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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAVEIN COKE,)
Petitioner)
v.)
Bruce Scott)
Respondent.)

Case No. 2:25-CV-00694-RSM-BAT

PETITIONERS MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER, IMMEDIATE RELEASE PURSUANT
TO LUCAS V. HADDEN AND/OR ORDER TO SHOW CAUSE

PRELIMINARY STATEMENT

Javein coke is a 33 years old native and citizen of Jamaica who fled the country of Jamaica for the protection of the United States for the safety of his life and his fear of being tortured by government officials and gang members he was granted deferral of removal in the United states by an immigration judge on October 23, 2024 See petition at 4. Despite an immigration judge granted Mr. Coke has no aggravated felony ICE has refused to release Mr. Coke fro immigration detention during its appeal of the immigration Judges decision. ICE has placed MR. Coke in an impossible predicament it prevents Mr. Coke from leaving the United States but it also subjected him to indefinite detention as part of Mr. Coke attempt to stay. The only option ICE has left Mr. Coke if he seeks to avoid this ongoing deprivation of his rights is to return to Jamaica where an Immigration Judge determined his life is in imminent danger. ICE decision to continue detaining Mr. Coke not only violates Mr. Coke constitution rights, but I also directly conflicts with ICE's policy to release individuals granted fear-based relief including during the pendnecy of an appeal. His continued detention places Mr. Coke in imminent danger, both due to his history of PTSD anxiety, depression, sleep deprivation based on the extremely dangerous conditions he faces in detention, These threats to Mr. Coke health well being and even his life demand immediate action. A TRO in an "extraordinary remedy" that should be awarded only upon a clear showing that the plaintiff (or in this case the petitioner) is entitled to such relief see **Winter v. NRDC. INC** 555 U.S. 7, 22, 29 5. ct 365 (2008) the party seeking a TRO must establish: (1) a likelihood of success on the merits;(2) a likelihood of irreparable harm absent preliminary relief (3) that the balance of equities tips in the petitioners favor; and (4) that an injunction is in the public interest. See id at 20. Alternatively, moving party must demonstrate that "serious questing going to the merits were raised" that "the balance of hardships tips sharply in the petitioners favor" and that the other two Winter elements are satisfied. **Alliance for wild Rockies v Cottrell** 632 F.3d 1127, 1134-35 (9th Cir 2011) The "likelihood of success on the merits is the most important winter favor" **Disney Enters, INC v Vidangel INC.**, 786 F.3d 733, 740 (9th Cir. 2015). Coke brings an as- applied constitutional challenge to his continued detention under 1226(c) without a bond hearing.

DUE PROCESS ANALYSIS

Coke argues that he is likely to succeed in his argument that due process entitles him to a bond hearing even though the INA's mandatory detention provision 8 U.S.C 1226 (c) does not.

LEGAL FRAMEWORK

8 U.S.C 1226 sets forth whether the government may detain or release non citizen during removal proceedings under the “default rule” of 1226 (a) the government “may release” or “may continue to detain” and arrested non citizen “pending a decision” their removal 8 U.S.C 1226(a) see also **Nielson v. Preap** 139 S. Ct 954, 958 (2019)(Alien who are arrested because they are believed to be deportable may generally apply for release on bond or parole while the question of their removal is being decided”). Section 1226(c) titled “detention of criminal aliens” Instructs that the government “shall take into custody any alien” who has committed various type of criminal offenses “when the alien is released”. The due process protection “applies to all persons within the United States including aliens whether their presence here is lawful, temporary or permanent” **Zadvydas v Davis** 533 U.S. 678, 693,121 S. Ct 2491 (2001). Detention violates due process absent “adequate procedural protections” or “special justifications” sufficient to outweigh the constitutionally protected interest in avoiding physical restraint” **Zadvydas** 533 U.S at 690 (quoting **Kansas v Hendricks** 521 U.S 346, 356, 117 S. Ct 2072 (1997). Courts apply three factors from **Mathew v. Eldridge** 424 U.S 319, 96 S. Ct 893 (1976), to determine what he “specific dictator of due process require in a particular case: First the private interest that will be affected by the official action; Second if the risk of an erroneous deprivation of such interest through the procedures used and the probable value if any of additional or substitute procedural safeguards; and finally the government interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. 424 U.S at 335. While as applied due process challenges to mandatory detention under 8 U.S.C 1226(c) are common.

