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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

John Doe,
Petitioner-Plaintiff, and
James Smith,
Plaintiff,
v.

Case No. 2:25-cv-13124

KEVIN RAYCRAFT, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; TODD LYONS, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; JOSEPH B. EDLOW, in his official capacity as Director, U.S. Citizenship and Immigration Services, and KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY,
INJUNCTIVE, AND
MANDAMUS RELIEF**

Respondent-Defendants.

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR
DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF**

Petitioner-Plaintiff John Doe¹ and respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents. Additionally, Plaintiffs John Doe and James Smith respectfully request that the Court grant them declaratory, injunctive, and mandamus relief to remedy the violations of the Administrative Procedure Act discussed below:

INTRODUCTION

1. Petitioner-Plaintiff John Doe came to the United States from Haiti in 2023 to seek asylum. He presented himself at a port-of-entry, was paroled into the country until December 2025, and subsequently filed his asylum application. He is now married to a U.S. citizen, and has filed an application for adjustment of status on that basis. He has never violated any condition imposed by immigration officials or been arrested.

2. Nonetheless, he was arrested and detained by Respondent-Defendants after the driver of a truck he was riding in took a wrong turn near the Ambassador Bridge. His parole was revoked without notice or any individualized determination,

¹ A motion for Petitioner-Plaintiff and Plaintiff to proceed under pseudonym is forthcoming. *See Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004).

and his subsequent parole requests have been summarily denied. Mr. Doe has now been detained in immigration custody for over five months, largely due to the government's mismanagement of his removal proceedings. Most egregiously, Respondent-Defendants have refused to expedite adjudication of his applications before U.S. Citizenship and Immigration Services, which, if granted, would immediately resolve his removal proceedings and permit his release as a lawful permanent resident.

3. Therefore, Mr. Doe now seeks relief from this Court for three reasons. First, his prolonged detention pending removal proceedings without a hearing to assess danger and flight risk violates the U.S. Constitution's Fifth Amendment because it deprives him of liberty without due process of law.

4. Second, Respondent-Defendants' revocation of his prior grant of parole under 8 U.S.C. § 1182(d)(5)(A) was inconsistent with the statute and implementing regulations because they failed to provide notice or conduct an individualized determination. That amounted to a violation of the Administrative Procedure Act (APA) and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

5. Third, Respondent-Defendants have unreasonably delayed adjudication of his pending I-130 petition and I-485 application for adjustment of status by failing to expedite consideration of those applications in light of his detention status.

6. Mr. Doe therefore respectfully requests that this Court either (1) issue a writ of habeas corpus and order Petitioner's release from custody; (2) conduct or order an immigration judge to conduct a bond hearing at which the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and the reviewing court considers alternatives to detention that could mitigate risk of flight, or (3) compel Respondent-Defendants to adjudicate Mr. Doe's pending I-130 petition and I-485 application forthwith.

JURISDICTION

7. Petitioner-Plaintiff John Doe is in the physical custody of Respondents. Mr. Doe is detained at the North Lake Correctional Facility in Baldwin, Michigan.

8. This Court has jurisdiction under 5 U.S.C. § 701 et seq. (the Administrative Procedure Act), 28 U.S.C. § 2241(c)(3) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause). *See Rosales-Garcia v. Holland*, 322 F.3d 386, 394 (6th Cir. 2003).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361, the All Writs Act, 28 U.S.C. § 1651, and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. The Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202; 5 U.S.C.

§ 702, and 28 U.S.C. § 1361. Respondent-Defendants have waived their sovereign immunity pursuant to 5 U.S.C. § 702.

VENUE

10. Venue is proper in the Eastern District of Michigan under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Mr. Doe is detained at the direction of, and is in the immediate custody of, Respondent-Defendant Raycraft. *See Roman v. Ashcroft*, 340 F.3d 314, 320-21 (6th Cir. 2003).

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondent-Defendants are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims and relevant facts occurred in the Eastern District.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or order Respondent-Defendants to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondent-Defendants must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis

added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

14. Petitioner-Plaintiff John Doe is a native of Haiti who has resided in the United States since December 2023. He has been detained in ICE custody since April 14, 2025, and is currently detained at the Northlake Processing Center in Baldwin, Michigan.

15. Respondent-Defendant Kevin Raycraft is the Acting Director of the Detroit Field Office of ICE’s Enforcement and Removal Operations division. As such, Acting Director Raycraft is Petitioner-Plaintiff’s immediate custodian and is responsible for Petitioner-Plaintiff’s detention and removal. He is named in his official capacity.

16. Respondent-Defendant Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). In this capacity, Acting Director Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations, and, as such, is a legal custodian of petitioner. Acting Director Lyons is further authorized to delegate such powers and authority to subordinate employees of ICE. *See* 8 U.S.C. § 1103(a)(4).

17. Respondent-Defendant Joseph B. Edlow is the Director of U.S. Citizenship and Immigration Services (USCIS). In this capacity, Director Edlow is responsible for the administration of federal immigration law and the adjudication of affirmative applications for immigration benefits, including I-130 petitions and Form I-485 Applications for Adjustment of Status. Director Edlow is further authorized to delegate such powers and authority to subordinate employees of USCIS. *See* 8 U.S.C. § 1103(a)(4).

