service Inspector.

Item 7 - If you are entering the United States by land, enter LAND in this space. If you are entering the United States by ship, enter SEA in this space.

Form I-94 (04-15-00)Y

Admission Number



Asylum Granted
Indefinitely
Pursuant to
Section 208 of
the INA MAY 05 7
WJF

Immigration and
Naturalization Service

I-94
Arrival Record

MAY 17 2000



1 Family Name Grigoryan		7 Birth Date (Day Mo. Yr) 1,86	
2 First (Given) Name Andranik		5 Sex (Male or Female) male	
4 Country of Citizenship Uzbekistan		8 Airline and Flight Number	
3 Passport Number		9 City Where You Boarded	
6 Country Where You Live		11 Date Issued (Day Mo Yr)	
10 City Where Visa Was Issued			

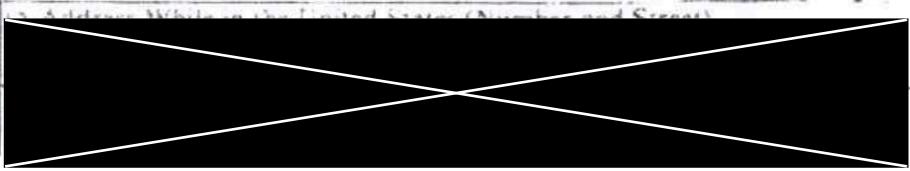


EXHIBIT C



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT

Respondent Name:

GRIGORYAN, ANDRANIK

To:

Usher, Mikhail
1022 Avenue P
2nd Fl, Usher Law Group
BROOKLYN, NY 11223

A-Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

09/20/2024

Unable to forward - no address provided.

Attached is a copy of the **decision of the Immigration Judge**. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

Board of Immigration Appeals
Office of the Clerk
P.O. Box 8530
Falls Church, VA 22041

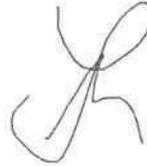
Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242B(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252B(c)(3) in deportation proceedings or section 240(b)(5)(c), 8 U.S.C. § 1229a(b)(5)(c) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:

Immigration Court

Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA § 242.

- Attached is a copy of the decision of the immigration judge relating to a **Credible Fear Review**. This is a final order. No appeal is available.
- Other:

Date: 09/20/2024



Immigration Judge: MULLICAN, LEILA 09/20/2024

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable
To: [] Noncitizen | [] Noncitizen c/o custodial officer | [E] Noncitizen's atty/rep. | [E] DHS
Respondent Name : GRIGORYAN, ANDRANIK | A-Number 

Riders:

Date: 09/20/2024 By: HERNANDEZ, RUBY, Court Staff



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT

Respondent Name:

GRIGORYAN, ANDRANIK

To:

Usher, Mikhail
1022 Avenue P
2nd Fl, Usher Law Group
BROOKLYN, NY 11223

A-Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

09/20/2024

ORDER OF THE IMMIGRATION JUDGE

- This is a summary of the oral decision entered on 09/20/2024. The oral decision in this case is the official opinion, and the immigration court issued this summary for the convenience of the parties.
- Both parties waived the issuance of a formal oral decision in this proceeding.

I. Removability

The immigration court found Respondent removable inadmissible under the following Section(s) of the Immigration and Nationality Act (INA or Act): 237(a)(2)(A)(ill).

The immigration court found Respondent not removable not inadmissible under the following Section(s) of the Act:

II. Applications for Relief

Respondent's application for:

A. Asylum/Withholding/Convention Against Torture

- Asylum was granted denied withdrawn with prejudice withdrawn without prejudice
- Withholding of Removal under INA § 241(b)(3) was granted denied withdrawn with prejudice withdrawn without prejudice
- Withholding of Removal under the Convention Against Torture was granted denied withdrawn with prejudice withdrawn without prejudice
- Deferral of Removal under the Convention Against Torture was granted denied withdrawn with prejudice withdrawn without prejudice
- Respondent knowingly filed a frivolous application for asylum after notice of the consequences. *See* INA § 208(d)(6); 8 C.F.R. §1208.20

B. Cancellation of Removal

- Cancellation of Removal for Lawful Permanent Residents under INA § 240A(a) was granted denied withdrawn with prejudice withdrawn without prejudice
- Cancellation of Removal for Nonpermanent Residents under INA § 240A(b)(1) was granted denied withdrawn with prejudice withdrawn without prejudice
- Special Rule Cancellation of Removal under INA § 240A(b)(2) was granted denied withdrawn with prejudice withdrawn without prejudice

C. Waiver

- A waiver under INA § was granted denied withdrawn with prejudice withdrawn without prejudice

D. Adjustment of Status

- Adjustment of Status under INA § was granted denied withdrawn with prejudice withdrawn without prejudice

E. Other

III. Voluntary Departure

- Respondent's application for pre-conclusion voluntary departure under INA § 240B(a) post-conclusion voluntary departure under INA § 240B(b) was denied.
- Respondent's application for pre-conclusion voluntary departure under INA § 240B(a) post-conclusion voluntary departure under INA § 240B(b) was granted, and Respondent is ordered to depart by . The respondent must post a \$ bond with DHS within five business days of this order. Failure to post the bond as required or to depart by the required date will result in an alternate order of removal to taking effect immediately.
- The respondent is subject to the following conditions to ensure his or her timely departure from the United States:
 - Further information regarding voluntary departure has been added to the record.
 - Respondent was advised of the limitation on discretionary relief, the consequences for failure to depart as ordered, the bond posting requirements, and the consequences of filing a post-order motion to reopen or reconsider:

If Respondent fails to voluntarily depart within the time specified or any extensions granted by the DHS, Respondent shall be subject to a civil monetary penalty as provided by relevant statute, regulation, and policy. *See* INA § 240B(d)(1). The immigration court has set

- the presumptive civil monetary penalty amount of \$3,000.00 USD
- \$ USD instead of the presumptive amount.

If Respondent fails to voluntarily depart within the time specified, the alternate order of removal shall automatically take effect, and Respondent shall be ineligible, for a period of

10 years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act, to include cancellation of removal, adjustment of status, registry, or change of nonimmigrant status. *Id.* If Respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of such a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply.

If Respondent appeals this decision, Respondent must provide to the Board of Immigration Appeals (Board), within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if Respondent does not submit timely proof to the Board that the voluntary departure bond has been posted.

In the case of conversion to a removal order where the alternate order of removal immediately takes effect, where Respondent willfully fails or refuses to depart from the United States pursuant to the order of removal, to make timely application in good faith for travel or other documents necessary to depart the United States, to present himself or herself at the time and place required for removal by the DHS, or conspires to or takes any action designed to prevent or hamper Respondent's departure pursuant to the order of removal, Respondent may be subject to a civil monetary penalty for each day Respondent is in violation. If Respondent is removable pursuant to INA § 237(a), then he or she shall be further fined or imprisoned for up to 10 years.

IV. Removal

- Respondent was ordered removed to UZBEKISTAN.
- In the alternative, Respondent was ordered removed to
- Respondent was advised of the penalties for failure to depart pursuant to the removal order:

If Respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, to present himself or herself at the time and place required for removal by the DHS, or conspires to or takes any action designed to prevent or hamper Respondent's departure pursuant to the order of removal, Respondent may be subject to a civil monetary penalty for each day Respondent is in violation. If Respondent is removable pursuant to INA § 237(a), then he or she shall be further fined or imprisoned for up to 10 years.

V. Other

- Proceedings were dismissed terminated with prejudice terminated without prejudice administratively closed.
- Respondent's status was rescinded under INA § 246.
- Other:

Addendum: Asylum, Withholding of Removal, and CAT

The following statements of law are hereby incorporated into the Immigration Judge's oral decision. These statements are not the sole legal basis for the decision and are meant to be read in conjunction with any law cited in the oral

decision itself.

I. Credibility & Corroboration

An applicant requesting asylum bears the evidentiary burden of proof and persuasion in connection with any application under INA § 208. Under the REAL ID Act, after considering “the totality of the evidence, and all relevant factors,” courts may base a credibility determination on: the demeanor, candor, or responsiveness of the applicant or witness; the inherent plausibility of the account; the consistency between oral and written statements; the internal consistency of such statements; the consistency of such statements with other evidence of record; and any inaccuracy or falsehood in such statements, “without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim.” INA § 240(c)(4)(C); see generally *Lin v. Att’y Gen.*, 543 F.3d 114, 126-27 (3d Cir. 2008) (affirming the Immigration Judge’s adverse credibility determination based on discrepancies between respondent’s testimony and affidavit).

An applicant’s testimony alone may be sufficient to satisfy his or her burden of proof if it is credible, persuasive, and refers to specific facts. INA § 240(c)(4)(B); *Sandie v. Att’y Gen.*, 562 F.3d 246, 252 n.2 (3d Cir. 2009); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007). In determining whether the applicant has met his or her burden of proof, courts “may weigh the credible testimony along with other evidence of record.” INA § 208(b)(1)(B)(ii). In cases initiated both before and after the passage of the REAL ID Act of 2005, the IJ must conduct a three-part inquiry—otherwise known as the *Abdulai* inquiry—before concluding that an applicant has failed to corroborate his or her claim. See *Chukwu v. Att’y Gen.*, 484 F.3d 185, 191 (3d Cir. 2007) (citing *Abdulai v. Ashcroft*, 239 F.3d 542 (3d Cir. 2001)); see also *Sandie v. Att’y Gen.*, 562 F.3d 246, 252-53 (3d Cir. 2009). The Immigration Judge must 1) identify the testimony for which it is reasonable to expect the applicant to produce corroboration; 2) examine whether the applicant corroborated that testimony; and 3) analyze whether the applicant has adequately explained any failure to provide corroboration. *Abdulai v. Ashcroft*, 239 F.3d 542, 554 (3d Cir. 2001); see also *Sandie v. Att’y Gen.*, 562 F.3d 246, 252-53 (3d Cir. 2009).

Where courts determine that the applicant should “provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.” INA § 208(b)(1)(B)(ii). The IJ must give the applicant notice of what corroborating evidence will be expected and the opportunity to provide such evidence or present an explanation if the applicant cannot produce such corroboration. *Saravia v. Att’y Gen.*, 905 F.3d. 729, 737 (3d Cir. 2018) (citing *Chukwu v. Att’y Gen.*, 484 F.3d 185, 192 (3d Cir. 2007)) (finding that it was not fair to require the petitioner to provide further corroboration without telling him so and giving him the opportunity either to supply that evidence or to explain why it was not available); *Toure v. Att’y Gen.*, 443 F.3d 323 (3d Cir. 2006); *Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997). The immigration judge should ask if the applicant could submit corroborating evidence, as opposed to asking why the applicant did not submit corroborating evidence.

Saravia v. Att’y Gen., 905 F.3d. at 738. The absence of such corroboration may lead to a finding that an applicant failed to meet his or her burden of proof. *Matter of S-M-J*, 21 I&N Dec. at 726.

II. Asylum

To be statutorily eligible for asylum, an applicant bears the burden of establishing that he or she is a refugee, which requires a showing of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA §§ 101(a)(42)(A), 208(b)(1)(A); 8 C.F.R. §§ 1208.13, 1240.8(d). If eligibility is established, asylum may be granted in the exercise of discretion. INA § 208(b)(1)(A); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987).

