IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
SCRANTON DIVISION

LUCAS OLOGBENLA,

Petitioner,

v.

CRAIG LOWE, *in his official capacity as Warden of Pike County Correctional Center*,

BRIAN MCSHANE, *in his official capacity as Philadelphia ICE Field Office Director,*

KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security,*

PAM BONDI, *in her official capacity of United States Attorney General*

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 3:25-CV-01351

INTRODUCTION

1. Petitioner Lucas Ologbenla ("Mr. Ologbenla" or "Petitioner"), a forty-three-year-old citizen of Nigeria who has lived in the United States as a Lawful Permanent Resident for more than twelve years, has been detained in Immigration and Customs Enforcement ("ICE") custody for nearly two years – separated from his two young U.S. citizen children – without having ever received a bond hearing.[1] Mr. Ologbenla petitions this Court for a Writ of Habeas Corpus pursuant

[1] Proceeding *pro se*, Mr. Ologbenla requested a bond hearing, but the Immigration Judge ("IJ") denied having the authority to release Mr. Ologbenla because he is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c).

to 28 U.S.C. § 2241 to remedy his detention by Respondents at Pike County Correctional Facility ("Pike"), which now violates his rights under the due process clause due to the length of the detention and the absence of any bond hearing.

2. ICE has charged Mr. Ologbenla as removable under 8 U.S.C. § 1182(a)(2)(A)(i)(I) and civilly detained him without bond throughout the duration of his immigration proceedings pursuant to 8 U.S.C. § 1226(c) based on the contention that Mr. Ologbenla's conviction for conspiracy to commit wire fraud under 18 U.S.C. § 1349 is a crime involving moral turpitude. However, Mr. Ologbenla won relief pursuant to the Convention Against Torture ("CAT") on March 26, 2025. ICE has appealed the decision of the IJ granting Mr. Ologbenla deferral of removal pursuant to the CAT to the Board of Immigration Appeals ("BIA"). Mr. Ologbenla remains needlessly detained while the appeal is pending.

3. Mr. Ologbenla's twenty-three-month-long detention in ICE custody without a bond hearing and with no end in sight violates his due process rights. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203 (3d Cir. 2020). His claims are substantially similar to those raised by numerous petitioners to whom courts in this circuit have granted habeas relief. *See, e.g., Davydov v. Doll*, No. 1:19-cv-2110, 2020 WL 969618, at *8 (M.D. Pa. Feb. 28, 2020).

4. To remedy his unlawful detention, Mr. Ologbenla requests that this Court order the Government to promptly schedule a bond hearing before an IJ at which ICE bears the burden of proving by clear and convincing evidence that he is a flight risk or danger to the community and at which the IJ considers Mr. Ologbenla's ability to pay and alternatives to detention, such as conditional release. Alternatively, Mr. Ologbenla requests that this Court conduct the bond hearing itself using those same standards.

JURISDICTION & VENUE

5. This case arises under the United States Constitution. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution, 28 U.S.C. § 2241, and 28 U.S.C. § 1331.

6. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See German Santos*, 965 F.3d at 208; *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Administrative exhaustion is unnecessary as it would be futile.

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained in Pike County within the jurisdiction of the Middle District of Pennsylvania.

PARTIES

8. Petitioner Lucas Ologbenla is a native and citizen of Nigeria who has been in ICE custody since August 29, 2023, and is currently detained at Pike in Lords Valley, Pennsylvania.

9. Respondent Craig A. Lowe ("Respondent" or "Mr. Lowe") is the Warden of Pike. In his capacity as Warden, he oversees the administration and management of Pike, which contracts with ICE to detain noncitizens alongside inmates serving criminal sentences. Though Mr. Lowe does not have the legal authority to release Mr. Ologbenla without ICE's permission, this Court has routinely deemed him the immediate custodian of non-citizen habeas petitioners detained at Pike and the sole proper respondent under Third Circuit precedent. *See Yi v. Maugans*, 24 F.3d 500, 507 (3rd Cir. 1994). Mr. Lowe is sued in his official capacity.

10. Respondent Brian McShane ("Mr. McShane") is the Field Office Director for the Philadelphia Field Office. Mr. McShane is the Field Office Director for the ICE Enforcement and Removal Operations Field Office with jurisdiction over Mr. Ologbenla's detention. Mr. McShane is sued in his official capacity.

