UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

25 CV-694 RSM-BAT

NO.

JAVEIN JUMEL COKE
A[redacted]
Petitioner
(DETAINED)

V.

Bruce SCOTT, in his official capacity as the warden of Northwestern ICE Processing Center: Mary CHENG, in her official capacity as Acting Director of the Executive Office for Immigration Review ; Krisi NOEM in her official capacity as Secretary of the U.S Department of Homeland Security; and Pam BONDI, in her official capacity as Attorney General of the united States;
Respondents

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

INTRODUCTION

1. Petitioner, proceeding *pro se,* is a native and citizen of Jamaica. Detained at North West ICE Processing center (NWIPC), located at 1623 E "J" street Tacoma , WA 98421
on February 2 2025. Petitioner was served with NTA and taken into ICE custody. On October 23 2024, immigration judge ("IJ") Laylah Maccullen , granted petitioners application for deferral of removal under the C.A.T. On November 20 2024 DHS appealed the IJ's decision granting Petitioner CAT relief, Petitioner, Pro se, does hereby petition this court for a writ of habeas corpus to remedy Petitioner's indefinite detention by respondents.
2. Petitioner has been in civil detention since April 23 2024, over 10 months ago. According, to

2. Petitioner has been in civil detention since April 23 2024, over 12 months ago. According, to vindicate Petitioners statutory and constitutional rights and to put and end to his continued arbitrary detention, this court should GRANT the instant petition for writ of habeas corpus.

3. DHS/ICE cannot remove Petitioner unless the order of deferral is terminated. Absent an order from this court, Petitioner will likely remain detained for many more months if not years.

4. Furthermore, ICE's ongoing decision to refuse release of petitioner is inconsistent with ICE's own policy, pursuant to ICE directive 16004.1, long-standing ICE policy favors the prompt release of non-citizens who have been granted protection relief by an immigration judge. **EX A**

5. The supreme court has required stringent substantive standards and strong procedural protections for civil detention, particularly when prolonged. The supreme court has said that, under the Due Process Clause, detention must "bear a reasonable relation to the purpose for which the individual was committed" in Diop v. ICE DHS, 3rd circuit, held that once mandatory detention becomes prolonged, mandatory detention no longer serves the legitimate purpose of the statue and cease to govern the individual detention. Pursuit of bonafide challenges to removal, including appeals did not make corresponding extension in mandatory detention reasonable, since contrary holding would "effectively punish(petitioner) for pursuing applicable legal remedies". Lesli v. A.G, 678 F.3d 265 (3rd Cir. 2012), the court of appeals interpreted *Zadvydas as holding that the longer the foreign national is detained the less evidence must be provided to obtain relief.*

6. This particular prolonged detention challenge arises post final order, wherein immigration court proceedings have concluded, petitioner has been granted CAT relief, and continued custody attributable to litigation decisions made by the government. Despite success on cat claim over 5 months ago, petitioner remains in custody. This lengthy period of post-removal continued detention is largely attributable to litigation decisions made by the government, thus for the past months the government

has been the principle agent of the delay in this case. In such instances where immigration officials have made litigation choices that prolonged and delayed removal proceeding, the release of the alien pending completion of this protracted litigation is both necessary and appropriate. If an alien is granted withholding relief, DHS may not remove the alien to the country designated in the removal order unless, the order of withholding is terminated. This decision is clothed with and the respondent must overcome the 'presumption of regularity'.

7. Despite no bail hearing, nor adequate liberty protections, petitioner remains in custody. The lengthy period of post-removal continued detention is largely attributable to custody decisions made by the government, thus for the past months the government has been the principle prosecutor and decision maker. The release of the alien pending completion of this protracted litigation is both necessary and appropriate.

8. As the supreme court held *Zedvydas v. Davis,533 U.S 678 (2001)*, non citizens cannot be detained indefinitely if the government is unable to carry out their removal. Instead, detention after a final order of removal is authorized only when removal is reasonably foreseeable. As a guide to the courts, the court in *Zadvydas* established a presumption that detention after a final order of removal was permissible for the six months. Detention after a final order may be unlawful even when six months have not passed, particularly if it is clear the United States while not be able to effect a non citizens removal. But after that six months period, once a non citizen provides '"good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing" and the longer a non citizen has been detained, the stronger the governments showing must be.

9. Petitioner is entitled to release under the framework of *Zadvydas* unless the government promptly demonstrates that there is a significant likelihood of removal in the reasonably foreseeable future. Petitioner asks this court to find that his prolonged detention is unreasonable and to order his

immediate release.

10. Petitioner brings this petition for writ of habeas corpus pursuant to 28 U.S.C 2241 , seeking his IMMEDIATE release

PARTIES

11. Petitioner is a Jamaican citizen who was GRANTED deferral of removal under the C.A.T.

on October 23 2024 see **EX-F.** The Department of Homeland Security (''DHS'') issued a Notice to Appear

(''NTA''), on April 23 2024 charging petitioner as removable for non immigrant overstay of visa 237(a)(1)(B) and identity theft 1028(a)(1). He has been detained since then without the opportunity for bond. Petitioner removal proceedings were heard at the Elizabeth Immigration court in Elizabeth New Jersey, and his case is currently on appeal Board of Immigration of Appeals

12. Bruce Scott is named in his official capacity as the warden of North West ICE Processing Center (NWIPC). He is a employee of the GEO group, a private company that contracts with United States Immigration and Customs Enforcement (''ICE'''') to run NWIPC. In his capacity as Warden, he oversees the administration and management of NWIPC, which is located at 1623 E''J'' street Tacoma, WA 98421.

12. Respondent David Neal is named in his official capacity as acting director of the Executive Office for Immigration Review (''EOIR''). In this capacity, he is responsible for the adjudication of custody determinations, remove ability, and eligibility for immigration relied by Immigration Judges and appellate Immigration Judge of the BIA. He is legally responsible for determination regarding petitioner custody status, removability and eligibility for relief from removal. Respondent Neal office is located at 5107 Leesburg pike, Falls Church, Virginia 22041.

Respondent Kristi Noem is name in her official capacity as the secretary of the United States Department of Homeland Security. In his official capacity, she is responsible for administration of the

immigration laws pursuant to 8 U.S.C. 1103(a), he routinely transacts business in the Western District of Washington, he is legally responsible for the

pursuit of Petitioners detention and removal. Respondent Noem office is located at the United States Department of Homeland Security, Washington D.C. 20528.l

13. Respondent Pam BONDI is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for administration of the immigration laws in the North Western District of Washington and is legally responsible for administering Petitioner removal and custody re determination proceedings and the standards used in those proceedings. Respondent Bondi office is located at the United States Department pf Justice, 950 Pennsylvania Avenue, N.W., Washington D.C. 20530

JURISDICTION

14. This court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. 2241; 28 U.S.C. 1331; Article I, 9,cl.2 of the United States Constitution; and the All Writs Act, 28 U.S.C. 1651. Additionally , the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. 2201. Petitioners detention as enforced by Respondents constitutes a ''severe restraint on Petitioners individual liberty", as Petitioner is ''subject to restraints not shared by the public generally", he ''cannot come and go as he pleases"and his ''freedom of movement rests in the hands of,"public officers. *See Hensley v. Municipal court, 411 U.S 345 351 (1973)*

15. Federal courts have federal jurisdiction, through the APA, to ''hold unlawful and set aside agency action" that is arbitrary, capricious , and, abuse of discretion, or otherwise not in accordance with law '' 5 U.S.C 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C 703 (providing that judicial review

of agency action under the APA may proceed by ''any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus''

The APA affords a right or review to a Person who is ''adversely affected or aggrieved by agency action.'' 5 U.S.C 702. Respondents continued detention of Petitioner up to and past the 90 day removal period has adversely affected petitioners liberty and freedom.

