UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

Javein Jumel Coke)
)
Petitioners)
v)
)
Bruce Scott, et. al.)
)
Respondents)
_____)

Case No. 2:25-cv-694-RSM-BAT

REPLY BRIEF IN SUPPORT OF JAVEIN COKES PETITION FOR HABEAS CORPUS RELIEF

INTRODUCTION

1.The government appears to disagree that Petitioner Javeln coke is likely entitled to a court ordered bond hearing or immediate release his detention now approaching 15 months. Stating that petitioner is lawfully detained pursuant 263(a) of INA codified at 8 U.S.C 1226(a) see (doc) 9.

2.The government position consistent that they charged Mr. coke he is removable under 8 1227(a)(1)(B) due to overstaying his visa. Government argues ICE lawfully detains petitioner pursuant to 8 U.S.C 12226(a) where he was eligible to request bond and did not exhaust his remedy's to do so.

3.Petitioner is surprised and disagrees with this argument by the government . ICE officer at Moshannon Valley processing center and petitioners previous counsel both told Mr. Coke he is not eligible for a bond because of his aggravated identity theft charge 1028A(a)(1).

4. Upon looking at other related cases with similar convictions of 1028A (a)(1) all person where deportable under 1226 (c) in immigration proceedings see **Oboh v U.S 2025 U.S Dist Lexis 292 (jan 2 2025 6th cir) Inyang v Holder, 2014 U.S App. Lexis (Mar 12 2024 6th cir) Labrada v U.S attorney general 2025 U.S App Lexis (jun 13 2025 11th cir) , Sasay v AG 13 F.4 291(sep 10 3rd cir)** all convicted of 1028A(a)(1) and where deportable under * 1227 (a) (2) (A) (ii).

5. Petitioner is detained under 1226(c) which states alien who is deportable under section 237 (a) (2) (A)(i) [8 U.S.C 1227(a)(2)(A)(i)] on the basis of an offense for which the alien has been sentence to a term of imprisonment of at least a year.

ARGUMENT

A. Statuary Basis for Petitioners Detention

6.Title 8 U.S.C 1226 provides the framework for the arrest, detention, and release of non citizens who are in removal proceedings. 8 U.S.C. 1226; see **Demore v. Kim, 538 U.S. 510, 530, 123 S. Ct. 1708, 155 L.Ed. 2D 724 (2003)** ("Detention during removal proceedings is a constitutionally permissible part of that process."); **Avilez v. Garland, 69 F.4th 525, 529-530 (9th Cir. 2023).**

7.Section 12269a) grants DHS the discretionary authority to determine whether a non- citizen should be detained, released on bond, or released on conditional parole pending the completion of removal proceeding, unless the non-citizens falls within one of the categories of criminals described in 1226(c), for whom detention is mandatory until removal proceedings have concluded. 8 U.S.C 1226; **Jennings v Rodriguez, 583 U.S 281, 303-06, 138 S. Ct. 830, 200 L. Ed. 2D 122 (2018).** Section 1226(c) includes any non-citizen who "is deportable by reason of having committed any offense covered in section 1227(a)(2)(A) (ii), A(iii), (B), C, or (D) of this title". 8 U.S.C 1226 (c)(1)(B).

8.Here, petitioner was found to be removable for having committed an offense covered in 1227(a)(2) (A)(i) and 1227(a)(2)(A)(ll). As such, petitioner detention is statutorily mandated by 1226(c) until his removal proceedings have concluded. Petitioner is therefore not entitled to release or a bond hearing on statutory grounds.

B. Due Process

9. Civil detention, like petitioners, violates due process expect in " certain special narrow" non punitive circumstances " where government has a "special justification" that outweighs the individuals core liberty interest in freedom from detention **Zadvydas 533 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").

10The sole permissible purpose of civil immigration detention are to ensure the appearance of noncitizens 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.**

11. Even if authorized under Section 12269c), petitioners continued detention must comport with due process. Petitioner argues that his detention has become prolonged and violates his due process rights, and that he is entitled to release or a court ordered bond hearing on this basis.

12.In Demore, the supreme court rejected a due process challenge to 1226(c) explaining that congress drafted 12269c) to respond to the high rates of crime and flight by removable non citizens convicted of certain crimes and holding that " the government may constitutionally detain deportable Non-citizens during the limited period necessary for their removal proceedings". **538 U.S at 518-21, 526.** In so holding the supreme court stressed the "brief' nature of the mandatory detention under 1226(c), which has a " a definite termination poin" that, in most cases resulted in detention of less than about five months. Is. At 529-30.