There is no universally accepted definition of “persecution.” See Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, ¶ 51 (Geneva, January 1992) (“Handbook”). While “persecution” has generally been interpreted to include threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom, courts have also recognized that “the concept of persecution is broad enough to include governmental measures that compel an individual to engage in conduct that is not physically painful or harmful but is abhorrent to that individual’s deepest beliefs.” *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (noting that persecution may include mental suffering or even severe economic deprivation); *Matter of T-Z-*, 24 I&N Dec. 163, 173-75 (BIA 2007) (holding that nonphysical forms of harm, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life, may amount to persecution).

A. One Year Filing Deadline

As a threshold matter, an applicant must prove by clear and convincing evidence that the application was filed within one year of the date of his or her last arrival in the United States or April 1, 1997, whichever is later. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(ii). The BIA has interpreted the term “last arrival” to mean a noncitizen’s most recent arrival in the United States from a trip abroad, regardless of whether the trip was temporary. *Matter of F-R-P-*, 24 I&N Dec. 681, 684-85 (BIA 2008).

B. Particularly Serious Crime

An applicant is statutorily barred from asylum if he or she, “having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community.” INA § 208(b)(2)(A)(ii); 8 C.F.R. § 1208.13(c)(1). An applicant who is subject to a deferred adjudication that satisfies the elements of a “conviction” under section 101(a)(48)(A) of the Act has been “convicted by a final judgment” within the meaning of the particularly serious crime bar. *Matter of D-L-S-*, 28 I&N Dec. 568, 575 (BIA 2022). The Immigration Judge need not separately determine whether the applicant is a danger to the community because a person who has been convicted of a particularly serious crime shall be considered a danger to the community. See

INA § 208(b)(2)(A)(ii); see also *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007) (holding said proposition in the context of a withholding of removal analysis); *Matter of Q-T-M-T-*, 21 I&N Dec. 639, 655-56 (BIA 1996) (holding said proposition in the context of a withholding of deportation analysis).

In the context of asylum, all aggravated felonies are per se particularly serious crimes. INA § 208(b)(2)(B)(i). Additionally, an offense need not be an aggravated felony to constitute a particularly serious crime for either asylum or withholding of removal. *Bastardo-Vale v. Att’y Gen.*, 934 F.3d 255, 264–65 (3d Cir. 2019) (overruling *Alaka v. Attorney General*, 456 F.3d 88 (3d Cir. 2006), and holding that the phrase “particularly serious crime,” as used in both the asylum and the withholding of removal statutes, includes, but is not limited to, aggravated felonies). “The proper focus for determining whether a crime is particularly serious is on the nature of the crime and not the likelihood of future serious misconduct.” *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007); see also *Matter of R-A-M-*, 25 I&N Dec. 657, 661-62 (BIA 2012) (finding possession of child pornography under Cal Penal Code § 311.11(a) is not per se a particularly serious crime but downloading “numerous images and videos” of it was enough to make it so); *Kaplun v. Att’y Gen.*, 602 F.3d 260, 267-68 (3d Cir. 2010) (finding that securities fraud with losses of nearly \$900,000 was a particularly serious crime); *Denis v. Att’y Gen.*, 633 F.3d 201, 213-17 (3d Cir. 2011) (finding that where petitioner tampered with physical evidence by violently dismembering and concealing his victim constituted an aggravated felony and a particularly serious crime).

In limited circumstances, the court may look at information outside the record of conviction when analyzing whether an offense falls within the ambit of particularly serious crimes. Specifically:

[i]f the elements of the offense do not potentially bring the crime into a category of particularly serious crimes, the individual facts and circumstances of the offense are of no consequence, and the alien would not be barred from a grant of withholding of removal. On the other hand, once the elements of the offense are examined and found to potentially bring the offense within the ambit of a particularly serious crime, all reliable information may be considered in making a particularly serious crime determination, including the conviction records and sentencing information, as well as other information outside the confines of a record of conviction.

Denis v. Att’y Gen., 633 F.3d 201, 215 (3d Cir. 2011) (quoting *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007)).

The Court may consider a respondent’s mental health in determining whether an individual, “having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States.” 8 U.S.C. § 1158(b)(2)(A)(ii); see id § 1231(b)(3)(B)(ii); *Matter of B-Z-R-*, 28 I&N Dec. 563 (AG 2022) (overruling *Matter of G-G-S-*, 26 I&N Dec. 339, 345 (BIA 2014)).

C. Past Persecution

To establish past persecution, an asylum applicant must demonstrate that he or

she suffered persecution in his or her country of nationality on account of a protected ground, and that he or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such persecution. INA §§ 101(a)(42)(A), 208(b)(1)(B); 8 C.F.R. § 1208.13(b)(1). While “persecution” has generally been interpreted to include threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom, courts have also recognized that “the concept of persecution is broad enough to include governmental measures that compel an individual to engage in conduct that is not physically painful or harmful but is abhorrent to that individual’s deepest beliefs.” *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (noting that persecution may include mental suffering or even severe economic deprivation); *Matter of T-Z-*, 24 I&N Dec. 163, 173-75 (BIA 2007) (holding that nonphysical forms of harm, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life, may amount to persecution). Moreover, persecution must be inflicted by either the government or by a person or entity the government is “unwilling or unable to control.” *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985); see also *Fiadjoe v. Att’y Gen.*, 411 F.3d 135, 160-63 (3d Cir. 2005).

Persecution should be treated cumulatively. The severity of each incident should not be addressed in isolation without considering the cumulative effect of events. *Fei Mei Cheng v. Att’y Gen.*, 623 F.3d 175, 190-98 (3d Cir. 2010). In examining incidents of claimed past persecution, the court should explicitly consider what effect, if any, the applicant’s experiences had in light of the applicant’s age at the time of the events. *Saban-Cach v. Att’y Gen.*, No. 21-2378, 2023 WL 383078, at *8 (3d Cir. Jan. 25, 2023) (citing *Ordenez-Quino v. Holder*, 760 F.3d 80, 91–92 (1st Cir. 2014)).

If past persecution is established, a regulatory presumption arises that the applicant has a well-founded fear of future persecution on the basis of his or her original claim. 8 C.F.R. § 1208.13(b)(1). The Department of Homeland Security may rebut this presumption if it establishes by a preponderance of the evidence that the applicant’s fear is no longer well-founded due to a fundamental change in circumstances or because the applicant could avoid future persecution by relocating to another part of the country and that it would be reasonable to expect him or her to do so. 8 C.F.R. §§ 1208.13(b)(1)(i)-(ii).

i. Generally Harsh Conditions

Generally harsh conditions shared by many other persons have not been found to amount to persecution. See *Konan v. Att’y Gen.*, 432 F.3d 497, 506 (3d Cir. 2005) (finding that general conditions of civil unrest or chronic violence and lawlessness did not amount to persecution).

ii. Physical Harm

Evidence that the applicant was physically harmed by his or her persecutors and that the harm was severe and required medical attention, along with other harassment, may rise to the level of persecution. See *Voci v. Gonzales*, 409 F.3d 607, 615 (3d Cir. 2005). However, persecution does not require that an

applicant establish permanent or serious injuries. *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998); *Gomez-Zuluaga v. Att’y Gen.*, 527 F.3d 330, 341-45 (3d Cir. 2008); *Blanco v. Att’y Gen.*, 967 F.3d 304, 312 (3d Cir. 2020). In addition, a finding of past persecution is not conditioned on whether the victim required medical attention, whether he was too hurt to escape his aggressors, or whether the victim was physically harmed at all. See *Doe v. Att’y Gen.* 956 F.3d 135, 145, 146 (3d Cir. 2020); see also *Herrera-Reyes*, 952 F.3d 952 F.3d 101, 110 (3d Cir. 2020).

iii. Threats

Only where threats are “so menacing as to cause significant actual suffering or harm” may they constitute persecution. *Chavarria v. Gonzalez*, 446 F.3d 508, 518 (3d Cir. 2006) (citing *Li v. Att’y Gen.*, 400 F.3d 157 (3d Cir. 2005)).

A threat does not need to be imminent or close in time to other mistreatment in order to constitute persecution. See *Herrera-Reyes v. Att’y Gen.*, 952 F.3d 101 (3d Cir. 2020). Rather, what is most important is the likelihood that the threatened harm will occur, which indicates that the threat is “concrete.” *Id.* at 108. The Third Circuit has clarified that a threat constitutes persecution if it is “concrete and menacing.” A threat is concrete when it is “not abstract or ideal,” but is corroborated by credible evidence. A threat is menacing where it “shows intention to inflict harm.” Therefore, “a threat is ‘concrete and menacing,’ constituting past persecution, where the aggregate effect of a respondent’s experiences, including or culminating in the threat in question, placed his or her life in peril or created an atmosphere of fear so oppressive that it severely curtailed the [applicant’s] liberty.” *Id.*

When analyzing whether a threat amounts to past persecution, the ultimate question is whether “the aggregate effect” of the applicant’s experience, “including or culminating in the threat,” put the applicant’s “life in peril or created an atmosphere of fear so oppressive that it severely curtailed [his] liberty.” *Id.*

iv. Criminal Acts/Extortion

Ordinary, isolated criminal acts do not constitute persecution. *Gonzalez-Posadas v. Att’y Gen.*, 781 F.3d 677, 685 (3d Cir. 2015) (citing *Shehu v. Att’y Gen.*, 482 F.3d 652, 657 (3d Cir. 2007)) (finding that the applicant had not demonstrated past persecution when the gang had targeted him for economic gain, rather than on account of his familial or political affiliations); *Abdille v. Ashcroft*, 242 F.3d 477, 494 (3d Cir. 2001) (finding that the past mistreatment at issue could have been “motivated not by animosity against a particular ethnic group, but rather by arbitrary hostility or by a desire to reap financial rewards” and thus did not rise to the level of persecution).

v. Personal Conflict

Conflicts of a personal nature do not constitute persecution on account of one of the enumerated grounds. *Gonzalez-Posadas v. Att’y Gen.*, 781 F.3d 677, 685 (3d Cir. 2015) (citing *Amanfi v. Ashcroft*, 328 F.3d 719, 727 (3d Cir. 2003)) (finding no persecution where the past conflict was driven by an interpersonal conflict rather than religious persecution); *Matter of Mogharrabi*, 19 I&N Dec. 439, 447 (BIA 1987) (stating that “aliens fearing retribution over purely

personal matters . . . would not qualify for asylum”).

D. Well-Founded Fear of Future Persecution

To establish a well-founded fear of future persecution, the applicant must establish that he or she has a subjective fear of persecution and that the fear is objectively reasonable. See *Voci v. Gonzales*, 409 F.3d 607 (3d Cir. 2005); *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). The subjective prong requires a showing that the fear is genuine. *Ghebrehiwot v. Att’y Gen.*, 467 F.3d 344, 351 (3d Cir. 2006) (quoting *Mitev v. INS*, 67 F.3d 1325, 1331 (7th Cir.1995)).

Credible testimony by an applicant of his or her subjective fear of persecution may be enough to satisfy the subjective component, depending on the circumstances. See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987).

