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June 18, 2025

VIA ECF

Honorable Michael A. Shipp
United States District Judge
United States District Court
Clarkson S. Fisher Building and United States Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: Wahi v. Pittman,
Civil Action No. 25--02207 (MS)

Dear Judge Shipp:

In accordance with practice under the Local Civil Rules we would respectfully request the Court to accept this reply letter brief in support of the petition for habeas corpus by the petitioner Ishan Wahi (“Mr. Wahi” or “Petitioner”).

PRELIMINARY STATEMENT

On June 24, 2025 Mr. Wahi will have been detained without a bond hearing for nine months since being taken into custody by United States Immigration & Customs Enforcement (“ICE”) on September 24, 2024. When his individual hearing occurs on July 22, 2025, detention will have all but reached the ten month mark. Moreover, the government’s opposition¹ to Mr. Wahi’s as applied challenge to his continued detention under the Due Process Clause of the Fifth Amendment, does not dispute the Petitioner’s contention that his imprisonment will be further prolonged by an appeal to the Board of

¹ Opposition Brief In Response To Petition For Habeas Corpus (“GBr.”)

Immigration Appeals (“BIA” or the “Board”) either by Mr. Wahi or the Department of Homeland Security (“DHS”), depending upon the outcome of the July 22, 2025 hearing, not to mention a petition for review by Mr. Wahi to the United States Court of Appeals for the Third Circuit should he lose before the Board. In short, Mr. Wahi’s continued detention at the Elizabeth Contract Detention Facility (“ECDF”) falls well within the range where detention without a bond hearing becomes suspect under Third Circuit precedent. See German Santos v. Warden Pike Cty. Corr. Facility, 965 F.3d 203, 211 (3d Cir. 2020)(citing Chavez-Alvarez v. Warden York Co. Prison, 783 F.3d 469, 478 (3d Cir. 2015) (six month to one year period triggered a bond hearing)). See also Diop v. ICE, 656 F.3d 221, 234 (3d Cir. 2011)(mandatory detention becomes “more and more suspect” after five months); Bautista v. Sabol, 862 F.Supp.2d 375, 381 (M.d. Pa. 2012) (“While courts have declined to establish concrete rules for appropriate detention periods, there exists a point—somewhere around the seventh month mark—where pre-removal detentions becomes universally questionable”).

Furthermore, while mistakenly criticizing the Petitioner for assertedly challenging conditions of confinement at ECDF, GBr. at 7, the government does not dispute the fact that Mr. Wahi is detained with inmates having ongoing criminal cases or that solitary confinement is used as a disciplinary measure at ECDF. These uncontested facts strongly support relief, for they establish that Mr. Wahi’s detention is more akin to criminal custody than civil detention, an important criterion for assessing the constitutionality of mandatory detention under German Santos. See also Aseez O.A v. Pitman, 2023 U.S. Dist. LEXIS 116037 at 4 (D.N.J. July 6, 2023)(Martinotti, J.)(conditions of confinement at ECDF are “not meaningfully distinguishable from criminal punishment.”). Finally the

government makes no claim that Mr. Wahi is proceeding in bad faith to delay proceedings, while German Santos, 965 F.3d at 212, makes clear that his valid application for relief from removal should not be held against him.

RECENT DEVELOPMENTS

At the time this second habeas petition was filed, the individual hearing was scheduled for July 18, 2025 before Immigration Judge Adrian N. Armstrong, who had presided over this case from the beginning at the Elizabeth Immigration Court. Verified Petition for Writ of Habeas Corpus (“Pet.”) ¶10. For reasons that the government does not explain, Adrian Armstrong is no longer an Immigration Judge, either in the Elizabeth or the Newark Immigration Court, and Mr. Wahi’s case has been transferred to another Immigration Judge with the individual hearing date moved to July 22, 2025, as shown by the materials attached as Exhibit A. All administrative remedies to secure Mr. Wahi’s release have been exhausted, Pet. ¶13, and the government makes no claim that there are any further administrative remedies left to exhaust.

