IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

DORIAN ABAD ABROSI,

Petitioner,

v.

WARDEN OF FOLKSTON ICE PROCESSING CENTER, *in their official capacity*; KRISTIN SULLIVAN, *in her official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Atlanta Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security;* and PAM BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

Case No. CV 525-013

HABEAS CORPUS
PETITION FOR A WRIT OF

INTRODUCTION

1. Petitioner Dorian Abad Abrosi ("Mr. Abad" or "Petitioner"), a 53-year-old man from Ecuador with a litany of serious medical issues, has been detained without a bond hearing by Respondents for *twenty months*. Mr. Abad came to the United States in June 2023, seeking protection from drug cartels after he refused to cooperate with them as a candidate for governor in his region of Ecuador. In November 2024, an Immigration Judge (IJ) granted Mr. Abad withholding of removal under the Immigration and Nationality Act (INA), finding that he would more likely than not be persecuted if deported and legally blocking his deportation to Ecuador. But Immigration and Customs Enforcement (ICE) appealed the IJ's decision and has refused to release Mr. Abad during the pendency of its appeal.

2. Mr. Abad is detained pursuant to 8 U.S.C. § 1231(a)(6) and is therefore ineligible for a bond hearing before an IJ. But ICE is obligated, by regulation and its own policies, to periodically review Mr. Abad's custody. Yet it has repeatedly failed to conduct these required custody reviews.

3. Mr. Abad's prolonged detention without a bond hearing and without adequate custody reviews violates due process under established Eleventh Circuit precedent and this Court's caselaw. *See Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1212 (11th Cir. 2016), *vacated on other grounds*, 890 F.3d 952 (11th Cir. 2018); *Dorley v. Normand*, No. 5:22-cv-62, 2023 WL 3620760 (S.D. Ga. Apr. 3, 2023) (applying *Sopo* to find 20-month detention without bond unreasonable). Having already been detained for approximately twenty months without a bond hearing, Mr. Abad's detention is likely to continue for months to come because of ICE's appeal of the IJ's grant of withholding of removal, despite the fact that he is more likely than not to ultimately prevail. Virtually all of the delay in Mr. Abad's case is attributable to the Government's actions or inactions. Meanwhile, he is detained in prison-like conditions at Folkston ICE Processing Center ("Folkston") without adequate medical care for his numerous ailments.

4. Additionally, Mr. Abad's continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his native country—Ecuador—because he has been granted withholding of removal under 8 U.S.C. § 1231(b)(3). ICE's appeal of the IJ's decision is without legal basis, and any attempts to remove him to alternative countries would be futile.

5. Finally, ICE's failure to conduct custody reviews required by its own regulations and policies violates the Administrative Procedure Act (APA). *See Accardi v. Shaughnessy*, 347 U.S. 260, 266 (1954).

6. As a remedy, Mr. Abad requests immediate release from ICE custody. Alternatively, and at a minimum, he requests a bond hearing before an IJ at which ICE bears the burden of proving by clear and convincing evidence that he is a current flight risk or danger to the community. Along with this petition, Petitioner has filed a Motion for Temporary Restraining Order or Preliminary Injunction asking this Court to order his release during the pendency of the petition.

JURISDICTION & VENUE

7. This Court has jurisdiction under 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. 1, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); and 28 U.S.C. § 1331 (federal question jurisdiction).

8. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252, the federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (holding that 8 U.S.C. § 1226(e) does not bar habeas jurisdiction over a constitutional challenge to mandatory detention in the absence of a specific provision barring habeas review).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), (e)(1) because Mr. Abad is detained in this district, where a substantial part of the events or omissions giving rise to this action occurred and continue to occur.

PARTIES

10. Petitioner, Mr. Abad, a native and citizen of Ecuador, is currently detained at Folkston. He is under the direct control of Respondents and their agents.

11. The Warden of Folkston ICE Processing Center, which is operated by GEO Group, Inc., is Mr. Abad's immediate custodian. They are sued in their official capacity.

12. Respondent Kirstin Sullivan is sued in her official capacity as the Acting Director of the Atlanta Field Office of ICE. In this capacity, she has responsibility for and authority over the detention and removal of noncitizens detained at Folkston and is authorized to release Mr. Abad. She is an immediate and legal custodian of Mr. Abad.

13. Kristi Noem is sued in her official capacity as the Secretary of the Department of Homeland Security (DHS). DHS is responsible for the administration and enforcement of immigration laws, and the Secretary has supervisory responsibility and authority over the detention and removal of noncitizens throughout the United States. ICE is a subdivision of DHS, and the Secretary is a legal custodian of Mr. Abad.

14. Pam Bondi is sued in her official capacity as the Attorney General of the United States. The Attorney General is the head of the Department of Justice, which encompasses the Board of Immigration Appeals (BIA) and the IJs as subunits of the Executive Office of Immigration Review (EOIR). The Attorney General supervises IJs, including those who preside over the Atlanta Immigration Court and the Stewart Immigration Court, which have jurisdiction over bond proceedings for individuals in ICE custody at Folkston. Only EOIR has the authority to provide Mr. Abad with a bond hearing, and it routinely does so when a federal district court orders.

STATEMENT OF FACTS

15. Mr. Abad is a 53-year-old native and citizen of Ecuador. He is not a citizen of any country besides Ecuador. Ex. 1, Declaration of Dorian Abad Abrosi at ¶ 1.