11. Respondent Kristi Noem ("Ms. Noem") is the Secretary of the Department of Homeland Security ("DHS"). In her capacity as DHS Secretary, she oversees ICE and immigration detention. Ms. Noem is sued in her official capacity.

12. Respondent Pam Bondi ("Ms. Bondi") is the United States Attorney General. In her capacity as United States Attorney General, she oversees the immigration courts within the Executive Office of Immigration Review, including all IJs and the BIA. Ms. Bondi is sued in her official capacity.

STATEMENT OF FACTS

Mr. Ologbenla's Background and Immigration Proceedings

13. Mr. Ologbenla was born in and grew up in Nigeria. Ex. A, Ologbenla Declaration at ¶ 1. On or about December 13, 2012, he became a Lawful Permanent Resident after entering the United States with an immigrant visa obtained through the Diversity Visa Program. Ex. A at ¶ 2. In 2019, Mr. Ologbenla traveled to Nigeria to visit his sick mother who had just suffered a stroke and in or about May 2019, he was paroled back into the United States to face criminal prosecution. Ex. A at ¶ 6. For many years, Mr. Ologbenla has lived and worked in Pennsylvania, where he married his now-wife Virginia Igbedion on December 15, 2018, and became a father to the couple's two U.S. citizen daughters. Ex. A at ¶ 3.

14. In June 2022, Mr. Ologbenla entered into a plea agreement and was convicted of one count of conspiracy to commit wire fraud pursuant to 18 U.S.C. § 1349. Ex. A at ¶ 9. In March 2023, ICE issued Mr. Ologbenla a Notice to Appear, charging him as removable from the United States and initiating removal proceedings against him. Upon Mr. Ologbenla's August 29, 2023 release from federal custody, ICE picked him up and transferred him into their custody, where he has remained since without ever receiving a bond hearing or opportunity to contest his detention. Ex. A at ¶ 11.

15. On April 12, 2023, Mr. Ologbenla filed Form I-589, Application for Asylum, Withholding of Removal, and Deferral of Removal Pursuant to the CAT with the Immigration Court. On March 26, 2025, the IJ found that Mr. Ologbenla had met the requirements for deferral of removal under the CAT. *See* Ex. B, Decision and Order of the Immigration Judge.

16. On April 1, 2025, ICE filed notice of its intent to appeal the IJ's decision granting Mr. Ologbenla CAT protections to the Board of Immigration Appeals ("BIA"). *See* Ex. C, BIA Appeal Filings. ICE and Mr. Ologbenla submitted their briefs and the appeal is now pending before the BIA, which will very likely take at least six months to decide the appeal. *See* Ex. C. There is a substantial likelihood that the BIA will either affirm the decision in Mr. Ologbenla's favor or, if not, remand the case back down to the IJ for further analysis.

Mr. Ologbenla's Experience in ICE Detention

17. Mr. Ologbenla has been detained throughout the duration of his immigration proceedings and since ICE first arrested him and transferred him to an immigrant detention facility on August 29, 2023. Ex. A at ¶¶ 11-15. Initially, ICE detained Mr. Ologbenla at Clinton County Correctional Facility ("Clinton") in McElhattan, Pennsylvania. Ex. A at ¶ 11. In early October 2023, he was transferred to Pike, where he remained until he was transferred to Moshannon Valley Processing Center ("Moshannon") in Philipsburg, Pennsylvania in early March 2024. Ex. A at ¶¶ 12-13. In May 2024, ICE then transferred Mr. Ologbenla back to Pike, where he has remained since without ever receiving a bond hearing or opportunity to contest his detention. Ex. A at ¶¶ 14-15.

18. The conditions at Pike are wholly indistinguishable from incarceration in a criminal jail or prison. Ex. A at ¶ 16. In fact, Pike houses people on behalf of ICE alongside people serving sentences for criminal convictions. Ex. A at ¶ 16. Of the forty-two detained on Mr. Ologbenla's

housing block at Pike, twenty-four are detained by ICE and the remaining eighteen are detained on criminal charges. Ex. A at ¶ 16. One of Mr. Ologbenla's two cellmates is an ICE detainee and the other is detained on criminal charges. Ex. A at ¶ 16.