To meet the objective element of the test, the applicant must then show that such fear is grounded in reality to meet the objective element of the test—that is, he or she must present credible, specific and detailed evidence that a reasonable person in his or her position would fear persecution. *Voci v. Gonzales*, 409 F.3d 607, 609 (3d Cir. 2005). The applicant must demonstrate either that he or she will be individually singled-out for persecution, or that there is a pattern or practice of persecution of individuals similarly-situated to him or her on account of one of the statutorily protected grounds. 8 C.F.R. § 208.13(b)(2)(iii)(A); see also *Elias-Zacarias*, 502 U.S. 478, 480 (1992); *Ghebrehiwot v. Att’y Gen.*, 467 F.3d 344, 351 (3d Cir. 2006); *Gao v. Ashcroft*, 299 F.3d 266 (3d Cir. 2002). In demonstrating the latter, the applicant must also show that he or she is included in and identifies with that group, such that his or her “fear of persecution upon return is reasonable.” 8 C.F.R. § 1208.13(b)(2)(iii). The BIA has explained that in order to state a “pattern or practice” claim, an applicant must demonstrate that the persecution against the group in which he or she is included is “systemic or pervasive.” *Matter of A-M-*, 23 I&N Dec. 737, 741 (BIA 2005); see also *Ghebrehiwot v. Att’y Gen.*, 467 F.3d 344, 353-55 (3d Cir. 2006); *Sukwanputra v. Gonzales*, 434 F.3d 627, 627 (3d Cir. 2006).

i. Changed Country Conditions

The DHS has the burden of rebutting the presumption of a well-founded fear of future persecution and must establish by a preponderance of the evidence that the applicant’s fear is no longer well-founded due to a fundamental change in circumstances (changed country conditions). 8 C.F.R. § 1208.13(b)(1)(i)(A); see also *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008).

ii. Safe Relocation

The presumption of a well-founded fear of future persecution may also be overcome if the DHS demonstrates that the applicant could avoid future persecution by relocating to another part of the country and that it would be reasonable to do so. 8 C.F.R. § 1208.13(b)(1)(i)(B); *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33 (BIA 2012) (setting forth criteria to determine whether applicant has the ability to relocate and whether relocation is reasonable). DHS must show that there is a specific area of the country where the risk of persecution to the applicant falls below the well-founded fear level. *Matter of*

M-Z-M-R-, 26 I&N Dec. 28, 33 (BIA 2012). If evidence indicates that the area may not be practically, safely, or legally accessible, DHS also bears the burden to show, by a preponderance of the evidence, that the area is or could be made accessible to the applicant. Matter of M-Z-M-R-, 26 I&N Dec. 28, 33 (BIA 2012).

An applicant's ability to successfully remain in hiding within the country does not establish that the applicant can safely relocate and remain within that country. *Nsimba v. Att'y Gen.*, 21 F.4th 244, 254-55 (3d Cir. 2021) (holding that "[t]he mere fact that it may be possible for [the applicant] to successfully avoid arrest by hiding for the rest of his life (or the rest of the current regime) does not make his fear of return unreasonable...[t]he very fact that he would have to do so corroborates the reasonableness of his fear of future persecution"). An applicant's ability to successfully remain in hiding within the country does not establish that the applicant can safely relocate and remain within that country. *Id.* Evidence that the applicant's family members remaining in the country continue to live in fear from the gang is relevant to whether the applicant can safely relocate. *Saban-Cach v. Att'y Gen.*, No. 21-2378, 2023 WL 383078, at *11 (3d Cir. Jan. 25, 2023) (finding the BIA and IJ erred by not considering the fact that the respondent's only remaining relative in Guatemala refuses to tell the respondent where he is living for fear of further gang-related persecution).

E. Nexus to a Protected Ground

An applicant for asylum must also demonstrate that the persecution he or she fears would be "on account of" his or her race, nationality, religion, membership in a particular social group, or political opinion. INA §§ 101(a)(42)(A), 208(b)(1)(A); 8 C.F.R. §§ 1208.13, 1240.8(d); Matter of S-P-, 21 I&N Dec. 486 (BIA 1996). In post-REAL ID Act cases, the applicant must demonstrate that the protected ground would be "at least one central reason" for the persecution. INA § 208(b)(1)(B)(i); *Ndayshimiye v. Att'y Gen.*, 557 F.3d 124, 129 (3d Cir. 2009); *Gomez-Zuluaga v. Att'y Gen.*, 527 F.3d 330, 339-40 (3d Cir. 2008); see also Matter of N-M-, 25 I&N Dec. 526 (BIA 2011); Matter of J-B-N- & S-M-, 24 I&N Dec. 208 (BIA 2007). In order for a protected characteristic to constitute "one central reason," it must play more than "an incidental, tangential, or superficial role in persecution;" rather, it must be an essential or principal reason for the persecution. *Gonzalez-Posadas v. Att'y Gen.*, 781 F.3d 677, 685 (3d Cir. 2015). In discerning persecutory motives, courts must consider the "totality of the circumstances." Matter of S-P-, 21 I&N Dec. 486, 494 (BIA 1996).

i. Religion

Although instructive, rather than binding, the Second Circuit Court of Appeals has commented on what must be assessed when analyzing a claim for asylum based on religious persecution. "The critical showing that an applicant must make to demonstrate eligibility for asylum on religious persecution grounds is that he has suffered past persecution, or fears future persecution, on the basis of religion." *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006). The applicant must establish that he or she identifies with a particular religion or that others

perceive the applicant as an adherent to that religion, but the applicant need not demonstrate detailed knowledge of the religion's doctrinal tenets. *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006).

Religious persecution inflicted by a member of the applicant's family may be sufficient to constitute past persecution on account of religion. See *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000) (holding that a woman with liberal Muslim beliefs suffered past persecution and has a well-founded fear of future persecution at the hands of her father on account of her religious beliefs, which differ from her father's orthodox Muslim views concerning the proper role of women in Moroccan society).

ii. Particular Social Group

An applicant for asylum or withholding should clearly indicate on the record before the Immigration Judge the enumerated ground(s) he or she is relying upon in making a claim, including the exact delineation of any particular social group to which the applicant claims to belong. *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018); *Matter of A-T-*, 25 I&N Dec. 4 (BIA 2009); *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 73 (BIA 2007).

A "particular social group" must (1) be composed of members who share a common immutable characteristic; (2) be defined with particularity; and (3) be socially distinct within the society in question. *S.E.R.L. v. Att'y Gen.*, 894 F.3d 535 (3d Cir. 2018); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014).

The characteristic may be innate or based upon a shared past experience. *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985); see also *Matter of C-A-*, 23 I&N Dec. 951, 958 (BIA 2006). The Third Circuit has noted that "asylum and withholding of removal under the INA may be granted on the basis of imputed, not just actual, membership in a particular social group." *Guzman Orellana v. Att'y Gen.*, 956 F.3d 171, 180 (3d Cir. 2020).

In order for a particular social group to be cognizable, it must "exist independently" of the harm asserted. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 236 n.11, 243 (BIA 2014). A particular social group "cannot be defined exclusively by the fact that its members have been subjected to harm." *Matter of M-E-V-G-*, 26 I&N Dec. 227, 242 (BIA 2014) (internal quotations omitted).

a) Immutability

The "common, immutable characteristic" is determined on a case-by-case basis and "must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985).

b) Particularity

The particularity requirement is "definitional in nature" and focuses on delineation—whether the particular social group definition is sufficiently discrete and precise as opposed to amorphous. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 239-41 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 214 (BIA 2014). The proposed particular social group should address the "outer limits" of the group's boundaries and "provide a clear benchmark for determining who falls within the group." *Matter of M-E-V-G-*, 26 I&N Dec. 227, 239-41 (BIA

2014). In making this determination, the definition should be analyzed in the context of the society in question and focus on whether members of the society “generally agree on who is included in the group.” Matter of M-E-V-G-, 26 I&N Dec. 227, 239-41 (BIA 2014); Matter of W-G-R-, 26 I&N Dec. 208, 221 (BIA 2014).

c) Social Distinction

“Social distinction” requires that members of the proposed group would be perceived as a separate or distinct group by society. S.E.R.L. v. Att’y Gen., 894 F.3d 535 (3d. Cir. 2018); Matter of M-E-V-G-, 26 I&N Dec. 227, 242 (BIA 2014) (clarifying that the perception of the society, and not the persecutor, is determinative for social distinction purposes). In other words, the society in question must meaningfully distinguish those with the common, immutable characteristic from those who do not have it. Matter of M-E-V-G-, 26 I&N Dec. 227, 238 (BIA 2014).

An applicant for asylum or withholding should clearly indicate on the record before the Immigration Judge the enumerated ground(s) he or she is relying upon in making a claim, including the exact delineation of any particular social group to which the applicant claims to belong. Matter of W-Y-C-& H-O-B-, 27 I&N Dec. 189 (BIA 2018); Matter of A-T-, 25 I&N Dec. 4 (BIA 2009); Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69, 73 (BIA 2007).

A “particular social group” must (1) be composed of members who share a common immutable characteristic; (2) be defined with particularity; and (3) be socially distinct within the society in question. S.E.R.L. v. Att’y Gen., 894 F.3d 535 (3d. Cir. 2018); Matter of M-E-V-G-, 26 I&N Dec. 227, 237 (BIA 2014).

The characteristic may be innate or based upon a shared past experience. Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985); see also Matter of C-A-, 23 I&N Dec. 951, 958 (BIA 2006).

In order for a particular social group to be cognizable, it must “exist independently” of the harm asserted. Matter of M-E-V-G-, 26 I&N Dec. 227, 236 n.11, 243 (BIA 2014)). A particular social group “cannot be defined exclusively by the fact that its members have been subjected to harm.” Matter of M-E-V-G-, 26 I&N Dec. at 242.

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Once the applicant has established a cognizable particular social group, he or she must then demonstrate membership in that group and persecution based on that membership. *Fatin v. INS*, 12 F.3d at 1239-40.

“[P]ossession of broadly-based characteristics such as youth and gender will not by itself endow individuals with membership in a particular group.” *Lukwago v. Ashcroft*, 329 F.3d 157, 172 (3d Cir. 2003). The Third Circuit has held that a PSG defined as “Guatemalan women” was not legally cognizable because the group lacked particularity. See *Chavez-Chilel v. Att’y Gen.*, No. 21-1180, 2021 WL 5830338, at *4 (3d Cir. Dec. 9, 2021).

iii. Membership Based on Domestic Violence

Depending on the facts and evidence in a case, individuals fleeing domestic violence may be eligible for asylum. In *Matter of A-R-C-G-*, where the respondent sought relief based on repeated abuse by her husband and the Guatemalan police force’s refusal to intervene, the BIA found “married women in Guatemala who are unable to leave their relationship” to be a cognizable social group. *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). In making this finding, the BIA considered that the record included un rebutted evidence that Guatemala has a culture of “machismo and family violence,” enforcement of domestic violence laws can be problematic, and “spousal rape remains a serious problem.” *Id.* at 394. In addition, the BIA found that “a married woman’s inability to leave the relationship may be informed by societal expectations about gender and subordination, as well as legal constraints regarding divorce and separation.” *Matter of A-R-C-G-*, 26 I&N Dec. at 393.

The record should reflect that the domestic violence was on account of the particular social group asserted. See, e.g., *Matter of R-A-*, 22 I&N Dec. 906, 921 (BIA 1999) (stating that “the record does not reflect that [the respondent’s] husband bore any particular animosity toward women who were intimate with abusive partners, women who had previously suffered abuse, or women who happened to have been born in, or were actually living in, Guatemala”).

The Third Circuit has held that “Guatemalan women” is not a legally cognizable particular social group where there was “no record evidence that all Guatemalan women share a unifying characteristic that results in them being targeted for any form of persecution based solely on their gender.” *Chavez-Chilel v. Att’y Gen.*, 20 F.4th 138 (3d Cir. 2021).

