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PRELIMINARY STATEMENT

Petitioner Maksaddzhon Akhmedov has proven to an immigration judge that he is eligible for asylum, and has supplied evidence to Respondents that he will not be a flight risk or a danger to the community if released. Nonetheless, Respondents have detained him in immigration custody for a year without a bond hearing, and without adjudicating his parole requests in accordance with their own policies. His ongoing detention violates due process and the Administrative Procedure Act, and the Court should order Respondents to release him or provide him a bond hearing at which the Department of Homeland Security bears the burden of showing that his continued detention is necessary.

ARGUMENT

I. Mr. Akhmedov’s Detention Without a Bond Hearing Has Become Unconstitutionally Prolonged

Noncitizens within the United States are “persons” within the meaning of the Due Process Clause, and therefore have the right to be free from unreasonably prolonged detention without a bond hearing. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“[I]t must be concluded that all persons within the territory of the United States are entitled to the protection guarantied [sic] by [the Fifth and Sixth] amendments . . . and that even aliens shall not be . . . deprived of life, liberty, or property without due process of law.”); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221,

231 (3d Cir. 2011) (“[T]he constitutionality of [detention without a bond hearing] is a function of the length of the detention.”). In this Circuit, *German Santos* sets forth the factors for adjudicating as-applied constitutional challenges to prolonged mandatory detention. *German Santos v. Warden Pike C’ty Corr. Facility*, 965 F.3d 203, 208, 211 (3d Cir. 2020); *see also A.L. v. Oddo*, 761 F. Supp.3d 822, 826 (W.D. Pa. 2025) (applying *German Santos* to assess prolonged detention under 8 U.S.C. § 1225(b)).

Respondents’ argument that *German Santos* does not apply because the statute under which Mr. Akhmedov is detained does not limit the length of detention is inapposite, because the same is true of 8 U.S.C. § 1226(c), the statute at issue in *German Santos*. Resp. (Doc. No. 4) at 18; *see Jennings v. Rodriguez*, 583 U.S. 281, 302, 305 (2018) (holding that both § 1225(b) and § 1226(c) mandate detention throughout removal proceedings). *German Santos* held, after *Jennings*, that noncitizens may nonetheless bring as-applied constitutional challenges to their prolonged detention. 965 F.3d at 208. This is such an as-applied constitutional challenge, and the *German Santos* factors apply.

Respondents’ invocation of *Thuraissigiam* is equally unavailing. Resp. at 18. As the passage Respondents quote makes clear, *Thuraissigiam* limited the rights of “arriving aliens” regarding their admission but did not address challenges to

prolonged detention. *Id.* (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). As a Court in this Circuit recently explained:

Thuraissigiam involved a challenge to the arriving alien's removal, and the Supreme Court concluded that the Due Process Clause does not require review of that determination or how it was made. Nowhere in that decision did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever.

A.L., 761 F. Supp. 3d at 825. Respondents do not cite any case law suggesting that arriving aliens cannot challenge their prolonged detention, nor do they suggest any other standard that should apply to adjudicate such a claim. Resp. at 18-19; *see also Damus v. Tsoukaris*, No. 16-933, 2016 WL 4203816, at *4 (D.N.J. Aug. 8, 2016) (holding, before *German Santos*, that unreasonably prolonged detention under § 1225(b) is unlawful). Therefore, this Court should apply the *German Santos* factors to this as-applied due process challenge.

The first and most important *German Santos* factor is the length of detention. 965 F.3d at 211. Mr. Akhmedov's detention of one year suggests that a bond hearing is now necessary. *German Santos* made clear that the Third Circuit's prior decision in *Chavez-Alvarez*, in which the Court held that detention became unreasonable between six months and a year, remains good law. 965 F.3d at 210-211; *see also Chavez-Alvarez v. Warden York C'ty Prison*, 783 F.3d 469, 478 (3d Cir. 2015), *abrogated in part and on other grounds by Jennings*, 538 U.S. at 305; *cf.* Resp. at

20 (citing the time Mr. Chavez-Alvarez had been detained when the District Court issued its decision instead of the Third Circuit's holding that his detention became unreasonable much earlier). Mr. Akhmedov's case is analogous to *Chavez-Alvarez*, so the Court should reach the same conclusion here.