13.Justice Kennedy concurring opinion, which created the majority, reasoned that under the due process clause, a non citizen could be entitled to an "individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." Id. At 532.

14. Since Demore, the ninth circuit has expressed "grave doubt that any statue that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government arbitrary deprivation of liberty would have thought so." **Rodriguez v Marin, 909 F.3d 253, 256 (9th Cir.2018).** District courts that have considered the constitutionality of prolonged mandatory detention and other judges in this district -"agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, "will at some point violate the right to due process."

15.Martinez v Clark,2019 U.S Dist. LEXIS 197895, 2019 WL 5968089, at*6 (W.D. Was. May 23, 2019), report and recommendation adopted, 2019 U.S. Dist LEXIS 196836, 2019 WL 5962685 (W.D> Wash Nov. 13, 2019) (quoting **Sajous v Decker, 2018 U.S. Dist. LEXUS 86921, 2018 WL 2357266, at*8 (S.D.N.Y. May 23, 2018, and collecting cases); see also Banda v McAleenan, 385 F. Supp. 3D 1099, 1106 (W.D. Wash. 2019)** ("unreasonably prolonged detention under [8 U.S.C 1225(b) without bond hearing violates due process".)

16.**Dejelassi v Ice Field Officer Director, 434 F. Supp. 3D 917, 923-24 (W.D. Was 2020)** granting hebeas petition and ordering bond hearing for non citizen whose mandatory detention had become unreasonably prolonged.)

17. The longer mandatory detention continues beyond the 'brief" period authorized in Demore, the harder it is to justify. See e.g **Martinez, 2019 WL 5968089, at *9** (finding nearly 13- month detention weighed in the favor of granting a bond hearing);

18.**Liban M.J. v Sec'y of Dep't of Homeland Sec., 367 F. Supp. 3D 959, 963-64 (D. Minn. 2019)** (" although there is no bright-line rule for what constitutes a reasonable length of detention, petitioners [12 month] detention has lasted beyond the 'brief' period assumed in Demore.")

19. **Sajous 2018 WL 2357266, at *10** ('' Detention that has lasted longer than six months is more likely to be 'unreasonable', and thus contrary to due process, than detention of less than six months.")

C. EXHAUSTOIN OF ADMINISTRATIVE REMEDIES

20. There is no statutory requirement to exhaust administrative remedies where no citizen challenges of detention.

21. **Pujalt-Leon v Holder, 934 F.Supp. 2D 759, 773 9 M.D. Pa 2013)** whereas 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)**

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

23. 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 in Moshannon valley where he did ten of the fourteen months of detention and ICE HQ pertaining to ICE policy and also BIA see petition EX- A, C.

D. PETITIONER CONTINUED DETENTION IS UNLAWFUL UNDER ZADVYDAS

24. 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.

25.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).

29. 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).

30 . 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.

31.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).

32. In Zadvydas, the Supreme Court construed 8 U.S>C 1231(a)(6) to authorize detention only where it is significantly likely that removal will occur in the reasonable foreseeable future, in order to avoid the serious due process concerns that would be presented by permitting detention for an indefinite period of time Zadvydas, 533 U.S 678. After a non citizen meets his or her burden to show that no such likelihood or removal exist, the burden shifts to the government to "respond with evidence sufficient to rebut the aliens showing". Id at 701.

33. Courts have rejected conclusory claims by ICE agents which claim, without submitting concrete factual information about scheduled flights or repatriation agreements, that removal is imminent. " A theoretical possibility of eventually being removed does not satisfy the governments reasonably foreseeable, "the hebeas court should consider the risk of the noncitizens committing further crimes as a factor potentially justifying within that reasonable removal period Id at 700.

burden once the removal period has expired and the petitioner establishes good reason to believe his removal is not significantly likely in the reasonably foreseeable future." ***Balza v. Barr***, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020) (internal quotation marks and citation omitted). "[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, [a] Court certainly cannot conclude that [a] removal is likely to occur---or even that it might occur---in the reasonably foreseeable future." ***Id.*** at *5 (internal quotation marks and citation omitted). See also ***Gomez Barco v. Witte***, No. 6:20-CV-00497, 2020 WL 7393786 (W.D. La. Dec. 16, 2020) (ordering release of a petitioner who was detained longer than six months because ICE had not been able to secure necessary travel documents, noting that the ICE officer "clearly has no factual basis for his 'belief' that there is no foreseeable impediment to Petitioner's removal or that her removal is imminent." and that there was no foundation for the "expectation" that the COVID-19 related travel restrictions in place would soon be lifted); ***Balza v. Barr***, No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) (same).[1]