!6. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, see 8 U.S.C 1252(a)(1),(b), district courts have jurisdiction to hear habeas corpus claims by non citizens challenging the lawfulness or constitutionality of their dentition bu ICE. *Jennings v. Rodriguez, 583 U.S 281, 292-96(2018); **Demore v. Kim 538 U.S. 510, 516-17 (2003); Zadvydas v. Davis, 533 U.S. 678, 687 (2001).***

STATEMENT OF FACTS

17.Petitioner is 33 years old citizen of Jamaica a father of 2 beautiful kids one living in Jamaica and another in America. He is someone that has escaped a series of torture and persecution in his home country of Jamaica which led him to depart over a decade ago. On April 23 2024 DHS/ICE placed petitioner in removal proceedings through an administrative order for overstaying of visa and identity theft .

18. Petitioner following the entry of the order of removal petitioner was granted deferral of removal C.A.T on October 22, 2024 on November 20 2024 DHS appealed his relief. On January 12 the decision to

continue detention after being granted relief following ICE policy 16004.1 was made by David Oniel ICE deputy field office director in case of Javein Coke.

19. Petitioner has coopered fully with all of ICE efforts to remove petitioner. Petitioner has cooperated with ICE in the following way
* Providing information about country of birth
* Talking to his home country consulate and embassy
* Providing identification documents

If released petitioner will be supported by family in the United States who are all citizens
*Keziah coke-Wife
* Dorothy Lee -grandmother
*Dawn Marshall-Mother
*Malcom Marshall- step father
*Paula Greaves -aunt
* Devon coke -cousin army veteran
*Omar Coke- Uncle
* Andre Greaves -cousin

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. There is no statutory requirement to exhaust administrative remedies where a non citizen challenges of detention. ***Pujalt-Leon v. Holder, 934 F.Supp. 2D 759, 773 (M.D. Pa 2013).*** Where as here, the agency has predetermined a dispositive issue, no further action is necessary. ***Woodall v. Fed. Bureau of Prisons, 432 F.3d 235, 239 n.2 (3rd Cir. 2005)***

21. Because Supreme Court precedents, regulations and precedent decisions by the board of immigration appeals (''BIA") require Immigration Judges (''IJ") to find that individuals detained pursuant to 1225(b) are subject to detention without bond, see **Jennings, 583 U.S. at 303; 8 C.F.R 1003.19(h)(2)(b);*Matter of Oseiwsu, 22 I&N Dec. 19 (BIA 1998).***, no further administrative remedies are required

22. In any event, Petitioner has repeatedly sought release from respondent using the statutory mechanisms available to him. He has requested release from custody from ICE by writing Deporting officer and ICE HQ pertaining to ICE policy and also BIA see **EX-B & EX-C**

VENUE

23.Venue is proper in the North Western District of Washington because Petitioner is presently in the custody of Respondents in the District, at the North Western ICE Processing Center 1623 E ''J" street

Tacoma , WA 98421, which is in Pierce County within the jurisdiction of North Western district of Washington.

STATEMENT OF FACTS AND LEGAL BACKGROUND

A. PETITIONER CONTINUED DETENTION IS UNLAWFUL UNDER ZADVYDAS SINCE REMOVAL IS NOT REASONABLY FORESEEABLE AND THIS COURT SHOULD ACCORDINGLY ORDER IMMEDIATE RELEASE

24. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-

citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez,* **141 S, CT. 2271 2283 (2021).** Once withholding or CAT is granted, either party has the right to appeal that decision to the BIA within 30 days. *SEE* **8 C.F.R. 1003.38(b).** If both parties waive appeal or neither party appeals within 30-days period, the withholding or CAT relief grant and the accompanying removal order become administratively final. *See* id. 1241.1.

25. When non-citizen has a final withholding or CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. See **8 U.S.C. 1231(b)(3)(A); 8 C.F.R. 1208.17(b)(2).** While ICE is authorized to remove non-citizen who are granted withholding or CAT relief to alternative countries, see **8 U.S.C. 1231(b); 8 C.F.R. 1208.16(f)** , the removal statue specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the non-citizen is a citizen, subject or national" the country ''in which the non-citizen was born", or the country '' in which the non-citizen resided '' immediately before entering the United States. **8 U.S.C 1231(b)(2)(D)-(E).**

26. If ICE identifies an appropriate alternative country of removal, ICE must undergo further

proceedings in immigration court to effectuate removal to that country. See ***Jama v. ICE,543 U.S 335,348(2005)*** ("if non-citizens would face persecution or other mistreatment in the country designated under **1231(b)(2),** they have a number of available remedies: asylum **1158(b)(1);** withholding of removal **1231(b)(3)(A);** and relief under an international agreement prohibiting torture *see* **8 C.F.R 208.16(c)(4),208.17(a)(2004); *Romero v. Evans, 280 F.Supp.3D 835,848 n.24 (E.D. Va. 2017)*** *("DHS* could not immediately remove petitioners to a third country, as DHS would first need to give petitioner notice and the opportunity to raise any reasonable fear claims.").*revd on other grounds, Guzman chavez,* **141 S. Ct.2271.**

27. As a result of these restrictions and procedures, "only 1.6% of non-citizens granted withholding relief were actually removed to an alternative country" in FY 2017. ***Guzman Chavez, 141 S. Ct. at 2295(Breyer, J.,dissenting).*** An analysis of statistics provided by ICE and EIOR for FY 2020 reveals that

this percentage was at most 3.3% during that period.

28. To comply with *Zadvdas,* DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizen with final removal orders are likely to be removed in the reasonably foreseeable future. See continued detention of aliens subject to final order of removal **66 Fed. Reg. 56,967 (Nov. 14,2001).** While **8 C.F.R 241.4** Custody review process remained largely intact, subsection(i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when" the non-citizens submits, or the record contains , information providing a substantial reason to believe that removal of detained non citizen is not significantly likely in the reasonably foreseeable future" **id 241.4(i)(7).**

29. Under this procedure, ICE HQ evaluates the foresee ability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. *See id* **241.13(f).** if ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on " special circumstances", it must justify the detention based on narrow grounds such as a national

security or public health concern, *id i241.14(b)-(d), or by* demonstrating by clear and convincing evidence before an IJ that he the non-citizen is ''specially dangerous''id **241.14(f).**

ICE POLICY

30. Consistent with the statutory and regulatory scheme, long standing ICE policy favors the prompt release of non-citizen who have been granted withholding or CAT relief. In 2000, the then Immigration and Naturalization Services(INS) General Counsel issued a memorandum clarifying that **8 U.S.C 1231** authorizes but does not require the detention of non-citizens granted withholding of removal or CAT relief during the 90-day removal period. ICE policies on post-relief release a 2004 ICE memorandum turned this acknowledgment of authority into a presumption, stating that ''it is ICE policy to factor the release of non-citizens who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain''

31. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2000 and 2004 ICE memorandums are ''still in effect and should be followed '' and that this policy applies at all times following a grant of protection, including during any appellate proceedings and through the removal period. Finally, in 2001, acting ICE director Tae Johnson circulated a memorandum to all ICE employees reminding them of the '' longstanding policy'' that ''absent exceptional circumstances , no-citizens granted relief withholding CAT protection by an immigration judge should be released. Director Johnson clarified that ''in considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat or danger to community **EX- A.**

32. Petitioner is 33 years old Jamaican citizen, who has previously been beaten, shot at tortured, extorted victim of arbitrary arrest and threatened with death.