19. The guards are trained to treat both criminal detainees and immigration detainees the same way, often using threats of solitary confinement or additional time in custody. Ex. A at ¶ 17. The guards and facility staff at Pike also utilize draconian disciplinary procedures, including frequent write-ups for alleged disciplinary infractions. Ex. A at ¶ 17. Mr. Ologbenla has no disciplinary history at Pike, but nevertheless fears being thrown in the hole and punished with a long period of solitary confinement. Ex. A at ¶ 17.

20. In many respects, the conditions at Pike are far worse and more punitive than those Mr. Ologbenla experienced in federal prison. While in federal prison, Mr. Ologbenla was allowed open movement, to go to the recreation area multiple times per day in hour-long increments, and access to workout facilities. Ex. A ¶ 19. While at Pike, he is only offered one full hour of outdoor recreation twice per week and one hour of indoor recreation three times per week. Ex. A at ¶ 19. At Pike, gym access is only available to Pike employees. Ex. A at ¶ 19. Those serving criminal sentences in federal prison were permitted to carry their own medications and had far greater access to medical facilities while Pike prohibits Mr. Ologbenla from carrying his own medications and limits access to medical staff and facilities. Ex. A at ¶ 19. In federal prison, contact visits with loved ones are permitted, but at Pike, there are only "no-contact" visits, where detainees/inmates and visitors are physically separated and may only speak through glass with phones. Ex. A at ¶ 19. Mr. Ologbenla does not want to subject his wife and young children to such conditions, which he worries might scare or traumatize them, and thus, he has not seen his family in person since January 2023. Ex. A at ¶ 20.

21. In late April 2025, Mr. Ologbenla began working a custodian job while detained at Pike. Ex. A at ¶ 18. In this role, he cleans and removes the trash from each unit from 8:30 a.m. until 3:00 p.m., but he earns only $2.00 per day. Ex. A at ¶ 18. Mr. Ologbenla must also pay exorbitantly high fees for calls to keep in touch with his wife, children, and other family members. Ex. A at ¶ 18. The prolonged separation from his family – especially from his wife and children – has taken a severe emotional toll on Mr. Ologbenla. Ex. A at ¶ 20.

22. Mr. Ologbenla's health has also suffered significantly in ICE detention. He has developed a severe acid reflux condition while detained by ICE, which makes it very difficult for him to sleep, causes intense discomfort, and impacts his ability to communicate orally. Ex. A at ¶ 21. While in ICE custody, he has needed to see radiologists, an ears, nose, and throat doctor, and a gastroenterologist, in addition to the medical staff at Pike. Ex. A at ¶ 21. He has undergone multiple tests and tried numerous medications, including his current prescription for Nesium (40 mg administered daily), but these efforts have been unsuccessful. Ex. A at ¶ 21. Mr. Ologbenla still endures debilitating symptoms from this condition. Mr. Ologbenla also began experiencing high blood pressure while in ICE custody, which he attributes to the heavily processed, high sodium food served at Pike. Ex. A at ¶ 22. Mr. Ologbenla is now prescribed Losarten (50 mg administered daily) to treat this condition. Ex. A at ¶ 22. In October 2023, Mr. Ologbenla's high blood pressure made him so ill that Pike officials needed to call an ambulance to take him to the emergency room for treatment. Ex. A at ¶ 22. What's more, he has also been charged exorbitant costs for his medical care while in ICE custody. Ex. A at ¶ 23. If Mr. Ologbenla were not in custody, he could use his health insurance and access to resources to obtain the medical treatment he needs. Ex. A at ¶ 23.

23. If released, Mr. Ologbenla will return to Upper Darby, Pennsylvania, where his wife and two U.S. citizen children live and where he has a strong social support network. Ex. A at ¶ 25. Mr. Ologbenla has experience in event promotion and already has an offer of employment to work with a DJ in that field. Ex. A at ¶ 25. He also intends to return to his prior job working with adults with mental disorders and developmental disabilities. Ex. A at ¶ 25. Mr. Ologbenla is committed to working diligently to support his family and rebuild his life in the U.S. Ex. A at ¶ 25.

LEGAL BACKGROUND

24. The Third Circuit has long held that the Fifth Amendment's Due Process Clause limits prolonged immigration detention without bond. *See Diop v. ICE*, 656 F.3d 221, 233 (3d Cir. 2011); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 475-78 (3d Cir. 2015). Following the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which declined to read 8 U.S.C. § 1226(c) as automatically requiring bond hearings for all noncitizens after six months of detention, the Third Circuit in *German Santos* reaffirmed the reasoning in *Diop* and *Chavez-Alvarez* and held that when detention becomes unreasonably prolonged, due process requires a bond hearing where the Government bears the burden of proving by clear and convincing evidence that continued detention is necessary to prevent flight or danger to the community. 965 F.3d at 210, 213-14.

