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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MAKSADDZHON AKHMEDOV,

Petitioner,

v.

YOLANDA PITTMAN, *et al.*,

Respondents.

Hon. Madeline Cox Arleo

Civil Action No. 25-13734 (MCA)

**ANSWER TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

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PRELIMINARY STATEMENT

Petitioner, a native and citizen of Tajikistan, applied for admission at the Calexico West Port of Entry in Calexico, California on August 3, 2023. Petitioner did not present any valid entry document as required by 8 U.S.C. § 1182(a)(7)(A)(i)(I), and, accordingly, U.S. Customs and Border Protection (“CBP”) classified Petitioner as an inadmissible alien under § 1182 and placed him in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). However, U.S. Citizenship and Immigration Services determined that Petitioner demonstrated a credible fear of returning to his country and transferred his asylum matter to immigration court for further proceedings. On August 21, 2023, U.S. Immigration and Customs Enforcement (“ICE”) released Petitioner from detention on parole under 8 C.F.R. 212.5(b).

On September 13, 2024, however, ICE terminated Petitioner’s parole and detained him at the Elizabeth Contract Detention Facility since September 13, 2024, pending his removal proceedings. ICE detained him under the mandatory detention authority set out in 8 U.S.C. § 1225(b)(2). Specifically, ICE found that he was an “applicant for admission” subject to mandatory detention until his removal proceedings conclude. On May 21, 2025, an Immigration Judge (“IJ”) granted asylum to Petitioner. Because ICE timely appealed the decision, however, his removal proceedings have not concluded; they will conclude after the appellate process before the Board of Immigration Appeals (“BIA”) resolves. 8 C.F.R. § 1003.39. ICE accordingly must continue to detain Petitioner under § 1225(b)(2).

Since re-detention, Petitioner has filed requests for release on parole, citing to ICE Directive 11002, Parole of Arriving Aliens Found to Have a Credible Fear of

Persecution or Torture. ICE has denied Petitioner's requests because he has not established any compelling humanitarian factors that would support parole.

On July 25, 2025, Petitioner filed this habeas action asserting two claims for relief. First, he claims that ICE has violated his due process rights by subjecting him to prolonged detention without a bond hearing. Second, he claims that ICE has violated the Administrative Procedure Act ("APA") by failing to follow two ICE directives: Directives 11002.1 and 16004.1. The first favors parole of noncitizens who have a credible fear of persecution. The second encourages parole pending appeals of asylum decisions, unless the INA requires the noncitizen to continue to be detained. Petitioner seeks release from detention or a custody hearing before an IJ at which the government must establish by clear and convincing evidence that he presents a risk of flight or danger to the community.

Petitioner's first claim fails because his mandatory detention is lawful under 8 U.S.C. § 1225(b)(2), and his detention is not prolonged. His second claim, the APA violation, fails for two reasons. First, the Court lacks jurisdiction to review parole decisions, which are committed to the sole, unreviewable discretion of the Department of Homeland Security ("DHS"). Second, even if the Court had jurisdiction over the claim, ICE's denial of Petitioner's parole requests comports with Directives 11002.1 and 16004.1. For these reasons, the Court should dismiss the Petition.

* * *

In accordance with the Court's August 12, 2025, Order, ECF 3, Respondents Answer the Petition and then brief their arguments in support of dismissing the

Petition.

ANSWER TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
INTRODUCTION

1. Respondents admit that Petitioner is in the custody of the U.S. Department of Homeland Security and detained at the Elizabeth Contract Detention Facility since September 2024, pending his removal proceedings. Respondents deny all remaining allegations in Paragraph 1.

2. Respondents admit that Petitioner is in the custody of the U.S. Department of Homeland Security and detained at the Elizabeth Contract Detention Facility since September 2024, pending his removal proceedings. Respondents deny all remaining allegations in Paragraph 2.

3. Respondents admit that Petitioner is detained pursuant to 8 U.S.C. § 1225(b), pending removal proceedings. The remaining allegations in Paragraph 3 set forth legal conclusions, to which no response is required. To the extent a response is deemed required, Respondents deny all remaining allegations in Paragraph 3.

