UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

RALPH BRONSON FILS-AIME

Petitioner,

v.

ANDREW ACKLEY, Acting Warden of the Federal Correctional Institute, Berlin; **PATRICIA H. HYDE**, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General;

Respondents.

Case Number: 1:25-cv-287-JL-TSM

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR HABEAS CORPUS RELIEF

INTRODUCTION

Petitioner Ralph Bronson Fils-Aime is an asylum seeker from Haiti whose deportation to Haiti has been blocked through the Immigration Judge's (IJ's) decision granting him statutory withholding of removal on April 22, 2025 under 8 U.S.C. § 1231(b)(3)(A) ("[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."). Respondents did not appeal the IJ's decision. However, instead of releasing Petitioner from immigration custody, Respondents issued a notice of removal to Mexico on July 31, 2025, which forced Petitioner to pursue a motion to reopen with the IJ. After the IJ reopened Petitioner's removal proceedings, Petitioner is pursuing his asylum, statutory withholding of removal, and protection under the Convention Against Torture (CAT) with respect to Mexico.

Throughout Petitioner's removal proceedings, he has been mandatorily detained for more than 12 months (since August 22, 2024) under 8 U.S.C. § 1225(b) and 1231(a). Because Petitioner's detention has been and will continue to be unreasonably prolonged, this Court should order a bond hearing at which Respondents justify his detention under clear and convincing evidence. Respondents argue that this Court should not provide this relief for two reasons. First, in the Respondents' view, Petitioner has failed to exhaust his administrative remedies such as "requesting a bond redetermination hearing" or "seeking release on parole." Docket Number (DN) 15-1 (Govt's Br.) at 7. Second, Petitioner's prolonged detention without a bond hearing does not violate the Due Process Clause as an individual detained under 8 U.S.C. § 1225(b). *Id.* at 8-13.

Neither argument is persuasive.

First, Petitioner is statutorily ineligible for a bond hearing under 8 U.S.C. § 1225(b), and

the IJ (or the BIA) has no power to address the constitutionality of his mandatory detention. There is no prudential exhaustion requirement for Petitioner to seek a relief that is futile. Even assuming that the Court imposes such a requirement, Respondents acknowledge that Petitioner sought a bond hearing but withdrew his request because of the ineligibility problem. DN 15-2 at 3-4 ¶¶16-17. To the extent Respondents complain that Petitioner has not sought a request for release under parole, Respondents are incorrect. *Cf.* DN 1-2 at 1-58 (Parole Request Package dated April 3, 2025).

Second, contrary to Respondents' treatment of Petitioner, Petitioner is not like a litigant in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), or *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950), for the purpose of Due Process Clause analysis, as he already prevailed in his statutory withholding of removal relief with respect to Haiti. *See Khouzam v. AG of the United States*, 549 F.3d 235, 256 (3d Cir. 2008) (finding that "[n]either [*Mezei* or *Knauff*] case is applicable" under the Due Process Clause because "unlike the aliens in *Mezei* and *Knauff*, [the petitioner] has already been granted statutory relief from removal"). Several courts have found that noncitizens in similar situations are entitled to a bond hearing under the Due Process Clause. *See A.L. v. Oddo*, 761 F. Supp. 3d 822, 824-27 (W.D. Pa. 2025) (granting habeas and ordering a bond hearing after the arriving alien petitioner's "nearly ten months" during which he prevailed in withholding of removal); *Lett v. Decker*, 346 F. Supp. 3d 379, 387 (S.D.N.Y. 2018) (10 months of detention); *Didier Kofe Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 850 (E.D. Va. 2020) (22 months of detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 605 (E.D. Va. 2021) (24 months of detention). *See Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018) ("agree[ing] 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").

To be sure, one of the critical factors to consider is "the foreseeability of proceedings concluding in the near future (or the likely duration of future detention)[.]" *Rocha v. Barr*, 422 F. Supp. 3d 472, 480 (D.N.H. 2019). In this case, Respondents' attempt to deport Petitioner to a third country even after he prevailed in a statutory relief with respect to the proposed country of deportation highly favors habeas relief. And Respondents do not claim that they will not attempt to remove him to another country other than Haiti and Mexico, even if he prevails in his protective claims with respect to Mexico. *Cf. id.* at 481 (there is "no suggestion that removal will be delayed once proceedings are concluded"). In short, unlike other ordinary cases, the terminating point will not come in the near future.