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner-Plaintiff's detention, as well as USCIS. Ms. Noem has ultimate custodial authority over Petitioner-Plaintiff and is sued in her official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary. *Shurney v. I.N.S.*, 201 F. Supp. 2d 783, 789 (N.D. Ohio 2001).

20. In making that decision, the Court should consider the urgency of the need for immediate review. "Where a person is detained by executive order . . . the

need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

21. In general, courts do not require exhaustion “(1) where such requirement would subject an individual to an unreasonable or indefinite time frame for administrative action, (2) where the administrative agency lacks the competence to resolve the particular issue presented, or (3) the exhaustion of administrative remedies would be futile because the administrative body is shown to be biased or has pre-determined the issue before it.” *Shurney*, 201 F. Supp. 3d at 789.

22. By regulation, arriving aliens are ineligible for bond. 8 C.F.R. § 1003.19(h)(2)(i)(B). Exhaustion before the BIA would therefore be futile. *See* 8 C.F.R. § 1003.1(d) (providing that the BIA is governed by applicable regulations).

23. Further, “the BIA does not have jurisdiction to adjudicate constitutional issues” *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002). Therefore, any administrative proceedings would be futile because petitioner raises a constitutional due process claim. *Marogi v. Jenifer*, 126 F. Supp. 2d 1056, 1060 (E.D. Mich. 2000).

24. Mr. Doe utilized the only available avenue for release available to him—request for parole “for urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5)(a). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018)

(noting that people detained under 8 U.S.C. §1225(b) may be released only through § 1182(d)(5) parole). As discussed below, Mr. Doe's most recent parole request was denied on August 12. There is no hearing, no record, and no administrative appeal from a negative parole decision, even to correct manifest errors. *See Rodriguez v. Robbins*, 804 F.3d 1060, 1081 (9th Cir. 2015), *reversed by Jennings*, 583 U.S. at 281. Mr. Doe has therefore exhausted all available administrative remedies to challenge his detention.

25. There is no administrative remedy for Respondent-Defendants' neglect of their duties toward Mr. Doe related to adjudication of his pending applications before USCIS.

STATEMENT OF FACTS

26. Petitioner John Doe arrived in the United States on December 27, 2023 and applied for admission at the Nogales, Arizona Port of Entry. Exh. A (Notice to Appear). At that time, he was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5) until December 25, 2025. *Id.*; Exh. B (I-94). He was issued a Notice to Appear and scheduled for a hearing before an immigration judge in Newark, NJ. He was released from custody and moved to New Jersey, where he filed applications for asylum and temporary protected status (TPS). Exhs. C, D.

27. On April 14, 2025, Mr. Doe was working as a delivery assistant on a truck when the driver took a wrong turn near the Ambassador Bridge. Mr. Doe was

detained by the Detroit Field Office of Immigration and Customs Enforcement (ICE) and transferred to the Mahoning County Jail in Youngstown, Ohio. Exh. N (Decl. of John Doe).²

28. After his detention, Mr. Doe's removal proceedings continued, subject to several administrative delays. First, ICE did not inform the Newark Immigration Court, where his removal proceedings were venued, of his detention until May 29, 2025, a month and a half after he was detained. Exh. F (Form I-830 dated May 29, 2025). His case was then transferred to the Cleveland Immigration Court, where he was scheduled for several master calendar hearings in June 2025 and then an individual hearing on his application for asylum on July 23, 2025. Exh. G (Hearing Notices).

29. Meanwhile, however, ICE transferred Mr. Doe to the Northlake Processing Center in Baldwin, Michigan on approximately June 24, 2025, but did not advise the immigration court of the transfer until July 8, 2025. Exh. H (Form I-830 dated July 8, 2025). The Cleveland Immigration Court, in turn, did not process

² Respondent-Defendants have regularly detained people in this location in recent months. See Frank Witsil, *Venezuelan Immigrant in Detroit Makes a Wrong Turn at Ambassador Bridge, Is Deported*, Detroit Free Press (Apr. 23, 2025), <https://www.freep.com/story/news/local/michigan/2025/04/23/venezuelan-immigrant-detroit-michigan-deported-el-salvador/83228829007/>; Niraj Warikoo, *Wrong Turn at Ambassador Bridge Exit Leads to Detention for Detroit Immigrant Mom, Kids*, Detroit Free Press (Mar. 29, 2025), <https://www.freep.com/story/news/local/michigan/detroit/2025/03/29/immigrant-mom-kids-detained-after-wrong-turn-at-ambassador-bridge/82711327007/>.

that form and transfer the case to the Detroit Immigration Court until July 21, 2025. The Detroit Immigration Court then erroneously placed the case on the non-detained docket and did not schedule a hearing until August 6, 2025. Exh. G.

30. On August 14, 2025, Mr. Doe appeared with counsel for a master calendar hearing, and the immigration judge scheduled a final individual hearing on Mr. Doe's application for asylum for October 6, 2025. *Id.* On September 9, 2025, the immigration court issued another notice changing the hearing date to November 14, 2025.