25. In *German Santos,* which, as here, involved mandatory detention under 8 U.S.C. § 1226(c), the Third Circuit articulated a four-factor, non-exhaustive, case-by-case balancing test for determining whether a noncitizen's mandatory detention has become unreasonably prolonged. 965 F.3d at 211. The four factors, which borrow from *Diop* and *Chavez-Alvarez, see Diop*, 656 F.3d at 234; *Chavez-Alvarez*, 783 F.3d at 474, are (1) the "duration of detention[;]" (2) "whether the [noncitizen]'s detention is likely to continue[;]" (3) "the reasons for the delay," particularly

"whether either party made careless or bad-faith errors in the proceedings that caused unnecessary delay[;]" and (4) "whether the [noncitizen]'s conditions of confinement are meaningfully different from criminal punishment." *Id.* at 211 (internal quotation marks, citations, and alterations omitted).

26. The first factor – the length of detention without a bond hearing – is the "most important." *German Santos*, 965 F.3d at 211. The Third Circuit has held that mandatory detention without bond "becom[es] unreasonable sometime between six months and one year." *Id.* (citing *Chavez-Alvarez*, 783 F.3d at 478); *see also Diop,* 656 F.3d at 234 (holding that mandatory detention "becomes more and more suspect" after five months); *Gayle v. Warden Monmouth Cty. Corr. Inst.*, 12 F.4th 321, 332 (3d Cir. 2021) (explaining that an "unreasonably long" detention under § 1226(c) "may be six months"). Applying Third Circuit law, the Middle District of Pennsylvania has repeatedly found detention periods between twelve and nineteen months to be unreasonably prolonged. *See, e.g., Baptista v. Lowe,* No. 1:23-cv-1666, 2024 WL 3410600, at *3 (M.D. Pa. Apr. 30, 2024) (nineteen months); *Malede v. Lowe*, No. 1:22-cv-01031, 2022 WL 3084304, at *5 (M.D. Pa. Aug. 3, 2022) (eighteen months); *Davydov,* 2020 WL 969618, at *8 (fourteen months); *Kleinauskaite v. Doll*, No. 4:17-cv-02176, 2019 WL 3302236, at *6 (M.D. Pa. July 23, 2019) (twelve months); *Bah v. Doll*, No. 3:18-cv-1409, 2018 WL 6733959, at *7 (M.D. Pa. Oct. 16, 2018) (fourteen months); *report and recommendation adopted*, 2018 WL 5829668 (M.D. Pa. Nov. 7, 2018); *Sassmannshausen v. Doll*, No. 3:17-cv-1244, 2017 WL 4324836, at *1, *3 (M.D. Pa. Aug. 10, 2017) (thirteen months), *report and recommendation adopted*, No. 3:17-cv-1244, 2017 WL 4310177 (M.D. Pa. Sept. 28, 2017).

27. Similarly, other district courts in this Circuit applying *German Santos* have recently found that mandatory immigration detention surpassing one year is unreasonable and warrants a

bond hearing consistent with due process. *See, e.g., Abioye v. Oddo,* 704 F. Supp. 3d 625, 2023 WL 8254368 (W.D. Pa. Nov. 29, 2023) (18 months); *Rivas v. Oddo*, No. 3:22-cv-223, 2023 WL 4361140 (W.D. Pa. June 27, 2023) (15 months).

28. The second factor focuses on the likelihood of continued detention. If a petitioner's detention is "unlikely to end soon," continued detention without a bond hearing grows more suspect. *German Santos*, 965 F.3d at 211. The Third Circuit and district courts within it have repeatedly held that this factor favors the petitioner where the petitioner's immigration case remains pending after an extended period, particularly when it is currently on appeal. *See, e.g., id.* at 212 (noting that petitioner would "stay in prison as long as it takes the [appellate court] to issue its decision."); *Chavez-Alvarez*, 783 F.3d at 477-78 (concluding that the parties "could have reasonably predicted that [the petitioner's] appeal would take a substantial amount of time, making his already length detention considerably longer.").