F. Government is “unable or unwilling” to control persecutor

An applicant for asylum must be unable or unwilling to avail him or herself of the protection of the country of persecution. The applicant is not required to demonstrate that the government or police refused to protect him, the applicant need only establish that the persecution was, or would be, inflicted by the

government or by persons or organizations the government is unable or unwilling to control. *Valdiviezo-Galdamez v. Att’y Gen.*, 502 F.3d 285, 288-89 (3d Cir. 2007); *Fiadjoe v. Att’y Gen.*, 411 F.3d 135, 160-63 (3d Cir. 2005); see also *Mendoza-Ordonez v. Att’y Gen.*, 869 F.3d 164 (3d Cir. 2017); *Matter of S-A-*, 22 I&N Dec. 1328, 1333, 1335 (BIA 2000).

Moreover, while failing to report persecution to local authorities does not bar a noncitizen from relief, a “failure to report ‘generally is fatal’ to a persecution claim unless the noncitizen can show it would be futile to make a report” *Matter of O-F-A-S-*, 27 I&N Dec. 709, 722 (BIA 2019). The Third Circuit has held that “the absence of a report to police does not reveal anything about a government’s ability or willingness to control private attackers; instead, it leaves a gap in proof about how the government would respond if asked, which the petitioner may attempt to fill by other methods.” *Doe v. Att’y Gen.* 966 F.3d 135, 146 (3d Cir 2020). An applicant may fill this gap in several ways:

- 1) demonstrating that a country’s laws or customs effectively deprive the petitioner of any meaningful recourse to governmental protection,
- 2) describing [p]rior interactions with the authorities,
- 3) showing that others have made reports of similar incidents to no avail,
- 4) establishing that private persecution of a particular sort is widespread and well-known but not controlled by the government, or
- 5) convincingly establish[ing] that [reporting] would have been futile or [would] have subjected [the applicant] to further abuse.

Id. at 145 (citing *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1066 (9th Cir. 2017) (quoting *Rahimzadeh v. Holder*, 613 F.3d 916, 922 (9th Cir. 2010)); *Matter of C-G-T-*, 28 I&N Dec. 740, 744 (BIA 2023) (finding that a respondent’s failure to report harm is not necessarily fatal to a claim of persecution if the respondent can demonstrate that reporting private abuse to government authorities would have been futile or dangerous).

Furthermore, the government’s decision to relocate someone to another country serves as evidence that the government is unable to protect the applicant. *Garcia v. Att’y Gen.*, 665 F.3d 496, 503 (3d Cir. 2011) (finding that although the Guatemalan government displayed great willingness to protect the noncitizen before and after her testimony in a murder trial, that willingness shed no light on Guatemala’s ability to protect her, and the fact that Guatemalan authorities saw fit to relocate her to Mexico was tantamount to an admission that she could not be protected in Guatemala).

G. Discretion

An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that he or she merits a grant of asylum as a matter of discretion. See INA § 208(b)(1); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 (1987) (noting that the Attorney General is not required to grant asylum to everyone who meets the refugee definition). In determining whether a favorable exercise of discretion is warranted, both favorable and adverse factors should be considered and the decision should be based on the totality of the circumstances. See *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987); see

also *Matter of H-*, 21 I&N Dec. 337, 347 (BIA 1996). The danger of persecution should outweigh all but the most egregious adverse factors. See *Matter of Pula*, 19 I&N Dec. at 473. The applicant may even warrant a grant of asylum in the exercise of discretion where there is little likelihood of future persecution. *Matter of Chen*, 20 I&N Dec. 16, 21-22 (BIA 1989) (granting asylum to the noncitizen who suffered severe past persecution in China and demonstrated other compelling factors to warrant a favorable exercise of discretion).

When an Immigration Judge denies asylum solely in the exercise of discretion and grants withholding of removal, 8 C.F.R. § 1208.16(e) requires that he or she reconsider the denial to take into account factors relevant to family unification. *Matter of T-Z-*, 24 I&N Dec. 163, 176 (BIA 2007). The Third Circuit listed some of these factors in *Sathanthrasa v. Att’y Gen.*, 968 F.3d 285, 295 (3d Cir. 2020).

III. Withholding of Removal under Section 241(b)(3) of the Act

An applicant for withholding of removal must demonstrate that, if returned to his or her country, his or her life or freedom would be threatened on account of one of the protected grounds—race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3). The applicant must establish a “clear probability” of persecution, meaning that it is “more likely than not” that he or she will be subject to persecution on account of a protected ground if returned to the country from which he or she seeks withholding of removal. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987); see also *Valdiviezo-Galdamez v. Att’y Gen.*, 663 F.3d 582, 591 (3d Cir. 2011). Furthermore, like an asylum applicant, a withholding applicant must establish that a protected ground was or will be at least “one central reason” for the persecution. *Matter of C-T-L-*, 25 I&N Dec. 341, 348 (BIA 2010); *Gonzalez-Posadas v. Att’y Gen.*, 781 F.3d 677, 685 n.6 (3d Cir. 2015); INA § 208(b)(1)(B). There is no discretionary element. Therefore, if the applicant establishes eligibility, withholding of removal must be granted. *INS v. Ventura*, 537 U.S. 12, 13 (2002).

A. Particularly Serious Crime

An alien is ineligible for withholding of removal if he or she has been convicted of a particularly serious crime. INA § 241(b)(3)(B)(ii). An applicant who is subject to a deferred adjudication that satisfies the elements of a “conviction” under section 101(a)(48)(A) of the Act has been “convicted by a final judgment” within the meaning of the particularly serious crime bar. *Matter of D-L-S-*, 28 I&N Dec. 568, 575 (BIA 2022). The bar to withholding of removal for conviction for a particularly serious crime is not identical to the bar in the asylum context.

i. Per Se Particularly Serious Crime Bar

For withholding of removal, an alien has been per se convicted of a particularly serious crime if he or she has been convicted of one or more aggravated felonies that result in an aggregate prison sentence of at least five years. INA § 241(b)(3)(B).

ii. Discretionary Particularly Serious Crime Bar

An aggravated felony for which the noncitizen has been sentenced to less than five years imprisonment is not a particularly serious crime per se; rather, “it [is] left up to the Attorney General” to make the determination. *Lavira v. Att’y Gen.*, 478 F.3d 158, 161 (3d Cir. 2007), overruled on other grounds by *Pierre v. Att’y Gen.*, 528 F.3d 180 (3d Cir. 2008). Furthermore, an offense need not be an aggravated felony to constitute a particularly serious crime for withholding of removal. *Bastardo-Vale v. Att’y Gen.*, 934 F.3d 255, 266 (3d Cir. 2019) (overruling *Alaka v. Attorney General*, 456 F.3d 88 (3d Cir. 2006), and holding that the phrase “particularly serious crime,” as used in both the asylum and the withholding of removal statutes, includes, but is not limited to, aggravated felonies).

To determine whether Respondent’s conviction constitutes a particularly serious crime, the court considers the nature of the conviction, the sentence imposed, and the circumstances and underlying facts of the conviction. *Matter of L-S-*, 22 I&N Dec. 645 (BIA 1999), overruled in part, *Matter of Y-L-, A-G-, & R-S-R-*, 23 I&N Dec. 270 (AG 2002). The court considers the nature of the crime, and not the likelihood of future serious misconduct. *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007). The Third Circuit quoted the BIA in explaining that

[i]f the elements of the offense do not potentially bring the crime into a category of particularly serious crimes, the individual facts and circumstances of the offense are of no consequence, and the alien would not be barred from a grant of withholding of removal. On the other hand, once the elements of the offense are examined and found to potentially bring the offense within the ambit of a particularly serious crime, all reliable information may be considered in making a particularly serious crime determination, including the conviction records and sentencing information, as well as other information outside the confines of a record of conviction.

Denis v. Att’y Gen., 633 F.3d 201, 215 (3d Cir. 2011) (quoting *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007)). The BIA emphasized that no decision “has ever suggested that the categorical approach, used primarily in determining removability, is applicable to the inherently discretionary determination of whether a conviction is for a particularly serious crime.” *Denis v. Att’y Gen.*, 633 F.3d 201, 215 (3d Cir. 2011) (quoting *Matter of N-A-M-*, 24 I&N Dec. at 344).

Because the analysis hinges on the crime that was committed, the “inquiry does not involve an examination of an alien’s personal circumstances and equities, such as family or communal ties or any risk of persecution in the country of removal.” *Matter of G-G-S-*, 26 I&N Dec. 339, 343 (BIA 2014) (citing *Matter of L-S-*, 22 I&N Dec. 645, 651 (BIA 1999); *Matter of Q-T-M-T-*, 21 I&N Dec. 639, 656 (BIA 1996); *Matter of K-*, 20 I&N Dec. 418, 418-21 (BIA 1991); *Matter of Rodriguez-Coto*, 19 I&N Dec. 208, 209-10 (BIA 1985)). Rehabilitation is also irrelevant to the analysis. *Matter of R-A-M-*, 25 I&N Dec. 657, 662 (BIA 2012) (citing *Matter of S-S-*, 22 I&N Dec. 458, 466 (BIA 1999)). The sentence imposed may be considered, but it is not a “dominant factor” because issues unrelated to the commission of the offense are

considered in sentencing. Matter of N-A-M-, 24 I&N Dec. 336, 343 (BIA 2007) (citing Matter of Y-L-, A-G-, & R-S-R-, 23 I&N Dec. 270, 273-74, 277-78 (AG 2002)). Instead, the BIA held that, the extent of harm suffered by the victim is a “pertinent factor” in the analysis, as is whether the nature of the crime suggests that the noncitizen represents a danger to the community. Matter of G-G-S-, 26 I&N Dec. 339, 343 (BIA 2014); Matter of Carballe, 19 I&N Dec. 357, 360 (BIA 1986).

B. Past Persecution

If an applicant demonstrates past persecution in the proposed country of removal, a regulatory presumption arises that the applicant’s life or freedom would be threatened in the future in the country of removal on the basis of the original claim. 8 C.F.R. § 1208.16(b)(1)(i). DHS may rebut the presumption of future persecution by establishing by a preponderance of the evidence that a fundamental change in circumstances has occurred in that country, or that the applicant could safely relocate to another area in the proposed country of removal and that it would be reasonable to expect him or her to do so. 8 C.F.R. §§ 1208.16(b)(1)(i)-(ii); see Matter of D-I-M-, 24 I&N Dec. 448, 450 (BIA 2008). If the persecutor was a government or is “government-sponsored,” a presumption arises that internal relocation is unreasonable. 8 C.F.R. § 1208.16(b)(3)(ii).

IV. Humanitarian Asylum

An IJ considers an applicant’s eligibility for humanitarian asylum, where the applicant has established past persecution but no longer has a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1)(iii); Matter of S-A-K- and H-A-H-, 24 I&N Dec. 464, 465-66 (BIA 2008) (holding that a Somali mother and daughter who suffered FGM and continued to suffer side effects were entitled to humanitarian asylum). Before an applicant can be granted humanitarian asylum, he or she must have demonstrated past persecution and must have thus proven that he or she is a “refugee” under the INA. See 8 C.F.R. § 1208.13(b)(1)(iii); Matter of L-S-, 25 I&N Dec. 705, 710 (BIA 2012). Humanitarian asylum may be granted if the applicant either (1) demonstrates that he or she has “compelling reasons,” arising out of the severity of the past persecution, for being unable or unwilling to return to his or her country; or (2) establishes that there is a reasonable possibility that he or she may suffer “other serious harm” upon removal to that country. 8 C.F.R. § 1208.13(b)(1)(iii)(A)-(B); Matter of L-S-, 25 I&N Dec. 705, 710-15 (BIA 2012). An asylum applicant bears the burden of proof to show that either form of humanitarian asylum is warranted. Matter of L-S-, 25 I&N Dec. 705, 710 (BIA 2012). In determining eligibility for humanitarian asylum, courts must consider the “totality of the circumstances” on a case-by-case basis. Matter of L-S-, 25 I&N Dec. 705, 715 (BIA 2012).