31. While detained at the Northlake Processing Center, Mr. Doe married his fiancé James Smith, a United States citizen who resides in New Jersey. Exh. I (Marriage Certificate). Mr. Doe and Mr. Smith had planned to marry prior to Mr. Doe's detention and had applied for a marriage license on March 24, 2025. Their plans were delayed by Mr. Doe's detention, particularly because communication at the Mahoning County Jail was limited. The couple married on July 3, 2025 through a remote ceremony at the Northlake Processing Center.

32. Mr. Smith filed an I-130 Petition for Alien Relative on Mr. Doe's behalf with U.S. Citizenship and Immigration Services (USCIS), and Mr. Doe filed an I-485 Application for Adjustment of Status to that of a Lawful Permanent Resident. Exh. J (Receipt Notices). Mr. Doe is an "immediate relative" of a U.S. citizen, so his visa application is not subject to numerical limitations and a visa will be immediately

available to him if USCIS approves the I-130 petition. Moreover, USCIS has jurisdiction over the I-485 application because Mr. Doe is an “arriving alien.” 8 C.F.R. § 1245.2. Therefore, USCIS can adjudicate the I-130 petition and the I-485 application concurrently.

33. At the August 14, 2025 master calendar hearing, counsel for Mr. Doe requested on the record that the Office of the Principal Legal Advisor (OPLA) for the Department of Homeland Security (DHS) request that USCIS expedite consideration of Mr. Doe’s pending applications. Counsel for the DHS indicated that she would do so, but in subsequent communications DHS declined to request expedited adjudication of the I-130 and I-485. Exh. K (Emails).

34. On information and belief, and through experience of undersigned counsel, DHS OPLA has a long-standing policy and practice of requesting that USCIS expedite adjudication of collateral matters that impact the outcome of removal proceedings of detained noncitizens, like Mr. Doe’s I-130 and I-485. As reflected in the email of Officer Pomales at Exh. K, the request for expedited processing is submitted to USCIS directly by the OPLA office handling the detained removal proceeding.

35. Since his detention in April 2025, Mr. Doe has filed two requests for release on parole, most recently July 11, 2025. Tab L. During the pendency of that request, Mr. Doe sent a message to ICE through a tablet at the detention center asking

about the status of the request, and received the following response: “We don’t release people if we haven’t denied it yet we will soon.” Exh. E (Decl. of James Smith). A later message indicated that the request was pending. An ICE officer interviewed Mr. Doe about the request on August 8, and ICE issued a decision denying parole on August 12. Exh. M.

36. At the Mahoning County Jail, where Mr. Doe was detained for over two months, he was detained alongside people in criminal custody. Exh. N. At the Northlake Processing Center he is detained only with immigration detainees, but the conditions still resemble criminal confinement: he is locked into his cell for multiple hours a day, phone calls are expensive and his ability to use the phone is restricted, meal times are inflexible, and he is unable to work and support his family. *Id.*

LEGAL FRAMEWORK

I. Prolonged detention without a bond hearing pending removal proceedings violates procedural due process.

37. The Immigration and Nationality Act contains several provisions authorizing detention of noncitizens. Section 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an Immigration Judge to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Noncitizens who are removable by virtue of certain criminal convictions are detained pursuant to § 1226(c). Section 1231 governs the detention of noncitizens with a final order of removal. Lastly, § 1225(b), the statute under which Mr. Doe is

detained, requires the detention of noncitizens arriving at a designated port of entry as well as certain other noncitizens who are treated as “applicants for admission.” In stark contrast to § 1226(a), other detention provisions do not authorize a bond hearing. *See generally Jennings*, 583 U.S. at 281.

38. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *Rosales-Garcia v. Holland*, 322 F.3d 386, 409 (6th Cir. 2003) (en banc).

39. Due process therefore requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to

mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes. As Justice Kennedy made clear in his concurrence in the 5-4 decision in *Demore*, “since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien such as respondent could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified.” *Id.* at 532 (Kennedy, J., concurring).

40. After *Zadvydas* and *Demore*, courts around the country, including the Sixth Circuit, applied the canon of constitutional avoidance and held that these statutes required a bond hearing when detention became prolonged. *Ly v. Hansen*, 351 F.3d 263, 267-68 (6th Cir. 2003) (interpreting § 1226(c) to require a bond hearing when detention becomes unreasonable); *Rosales*, 322 F.3d at 415 (applying *Zadvydas* to prolonged detention of excludable noncitizens detained under § 1231(a)(6)) *see also, e.g. Guerrero-Sanchez v. Warden York C'ty Prison*, 905 F.3d 208, 226 (3d Cir. 2018) (requiring bond hearings after six months of detention under § 1231(a)(6)); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (requiring bond hearings after six months of detention under § 1225(b)).