For these reasons, this Court should grant Petitioner's Petition for Writ of Habeas Corpus and deny Respondents' Motion to Dismiss or, in the Alternative, for Summary Judgment. *See* 28 U.S.C. § 2243 ("The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.").

MATERIAL UNDISPUTED FACTS

Petitioner is a 32-year-old asylum seeker from Haiti. Exhibit 17 (IJ Oral Ruling) at 13. Petitioner left Haiti in 2018 because [redacted]

[redacted]

On or about April 28, 2022, Petitioner crossed the United States southern border without a lawful entry and was detained. After his release from the border under parole, Petitioner resided in Massachusetts with his family. Petitioner has dismissed criminal records, including unlicensed operation of a motor vehicle, uninsured motor vehicle, unregistered motor vehicle, failure to stop/yield, possession of a class B drug, and assault and battery on a household member.

On August 22, 2024, Respondents detained Petitioner and placed him in removal proceedings after the credible fear interview determination process. With limited assistance from the Harvard Immigration and Refugee Clinical Program of Harvard Law School (HIRC), *pro se* Petitioner pursued his asylum, statutory withholding of removal, and protection under the Convention Against Torture (CAT). The only designated country of removal was Haiti. *See* Exhibit 17 at 57 ("The [IJ] found by clear and convincing evidence [Petitioner] was removable and designated Haiti as a country of removal."). On April 3, 2025, Petitioner, represented by HIRC for parole request purposes, submitted a release request. DN 1-2. Based on information and belief, Respondents denied this parole request. On April 22, 2025, the IJ at the Chelmsford Immigration Court (MA) granted his statutory withholding of removal with respect to Haiti. Exhibit 17 at 56-67; DN 5-1 at 1-4.

Respondents did not appeal the IJ's decision to the BIA. While Petitioner remained in detention at FCI Berlin, Respondents informed Petitioner on July 31, 2025, that Respondents were removing Petitioner to Mexico. DN 6-1 (Notice of Removal). On August 1, 2025, after securing additional counsel, Petitioner filed a petition for review and stay of removal motion with the First Circuit. DN 1-5, 1-6. On the same day, Petitioner also filed an administrative motion to reopen and stay of removal with the IJ at the Chelmsford Immigration Court. DN 1-4.

On August 6, 2025, the IJ granted Petitioner's motions to stay removal and reopen. DN 8-1. On August 14, 2025, the First Circuit granted Petitioner's motion to stay removal "in relation to any and all removal orders entered against him." DN 12-1.

On August 19, 2025, Petitioner had his first master calendar hearing. DN 12-2. The IJ set Petitioner's individual hearing with respect to Mexico for October 22, 2025. DN 12-2. Subsequently, the IJ changed the individual hearing date to October 8, 2025. Exhibit 16.

ARGUMENT

I. THE COURT CAN AND SHOULD ENTERTAIN PETITIONER'S HABEAS CORPUS PETITION

The Court can and should entertain Petitioner's arguments presented in his habeas corpus petition. Respondents do not appear to assert that there is a statutory mandate requiring exhaustion here. *See* Govt's MTD at 7-8. Nevertheless, Respondents request that this Court dismiss the petition because Petitioner "has not sought release by requesting a bond redetermination hearing, nor by seeking release on parole." *Id.* at 7. The Court should reject this argument.

Although this Court has broad discretion to require administrative exhaustion based on prudential reasons, "[e]xhaustion is not required" when the "exhaustion would be futile[.]" *Williams v. Warden, FCI Berlin*, 2025 DNH 086, 2025 U.S. Dist. LEXIS 148910, at *16 (D.N.H. Aug. 4, 2025). Further, "[a] failure to exhaust may also be excused when exhaustion would cause irreparable harm, such as by requiring him to be incarcerated beyond the date he would otherwise be entitled to release[.]" *Id.* All of these exceptions to the prudential exhaustion requirements apply in this case.