ARGUMENT

PETITIONER’S CONTINUED DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS

Despite the government’s contrary arguments, the Court should order a bond hearing under the test set forth in German Santos, which, to repeat, confirms that the constitutional holdings in Diop and Chavez-Alvarez, 783 F.3d 469, 474 (3d Cir. 2015), remain good law as Borbot v. Warden Hudson Cnty Corr. Facility, 906 F.3d 274, 278-79 (3d Cir. 2018) had recognized earlier. See also Amadu K at 4-5. Turning first to length of detention, Mr. Wahi’s detention will be two days shy of ten months by his July 22,

2025 individual hearing and, regardless of the outcome, will certainly continue well beyond that time, a point the government does not dispute. With a virtually identical length of detention, just under then months, A.L. v. Oddo, 761 F.Supp.3d 822, 825 (W.D. Pa. 2025) ordered a bond hearing under German Santos. See also Frank B. v. Green, 2020 U.S. Dist. LEXIS 59456 (D.N.J. 2020) (bond hearing ordered for foreign national detained under 8 U.S.C. §1225(b) for 11 months) and Tracey M.S. v. Decker, 2020 U.S. Dist. LEXIS 82206 (D.N.J. 2020)(bond hearing was ordered for a foreign national detained just over 11 months). Moreover, in Black v. Dir. Thomas Decker, 103 F.4th 133 (2d Cir. 2024), the Second Circuit, albeit under a somewhat different standard than German Santos, upheld the grant of a bond hearing to a foreign national detained for some seven months. See also Bautista, *supra*, 862 F.Supp.2d at 381 (detention becomes questionable around seventh month mark).

Moreover, to reiterate, the length of detention must be evaluated “in light of the likelihood of whether detention under the statute is likely to continue,” as Azeez Q.A. v. Pitman, 2023 U.S. Dist. LEXIS 116037 (D.N.J. 2023)(Martinotti, J.) holds, a point the government, again, does not dispute. . See also A.L., *supra.*, 761 F.Supp.3d 822, 825. Furthermore, even if a decision were rendered from the bench at the July 22, 2025 individual hearing, detention could still be reasonably expected to continue up to and well beyond a year, given an appeal either by DHS or Mr. Wahi to the BIA and then to the Third Circuit by Mr. Wahi, a contention the government does not challenge. In short, there is every reason to believe that detention will continue well past the one year outer limit set in Chavez-Alvarez. Accordingly, the length and likelihood of continued detention strongly supports ordering a bond hearing. See Amadu K., *supra*, which ordered

a bond hearing in the case of a foreign national detained for just over 12 months and cited with approval both Reid v. Decker, 2020 U.S. Dist. LEXIS 36095 (S.D.N.Y. 2020) (collecting cases from S.D.N.Y. granting relief under 8 U.S.C. §1226(c) for detentions between six months to a year) and Khan v. Tsoukaris, 2020 U.S. Dist. LEXIS 77758 (D.N.J. 2020)(granting habeas petition for petitioner “detained for just over a year”), *appeal dismissed* Khan v. Field Office Director, 20-2395 (3d Cir. Oct. 29, 2020).

By contrast, Romeo S.K. v. Tsoukaris, 2020 WL 4364297 (D.N.J. July 29, 2020) or Wilmer M.R.R. v. Tsoukaris, 2020 WL 4727276 (D.N.J. Aug. 14, 2020) on which the government relies, GBr. at 5, are not persuasive authority to deny a bond hearing for Wahi. Thus Romeo did not consider the likelihood of continued detention or whether the foreign national’s conditions of confinement were meaningfully different from criminal punishment. Even less cogent is the government’s reliance upon Wilmer, where the foreign national had only been detained from February 2020 to August 2020 and his principal claim for release was based upon the alleged inadequacy of the ECDF’s response to COVID.

The second factor German Santos, 965 F.3d at 211 considers is the reason for the delay about which the Court of Appeals held that the foreign national’s good faith challenge to removal, amply made here, should not be held against him and makes clear, “detention under 8 U.S.C. §1226(c) can still grow unreasonable even if the Government handles the removal proceedings reasonably.” Here both parties have proceeded expeditiously and the government makes no claim, which would wholly unwarranted in any event, that Mr. Wahi has somehow proceeded in bad faith to delay proceedings.