41. In 2018, the Supreme Court held that, as a matter of statutory construction, sections 1225(b) and 1226(c) mandate detention for the length of

proceedings and do not require bond hearings. *Jennings*, 138 S. Ct. at 844. Therefore, *Jennings* abrogated the statutory holdings of the cases cited above, including *Ly. Hamama v. Adducci*, 946 F.3d 875, 880 (6th Cir. 2020) (“*Ly* also turned on a constitutional avoidance reading of § 1226(c), one that *Jennings* expressly foreclosed.”).

42. *Jennings*, however, did not address whether unreasonably prolonged detention without a bond hearing may violate due process, and left it to the lower courts to address the issue in the first instance. *Id.* at 312. Therefore, as-applied constitutional challenges to such prolonged detention remain available, and the constitutional teachings of pre-*Jennings* cases remain relevant to those challenges. *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (“[W]e adhere to the notion that the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention under section 1226(c).”) (cleaned up). *German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (“And while *Jennings* rejected that construction as a reading of the text, it did not touch the constitutional analysis that led *Diop* and *Chavez Alvarez* to their reading. That analysis stands.”); accord *Hamama*, 946 F.3d at 882-83 (White, J., concurring).

43. Multiple circuit courts have held that prolonged detention without a bond hearing is unconstitutional, and but have applied different tests for adjudicating such claims. See *M.T.B. v. Byers*, No. 2:24-028, 2024 WL 3881843, *3 (E.D. Ky.

Aug. 20, 2024) (noting the absence of controlling authority in this Circuit). The Second Circuit applies the *Mathews v. Eldridge* framework, weighing (1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards; and (3) the Government's interest, including any additional administrative burdens that additional procedural requirements would entail. *Black v. Decker*, 103 F.4th 133, 147 (2d Cir. 2024). The Third Circuit uses its own multi-factor balancing test, which considers (1) the length of detention; (2) whether detention is likely to continue; (3) the reasons for the delay; and (4) the conditions of confinement. *German Santos*, 965 F.3d at 211.

44. In both circuits, if detention without a bond hearing has become unreasonably prolonged, the noncitizen is entitled to a bond hearing. At that bond hearing, due process requires certain minimal protections to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention and the noncitizen's ability to pay a bond. *Black*, 103 F.4th at 157-58; *German Santos*, 965 F.3d at 213-214.

45. These principles apply with equal force in the context of § 1225(b) detention, because both § 1225(b) and § 1226(c) deprive noncitizens of their liberty without an individualized determination about whether continued detention is necessary. *See A.L. v. Oddo*, 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025) (applying

German Santos to prolonged detention under § 1225(b); *Banda v. McAleenan*, 285 F. Supp. 3d 1099, 1117 (W.D. Wash. 2019) (joining “the vast majority of other district courts to conclude that unreasonably prolonged detention under § 1225(b) without a bond hearing violates due process” and applying a multi-factor analysis); *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858-59 (D. Minn. 2019) (same).

46. The Supreme Court’s decision in *Thuraissigiam* is not to the contrary. There, it explained that the “entry fiction” that allows the government to treat noncitizens who are paroled at the border as remaining outside the country for due process purposes serves to protect the “sovereign prerogative” to determine which noncitizens to admit or exclude, and thus limits noncitizens’ due process rights related to their applications for admission, not to their detention. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (holding that an arriving noncitizen “has only those rights *regarding admission* that Congress has provided by statute”) (emphasis added); *see A.L.*, 761 F. Supp. 3d at 825. The Sixth Circuit has similarly held that while excludable noncitizens “do not have a constitutional right to enter or be admitted to the United States,” they are protected by due process and may not be subjected to indefinite detention. *Rosales-Garcia*, 322 F.3d at 412-15; *see also Wong Wing v. United States*, 163 U.S. 228, 235-36 (1896); *Castro v. U.S. Dep’t of Homeland Sec.*, 835 F.3d 422, 449 & n.32 (3d Cir. 2016). Therefore, noncitizens subject to § 1225(b) are “persons” within the meaning of the Due Process Clause

and, like noncitizens detained under § 1226(c), may not be subjected to unreasonably prolonged detention without a bond hearing. *A.L.*, 761 F. Supp. 3d at 825; *see also*, e.g., *Leke v. Holt*, 521 F. Supp. 3d 597, 602 (E.D. Va. 2021); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020); *Perez v. Decker*, No. 18-cv-5279, 2018 WL 3991497, at *3 (S.D.N.Y. 2018).

47. Indeed, even those courts that have indicated that the rights of detainees under § 1225(b) are limited in some respects have acknowledged that they “still possess some rights under the Due Process Clause which may be impugned should detention under the statute become unduly and unreasonably prolonged,” and have applied similar factors to make that determination. *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 442 (D.N.J. 2019); *accord Jamal A.*, 358 F. Supp. 3d at 858 (stating that “it is not clear what, if anything, turns on this dispute, at least as a practical matter”).

48. In sum, prolonged detention without a bond hearing violates due process, regardless of the statutory basis for the detention. Court generally apply either the *German Santos* multi-factor analysis or the *Mathews v. Eldridge* balancing test to determine whether detention has become unconstitutionally prolonged.

II. Respondents must comply with the Administrative Procedure Act and procedural due process before revoking parole or denying a new parole request.