---

[1] Other district courts in the Fifth Circuit and elsewhere have similarly granted habeas relief when the noncitizen has shown that there is no significant likelihood of removal in the reasonably foreseeable future. See e.g., ***Carreno v. Gillis***, No. 5:20-cv-44-KS-MTP, 2020 WL 8366735 (S.D. Miss. Dec. 16, 2020) (granting relief to petitioner detained for approximately sixteen months due to a lack of diplomatic relations with Venezuela); ***Ali v. Dep't of Homeland Sec.***, 451 F. Supp. 3d. 703 (S.D. Tex. 2020) (granting habeas relief to petitioner initially detained for three years, released and detained again for four months when petitioner could not be removed due to travel restrictions to Pakistan); ***Shairfi v. Gillis***, No. 5:200cv-50DCB-MTP, 2020 WL 7379211 (S.D. Miss. Oct. 9, 2020) (granting habeas relief to petitioner detained for seventeen months after Iranian officials failed to respond to a travel document request for more than seven months.

34. In granting Ms. Balza's release, the court considered and rejected a conclusory declaration by a local ICE Assistant Field Officer that removal was imminent. **Id. at** * 5. In **Alexis v. Smith**, the petitioner, Mr. Alexis, had been in detention for almost a year and subject to a removal order for over a year. An ICE official testified to an informal agreement that permitted removals but

acknowledged that there were far fewer removals to Haiti in the aftermath of the 2010 hurricane. The Haitian government had an issue with identity documents and it was unknown when that would be resolved,. The magistrate did not credit ICE's vague statements that it was "endeavoring to rectify the issue" and concluded there was no end in sight for detention, and recommended release. The District Court Judge agrees and ordered release. ICE then released Mr. Alexis on an Order of Supervised release and moved to get the judgment vacated on mootness, which it was. However, this does not invalidate the reasoning and conclusions of the Magistrate Judge and District Court Judge on this subject, and this case is still informative and persuasive to the body of law on this subject. ***Alexis v. Smith***, No. CIV.A. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011), report and recommendation adopted, No. CV 11-0309, 2011, WL 3954945 (W.D. La. Sept. 6, 2011), vacated, No. CIV.A. 11-0309, 2011 WL 13386020 (W.D. La. Sept. 15, 2011).

35. Courts in this District have---pursuant to ***Zadvydas***—release individuals who have been detained for over six months. See, e.g., ***Gomez Barco***, 2020 WL 7393786 (ordering release of an immigrant detained who was a native and citizen of Venezuela who was detained longer than six months because ICE had not been able to secure necessary travel documents); ***Balza***, 2020 WL 6143643, at *5 (ordering release of petitioner and noting that "[a]fter more than a year of detention, Petitioner's removal need not necessarily be imminent, but it cannot be speculative") (internal quotation marks omitted).

36. Under Zadvydas, courts have found that there is no significant likelihood of removal and granted relief where:

> * No country will accept the petitioner. See e.g. ***Jabir v. Ashcroft***, No. 03-2480, 2004 WL 60318 *E.D. La. Jan. 8, 1004) (granting habeas relief to petitioner detained for more than fourteen months after numerous countries refused repatriate the petitioner) [2]

37. Under ***8 U.S.C § 12131(a)(1)-(2)*** authorizes detention of noncitizens during "the removal period," which is defined as the 90-days period beginning on "the latest" of either "[t]he date the order

of removal becomes administratively final"; "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order"; or "[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement."

38. Under *8 U.S.C. § 1231(a)(6)* permits detention "beyond the removal period" of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In ***Zadvydas***, the Supreme Court held that "the statute, read in light of the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." ***Id.*** At 699

---

[2] See also ***Hassoun v. Sessions***, No. 19-CV-586-FPG, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019) (ordering release of petitioner detained fourteen months after petitioner showed "that the countries with which he has any affiliation will not accept him"); ***Yusupov v. Love***, No. 4:CV-06-1804. 2007 WL 5063231 (M.D. Pa. Jan. 12, 2007); ***Abel-Muhtl v. Ashcroft***, 324 F. Supp. 2d. 418 (M.D. Pa. 2004) (Ordering release of petitioner detained approximately two years after refusal of several countries to accept petitioner).