29. The third factor considers whether either party caused unnecessary delay by "carelessness or bad faith" in petitioner's underlying immigration case. *German Santos*, 965 F.3d at 211. On this factor, courts cannot "hold a[] [noncitizen]'s good-faith challenge to his removal against him, even if his appeals or applications for relief have drawn out the proceedings," and seeking reasonable continuances does not amount to bad faith. *Id.*; *see Rad v. Lowe*, No. 1:21-cv-00171, 2021 WL 1392067, at *4 (M.D. Pa. Apr. 13, 2021); *Davydov*, 2021 WL 1392067, at *4. This factor often favors neither side. Yet detention "can still grow unreasonable even if the Government handles removal proceedings reasonably." *German Santos*, 965 F.3d at 211. The Middle District of Pennsylvania has repeatedly found detention unreasonable in the absence of governmental bad faith. *See, e.g., Clarke v. Doll*, 481 F. Supp. 3d 394, 397–98 (M.D. Pa. 2020); *Davydov*, 2020 WL 969618, at *5.

30. The fourth and final *German Santos* factor compares the conditions of the petitioner's ICE detention to conditions of criminal custody. This factor favors the petitioner where the conditions of confinement are not "meaningfully different" from criminal punishment. *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478). Courts have nearly exclusively found that this factor favors the petitioner because civil immigration detention often closely resembles criminal custody. *See, e.g., id.* at 213 (finding that ICE detention at Pike resembles criminal custody); *Rivas*, 2023 WL 4361140, at *2 (same finding for Moshannon); *Buleishvili v. Hoover*, No. CV 1:20-1694, 2021 WL 674226, at *4 (M.D. Pa. Feb. 22, 2021) (same finding for Clinton).

31. If a petitioner's mandatory detention is deemed unreasonable under *German Santos*, the petitioner is entitled to a bond hearing where the Government bears the burden of justifying continued detention by clear and convincing evidence. *German Santos*, 965 F.3d at 213-14. To do so, the Government must provide sufficient evidence that the petitioner *presently* poses a danger to the community or a flight risk. *Id.* at 214; *see also German Santos v. Lowe,* No. 1:18-cv-1553, 2020 WL 4530728, at *3 (M.D. Pa. Aug. 6, 2020) (noting that past criminal history does not place petitioner "forever beyond redemption" and that due process does not permit the decision-maker to "presume dangerousness to the community . . . based solely on [petitioner's] past record").

32. This Court has authority to conduct the bond hearing itself in the first instance. *See Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) ("[T]he authority to conduct [a bond] hearing has long been recognized as an essential ancillary aspect of [the Court's] federal habeas corpus jurisdiction."). Indeed, multiple district courts in the Third Circuit have ordered the release of noncitizens through district court bond hearings. *See id.* (ordering release of § 1226(c) petitioner

subject to "reasonable, and individually tailored, release conditions"); *Madrane v. Hogan,* 520 F. Supp. 2d 654, 670 (M.D. Pa. 2006) (ordering release of § 1226(c) petitioner subject to reporting conditions and restrictions on movement).

33. When courts in this circuit have ordered an IJ to conduct the bond hearing, they have often retained jurisdiction to review the IJ's custody determination for consistency with the court's order and, if necessary, to conduct their own bond hearing. *See, e.g., Clarke,* 481 F.3d at 399 ("If the immigration judge fails to convene an individualized bond hearing within 30 days of the date of this order, the court will reopen this case and conduct its own individualized bond hearing under the standards governing bail in habeas corpus proceedings.").

ARGUMENT

I. MR. OLOGBENLA'S PROLONGED DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS AND HE IS ENTITLED TO A PROMPT BOND HEARING.

A. Mr. Ologbenla's detention is unreasonably prolonged under *German Santos.*

34. ICE charged Mr. Ologbenla as removable under INA § 212(a)(2)(A)(i)(I) and civilly detained him without bond throughout the duration of his immigration proceedings pursuant to 8 U.S.C. § 1226(c) based on the contention that Mr. Ologbenla's conviction for conspiracy to commit wire fraud under 18 U.S.C. § 1349 is a crime involving moral turpitude. However, the IJ who heard Mr. Ologbenla's case found in Mr. Ologbenla's favor and granted him deferral of removal pursuant to the CAT. Mr. Ologbenla only remains in custody because ICE has appealed the IJ's decision to the BIA, challenging the IJ's findings that Mr. Ologbenla's testimony was credible and corroborated and that Mr. Ologbenla satisfied his burden for proving his entitlement to relief under the CAT. Mr. Ologbenla has never been afforded a bond hearing at any point during his twenty-three-month-long detention, and the *German Santos* factors squarely apply to his case and require granting Mr. Ologbenla relief.