49. Under 8 U.S.C. § 1182(d)(5)(A), the Secretary of Homeland Security may release noncitizens applying for admission to the United States on parole for “humanitarian reasons or significant public benefit.” When she determines that the purposes of the parole have been served the noncitizen may be returned to custody. 8 U.S.C. § 1182(d)(5)(A).

50. The implementing regulations further provide that parole shall be automatically terminated without notice upon either (i) departure from the United States or (ii) the expiration of the period of time for which the parole was authorized. 8 C.F.R. § 212.5(e)(1). Otherwise, it may be terminated “upon written notice” “upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States.” 8 C.F.R. § 212.5(e)(2).

51. As discussed above, noncitizens are entitled to procedural due process before the government deprives them of their liberty, including by revoking or denying parole. *Rosales-Garcia*, 322 F.3d at 411; *see also Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 399 (3d Cir. 1999) (reviewing a parole denial and determining that “[t]he petitioner has not yet received the rigorous review of his eligibility for parole that due process requires”). Due process requires notice that is reasonably calculated

to apprise interested parties and an opportunity to be heard. *A.A.R.P. v. Trump*, 605 U.S. 91, 94-95 (2025).

52. Moreover, under the *Accardi* doctrine, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954) (holding that BIA must follow its own regulations in its exercise of discretion); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

53. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the Administrative Procedure Act (APA), *see Leslie v. Att’y Gen. of U.S.*, 611 F.3d 171, 175 (3d Cir. 2010) (holding that “rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency,” and a failure to follow those rules without explanation is arbitrary, capricious, and an abuse of discretion), or as a due process violation, *see Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations tends to cause unjust discrimination and deny

adequate notice and consequently may result in a violation of an individual's constitutional right to due process.”) (internal quotations omitted).

54. Prejudice is generally presumed when an agency violates its own policy. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) (“We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them.”); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) (“The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.”).

55. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, *see Damus v. Nielsen*, 313 F. Supp. 3d 317, 343 (D.D.C. 2018) (“[T]his Court is simply ordering that Defendants do what they already admit is required.”), or a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because “it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure”).

56. Multiple district courts have held that the statute and regulations require that parole revocation decisions must be made on a case-by-case basis and must

involve notice and an opportunity for the noncitizen to be heard about the reasons for the revocation. *Munoz Materano v. Arteta*, No. 25-6137, 2025 WL 2630826, at *14 (S.D.N.Y. Sept. 12, 2025); *Orellana v. Francis*, No. 25-cv-4212, 2025 WL 2402780, at *5 (E.D.N.Y. Aug. 19, 2025); *Mata Velasquez v. Kurzdorfer*, No. 5-cv-493, 2025 WL 1953796, at *10 (W.D.N.Y. July 16, 2025); *Y-Z-L-H- v. Bostock*, No. 3:25-cv-965, 2025 WL 1898025, -- F. Supp. 3d --, at *12 (D. Or. July 9, 2025). When ICE revokes parole without following those requirements, it violates procedural due process, *Accardi*, and the APA.

III. Respondents must adjudicate pending applications for immigration benefits within a reasonable time

57. U.S. citizens who marry noncitizens may file a Form I-130 Petition for Alien Relative as the first step toward securing lawful permanent resident status for their spouse. Once the I-130 is approved, the noncitizen may adjust status and obtain lawful permanent residence while remaining in the United States if they (1) apply for adjustment; (2) are eligible to receive an immigrant visa and are admissible to the United States for permanent residence; and (3) an immigrant visa is immediately available. There is no numerical limitation on visas for “immediate relatives” of U.S. citizens, including spouses, so the visa is always immediately available. 8 U.S.C. § 1151.

58. USCIS has jurisdiction over all adjustment applications, unless an immigration judge has jurisdiction pursuant to 8 C.F.R. § 1245.2(a)(1). Immigration

judges generally do not have jurisdiction over applications for adjustment of status filed by arriving aliens. 8 C.F.R. § 1245.2(a)(1)(ii). Therefore, USCIS has jurisdiction to adjudicate the adjustment applications of arriving aliens, like Mr. Doe.

59. At the same time, immigration judges have jurisdiction over asylum applications for people in removal proceedings. 8 C.F.R. § 1208.2(b). This creates a “race to the finish” where two different applications are being adjudicated on different timelines, in different venues. As discussed above, OPLA, opposing counsel in the removal proceeding, has the power to control the pace of adjudication of the collateral USCIS matter.

60. Respondents have a non-discretionary duty to adjudicate I-130 petitions and I-485 applications for adjustment of status. The regulations require U.S. Citizenship and Immigration Services (USCIS) to give notice of an approval or denial for all properly filed benefits requests. *See* 8 C.F.R. § 103.2(b)(19) (defining procedures for notification of approvals); 8 C.F.R. § 103.3 (defining notification procedures for denials); *see also Labaneya v. U.S. Citizenship & Immigration Servs.*, 965 F. Supp. 2d 823, 832 (E.D. Mich. 2013) (“[T]he INA and the implementing regulations impose a duty upon the USCIS to adjudicate all properly filed applications.”).