* The petitioner's country of origin refuses to issue a travel document. See, e.g. Alexis v. Smith, No. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011) (granting habeas relief to petitioner detained for approximately one year due to the Haitian government rejecting the quality of identity document provided); ***Fermine v. Dir. of Immigr. & Customs Enf't***, No. 2:06-cv-1578, 2007 WL 2284606 (W.D. La. May 23, 2007) (granting habeas relief to petitioner detained for Fifteen months due to Trinidad's refused to issue travel document); ***Lijadu v. Gonzales***, No. 06-1208, 2006 WL 3933850 *W.D. La. Dec. 18, 2006) (granting habeas relief to petitioner detained nineteen months because Nigeria refused to issue travel documents due to petitioner's HIV status).[3]

* There is no removal agreement between the United States and a country. In these scenarios, courts have found that the lack of a formal agreement regarding repatriation, lack of diplomatic relationship, and lack of a functioning government support a finding that there is no significant likelihood of removal. See, e.g., ***Negusse v. Gonzales***, No. 06-1382, 2007 WL 708615 (W.D. La. Mar. 1, 2007) (granting habeas relief to petitioner detained for approximately one year and Ethiopia would not issue travel documents because one of petitioner's was not Ethiopian).[4]

* There is either no response from a country designated for removal or a significant delay in receiving a response. See, e.g., ***Gonzalez-Rondon v. Gillis***, 5:19-cv-109-DCB-MTP, 2020 WL 3428983 (S.D. Miss. June 23, 2020) (granting habeas relief to petitioner detained thirteen months where there was no response from Venezuelan Officials.).[5]

* ICE fails to take action to secure travel documents for a prolonged period. See e.g. Senor, 401 F. Supp. 3d. 430-31 (granting habeas relief after ICE initially requested travel documents but where "there [wa]s no indication from the record that anyone ha[d] taken any further action in the eight months since that time ... to facilitate Senor's receipt of the necessary travel documents").

---

[3] See also ***Ka v. Bureau of Immigr. & Customs Enf't,t***, No. B-07197, 2008 WL 11462867, at *8 (S.D. Tex. June 24, 2008) (ordering release of petitioner detained twelve months after Senegal "refused to issue Ka a travel document because he d[id] not proper identity documentation"); ***Moreira v. Gonzales***, No. CIVA CVO05-588 A, 2006 WL 3861972 (W.D. La. Nov. 2, 2006) (granting habeas relief to petitioner detained for three years because Cape Verde advised that if would not accept the petitioner for repatriation); Khan v. Gonzales, 481 F. Supp. 2d. 638 (W.D. Tex. 2006).

[4] See also ***Gomez Barco***, 2020 WL 7393786; ***Lslam v. Kane***, No. CV-11-515-PHX-PGR (LOA), 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011) (ordering release of petitioner detained ten months where petitioner presented evidence that Bangladesh "is one of fifteen countries identified by ICE as least likely to issue travel document"); ***Carreno***, 2020 WL 8366735; ***Simoza Rangel v. Gillis***, No. 5:19-cv-118-DCB-MTP, 2020 WL 7223258 (S.D. Miss. Sept. 2, 2020) (granting habeas relief to petitioner detained for sixteen months due to a lack of diplomatic relations with Venezuela); ***Abduelle v. Gonzales***, 422 F. Supp. 2d. 774 (W.D. Tex. 2006) (concluding that the petitioner met the burden to show removal was not reasonably foreseeable after being detained for more than one year when an injunction restricted the government's ability to remove the petitioner to Somalia).

[5] See also ***Sharifi***, 2020 WL 7379211; ***Aung v. Barr***, No. 20-CV-681-LJV, 2020 WL 4581465 (W.D.N.Y. Aug. 10, 2020); ***Edwards v. Barr***, No. 4:20cv35-WS-MAF, 2020 WL 6747737 (N.D. Fla. Oct. 14, 2020); ***Rual v. Barr***, 6:29-CV-062215 EAW, 2020 WL 3972319 (W.D.N.Y. July 14, 2020); ***Rodriguez Del Rio v. Price***, No. EP-20-CV-00217-FM, 2020 WL 7680560 (W.D. Tex. Nov. 3, 2020); Singh v. Whitaker, 362 F. Supp. 3d. 93 (W.D.N.Y. 2019); ***Butt v. Holder***, No. CA 08-0672-CG-C, 2009 WL 1035354 (S.D. Ala. Mar. 19, 2009) (holding that petitioner met his initial burden where he was held in ICE custody for more than ten months after the issuance of his removal order with no indication from the Pakistani Embassy that travel documents would be issued); ***Lawrikow v. Kollus***, No. CV-08-1403-PHX-GMS (LOA), 2009 WL 2905549 (D. Ariz. July 27, 2009); ***Reid v. Crawford***, No. 06-2436 PHX JWS (MEA), 2007 WL 1063413 (D. Ariz. Jan. 31, 3007); ***Gul v. Ridge***, No. 3CV031965, 2004 WL 1920719 (M.D. Pa. Aug. 13, 2004); ***Shefqet v. Ashcroft***, No. 02 C 7737, 2003 WL 1964290 (N.D. I11. Apr. 28, 2003).