LIKELIHOOD OF SUCCESS ON THE MERITS

With this backdrop this court must decide whether Coke is likely to succeed in his argument that 1226(c) as applied to him violates due process. First, the court must address the due process interest at stake, **Mathews** 424 U.S. at 335. As judge freeman held in **Perera** “the main private interest at stake in the instant matter is Cokes freedom from imprisonment from government custody, detention, or other forms of physical restraint” **Perera** 2021 Dist Lexis 110194, 2021 W2 2400981 at 4 (quoting **Zdvydas**, 533 U.S at 690. This interest persists no matter the length of his detention See **Id** (quoting

Rajnish v Jennings no 3:20-cv-078198-who, 2020 U.S Dist LEXIS 241056, 2020 WL 7626414 at6 (N.D.Cal. Dec 22 2020). Coke's liberty interest in "freedom from imprisonment from government custody, detention, or other forms of physical restraint". **Zadvydas**, 533 U.S. at 690. Having found that coke have a liberty interest, the court must assess the other **Matthews** factors- the risk of erroneous deprivation and the government interest-to determine whether he is entitled to a bond hearing. **Matthews** 424 U.S. at 335. In according with judge freeman's conclusion in **Perera**, the other **Matthews** Factors unquestionably weigh in favor of coke. **Perera**, 2021 U.S. Dist LEXIS 11094, 20201 WL 2400981 at*4. The risk of erroneous deprivation is significant. While it is not for the court to decide the ultimate question of whether coke should be granted bond, Coke has put forth persuasive evidence that he does not pose a danger or present a flight risk he has completed program while detained in BOP and also programs after being released from BOP to ICE see **EX-A**. Mr. Coke is by all accounts happily married; and he has meaningful ties to the community. But because 1226(c) does not entitled him to a bond hearing Coke has receive no process at all on the questions of his dangerouness or risk of flight. See **Palakiko Decl. EX G**; See also **Perera** 2021 U.S Dist LEXIS 110194 2021 WL 2400981 at*4 Given this context the risk of erroneous deprivation is high. Finally, the government interest in detention absent a bond hearing is low. The government certainly has an interest in the "efficient administration of immigration laws" and the administrative burdens inherent in additional additional procedural protections. **London v Plasencia** 459 U.S. 21, 34, 103 S. Ct. 321(1982). But "the governmental issue at stake in this motion is the ability to detain petitioner without providing him with a bond hearing, not whether the government may continue to detain him" at all. **Reyes v Bonnar**, 362 F.supp. 3D 762,777 (N.D.Csl 2019) "requiring the government to provide Coke with a bond hearing does not meaningfully undermine the government interest in detaining no citizens who pose a danger to the community or are a flight risk" **Perera**, 20201 U.S. Dist. LEXIS 110194, 2021 WL 2400981 at *5. Accordingly, balancing the **Mathews** factors, coke is likely to succeed on the merits of his due process claim. Because coke is likely to establish that 1226(c) is unconstitutional as applied to him, his continued detention without a bond hearing would violate due process.

OTHER WINTER FACTORS

The other **Winter** factors-irreparable harm, the balance of equities, and the public interest are also satisfied here. Of course "the deprivation of constitutional rights unquestionably constitutes irreparable injury" **Melendres v Arpaio** 695 f.3 990, 1002 (9th Cir 2012) (Quoting **Elrod v Burns** 427 U.S 347,

373, 96 S. Ct 2673 (1976). But even putting this aside, Coke face concrete and irreparable harms from continued detention without bond hearing. Including the inability to be with his family, provide economic and emotional support and to bond with his wife and kids. See e.g **Martinez Franco v Jennings**, 456 F.Supp 3d 1193, 1200 (N.D.Cal 2020). The balance of the equities tips in Coke's favor because the administrative burden of a bond hearing minimal when weighed against these severe hardships. See **Hernandez v Sessions**, 872 F.3d 976, 995-96 (9th Cir 2017) and further the imposition of a TRO serves the public interest because it could prevent the "unnecessary detention" of Coke should an IJ determine that he is "Neither dangerous nor enough of a flight risk to require detention without bond" ID at 996.

BURDEN OF PROOF

Having decide that due process requires a bond hearing, this court must now decide who bears the burden of proof. Coke relying primarily on **Singh V Holder**, 639 f.3d 1196 (9th Cir. 2011) argues that the government should bear the burden of proving by clear and convincing evidence that further detention is warranted. Absent controlling authority to the contrary, the reasoning of Singh and its holding remains applicable to 1226(c) cases, like this one where there is a "substantial liberty interest at stake" **Singh**, 638 F.3d at 1204; **Perera**, 2021 U.S Dist LEXIS 110194, 2021 WL 2400981, at * 6; See also **Doe v Garland** No. 3:22-cv-03759-JD, 2023 U.S. Dist LEXIS 4312, 2023 WL 1934509, at *2 (N.D. Cal Jan 10, 2023) (Holding that the government shall bear the burden in a constitutionally required bond hearing in the sub section 1226(c)

ARGUMENT

Because of the immediate threat to Mr. coke's health and safety, the court must act expeditiously to issue a temporary restraining order or preliminary injunction requiring respondents to release Mr. Coke and enjoining them arresting him for the purpose of civil immigration detention during the pendency of his habeas petition. Such emergent relief is proper because Mr. Coke is likely to succeed on the merits of his underlying claims for habeas relief, he faces irreparable physical injury and ongoing constitutional harm, and the balance of interest weighs in favor of temporary restraints. Alternatively, this court should exercise its inherent authority Under **Lucas v Hadden**, 790 F.2d 365 (1986); See Also **Black v Deckers** 2020 U.S. Dist LEXIS 131735, 2020 WL 4260994 at*5 (S.D.N.Y July 23, 2020); **Black V**