First, Petitioner is statutorily ineligible to seek a bond hearing before an IJ under 8 U.S.C. § 1225(b). Indeed, this is why Petitioner withdrew the bond hearing request after initially seeking the relief before the IJ. Moreover, IJs and the BIA lack the authority to address any constitutional

questions, including Petitioner's as-applied due process challenge. *See Alvarez Figueroa v. McDonald*, 680 F. Supp. 3d 18, 23 (D. Mass. 2018) ("While Petitioner did not appeal the IJ's detention decision to the BIA, the agency would not have had jurisdiction to consider his due process arguments even if they had been presented.") (citing *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010)); *Matter of G-K-*, 26 I. & N. Dec. 88 (B.I.A. 2013) ("The Board of Immigration Appeals and the Immigration Judges do not have the authority to rule on the constitutionality of the statutes they administer and therefore lack jurisdiction to address a claim that the statute barring relief for particularly serious crimes is void for vagueness."). In other words, seeking a bond hearing would be an empty exercise and futile.

Further, Petitioner has already sought a request for parole release with Respondents, which was presumably denied. DN 1-2. Nor should Petitioner be required to seek subsequent parole release after obtaining the statutory withholding of removal relief. When Petitioner was granted a country-specific statutory relief, such as statutory withholding of removal or protection under the Convention Against Torture (CAT), Respondents' own policy required them to consider Petitioner's release. *See A.L.*, 761 F. Supp. 3d at 826 ("the longstanding and current policy of DHS and ICE favors release of aliens who have been granted protection by an immigration judge, to specifically include withholding of removal, absent exceptional circumstances such as national security issues or danger to the community, and absent any requirement under law to detain"). *See also* Detention and Release during the Removal Period of Aliens Granted Withholding or Deferral of Removal, Immigration and Naturalization Service (Apr. 21, 2000); Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed, Immigration and Customs Enforcement (Feb. 9, 2004) (collectively attached as Exhibit 18). Respondents did not do so, presumably because these policies and the new policy provide an exception—namely, a third

country removal. *See id.*; 2025 February ICE Directive; 2025 March ICE Directive (collectively attached as Exhibit 19). Because the record is clear that Respondents attempted to remove Petitioner to an alternative country, any parole request would have been futile.

Second, Petitioner suffers from immigration detention. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) ("There is no question that [the petitioner] suffered a substantial deprivation of liberty."). Respondents rely on the First Circuit's *Brito* to support their position that this Court should wait until the BIA's decision on appeal. *See* Govt's MTD at 7 (citing and quoting *Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021)). However, *Brito* emphasized that "[e]xhaustion might not be required if [the petitioner] were challenging h[is] incarceration[.]" *Brito*, 22 F.4th at 256. And this Court has not required the petitioner to exhaust the administrative remedy at the IJ or the BIA before the petitioner can challenge his incarceration under the Due Process Clause. *See Rocha v. Barr*, 422 F. Supp. 3d 472 (D.N.H. 2019).

Based on all of these exceptions to any prudential exhaustion requirement, this Court can and should entertain Petitioner's habeas corpus petition.

II. PETITIONER HAS DUE PROCESS RIGHTS TO AN INDIVIDUALIZED BOND HEARING WHEN DETENTION BECOMES UNREASONABLY PROLONGED

A. Due Process Requires an Individualized Bond Hearing for Petitioner Once the Detention Becomes Unreasonably Prolonged

Petitioner, as an arriving alien who already prevailed in statutory relief, has due process rights beyond the protections provided by the statute. Respondents argue that the only process that is due is "the protections set forth by statute[.]" Govt's Br. at 8. However, Respondents do not consider the fact that Petitioner already prevailed in a statutory relief. *Id.* at 8-13. While Respondents cite several cases in support of their position that Petitioner is not entitled to a bond hearing under the Due Process Clause, none of the cases Respondents cites have facts resembling

Petitioner's case—namely, whether a noncitizen who already prevailed in securing a statutory relief from removal but is pursuing additional protective claims conferred by Congress because the government attempts to deport him to another country has due process rights beyond the statutes.