33. After serving his sentence for identity theft , for which he served 14 months upon release from B.O.P, petitioner was released to ICE custody on April 23 2024. Once detained petitioner filed I-589 application for Asylum, withholding of removal and CAT.

34. On October 23 2024, petitioner had individual merits hearing and testified extensively under oath in support of his application. The IJ found petitioner credible and that petitioner substantially corroborated his claim. Furthermore, '' the court acknowledges the objective evidence suggests there is a likelihood that respondent will face harm upon his return to Jamaica (IJ decision) **EX- F**

35. Petitioner has formally requested release on multiple occasions from ICE. First on January 16 2024 while unrepresented. On January 11, ICE served a decision to continue detention on petitioner **EX-H** ICE custody review denial. Alleging exceptional circumstances, yet refusing to declare the factors used to determine this, not only in violation of its own policy but also due process. The decision does not allege danger to the community or flight risk, nor health concerns, nor does it allege that petitioners removal is not reasonably foreseeable, nor does it identify third country for which ICE is attempting to acquire travel documents. This decision was made purposefully, knowing and intelligently. Despite numerous followup emails requesting an answer ICE did not respond to petitioner request for clarification. **EX-D**

36. ICE has not identified any exceptional circumstances warranting continued detention under ICE policy.

37. Petitioner has been diagnosed with PTSD, mental distress disorder and cognitive disassociation, which requires counseling and have to take medication regularly, is prone to anxiety and sleep deprivation, insomnia, latent tuberculous **EX-E**

38. If released, petitioner would live with his wife Keziah Coke, a United States Citizen, at 14725 94th avenue, Apt #801, and seek mental health services with the support of wife and family.

ARGUMENT PETITIONERS CONTINUED DETENTION IS UNLAWFUL UNDER ZADVYDAS BECAUSE REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT SHOULD ACCORDINGLY ORDER IMMEDIATE RELEASE

39. Petitioner will very likely ***never*** be deported from the United States, let alone in the reasonably foreseeable future. Petitioner cannot be deported to his home country because he has a CAT deferral of removal. See **8 U.S.C 1231((b)(3)(A);; 8 C.F.R. 1208.17(b)(2).**

40. Furthermore, its exceedingly unlikely that ICE will identify an alternative country to which it can remove petitioner. ICE only managed to remove to third country approximately 3% of non-citizens

granted withholding and CAT relief and a increase in ICE's third country removals is highly doubtful without a substantial change in diplomatic relationships between the United States and other countries.

41. Therefore, petitioners removal is not reasonably foreseeable because 1) petitioner cannot be deported to home country due to CAT deferral relief grant;2) ICE has historically managed to remove only a tiny fraction of non-citizens granted withholding or CAT to alternative countries; 3) ICE faiked to remove every similarly situated individual in the last year, leading to their eventual release; 4) any countries to which request may be pending have no logical reason to accept petitioner to alternative country would require additional lengthy proceedings see **Hassaoun v. Sessions, No. 18-cv-586-FPG,2019 WL78984,t*5(W.D.N.Y Jan.2,2019)**(finding removal not reasonably foreseeable where several countries had declined to issue travel documents and several others had provided no response or timeline for response);**(Kacanic v. Elwood, No 02-cv-8019,2002 WL 31520362, at*5 E.D. Pa. Nov.8c2002)**(finding removal not reasonably foreseeable where the country of origin ''been in possession of all the information ICE is capable of providing to it ''but had never state that the petitioner is likely to be granted travel papers'' and was ''unable to tell ICE when a decision will be reached'')

42. Under **zadvydas** it is ''presumptuously reasonable'' for ICE to detain a non-citizen for six months after a removal order in order to carry out deportation process. **533 U.S at 689.**. eg post removal order detention for less than six months may still be unreasonable in unique circumstances like petitioners where he can meet his burden of demonstrating that removal is not reasonably foreseeable. See **Cesar 542 F. Supp. 2D at 904**(''The burden might be on the detainee within the first six months to overcome the presumptive legality of his detention, but where a non-citizen can carry that burden, even while giving appropriate deference to any executive branch expertise, his detention would be unlawful'') **Trinh v. Homan, 466 F. Supp. 3D 1077, 1093 (C.D Cal 2020)**(''Zadvydas established a guide for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months'') **Ali v. DHS,451 F Supp. 3D 703, 708 (S.D Tex. 2020)** (''whereas the Zadvydas court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was indefinite duration before habeas court could find that the detention is unconstitutional '')

43. One such matter was recently addressed in this district. See **Akinola v. Weber, 20110 U.S. Dist LEXIS 5780 (D.N.J. Jan. 26, 2010)** in Akinola, multiple postponements of the aliens removal proceeding (some lasting up to three months) were consistently requested by the executive branch and

then, upon the entry of the IJ order granting the alien deferral of removal, the executive branch placed the alien in a procedural limbo by appealing the IJ decision to the BIA and continuing its postponement practice while keeping the alien in detention. In light of these unique circumstances, the district court ordered a hearing to determine whether a bond hearing would be warranted. **697 F. Supp. 2D 586:: in re Aquino:: March, 4 2010.** This Court similarly relied on the likely impossibility of removal in **Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir. 2006),** where er held that an aliens continued detention was not authorized by statue. In **Nadarajah,** the BIA had " awarded **Nadarajah** asylum twice, as well as protection under the Convention Against Torture" and yet his detention continued for over five years while the government appealed the outcome of these agency proceedings. Id at 1071, 1081. We held that **Nadarajah** had successfully demonstrated that there was no significant likelihood of his removal in the reasonably foreseeable future, because as a result of the asylum and CAT findings "the government is not entitled to remove **Nadarajah** to Sri Lanka, and no other country has been identified to which **Nadarajah** might be removed, "thus forming a powerful indication of the improbability of his foreseeable removal. "Id. At 108-82. **Nadarajah,** like **Zadvydas** and **Clark,** thus involved the detention of an alien whom the government could not lawfully remove.

44. For the reasons stated above, petitioner has clearly met his burden, he has been in post-order detention more than six months. Unlike Zadvydas and the vast majority of its progeny, which analyzed whether ICE will foresee ably be able to remove the petitioner to their home country or country of citizenship, see e.g., **Zadvydas, 533 U.S at 684-85** ,the question here is whether ICE will be able to deport petitioner to random third countries countries to which they have no connection whatsoever. The answer to that question has been ''NO" from the moment petitioner relief was granted, and the likelihood of third country-country removal has only decreased since then.

45. Previous custody determination reviews have been cursory and on policy based metrics which conflates enforcement preference with risk. Actual indicates of risk irrelevant in ICE-DHS custody determination, representative more of policy priorities. The link between enforcement policy and risk assessment is fundamentally flawed and deviates from true risk, unmoored from constitutional constraints and the result is brazen violation of constitutional demands,

* Custody determinations are categorical denials of release rather than individualized assessments.
* Custody decisions driven by political/enforcement preferences rather than risk to public safety or flight.

* Risk classification assessment manipulation, which lacks transparency, DHS ICE adjusts factors to be considered and undue weight given to those factors, not based on any new evidence or data related to the safety or flight risk.

* DHS ICE fails to follow its own policy in violation of due process, APA, and the Accardi doctrine . As well as constitutional guarantees, liberty interest and creates automated system of unconstitutional detention which becomes prolonged and indefinite. Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures even when the internal procedures are possibly more rigorous that otherwise would be required.