Moreover, as Respondents acknowledge, district courts in this Circuit have held that detention of about one year without a bond hearing warrants additional procedural protections. *See, e.g., A.L.*, 761 F. Supp. 3d at 826 (ordering a bond hearing after ten months); *Amadu K. v. Anderson*, No. 2:20-cv-3220, 2020 WL 1864583, at *4 (D.N.J. Apr. 14, 2020) (same, after twelve months); *Frank B. v. Green*, No. 19-346, 2020 WL 1673026, at *4 (D.N.J. Apr. 60, 2020) (same, after eleven months); *Kleinauskite v. Doll*, No. 4:17-cv-2176, 2019 WL 3302236, at *6 (M.D. Pa. July 23, 2019) (finding detention over twelve months "escaped the realm of reason" and ordering EAJA fees). The length of detention similarly weighs in favor of a bond hearing in this case.

The second factor, the likelihood of future detention, further weighs in favor of relief. *See German Santos*, 965 F.3d at 211. Respondents' statement that "Petitioner's detention is nearing its end" is inaccurate. Resp. at 22. Although the Department of Homeland Security (DHS)'s appeal was filed on June 16, 2025, a transcript of the proceedings before the immigration judge has not yet been produced and therefore no briefing schedule has been issued. Once the BIA issues the briefing

schedule, the parties will have twenty-one days, subject to potential extension, to file briefs in the matter and then the BIA will consider those briefs and issue decision. Therefore, Mr. Akhmedov's detention will continue, at minimum, for several more months. *See German Santos*, 965 F.3d at 212 (“As with his first two appeals, that [BIA appeal] could take months.”).

The third factor, the reasons for the delay, further favors a bond hearing. Respondents detail the procedural protections that Mr. Akhmedov received in his removal proceedings, but do not explain why this is relevant. Resp. at 21. Mr. Akhmedov does not allege that he was deprived of due process in those proceedings, but rather than he has been held in detention without a bond hearing to determine whether he is a flight risk or danger to the community. Pet. at ¶ 53; *see German Santos*, 965 F.3d at 213 (holding that when detention becomes unreasonable a petitioner is “entitled to a bond hearing to gauge whether he still needs to be detained to keep him from fleeing or committing . . . crimes”). Under Third Circuit precedent, his “pursuit of bona fide legal challenges to his removal” does not “render the corresponding increase in time of detention reasonable,” because that would “effectively punish [him] for pursuing applicable legal remedies.” *Leslie v. Att’y Gen. of the U.S.*, 678 F.3d 265, 271 (3d Cir. 2012), *abrogated in part and on other grounds by Jennings*, 538 U.S. at 305.

At this point, moreover, it is the DHS's choice to appeal the grant of asylum to the BIA and the relatively long time the BIA has taken to issue a briefing schedule that is prolonging Mr. Akhmedov's detention. This time is entirely attributable to the government and further favors a grant of relief.

Finally, Mr. Akhmedov is detained in a detention center where the deprivation of liberty he is experiencing is similar to criminal confinement. *See German Santos*, 965 F.3d at 211. Specifically, he has been unable to seek satisfactory medical care for ongoing pain. Pet., Exh. A (Doc No. 1-3). For all these reasons, Mr. Akhmedov's detention has become unconstitutionally prolonged, and the Court should order a bond hearing at which the government bears the burden of showing by clear and convincing evidence that his continued detention is necessary. *See German Santos*, 965 F.3d at 214.

II. Respondents' Denial of Mr. Akhmedov's Parole Requests Did Not Comport with ICE Policies, in Violation of the Administrative Procedure Act and Due Process

Respondents' revocation of Mr. Akhmedov's release on parole and subsequent denial of his renewed parole requests violated the Administrative Procedure Act (APA) and procedural due process because those decisions failed to comport with ICE's own policies. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-67 (1954). Contrary to Respondents' suggestion, this claim does not impermissibly ask the Court to review Respondents' exercise of discretion. Resp.

at 23 (citing cases that invoke 8 U.S.C. § 1252(a)(2)(B)(ii)). Indeed, *Accardi* itself made clear that even when a decision is ultimately discretionary, Courts can require that the government exercise that discretion in accordance with the law. *Accardi*, 347 U.S. at 268. The Third Circuit has exercised its jurisdiction to ensure that parole decisions comport with Due Process, and other district courts have exercised jurisdiction over similar claims. *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 399 (3d Cir. 1999); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 328 (D.D.C. 2018) (holding that a challenge to the way in which a parole decision is made rather than the substance of that decision is reviewable); *Abdi v. Duke*, 280 F. Supp. 3d 373, 385 (W.D.N.Y. 2017), *vacated in part and on other grounds by Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019). Therefore, this Court has jurisdiction over Mr. Akhmedov's *Accardi* claim.