Dir Thomas Decker, 103 F.4th 133 (2024) to immediately release Mr. Coke from custody. The courts invocation of this power is appropriate because Mr. Coke has presented a “ clear case for habeas relief” in this underlying petition, and the “exceptional circumstances” in his case warrant special treatment. Lucas 790 F.2d at 367. Finally the court should order respondents to show cause why Mr. Coke’s petition should not be granted. Mr. Coke who has been confined for a constitutionally unreasonable period in respondents custody, suffers ongoing deprivation of his rights under due process clause constitution. Additionally, Ice actions are all the more unreasonable when considering the fact that its own policies direct that he should be released, as someone who has been granted deferral of removal. Providing a swift remedy to such a unlawful government conduct is precisely the function of the great writ. Unreasonably delays vitiate that purpose. Consistent with congress intent as expressed in 28 U.S.C sub section 2243 that district courts expeditiously resolves habeas petition, this court should take steps to ensure a prompt disposition of Mr. Coke petition.

1. The court should grant preliminary relief requiring respondents to immediately release Mr. Coke and not re-detain him during the pendency of this petition

A preliminary injunction is appropriate where the movant demonstrates (1) that a delay in adjudication is more likely than not to cause irreparable damage to the petitioner and (2) a likelihood of success on the merits of the petition and if considerations of (3) “the possibility of harm to other interested persons” and (4) the “public interest” weigh in favor of a grant. **Reilly v City of Harrisburg, 858 F.3d 173, 176-79 (2017) (quoting Del. River Port Auth v Transaction Trailer Trans inc, 501 F.2d 917,919-20 (1974).**

Consideration of a request for a temporary restraining order weighs the same factors. **S e.g Am Tel and Tel Co v Winback and Conserve Program inc, 42 F.3d 1421 (1994); Lonzano v City of Hazleton 459 F.Supp. 2D 332, 335 (M.D. Penn. 2006).** Risk of irreparable harm and likelihood of success on the merits are threshold matters. **Reilly, 858 f.3d at 179.** Once they are proven the court balances all four factors to determine whether to grant immediate relief. **Id.**

A. Mr Coke prolonged and unlawful detention creates a clear risk of irreparable harm including the ongoing violation of his constitutional rights and ongoing harm to his mental health.

“Irreparable injury” sufficient to justify emergent relief requires a showing of “significant risk that he or she will experience harm that cannot adequately be compensated **“Adams v Freedom Forge Corp, 204 F.3d 475, 484-85 (2000)**. The central question is whether the threatened harm is such that it “cannot be redressed by a legal or an equitable remedy following a trial” **Instant Air Freight Co v Air Freight inc, 882 F.2d 797, 801 (1989)**. An ongoing constitutional violation is a per se form of irreparable harm. See **Elrod v Burns, 427 U.S. 347, 373 (1976)** (“ the loss of first amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”) Indeed where the movant establishes a *prima facie* constitutional claim very likely “the other requirements for a preliminary injunction claim very likely “the other requirements for a preliminary are satisfied” **Stilp V. Contino, 613 F.3d 405, 409 (2010)**. Unlawful incarceration has been determined to constitute “a harm which cannot be redressed following a trial” and thus satisfies the irreparable-harm requirement **Forehion V. Intensive Supervised parole 240 F.supp ed 3032 310 (D.N.J 2003)**

Here Mr. Coke is suffering from an ongoing denial of his procedural rights because of his unreasonably prolonged detention without an individualize custody determination he has been detained by respondents for over fourteen months without a bond hearing. He has spent the 10 months at Moshshannon Valley Proceeding center where he has been subjected to life threatening punitive conditions of detention. Despite having no aggravated felony, he is jailed alongside individuals categorized as “ high security” (see petition at 22-24). These individuals often have serious criminal records, and some of them are in immigration detention immediately following multi-decade criminal sentence Id. Among the detainees in Mr. Coke’s unit are members of dangerous criminal gangs, like Ms-13,TdA 18th street and the bloods. Id.

Mr. Coke has a standing that his Eight Amendment are being violated according to supreme court decisions **Helling v Finney, 437 US 6768, 682, 98 S. Ct 2565 57 L. Ed 2d.22 (1993)**. In Helling a prisoner alleged that his eight amendment rights had been violated because he had been exposed to environmental tobacco smoke in prison. The supreme court ruled as follows. That the eight amendment protects against future harm to inmates is not a novel proposition the amendment as we have said requires that inmates be furnished with basic human needs, one of which is “reasonable safe” **Deshaney v Winnebago county Dept of social services 489 US 189, 200, 109 S, Ct 998, 103 L. Ed 2d 249 (1989)** it is “it is cruel and unusual punishment to hold convicted criminal in unsafe conditions **“Youngberg v Romeo 457 U.S 307, 315-316 102 S. Ct 2452 73 L. Ed 2d. 28 (1982)**. It would be odd to deny an injunction to inmates who plainly proved an unsafe life threatening condition in their prison the ground

that nothing yet has happened to them. The courts of appeals have plainly recognized that a remedy for unsafe conditions need not await a tragic event. Two of them were cited with approval in **Rhode V Chapman 452 U.S 337, 352, n.17, 101 S.Ct 2392 69 L.Ed 2d. 59 (1981)**. **Gates v Collier, 501 F.2d 1291 (5th cir 1974)** held that inmates were entitled to relief under the eight amendment when they proved threats to personal safety from exposed electrical wiring deficient firefighting measures and the mingling of inmates with serious contagious diseases with other prison inmates. **Ramos vLamm 639 F.2d 559, 572 (10th cir 1980)** stated that a prisoner need not wait until he is actually assaulted before obtaining relief