61. “With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to

conclude a matter presented to it.” 5 U.S.C. § 555(b) (emphasis added). “[B]y using the term ‘shall’ in requiring that the courts compel action unlawfully withheld or unreasonably delayed, Congress imposed a mandatory duty in that regard.” *Saini v. U.S. Citizenship & Immigration Servs.*, 553 F. Supp. 2d 1170, 1176 (E.D. Cal. 2008). Therefore, the APA gives federal courts the power to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1); see *Barrios Garcia v. U.S. Dep’t of Homeland Sec.*, 25 F.4th 430, 450 (6th Cir. 2022).

62. In determining whether there has been unreasonable delay, Courts generally consider six factors laid out in *TRAC v. FCC*, 750 F.2d 70 (D.C. Cir. 1984): (1) where the time involved is governed by a rule of reason; (2) the statutory scheme, if applicable; (3) whether human health and welfare, rather than economic regulation, are at stake; (4) the effect of expediting delayed action on other agency activities; (5) the nature and extent of the interests prejudiced by delay; and (6) there need not be any impropriety to warrant a finding that agency action is unreasonably delayed. *Barrios Garcia*, 25 F.4th at 451-52.

FIRST CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Procedural Due Process: Unreasonably Prolonged Detention Without a Bond Hearing

63. Petitioner re-alleges and incorporates by reference the above paragraphs.

64. As discussed above, prolonged detention without a bond hearing violates due process, and courts typically use either the Second Circuit or Third Circuit approach to determine when detention has become unlawfully prolonged. *See M.T.B.*, 2024 WL 3881843, at *4. Under either approach, Mr. Doe’s detention of over five months and counting has become unlawful in light of his individual facts and circumstances.

65. Applying the *Mathews v. Eldridge* framework discussed in the Second Circuit’s decision in *Black v. Decker*, the private interest “is the most significant liberty interest there is—the interest in being free from imprisonment.” *Black*, 103 F.4th at 150. Mr. Doe has been deprived of his liberty despite never having been arrested for or convicted of a crime. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (“The deprivation that Velasco Lopez experienced was not the result of a criminal adjudication.”). Yet the conditions of his confinement mirror, in many ways, the experience of criminal incarceration. His freedom of movement is restricted through the day, he cannot work, and his ability to talk to his family on the phone is limited. Exh. N; *see Velasco Lopez*, 978 F.3d at 851-52. Moreover, as discussed below, the Department of Homeland Security and the immigration courts have repeatedly mishandled Mr. Doe’s proceedings, leading to unnecessary delays that have lengthened his detention.

66. The only procedure available for Mr. Doe to request his release is humanitarian parole under 8 U.S.C. § 1182(d)(5). As discussed below, Mr. Doe has not received meaningful individualized review of his parole requests. The parole process does not involve a record that is available to the noncitizen, a hearing before a neutral arbiter, or an administrative appeal. *Rodriguez*, 804 F.3d at 1081. Given the lack of procedural protections, there is significant risk of error, meaning that Mr. Doe remains detained despite the fact that he is not dangerous or a flight risk. *Black*, 103 F.4th at 152.

67. Finally, Respondent-Defendants do not have a legitimate interest in continuing to detain him for this lengthy period of time without showing that his continued detention is necessary. *Id.* at 153. To the contrary, a bond hearing would promote the government's interest "in minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 854.

68. The Third Circuit's approach from *German Santos* leads to the same conclusion. The first *German Santos* factor, the length of detention, favors a bond hearing. *See* 965 F.3d at 211-12. Mr. Doe has been detained for nearly six months. Courts have repeatedly recognized that detention without a bond hearing becomes constitutionally-suspect at this point. *See Demore*, 538 U.S. at 529-30 (noting, in upholding § 1226(c) against a facial challenge, that detention usually lasts "roughly a month and a half in the vast majority of cases in which it is invoked, and about five

Doe's proceedings were pending, about his initial detention for six weeks. Exhs. E-G. During that time, his case remained on the non-detained docket and did not move forward. When Respondents then transferred Mr. Doe to the Northlake Processing Center in Michigan, there was another one-month delay (some of which was attributable to DHS and some of which was attributable to the court) in transferring his case from the Cleveland Immigration Court to the Detroit Immigration Court. Exhs. G, H. It then took two more weeks for the Detroit Immigration Court to schedule the case for a hearing, because it had been erroneously placed on the non-detained docket. Exh. G. When Mr. Doe finally appeared for a hearing before the Detroit Immigration Court the immigration judge scheduled a final hearing for October 6, but the court then sua sponte rescheduled that hearing for November 14. *Id.* All of these errors have extended Mr. Doe's time in detention unnecessarily, and render the over five months he has spent in detention unreasonable. *See Diop*, 656 F.3d at 234.

71. Additionally, Respondent-Defendants have refused to take steps that could limit Mr. Doe's time in detention. Mr. Doe has a pending concurrent visa petition and application for adjustment of status, which, if granted, would resolve his removal proceedings. *See* Exh. A (charging Mr. Doe with seeking admission without a valid visa); 8 U.S.C. § 1255(a) (describing the process of adjustment of status for a noncitizen who is eligible for an immigrant visa).