The third factor considered by German Santos, 965 F.3d at 211, is whether detention is “meaningfully different” from criminal punishment. Given Mr. Wahi’s detention with those having pending criminal cases and the use of solitary confinement as a form of punishment, Mr. Wahi’s conditions of confinement at ECDF are “not meaningfully distinguishable from criminal punishment,” as was held in Aseez O.A., 2023 U.S. Dist. LEXIS 116037 at 4, in the case of another foreign national detained as ECDF. Indeed, the government does not challenge the fact that Mr. Wahi continues to be detained with those having pending criminal cases or that solitary confinement is used as a punishment at ECDF. Moreover, Mr. Wahi’s detention among those with pending criminal cases, as in a county jail, supports the concern expressed by the Third Circuit in Chavez-Alvarez, 783 F.3d at 478, about the reality “that merely calling a confinement ‘civil detention’ does not, of itself, meaningly differentiate it from penal measures. Accord Ngo v. INS, 192 F.3d 390, 397-98 (3d Cir. 1999) (“It is. . . unrealistic to believe that. . . INS detainees are not actually being ‘punished’ in some sense for their past conduct”).

Furthermore, Romeo and Wilmer, on which the government relies, illustrate that Mr. Wahi faces continued detention at ECDF with detainees who are at a higher risk level than those at the Fort Dix Low Security Institution, where he served his federal criminal sentence. Thus the detainee in Romeo had been convicted of resisting arrest and aggravated assault, while the detainee in Wilmer had been convicted of resisting arrest and possession of heroin. Additionally in the ongoing litigation concerning whether New Jersey can preclude renewal of the ECDF contract with the government, it was established that ECDF now houses not only medium but also high risk detainees. See

CoreCivic, Inc. v. Murphy, 690 F.Supp.3d 467, 473 (D.N.J. 2023), appeal docketed Sept. 7, 2023, C/A Dkt. No. 23-2598. In short this factor strongly supports granting a bond hearing.

In the final analysis, the governing factors taken together make a strong case for granting habeas corpus and ordering a bond hearing despite the government's opposition.

CONCLUSION

For all the above reasons, the Court grant the petition and order a bond hearing. In the alternative, the Court should set this matter down for a hearing.

Dated: Newark, New Jersey
June 18, 2025

/s/Thomas E. Moseley

THOMAS E. MOSELEY
One Gateway Center--Suite 2600
Newark, New Jersey 07102
Tel. (973) 622-8176
Attorney for Petitioner

EXHIBIT A

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Executive Office for Immigration Review | Newark Immigration Court



Newark Immigration Court

[About the Court](#)

[Contact the Court](#)

[Observing Immigration Court Hearings](#)

[Immigration Court Procedures](#)

[Stakeholder Resources](#)

About the Court

The Newark Immigration Court falls under the jurisdiction of the [Office of the Chief Immigration Judge](#), which is a component of the [Executive Office for Immigration Review](#) under the [Department of Justice](#).

Address

970 Broad Street, Room 1200
Newark, NJ 07102

Hours

- Public Hours: 8 a.m. - 4:30 p.m.
- Window Filing Hours: 8 a.m. - 4 p.m.

The immigration court is open Monday to Friday except for federal holidays. The Office of Personnel Management publishes a list of the observed dates of every federal holiday by year online at this link: [OPM holidays](#). Additionally, the court may have to unexpectedly close due to inclement weather or for another emergency or reason. When necessary, information on

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Executive Office for Immigration Review | Newark Immigration Court

Please direct inquiries to the EOIR Office of Policy:

EOIR Office of Policy
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
703-305-0289
PAO.EOIR@usdoj.gov

Asylum EAD Clock Requests

For Asylum EAD inquiries or clock correction requests for Newark, please e-mail Asylum.Clock.Newark@usdoj.gov.