The Third Circuit rejected a similar argument that Respondents present in this case. In disagreeing with the government's argument that the petitioner in *Khouzam v. AG of the United States*, 549 F.3d 235 (3d Cir. 2008) was "entitled to no process because he was intercepted prior to entry[,]" the *Khouzam* court distinguished *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) and *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950) from the petitioner's case. *Khouzam*, 549 F.3d at 256-57. The court explained that "[o]ne dispositive difference [wa]s that Khouzam, unlike the aliens in *Mezei* and *Knauff*, ha[d] already been granted statutory relief from removal." *Id.* at 256. This Court should conclude the same.

Other cases Respondents rely on should be rejected for the same reason. Putting aside the fact that *Thuraissigiam* involved no due process analysis for the lawfulness of mandatory and prolonged detention, *Thuraissigiam* involved a person who failed to secure his protection claim at the initial screening stage, not after the person prevailed in a statutory relief through full-blown hearings. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). *See also A.L.*, 761 F. Supp. 3d at 825 ("Nowhere in [*Thuraissigiam*] 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.").

Nor does Respondents' reliance on *Amanullah v. Nelson*, 811 F.2d 1 (1st Cir. 1987) and other district court cases support their position that Petitioner has no due process rights beyond the statute because the facts are distinguishable. Govt's Br. at 11-13; *Amanullah*, 811 F.2d at 4 (the

asylum and withholding of deportation applications are still pending); *Alexandre v. Decker*, 2019 U.S. Dist. LEXIS 53166, at *2 (S.D.N.Y. Mar. 28, 2019) (both the IJ and BIA denied the asylum application, which was appealed to the Second Circuit); *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 646 (S.D.N.Y. 2018) ("Petitioner's [asylum, withholding of removal, and protection under the Convention Against Torture] application currently remains pending."); *Aracely R. v. Nielsen*, 319 F. Supp. 3d 110, 122 (D.D.C. 2018) (no indication that any noncitizen in the case was granted a statutory relief); *Ramirez v. Decker*, 612 F. Supp. 3d 200, 204 (S.D.N.Y. 2020) (the government's appeal of the IJ's decision granting asylum to the BIA remains pending); *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1205 (D.N.M. 2020) (the petitioner's appeal of the BIA's asylum denial remains pending at the Tenth Circuit); *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 687 (E.D. Va. 2020) ("The appeal before the BIA remains pending."); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 669 (S.D. Tex. 2021) (Petitioner's "appeal [of the IJ's decision] remains pending[.]").

In contrast, individuals like Petitioner, whose withholding of removal has been granted but whom Respondents attempt to terminate the protection or remove to another country, are entitled to additional protections. Indeed, unsurprisingly, the regulation also provides such protection. *See* 8 C.F.R. § 1208.24(f) (requiring the government to "establish, by a preponderance of evidence" that the withholding of removal should be terminated). Although the grant of withholding of removal does not permit Petitioner to either adjust his immigration status to become a lawful permanent resident or hold a legal immigration status, it still provides a practical and legal avenue to stay in the United States and allow him to lawfully work as long as the withholding of removal is not terminated pursuant to 8 C.F.R. § 1208.24(f) or the government does not deport him to another country pursuant to 8 C.F.R. § 1208.16(f). *See* 8 C.F.R. § 274a.12(a)(10) (authorizing employment to "[a]n alien granted withholding of deportation or removal for the period of time in

that status, as evidence by an employment authorization document issued by the Service"). Further, the fact that Respondents attempt to remove Petitioner to a third country instead of terminating his withholding of removal does not change the conclusion that Petitioner has more due process rights than other arriving aliens who have not secured their statutory relief. Indeed, this Court previously noted that Petitioner "may well have due process rights to notice and an opportunity to apply for country-specific relief if ICE ever attempts to remove him to a country other than" the designated country of removal. *Chaleunphong v. Strafford Cnty. Dep't of Corr. Superintendent Christopher Brackett*, No. 18-cv-1093-JL, 2019 U.S. Dist. LEXIS 251231, at *12 (D.N.H. June 5, 2019); *cf. Mezei*, 345 U.S. at 212 ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."). In sum, Petitioner has more due process rights than other arriving aliens whose statutory relief applications remain pending. *See, e.g., Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 517 (D. Md. 2025) ("the statutory scheme which conferred withholding of removal also entitled Abrego Garcia to not be returned to El Salvador absent process"), *vacated and remanded on other grounds in Noem v. Garcia*, 145 S. Ct. 1017 (2025) ("The rest of the District Court's order [other than the deadline] remains in effect but requires clarification [on the meaning of effectuate the litigant's return] on remand."); *Osorio-Martinez v. AG United States*, 893 F.3d 153 (3d Cir. 2018) ("Because of the rights and benefits they have been accorded, [Special Immigrant Juvenile] stand much closer to lawful permanent residents than to aliens present in the United States for a few hours before their apprehension."); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953) ("Although Congress may prescribe conditions for [a lawful permanent resident's] expulsion and deportation, not even Congress may expel him without allowing him a fair opportunity to be heard.").