V. Convention Against Torture

The Convention Against Torture and its implementing regulations provide that no person shall be removed to a country where it is “more likely than not” that such person will be subject to torture. 8 C.F.R. §§ 1208.16(c)(2). “Torture” is “an extreme form of cruel and inhuman treatment,” defined, in part, as the

intentional infliction of severe pain or suffering by, or at the instigation of, or with the consent or acquiescence of a public official. 8 C.F.R. §§ 1208.18(a)(1)-(2); see *Auguste v. Ridge*, 395 F.3d 123, 151 (3d Cir. 2005) (citing *Matter of J-E-*, 23 I&N Dec. 291, 297 (BIA 2002)); see also 8 C.F.R. § 208.18(a)(1). An applicant must also establish the likelihood that he or she will be subjected to torturous acts inflicted by or at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1); *Silva-Rengifo v. Att’y Gen.*, 473 F.3d 58 (3d Cir. 2007); *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000); *Matter of Y-L-*, 23 I&N Dec. 270 (AG 2002).

In assessing whether the applicant has satisfied the burden of proof, courts must consider all evidence relevant to the possibility of future torture, including evidence that the applicant has suffered torture in the past; evidence that the applicant could relocate to a part of the country of removal where he is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal; and other relevant information on country conditions. 8 C.F.R. § 1208.16(c)(3); see also *Guzman Orellana v. Att’y Gen.*, 956 F.3d 171, 182 (3d Cir. 2020) (quoting *Quinteros v. Att’y Gen.*, 945 F.3d 772, 786 (3d Cir. 2019); *Pieschacon-Villegas v. Att’y Gen.*, 671 F.3d 303, 313 (3d Cir. 2011). Reports of generalized brutality within a country do not necessarily show that a particular person would be in danger of being subjected to torture upon his or her return to that country. *Zubeda v. Ashcroft*, 333 F.3d 463, 478 (3d Cir. 2003). Specific grounds must exist to indicate that the applicant will be personally at risk of torture. *Sevoian v. Ashcroft*, 290 F.3d 166 (3d Cir. 2002); *Valdiviezo-Galdamez v. Att’y Gen.*, 663 F.3d 582, 592 (3d Cir. 2011). Eligibility for relief under the CAT cannot be established by stringing together a series of suppositions to show that torture is more likely than not to occur unless the evidence shows that each step in the hypothetical chain of events is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (AG 2006); see also *Matter of M-B-A-*, 23 I&N Dec. 474, 479 (BIA 2002).

A. Specific Intent

An applicant seeking relief under the CAT need not establish that he or she is a refugee and, therefore, need not establish that the torture is inflicted on account of a protected status. See *Amanfi v. Ashcroft*, 328 F.3d 719 (3d Cir. 2003). Rather, he or she must show that the act is specifically intended to inflict severe physical or mental pain or suffering. *Pierre v. Att’y Gen.*, 528 F.3d 180, 189 (3d Cir. 2008). Specific intent requires the applicant to show that the “prospective torturer will have the motive and purpose to cause him pain or suffering.” *Pierre v. Att’y Gen.*, 528 F.3d 180, 189 (3d Cir. 2008); see also *Roye v. Att’y Gen.*, 693 F.3d 333, 341 (3d Cir. 2012); *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002). Specific intent requires a showing that the actor had the intent to commit the act as well as the intent to achieve the consequences of the act. *Pierre v. Att’y Gen.*, 528 F.3d at 189. “Mere knowledge that a result is substantially certain to follow from one’s actions is not sufficient to form the specific intent to torture.” *Id.*

B. Likelihood of Future Torture

The likelihood of future torture is a mixed question of law and fact. *Kaplun v. Att’y Gen.*, 602 F.3d 260, 271 (3d Cir. 2010). Courts must examine two distinct parts: 1) what is likely to happen to the respondent if removed; and 2) does what is likely to happen amount to the legal definition of torture?” *Kaplun v. Att’y Gen.*, 602 F.3d 260, 271 (3d Cir. 2010); *Quinteros v. Atty Gen.*, 945 F.3d 772, 786 (3d Cir. 2019) (citing *Myrie v. Att’y Gen.*, 855 F.3d at 516). The first question is factual, and courts must make a finding of fact as to what exactly would happen to an applicant upon his or her return. *Kaplun v. Att’y Gen.*, 602 F.3d at 271. The second question is legal, and courts must determine whether what is likely to happen to the applicant upon his or her return amounts to torture. Torture is a term of art, and whether imprisonment, beating, and extortion are severe enough to rise to the level of torture is a legal question. *Id.*

Nonetheless, if the court determines that the applicant has failed to demonstrate the second prong, in that the harm he or she would suffer does not amount to the legal definition of torture, there is no need to make a factual finding as to the first prong. *Green v. Att’y Gen.*, 694 F.3d 503, 508 (3d Cir. 2012) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “[a]s a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”)).

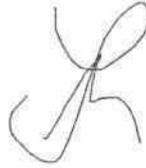
C. Government Acquiescence/Willful Blindness

The determination of “whether likely government conduct equates to acquiescence is a mixed question of law and fact.” *Kaplun v. Att’y Gen.*, 602 F.3d 260 (3d Cir. 2010); see also *Myrie v. Att’y Gen.*, 855 F.3d 509, 517 (3d Cir. 2017). The Immigration Judge must conduct a two-step analysis: first, the Immigration Judge must make a factual finding as to how public officials will likely act in response to the harm the petitioner fears. *Myrie v. Att’y Gen.*, 855 F.3d 509, 517 (3d Cir. 2017). Next, the Immigration Judge must apply the legal standard for acquiescence to determine whether this response establishes that a public official was ‘aware[] of [the torturous] activity’ and subsequently breaches his or her ‘legal responsibility to intervene to prevent such activity.’” *Myrie v. Att’y Gen.*, 855 F.3d 509, 517 (3d Cir. 2017) (citing 8 C.F.R. § 1208.18(a)(7)).

In order to qualify under the Convention Against Torture, the torturous conduct must be inflicted or approved by a public official who is acting “in an official capacity,” that is, “under color of law.” *Matter of O-F-A-S-*, 28 I&N Dec. 35, 39 (AG 2020) (vacating and remanding *Matter of O-F-A-S-*, 27 I&N Dec. 709 (BIA 2019)). Acts are performed “under the color of law” when the actor misuses power possessed by virtue of law, which is made possible only because the actor was clothed with the authority of law. *Id.* (citing *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 191 (1988)). This use of power includes using official authority to fulfill personal objectives. *Id.* at 41 (citing *O-F-A-S-*, 27 I&N Dec. at 715). Determination of whether an official’s conduct is under the color of law is a “fact-intensive inquiry” that depends on whether the official’s conduct is “fairly attributable to the State.” *Id.* at 40-41

(citations omitted). The test makes no distinction between high- and low-level officials and does not categorically exclude corrupt, low-level officials if they are acting under color of law. *Id.* at 40.

Courts must also consider circumstantial evidence of willful blindness, as it may establish the government's acquiescence to future torture. *Myrie v. Att'y Gen.*, 855 F.3d 509, 517 (3d Cir. 2017) (remanding to the BIA for consideration of circumstantial evidence, such as sworn letters, a letter from the Panamanian Public Safety Department, and an affidavit from a former girlfriend which indicated that the Panamanian government had not taken steps to protect the petitioner or his family, that his family continued to receive threats, and that one incident had been reported to the police). A government's opposition to or inability to control a group does not bar a showing of acquiescence to torture. See, e.g., *Guzman Orellana v. Att'y Gen.*, 956 F.3d 182 (3d Cir. 2020) ("[T]he government of El Salvador had recognized that witnesses to crimes need protection and has enacted a program to protect witnesses during the investigation and trial of a case. Unfortunately, this program has apparently been limited to protection during trial and has even then been ineffective and underfunded. Witnesses are still threatened and attacked. It is clear that this program is not sufficient to provide the protection to [the petitioner] required to satisfy the CAT."); *Quinteros v. Att'y Gen.* No. 18-3750, 2019 WL 6871620 (3d Cir. Dec. 17, 2019); *Myrie v. Att'y Gen.*, 855 F.3d 509, 518 (3d Cir. 2017) (noting that evidence of the government's active engagement against the group the petitioner fears, and the petitioner's failure to report a recent physical attack to the police, do not preclude the petitioner from establishing that the government was willfully blind); *Pieschacon-Villegas v. Att'y Gen.*, 671 F.3d 303, 311 (3d Cir. 2011) (remanding to the BIA for consideration of Third Circuit precedent "that an applicant can establish governmental acquiescence even if the government opposes the paramilitary organization that is engaged in torturous acts").



Immigration Judge: MULLICAN, LEILA 09/20/2024

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved
Appeal Due: 10/21/2024

Certificate of Service

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Respondent Name : GRIGORYAN, ANDRANIK | A-Number : 

Riders:

Date: 09/20/2024 By: HERNANDEZ, RUBY, Court Staff

EXHIBIT D

EXHIBIT E

EXHIBIT F

EXHIBIT G

Philadelphia's Federal Detention Center will house ICE detainees

Philadelphia's Federal Detention Center will dedicate up to 125 beds for ICE detainees.

Feb. 21, 2025, 8:57 p.m. ET



The Federal Detention Center in Philadelphia is set to house ICE detainees as they await trial or deportation. Yong Kim / Staff Photographer

Philadelphia's Federal Detention Center is set to become one of two federal facilities in the Northeast United States that will confine ICE detainees amid President Donald Trump's push for significantly more arrests and deportations of undocumented immigrants.

Up to 125 detainees could be held at the Center City jail while they await

The move expands the number of U.S. Immigration and Customs Enforcement detention sites in Pennsylvania from three to four, and immediately drew condemnation from immigrant advocates who want local leaders to speak out against the arrangement.

The Federal Bureau of Prisons will reserve space in FDC Philadelphia for male ICE detainees, said Frank Bailey, Northeast regional vice president of the American Federation of Government Employees' (AFGE) Council of Prison Locals 33, in an interview Friday. ICE will also provide at least two officers at FDC Philadelphia, located at Seventh and Arch Streets, and the other institutions holding detainees.

The first detainees have begun to arrive at the facility, according to immigration attorneys in Philadelphia.

Philadelphia's new role in immigration detentions comes as reports of ICE activity have risen around the Philadelphia region since Trump was inaugurated.

Trump has pledged to [deport millions of undocumented immigrants, which has raised significant questions](#) for those charged with carrying out the plan. That includes how the federal government will confine millions of people who await court dates and deportation flights after being arrested. Staffing shortages also remain for federal correctional workers.

Earlier this month, the Department of Justice, Homeland Security, ICE, and the Federal Bureau of Prisons reached an agreement that included the selection of Philadelphia and Berlin, N.H., as the two Northeastern sites, according to [a memo](#) that was obtained by ABC News. Federal detention centers in Miami, Atlanta, and Leavenworth, Kan., were also chosen.