4. Respondents deny the allegations in Paragraph 4.

5. Respondents deny the allegations in Paragraph 5.

6. Paragraph 6 consists of Petitioner's requests for relief, to which no response is required. To the extent that any of the allegations in Paragraph 6 may be deemed factual in nature, Respondents deny the allegations in Paragraph 6.

PARTIES

7. Respondents admit the allegations in Paragraph 7.

8. Respondents admit the allegations in Paragraph 8.

9. Respondents admit the allegations in Paragraph 9.

10. Respondents admit the allegations in Paragraph 10.

11. Respondents admit the allegations in Paragraph 11.

JURISDICTION AND VENUE

12. The allegations in Paragraph 12 set forth legal conclusions, to which no response is required. To the extent a response is deemed required, Respondents deny the allegations in Paragraph 12.

13. Respondents admit that the Court has subject matter jurisdiction over this action, except for certain issues identified below over which the Court lacks jurisdiction.

14. Paragraph 14 sets forth legal conclusions, to which no response is required. To the extent a response is deemed required, Respondents deny all allegations and legal conclusions in Paragraph 14.

15. Respondents admit that venue is proper in this District because Petitioner is detained in New Jersey.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16-21. The allegations in Paragraphs 16-21 consist of legal conclusions, to which no response is required. To the extent a response is deemed required, Respondents deny the allegations in Paragraphs 16-21.

STATEMENT OF FACTS

22. Respondents admit that Petitioner is a citizen and national of Tajikistan who came to the United States on or about August 3, 2023 purportedly to request asylum. Respondents further admit that Petitioner used the CBP One mobile application to request an inspection appointment. Respondents are without knowledge or sufficient information to admit the remaining allegations in Paragraph 22, and thus deny the remaining allegations in Paragraph 22.

23. Respondents admit that CBP placed Petitioner in expedited removal proceedings and, after a credible fear determination, transferred Petitioner's removal proceedings to Immigration Court. Respondents deny the remaining allegations in Paragraph 23.

24. Respondents admit that the U.S. Department of Homeland Security ("DHS") released Petitioner on parole on or about August 21, 2023, and admit that DHS re-detained Petitioner on or about September 13, 2024. Respondents further admit that Petitioner's immigration matter was transferred to New York Immigration Court and that he filed an application for asylum. Respondents refer to the specific records referenced by Petitioner for the information provided in the records. Respondents deny the remaining allegations in Paragraph 24.

25. Respondents admit that on or about May 21, 2025, an Immigration Judge granted Petitioner's asylum application and that DHS filed a timely appeal of the decision. Respondents further admit that the appeal is pending before the Board

of Immigration Appeals. Respondents deny the remaining allegations in Paragraph 25.

26. Respondents admit that Petitioner has filed requests for release on parole and that the requests have been denied. Respondents deny the remaining allegations in Paragraph 26.

LEGAL FRAMEWORK

27-38. Paragraphs 27-38 set forth Petitioner's legal framework, conclusions, and arguments that are addressed in the brief below.

39-46. Paragraphs 39-46 set forth Petitioner's legal framework, conclusions, and arguments that are addressed in the brief below.

FIRST CLAIM FOR RELIEF

47. Respondents repeat and reallege their responses to the previous paragraphs of the Verified Petition for Writ of Habeas Corpus, as if fully set forth herein.

48-53. Paragraphs 48-53 set forth Petitioner's legal framework, conclusions, and arguments that are addressed in the brief below.

SECOND CLAIM FOR RELIEF

54. Respondents repeat and reallege their responses to the previous paragraphs of the Verified Petition for Writ of Habeas Corpus, as if fully set forth herein.

55-59. Paragraphs 55-59 set forth Petitioner's legal framework, conclusions, and arguments that are addressed in the brief below.

PRAYER FOR RELIEF

The subsequent paragraph consists of Petitioner's requests for relief, to which no response is required. To the extent that any of the allegations set forth in this Paragraph may be deemed factual in nature, Respondents deny the allegations in the Paragraph.