35. The first and "most important" factor – the length of detention without a bond hearing – favors Mr. Ologbenla because he has been detained for nearly two years. *See German Santos*, 965 F.3d at 211. Mr. Ologbenla's twenty-three-month length of detention is more than double the six-month to one-year timeframe laid out in *Chavez-Alvarez* and reaffirmed in *German Santos*. *See* 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478). Furthermore, Mr. Ologbenla has been detained for longer than numerous habeas petitioners granted relief by courts in this Circuit. *See, e.g., Rivas*, 2023 WL 4361140 at *2 (W.D. Pa. June 27, 2023) (applying *German Santos* factors and granting bond hearing after fifteen months); *Davydov*, 2020 WL 969618, at *8 (applying *Chavez-Alvarez* factors and granting bond hearing after fourteen months); *Kleinauskaite*, 2019 WL 3302236, at *6 (finding detention became unreasonable after twelve months).

36. The second factor focuses on the likelihood of continued detention. Although the IJ granted Mr. Ologbenla relief in Immigration Court, ICE has appealed the IJ's ruling to the BIA, where such appeal will likely remain for at least several more months, especially considering recent staffing changes at the BIA.[2] If ICE's appeal is sustained, the BIA will likely remand Mr. Ologbenla's case back to the IJ for further proceedings. Such proceedings would require additional time and may yield additional appeals, and there is therefore a good chance that Mr. Ologbenla is likely to face several more rounds of remand and appeal before there is a final removal order in his case. Ultimately, the BIA could affirm the grant of deferral under the CAT or could vacate that

[2] In recent months, 13 of 25 members of the BIA were terminated, bringing the number of permanent BIA members to 15. *See* Letter to Attorney General Bondi (Mar. 28, 2025), available at https://www.bennet.senate.gov/wp-content/uploads/2025/04/letter-on-immigration-judges.pdf; *Reducing the Size of the Board of Immigration Appeals* Interim Final Rule (Apr. 14, 2025), available at https://www.federalregister.gov/documents/2025/04/14/2025-06294/reducing-thesize-of-the-board-of-immigration-appeals#:~:text=SUMMARY%3A,the%20Board%20to%2015%20members. This downsizing comes at a time when the BIA faced a backlog of 112,952 cases at the end of FY 2024. *See* EOIR Adjudication Statistics (Oct. 10, 2024) available at https://www.justice.gov/eoir/media/1344981/dl?inline.

grant of protection; Mr. Ologbenla would likely seek review and a stay of removal from the federal circuit court of appeals in the event of an adverse ruling from the BIA. *See* 8 U.S.C. § 1252.[3] Barring the BIA's unequivocal finding in his favor and dismissal of ICE's appeal, there is no clear end in sight to his immigration proceedings, and thus his detention is unlikely to end anytime soon.

37. The third factor – the reason for delays in the proceedings – favors Mr. Ologbenla. Mr. Ologbenla has done nothing more than diligently litigate his case and seek all the remedies available to him, as evidenced by the fact that the IJ ruled in his favor and granted him protection under the CAT. Responding to the appeal that *ICE* filed before the BIA cannot be held against Mr. Ologbenla in this Court's reasonableness analysis.

38. Meanwhile, the Government has caused significant delays. The Government has appealed the IJ grant of protection under the CAT. The Government's appeal leads with a request that the BIA second-guess the IJ's evaluation of the credibility of Mr. Ologbenla's testimony. *See* Ex. C, BIA Appeal Filings. Even if this Court determines that the Government has acted reasonably in the removal proceedings, it can and should find continued detention unreasonable. *See German Santos*, 965 F.3d at 211 (finding detention unreasonable where third factor favored neither party); *Clarke*, 481 F. Supp. 3d at 397-98 (rejecting Government's contention that petitioner's pursuit of immigration relief and absence of governmental bad faith precluded relief).