At Moshannon, there is no separation between the detainees- they are all housed in one room with tightly packed cots id. The guards are often absent from the unit, leaving the detainees free to police themselves id. Under there conditions it is unsurprising that violence often ensues. Mr Coke states that in his unit one could often hear hear the sounds of knives being carved and sharpened, even in broad daylight. id. Inmate also fashion mace-like weapons by placing padlocks in socks and swinging them for full force at peoples head and face causing sever damage.

Mr. Coke has experienced horrific scenes of extreme violence in ICE detention centers. On one occasion, a detainee bit off the entire finger of another detainee right in front of Mr. Coke which lead Mr. Coke to seek mental help. Mr. Cokes time at Moshannon valley numerous brawls broke out while Mr. Coke was out outside for recreation In one specific brawl that made the local paper and nightly news Mr. Coke recalls seeing a race war happen where Hispanic detainees attacked all non Hispanic detainees leaving numerous detainees covered in blood with stab wounds in their head and face all because they wanted control of all the TV on the pods. Following the brawl Mr. Coke describes piles of knives on the ground in the yard abandoned by attackers who knew they would be searched upon reentering the jail. Recently, Mr. coke himself came under threat from gang members in his unit because they wanted control while he was watching it which lead to Mr. coke being jumped by numerous gang members During which he had to defended himself which lead to him being put in the SHU, such that Mr. Coke was diagnosed with PTSD, anxiety, depression. Under these nightmarish conditions, Mr. Coke life is continuously in danger. Mr. Coke brought all these issues to ICE see **EX-B**

Mr. Coke was transferred from Moshannon to Tacoma, WA where he is currently being held at North west Ice Processing Center (NWIPC) without notice thousands of miles away from his family on Feb. 2 2024, Where he faces the same nightmarish conditions Mr. Coke constantly under PTSD, anxiety, depression from light in his face 24 hours a day which effecting his eyesight that is extremely poor, every

movement he is pat down and searched with a metal detector wand EX-C constant noise 24 hours a day and night, Mr. coke is locked down 23 hours a day sometimes 24 when there is no recreation because of shortage of staff and facility is full to capacity. When Mr. Coke go to recreation he is searched with a metal detector its only for an hour with guards outside with a rifle and handguns patrol the yard which affects his mental state of having ptsd, anxiety, and depression this reminds of conditions and scenarios in his place of birth Jamaica which he is trying to escape from which forces him to stay inside his pod and not go out for recreation which he seeks mental help therapy from facility psychologist to help cope with condition of facility which is ineffective due to hardly being schedules to see them on a weekly basis. Most recently Mr. Coke has witness a mentally challenged detainee used a razor to cut himself where it took 10 staff members to subdue him in an aggressive manner to where he couldn't breath detainees had to tell them to let detainee breath this incident was videoed by staff on may 9 2025. These incidents triggers Mr. cokes PTSD anxiety and depression due condition and violence he is exposed to he is afraid he will be attacked and hurt by mentally challenged persons. Recently Mr. Coke was not served any dinner and had not at from 12:00 earlier that day due to shortage of trays while begging staff member to order an extra tray they refused to do so there are instances if trays are short staff members would tell you to fight other detainees for a tray of food. Mr. Coke wrote a grievance about these instances but nothing has been done by facility or warden to correct theses issues (EX-D.) Mr. Coke is in the unit with Ms-13 18th street TdA and blood and crip southern, northern gang members sometime there is no sanitary items such as toilet paper or soap for hours at a time or even days when Mr. Coke ask why is this Geo staff reply "they weren't ready to house so much individual facility is 95% full and they are under staff nobody want to go to warehouse to get supply's" Sheets are changed once a month and when u receive new sheets they are stained are discolored as if not being properly washed same with laundry when it is being sent out comes back wet from not being properly dried. Mr. coke's wife and family members are not able to visit him due to the distance between his home town of New York City which is thousands of miles away from Tacoma Washington which would cost hundreds of dollars in plane fare.

Subjecting Mr. Coke to indefinite detention, especially under these conditions place him at risk of mental decompensation. Mr Coke is currently confronted with a similarity hopeless situation: the reality that ICE plans to detain him for months mostly likely years as it appeals Mr. Coke CAT grant Mr. Coke fled Jamaica to avoid threats of torture or at worst being killed by gang members or security forces and being thrown in jail in inhumane conditions in Jamaica. Tragically ICE has exposed Mr.