* * *

**BRIEF SUPPORTING DISMISSAL OF THE VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

LEGAL FRAMEWORK

I. Asylum Relief and Appeal Process

Generally, under the Immigration and Nationality Act (“INA”), a removable noncitizen in the United States who fears returning to his home country may apply for asylum. *See* 8 U.S.C. §§ 1158(b)(1)(A), 1101(a)(42)(A). If a noncitizen is statutorily eligible for asylum, an immigration judge (“IJ”) “may grant or deny asylum in the exercise of his discretion.” 8 C.F.R. § 208.14(a); *see* 8 U.S.C. § 1101(a)(42). If a noncitizen is granted asylum, he is no longer removable, and he has a pathway to become a lawful permanent resident and eventually a U.S. citizen. 8 U.S.C. §§ 1158(c), 1427(a); 8 C.F.R. § 209.2. A noncitizen may, however, be ineligible for asylum if, *inter alia*, he has certain serious criminal convictions, he failed to meet the requisite filing deadline, or he unlawfully reentered the country after a prior removal. *See* 8 U.S.C. §§ 1158(a), (b), 1232(a)(5); 8 C.F.R. § 208.12(c)(6).

Either party has thirty days to appeal an IJ’s decision to grant asylum to the Board of Immigration Appeals (the “BIA”). 8 C.F.R. § 1003.38(a), (b). U.S. Immigration and Customs Enforcement’s (“ICE”) decision whether to appeal an IJ’s grant of asylum is highly individualized and depends on the particular facts of the case. *See* Kerry E. Doyle, Principal Legal Advisor, *ICE, Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* at 14 (Apr. 3, 2002)

<https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration->

[enforcement_guidanceApr2022.pdf](#). ICE may reserve its right to appeal to ensure that the IJ provides a fully reasoned decision that can help inform ICE whether it should perfect the appeal. *Id.*

The decision of the IJ granting asylum, if appealed, does not become final until the BIA certifies the decision. 8 C.F.R. § 1003.39 (“Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first.”).

II. Detention of “Arriving Aliens” Who Seek Asylum

A noncitizen “who has not been admitted or who arrives in the United States” is considered an “applicant for admission” under INA. 8 U.S.C. § 1225(a)(1). All “[a]pplicants for admission must ‘be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting 8 U.S.C. § 1225(a)(3)). “[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Id.* at 287. “Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.” *Id.* Immigration officials also have the discretion to permit an applicant for admission to withdraw an application and depart the United States immediately. 8 U.S.C. § 1225(a)(4).

Under § 1225(b)(1), applicants for admission who are “arriving” or fall into certain other categories are subject to expedited removal. Arriving aliens typically encounter immigration officers at the border, such as the airport. *See* 8 C.F.R. § 1001.1(q) (“The term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry.”). In general, an

immigration officer who finds the applicant inadmissible “shall order” removal without further hearing. § 1225(b)(1)(A)(i). If the applicant announces an intention to apply for the asylum or expresses a fear of persecution, expedited removal is postponed pending further proceedings on the asylum application. *Id.* § 1225(b)(1)(B). However, the applicant “shall be detained” throughout this process. *Id.* § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV).

While section 1225(b) does not provide for bond hearings, *see id.* at 297–303, it does contain “a specific provision authorizing release from . . . detention”: The Secretary of Homeland Security “may ‘for urgent humanitarian reasons or significant public benefit’ temporarily parole [non-citizens] detained under §§ 1225(b)(1) and (b)(2),” *id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)). “[S]uch parole,” however, “shall not be regarded as an admission of the [non-citizen].” 8 U.S.C. § 1182(d)(5)(A); *see* 8 C.F.R. § 1001.1(q). When the DHS Secretary determines that “the purposes of [the] parole . . . have been served[,] the [non-citizen] shall . . . return or be returned to the custody from which he was paroled.” 8 U.S.C. § 1182(d)(5)(A). After that, the noncitizen’s “case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.*

III. ICE Directives for Discretionary Release Pending Appeals

Two directives guide ICE’s discretion to release noncitizens on parole. ICE Directive 16004.1 favors release of noncitizens when ICE appeals an IJ’s decision granting asylum, withholding of removal, or protection under the Convention Against Torture (“CAT”), and when there are no “exceptional concerns such as national security issues or danger to the community and [] any requirement under law to

detain.” Ex. A, ICE Directive 16004.1, *Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed* (Feb. 2004). The custody decision, according to the Directive, can be made only by the Field Office Director. *Id.*