* A past criminal record should only be considered to the extent it is indicative of future dangerousness

* DHS ICE officials acknowledge, that it does not take into account certain factors that should be considered, when deciding whether to continue to detain someone. Specifically, eligibility for relief, whether relief has already been granted, length of lawful status in the U.S . entry as a minor , lack of ties and conditions in country of origin or nationality that renders removal unlikely.

* DHS ICE fails to assess 'special vulnerabilities ' or give those proper weight, or take into account certain factors such as in this case; 1 PTSD 2 Anxiety 3 Depression 4 primary caretaker 5 latent tuberculous responsibilities all which have been exacerbated and deteriorating while in ICE custody.

46. Instead of industry – standard risk methodology informing the use of civil detention, the customary use of detention is driving the methodology. Risk levels mirror the executive branches enforcement priorities, but enforcement priorities do not necessarily correspond to the danger someone poses or their likelihood of flight. Instead of local ICE officers and supervisors conforming their detention decisions to risk based assessments, the scoring rubric has been altered to match preexisting policy, conflates risk with enforcement preferences. This link lacks an underlying logic, enforcement priorities do not necessarily correlate with risk to public safety or flight risk. The characteristics used to determine and individual priority for enforcement have no inherent nearing in the need for detention. ICE-DHS however stopped distinguishing indication of risk from political preference, instead engineered methodology to conform to local customs. Aliens removable status itself, bears no relation to detainee dangerouness . Due process is not satisfied, by rubber stamp denials based on temporary distant offenses. The process due even to excludeable aliens requires an opportunity for an evaluation of an evaluation of the individuals current threat to the community and his risk of flight. **Chin Thon Ngo 192 F.3d @ 398**

47. The government should not be deemed to have met its burden based on documents that are inherently suspect or prone to error. **cf. James v. Mukasey, 522 F.3d 250,257(2nd Cir.2008); Francis v. Gonzales, 442 f.3d 131, 141 (2nd Cir.2006); Dickson v. Ashcroft, 346 F.3d 44, 55 (2nd Cir 2003); Matter of Guevara, 20 1 & N Dec.238, 244(BIA 1991); Matter of Tang, 13 I & N DEC. 691, 692 (BIA 1971).** The heightened liberty interest and decreased government safety interest skews the balancing test in favor of the liberty interest for individuals who are detained on the basis of old convictions. The result is a brazen violation of the constitutional demands, losing its constructional footing. Resulting in automated recommendations of continued detention.

THIS COURT SHOULD ORDER THE IMMEDIATE RELEASE OF PETITIONER

48. Because petitioner removal is not reasonably foreseeable, **Zadvydas** requires that he be immediately released. Se **533 U.S at 700-01** (describing release as an appropriate remedy); **8 U.S.C. 1231(a)(6)** (authorizing release subject to terms of supervision). To order petitioners immediate release, This court need only determine that their removal is not reasonably foreseeable under **Zadvydas**; it need not analyze whether they pose a danger to the community or a flight risk. SEE **533 U.S. AT 699-700I** (if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statue)

49. **Zadvydas** explicitly held that flight risk is already baked into reasonable foresee ability analysis (observing that the justification of preventing flight is weak or nonexistent where removal seems a remote possibility at best) and that dangerousness cannot unilaterally justify indefinite civil detention barring " special circumstances," which may include the non-citizen being a ''suspected terrorist '' but do not include the non-citizens ''removable statues itself '' **See Kansa v. Hendricks, 521 U.S. 346, 358, (1997)** (' A finding of dangerouness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary civil detention"). With respect to petitioners detention, ICE has not invoked the regulation governing these "special circumstances "determinations, nor could they reasonably do so because petitioner clearly does not present a national security or public health concern and does not have a criminal conviction qualifying him as "specially dangerous "see **C.F.R 241.14**

50. To the extent this court considers any factors outside of the foresee ability of petitioners removal, which it need not, petitioner have significant equities that warrant release. Petitioners for example, has lived in the United States for over 20 years and is married to a US citizen Keziah coke **EX G**

51. Additionally, this court or ICE is free to impose conditions on release to militate any potential concerns regarding flight risk or danger. See **Zadvydas, 533 U.S at 700** (" the non-citizen release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances") such as a GPS monitor

52. To determine whether detention has become unreasonable or unjustified, the courts in this district apply, German Santos factors, which provide the framework to evaluate due process claims. Together Diop and Chavez- Alvarez, gives a non-exhaustive list of four factors to consider in assessing whether an alien detention has grown unreasonable.

B. PETITIONERS DETENTION OVER 12 MONTHS UNREASONABLY PROLONGED AND ICE CONTINUED DETENTION WITHOUT REVIEWING CUSTODY UNDER ICE POLICY VIOLATES THE APA AND DUE PROCESS

53. **Demore, 538 U.S at 532,** the court has also expressed serious due process concern about the mandatory detention of individual who have substantial claims challenging their remove ability. **Gonzalez v. Oconell 355 F.3d 1010, 1020 (7th Cir.2004)**('a wholly different case arises when a detainee who has a good faith challenge to his deport ability is mandatory detained.') Therefore if there is an ambiguity in the phrase ' is deportable' '. constitutional avoidance should be applied in this context, if not applied, it is in violation of due process clause of the fifth Amendment. Petitioner detention without a bond hearing pursuant to 1231 is unreasonably prolonged in violation of the due process clause of the fifth Amendment. ICE has detained petitioner since April 23 2024 without bond hearing.

54. Under **Accardi** doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration case law, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit

otherwise discretionary decisions. See **Accardi, 347 I.S at 226** (holding that BIA must follow its own regulations in its exercises of discretion); **Morton v. Ruiz, 415 U.S 199, 235 (1974)**(" Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures even where the internal procedures are possibly more rigorous than otherwise would be required.

55. The requirement that an agency follow its own policies is not "limited to rules attaining the statues of formal regulations". **Montilla v. INS, 926 F.2d 162, 167 (2nd cir 1991).** Even an unpublished manual or policy binds the agency if "an examination of the provisions language, its context, and any available extrinsic evidence "supports the conclusion that it is "mandatory rather than merely precatory". **Doe v Hampton, 566 f.2d 265,281 (D.C. Cir.1977);** See also **Morton , 415 U.S. at 235-36** (applying Accardi to violation of internal agency manual); **U.S. v. Heffner, 420 F.2d 809, 813 (4th Cir. 1969)**(" Nor does does it matter that these IRS instructions to special agents were not promulgated in something formally labeled as a regulation')

56. When agencies fail to adhere to their own policies as required by **Accardi,** courts typically frame the violation as arbitrary, capricious and contrary to law under APA see **Damus v. Nielson,313 F.Supp 3D 317, 337 (D.D.C 2018)** ('its clear moreover that **Accardi** claims may arise under the APA") or as due process violation see **Sameena, Inc v. United States Air Force, 147 F.3d 1148,1153 (9th cir. 1998)** ("an agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individuals constitutional right to due process")

57. Prejudice is generally presumed when an agency violates its own policy. **See Montilla 9926 F.2d at 167** ("We hold that an alien claiming the INS has failed to adhere to its own regulations is not required to make a showing of prejudice before he is entitled to relief. All that need to be shown is that the subject regulations were for the aliens benefit and that the INS failed to adhere to them "). **Heffener, 420 F./2d at 813** (" The Accardi doctrine furthermore requires reversal irrespective of whether a new trail will produce the same verdict")

58. To remedy an **Accardi** violation, a court may direct the agency to properly apply its policy see **Damus,313 F.Supp. 3D 626,657 (D.mass.2018)** (scheduling bail hearing to review petitioners custody under ICE's standards because "it would be particularly unfair to require that petitioner remained detained while ICE attempts to remedy its failure").