Coke to the same reality in the united states. Given Mr. Coke mental health history, exposing Mr. Coke to indefinite detention under the oppressive conditions of detention he faced at Moshannon and similarly here at NW Ice processing center at Tacoma, WA, places him at imminent risk of mental decompen-sation and self harm

Mr. Coke argues that he has established a *prima facie* violation of his constitutional rights to due process and liberty, rising to irreparable harm. *Zadvydas V Davis*, 533 U.S 678,690 121 S. Ct. 2491 (2001); See also e.g *German santos v Warden Pike county corr. Fac.*, 965 F.3d 203, 206-08 (2020) (finding that *Jennings V Rodriguez*, 138 S. Ct 830 (2018) does not preclude an as applied constitutional challenge to the length of detention under 8 U.S.C 1226(c) and providing a framework for analyzing such challenges that include duration of detention" whether the detention is likely to continue" "reason for the delay "and whether the non-citizens "conditions of confinement are meaningfully different from criminal punishment"). Immigration and Customs Enforcement (herein after "ICE") an agency which routinely fails to meet even its own detention performance standards has failed to protect Mr. coke and indeed has subjected him to cruel and inhuman treatment that has exacerbated his mental health. A recently filed CRCL complaint outlines the severe deficiencies in medical care at Moshannon; including delays in scheduling medical services and the use o chemical agents against individuals experiencing mental health crises. A report published by temple university school of law further details the dangerousness conditions at Moshannon where petitioner was transferred from see (EX-E) confines under harsh conditions for ten of the fourteen months of being detained by ICE. Where a noncitizen is transferred during 1226 (c) detention, district courts can consider the conditions of the facility where the majority of the confinement took place of unreasonableness if those conditions are similar to penal incarceration. See e.g *Michelin v Oddo*, No. 3:23-cv-22, 2023 WL 5044929, at *7 (W.D. P.A Aug. 8, 2023) (basing its decision on the fourth factor on the conditions at Moshannin Valley where the noncitizen has been detained for eighteen months before transfer to an out- of-state facility). A member of congress has also so visited NWIPC and which came in the local newspaper Tacoma news tribune on April 25 stating the harsh conditions in NWIPC Mr. Coke faces mounting harm warranting this courts immediate action. See *Adams* 204 F.3d at 485 ; *U.S steelworkers of America, AFL-CIO v Fort Pitt Steel Casting*, 598 F.2d 1273, 1282 (1979); *Muhammad V. Dep't of Corr*, 645 F. Supp 2d 299, 318 (D.N.J. 2008)

B Mr. Coke is likely to succeed on the merits of his verified petition for writ of habeas corpus

A litigant seeking a temporary restraining order or a preliminary injunction need not prove his case as a prerequisite nor show that his success is assured. **Oburn V. Shapp** 521 F.2d 142 148 (1975). Indeed a party need only demonstrate a “*Prima facie* case showing a reasonable probability that it will prevail” *Id*; *Se also Reilly*, 858 F.3d at 179. (preliminary equitable relief requires a showing “significantly better than negligible” but not “more likely than not”). Moreover, “where factors of irreparable harm interest of third parties and public considerations strongly favor the moving party, an injunction might be appropriate even though plaintiffs did not demonstrate as strong a likelihood of ultimate success as would generally be required” *In re Arthur Treacher’s Franchise litigation* 689 F.2d 1137, 1147 (1982) (quoting *Constr. Ass’N of W. Pa. V. lereps*, 573 F. 2d 811, 815 (1978); *See also Reilly*, 858 F.3d at 179. “The more net harm an injunction can prevent, the weaker the plaintiffs claim on the merits can be while still supporting some preliminary relief” (quoting **Hoosier energy Rural Elec. Coop INC v John Hancock Life INS. Co.** 582 F.3d 721, 725 (2009). This is so because the adjudicating courts goal is “to minimize the probable harm to legally protected interest” during the pendency of litigation. **Kreps**, 573 F.2d at 815. Here the strong merits of Mr. Coke claims easily meet the requisite standard.

1. Mr. Coke has a reasonable likelihood of success in demonstrating that his thirteen months long confinement which is likely to continue for many months if not years without an individualized custody determination renders his detention unconstitutionally prolonged

As an individual detained under 1226(c) Mr. Coke retains a due process right to a bond hearing when his detention becomes unreasonably prolonged. See e.g. **Shire v. Decker**, No 17 Civ 1984, 2018 WL 509740, at*4 (M.D. Pa. Jan. 23, 2018) (“courts have held that arriving aliens detained pursuant to 1226(c) enjoy the same basic due process right afforded to many other classes of detained aliens; that is, the right to an individualized bond hearing once the length of their removal detention has become unreasonable.”); **Pulatov v Lowe** no 18 Civ 934, 2019 WL 2643076, at *3 (M.D. Pa June 27, 2019) (“ the court agrees with the weight of authority finding that arriving aliens, like petitioners detained pre-removal pursuant to 1226(c) have a due process right to an individualized bond consideration once

it is determined that the duration of their detention has become unreasonable") See also **Castro V United States dep't of homeland Sec., 835 F.3d 422, 494 n. 32 (2016)** ("we doubt...that congress could authorize, or that the executive could engage in, the indefinite hearing less detention of a non citizens in expedited removal proceedings ") As detailed in the petition under the framework articulated in **German Santos**, Mr. Coke detention has become unjustifiably prolonged and therefore "raises a serious constitutional problem" **Zadvydas, 533 U.S. 678, 690 (2001)** and he is entitled to a hearing at which the government bears the burden of providing that continued detention is necessary to fulfill the purposes of the detention statute.