Similarly, ICE Directive 1102.1 “provides guidance” to ICE “for exercising their discretion to consider the parole of arriving aliens processed under the expedited removal provisions of [8 U.S.C. § 1225] who have been found to have a “credible fear” of persecution or torture[.]” Ex. B, ICE Directive 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* (Jan. 2010). The Directive recounts an arriving alien’s ability to request parole, *id.* ¶ 4.2, lists the applicable regulations that describe the types of aliens who may meet the standard for parole, *id.* ¶ 4.3, sets out the procedures that ICE must follow when making a parole decision (e.g., how quickly to make a decision, who in ICE can make the decision, how ICE should notify the noncitizen of the decision, and so on), *id.* ¶ 8.

FACTUAL BACKGROUND

I. Petitioner’s Immigration History

Petitioner, a native and citizen of Tajikistan, applied for admission at the Calexico West Port of Entry in Calexico, California on August 3, 2023. ECF 1, Verified Petition for Writ of Habeas Corpus (“Pet.”) ¶ 22, ECF 1-4 (Notice to Appear). Petitioner used the U.S. Customs and Border Protection (“CBP”) One mobile application to request an appointment for inspection and asylum. Pet. ¶ 22; Akhmedov Declaration (“Decl.”), ECF 1-3 at 2-3. Petitioner did not present any valid entry document as required by 8 U.S.C. § 1182(a)(7)(A)(i)(I), Immigration and Nationality Act § 212(a)(7)(A)(i)(I), and, accordingly, CBP classified Petitioner as an

inadmissible alien under § 1182 and placed him in expedited removal proceedings. Pet. ¶ 23, Notice to Appear. However, U.S. Citizenship and Immigration Services determined that Petitioner demonstrated a credible fear of returning to his country due to past persecution for practicing his religion Islam and transferred his asylum matter to immigration court for further proceedings. Pet. ¶ 23; Notice to Appear, ECF 1-4; Credible Fear Determination, ECF 1-5; July 22, 2025 Parole Denial, ECF 1-7 at 4. CBP transferred custody of Petitioner to ICE on August 4, 2023. July 22, 2025 Parole Denial.

On August 21, 2023, ICE released Petitioner from detention on parole under 8 C.F.R. 212.5(b). Pet. ¶ 24; Ex. D, Interim Notice Authorizing Parole (Aug. 21, 2023). The Notice authorizing parole states that his “parole authorization is valid for one year beginning from the date on this notice and will automatically terminate . . . at the end of the one-year period unless ICE provides you with an extension at its discretion. ICE may also terminate parole on notice prior to the automatic termination date. Parole is entirely within the discretion of ICE and can be terminated at any time for any reason.” See Ex. D, Interim Notice Authorizing Parole.

Petitioner then moved to New York and, at his request, ICE transferred his removal proceedings to New York Immigration Court. Pet. ¶ 24, Akhmedov Decl. ¶ 2. Petitioner filed an application for asylum in that court and appeared for hearings and reported as required by ICE. *Id.*

On September 13, 2024, ICE terminated Petitioner’s parole status because “[n]either urgent humanitarian reasons nor significant public benefit warrant[ed]

[his] continued parole.” Pet. ¶ 24; *see also* Parole Revocation, ECF 1-6. ICE has detained Petitioner at the Elizabeth Contract Detention Facility since September 13, 2024, pending the conclusion of his removal proceedings. Pet. 24, Akhmedov Declaration ¶ 3; July 22, 2025 Parole Denial, ECF 1-7. ICE is required to detain him pursuant to 8 U.S.C. § 1225(b) pending removal proceedings. Pet. ¶ 27.

On May 21, 2025, an IJ granted asylum to Petitioner. Pet. ¶ 25; May 21, 2025 IJ Decision, ECF 1-8. However, ICE filed a timely appeal of the decision, and the appeal is pending before the BIA. Ex. C, Notice of Appeal of May 21, 2025 IJ Decision. The appeal prevents the asylum grant from becoming final. *See* 8 C.F.R. § 1003.39. Since re-detention, Petitioner has filed three requests for release on parole under § 212.5(b), pursuant to ICE Directive 11002, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture. Pet. ¶ 26. ICE has denied the three requests based upon Petitioner’s failure to establish “compelling humanitarian factors.” Pet. ¶ 26; Apr. 15, 2025 Parole Denial and July 22, 2025 Parole Denial, ECF 1-7.