16. Mr. Abad first came to the United States in 1995. He married a U.S. citizen in 1998, and they lived together in Connecticut for 25 years. Mr. Abad's wife petitioned for him to obtain lawful status. In 2013, the U.S. Citizenship and Immigration Service (USCIS) approved the I-130 petition, the first step toward Mr. Abad becoming a citizen. *Id.* at ¶ 3.

17. Mr. Abad has U.S. citizen children by marriage, as well as a child of his own who was born in Ecuador and will soon become a U.S. citizen. He worked as a mechanic for many years before starting his own construction business. *Id.* at ¶ 3-4.

18. Mr. Abad struggled with alcoholism, leading to a few arrests and convictions for driving under the influence and traffic offenses. This prompted ICE to initiate removal proceedings against him in 2011. After participating in a court-ordered alcohol treatment program, Mr. Abad stopped drinking and has been sober for approximately 15 years. *Id.* at ¶ 4.

19. Mr. Abad sought Cancellation of Removal, a form of relief for noncitizens who have resided in the United States for more than 10 years and whose deportation would cause exceptional hardship to their U.S. citizen family members. The IJ found that Mr. Abad's deportation would indeed cause exceptional hardship but nonetheless denied him relief in discretion due to his criminal record. After a protracted appeals process, the BIA ultimately affirmed the IJ's decision in 2019, rendering Mr. Abad's deportation order final. *Id.* at ¶ 5.

20. While the deportation order was in place, Mr. Abad returned to Ecuador voluntarily in 2020 to care for his ailing, elderly mother. He ended up running for governor of his region on an anti-corruption campaign, which attracted the attention of a drug cartel that attempted to bribe

and intimidate him. When Mr. Abad refused, the drug cartel repeatedly threatened him with death, forcing him to flee the country. *Id.* at ¶ 6.

21. In early June 2023, Mr. Abad crossed into the United States and was apprehended by border officials. Though he had not been deported in 2020, but rather left voluntarily under a removal order, the authorities reinstated his prior removal order. After brief stints detained in Arizona and Texas, ICE transferred Mr. Abad to Folkston at the end of June 2023. *Id.* at ¶ 7.

22. Mr. Abad demonstrated a sufficient fear of return to Ecuador to enter withholding-only proceedings before an IJ in July 2023. Mr. Abad obtained private counsel from New York for these proceedings. In March 2024, an IJ denied him all relief and ordered him removed to Ecuador. But Mr. Abad appealed, and the BIA remanded the case back to the IJ in May 2024. Ex. 2, IJ Decision Granting Relief at 1.

23. On November 19, 2024, a different IJ granted Mr. Abad withholding of removal, finding that he would more likely than not be persecuted in Ecuador on account of his political opinion. *Id.* at 24. At the 30-day deadline, ICE filed a Notice of Appeal of the IJ's decision. The sole ground for appeal appears to be that DHS does not believe that the drug traffickers would carry out their threats if Mr. Abad returned to Ecuador. The parties' briefs at the BIA are currently due on February 6, 2025.

24. Because his previous removal order was reinstated, Mr. Abad is not eligible to request bond from an IJ and can only request release from ICE. Mr. Abad requested his release, through counsel, immediately upon being granted withholding of removal. An anonymous ICE officer representing the "Folkston Outreach Team" responded that they were monitoring whether the Office of Principal Legal Advisor (OPLA) would appeal the IJ's decision. Ex. 3, Release Request Emails at 7. Upon OPLA appealing, the officer advised counsel that any release request

would be denied but nonetheless asked counsel to seek a custody review in two weeks. *Id.* at 2-3. Counsel did as requested on December 30, 2024, and less than two hours later, the ICE officer responded that "a review of your client's case was conducted, and the decision was made to continue detention." *Id.* at 1.

25. Independently of any parole requests, ICE was required to review Mr. Abad's custody under 8 C.F.R. § 241.4 after 90 days of detention, again at 180 days of detention, and a third time at 540 days of detention. ICE was also required to serve each of these custody review decisions on Mr. Abad and to personally interview Mr. Abad at least once prior to the 180-day review. *See infra* Legal Background, II.b. But Mr. Abad has never received any such custody decision or interview. Ex. 1 at ¶ 11. On information and belief, ICE has not conducted any of the required custody reviews under 8 C.F.R. § 241.4 in the entire time Mr. Abad has been detained.

26. At Folkston, Mr. Abad is confined to a large cell with 60 other people for approximately 22 hours a day, with limited time for meals and recreation. The people detained at Folkston wear different colors of prison garb according to their security classification and are constantly monitored through frequent head counts. *Id.* at ¶ 13.

27. Mr. Abad is 53 years old and has several serious medical conditions that have not been adequately treated at Folkston. He has Type 2 diabetes, hyperlipidemia, blindness in his right eye, and decaying teeth. *Id.* at ¶ 14; *see also* Ex. 4, Medical Diagnoses and Medications at 3. He also has persistent pain in his right shoulder resulting from an assault during his journey to the United States and lasting for the entire twenty months he has been detained, and he currently has

a hernia, both of which likely require an operation that ICE refuses to authorize. *Id.* at ¶ 15. Mr. Abad fears he will die in ICE custody like his friend died at Folkston in April 2024. *Id.* at ¶ 16.[1]