First Mr. Coke has been detained by ICE since April 23 2024 this amounts to fourteen months of civil confinement. The length of his confinement goes well beyond the six months to one year reasonable time frame set forth in **zadvydas**.

Second Mr. Coke detention will inevitably continue due to ICE's pending appeal of the immigration Judges determination that Mr. Coke merits deferral of removal. If ICE is successful in its appeal, the case may well be remand to the immigration Judge, leading to further delays, after which either side again has the right to appeal, and Mr. Coke ultimately has the right to seek a petition for review from the circuit court of any final removal order. ICE's appeal will indefinitely continue Mr. Coke detention unless this court acts to order a bond hearing.

Third Mr. Coke did not cause any delay in his proceedings that justify his prolonged detention. Mr.- Coke has been represented and has not requested any continuance in this case. Petitioner has received an order from BIA to put Mr. Cokes appeal on pause according to statue 1003.1 asking for background check and bio metrics which can put his appeal on hold for 6 months or more which would further continue Mr. Coke detention to nearly two years unless this court acts to order his release.

Fourth, Mr. Coke can establish that the conditions of his confinement mirror-and in some cases are for worse than the conditions he experienced in criminal custody. While In ICE custody Mr. Coke is subjected to a multitude of punitive conditions. He is held in cramped quarters completely lacking in privacy, alongside over sixty plus other prisoners, including individuals with serious violent criminal records and members of gangs like MS-13 18th street TdA and the bloods and crips. Petition at 22-24 the unit is plagued by extreme violence, including stabbing and maiming id. The unit is largely windowless, and all fences are wrapped in barbed wire. Moshannon and here at NW Ice Processing center limits detainees access to basic necessities like toilet paper, soap, toothpaste etc. NWIPC keeps lights on in dorm 24/7 charges exorbitant fees for phone and video calls They also deprive detainees of basic

medical care when suffering from severe fever or pain. Detainees are categorized and labeled by different color uniforms which detainees are forced to wear and denied privileges due to color you are designated to. Mr. Coke was categorized as a low risk when first transferred to NWIPC and was changed to high risk due to the ICE labeling him as a gang member to Mr. Coke surprise due to never being apart of any gang. Mr. Coke then asked what gang is he apart and how did they identify him as a gang members he has no tattoos or been categorized as a gang member in any other federal custody facility of they just replied that's what is on the file. These conditions are clearly punitive, and they cannot be meaningfully differentiated from criminal imprisonment which causing immense mental break down for Mr. Coke who is not getting proper care

C. The risk of harm to other interested parties if Mr. Coke is immediately released is minimal compared to the risk of harm should his detention drag on indefinitely

When a fundamental right, like Mr. Coke is at stake it weighs heavily against any burden on the opposing party. See e.g. **Reilly v City of Harrisburg**, 336 f.3d 451, 472 (M.D. Pa 2018) aff'd, 790 F.Appx 468 (2019) Cert requested ("It goes without saying, however, that a deprivation of a constitutional right is contrary to the public interest and the harm to others (e.g. Neighborhood residents, planned parenthood employees and clinic patients) although substantial, does not outweigh such a denial") This is particularly so where as here, the burden on other interest parties is merely administrative. See **United States v. berks County, Pa**, 250 F. supp 2d 525, 541 (E.d.Pa.2003) (finding that minimal administrative expenses were "for outweighed by the fundamental right at issue")0. Here the continuing detention of Mr. Coke under conditions that bought place his life at risk and also place him at risk of PTSD, anxiety and depression constitutes a constitutional violation.

The risk of harm to respondents is vastly outweighed by the ongoing harm and risk of additional imminent harm to Mr. Coke. As discussed above, Mr. Coke seeks to avoid the irreparable harm that he will suffer if he continues to be detained in violation of his constitutional and statutory rights, in a jail-like environment where, due to his underlying mental health problems, he faces a uniquely acute risk of suffering due to his mental health. Moreover, the risk of harm to respondent is especially great where the conditions of Mr. Coke's detention have placed Mr. Coke life at risk. This harm to Mr. Coke greatly outweigh any harm that the government may suffer as a result of his released that it might be required

to create conditions of release is purely fiscal or administrative. Additionally, the government has already granted Mr. Coke deferral of removal, determining not only that Mr. Coke deserves our country's protection Under DHS/ICE own national policy (16004.1) reiterated repeatedly over the years he should be released due to the immigration judges grant of deferral of removal even during the pendency of any appeal. See (ICE policy document). As such the harm to the government in releasing Mr. Coke is minimal at best. Here the balance clearly tips in favor of Mr. Coke whose life and liberty weigh much more heavily than burden on respondents.