II. The Habeas Petition

On July 25, 2025, Petitioner filed this habeas action asserting two claims for relief from detention under § 1225(b). Pet. ¶¶ 48-59. First, he claims that continued detention without a bond hearing violates his due process rights. Pet. ¶ 53. Second, he claims that ICE did not follow Directives 11002.1 or 16004.1 when denied his requests for parole after re-detaining him in September 2024. Pet. ¶¶ 55-57. He seeks release from detention or a custody hearing before an IJ at which the government would bear the burden to contest his release. Pet., Prayer for Relief.

On August 1, 2025, Petitioner filed an Application for Issuance of Order to Show Cause seeking, *inter alia*, to compel Respondents to demonstrate, on an expedited basis, why the Petition should not be granted under 28 U.S.C. § 2243. ECF 2. On August 12, 2025, the Court entered an Order denying Petitioner's request for an Order to Show Cause under § 2243 and directed Respondents to file an answer to the Petition by September 11, 2025. ECF 3. The Court further ordered that Petitioner may file a reply within thirty days of Respondents' answer. *Id.* In response to the Petition, Respondents respectfully submit this Answer and Brief in Support of Dismissal of the Petition.

ARGUMENT

Petitioner asserts two claims in the Petition. First, he argues that ICE has violated his due process rights by subjecting him to prolonged detention without a bond hearing. Second, he argues that ICE has violated the APA by failing to follow its own policies—namely, ICE Directives 11002.1 or 16004.1—requiring parole of aliens who have a credible fear of persecution or who are awaiting an appeal of their grant of asylum. Respondents address each in turn.

I. Petitioner Fails to Assert a Due Process Claim.

Petitioner's first claim fails because his mandatory detention is lawful under 8 U.S.C. § 1225(b)(2), and his detention is not prolonged. Specifically, he argues that detention for about one year (i.e., since September 13, 2024) is unreasonable under *German Santos v. Warden Pike County Corrections Facility*, 965 F.3d 203 (3d Cir. 2020).

Under *German Santos*, district courts must consider the following factors when evaluating the constitutionality of prolonged detention: The first and “most important factor is the duration of detention,” followed by the likelihood of continued detention and the reasons for the delay, including “whether either party made careless or bad-faith ‘errors in the proceedings that caused unnecessary delay.’” *Id.* at 211 (quoting *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232 (3d Cir. 2011)). Finally, courts ask “whether the alien’s conditions of confinement are ‘meaningfully different’ from criminal punishment.” *Id.* (quoting *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015)).

As a threshold matter, *German Santos* does not apply to Petitioner’s claim. As Petitioner acknowledges, Pet. ¶¶ 34-35, *German Santos* concerned mandatory detention under a different part of the INA—namely, mandatory detention under § 1226(c). Neither the Supreme Court nor the Third Circuit Court of Appeals has directly addressed the question of whether arriving aliens detained under § 1225(b) have the same due process right to a bond hearing upon unreasonable detention as that afforded to aliens being held under § 1226(c). To that end, § 1225(b) does not contain any “reasonableness” limitation to detention beyond the outer limits set by that section—the end of the removal proceeding. *See Jennings*, 583 U.S. at 299 (citing § 1225). And, as the Supreme Court recognized in *Thuraissigiam*, when dealing with the executive’s plenary power over immigration and arriving aliens, “an alien in [petitioner’s position has only those rights regarding admission that Congress has provided by statute. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140

(2020); *see also* *Damus v. Tsoukaris*, No. 16-933 (JLL), 2016 WL 4203816, at *2 (D.N.J. Aug. 8, 2016) (“It is thus clear that Petitioner, in so much as immigration officials have essentially revoked his parole into the United States, is not entitled to release or a bond hearing under the statute itself, and could only receive such relief if it were compelled by the Constitution.”). Accordingly, *German Santos* should not apply to this case.¹