59. ICE long-standing policy (hereinafter "the policy") is to release non-citizens immediately following a grant of withholding or CAT relief absent exceptional circumstances. See **EX-A** (" in

general, it is ICE policy to favor the release non-citizens who have been granted protection by any immigration judge, absent exceptional concerns.") (" Pursuant to longstanding policy, absent exceptional circumstances non citizen granted asylum, withholding of removal, or Cat protection by an immigration Judge should be released". The policy specifically instructs the local ICE field office to make an individualized determination whether to keep a non-citizen detained to keep a non citizen who received a grant of asylum, withholding, or CAT relief in custody.

60. The policy constitutes ICES interpretation of the statue and regulations governing a post-removal order detention. See **8 U.S.C. 1231; 8 C.F.R 241.4,241.13,241.14.** ICE has reasonably concluded that 8 U.S.C 1231(a)(2) does not require the detention of non-citizens granted withholding or cat for the entirety of the 90-day removal period and that ICE " has the authority to consider the release of such non-citizen during the removal period. **EX-A.** Furthermore, ICE has stated that the release policy established in 2004 " applies at all times following a grant of protection, Including during any appellate proceedings and through the removal period. "thereby explicitly extending the Policy to non-citizens with final removal orders who were granted withholding or CAT relief **EX-A.**

61. Such an application of the policy is consistent with the board discretion afforded to ICE by statue and regulations governing post removal order detention and is reasonable interpretation of the ambiguities in that framework. Neither the statue nor regulations specifically contradict the Policy, and the regulatory language suggest that the standard custody review procedures for non-citizens with final removal orders do not apply to non-citizens like petitioner who has been detained for over six months and has been granted CAT relief and lacks a connection to any alternative country. See e.g., * **C.F.R. 241.14(b)(4)** (" the custody review procedures in this section do not apply after the services has made a determination, under the procedures provided in **8 C.F.R 241.13,** that there is no significant likelihood that non-citizen under final order of removal can be removed in reasonably future"). The policy and its application to Petitioner is thus entitled to deference. See **Kisor v Wilkie 139 S. Ct.2400, 2408 (2019)** (" this Court has often differed to agencies reasonable readings of genuinely ambiguous regulations. We call that a Auer deference"; **Auer v Robbins, 519 U.S. 452 (1997)**(deferring to Labor Secretary reasonable interpretation of overtime pay regulations);

62. The policy is precisely the type of rule ICE is obligated to follow under Accardi. In Damus, the U.S District Court for the District of Columbia found that a similarly styled ICE directive from 2009 laying out " procedures ICE must undertake to determine whether a given asylum-seeker should be granted parole" fall squarely within the ambit of those agency actions to which the Accardi doctrine

may attach " in part because it "established a set of minimum protection for those seeking asylum" and 'was intended-at least in part-to benefit asylum-seekers navigating the parole process" **313 F.Supp. 3D at 324, 337-38;** See also, **Pasquini v. Morris, 700 F.2d 658,663 n.1 (11th Cir.1983)** ("although the INS internal operating instructions confers non substantive rights on the non citizens applicant, it does confer the procedural right to be considered for such statues upon application). Similarly, the Policy here establishes procedures for reviewing the custody of non-citizen who are granted immigration relief and is clearly intended, at least in part , to benefit those non- citizens. See **EX** (referring to "ICE policy favoring a non-citizens release")

63. Furthermore, by reiterating the Policy four times over the last two decades and using mandatory language, ICE leadership has clearly indicated that it intends the Policy to be binding on all field offices and officers. See e.g. **EX-A** ('" in all cases, the Field Office Director must ") (emphasis added): (" I am using this reminder to ensure that ICE personnel remains cognizant of and continue to follow this Directive"); see also **Padula v. Webster, 822 F.2d 97, 100 (D.C. Cir. 1987)** (" An agency pronouncement is transformed into a binding norm if so intended by the agency")

64. ICE has clearly flouted ICES national policy with respect to petitioners detention, in violation of Accardi. The available evidence demonstrates that ICE is automatically consistently, and reflexively detaining every non citizen granted withholding or CAT relief, Including petitioner, and conducts only cursory standard custody review pursuant to factors in 8 C.F.R 241.4, without regard to the policy requirements. At no point does it appear that ICE is conducting an individualized review under the "exceptional circumstances" standard as required by the policy.

65. There is, furthermore no evidence that the ICE Field Office Directors, who are vested with non-delegable review of power under the Policy, approved the continued detention of Petitioner after relief grant as required by the Policy.

66. ICES failure to promptly and properly review petitioners custody under the Policy is prejudicial to petitioner. Prejudice can be presumed because the Policy implicates petitioners fundamental liberty interest and due process rights. See **Delgado-Corea v INS, 804 F.2d 261, 263 (4th Cir. 1986)**(holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the non-citizen "(internal quotations omitted). The policy provides petitioner with a discrete opportunity to win their freedom from detention and that opportunity has thus far been withheld from him. See **zadvydas, 533 U.S. at 690** ("Freedom from imprisonment-from government

custody, detention, or other forms of physical restraint-lies at the heart of liberty that the Due Process Clause protects")

67. Conducting the standard 90-day custody review under **C.F.R 241.4** does not suffice to comply with the Policy because **8 C.F.R 241.4** which facially applies to all non-citizens subject to an alternatively final order of removal, employs a different standard that places the burden of proof on the non-citizen to justify their release. See **8 C.F.R 241.4(d)(1)** ("ICE may release a non-citizen if the non-citizen demonstrates to the satisfaction of ICE that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight")

68. In contrast, the Policy presumes that a non-citizen granted withholding or CAT relief will be released "absent exceptional circumstances, such as when the non-citizens presents a national security threat or a danger to the community", and it specifies that "prior convictions alone do not necessarily indicate a public safety threat or a danger to the community " **EX-A** If ICE were to review petitioners custody under the policy , petitioner would very likely be released, as they have only minor criminal convictions and clearly did not pose a national security threat

69. Therefore, Petitioner has been prejudiced by ICES failure to review custody under the Policy's "exceptional circumstances" standard. According to Accardi doctrine, Ices departure from its own policy is arbitrary, capricious, and contrary to law under the APA and violates Petitioners due process rights.

70. As remedy, this court should review petitioners custody under the Policy's "exceptional circumstances" standard and order petitioner release accordingly. See **Jimenez, 317 F. Supp. At 657** (" in these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners constitutional rights to due process by promptly deciding itself whether he should be released."). At the very least, this court should order that Tacoma ICE immediately conduct such review for petitioner pursuant to the policy. See **Damus, 313 F.Supp. 3D at 343.**

71. This period is unquestionably prolonged His continued detention is all the more outrageous because there are no factors in his history that could indicate any danger to the community or risk of flight.