28. Mr. Abad's experience is consistent with DHS's own observations. According to a 2022 report by the DHS Office of the Inspector General (OIG), "Folkston did not meet standards for facility conditions, medical care, grievances, segregation, staff-detainee communications, and handling of detainee property" and these violations "compromised the health, safety, and rights of detainees." Ex. 5, Folkston Report at 1.[2] Specifically, the report noted the following:

> Folkston facilities were unsanitary and dilapidated, with torn mattresses, water leaks and standing water, mold growth and water damage, rundown showers, mold and debris in the ventilation system, insect infestations, lack of access to hot showers, inoperable toilets, an inoperable thermometer display on a kitchen freezer, and an absence of hot meals. Facility medical staff did not provide timely access to specialty care or adequate mental health care for detainees. Folkston did not provide timely or complete responses to detainee grievances and requests. Folkston also did not consistently provide required services to detainees in segregation and inappropriately handcuffed detainees. Further, ICE did not consistently respond to detainee requests in a timely manner and did not provide detainees with paper grievance forms and submission boxes as required. ICE also did not provide detainees sufficient contact with deportation officers. Lastly, the facility has improperly handled detainee property. In addition, Folkston has not met staffing levels required by the contract with ICE to ensure proper detainee oversight. In addressing COVID-19, Folkston did not consistently enforce use of masks and social distancing. *Id.*

29. If released, Mr. Abad plans to return to live with his wife in Connecticut, who has cancer and is struggling without his emotional and financial support. He will restart his construction business and work with legal authorization. Ex. 1 at ¶ 17-18.

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[1] ICE, *Indian national in ICE custody dies in hospital* (April 17, 2024), https://www.ice.gov/news/releases/indian-national-ice-custody-dies-hospital.

[2] This report is also available online: DHS Office of the Inspector General, *Violations of ICE Detention Standards at Folkston ICE Processing Center* (June 30, 2022), https://www.oig.dhs.gov/sites/default/files/assets/2022-07/OIG-22-47-July22.pdf.

LEGAL BACKGROUND

I. Reinstatement of Removal and Withholding-Only Proceedings

30. When a noncitizen facing persecution in their home country flees to the United States after having been previously deported, they are subject to a process called "reinstatement of removal," whereby DHS reinstates the noncitizen's prior removal order and seeks to immediately deport them without a hearing. *See* 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. These noncitizens are often referred to as being "in reinstatement."

31. However, pursuant to treaty obligations codified into U.S. law that prevent governments from removing individuals to countries where their lives are at risk, a noncitizen in reinstatement is entitled to request a Reasonable Fear Interview (RFI). *See* 8 C.F.R. § 241.8(e). To pass the RFI, the noncitizen must demonstrate "a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal." 8 C.F.R. § 208.31(c).

32. If an Asylum Officer (AO) finds that the noncitizen has demonstrated a reasonable possibility of persecution or torture at the RFI, the noncitizen is referred to proceedings before an IJ at which they seek to demonstrate their eligibility for withholding of removal under 8 U.S.C. § 1231(b)(3) or Convention Against Torture (CAT) protection under 8 C.F.R. § 1208. These proceedings are often referred to as "withholding-only proceedings."

33. Withholding-only proceedings last for many months or even years. *See, e.g., Guerrero Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 212 (3d Cir. 2018) (noting that

petitioner's withholding-only proceedings lasted more than 53 months).[3] Typically, it takes a few months before a noncitizen in withholding-only proceedings has an individual merits hearing at which the IJ decides whether to grant protection. Once the IJ reaches a decision, both the noncitizen and DHS have the right to appeal that decision to the BIA. *See* 8 C.F.R. § 1003.38(b). Many more months may pass before the BIA either affirms, reverses, or remands back to the IJ. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2294 (2021) (Breyer, J., dissenting) (citing data finding that withholding-only proceedings typically last "114 days when neither party appealed the immigration judge's final decision, 301 days when at least one party appealed and the BIA rendered a final decision, and 447 days when the BIA remanded the case and the immigration judge made a final decision."). Once the BIA issues a decision, the noncitizen can petition a federal circuit court of appeal for review of the BIA decision, prolonging detention even further as the noncitizen asserts their right to judicial review. *See* 8 U.S.C. § 1252(b).

34. To be granted "withholding of removal," a noncitizen must convince the Attorney General (via an IJ) that the noncitizen's "life or freedom would be threatened in that country because of the [noncitizen]'s race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 1208.16(b). Withholding of removal has all the same elements as asylum, *see* 8 U.S.C. § 1158(b)(1), except that to receive withholding the noncitizen must show a "clear probability" of future persecution – that it is more likely than not that he or she would be subject to persecution – as opposed to merely showing a "reasonable possibility" of future persecution in the asylum context. *INS v. Stevic*, 467 U.S. 407, 424 & n.19 (1984).

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[3] David Hausman, ACLU Immigrants' Rights Project, Fact-Sheet: Withholding-Only Cases and Detention, at 2 (Apr. 19, 2015), available at: https://www.aclu.org/sites/default/files/field_document/withholding_only_fact_sheet_-_final.pdf.

35. If a noncitizen is granted withholding of removal by the IJ, they receive a removal order to their country of citizenship, but that removal order is "withheld" indefinitely because of the high likelihood of persecution upon removal. 8 U.S.C. § 1231(b)(3). The noncitizen thus cannot be removed to their native country unless DHS brings forward sufficient evidence demonstrating that the noncitizen is no longer at risk of persecution, or other extremely limited circumstances. 8 CFR § 1208.24(b). While ICE is authorized to remove noncitizens who are granted withholding of removal to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Noncitizens can be removed, for instance, to the country "of which the [noncitizen] is a citizen, subject, or national," the country "in which the [noncitizen] was born," or the country "in which the [noncitizen] resided" immediately before entering the United States. 8 U.S.C. §§ 1231(b)(2)(D)–(E).