Therefore, expedited consideration of these pending applications would obviate the need for him to wait in detention until an immigration judge can hold a hearing and adjudicate his asylum application. USCIS has indicated that it can expedite adjudication of these applications if counsel for the DHS Office of the Principal Legal Advisor (OPLA) asks it to do so, but OPLA has refused to request such expedited adjudication. Exh. K. This bad faith refusal to make simple efforts that could avoid prolonging Mr. Doe's detention makes it necessary "to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *See Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring); *German Santos*, 965 F.3d at 211. Therefore, the Court should order a bond hearing now.

72. Lastly, the conditions of Mr. Doe's confinement, particularly as the duration of detention increases, weigh strongly in favor of finding his detention to be unreasonable. For the first two months of his detention he was detained alongside people in criminal custody. Exh. N; *see Chavez-Alvarez v. Warden York C'ty Prison*, 783 F.3d 469, 478 (3d Cir. 2015). Even now that he is detained in an immigration detention facility, his liberty is severely restricted throughout the day. Exh. N. Thus, "[m]erely calling a confinement 'civil detention' does not, of itself, meaningfully differentiate it from penal measures." *Chavez-Alvarez*, 783 F.3d at

73. Under either test, the reasonableness of detention is “highly fact-specific” and must be analyzed based on the totality of circumstances. *German Santos*, 965 F.3d at 210. All the factors in this case favor a determination that Mr. Doe’s detention without a bond hearing has become unreasonable. Therefore, the Court should order Respondents to provide a bond hearing at which the government bears the burden of proving that his continued detention is necessary by clear and convincing evidence, including consideration of his ability to pay and alternative means of assuring his appearance. *Black*, 103 F.4th at 159; *German Santos*, 965 F.3d at 214.

SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act and Procedural Due Process: Failure to Follow Regulations Implementing Statutory Provisions

74. Petitioner re-alleges and incorporates by reference the above paragraphs.

75. Governing regulations and the due process clause require that Respondents may only revoke humanitarian parole upon written notice and after an individualized determination that parole is no longer warranted. 8 C.F.R. § 212.5(e)(2)(i); *see, e.g., Materano*, 2025 WL 2630826, at *14. Mr. Doe was paroled into the United States on December 27, 2023, and his parole was valid until December 25, 2025. Yet Respondents detained him on April 14, 2025 and

presumably revoked his parole, without providing any individualized assessment of why they believed revocation was appropriate.

76. Upon information and belief, Mr. Doe did not receive any written notice that his parole was revoked on or before April 14, 2025.³ This directly violated the regulation, and therefore, the APA. *Orellana*, 2025 WL 2402780, at *6 (finding an *Accardi* violation under similar circumstances). When Mr. Doe was detained because he took a wrong turn, his asylum application was still pending and nothing had changed to indicate that he had become a danger to the community or a flight risk. There is no indication that Respondents considered these issues, as they were required to do under the statute and regulation. *Mata Velasquez*, 2025 WL 1953796, at *11; *Y-Z-L-H-*, 2025 WL 1898025, at *13. Nor did Mr. Doe have an opportunity to be heard or present evidence in opposition to Respondents' revocation decision. *See Mata Velasquez*, 2025 WL 19539796, at *17. Therefore, the revocation of his parole, presumably on April 14, 2025, violated the APA and procedural due process.

77. Respondents' subsequent consideration of Mr. Doe's new parole requests was equally deficient. While Mr. Doe did file significant evidence and supporting documents with his July 11 parole request, Exh. L, Respondents did not

³ The service of a charging document can serve as written notice of termination of parole. However, here, the charging document—the Notice to Appear—was issued on the same day that Mr. Doe was paroled until December 25, 2025. Exh. A. Therefore, it was not served after the grant of parole and cannot be interpreted as indicating that the parole was revoked.

meaningfully consider that evidence. Indeed, a deportation officer told Mr. Doe that “we do not release people” —making clear that this was not the individualized adjudication that the statute requires. Exh. 8 U.S.C. § 1182(d)(5)(A) (allowing parole “on a case-by-case basis”). When Respondents did notify Mr. Doe that they would not parole him, the form denial letter indicated that he “failed to provide a valid address” and that imposition of bond would not ensure his appearance at future immigration hearings. Exh. M. The “parole determination worksheet,” however, noted that he did provide an address. *Id.* Mr. Doe has no history of failing to appear for court and has filed multiple applications for immigration benefits since his arrival in this country in 2023, so the boilerplate language about flight risk is little more than a “rubberstamp[] denial” that does not comport with due process. *See Chi Thon Ngo*, 192 F.3d at 398. Finally, there is no record of what the allegations of “inconsistent statements” or “deception” in the parole determination worksheet refer to. Exh. M. Mr. Doe has never had a meaningful opportunity to contest the basis for those conclusions. *See De la Llana-Castellon v. I.N.S.*, 16 F.3d 1093, 1096 (10th Cir. 1994) (noting that due process “entitles a person to factfinding based on a record produced before the decisionmaker and disclosed to that person”) (citing *Goldberg v. Kelly*, 397 U.S. 254 (1970)).