Pennsylvania is home to three institutions that already hold ICE detainees:

the [1,876-bed Moshannon Valley Processing Center](#) in Clearfield County, the Clinton County Correctional Facility, and the Pike County Correctional Facility. It remains unclear why a detainee would be held in FDC Philadelphia instead of one of the other facilities.

Philadelphia is a sanctuary city, the [name given to jurisdictions that limit their cooperation](#) with ICE, but Trump has promised to crack down on these spaces. For instance, the city does not accept ICE-issued detainers for migrants as valid unless those documents are accompanied by signed judicial warrants.

The city government in Philadelphia has no authority to dictate the operation of federal lockups. And ICE agents in this and other sanctuary cities retain all power to do their jobs.

Efforts to reach city officials for comment were unsuccessful on Friday.

ICE said in a statement that it would use up to 125 beds at the jail, to be filled as the agency's operational needs dictate. The Philadelphia office "is dedicated to the ICE mission and will continue to use all available resources to fulfill it," the agency said.

Expecting a 'pretty steady flow' of ICE detainees

The federal prisons have temporarily housed ICE detainees — under both Republican and Democratic presidencies — but this time around, the institutions will be holding them on a much more regular and longer-term basis while they await trial or deportation. Given the Trump administration's focus on the issue, Bailey is anticipating an influx of detainees.

"Typically there could have been months where you wouldn't have any and then you would get a few or whatever, but now I think it's going to be a pretty steady flow, so it will be much more constant and more of a regular occurrence than it had in the past," Bailey said.

If a person is charged with a separate crime in addition to entering the country illegally, they will be held at the federal facility until their hearing, Bailey said, but if they are detained solely because of their immigration status then they will be housed until deportation.

Legally, detention is a civil function, not criminal, and its aim is to ensure compliance with immigration court dates and orders.

Jonah Eaton, the supervising litigation attorney at Nationalities Service Center, an immigrant-aid organization in Philadelphia, said he and other lawyers know of several cases where migrants have already been transferred to the federal jail. One of his clients has been there more than a week, after being sent from the Pike facility in Hawley, Pa., he said.

Prior to the "routine processing" of detainees in or out of any federal correctional institution, the facilities will typically be given 48 hours' notice, according to the memo. Detainees are most likely to be "fully processed" at approved detention centers between 8 a.m. and 2 p.m. Monday through Friday, excluding federal holidays. FBOP will not accept juvenile detainees under the age of 18.

"They'll get treated just like any other person that would go to a federal prison," Bailey said, emphasizing that "they will not get treated poorly."

It remains unclear to the Council of Prison Locals why Philadelphia was chosen as one of two facilities in the Northeast region, considering several institutions across the U.S. operated by the FBOP — including Federal Correctional Institution Loretto, Pa. — were recently closed or deactivated, potentially prime real estate for housing detainees. The council pitched the idea to FBOP's central office, but it didn't take.

"We could have just moved some of these ICE detainees into those facilities, and then the staff could have stayed and not had to move to another location," Bailey said.

Peter Pedemonti, codirector of New Sanctuary Movement of Philadelphia, an immigrant advocacy group, had a similar thought, questioning why Philadelphia was chosen.

"It feels very much in Trump's playbook of petty vengeance and retribution," he said. "The decision to put extra detention beds right in the heart of Philadelphia, blocks from where they signed the Declaration of Independence, is vintage Trump."

Philadelphia will have the space, but concerns about staffing remain

FDC Philadelphia is not at full capacity, meaning "they'll have the space," for the male detainees, Bailey said. However, female detainees are barred from being housed in the federal detention centers due to space concerns, according to the memo.

ICE has approximately 42,000 people currently detained and electronically monitors nearly five times that number, according to government statistics. About 188,302 individuals and families are allowed to live freely, often with relatives or supporters, while being tracked through technological facial matching, telephone check-ins, and wrist-worn devices.

The surge of arrests under the Trump administration is crowding the federal detention system, exceeding its capacity and causing the agency to release detainees, sometimes dozens a day, [according to internal government statistics obtained by CBS News](#).

It's a problem that has spanned across presidencies with the Biden administration exploring ways to add 600 beds to detention facilities in New Jersey, [The Inquirer reported in November 2024](#).

Though federal agencies dedicated to public safety, like the FBOP, were largely unscathed by Trump-era government [hiring freezes](#) or [layoffs](#), the

federal prison system is still grappling with nationwide staffing shortages and an influx of detainees "stretches the staff even more," Bailey said.

FDC Philadelphia is understaffed by 25 officers, according to staffing data obtained by The Inquirer

"The staff are on board with doing whatever we need to do, we just really need more resources to do it and more staff to do it," Bailey said. "And the only way we can get more staff is if our pay is competitive, so we need to increase the pay."

In response to a list of questions from The Inquirer regarding FDC Philadelphia's staffing, expected number of detainees, and other operations at the detention center, FBOP spokesperson Donald Murphy confirmed federal prisons are assisting ICE in their operations, but provided no specifics.

The move faces opposition from advocacy groups who want the local leaders to take a strong stance against Philadelphia being chosen for this operation.

"As this impact becomes larger, what is our city committed to doing, if anything at all?" Erika Guadalupe Núñez, executive director of Juntos, the Latino advocacy organization in Philadelphia, said on Friday. "There are going to be people unjustly detained in our city. Are we just going to look away?"

Councilmember Rue Landau, who [held a hearing to gauge the city's preparedness](#) for a second Trump administration, including the president's immigration policies, condemned the housing of migrants in federal institutions.

"Housing detainees in our federal prisons is unconscionable and immoral and leaves me with a lot of questions that I want answered," Landau said.

EXHIBIT H

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

And

U.S. Department of Justice

FEDERAL BUREAU OF PRISONS

Pursuant to relevant authority under the Economy Act, 31 United States Code (U.S.C.) § 1535 and 8 U.S.C. § 1103, this Inter-Agency Agreement (IAA or Agreement) is entered between the United States Department of Justice, Federal Bureau of Prisons (BOP), and U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE). The parties hereby agree as follows:

1. PURPOSE AND SCOPE:

- (A) To establish operational procedures for the confinement of ICE detainees at BOP institutions operated throughout various locations across the United States.
- (B) Nothing contained in this Agreement shall be construed to abrogate, impair, alter, or amend any other agreement or contract now in effect between the parties relating to any other subject.

2. PERIOD OF PERFORMANCE:

This Agreement shall become effective upon date of authorized signatures of both parties and shall expire not to exceed six (6) months from the date of those signatures. The Agreement may be terminated sooner in accordance with the process outlined in the subsection below entitled "TERMINATION". The parties may mutually agree to extend the Agreement for a period not to exceed six (6) months. Any provisions which require performance after the expiration or termination shall remain in force notwithstanding the expiration or termination of this Agreement.

3. PERFORMANCE:

- A. Subject to the availability of suitable space, the BOP will reserve units as described below for the detention of male ICE detainees at the following institutions:

- 1. FDC Miami - up to 4 units

2. FDC Atlanta - up to 2 units
3. FCI Leavenworth - up to 1 unit
4. FDC Philadelphia - up to 1 unit
5. *FCI Berlin - up to 4 units
 - i. *The units at FCI Berlin are not currently available due to a substantial amount of preparation and resources needed before it will be ready to accept ICE detainees, including but not limited to additional funding for staffing, food, utilities, clothing, training and other necessary items. BOP will inform ICE when FCI Berlin is ready to accept ICE detainees and ICE will be responsible for all costs associated with preparing and maintaining FCI Berlin for this expanded mission.

Due to a lack of dedicated space, the BOP will not house female immigration detainees, unless authorized by the Senior Deputy Assistant Director, Designation and Sentence Computation Center (DSCC). ICE shall coordinate with the DSCC Sr. Deputy Assistant Director to determine the availability of space for ICE detainees. At the time of execution of this agreement, the DSCC Sr. Deputy Assistant Director is Rick Stover, phone no. (606)524-7007; email rxstover@bop.gov.

- B. BOP has the sole discretion to select specific institutions for placement of ICE detainees. ICE shall only place detainees at institutions designated by the BOP and may not place detainees at any BOP institutions without specific authorization by BOP. BOP reserves the right to reject placement of an ICE detainee at any location other than those specified herein. At the time of execution of this agreement, the following BOP facilities are designated to accept ICE detainees: FDC Miami, FDC Atlanta, FCI Leavenworth, and FDC Philadelphia. Additional institutions may be designated for placement of ICE detainees by mutual agreement of both parties. A modification of this agreement is required to authorize the placement of ICE detainees at any BOP facility other than those listed herein. Requests for additional BOP locations to house detainees must be approved by the Assistant Director, Correctional Programs Division.
- C. BOP/DSCC shall notify specific, designated local institutions of the pending placement of ICE detainees at BOP facilities. Generally, forty-eight (48) hour advance approval is required prior to routine processing of ICE detainees in and out of any BOP institution. However, in those cases where ICE loses detention authority over the detainee (e.g., bond posted), ICE will provide as much advanced notice as possible and transport such detainees from the BOP facility. Normally, detainees may be fully processed (funds, clothing, etc.) at approved BOP facilities between the hours of 8:00 a.m. and 2:00 p.m., Monday through Friday, excluding

federal holidays. Outside of these times frames, full processing of detainees may not be possible.

- D. When requested, ICE shall provide guidance to the BOP and its employees regarding the proper handling of ICE detainees in BOP institutions.

4. OPERATIONAL RESPONSIBILITIES AND PROCEDURES:

A. TRANSFER REQUEST BY ICE:

1. ICE shall request permission to transfer detainees to BOP institutions by submitting a request to CPD Senior Deputy Assistant Director (SDAD), Rick Stover. The initial request should be made via telephonic contact to (606) 524-7007. The request should specify the number of detainees identified for transfer and the requested BOP location in which ICE seeks for placement. Following verbal approval, ICE shall provide a manifest to SDAD Stover via email at rxstover@bop.gov. The manifest should contain each detainee name, date of birth, and alien registration number. Once ICE receives email confirmation of the approval, ICE shall provide to the local, designated institution the following information, if applicable, or known to ICE for each of the ICE detainees listed on the manifest and proposed for transfer prior to their arrival at the respective BOP locations:

- a. Copies of all relevant documents which relate to the detainee's case history, infectious disease history, education, physical and clinical record, including but not limited to, copy of a pre-sentence investigation or equivalent report, summary of institutional adjustment if applicable, summary of prior offense history, and a description of the detainee's gang affiliation and activities including any security concerns with other gang members. Clinical documentation shall include all available information on health history, any identified or reported disability, current medical/mental problems, prior treatment history, relevant court orders related to psychiatric care, a list of any prescribed or over-the-counter medications being taken, and a mental health risk assessment prior to transfer, including details of detainees with a history of self-harm, suicidal ideation, or psychiatric hospitalization. ICE will provide a full record upon request. Case history information should be equivalent to that which is provided in a BOP Prisoner Remand form and ICE detainer form.

- b. Copies of all judicial and administrative rulings and

orders relating to the detainee, as appropriate and permitted by law, and the sentence(s) of confinement, including any outstanding warrants or detainers and sentencing data to include the date the sentence was imposed, the date the sentence began, and projected release date.