36. 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 [noncitizens] 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 petitioners notice and the opportunity to raise any reasonable fear claims."), *rev'd on other grounds, Guzman Chavez*, 141 S. Ct. 2271.

37. As a result of these restrictions and procedures, "only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country" in FY 2017. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting). An analysis by undersigned counsel of updated

statistics provided by ICE and EOIR for FY 2019 through FY 2020 reveals that this percentage was at most 3.3% during that period.[4] *See* Ex. 6, ICE Data on Post-Relief Detention and Removal at 1. In practice, this means that a noncitizen granted withholding of removal will very likely live in the United States for the rest of their life.

II. DETENTION OF NONCITIZENS GRANTED WITHHOLDING OF REMOVAL

a. Statutory Framework

38. 8 U.S.C. § 1231 governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). For individuals with a reinstated removal order like Mr. Abad, the removal period begins on the date they enter detention with the reinstated order. *See Guzman Chavez*, 141 S. Ct. at 2291.

39. The removal period lasts for 90 days, during which ICE "shall remove the [noncitizen] from the United States" and "shall detain the [noncitizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "*may* be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

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[4] EOIR data indicates that approximately 386 noncitizens were granted withholding-only relief in FY 2019 and 2020. Ex. 5 at 1. In response to a 2021 FOIA request, the ICE-ERO Statistical Tracking Unit provided data showing that a total of 13 people in "Case Category 5C (Relief Granted - Withholding of Deportation/Removal)" were removed in FY 2019 and 2020. *Id.* at 2. Comparing these data suggests that approximately 3.3% of noncitizens granted withholding of removal or CAT protection were ultimately deported by ICE during that period. To the extent that the ICE data includes non-citizens removed to their country of origin after their withholding or CAT grant was terminated, the percentage of non-citizens removed to *third* countries following a final withholding or CAT protection grant is even lower.

40. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two noncitizens who could not be removed to their home countries or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231 authorizes detention only for "a period reasonably necessary to bring about the [noncitizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701.

b. Regulations

41. DHS regulations provide that, at or before the end of the 90-day removal period that ensues upon a noncitizen's removal order becoming final, the local ICE field office with jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must conduct a custody review before or at 180 days. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the noncitizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the noncitizen under conditions of supervision. *Id.* § 241.4(j)(2). Before the 180-day review, ICE must personally interview the noncitizen and make a custody determination based on the interview. *Id.* § 241.4(i)(3)-(6). After the 180-day review, ICE must continue conducting periodic reviews every 90 days upon request, or at least every year thereafter. *Id.* § 241.4(k)(2)(iii).

42. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained noncitizens with final

removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

43. Under this procedure, ICE HQ evaluates the foreseeability 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 still seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the noncitizen is "specially dangerous." *Id.* § 241.14(f).

c. ICE Policy

44. Long-standing ICE policy favors the prompt release of noncitizens who have been granted asylum, withholding of removal, or CAT relief. *See* Ex. 7, ICE Policies on Post-Relief Release at 1. In 2004, ICE issued a policy memorandum ("ICE Directive 16004.1") stating that "it is ICE policy to favor the release of [noncitizens] 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." *Id.* at 1.

45. ICE reaffirmed this policy in a 2012 announcement, clarifying that the 2004 ICE memorandum is "still in effect and should be followed" and that "[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the

removal period." *Id.* at 2. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the "longstanding policy" that "absent exceptional circumstances, . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released. . . " *Id.* at 3 (emphasis added). There is no indication that this policy has been rescinded or modified by the current administration.

d. Due Process Under the Fifth Amendment

46. In *Johnson v. Arteaga-Martinez*, the Supreme Court declined to adopt a *per se* rule construing § 1231(a)(6) to require bond hearings with the burden of proof on the Government for *all* noncitizens detained for more than six months under that provision. 142 S. Ct. 1827 (2022), However, neither *Arteaga-Martinez* nor its predecessor *Guzman Chavez* addressed whether noncitizens subject to prolonged detention under § 1231(a)(6) may be entitled to habeas relief on a case-by-case basis. Rather, the Supreme Court declined to reach the petitioner's as-applied claims, leaving them "for the lowers courts to consider in the first instance." *Id.* at 1835. Indeed, the Government conceded in *Arteaga-Martinez* that although noncitizens detained pursuant to § 1231(a)(6) are not statutorily entitled to automatic bond hearings after six months, "as-applied constitutional challenges remain available" for those noncitizens who continue to be detained well beyond the time normally required to execute a removal order. *Id.*

47. Thus, noncitizens detained under § 1231(a)(6) may bring as-applied due process challenges to their prolonged detention under the statute. Since *Arteaga-Martinez*, many courts across the country have ruled favorably on these very challenges. *See, e.g., Michelin v. Oddo*, No. 3:23-cv-22, 2023 WL 5044929, *6-8 (W.D. Pa. Aug. 8, 2023) (holding that 18-month detention under § 1231(a)(6) without bond violated due process); *Cabrera Galdamez v. Mayorkas*, No. 22-

cv-9847, 2023 WL 1777310, at *4, *9 (S.D.N.Y. Feb. 6, 2023) (holding that 16-month detention under § 1231(a)(6) without bond hearing violated due process).