72. Civil detention, like petitioners, violates due process except in "certain special and narrow" non punitive circumstances "where the government has a "special justification" that outweighs the individuals core liberty interests in freedom from detention **Zadvdas 533 us U.S at 690 (quoting Foucha v. Lousiana 504 U.S. 71, 80 (1992); see also Jackson v. Indiana 406 U.S. 715, 738 (1972).**

("Due process requires that the nature and duration of civil commitment bear some reasonable relation to the purpose for which the individual is committed") The sole permissible purpose of civil immigration detention are to ensure the appearance of non-citizens at future hearing and to prevent danger to the public. See **Demore, 538 U.S at 523-33** (Kennedy J concurring) **Zadvydas,533 U.S. at 690-91**

GERMAN SANTOS ANALYSIS

!.) The most important factors is duration of detention. Extending Demores logic to as-applied challenges explain that detention "becomes more and more suspect" after five month. Therefore, in terms of duration of this detention, Petitioners case falls squarely within that array of cases where prolonged detention, spanning a year or more, has inspired profound constitutional concerns justifying habeas relief

73. Petitioners detention is already more than 12 months long. It is 2 times longer than six months that Demore court upheld as only "somewhat longer than average" **(538 U.S. at 530-31) ;Perez v Decker, 2018 U.S Disr LEXIS 141768, 2018 WL 3991497, at *5 (S.D.N.Y. Aug.20 2018)** ("finding that detention for more than nine months weighed in favor of petitioner"). Detention beyond six months "is more likely to be unreasonable and thus contrary to due process" **Garcia v. Deckcer, No.22 Civ. 6273, 2023 U.S. Dist. LEXIS 97661, 2023 WL 3818464, at 5 (S.D.N.Y. June 5, 2023) (citation omitted)Courts in this district have regularly granted habeas relief when faced with much shorter terms of detention. Graham v. Decker,no.20 Civ.3168 2020 U.S. Dist. LEXIS 107520, 2020 WL 3317728 at *5 (S.D.N.Y. June 18, 2020)**(ten months); **Cabral v. Decker, 331 F.supp. .3D 255,261 (S.D.N.Y 2018)(Seven months).** According, the length of tome weighs strongly in Petitioners favor.

2.) Whether detention under the statue is likely to continue. When the aliens removal proceedings are unlikely to end soon, this suggests that continued detention without a bond hearing is unreasonable.

74. Petitioner is likely to stay detained for some time. No confidence exist that his is a case in which the period of continued detention pending removal has any fixed, finite or identifiable duration. Indeed, to date this period of detention has already extended 12 months. During this lengthy period this case has been the subject before an immigration judge and BIA, which currently remains pending because of heavy case load, it cannot be predicted when a decision will be rendered. This means petitioner will

stay in detention as long as it takes the Court of Appeals to issue its decision. Furthermore, once the Appellate Court eventually rules, given the stakes involved in this litigation for the parties which is described as a matter of life or death for petitioner, will inspire further immigration proceedings and compel what this court has previously described as a maze of removal proceedings" Which may span many months. In such instances release of the alien pending completions of these proceedings is fully justified. See e.g **Mandrane v. Hogan 520 F. Supp. 2D 654 (M.D pa 2007); Wilks v. U.S D.H.S, No 07-2171, 2008 U.S Dist LEXIS 88587, 2008 WL 4820654 (M.D. Pa Nov 3, 2008); Viruel Arias v. Choate No. 22-cv-02238-CNS, 2022 U.S Dist Lexis 173702, 2022 WL 4467245 AT *2(D. Colo. Sept 26 2022)** ("where either party may appeal an immigration courts decision this factor weighs in favor of petitioner). So the likelihood that petitioner detention will continue strongly supports a finding of unreasonableness and favors Petitioner.

3.) The reason for the delay which caused the petitioners detention to become prolonged including whether either party made errors in bad faith or out of carelessness which unnecessarily prolonged removal proceedings. In this regard, delays attributable to the government weigh heavily against respondent in conducting this analysis. See Victor v. Mukasey (16 months due to government litigation decision, released ordered)

75. Continued detention largely attributable to litigation decision made the government, thus for the past months the government has been the principle agent of the delays in this case. In such instances where immigration officials have made litigation choices that prolonged and delayed removal proceedings, the release of the alien pending completion of this protracted litigation is both necessary and appropriate. Take **Diop,** in that case, this court found unnecessary delay based on fact that the immigration judge issued decision that required remands for clarification. **Diop, 656 F.3d at 224-25** as in the instant case wherein case was initially remanded finding no legal error, for clarification and further fact finding, this factor also favors petitioner strongly

4.) Finally, whether the conditions of confinement are meaningfully different from criminal detention unreasonable. Chavez-Alvarez, 783 F.3d at 478. And as the length of detention grows, so does the weight that we give this factor

76. Petitioner is being held at North West ICE Processing center (NWIPC) and also a previous ICE facility in Pennsylvania in conditions identical to or worse than those of county jail inmates serving prison sentences see(**Michelin v. Oddo Case No. 3;23-cv-22,2023 WL 5044929 at *1 n.2(W.D. Pa. Aug8, 2023**) and also **(Katlong v. Barr 2020 U.S. Dis LEXIS 224820 (W.D Wash Oct 30 2020)** noting it was uncontested that NWPIC and other ICE/GEO facility "is indistinguishable from a federal or state prison.

77. Detainees at NWIPC and petitioners previous ICE/GEO facility "being held under punitive, inhumane and dangerous conditions. They have tightly controlled schedulers, live in a 'pod' with 60-70 or a cell with four and two people in NWIPC, wear brightly colored jumpsuits, and are restricted from accessing the outside world. Further people at NWIPC and other previous ICE/GEO facility have reported issues ranging from inability to get medical care to physical and psychological abuse by staff. , there are no contact visits unless specifically approved in emergency situations or for detainee getting removed which only last an hour detainee are subject to frequent and unannounced searches and staff utilizes a pat down search as detainees move from a unit to other areas of the facility . Conditions of NWIPC are worse than conditions of a low level BOP prison NWIPC operates at near full capacity. The law library is is inefficient you cannot get any information from Geo staff to look up information online if your fighting your Asylum, CAT, Withholding cases pro se and time is limited daily to 1 hr. bathrooms open you can see other detainees can see your private detainees. When u get legal mail staff looks at it dinner that is supposed to be served by 5:00 pm isn't served until as late as 9;30 pm cause detainees due to hunger, not being able to go to recreation all due to shortage of staff conditions hasn't changed since **Katlong v. Barr 2020 U.S. Dis LEXIS 224820 (W.D Wash Oct 30 2020)** . ICE/GEO processing centers operate more like a federal prison that a processing center. Individual at NWIPC are deprived of sleep "bright lights that line the hallways of housing units stay on all night. Staff come com in and out of dorm at all hours slamming large, metal security doors that open and shut through the night.

78. Petitioner experiences in ICE/GEO facility's is consistent with its carceral nature and with the abuse detailed in the complaints. Being housed with detainees with very serious violent criminal records, individuals coming directly from prison after finishing twenty, thirty year prison sentences, gang member of all types. ICE/GEO facility failures to ensure detainee safety, which has resulted in multiple incidents of extreme violence, including stabbings, beatings with locks, chairs as well as riots and one inmate biting off the finger of another. Living areas enclosed by barbed wires, deprived of any

privacy space. Phone and video calls require expensive payments and are cut off for use 8 hours out of the day for count time and sleeping hours from 12-5 am and hours 10-11 am 4:30-5:30 pm and 10:30 - 11:30 pm. Subpar medical carer and dental care. Thus this fourth factor heavily favors petitioner.

79. Indeed, granting relief is particularly appropriate here, where it is evident that petitioner has made substantial showing that he may prevail on the merits; where immigration judge has found petitioner credible and has found more likely than not that petitioner will be harmed and tortured, granting CAT relief, deferral of removal and therefore DHS cannot remove petitioner to the country in the removal order less the order of deferral is terminated. Petitioner remains in a legal limbo neither free nor removed for over since October 23 2024 since deferral relief was granted by immigration judge. Since petitioner continued detention is now of an excessive duration and is largely the product of government delays stemming from efforts by immigration officials to contest an IJS findings and decisions, which is clothe\d with the presumption of regularity, and which respondent must overcome. An issue which may entail further protracted litigation, and for which this petitioner is now entitled to hebeas relief and release under reasonable conditions of supervision pending adjudication of government appeal due to his extraordinary circumstances and substantial claims.