2. ICE shall provide not less than two (2) ICE officers as POC or on-site at each BOP institution where ICE detainees are held for the duration of the detention of ICE detainees at that institution. They shall serve as the institution's primary point of contact for request of supplemental materials, supplementary translation services, "Know Your Rights" and other materials as needed, and to address issues related to detainee movement and individual ICE detainee cases.

B. ACCEPTANCE/REJECTION BY BOP:

1. The BOP shall have sole discretion to approve or reject each detainee from ICE. After receipt of a transfer request, the BOP shall review the request and inform ICE of the approval or denial. After consulting with the Sr. Deputy Assistant Director (DSCC), the Warden or designee (Warden) at each locally designated institution may reject or remove a detainee for any reason including but not limited to medical, mental health, safety, or security reasons. If additional bed space is needed to further the local designated institution's primary mission of housing federal prisoners, the Warden shall notify DSCC and may order the removal of ICE detainees from the institution. ICE officials may consult with the Warden regarding the rejection or removal of detainees, but the Warden (with approval of SDAD) will have the final decision concerning such matters.
2. Individual designated institutions will not accept ICE detainees who require separation from other ICE detainees already housed at the institution. The Warden shall notify DSCC, who shall attempt to locate an alternate facility. The Warden may order the removal of ICE detainees from the institution. ICE officials may consult with the Warden regarding the rejection or removal of detainees, but the Warden will have the final decision concerning such matters.
3. After consulting with the Sr. Deputy Assistant Director (DSCC), Warden may refuse detainees who are unable to provide for their own normal daily living functions in a correctional environment (e.g., require skilled nursing care, are bed-ridden, need emergency care to stabilize a medical crisis such

as obvious intoxication or symptoms of communicable infections such as tuberculosis) and for mental health concerns (e.g., detainees requiring specialized psychiatric care beyond the scope of in-house services, including those who pose a substantial risk of self-harm or require inpatient psychiatric treatment). Detainees brought directly from a community hospital post emergency care must have documentation of medical clearance by a physician. Detainees requiring skilled nursing care will not be accepted. Wheelchair detainees will be accepted subject to medical evaluation. Wheelchair detainees must be able to perform daily basic functions for themselves, i.e., dressing, eating, bathing, and bathroom use.

4. BOP will not accept juvenile detainees under the age of 18.
5. BOP's DSCC will determine the appropriate institution to place detainees based on the sex of the detainee and the sex of the inmates currently incarcerated at the BOP institution.

C. TRANSFER TO/FROM BOP AND TRANSPORTATION COSTS:

1. Upon receipt of transfer approval, ICE shall deliver the detainee to the designated local institution.
2. All costs incident to the transfer of each detainee, including transportation, shall be the responsibility of ICE. After consultation with the Sr. Deputy Assistant Director (DSCC) and by mutual agreement of the parties, BOP may transport ICE detainees, to minimize costs of transportation. ICE is not authorized to transport BOP inmates.
3. Personal Property will be limited to clothing worn upon arrival, a plain wedding band (without stones) valued at \$100.00 or less, prescribed medication/medical devices, legal materials relevant to current removal or other legal proceeding, prescription eyeglasses, U.S. currency, and one non-metal religious medallion valued at \$100.00 or less. **All other detainee property shall be stored by ICE.** Previously prescribed medications and devices may still be subject to prohibition, rejection or substitution depending on safety and security concerns.
4. Personal funds shall be regulated by existing BOP/local institutional policy.
5. BOP is not responsible for providing release gratuity or transportation funds for ICE detainees.
6. ICE shall remove ICE detainees from the custody of BOP detention centers/jails as space becomes available in ICE detention facilities. BOP detention centers/jails include institutions where

BOP and US Marshals predominantly hold pre-trial detainees (e.g., FDC Atlanta, FDC Philadelphia, FCI Leavenworth, and FDC Miami). For the purposes of this IAA, it does not include FCI Berlin.

D. CUSTODY, SECURITY, AND DISCIPLINE:

1. ICE will provide local BOP institution staff with written notification when significant changes occur in a detainee's status that may impact security concerns, including but not limited to denial of an appeal, receipt of removal date, or information regarding security concerns, separation issues, or gang affiliations that becomes available.
2. In the event an emergency evacuation is necessary at a local institution, as determined by the Warden of that institution, ICE agrees to assist the BOP with the evacuation, transportation, and temporary detention of ICE detainees housed at that local institution. ICE is responsible for all costs associated with the evacuation of ICE detainees from any BOP institution.
3. The BOP shall have physical control over, and power to exercise disciplinary authority upon, a transferred detainee, as follows:
 - a. While in BOP custody, a transferred detainee shall be subject to BOP's rules and regulations consistent with BOP's policies for pre-trial detainees and the laws, rules and regulations of the sending party. ICE detainees will receive a BOP register number once processed into the BOP institution for tracking purposes.
 - b. ICE detainees will be subject to pat searches and metal detector screenings, regularly. Visual searches shall be conducted only when properly authorized by a supervisor and only in the event that there is reasonable suspicion that contraband may be concealed on the detainee. ICE detainees suspected of serious criminal activity shall be returned to ICE custody, within 48 hours.
 - c. ICE detainees may be placed in SHU in accordance with the 2019 ICE National Detention Standards for Non-dedicated Facilities. A detainee must not be placed in SHU without written approval from the Warden. The placement in SHU cannot exceed 30 days. BOP must notify ICE immediately upon the placement of a detainee in SHU and provide written details of the incident. The 2019 ICE National Detention Standards that BOP must adhere to can be found at 2019 National Detention Standards for Non-Dedicated Facilities | ICE and 2.9 Special Management Units | 2019 NDS for Non-Dedicated Facilities
 - d. Nothing contained herein shall be construed to authorize or permit the imposition of a disciplinary action prohibited by law. Each party shall ensure that disciplinary

procedures comply with applicable due process.

- e. ICE detainees who are disruptive, assaultive, attempt to escape, engage in hunger strikes, engage in self-harm or attempted suicide, or commit serious infractions shall be immediately removed from the BOP facility and returned to ICE custody, within 48 hours of the incident. ICE detainees shall be subject to BOP Program statement 5270.09, CN-1, Inmate Discipline Program, while detained at a BOP institution, which meets or exceeds the procedures outlined in the 2011 ICE Performance-Based National Detention Standards (revised 2016), Section 3.1, Disciplinary System.
- f. All ICE detainee discipline shall be subject to review of the respective Regional Discipline Hearing Officer in the Region where the ICE detainee is located. ICE detainees may appeal any disciplinary action as outlined on Bureau of Prisons Program Statement 1330.18, Administrative Remedy Program, which meets or exceeds the 2019 Operations Manual ICE Performance-Based National Detention Standards, Section 6.2, Grievance System.
- g. ICE shall ensure that its transferred detainees have been advised of appropriate procedures to follow in raising concerns related to their confinement.
- h. While in the custody of BOP, detainees shall be subject to federal laws, rules, and regulations consistent with their legal status.
- i. BOP shall provide Admissions and Orientations handbooks to each ICE detainee at each local BOP institution housing ICE detainees. ICE shall provide BOP with copies of the ICE National Detainee Handbook to be provided to all detainees.
- j. ICE detainees must comply with existing BOP policies and procedures, unless otherwise noted in this agreement. ICE agrees to assist in the translation of detainee publications, such as the Admission and Orientation Handbook, applicable policies and procedures.
- k. BOP shall not require ICE detainees to engage in unpaid, non-voluntary labor. ICE detainees shall be able to volunteer for work assignments but otherwise shall not be required to work, except to do personal housekeeping.
- l. Social visitation hours are established at each institution holding ICE detainees. Social visits shall be permitted during set hours on Saturdays, Sundays and holidays, and to the extent practicable, facilities shall also establish visiting hours on weekdays and during evening hours and are subject to change and modification at the discretion of the Warden to accommodate staffing

levels, institutional emergencies, or other reasons as needed.

- m. ICE detainees will comply with existing BOP institutional inmate telephone regulations. ICE detainees must make arrangements with an ICE representative to make any telephone call that cannot be placed through the Inmate Telephone System (ITS) if feasible. ICE is responsible for all costs associated with non-ITS telephone calls made by ICE detainees. ICE shall provide ICE detainees capabilities to make free phone calls to recipients as in a standard ICE detention facility:
- ICE shall install not less than two (2) phone lines per unit housing ICE detainees, which will allow ICE detainees to make pro bono phone calls.
 - ICE shall provide a Speed Dial number directory for legal, advocacy, and consulates, with instructions for use, in English and Spanish.
 - ICE phone lines will allow ICE detainees to call 1-877-235-8297. Once connected to the ICS pro bono platform, ICE detainees shall be able to enter their Alien Number, then enter a Speed Dial number from the directory to connect to the desired recipient.
 - ICE pro bono phone call lines shall be unmonitored lines.
 - BOP shall make these pro bono phones accessible during waking hours seven days a week, consistent with the hours available locally to BOP inmates.
 - BOP may temporarily suspend access to these phones for the purpose of conducting accountability counts of detainees, and during institutional emergencies as determined by the Warden or designee.
 - BOP shall assign Personal Access Code (PAC) numbers to each detainee so that they may utilize standard BOP phone systems for monitored social calls.
 - BOP shall also facilitate standard legal calls by allowing detainees to request to make a legal call through the detainee's Unit Team. The detainee will provide the name and phone number of the attorney whom they wish to call, and the Unit Team member will facilitate in setting up the call.
- n. Requests to interview ICE detainees will be approved solely by ICE, and if the interviews are to take place at a BOP institution, will be handled in accordance with BOP policy. Detainee requests to be interviewed by the media will also be approved solely by ICE and will not occur at any BOP institution. The BOP local institution Public Information officer will notify ICE when an interview is requested. ICE officials may consult with the Warden regarding interviews with the media, but the Warden will have the final decision concerning access to the media for detainees at the facility. BOP staff will not release non-public information

or otherwise comment on matters involving ICE detainees.

- o. ICE will remain flexible in the deployment of officers assigned to BOP institutions. Deployments of ICE personnel to the BOP institutions shall be commensurate with the number of detainees being housed at any given point in time, with a minimum of two (2) assigned per institution. ICE will disseminate up-to-date and accurate information pertaining to travel document status and discuss any other relevant issues at a minimum once per week to the detainees. ICE agrees, under normal circumstances, to limit rotation of its representatives to once-every six months to maintain consistency. Detainees visiting with ICE staff in unit offices are under the direct supervision of the ICE representative.
- p. Asylum hearings will not be conducted at any BOP institutions. BOP will facilitate immigration officers conducting "credible fear" interviews as needed.
- q. ICE detainees will have access to education and psychology materials, leisure and law libraries, and indoor and outdoor recreation.

r. Language and Disability Services:

ICE shall be responsible for providing all necessary resources for language and disability services for ICE detainees housed in BOP institutions, except in cases where BOP can fully accommodate these needs with its existing resources. ICE's responsibilities include, but are not limited to:

- Ensuring effective communication for detainees with disabilities, which may involve providing auxiliary aids such as readers, materials in Braille, audio recordings, telephone handset amplifiers, hearing aid-compatible telephones, telecommunications devices for the deaf (TTYs), interpreters, and note-takers, as necessary.
- Providing language assistance for detainees with limited English proficiency (LEP), including access to bilingual staff, professional interpretation, and translation services to ensure meaningful access to programs and activities.
- Translating written materials into Spanish as a standard practice and, where practicable, making provisions for written translation in additional languages for other significant LEP populations. In cases where written translation is not available or the detainee is illiterate, oral interpretation or assistance shall be provided.