Assuming *German Santos* does apply, Petitioner does not demonstrate prolonged detention. First, the length of detention is reasonable under the circumstances. While there are cases finding detention of a year unreasonable, *see, e.g., Amadu K. v. Anderson*, No. 20-3220 (BRM), 2020 WL 1864583, at *4 (D.N.J. Apr. 14, 2020) (holding 12-month detention unreasonable), there is no brightline rule. *Cf. German Santos*, 965 F.3d at 211 (noting there is no “bright-line threshold” for when detention becomes unreasonable but an alien’s “detention ‘becomes more and more suspect’ after five months”). To that end, courts in this Circuit have upheld detention under § 1225(b) when they have been around a year long. *See Damus v. Tsoukaris*, No. 16-933 (JLL), 2016 WL 4203816, at *4 (D.N.J. Aug. 8, 2016) (“While it is unclear at what point in time such concerns would rise to the level of requiring redress, this Court concludes that Petitioner's current detention – for just under a year – does not

¹ *But see Nunez v. Oddo*, No. 25-143J, 2025 WL 2443437, at *3 (W.D. Pa. Aug. 25, 2025) (applying *German Santos* to a detainee held under 8 U.S.C. § 1225(b)); *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825-26 (W.D. Pa. 2025) (same); *Pierre v. Doll*, 350 F.Supp.3d 327, 332 (M.D. Pa. 2018) (agreeing with the “weight of authority” finding that arriving aliens detained pre-removal pursuant to § 1225(b) have a due process right to an individualized bond consideration once it is determined that the duration of their detention has become unreasonable).

appear to be unreasonable given the purposes of § 1225 that such detention serves – preventing the entry of an inadmissible alien into this country. It thus appears that detention of nearly a year would certainly be more reasonable under § 1225(b)(2)(A) than that which is reasonable under § 1226(c), given the lesser level of Due Process to which aliens subject to the entry fiction are entitled[.]”); *Doe v. Rodriguez*, No. 17-1709 (JLL), 2018 WL 620898, at *8 (D.N.J. Jan. 29, 2018) (“[T]he record indicates that [petitioner] has been detained for only ten months—nearly two months less than the petitioner in *Damus*. As this Court explained in *Damus*, detention for less than a year under § 1225(b) does not violate Due Process and Petitioner is therefore not entitled to relief based on the length of his detention at this time.”).

And other courts have found that detention of even eighteen months may be reasonable under the circumstances. See *Diahn v. Lowe*, No. 24-1936, 2025 WL 2115442, at *4 (M.D. Pa. July 11, 2025) (“Courts in this district have found that 18 months’ detention is unreasonably long in some cases but not in others.”; collecting cases), *report and recommendation adopted*, 2025 WL 2112074 (M.D. Pa. July 28, 2025). And, here, Petitioner’s detention of almost a year is less than the detention at issue in the major Third Circuit decisions: *Diop* (nearly three years), *Chavez-Alvarez* (more than a year and a half at the time of the district court’s decision), and *German Santos* (more than two-and-a-half years). Accordingly, the first factor weighs in Respondents’ favor.

But even if there is any doubt at the length of his detention, the second and third factors—likelihood of continued detention and reason for the delay—militate in

favor of Respondents. Petitioner is detained under § 1225(b) and is in removal proceedings under §1229a. When in removal proceedings, noncitizens receive many due process protections. For example, a noncitizen who (like Petitioner) is detained incident to removal proceedings under 8 U.S.C. § 1229a, receives notice of and an opportunity to dispute the charges against him; the right to testify; and the right to “examine the evidence against the alien,” “to present evidence,” and “to cross-examine witnesses presented by the Government,” subject to an exception for disclosure of certain national-security information, 8 U.S.C. 1229a(b)(4)(B); *see* 8 C.F.R. 1240.7(a), 1240.46(c); the ability to seek relief or protection from removal even if he is deportable or inadmissible, 8 C.F.R. 1240.11(c)(1); adjudication by an IJ, 8 U.S.C. 1101(b)(4), 1229a(a)(1); and several layers of appellate review. And any alien detained under § 1225(b) may request that the Secretary parole him into the United States “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. 1182(d)(5)(A); *see* 8 C.F.R. 212.5, 235.3(c).