Please include:

- the applicant's **name**;
- the applicant's **alien registration number**;
- **why** the requestor believes the clock should be adjusted.

NOTE: This mailbox is ONLY for Asylum EAD Clock requests. The court will not respond to any other communications sent to the mailbox. Rather, for general inquiry requests that are not related to the Asylum EAD Clock, please email the court at the email address listed in the "General Inquiries" section above.

Observing Immigration Court Hearings

Immigration court hearings are open to the public, with limited exceptions, as specified in law. You do not need to notify the immigration court in advance of your visit. You are, however, encouraged to contact EOIR's Office of Policy at PAO.EOIR@usdoj.gov to coordinate your visit. Note, the use of cameras and recording devices in courtrooms or other EOIR spaces is prohibited. For additional information about court observations, please review EOIR's [Observing Immigration Court Hearings Fact Sheet](#).

Newark (NEW) Staff Directory

Assistant Chief Immigration Judge*

David Cheng



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Executive Office for Immigration Review | Newark Immigration Court

Court Administrator

Paul Friedman

Immigration Judges

- Maria Akalski
- Shana W. Chen
- Leo Finston
- Nicole A. Lane
- Leila A. Mullican
- Michael Neal
- Arya S. Ranasinghe
- Dennis Ryan
- Ramin Rastegar
- Alberto Riefkohl
- Tamar H. Wilson

**Backup Assistant Chief Immigration Judge: Benjamin J. Davey*

Immigration Court Procedures

For information regarding procedures for practice before the immigration courts, please review the EOIR Policy Manual.

Stakeholder Resources

eRegistry

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Executive Office for Immigration Review | Elizabeth Immigration Court



Elizabeth Immigration Court

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About the Court

The Elizabeth Immigration Court falls under the jurisdiction of the [Office of the Chief Immigration Judge](#), which is a component of the [Executive Office for Immigration Review](#) under the [Department of Justice](#).

Address

625 Evans Street, Room 148A
Elizabeth, NJ 07201

Hours

- Public Hours: 8 a.m. - 4:30 p.m.
- Window Filing Hours: 8 a.m. - 4 p.m.

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Executive Office for Immigration Review | Elizabeth Immigration Court

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Elizabeth (ELZ) Staff Directory



Assistant Chief Immigration Judge*

David Cheng

Court Administrator

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Executive Office for Immigration Review | Elizabeth Immigration Court

Adaly Soto

Immigration Judges

- Richard J. Bailey
- Adam G. Panopoulos

**Backup Assistant Chief Immigration Judge: Benjamin J. Davey*

Immigration Court Procedures

For information regarding procedures for practice before the immigration courts, please review the [EOIR Policy Manual](#).

Stakeholder Resources

eRegistry

Attorneys and accredited representatives are required to register with EOIR in order to represent respondents in immigration court. More information is available at the following link: [eRegistry Validation Process](#).

Additional EOIR Resources

EOIR has several resources to assist aliens in navigating court proceedings, including [self-help materials](#) and the Immigration Court Online Resource ([ICOR](#)), which provides general information on what will happen during court hearings and how aliens can prepare for their hearing.

Finally, stakeholders may find the following resources helpful:

- [Administrative Control List](#)
- [Internet-Based Hearings Access Information](#)

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[Home](#) > [WAHI, ISHAN](#)



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Name: WAHI, ISHAN | A-Number:  | Docket Date:
9/27/2024



Next Hearing Information

Your upcoming **INDIVIDUAL** hearing is **INTERNET-BASED** on **July 22, 2025** at
8:30 AM.

JUDGE

Finston, Leo A.

For hearing access information, please visit EOIR's website and select
"Find an Immigration Court".



Court Decision and Motion Information

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Automated Case Information



This case is pending.



BIA Case Information

No appeal was received for this case.



Court Contact Information

If you require further information regarding your case, or wish to file additional documents, please contact the immigration court.

COURT ADDRESS

625 EVANS STREET ROOM 148A
ELIZABETH, NJ 07201

PHONE NUMBER

(908) 787-1355

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