D. MR. COKE RELEASE IS IN THE PUBLIC INTEREST

if plaintiff proves 'both' a likelihood of success on the merits and irreparable injury it almost always will be the case that the public interest favor preliminary relief. **Issa v. School Dist of Lancaster**,^{847 F.3d 121, 143 (2017)} (Quoting Winback & conserve program INC 42 F.3d at 1427) Here Mr. Coke has made a clear showing that he is likely to succeed on the merits of at least one o the claims in his habeas petition if not all, and that he will suffer irreparable harm absent the issuance of a temporary restraining order. Moreover "in the absence of legitimate, countervailing concerns, the public interest clearly favor the protection of constitutional rights". **Council of Alternative Pol. Parties v. Hooks**, ^{121 F.3d 876, 883-84 (1997)}. No public interest is served by permitting the government to detain vulnerable individuals , like Mr. Coke who is at heightened risk of severe harm or death due to his mental health problems. The public interest thus lies in preventing respondents from further violating Mr. Coke due process'rights. See **Osorio-Martinez v Atty Gen.** ^{893 F.3d 153,179 (2018)}. " It is squarely in the public interest to enable individuals to partake in statutory and constitutional rights and meaningful judicial review") The public has interest in preserving the right to petition for hebeas reviews to remedy unlawful executive action as long as there is no detriment to the public. See **Kanivets v Riley**, ^{268 E-Supp 2d 460, 469 (2003)} (citing **INS v St. Cyr**, ^{533 U.S. 289 (2001)}).

Further, Mr. Coke has no aggravated felony convictions, and he constitutes no danger to the community. As an individual granted deferral of removal, upon release Mr. Coke is eligible to work lawfully in the united States and as a recipient of deferral or removal he would be eligible for benefits including job training. Mr. Coke hope to use this training to work with his stepfather in his construction company Marshall's Fence in New York City and start his own company in the future. His release is clearly in the public interest, and is the result that is also required under ICE's own policies 16004.1.

This court should therefore find that the balance of equities and public interest weigh in favor of granting Mr. Coke's motion.

II. This court may also grant Mr. Coke immediate release pursuant to Lucas V Hadden because his petition presents a clear case for habeas relief and the harm to his health and safety are exceptional circumstances

This court has the inherent authority to order Mr. Coke's immediate release during the pendency of his petition. **Lucas v Hadden 790 F.2d 365 (1986)**. Federal courts authority to order the release of habeas petitioner pending resolution of his claims applies equally to those detained in immigration custody. See **Ahad v Lowe, 235 F. Supp 3d 676, 688-89 (M.D.Pa.2017); Leslie v Holder, 865 F.supp 2d 627,634-35(M.D.Pa. (2012); Nadarajah v Gonzales 443 F.2d 1069, 1083-84 (third Cir 2006); Mapp v Reno,241 F.3d 221,229 (2001)** The court in Leslie noted that " settled case law has long recognized that the power to order bail in habeas proceedings is a legal and logical concomitant of the court's habeas corpus jurisdiction." **864 F. Supp 2d at 634**. Acknowledging that such authority that such authority "has been expressly extended to habeas corpus petitions lodged by immigration detainees" the court ordered the petitioner release from ICE custody subject to certain conditions. **Id at 634, 641-42** (citing **Mapp, 241 F.3d at 225**)

Under the standard developed by various circuit courts and adopted by the third circuit in **Lucas** admission to bail pending resolution of a habeas petition is appropriate where the " habeas petitioner (1) makes out a clear case for habeas relief on the law and facts, or (2) establishes that exceptional circumstances exist warranting special treatment or both". **790 F.2d at 367**. Applying this standard to the immigration context, the Leslie court found that a habeas petitioner establishes eligibility for release on bail by demonstrating that the petition presents substantial claims and that "exceptional circumstances" exist "that make the grant of bail necessary to make the habeas remedy effective"**865 F. supp. 2d at 635** (quoting **Mapp, 241 F.3d at 230**). The burden shifts to the government to demonstrate that continued detention is necessary to ensure the petitioners presence at future hearing and prevent danger to the community. **Id at 636-37**.

Applying **Lucas** in **Leslie**, the district court found that the petitioners "array for medical problemspresented extraordinary concerns of the type which have in the past justified bail consideration". **865 F. Supp. 2D at 639.** (citing **D'Alessandro v. Mukasey, No.08-914, 2009 WL 799957(W.D.N.Y**

March 25, 2009) In light of those health problems, the court determined that any course of action short of granting bail would “completely defeat the purpose of the writ”. ***Id*** at 639-40

Here, exceptional circumstances justify Mr. Coke immediate release As discussed, Mr .Coke is detained under conditions that threaten his life. These life threatening and demeaning conditions also place Mr. Coke’s life at risk given the history of PTSD, anxiety and depression. See **Johnsson v wetzel**, 209 f. Supp. 3D 766, 781 (M.D.Pa.2016)(finding irreparable harm where prisoner suffered “ escalating symptoms of mental degradation”) These factors amount to precisely the sort of extraordinary circumstance that courts within the third circuit have found justifies releasing a habeas prisoner on bail pending adjudication of his underlying claims. See **Leslie**, 865 F. Supp. 2D at 636, 63; **Lucas**, 790 F.2d at 367. In addition, as detailed above, Mr. Coke petition presents a clear case for habeas relief because respondents action violates the due process clause and the first amendment.