48. In the analogous context of detention without bond under 8 U.S.C. § 1226(c), the Eleventh Circuit established a multi-factor, case-by-case balancing test for determining whether a noncitizen's mandatory detention has become unreasonably prolonged in violation of due process. The five factors are (1) the duration of detention, (2) the reason for delay, (3) the feasibility of removal, 4) the comparison between the length of immigration detention and criminal custody, and 5) "whether the facility or the civil immigration detention is meaningfully different from a penal institution or criminal detention." *Sopo*, 825 F.3d at 1218.

49. In 2018, the Supreme Court abrogated *Sopo* to the extent that it employed constitutional avoidance. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018). However, *Sopo*'s analysis of what constitutes "unreasonable and unjustified" detention continues to serve as persuasive authority for as-applied due process challenges in this Court. *See Clue v. Greenwalt*, No. 5:21-cv-80, 2022 WL 17490505, at *4 (S.D. Ga. Oct. 24, 2022) (finding *Sopo* analysis "highly instructive as to determining if prolonged detention under § 1226(c) does, in fact, violate a petitioner's right to procedural due process.")

ARGUMENT

50. Mr. Abad's detention without a bond hearing violates due process because it has become unreasonably prolonged under the *Sopo* factors. While *Sopo* involved a noncitizen detained under 8 U.S.C. § 1226(c), this Court should apply the *Sopo* factors to Mr. Abad's detention under 8 U.S.C. § 1231(a)(6) because he is in the functionally identical situation of prolonged detention without bond during ongoing proceedings.

51. Alternatively, Mr. Abad's continued detention violates § 1231(a)(6) as interpreted by *Zadvydas* because it has far exceeded six months, and his removal is not reasonably foreseeable. Under *Zadvydas* and the regulations implementing it, this Court should order Mr. Abad's immediate release under reasonable conditions of supervision.

52. Finally, ICE's failure to conduct custody reviews required by its own regulations and policies violates the Administrative Procedure Act (APA). *See Accardi*, 347 U.S. at 266.

I. Mr. Abad's prolonged detention without a bond hearing violates due process and he is entitled to a bond hearing before a neutral arbiter.

53. The *Arteaga-Martinez* Court expressly held that "as-applied constitutional challenges [to § 1231 detention] remain available to address 'exceptional' cases." 142 S. Ct. at 1835. Following the Supreme Court's instructions, this Court should apply the *Sopo* factors to the clearly exceptional case of Mr. Abad, who has been detained for twenty months without bond, who has not received the post-order custody reviews to which he is entitled, and who already won fear-based protection from deportation.

54. Other courts have done the same. For example, in *Michelin*, the U.S. District Court for the Western District of Pennsylvania considered the habeas petition of a noncitizen with a final removal order who had been detained for 18 months and whose motion to reopen was pending before the BIA for more than a year. 2023 WL 5044929, at *2. After recognizing that Mr. Michelin was detained under § 1231(a)(6), the Court analyzed his as-applied due process claim under the factors established in *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203 (3d Cir. 2020) – the Third Circuit equivalent of *Sopo*. *Id.* at *6. The Court also rejected the Government's argument that any due process violation in Mr. Michelin's prolonged detention had been remedied by ICE's post-order custody reviews; the Court found that these custody reviews were marred by

ICE's failure to follow agency procedures and therefore "did not provide [Mr. Michelin] with meaningful and adequate process." *Id.* at *8.

55. Like the petitioner in *Michelin*, Mr. Abad has never had a bond hearing in his twenty months of detentions. And unlike Mr. Michelin, he has never had *any* post-order custody reviews under 8 C.F.R. § 241.4, let alone fully compliant reviews that satisfied due process. It appears that ICE is unaware of their obligation to perform these custody reviews for someone in Mr. Abad's situation – putting him in a legal limbo in which he is ineligible for bond due to his final removal order yet not receiving the custody reviews to which all noncitizens with final removal orders are entitled.

56. Neither has the ICE Atlanta Field Office reviewed Mr. Abad's custody under ICE Directive 16004.1, which specifically mandates that the Field Office Director approve the continued detention of any non-citizen granted fear-based protection. *See* Ex. 7. Given that Mr. Abad has no meaningful criminal history for more than a decade, there are evidently no "exceptional circumstances" justifying his continued detention, *id.*, and it is virtually certain that ICE would release him if they were to perform this custody review as required.

a. Mr. Abad's detention is unreasonable under the *Sopo* factors.

57. The ***first*** factor—the length of detention without a bond hearing—favors Mr. Abad because he has been detained for twenty months. Mr. Abad's length of detention far exceeds the one-year cutoff described in *Sopo*. 965 F.3d at 217 ("[D]etention without a bond hearing may often become unreasonable by the one-year mark."). Furthermore, Mr. Abad has been detained for as long, or nearly as long, as numerous habeas petitioners granted relief by this Court. *See, e.g.*, *Dorley*, 2023 WL 3620760, at *5 (20 months); *Clue*, 2022 WL 17490505, at *4 (24 months).