[6] See also *Chun Yat Ma v. Asher*, No. C11_1797 MJP, 2012 WL 1432229, at *4 (W.D. Wash. Apr. 25, 2012) (ordering petitioner's release where the government failed "to provide any documentation of efforts ... to effectuate removal ... [for] nearly six months").

39. As the length of detention grows, the period of time that would be considered the "reasonably foreseeable future" shrinks. See e.g., *Zadvydas*, 533 U.S. at 701 (stating that as the length of time in detention grows "what courts as the 'reasonably foreseeable future' conversely would have to shrink"); *Senor*, 401 F. Supp. 3d at 430("'[T]he passage of time combined with' the 'government [being] no closer t . . . repatriating [a *detainee*] than they were once they first took him into custody' [is] sufficient to meet that 'initial burden.'"); *Lawrikow*, 2009 WL 2905549, at *12.

40. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen's due process right to liberty. *Zadvydas*, 533 U.S. at 701. In this circumstance, if the noncitizen "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." *Id.*

41. Petitioner's continued detention is unlawful, and Petitioner is unlikely to be removed in the reasonably foreseeable future. Therefore, Petitioner's detention violates the statute and he is entitled to immediate release.

42. Petitioner's detention also violates the Due Process Clause. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. Amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. Zadvydas, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. See *Id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only to valid purposes for civil detention: the mitigate the risk of flight and prevent dander to the community. *Id.* Petitioner's prolonged civil detention, which has lasted well beyond the end of the removal period and which is likely to continue indefinitely, is no longer reasonably related to the primary statutory purpose of ensuring imminent removal. Thus, Petitioner's detention violates Petitioner's right to due process.

43. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purpose for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification

44. The first justification of preventing flight, however, is "by definition . . . weak or nonexistent where removal seems a remote possibility." *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is "no longer practically attainable, detention no longer 'bears [a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, "preventive detention based on dangerousness" is permitted "only when limited to specially dangerous individuals and subject to strong substantive protections." *Zadvydas*, 533 U.S. at 690-91.

45. Thus, under *Zadvydas*, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700. If removal is

46. Thus under **Zadvydas** "If removal is not reasonably foreseeable, the court should hold counted detention unreasonable and no longer authorized by statue" **Id at 699-700.**

47. At minimum detention is unconstitutional and not authorized by statue when it exceeds six months and deportation is not reasonably foreseeable. See **Zadvydas, 533 U.S. at 701** (stating that " congress previusly doubted the constitutionality of detention for more than six months" and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); See also **Clark v Martinez, 543 U.S 371 386 (2005).**

E. GERMAN SANTOS ANALYSIS

1.) 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

48. 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 shoter 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.

49. 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 11 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)

49. Petitioner received a notice from BIA dated 4/18/25 pursuant to 8 C.F.R 1003.1 (d)(6)(ii) **EX-B** which can delay judicial review for 180 days or more but according to **(Doc 11-4 EX-D)** Biometerics were done as recent as 4/05/2024 which was three weeks before immigration procedures started. Petitioner has been in judicial review for over eight months after being granted CAT deferral of removal and being appealed by DHS on November 20, 2024 a process which is supposed to be adjudicated in 90 days after the briefing schedule has been meet. Petitioner also adds government added to this eight month waiting process by not sending petitioner transcript of his court hearing which added 21 days to the judicial review extension was offered after contacting BIA. ICE transferred petitioner and did not update his location to BIA which caused a second 21 days extension **see EX-A.** 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.