39. The fourth factor favors Mr. Ologbenla because the conditions of his confinement – including at Moshannon and Clinton, and primarily at Pike – are not "meaningfully different from criminal punishment." *See German Santos*, 965 F.3d at 211. The Third Circuit and this Court

[3] If Mr. Ologbenla were to seek judicial review of an adverse decision from the BIA, as he is entitled to do, he would face a process that takes an average of 9.7 months. *See* U.S. Court of Appeals – Judicial Caseload Profile, pg. 2 (Dec. 31, 2024), available at https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_appprofile1231.2024.pdf (noting that the median time from filing a notice of appeal to disposition as of December 31, 2024 was 9.7 months).

have repeatedly recognized that the conditions at Pike resemble criminal punishment not only because individuals at Pike are confined to their cells for close to 24 hours a day, but also because noncitizens are held there alongside people serving criminal sentences. *Id.* at 212-13; *Malede*, 2022 WL 3084304, at *7; Ex. A at ¶ 19 (noting that as someone who previously served time in a criminal facility, Mr. Ologbenla finds the conditions at Pike even worse). Pike County originally constructed the facility in 1995 to serve as a jail for individuals serving criminal sentences, and only recently began housing individuals in immigration detention as part of a contract with ICE meant to generate additional revenue for the county. Ex. D, Tri-County Independent, *Pike County gets amended ICE prison contract for detaining illegal immigrants* (January 12, 2022). Facility staff at Pike have charged Mr. Ologbenla exorbitant expenses for phone calls to loved ones. Ex. A at ¶ 18. He has been precluded from receiving adequate treatment to diagnose and address urgent and debilitating medical problems, and he has been charged for the insufficient care he has managed to obtain. *Id.* at ¶¶ 21-23. Pike houses criminal detainees in the same cells as individuals detained on immigration matters, and the staff treats both groups of detainees in the same matter. *Id.* at ¶¶ 16-17.

40. To the extent that this Court considers the conditions at Moshannon and/or Clinton where Mr. Ologbenla was previously detained, those conditions are clearly punitive as well. As this Court recently recognized, Moshannon was "once a private facility [called Moshannon Valley Correctional Center] that contracted with the Federal Bureau of Prisons to house federal prisoners," and "has since been repurposed as an immigration detention facility" beginning in September 2021. *Miller v. Mannion*, 1:22-CV-00840, 2022 WL 3044650, at *1 n.1 (M.D. Pa. July 11, 2022); *see Akhmadjanov v. Oddo,* Civil Action No. 3:25-35, 2025 WL 660663 (W.D. Pa. Feb. 28, 2025) (detention in Moshannon is not meaningfully different from criminal confinement).

Indeed, in finding that the fourth *German Santos* factor favored a petitioner detained at Moshannon, the U.S. District Court for the Western District of Pennsylvania found that "the physical facility at Moshannon . . . is unlikely to have changed much since it expressly was a criminal detention center." *Rivas*, 2023 WL 4361140 at *2. This Court has likewise found that the conditions at Clinton "to be punitive[.]" *Buleishvili*, 2021 WL 674226, at *4.

41. In summary, all four of the *German Santos* factors, including the most heavily weighted first factor, are squarely in Mr. Ologbenla's favor. Therefore, Mr. Ologbenla's nearly two-year-long detention without a bond hearing has become unreasonably prolonged in violation of due process. *See German Santos*, 965 F.3d at 213 (finding detention unreasonable where three of four factors favored petitioner); *Buleishvili*, 2021 WL 674226, at *3–4 (finding detention unreasonable where two of four factors favored petitioner).

B. <u>This Court should conduct or order a bond hearing with the burden on the Government by clear and convincing evidence and with consideration of ability to pay and alternatives to detention.</u>

42. Because Mr. Ologbenla's detention is unreasonably prolonged in violation of due process, he is entitled to a prompt bond hearing at which the Government bears the burden of proof justifying his continued detention by clear and convincing evidence. *See German Santos*, 965 F.3d at 214. If the Government cannot provide "individualized" evidence "to support a finding that continued detention is needed to prevent him from fleeing or harming the community," then "it must release him." *Id.*