58. The ***second*** factor similarly favors Mr. Abad because the Government is predominantly responsible for the delays prolonging his immigration proceedings. Mr. Abad's proceedings would be over, and he likely would have been released by now, if ICE had not appealed the IJ's grant of withholding protection. While ICE is entitled to appeal, the fact that Mr. Abad has already prevailed enhances the due process problem with his continued detention. *See Jarpa v. Mumford*, 211 F. Supp. 3d 706, 722 (D. Md. 2016) ("[T]he length of [petitioner's] detention now exceeding ten months, coupled with the unique circumstances of this case—particularly that he stands adjudicated lawful permanent resident—supports this Court's determination that Petitioner's continued detention without an individualized bail hearing under § 1226(c) is no longer reasonable").

59. With respect to the ***third*** factor, Mr. Abad has a final removal order, but the IJ has blocked Mr. Abad's removal to Ecuador, finding that he would more likely than not be persecuted there. Therefore, this factor—which focuses broadly on the "possibility of removal" —favors Mr. Abad. *Dorley*, 2023 WL 3620760, at *5.

60. The ***fourth*** *Sopo* factor favors Mr. Abad because his "civil immigration detention exceeds the time [he] spent in prison for the crime that rendered him removable." *Sopo*, 825 F.3d at 1218. There is no crime that made Mr. Abad removable, nor even a crime that triggered his immigration detention; he is in ICE custody merely because he returned to the United States due to political persecution in Ecuador that did not exist during his initial removal proceedings. Indeed, Mr. Abad has spent only a few months in jail over the course of his life, far less than the twenty months he has now spent in prison-like civil immigration detention. Ex. 1 at ¶ 12.

61. The ***fifth*** factor favors Mr. Abad because the conditions of his confinement at Folkston are not "meaningfully different from a penal institution for detention." *Sopo*, 825 F.3d at

1218. This Court has twice found that the conditions at Folkston resemble criminal detention and that this factor favors the non-citizen petitioner. *See, e.g., Dorley*, 2023 WL 3620760, at *6; *Clue*, 2022 WL 17490505, at *5. In *Dorley*, this Court referenced the same OIG report included in this petition, *see* Ex. 5, finding that it supported the petitioner's assertions on the fifth factor. *Dorley*, 2023 WL 3620760, at *5.

62. Mr. Abad's experience has been no different than the petitioners in those cases. He wears prison garb associated with his security level, is subject to frequent head counts, and must remain in his cell with more than 60 other people for approximately 22 hours a day. Ex. 1 at ¶ 13; *see also Clue*, 2022 WL 17490505, at *5 (finding that fifth factor favored petitioner detained at Folkston where he presented evidence that "his movement is restricted in ways similar to those in criminal detention, his living conditions are similar, and even his permitted clothing is similar.").

63. Moreover, Mr. Abad's lack of access to adequate medical care, corroborated by the OIG report, is another hallmark of punitive criminal detention. ICE refuses to authorize operations that Mr. Abad needs and that he would presumably have access to if Folkston were less restrictive than a prison. *See* Ex. 1 at ¶ 14-15.

64. In summary, all five *Sopo* factors are squarely in Mr. Abad's favor. Therefore, Mr. Abad's twenty-month detention without a bond hearing has become unreasonably prolonged in violation of due process. *See Sopo*, 825 F.3d at 1220-21 (finding that four of five factors favored petitioner and ordering bond hearing); *Dorley*, 2023 WL 3620760, at *6 (finding that four of five factors favored petitioner and ordering bond hearing); *Clue*, 2022 WL 17490505, at *6 (finding that three of five factors favored petitioner and ordering bond hearing).

b. Due process requires that Mr. Abad receive a bond hearing before a neutral arbiter at which the Government bears the burden of proof by clear and convincing evidence to justify continued detention.

65. The Supreme Court has repeatedly recognized that civil detention must be carefully limited—particularly through placing a heightened burden of proof on the Government to justify detention—to avoid due process concerns. *See, e.g.*, *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.") (citation and quotation marks omitted); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (holding unconstitutional a state civil insanity detention "statute that place[d] the burden on the detainee to prove that he is not dangerous"). Indeed, "[i]ncreasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered." *Addington v. Texas*, 441 U.S. 418, 427 (1979).

66. While this Court has traditionally declined to specify which party bears the burden at the court-ordered bond hearing, Mr. Abad's situation warrants a unique remedy because he already won protection from deportation before the IJ. Given that ICE is continuing to detain Mr. Abad while it appeals the IJ's decision, contrary to its own policy, it should at least be obligated to justify Mr. Abad's continued detention by clear and convincing evidence. *See Jarpa*, 211 F. Supp. 3d at 722 ("Placing the burden on Mr. Jarpa at the hearing, therefore, would be inconsistent with having found his continued detention unconstitutional"); *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 905 (D. Minn. 2020) (holding that "it would appear to make little sense to afford petitioner less due process than is afforded other civil, and even some criminal, detainees" where petitioner had moved to terminate his removal proceedings based on vacated conviction).

67. The U.S. District Court for the Middle District of Georgia has ordered a bond hearing with the burden on the Government in an analogous context under § 1226(a), which governs the discretionary detention of non-citizens. *J.G. v. Warden, Irwin County Detention Cente*r, 501 F. Supp. 3d 1331, 1341 (M.D. Ga. 2020). The court in *J.G.* reasoned that, under *Mathews v. Eldridge*, 424 U.S. 319 (1976), shifting the burden onto the Government was appropriate after balancing the strength of the petitioner's interest in "freedom from physical incarceration" and the risk of erroneous deprivation against the Government's interest in continued detention without bearing the burden to justify it. *Id.* at 1335-41. The same is true here, and indeed Mr. Abad's liberty interest is even stronger than the petitioner in *J.G.* because he has *never* had a bond hearing at any point during his detention and has already prevailed in his removal proceedings.