Petitioner acknowledges that he has received these protections. He received a credible fear screening that allowed him to go from expedited removal into standard removal proceedings under § 1229a, he has made an asylum application before an IJ where he presented evidence and responded to evidence against him, and he has applied for (and at times received) parole. For Petitioner, the passage of time in his proceedings reflect his decision to avail himself of these protections, not the lack of process.

Now, Petitioner’s detention is nearing its end: the IJ ruled on his asylum petition, and his case is on appeal before the BIA. If the BIA affirms the IJ’s decision, Petitioner will be released. If the BIA reverses the IJ’s decision, Petitioner would either be removed or, depending on the circumstances, could assert a prolonged detention claim based on the fact-specific circumstances at that time. *See Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 277 (3d Cir. 2018) (noting “the conclusion of his removal proceedings—and accordingly the end of his detention—appears to be forthcoming” because petitioner had two merits hearings). *But see Grigoryan v. Jamison*, No. 25-1389, 2025 WL 1257693, at *4 (E.D. Pa. Apr. 30, 2025) (holding removal proceeding not likely to conclude soon when appeal to BIA still pending).

Fourth, Petitioner’s detention is not penal in nature. The sole argument Petitioner makes is that he “has not been taken for an adequate medical examination[.]” Pet. ¶ 52. That conclusory assertion, without more, does not establish that his immigration detention is penal.

Ultimately, even if the Court finds that Petitioner’s detention is unreasonably long under *German Santos*, the proper remedy is a bond hearing before an IJ. *James P. B. v. Edwards*, No. 21-4810 (JMV), 2021 WL 2981044, at *4 (D.N.J. July 15, 2021) (citing *German Santos*, 965 F.3d at 213) (“The Court will grant the Petition and direct the Government to provide Petitioner with a bond hearing before an immigration judge, where the Government bears the burden of proof to justify detention by clear

and convincing evidence.”); *see also* *Nunez*, 2025 WL 2443437, at *5 (holding detention without bond hearing violated due process).

II. Petitioner’s APA Claim Fails.

Petitioner’s second claim—the APA violation—also fails. Petitioner argues that ICE has not followed Directives 11002.1 or 16004.1, which he concedes recommend but do not require release on parole. Pet. ¶ 55. This argument fails for two reasons.

First, the Court lacks jurisdiction to review parole decisions, which are committed to the sole, unreviewable discretion of the Department of Homeland Security. *See Doe*, 2018 WL 620898, at *8 (“The effect of [8 U.S.C. § 1252(a)(2)(B)(ii)] on habeas claims challenging discretionary parole denials is clear—the Government ‘can and often does release ... alien[s] on parole, but [the] decision to do so is not judicially reviewable.’”); *Naul v. Gonzales*, No. 05-4627 (JAG), 2007 WL 1217987, at *2-3 (D.N.J. Apr. 23, 2007) (“[T]he Attorney General’s denial of Petitioner’s parole requests, pursuant to 8 U.S.C. § 1182(d)(5)(A), is a discretionary decision outside this Court’s review.”).

Second, even if the Court had jurisdiction over the claim, ICE’s denial of Petitioner’s parole request comports with Directives 11002.1 and 16004.1. Directive 11002.1 recognizes that release on parole after a credible fear determination is in DHS’s sole discretion and sets out the times when ICE “should” (not shall) exercise its discretion to grant parole. And the Directive concludes by saying it creates no private rights on which a noncitizen can use against the Government. *See* Directive 11002.1 at ¶ 10. Petitioner received his discretionary parole review in compliance

with this Directive—and with Directive 16004.1—as recently as July 22, 2025, when the Field Office Director reviewed his parole application and denied it. *See* July 22, 2025 Parole Denial, ECF 1-7. Similarly, Directive 16004.1 “favors” but does not require release, and it is limited by an exception that applies to Petitioner. It notes that release is favored “absent any requirement under law to detain.” Here, the requirement under law to detain exists under § 1225(b)(2)’s mandatory detention rule. Thus, Petitioner’s argument that Respondents have failed to follow either Directive fails.

CONCLUSION

For the reasons set forth above, the Court should dismiss the Petition.

Respectfully submitted,

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