On the merits, “a government agency is not free to disregard its own regulations” or policies, and if it does so, it violates the APA. *De Jesus Martinez v. Nielsen*, 341 F. Supp. 3d 400, 410 (D.N.J. 2018); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (requiring agencies to follow their own internal procedures). Two different ICE directives favor release on parole for noncitizens who have passed credible fear interviews and then been granted asylum, absent exceptional circumstances. Resp. Exh. A (Doc. No. 4-1), Exh. B (Doc. No. 4-2). Yet

Respondents denied Mr. Akhmedov's repeated requests for released on parole without identifying any such factors. Pet. at ¶ 56.

Respondents' contrary arguments are unavailing. First, they note that Directive 11002.1 states that ICE "should," not "shall," grant parole when no negative factors are present, and that it indicates that it does not create a private right that can be enforced against the government. Resp. at 23 & Exh. B. However, as other district courts have found, this policy is binding on ICE, because "once an agency exercises its discretion and creates the procedural rules under which it desires to have its actions judged, it denies itself the rights to violate these rules." *Pacific Molasses Co. v. Fed. Trade Comm.*, 356 F.2d 386, 389-90 (5th Cir. 1966); *Damus*, 313 F. Supp. 3d at 337-38; *Abdi*, 280 F. Supp.3d at 387. Respondents do not explain why the use of the word "should" suggests a different conclusion. Resp. at 23.

Moreover, "Respondents cite no case law that would compel the conclusion that agencies can avoid application of *Accardi* by simply disclaiming any binding effect in the directive itself. To find otherwise would render the teaching of *Accardi* and its progeny meaningless." *Abdi*, 280 F. Supp. 3d at 389. Instead, policies like Directive 11002.1 that are intended to benefit individuals trigger the requirements of *Accardi* and *Morton*. *Damus*, 313 F. Supp. 3d at 338. While Mr. Akhmedov has no right to be granted parole, he has a right to have his request adjudicated in

accordance with the applicable policy. *Id.* at 337-338; *accord De Jesus Martinez*, 341 F. Supp. 3d at 410.

Finally, Respondents incorrectly state that Directive 16004.1's policy favoring release of noncitizens who have been granted asylum does not apply because § 1225(b)(2) is a "requirement under law to detain." Resp. at 24 & Exh. A. While § 1225(b) requires detention without a bond hearing, the statute permits ICE to parole arriving aliens pursuant to 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288, 300. That is why Directive 16004.1 says "[a]rriving aliens should be considered for parole." Resp., Exh. A. Respondents failed to consider Mr. Akhmedov's request for parole in accordance with this policy, in violation of the APA.

Given the length of Mr. Akhmedov's detention and ICE's repeated failure to comply with these binding policies, the Court should exercise its equitable power to order his release. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 656-67 (D. Mass. 2017); *accord Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *2 (M.D. Pa. 2020) (exercising the power to hold a bond hearing to enforce a writ of habeas corpus); *Santos v. Smith*, 260 F. Supp. 3d 598, 615-16 (W.D. Va. 2017) (ordering release rather than additional process).

CONCLUSION

For the foregoing reasons, Mr. Akhmedov respectfully requests that the Court grant his petition for writ of habeas corpus and order respondents to release him or

to hold a bond hearing at which the Department of Homeland Security bears the burden of showing that his continued detention is necessary.

Dated: September 18, 2025

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**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY**

_____)	
MAKSADDZHON AKHMEDOV,)	
Petitioner,)	CASE NO: 25-13734
)	
v.)	(Arleo, J.)
)	
YOLANDA PITTMAN, et al.,)	ELECTRONICALLY FILED
Respondents.)	
_____)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on September 17, 2025, she served a copy of the attached

**REPLY TO RESPONDENTS’ ANSWER TO PETITION FOR WRIT OF HABEAS
CORPUS**

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