Thus, Petitioner has more due process rights than other arriving aliens, and he should not be detained in an unreasonably prolonged manner without a bond hearing (even assuming that other arriving aliens' due process rights are exclusively limited to the process provided by statutes).

B. Petitioner's Detention Has Become Unreasonably Prolonged

The Court should apply the non-exhaustive reasonableness test and hold that Petitioner's mandatory detention is unreasonable and he should be given a bond hearing. Because Petitioner has due process rights not to be detained unreasonably prolonged detention without a bond hearing, this Court should consider four factors: (1) the length of detention, (2) the likely duration of future detention, (3) the reasons for the delay, and (4) the conditions of confinement as to whether they are meaningfully different from criminal punishment. *See A.L.*, 761 F. Supp. 3d at 826 ("In assessing whether detention has become unreasonable, this Court sees no reason not to apply the same factors laid out in *German Santos*" *v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 212 (3d Cir. 2020), which provides these four factors); *Rocha*, 422 F. Supp. 3d at 480-81 (applying similar non-exhaustive factors in determining whether the 8 U.S.C. § 1226(c) detention has become unreasonable).

First, the length of detention favors Petitioner's habeas corpus relief. As of the filing of this brief, Respondents have detained Petitioner for more than twelve months. *See A.L.*, 761 F. Supp. 3d at 826 ("Petitioner has been held in custody without a bond hearing for nearly ten months."); *Lett*, 346 F. Supp. 3d at 387 (10 months of detention); *Rocha*, 422 F. Supp. 3d at 481 (finding that "the one-year period" of detention "is persuasive"); *Smorodska v. USICE*, No. 1:20-cv-446-JL, Order (Docket Number (DN) 31) at *3 (D.N.H. May 14, 2020) ("Smorodska has been in pre-removal detention for over 13 months—since April 1, 2019.").

Second, the likely duration of future detention favors Petitioner's habeas corpus relief. It is unlikely that Petitioner's removal proceedings will end anytime soon. Ordinarily, individuals in removal proceeding conclude their proceedings once they are granted statutory relief, even if the relief is country-specific. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2001) ("[I]n 2017, only 1.6% of aliens who were granted withholding of removal were actually removed to an alternative country."). However, Petitioner's case is a rare case in which Respondents attempt to deport him to an alternative country. Moreover, Respondents do not state or otherwise indicate whether Respondents will not attempt to deport Petitioner to another country even if he prevails in his statutory relief with respect to Mexico. *See Zadvydas v. Davis*, 533 U.S. 678, 684 (2001) (construing Mr. Zadvydas' continued detention during the government's efforts to deport him to other countries as potentially indefinite). Thus, this factor favors Petitioner. *See A.L.*, 761 F. Supp. 3d at 826 ("[I]t is likely that Petitioner's detention will continue while Petitioner's appeal from the denial of his request for asylum is pending, which could take months."); *Smorodska*, No. 1:20-cv-446-JL, Order at *4 ("But even assuming that the BIA may issue a final removal order [in three months], Smorodska has already been detained for almost 14 months.").