50. 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

51 . Petitioners detention at the facility where he is currently detained **Martinez 20019 WL 5968089, at *9.** "The more that the conditions under which the noncitizen is being held resembles penal confinement, the stronger the argument that he is entitled to a bond hearing." **Jamal A v Whitaker, 358 F Supp. 3D 853, 860 (D. Minn. 2019)** (citation and internal quotations omitted)

52. petitioner asserts that his current conditions of detention are indistinguishable from criminal confinement. In support of his argument, petitioner reference to a decision from this district from 2020, Katlong v Barr, No. c20-0846-RSL-MAT,2020 WL 7048530 at*4 (W.D. Wash Oct. 30, 2020), report and recommendation adopted No. C20-0846-RSL-MAT, 2020 WL 7043580 (W.D Wash. Dec.1, 2020). In Katlong, the court in evaluating the conditions of confinement factor determined that:

The evidence establishes at least the following; The NWIPC is a private detention facility run by the GEO Group Ins (GEO), an independent contractor with ICE that provides facility management personnel and services for 24- hour supervision of the detainees in ICE custody at the NWIPC. The NWIPC has the capacity to house 1,575 detainees and is currently operating at full capacity. There are 21 housing units, one of which includes an Administrative Segregation Unit and a Disciplinary Management Unit.

53. Detainees are housed according to classification level, and detainees of different classification levels may not ordinarily be housed together in the same housing unit. Male and female detainees are housed in separate units. Most movement within the facility is unit specific, and detainees are allowed access to a small outdoor area for one hour a day which is closed in with fences and barb wires and patrolled by guards with firearms . These conditions

are "similar to those in many prisons and jails. ' **Jennings, 138 S. Ct at 861** (Breyer, J dissenting) (determining that immigration detainees were held in circumstances similar to many penal institutions); See also **Guerrero-sanchez v warden York Cnty Prison, 905 F.3d 208, 220 n.9 (3rd Cir. 2018)** (The reality is that merely calling a confinement civil detention does not, of itself , meaningfully differentiate it from penal measures.") (quoted source omitted). Accordingly, this factor weigh in petitioner favor.

54. The conditions at NWPIC have not improved since the Katlong case, but have instead gotten worse. Detainees are denied access to the internet per Geo policy. There is a memo stating that the law library officer may not utilize the internet to do research for any detainee and only the provided paper based publications and LEXIS NEXIS are available for detainee use. This effectively hamstring detainees from representing themselves in immigration proceedings as many detainees lack financial resources to get on the expensive phone calls lack of toilet paper and soap goes hours or dya without being refilled. Petitioners only communication with his family is through time limited and expensive phone or video calls and a glass partition separates petitioner from his family when they visit. See e.g **Albshir H.A v Barr, 2019 U.S Dist Lexis 132601, 2019 WL 3719467 (Dist. Minn June 28 2019).** These conditions are worse than the conditions at the Fort Dix low security Federal Prison where I served fourteen mouths. Petitioner is also detained with violent gang member from MS-13. TdA, 18th st, Bloods and crips and bloods In addition I also submitted a copy of the NWIPC Detainee Handbook, see **Exhibit-B,,** the handbook reinforces my allegations that the restrictions placed on my daily movements and conduct are similar to those restrictions imposed in penal institutions.

55. **Jaurez, 2021 U.S Dist LEXIS 107524, 2021 WL 2323436, at *6** (concluding that this favored the petitioner given "allegations" regarding "restrictions on privacy and autonomy" and "a focus on punitive discipline" at NWIPC). See also **Anyanwu v United Sates immigrant and Customs Enf Field Off Dir., 2024 U.S LEXIS 198560, 2024 WL 4627343 (Western Dist Wash Sep. 17 2024)** (concluding that these conditions of detention at NWIPC favored petitioner).

56. IN addition, detainee mail is photocopied including family photos and legal mail similar to the procedure in prisons and jails. There are no contact visits at NWIPC unless specifically

approved in emergency situations or for detainees getting removed, visits only last for about and hour, detainees are subject to frequent and unannounced searches and GEO staff utilize a pat down search as you move from unit to other areas of the facility and back. Accordingly, this factor weighs in Favor of petitioner.

CONCLUSION

For the foregoing reason this court should **GRANT** petitioners petition for immediate release or a individualized bond hearing placing burned on respondents to prove by clear and convincing evidence that petitioner is a danger to the community and or a flight risk during pending appeal because he is detained under 1226 (c) not 1226 (a). **Pursuant to Sing v Holder 638 f.3d 1196 (9th cir 2011).** The court IJ must find that a respondents release would pose a danger to persons or property before a bond is denied. That his risk of flight shows that he is unlikely to appear for future court hearing or to obey any order of the court.

I Javein Coke do hereby certify and declare under penalty of perjury that on 6/23/25 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