43. Given the circumstances, this Court can and should conduct the bond hearing itself in the first instance. *See Thaxter*, No. 1:14-cv-02413, 2016 WL 3077351, at *3 (M.D. Pa. June 1, 2016) (ordering magistrate to conduct bond hearing in first instance). On remand from the Third Circuit, the Middle District of Pennsylvania ordered the release of a non-citizen petitioner – who, like Mr. Ologbenla was subject to mandatory immigration detention due to "extraordinary

circumstances justifying bail consideration," including the petitioner's extensive family ties and support in the U.S., medical vulnerabilities, and the viability of his immigration case and habeas petition. *Leslie*, 865 F. Supp. 2d at 638-40. Mr. Ologbenla should similarly be released from custody because he has a large family and community network in the U.S. that is ready to support him. Ex. A at ¶ 25. Mr. Ologbenla is medically vulnerable to contracting a communicable disease in Pike due to his acid reflux condition and high blood pressure. Ex. A at ¶¶ 21-22. Mr. Ologbenla's BIA appeal is pending adjudication and there is a substantial likelihood that the BIA will either affirm the grant of CAT protection or remand the case back down to the IJ for further analysis. *See* Ex. B.

44. If this Court instead orders an IJ to conduct the bond hearing in Immigration Court, it should also retain jurisdiction to conduct its own bond hearing or order other appropriate remedies should the Government fail to comply with this Court's requirements. Such retention of jurisdiction "reconcile[s] the deference which should be accorded in the first instance to agency decision-making processes . . . with the District Court's concurrent jurisdiction stemming from the responsibility to address federal habeas corpus petitions filed by immigration detainees." *Vega*, 2018 WL 3765431 at *13. Furthermore, explicitly retaining jurisdiction will help ensure that Mr. Ologbenla's due process rights are fully vindicated, consistent with this Court's order. *See Luciano-Jimenez v. Doll*, 547 F. Supp. 3d 462, 466 (M.D. Pa. 2021) (conducting district court bond hearing and ordering release after determining court-ordered *German Santos* hearing conducted by IJ was inadequate).

45. Due process also requires that the bond adjudicator consider Mr. Ologbenla's ability to pay bond and alternatives to detention in addition to or in lieu of monetary bond, such as release with conditions of supervision. *See Leslie*, 865 F. Supp. 2d at 641-42 (ordering non-

citizen's release on conditions "that will reasonably ensure both the safety of the community" and "appearance at future immigration proceedings"); *Mansaray v. Perry*, No. 21-cv-1044, 2021 WL 2315415, at *11 (D. Md. June 7, 2021) (ordering IJ to consider "ability to pay and alternatives to detention" in bond hearing). When the Government fails to consider a non-citizen's financial circumstances when setting bond or fails to take in account alternatives to detention that would reasonably mitigate flight risk or danger, it runs the risk of impermissibly continuing detention without sufficient justification and based solely on an individual's inability to pay. *See Curry v. Yachera*, 835 F.3d 373, 376 (3d Cir. 2016); *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). A prohibitively high bond that Mr. Ologbenla cannot pay is the practical equivalent of no bond at all.

46. Not only do alternatives to detention place far less of a burden on noncitizens like Mr. Ologbenla, but they have also proven to be highly effective. For example, the Intensive Supervision Appearance Program ("ISAP") – one of ICE's principal monitoring programs – has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez*, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all [immigration court] hearings and a 95% attendance rate at final hearings.").

CLAIM FOR RELIEF

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

47. Mr. Ologbenla realleges and incorporates by reference the paragraphs above.

48. 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.

49. Mr. Ologbenla's detention without a bond hearing violates due process, which demands that Mr. Ologbenla receive a bond hearing before a neutral adjudicator at which the Government bears the burden of justifying continued detention by clear and convincing evidence and at which the adjudicator considers appropriate alternatives to detention and Mr. Ologbenla's ability to pay.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Declare that Petitioner's prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;

b. Conduct, or order the Government to schedule before an Immigration Judge within 14 days, an individualized bond hearing with the burden of proof on the Government to establish by clear and convincing evidence that Petitioner poses a flight risk or danger the community and at which the adjudicator considers alternatives to detention and ability to pay;

c. Retain jurisdiction over this matter to conduct its own bond hearing or order other appropriate remedies should the Government fail to comply with this Court's order;

d. Award Petitioner all costs incurred in maintaining this action, including attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and on any other basis justified by law; and

e. Grant any other further relief this Court deems just and proper.

Dated: July 23, 2025

Respectfully submitted,

By: */s/ Rachel Welsh*
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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: July 23, 2025

Respectfully submitted,

By: */s/ Rachel Welsh*

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy to each of the following individuals:

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Dated: July 23, 2025

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By: */s/ Rachel Welsh*