PETITIONER'S DETENTION IS UNREASONABLY PROLONGED UNDER THE MATTHEWS BALANCING TEST

80. In addition to this multi factor test, courts have also applied the three-part balancing test from **Mathews v. Eldridge, 424 U.S. 319 (1976),** to determine whether prolonged detention without a bond violates a non-citizens due process rights. The three Matthews factors are ;

1) "the private interest that will be affected by the official action".

2)" the risk of an erroneous deprivation of such interest through the procedures used, and the probable value if any, of additional or substitute procedural safeguards"

3)" the governments interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." An application of the Matthews factors also shows that Petitioners prolonged detention without a bond hearing is unreasonable.

81. First, the private interest at stake for petitioner is "the most elemental of liberty interests the interest in being free from physical detention." **Hamdi v Rumsfeld, 542 U.S. 507, 529 (2004) (citing Foucha,504 U.S. at 80)**

82. Second, Petitioner faces an acute risk of erroneous deprivation due to the absence, but for this court, of a procedure to challenge his prolonged detention. See, e.g., **Guerrero-Sanchez v warden York Counnty. Prison , 905 F.3d 208, 225 (3rd Cir. 2018) , abrogated on other grounds, Johnson v**

Arteag-Martinez,596 U.S. 573 (2022)(noting, in the context of mandatory detention under 8 U.S.C. 1231(a)(6), that "the risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decision maker is action by **substantial.")(quotation marks and citation omitted).** In Petitioners case, this risk is particularly manifest because the immigration judge has granted Petitioner CAT relief, deferral of removal, and there is nothing in petitioners recent history indicate current or present dangerounesness. See **EX-J**

83. The legal standard for custody re determination proceeding directs that Ijs should not automatically deem dangerous a person with a criminal conviction, but should consider the 'extensiveness', 'recentcy' , and 'seriousness' of any criminal conviction, along with any rehabilitation , remorse of post conviction behavior. See matter of **Guerra, 24 I&N Dec. 37, 40 (BIA 2206).** The critical question for a custody re determination is whether that person was a danger in the past or at the time the prior crime occurred. See, **Chi Thon Ngo v. I.N.S, 192 F.3d 390, 398 (Cir. 1991)**("measures must be taken to asses the risk of flight and danger to community of a current basis.") In this particular case all of the conduct underlying the criminal convictions are over 20 years old. Petitioner has expressed and demonstrated remorse, empathy, and has renounced criminal associations and affiliations.

84. Moreover, the only process available to petitioner to seek release from detention is to file a request for custody re determination, which is insufficient to protect petitioners constitutional interests.

85. Third, respondent do not have an overriding interest in detaining petitioner without the opportunity for a bond hearing. On contrary, " requiring respondents to justify continued detention 'promotes the Government interest...in minimizing the enormous impact of detention cases where it serves no purpose." **Black v. Decker,103 F.4th 133, 154(2nd Cir.2024)(quoting Velasco Lopez v. Decker,978 F.3d 842, 854 (2nd Cir. 2020).** Moreover, conducting bond hearing does not impose undue administrative burdens because they are conducted by immigration courts as a matter of course and because the cost to the government of release alternatives to detention are a fraction of those of detention at a jail like facilities like North West ICE Processing Center. Alternative to detention, ICE https://www.ice.gov/features/atd; See also, **Black, 103 F.4th at 154-55** (concluding that "the additional resources the government will need to expand to justify continued detention [of mandatory detainedd non-citizens petitioners] will be minimal-and will likely be outweighed by rhe costs saved by reducing unnecessary detention.")

THE COURT SHOULD ORDER ADDITIONAL PROCEDURAL PROTECTION AT PETITIONERS BOND HEARING

86. The proper remedy for the violation of petitioner due process rights is A bond hearing at which DHS bears the burden to show by clear and convincing evidence that he is a danger or a flight risk . *See e.g. German santos, 965 F.3d at 213.* The ninth circuit on july25th , 2008 issued two decisions in cases that had been pending before it. Those precedential cases are **Preito-Romero v A Neil Clark** 07-35458 **F.3d** abd **Casas-Castrillion v Lockyer 07-56261 F.3d.** Those decisions deliberately discuss the interplay between the statutes governing detention of aliens and release of aliens. In particular, the ninth circuit issued precedent dealing with several inter-related issues; A. When bond hearing is required ; B. The burden of the parties in bond hearing; C. When detention remains legally authorized. In th this case petitioner who is currently being held by the immigration Services where the bond is nonexistent.

87 The respondent has equities in the U.S. and those equities far outweigh any adversities. If the petitioner is released he will appear for all hearings and will appear if he is to be removes from country. The petitioner here moves the judge to grant a bond review in this case and release the respondent upon conditions that is fair and just.

88. This court has stated in the context of unreasonable detention under **8 U.S.C 1226(c),** this strikes the appropriate balance between "the non citizens liberty interests, the risk of error of harm to him, and the Government interest in detention until the end of removal proceedings.

89. A this court also noted is that "when a party stands to lose his liberty, even temporarily, courts hold the government to a higher burden of proof ". See also **Velasco Lopez, 978 F.3d at 855-56**(applying clear and convincing standard to bond hearing pursuant to **1226(a)** and noting that the standard also applies to pretrial detention and involuntary civil commitment)

90. Petitioner is not held under **8 USC 1226 (c) the** ninth circuit that an alien who has completed the administrative process is held under **8 USC1226(a). The court in Cases-Castrillon** cited " the Supreme Court similarly recognized in **Demore v kim 538 US. 510 (2003)** that **1226 (c)** was intended only "to govern detention of deportable criminal aliens **pending their removal proceedings** " which

the Court emphasized typically "lasts roughly a month and a half in the vast majority of cases in which it is invoked and about five months in the minority of cases in which the BIA chooses to appeal.

91. Importantly, the ninth circuit held that the conclusion of proceedings occurs upon the dismissal of the alien being appealed by the BIA. Thus under the explicit ninth circuit holding, the fact that the custody has changed from 1226(c) to 1226 (a) means that the Agency no longer had mandatory detention of the alien, but has the authority to order release on bond or upon conditions.

92. Petitioner has been detained in ICE custody for over 12 months and has paramount interest in liberty from unreasonable prolonged detention. The risk that petitioners liberty will be erroneously deprived is uniquely high because of the government insistence that he does not have the right to a bond hearing. Any interest the government has in his continued detention without a bond hearing should bear a higher burden where it deprives individuals of liberty.

93. Finally, the court should also order the immigration judge to consider alternatives to detention and petitioner ability to pay bond. Numerous courts have held that immigration judges must consider whether alternatives to detention (I.E release on monitoring program or order of supervision) would address concerns of dangerousness or flight risk and whether bond imposes an unreasonable financial burden on the non-citizen. See e.g **Hernandez v sessions, 872 F.3d 976, 991 n.4(9th cir. 20170)** (concluding that a bond determination that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interest.) ; **Ousman D v Decker, No 20 civ 9646 (JMV), 2020 WL 5587441 at *4 (D.N.J sept . 18 2020)** (finding that a bond hearing failed to comply with due process where the Immigration judge did not consider "less restrictive alternatives to detention0; **Leslie v. Holder 865 F.Supp 2D 627, 640-41 (M.D. Pa 2012)** (concluding that reasonable and individually tailored, release conditions could address DHS concerns about non-citizen dangerousness and flight risk and that his poverty was a meaningful factor in assessing bond); **Hernandez v. Decker no 18 Civ.5026 (ALC), 2018 WL 3579108 at *2 (S.D.N.Y Sep 18)** (holding that constitution compels "consideration of...alternative detention""); **Fernandez Aguirre v. Barr No. 19 Civ. 7048 (VEC), 2019 WL 4511933, at *5 (S.D.N.Y. Sept, 2019)** (observing that requiring the consideration of alternatives to detention " tracks the framework for pretrial detention in the criminal context, where the purpose of considering alternatives is to determine whether measures less intrusive than detention can achieve the same goal (reasonably assuring the safety of the community')

94. The court should therefore order DHS to bear the burden to justify petitioners continued detention by clear and convincing evidence and should order EOIR to consider alternatives to detention and ability to pay at a future bond hearing.