Only immediate relief in the form of release, will permit a habeas remedy to be effective in this case. See **Leslie**, 865 F. Supp 2d at 639-40. Mr. Coke is suffering ongoing life threatening conditions. Further irreparable harm including unnecessary infliction of pain and suffering, irreparable physical and emotional injury and even death is likely to befall Mr. Coke if he remains indefinitely detained. As such, the court should invoke its inherent power to order Mr. Coke immediate release from respondents custody

III. To prevent irreparable legal and bodily injury to Mr. Coke the court should issue an order to show cause requiring respondents to answer this claim on an expedited basis.

In light of the ongoing and imminent risk to Mr. Coke’s health and safety in respondents custody and the ongoing deprivation of his right to procedural and substantive due process and statutory protection, the court should follow the strict procedural deadlines of section 2243. See **Rules Governing Section 2254** case. Rule 1 (b) (providing that district courts “may” apply rule 4 to hebeas petitions not arising under 28. U.S.C 2254). Accordingly the court should forthwith issue a writ of habeas corpus or an order to show cause and order respondents to make a return within three days. See 28 U.S.C 2243. In the alternative, if the court applies Rule 4, it should exercise the discretion conferred by the Rule and, in harmony. With the congressional mandate for accelerated adjudication of hebeas petitions, issue an order to show cause and order respondents to expeditiously file a return. See **Iremashvili v. Rodriguez**,

No. 15-6320, 2017 WL 935441 at* 3-4 (D.N.J) Mar 9, 2017) (recognizing that Rule 4 provides “discretion to courts to establish their own time limit as appropriate”)

An order to show cause, whether issued pursuant to section 2243 or Rule 4, is appropriate in this case because any other procedures will cause Mr. Coke further irreparable legal and bodily injury. See l. Civ. R.65.1(a) (providing that an order to show cause is appropriate where the movant makes “a clear and specific showing... why a procedure other than by notice of motion is necessary”)

Each additional day that Mr. Coke spends detained compounds the ongoing infringement upon his due process rights, a singularly acute legal injury. See **Smith v Bennet**, 365 U.S. 708, 712 (1961) (describing “personal liberty” as “mans greatest right”); **Zadvydas**, 533 U.S. at 690. Worse still, Mr. Coke tenuous mental health and respondents inability to provide safe detention conditions endanger his bodily integrity and even his life. Swift judicial intervention to prevent such harm is the very reason that the writ of habeas corpus exists and enjoys such reverence in American jurisprudence see **Fay v Noia** 372 U.S. 391, 399-400 (1963). Only issuance of an order to show cause will fulfill the Great Writ promise in this case

“Congress has authorized federal district courts to grant a writ of habeas corpus whenever a petitioner is in custody in violation of the constitution or law or treaties of the United states” **Ozturk v Trump**, 2025 U.S. Dist LEXIS 74496-F. Supp 2025 WL 114250 (2025); **Black V Decker**, 2020 U.S. Dist. LEXIS 131735, 2020 WL 4260994 at*5 (S.N.D.Y July 23, 2020); **Black v Dir Thomas Decker** , 103 F.4th 133 2024 U.S. App LEXIS 13100 2024 WL 2789282 (2024).

- (1) Due process under the fifth amendment entitled detained non citizen to individualized bond hearing by immigration judge (IJ) when 8 U.S.C 1226 (c) detention based on convictions because unreasonably prolonged because the Matthew factors weigh in their favor, although no bright-line constitutional rule required a bond hearing after ant particular period of detention;
- (2) At the bond hearing, the government had the burden to justify continued detention by clear and convincing evidence because this evidentiary standard was appropriate for continued detention with a high risk of erroneous deprivation of liberty;
- (3) Absent a finding of danger to the community, directing the IJ to consider ability to pay and alternative to detention in setting a bond amount was proper because not doing so would risk an erroneous deprivation of liberty for financial reason.

CONCLUSION

Now wherefore, for the foregoing reasons Mr. Coke respectfully moves this court to:

- (1) Issue a temporary restraining order or preliminary injunction requesting respondents to release petitioner and enjoining them continuing to detain petitioner during the pendency of the petition; and/or
- (2) Order petitioner release from respondents custody pursuant to the courts inherent authority as described Lucas v Harden; and/or
- (3) order respondents to show cause why petitioners verified petition should not be expeditiously granted; and/or
- (4) Grant petitioner such other, further and additional relief as the court deems just and appropriate

Date: 6/7/25 2025

Respectfully submitted



Javell Coke
A 206-130-233

I Javein Coke do hereby certify and declare under penalty of perjury that on 07/25 2025 I served a true and correct copy of the change of address to the following parties.

This document served by mail to:

U.S District court
Clerks Office
1717 Pacific Avenue Room 3100
Tacoma, WA 98402

UNITED STATES ATTORNEY
1201 Pacific Ave STE 700
Tacoma, WA 98402
Sign: J. Coke

Taven Cole #
1623 East J Street
Tacoma, WA 98421

Quadrant
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04-063149465

United States District Court
Clerk's Office
1717 Pacific Ave Room 3100
Tacoma, WA 98402

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