II. Mr. Abad's continued detention violates § 1231(a)(6) under *Zadvydas* and he is entitled to immediate release.

68. If this Court does not find that Mr. Abad is entitled to a constitutionally adequate bond hearing under *Sopo*, it should alternatively hold that his twenty-month detention without a bond hearing violates § 1231(a)(6) as construed by *Zadvydas* and order his immediate release.

a. *Zadvydas* applies to Mr. Abad's detention.

69. Mr. Abad's continued detention violates 8 U.S.C. § 1231(a)(6) because his removal is not reasonably foreseeable. He cannot be deported to his home country of Ecuador because an IJ has granted him withholding of removal to that country, and ICE's baseless appeal of that decision will likely be dismissed. But when the BIA dismisses ICE's appeal, ICE may still detain Mr. Abad while it attempts to find a third country that will accept him, even if those attempts are extremely unlikely to succeed. Without relief from this Court, Mr. Abad will be needlessly detained well beyond the reasonably foreseeable future.

70. After six months of post-removal order § 1231 detention, a noncitizen is entitled to relief under *Zadvydas* if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. The Supreme Court and courts across the country have analyzed the foreseeability of removal on a sliding scale. *See Zadvydas*, 533 U.S. at 701 ("[F]or detention to remain reasonable, as the period of prior post removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink."); *Hassoun v. Sessions*, No. 18-cv-586-FPG, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019) ("[T]he government's burden becomes more onerous the longer an alien is detained, because it must show that removal will be effectuated sooner in the future.").

71. Though *Zadvydas* has traditionally been applied to noncitizens whose removal is hindered by practical barriers such as the inability to secure travel documents from the noncitizen's home country, the *Zadvydas* framework applies with equal force to noncitizens facing extensions of their detention due to ICE's unnecessary delays. Prolonged detention is constitutionally suspect regardless of the reason for delay. *See Oyedeji v. Ashcroft*, 332 F. Supp. 2d 747, 753 (M.D. Pa. 2004) ("Prolonged incarceration for an alien whose potentially meritorious challenge to removal is part of a congested docket is indistinguishable from lengthy incarceration because the alien's native country refuses to issue travel documents"). Courts have applied the *Zadvydas* standard to grant habeas relief to noncitizens in ongoing proceedings. *See Garcia Diaz v. Acuff*, 507 F. Supp. 3d 991, 997 (S.D. Ill. 2020) ("Because Garcia Diaz cannot be removed during the pendency of his withholding case, there is no significant likelihood that he will be removed in the reasonably foreseeable future."); *Quezada-Martinez v. Moniz*, No. 23-cv-12503, 2024 WL 1018451, at *4 (D. Mass. Mar. 8, 2024) (finding no significant likelihood of removal when removal hinged on "outcome of several lengthy remand and appeal proceedings"); *D'Alessandro v. Mukasey*, 628 F.

Supp. 2d 368, 386 (W.D.N.Y 2009) (applying *Zadvydas* to noncitizen detained under § 1231(a)(6) with temporary stay of removal while pursuing circuit court review).

72. Though the question has never been directly presented to the Supreme Court, the Court has indicated on several occasions that it would apply the *Zadvydas* test outside of its original context. First, in *Clark v. Martinez*, the Court held that *Zadvydas* applies to inadmissible noncitizens detained under § 1231(a)(6), rejecting the Government's attempts to confine *Zadvydas* to only admissible noncitizens and observing that "[the Government] cannot justify giving the *same* detention provision a different meaning when such [inadmissible noncitizens] are involved." 543 U.S. 371, 380 (2005). To exclude Mr. Abad from *Zadvydas*' reach would be similarly inconsistent and would "effectively punish[] [Mr. Abad] for pursuing applicable legal remedies." *Oyedeji*, 332 F. Supp. 2d at 753.

73. Second, in *Guzman Chavez*, the Court refuted the argument that "there is a difference between the Government's inability to remove [a noncitizen] due to the grant of withholding-only protection and its inability to remove [a noncitizen] because of the geopolitical and practical concerns that prevented removal in that case," noting that "the same lack of certainty [of removal] existed in *Zadvydas* . . . for geopolitical or practical reasons" as in ongoing proceedings where "it is not certain that the Government will actually be able to remove the [noncitizen] from the country." 141 S. Ct. at 2287 n.7.

74. This Court should follow these authorities and analyze Mr. Abad's prolonged detention under the *Zadvydas* framework, focusing on whether there is a significant likelihood of removal in the reasonably foreseeable future.

b. Mr. Abad's removal is not reasonably foreseeable under *Zadvydas*.

75. Mr. Abad has been detained for twenty months, more than *three times* the presumptively reasonable six-month detention period. Thus, this Court should be particularly stringent in determining whether Mr. Abad's removal is reasonably foreseeable. *See D'Alessandro*, 628 F. Supp. 2d at 406 ("[After sixteen months] the reasonably foreseeable future has nearly shrunk to the point of being the present time."); *Shefqet v. Ashcroft*, No. 02-cv-7737, 2003 WL 1964290, at *4 (N.D. Ill. April 28, 2003) ("The period of Petitioner's post-final-order detention has at this time exceeded seventeen months and so the 'reasonably foreseeable future' must now come very quickly.").