CLAIMS FOR RELIEF

COUNT 1
VIOLATION OF IMMIGRATION AND NATIONALITY ACT 8 U.S.C. 1231(a)(6)

95. Petitioner realleges and incorporates by reference the paragraph above.

96. 8 U.S.C 1231(a)(6), as interpreted by the Supreme Court in **Zadvydas**, authorizes detention only for "a period reasonably necessary to bring about the aliens removal from the United States" 533 U.S. at 689, 701

97. Petitioners continued detention has become unreasonable because removal is not reasonably foreseeable. Therefore, continued detention violates 8 U.S.C. 1231(a)(6, must be immediately released.

COUNT II
ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURES ACT, 5 U.S.C706 (2)(A)

-

98. Petitioner re alleges and incorporates by reference the paragraph above.

99. Courts must hold unlawful and set aside agency actions " that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". 5 U.S.C. 706 (2)(A).

100. ICE has deviated from its own policy in continuing to detain Petitioner after being granted immigration relief without determining whether exceptional circumstances warrant continued detention. This is arbitrary, capricious , and contrary to law in violation of APA.

101. As a remedy, this court should conduct its own review of Petitioners custody or, at least, order ICE to review Petitioners custody under the standard articulated in ICE policy.

COUNT III

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

102. Petitioners re alleges and incorporates by reference the paragraphs above.

103. ICE has violated petitioners due process rights by denying an individualized custody review entitled under ICE policy.

104. Petitioners detention pursuant without a bond hearing is unreasonably prolonged and is therefore unconstitutional.

105. The Due process clause of the Fifth Amendment of the United States Constituation prohibits the unreasonably prolonged detention of individuals without a bond hearing detained pursuant to **8 U.S.C 1225(b). U.S. Const. Amend. V; Pulatov, 2019 WL 2643076, at *3; Leke, 521 F.Supp 3D at 603-05**

106. Petitioners detention is unrelated to the purpose of civil detention.

107. Petitioners has been detained for over twelve months. His detention is likely to continue because of delays that are not attributable to him. He is detained to Jail-like conditions that are not meaningfully different from criminal punishment.

108. Petitioner has a paramount liberty interest in his freedom from unreasonable detention.

109. Respondent have a minimal interest in his continued detention without a bond hearing because there are no administrative burdens posed by a bond hearing and Respondent should have an interest in detainees being released on bond where continued detention is unnecessary, which is true here where Petitioner does not pose a threat to society, as evidenced by lack of violent history.

110. Discretionary parole is insufficient to protect petitioners due process rights because it features a high risk of erroneous deprivation and does not involve reviews by a neutral or detached magistrate.

111. But for action by this court, petitioner will remain detained in violation of his due process rights.

112. The court should find that petitioners continued detention without a bond hearing violates the Constitution. At a minimum, the Court should order that Respondent grant him a bond hearing at which the government bears the burden to show continued detention is warranted by clear and convincing evidence, and at which an immigration judge must consider alternatives to detention and ability to pay.

113. As a remedy, this court should conduct its own review of petitioners custody or , at least, order ICE to review petitioners custody under the standard articulated in ICE Policy.

b. Declare that petitioners continued detention violates the Due Process Clause of the Fifth Amendment of the United states Constitution, and Order Petitioners immediate release;

c. In the alternative, issue a writ of habeas corpus ordering that petitioner be provided with an individualized and recorded custody hearing before an impartial adjudicator within one week, at which the adjudicator must take into account his ability to pay bond and the appropriateness of non monetary conditions of supervision such as parole and electronic monitoring, and must release Petitioner unless Respondents show, by clear and convincing evidence, that he presents a present danger to the public or flight risk;

d. grant such relief as the Court deems just and proper

Date:_____

Respectfully Submitted,

JAVEIN JUMEL COKE
A[redacted]
1623 E. J Street, suite 5
Tacoma, WA 98421

CERTIFICATE OF SERVICE

I Javein Jumel Coke, does hereby certify that a true and correct copy of the foregoing has been placed in mail system of the facility in which I am detained to be mailed to the Chief Counsel Immigration and Customs at 1623 East J Street Tacoma, WA 98421 on this day of_____

Clerk of Court District court
United States Courthouse
1717 Pacific Ave RM 3100
Tacoma, WA 98402

JAVEIN COKE
A# [redacted]
Moshannon Valley Processing Center
555 GEO Drive
Philipsburg, PA 16866

12/20/2024

TO WHOM THIS MAY CONCERN:

On 12/11/2024, I Javein Coke received a Custody Determination Decision regarding ICE Directive 16004.1 Custody Decision following a GRANT of Deferral Removal on October 23, 2024 which is still pending appeal. It has been 8 Month since I have been in custody.

Ice Field Office Director has determined that exceptional circumstances and/or a legal Requirement Exist to keep me in detention until the outcome of the appeal from the BIA.

I have not received any documentation or a legal reasons justifying the basis for warrants my continued detention. According to ICE own policy 16004.1 states that ICE shall release me pending an appeal if I was GRANTED relief inder Asylum, Withholding of Removal, Deferral of Removal or Convention Against Torture CAT.

I am respectfully requesting this Reviewing Board to ORDER my release from detention based on ICE policy pending the outcome of the appeal. Thank you for looking into this matter for me.

Respectfully yours,

JAVEIN COKE
A# [redacted]

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

IN THE MATTER OF:

JAVEIN COKE, A[redacted]

APPLICANT

ON BEHALF OF APPLICANT: PRO-SE

Re: JAVEIN COKE
A[redacted]

Respondent Javein Coke is a 33 years old male Native and Citizen of Jamaica who entered the U.S. in 1994 on a visiter visa. On April 23, 2024, Respondent's was placed in ICE detention for an immigration court hearing. On October 23, 2024 Respondent's had an merits hearing for Asylum, Withholding of Removal and Deferral of Removal CAT, at the end of the hearing the Immigration Judge granted Respondent Deferral of Removal CAT. On November 20, 2024, DHS appeal the Immigration Judge decision.

Respondent now seek immediate relief from the BIA pending the outcome of the appeal pertaining to DHS directive 16004.1 detention policy where and immigration judge has granted a relief and ICE has appealed stating establishing ICE policy favoring a non-citizen release in instance in which ICE has appealed the decision of an immigration judge grating asylum, withholding of removal or protection pursuant to the regulations implementing the convention against torture (CAT protection). **(See: Exhibit A).**

CERTIFICATE OF SERVICE

I JAVEIN COKE, do hereby certify and declare that on 1/19//2024, I served a true and correct copy of the Re: JAVEIN COKE MOTION on the following parties:

This document was served by mail to:

BOARD OF IMMIGRATION APPEALS
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

DHS/ICE Office of Chief Counsel
2350 freedom Way, Suite 254
York, PA 17402

DATE: 1/19/2024

Respectfully submitted,

JAVEIN COKE
A[redacted]