Third, "[t]he reasons for the delay also weigh in favor of unreasonableness." *A.L.*, 761 F. Supp. 3d at 826. *Pro se* Petitioner prevailed in his statutory withholding of removal to Haiti before the IJ. Respondents elected not to appeal that decision to the BIA. During Petitioner's first removal proceedings, Petitioner only had two hearings, the December 16, 2024 hearing for master calendar (i.e., scheduling) and the April 22, 2025 hearing for individual (i.e., the merits of the asylum application).[1] *See* Exhibit 16 (Notices of Hearing). Thus, there is no delay caused by

[1] Although the IJ initially scheduled the individual hearing for April 11, 2025, the IJ moved the hearing date to April 22, 2025 because he "was unable to get to the case as [he] was finishing another one at the time." Exhibit 17 (Transcript) at 7.

Petitioner. Moreover, this Court does "not consider bond fide immigration proceedings, initiated by the alien, as grounds to deny a bond hearing[.]" *Smorodska*, No. 1:20-cv-446-JL, Order at *4; *A.L.*, 761 F. Supp. 3d at 826 ("Delays while he exercises the rights afforded to him by statute cannot be held against him *German Santos*, 965 F.3d at 212."). On the other hand, the delay is resulted from Respondents' failure to designate Mexico as an alternative country of removal during the first removal proceedings but instead Respondents' attempt to deport Petitioner to Mexico without reopening the removal proceedings. This is impermissible under the Due Process Clause. *See Chaleunphong*, 2019 U.S. Dist. LEXIS 251231, at *12 (Petitioner "may well have due process rights to notice and an opportunity to apply for country-specific relief if ICE ever attempts to remove him to a country other than" the designated country of removal."); *Kossov v. INS*, 132 F.3d 405, 408 (7th Cir. 1998) (failure to provide notice of and hearing on deportation to a third country was a "fundamental failure of due process"); *Kuhai v. INS*, 199 F.3d 909, 913 (7th Cir. 1999) (same); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process."); *Su Hwa She v. Holder*, 629 F.3d 958 (9th Cir. 2010) ("a failure to provide notice and, upon request, stay removal or reopen the case for adjudication of She's applications as to Burma would constitute a due process violation if Burma becomes the proposed country of removal (as opposed to an alternative country of removal") (emphasis in original); *Wani Site v. Holder*, 656 F.3d 590, 595 (7th Cir. 2011) (remanding the case to the Immigration Judge to determine whether the designated country of removal could be changed from Sudan to South Sudan). "Because of these delays, this factor favors [Petitioner's] habeas request." *Rocha*, 422 F. Supp. 3d at 481.

Fourth, the conditions of confinement as to whether they are meaningfully different from criminal punishment favor Petitioner's habeas relief. Petitioner has been detained first at the Plymouth County Correctional Facility (MA) and the Federal Correctional Institution (FCI) Berlin (NH). Both are "penal facility[ies]." *Rocha*, 422 F. Supp. 3d at 482. "This favor thus favors [Petitioner's] petition." *Id.*

Because all four factors favor the instant habeas relief, this Court should order a bond hearing "at which the government bears the burden of proving by clear and convincing evidence that the alien should not be released on bond." *Smorodska*, No. 1:20-cv-446-JL, Order at *5 (quoting *Rivera-Medrano v. Wolf*, No. 20-cv-194-JD, 2020 U.S. Dist. LEXIS 59609, at *10-11 (D.N.H. Apr. 4, 2020), *vacated by Rivera-Medrano v. Mayorkas*, 2023 U.S. App. LEXIS 15551 (1st Cir. June 14, 2023)); *A.L.*, 761 F. Supp. 3d at 826 ("Respondents must justify Petitioner's continued detention by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released.") (citing *German Santos*, 965 F.3d at 213-14).

CONCLUSION

For the reasons stated above, this Court should grant Petitioner's Petition for Writ of Habeas Corpus and deny Respondents' Motion to Dismiss or, in the Alternative, for Summary Judgment.

Date: September 8, 2025

Ralph Bronson Fils-Aime,

By and through her attorneys,

/s/ SangYeob Kim
Gilles R. Bissonnette (NH Bar: 265393)
SangYeob Kim (NH Bar: 266657)
Chelsea Eddy (NH Bar: 276248)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE
18 Low Avenue
Concord, NH 03301
Phone: 603.333.2081
gilles@aclu-nh.org
sangyeob@aclu-nh.org
chelsea@aclu-nh.org