ICE may permit BOP to utilize ICE resources, such as language translation service contracts, where feasible, to facilitate these services. However, the ultimate responsibility for ensuring the provision of these services remains with ICE unless BOP determines it can meet the needs with its existing capabilities.

s. ICE shall install/provide one computer terminal in the common area of each housing unit housing ICE detainees to provide immigration law resources to ICE detainees.

t. ICE shall provide "KNOW YOUR RIGHTS" videos and written materials in English and Spanish (and other languages as available) to each BOP institution housing ICE detainees to show or to provide to ICE detainees.

E. ESCAPES:

If an ICE detainee escapes, BOP will immediately notify ICE. After notification, ICE shall have the primary responsibility and authority to direct the pursuit and retaking of such escaped ICE detainee.

F. MEDICAL SERVICES:

1. The BOP can request ICE to detail full time ICE or U.S. Public Health Service Health Care providers to assist with medical care screenings and provision of health care to ICE detainees. Staff detailed under this provision will work under the oversight of the respective Institution Clinical Director and Health Service Administrator and will provide proof of necessary credentials and privileges. If the request is denied the BOP reserves the right to obtain the requested assistance and seek reimbursement for the cost associated with the BOP providing such services. At each facility, ICE will provide BOP the name and contact information for the IHSC Field Medical Coordinator (FMC) who can assist with case management and coordination of care.
2. BOP will provide in-house health care for ICE detainees confined at BOP institutions. In-house is defined as health care provided inside a BOP institution. The scope of in-house health care services will be the same as afforded to BOP inmates as determined by BOP policies and clinical guidance.
3. ICE is responsible for providing the transportation, supervision and funding for outside medical care of ICE

detainees housed at BOP institutions. Institution staff will notify ICE a minimum of 48 hours in advance of scheduled outside medical appointments. When feasible, appointments will be scheduled Monday through Friday, between 9:00 a.m. and 2:00 p.m. For security reasons, the detainee will not be provided with advance notice of the scheduled appointment.

In the event of a medical or mental health emergency, BOP will immediately provide necessary emergency medical treatment, including initial on-site stabilization and off-site transport to an appropriate emergent care facility, as needed or via ambulance as clinically indicated. In emergency situations requiring hospitalization, BOP staff will transport ICE detainees to a local hospital or escort via ambulance if clinically indicated and will remain until properly relieved by ICE or contract guard service personnel. BOP will notify ICE immediately regarding the nature of the transferred detainee's illness or injury and the type of treatment provided. The cost of all emergency medical services provided off-site will be the responsibility of ICE. At no time shall BOP or detainee incur any financial liability related to such services.

4. BOP shall notify ICE and the FMC as soon as possible if emergency off site care will be or was required; and in no case more than seventy-two (72) hours after detainee received such care. BOP will release all medical information for ICE detainees to the ICE Health Services Corps (IHSC) representatives upon request and report all hospitalization updates daily to the Field Medical Coordinator (FMC).
5. The Warden or their designee shall notify ICE and the FMC as soon as possible if emergency off site care will be or was required; and in no case more than seventy-two (72) hours after detainee received such care.
6. If agreed to by both parties that a funeral or bedside visit is appropriate for an ICE detainee, ICE will provide escort and will pay for all costs incurred.

G. DEATH:

In the event of a detainee death the BOP will provide the following information at the time of notification:

1. Name, Register Number, ICE Number, DOB
2. Date, Time, and location of death
3. Apparent cause of death
4. Investigative steps being taken, if necessary.

The BOP will properly identify the deceased detainee by taking postmortem photos, and fingerprints. Once properly identified the deceased detainee will be turned over to the coroner as soon as possible. The BOP will transfer the deceased detainee's property to ICE, unless it is retained as evidence. In case of a

questionable death the Special Investigative Agent (SIA) will work in cooperation with ICE on any on-going investigation. The Warden and/or ICE District Director reserve the right to order an autopsy following the death of any ICE detainee. Death notification will be handled by ICE. All costs associated with the death of an ICE detainee shall be paid by ICE. This includes, but is not limited to autopsy, casket, and funeral home transportation.

H. RELEASE/RETURN:

1. In preparation for the lawful termination of a transferred detainee's confinement, ICE shall accept return of the detainee at its own expense.
2. All costs related to the return of a transferred detainee, including transportation, clothing, supplies and any release gratuities shall be separately provided by ICE, in a manner mutually agreed upon by the parties.
3. If a detainee is rejected by the BOP after transfer to a BOP institution, ICE shall be notified to re-take physical custody of the detainee. ICE shall remove the detainee from the BOP institution within four (4) hours. All costs associated with transporting the detainee to or from the BOP are the responsibility of ICE.

5. REIMBURSEMENT BY ICE:

In consideration for the BOP's performance under the terms and conditions of this Agreement, and as required by 31 U.S.C. § 1535, ICE shall reimburse the BOP for the full costs and expenses of each ICE detainee accepted and housed by BOP.

6. BILLING/PAYMENT PROCEDURES FOR ICE DETAINEES:

- A. PER DIEM RATE:** ICE will reimburse BOP for the actual cost per-inmate, per-day. The rate will be based upon the most recent BOP per capita rate, plus current year inflation rate, for each location detainees are housed. In addition, BOP retains the right to invoice ICE for catastrophic expenses incurred. Catastrophic expenses are defined as medical expenses in excess of \$10,000.
- B. TDY & OVERTIME:** ICE will reimburse BOP for any costs incurred to temporarily assign staff (TDY) to an institution, or for overtime expenses incurred to assist institutions housing ICE detainees.
- C. Other Expenses**

a. **REIMBURSEMENT OF DIRECT AND INCIDENTAL COSTS:** ICE will reimburse BOP for all other expenses incurred, not included in A and B, to support the immigration efforts. Reimbursable costs include but are not limited to:

1. postage for indigent ICE detainees;
2. transportation, meals, and any other costs associated with any hearings or legal proceedings for ICE detainees
3. Facility and security improvements to include repair and renovations to accommodate ICE population;
4. Interpreter and Translation services;
5. Any other costs applicable to ICE detainees or their detention.

D. INVOICES:

- Invoices for per diem shall itemize each detainee by name, register number, dates of stay, and the appropriate per diem rate. Billing shall be based upon the actual number of days used.
- Invoices for overtime shall incorporate calculations that fairly represent overtime expenses related to ICE detainees.
- Invoices for TDY and Other Expenses shall be based on evidence of actual expenses incurred.

E. INVOICE SUBMISSION:

All invoices shall be submitted on a monthly basis to the following email box: ice-invoices@ice.dhs.gov.

F. PAYMENT:

Since this is an Economy Act based Inter-Agency Agreement (IAA), BOP shall collect payments promptly after issuing an appropriate invoice, ordinarily within thirty (30) days, via G-Invoicing system. The accounting information for the provider (BOP) and the customer (ICE) are as follows:

PROVIDER (BOP)

Address:

Federal Bureau of Prisons
Accounting Operations Section
320 First Street, NW
Room 901D – 4th Floor
Washington, DC 20534

Accounting Location Code (ALC):

15100900

Treasury Accounting Symbol (TAS):

15251060

UEI:

GPVSZFFUERL7

TIN/EIN:

352850280

Accounting Dimension

BBFY: 2025

Fund: 1060AR

Project Code: 25IA1006

Program: 22UM

CUSTOMER (ICE)

Department of Homeland Security
(DHS) Immigration and Customs
Enforcement (ICE)
500 12th Street SW
Washington DC 20024-5010

Accounting Location Code (ALC) :

70191512

Treasury Accounting Symbol (TAS) :

07054000

UEI:

N/A

TIN/EIN:

43-2000174

Accounting Dimension

BBFY: 2025

Fund: E1

Project Code: GE257200

Program: 311200000 ERODETN

7. ANTI-DEFICIENCY ACT:

Nothing contained herein shall be construed to violate the Anti-Deficiency Act, 31 U.S.C. § 1341, by obligating either Party to any expenditure or obligation of funds in excess or in advance of appropriations.

8. GENERAL PROVISIONS:

A. MODIFICATION:

This Agreement, or any of its specific provisions, may be revised or modified by signatory concurrence of the undersigned parties, or their respective official successors. If any provisions of this Agreement become invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the extent permitted by law and regulation.

B. TERMINATION:

This Agreement may be terminated by mutual written agreement or by either party upon sixty (60) days advanced written notice to the other party, or sooner by signatory concurrence of both parties. Within sixty (60) days after giving unilateral termination notice to ICE, or after receiving unilateral termination notice by ICE, all detainees shall be transferred to ICE custody under this Agreement. ICE bears the cost of transporting all ICE detainees out of BOP institutions.

C. LIABILITY:

Each party is responsible for any liability arising from its own conduct. Each party shall cooperate with the other in the investigation and resolution of claims arising from the agreement; and neither party shall be responsible for delays or failures in performance from acts beyond the reasonable control of the party (e.g., a natural or man-made disaster). Neither party agrees to insure, defend, or indemnify the other. All costs resulting from this agreement not otherwise identified in the Agreement will be borne by ICE.

D. DISPUTE RESOLUTION:

In the event of a dispute between the parties, the parties shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

E. POINTS OF CONTACT:

Each party shall provide to the other party, and update as necessary, a list of contact information for staff authorized to implement this Agreement and coordinate further operational details. At time of signature, each party has identified the following positions as the primary points of contact for the named subject areas:

1. Agreement Administration, e.g., notices, proposed modifications related to this IAA:

BOP: **Shane Salem**
 Assistant Director
 Correctional Program Division
 Federal Bureau of Prisons
 320 First Street, NW
 Washington, DC 20534
 Phone: 352-303-6701
 Email: ssalem@bop.gov

ICE:

 Monica Burke
 Assistant Director
 Custody Management Division
 Immigration and Customs Enforcement
 Enforcement and Removal Operations
 500 12th St., SW
 Washington, D.C. 20536
 Phone: 571-327-6473
 Email: monica.s.burke@ice.dhs.gov

2. Technical Requirements, e.g., individual case details:

BOP: **Rick Stover,**
 Senior Deputy Assistant Director
 Designation and Sentence Computation Center
 Federal Bureau of Prisons
 U.S. Armed Forces Reserve Complex
 346 Marine Forces Drive
 Grand Prairie, TX 75051
 Phone: (606) 524-7007
 Email: rxstover@bop.gov

ICE:

 Stephen Antkowiak
 Chief of Staff
 Custody Management Division
 Immigration and Customs Enforcement
 500 12th St, SW
 Washington, D.C. 20536
 Phone: 202-836-3491
 Email: stephen.m.antkowiak@ice.dhs.gov

IN WITNESS WHEREOF, the undersigned, duly-authorized officers have subscribed their names on behalf of the BOP and ICE:

U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS



William W. Lothrop, Acting BOP Director

02/06/2025

Date



Digitally signed by KELLY KUYKENDALL
DN: c=US, o=U.S. Government, ou=Dept of Justice,
ou=BOP, cn=KELLY KUYKENDALL
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Date: 2025.02.06 17:15:13 -05'00'

2/6/2025

Kelly Kuykendall, Chief, Acquisitions
Branch

Date

U.S. DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS
ENFORCEMENT

KENNETH D
GENALO

Digitally signed by KENNETH D
GENALO
Date: 2025.02.06 17:44:21 -05'00'

Kenneth Genalo, Acting Deputy Director, ICE Date