76. The IJ granted Mr. Abada withholding of removal in November 2024, but because of ICE's appeal and their refusal to release him to his wife in Connecticut, he remains detained more than two months later. Therefore, Mr. Abad's removal is not reasonably foreseeable after twenty months of detention because he cannot be removed to his country of origin, *see* Ex. 2, nor will ICE feasibly be able to remove him to a different country. *See* Ex. 5.

c. Mr. Abad must be immediately released under *Zadvydas*.

77. Because Mr. Abad has been detained under § 1231 for twenty months and his removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See* 533 U.S. at 692 (reviewing district court decisions ordering release); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision").

78. Release is the most common and appropriate remedy for a *Zadvydas* violation. *See Hassoun*, 2019 WL 78984, at *8 (ordering release subject to "reasonable conditions of supervision" determined by Respondents); *D'Alessandro*, 628 F. Supp. 2d at 406 (recommending that petitioner be "released immediately pursuant to reasonable conditions of supervision and

bond, as determined by DHS, subject to review and oversight by the District Court"), *report and recommendation adopted*, 2009 WL 931164 (W.D.N.Y. Apr. 2, 2009).

79. To order Mr. Abad's immediate release, this Court need only determine that his removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether Mr. Abad is a danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 699-700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute."). To the extent that this Court considers the risk of danger or flight, Mr. Abad clearly does not pose either risk as he has no meaningful criminal history for more than a decade, is married to a U.S. citizen, and has already won protection from removal. In any case, "the [noncitizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas*, 533 U.S. at 700.

III. ICE's failure to review Mr. Abad's continued detention under its own regulations and policies violates the APA.

79. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own policies that affect the fundamental rights of individuals, including self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise 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."); *Pasquini v. Morris*, 700 F.2d 658, 663, n.1 (11th Cir. 1983) ("Although the [INS] internal operating instruction confers no substantive rights on the [noncitizen]-applicant, it does confer the procedural right to be considered for such status upon application.")

80. ICE has failed to conduct *at least three* custody reviews expressly required under 8 C.F.R. § 241.4. *See supra* ¶ 24. Moreover, the Atlanta ICE Field Office has failed to review Mr. Abad's detention under ICE's long-standing policy requiring the Field Office Director to personally approve the continued detention of each non-citizen granted withholding of removal, and only if they find "exceptional circumstances" justifying such detention. *See* Ex. 7.

81. ICE's failure to review Mr. Abad's custody appropriately is prejudicial. Prejudice can be presumed because ICE's custody review regulations and policies implicate fundamental liberty interests 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]" and the violation affected "interests of the [non-citizen] which were protected by the regulation") (internal quotations omitted). The regulations and the ICE policy provide non-citizens with a discrete opportunity to obtain freedom from detention, and that opportunity has thus far been withheld from Mr. Abad. *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 the liberty that [the Due Process] Clause protects.").

82. Therefore, ICE's non-compliance violates the APA. As a remedy, this Court should review Mr. Abad's custody under 8 C.F.R. § 241.4 and/or ICE Directive 16004.1, and it should order Mr. Abad's release if appropriate under those standards. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) ("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 each should be released.").

CLAIMS FOR RELIEF

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

83. Mr. Abad realleges and incorporates by reference the paragraphs above.

84. 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.

85. Mr. Abad's detention without a bond hearing violates due process, which demands that Mr. Abad receive a bond hearing before a neutral adjudicator at which the Government bears the burden of justifying continued detention by clear and convincing evidence.

VIOLATION OF 8 U.S.C. § 1231(a)(6)

86. Mr. Abad realleges and incorporates by reference the paragraphs above.

87. 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 alien's removal from the United States," which is generally no longer than six months. 533 U.S. at 689, 701.

88. Mr. Abad has been detained for far longer than six months and his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6) and requires his immediate release.

VIOLATION OF THE ADMINSTRATIVE PROCEDURE ACT

89. Mr. Abad realleges and incorporates by reference the paragraphs above.

90. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), and "compel agency action unlawfully withheld or unreasonably delayed." *Id.* § 706(1).

91. ICE's continued detention of Mr. Abad without reviewing his custody under 8 C.F.R. § 241.4 and without the Field Office Director approving his continued detention under ICE Directive 16004.1 violates the APA.

PRAYER FOR RELIEF

WHEREFORE, Mr. Abad prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order Respondents to show cause why the writ should not be granted within three days, pursuant to 28 U.S.C. § 2243;

c. Grant a writ of habeas corpus;

d. Declare that Mr. Abad's detention without a bond hearing violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a)(6), and/or the Administrative Procedure Act;

e. Order Mr. Abad's release subject to appropriate conditions or, alternatively, order a bond hearing at which the Government bears the burden of proving danger or flight risk by clear and convincing evidence;

f. Award reasonable attorney's fees and costs pursuant to Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

g. Grant such further relief as this Court deems just and proper.

Dated: February 5, 2025

Respectfully submitted,

/s/ Felix A. Montanez

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Seeking Pro Hac Vice Admission

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

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

Dated: February 5, 2025

Respectfully submitted,

/s/ Ian Austin Rose

CERTIFICATE OF SERVICE

I hereby certify that on this date, I uploaded the foregoing Petition for a Writ of Habeas Corpus and all attachments to this Court's CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

Dated: February 5, 2025

Respectfully submitted,

/s/ Felix Montanez