78. In sum, Respondents’ revocation of Mr. Doe’s parole and denial of his subsequent parole requests violated the APA and due process. The Court should

remedy this violation by ordering his immediate release. *See, e.g., Materano*, 2025 WL 2630826, at *20; *Orellana*, 2025 WL 2402780, at *7.

THIRD CLAIM FOR RELIEF
Violation of the Administrative Procedure Act: 5 U.S.C. §706(1),
Unreasonable Delay in Adjudication

79. Plaintiffs re-allege and incorporates by reference the above paragraphs.

80. Mr. Doe is the beneficiary of a properly-filed I-130 Petition filed by his U.S. citizen spouse, Plaintiff James Smith, on July 11, 2025. Exh. J. Mr. Doe filed an I-485 Application for Adjustment of Status on August 18, 2025. *Id.* If the I-130 is approved, he will be eligible to adjust his status immediately, because he was paroled into the United States and is not subject to any ground of inadmissibility. Exh. B; 8 U.S.C. § 1255(a). USCIS has jurisdiction over both applications because Mr. Doe is charged in removal proceedings as an “arriving alien.” 8 C.F.R. § 1245.2(a)(1)(ii). Therefore, USCIS can adjudicate the I-130 and the I-485 concurrently.

81. USCIS has a non-discretionary duty to adjudicate these applications, but has failed to do so. Mr. Doe and Mr. Smith have requested that USCIS expedite adjudication of his applications, but USCIS has declined to do so absent intervention by ICE counsel, which refuses to request expedited adjudication.

82. Mr. Doe has been harmed by this failure because he remains detained as a result of this failure to adjudicate his applications. He is deprived of his liberty

in conditions that are similarly to those of criminal confinement while he waits for USCIS to adjudicate his applications. Exh. N. If USCIS grants his application for adjustment of status, he will be eligible for immediate release.

83. Mr. Smith has also been harmed by this unreasonable delay. Mr. Smith has suffered emotionally because of his spouse's absence. Exh. E. He has also borne the financial burden of supporting Mr. Doe's family abroad and covering the cost of their frequent phone calls on a single income. *Id.*

84. This refusal to adjudicate Mr. Doe's applications also burdens the resources of the Immigration Court, forcing it to continue adjudicating his asylum claim despite the availability of much more straightforward relief.

85. These circumstances render the relatively short period of time the petitions have been pending unreasonable, because each day that they remain pending prolongs Mr. Doe's detention unnecessarily. "A claim of unreasonable delay is necessarily fact dependent . . ." *Barrios Garcia*, 25 F.4th at 451. Here, the "interest[] prejudiced by the delay," *see id.*, is "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Given that adjudication of Mr. Doe's adjustment application could immediately end his detention and the absence of any reason for Defendants to depart from the prior practice of expediting such applications, the delay in adjudication is unreasonable now.

86. Therefore, Mr. Doe and Mr. Smith request that the Court compel Defendants to adjudicate their pending I-130 petition and Mr. Doe's I-485 application.

FOURTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act: 5 U.S.C. §706(2)(A), Arbitrary and Capricious Agency Action

87. Plaintiffs re-allege and incorporates by reference the above paragraphs.

88. The APA entitles "a person suffering a legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to judicial review." 5 U.S.C. § 702.

89. The APA compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . . otherwise not in accordance with law," *id.* § 706(2)(A), or "short of statutory right," *id.* § 706(2)(C).

90. Defendants' policy and practice is arbitrary and capricious. On the one hand, USCIS requires OPLA counsel to request expedited adjudication of USCIS matters but, on the other hand, OPLA counsel, at least in Detroit, refuses to do so. For Plaintiffs, this has led to Mr. Doe's continued detention and their continued separation. They have been and are continuing to be harmed, as discussed above, while Mr. Doe waits unnecessarily for a hearing on his asylum application, despite the fact that he is immediately eligible for adjustment of status.

91. The Court should set aside this unlawful agency action and compel expedited adjudication of Plaintiffs' pending I-130 and Mr. Doe's pending I-485.

PRAYER FOR RELIEF

WHEREFORE, Petitioner-Plaintiff John Doe and Plaintiff James Smith respectfully request that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Declare that Mr. Doe's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution; and
- 3) Issue a Writ of Habeas Corpus and order Mr. Doe's release within 10 days unless Defendants schedule a hearing before an immigration judge at which the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Mr. Doe's release would present; or
- 4) In the alternative, order Mr. Doe's immediate release from custody; and
- 5) Declare that Respondent-Defendants have violated the Administrative Procedure Act by unreasonably delaying the adjudication of Mr. Doe and Mr. Smith's I-130 petition and Mr. Doe's I-485 application; and
- 6) Compel Respondent-Defendants to perform their duties to adjudicate the applications within thirty days; and

- 7) Award Petitioner-Plaintiff and Plaintiff their costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 8) Grant such further relief as the Court deems just and proper.

Dated: October 3, 2025

Respectfully submitted,

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