JUDGE KATHLEEN CARDONE

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

FILED
OCT 29 2025
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS DIVISION
EL PASO

#[redacted]
JEAN CLAUDE CEIDE
Petitioner
v.
Angelo Garite, Warden SPC, ICE Processing center, and assistant field office director of the U.S. Immigration and Customs Enforcement and Removal Operations EL Paso Field, Mary-De-Andra Office director of the Immigration El Paso, Kristi Noem, Secretary of The Department Homeland Security, Pamela Bondi, Attorney General of The United States
Respondents
(name of warden or authorized person having custody of petitioner)

Case No. _____
(Supplied by Clerk of Court)

EP 25CV0500

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: JEAN CLAUDE CEIDE
(b) Other names you have used: NONE
2. Place of confinement:
(a) Name of institution: ICE "SPC" EL PASO PROCESSING CENTER
(b) Address: HOMELAND SECURITY 8915 MONTANA AVE
EL PASO TEXAS 79925
(c) Your identification number: ALIEN #[redacted]
3. Are you currently being held on orders by:
Federal authorities State authorities Other – explain:
Petitioner is detained by ICE under the Mandatory detention under statue §1225(b) and §1226(c) and has been in continuous custody since November 7, 2022 without a bond hearing

4. Are you currently:
A pretrial detainee (waiting for trial on criminal charges)
Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: U.S DISTRICT COURT, DISTRICT OFCOLUMBIA (WASHINGTON, DC)
(b) Docket number of criminal case: #:1:07-CR-00297-EGS-1
(c) Date of sentencing: 09/18/2009
Being held on an immigration charge
Other (*explain*): Petitioner being held on an immigration charge section 212(a)(7)(B)(i)(I) or (II) of the Immigration and Nationality Act (Act), Section 212(a)(7)(A)(i)(I) of the Act, Section 212(a)(2)(A)(i)(I) of the Act, Section 212(a)(3)(B)(i)(I) of the Act, Section 212(a)(3)(B)(iv)(II) , INA §§ 212(a)(3)(B)(iii)(II),(IV)

Decision or Action You Are Challenging

5. What are you challenging in this petition:
How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention
☑ Immigration detention
☐ Detainer
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
☐ Disciplinary proceedings
☐ Other *(explain)*: from Nov 7,2022, until this day - more than thirty-four months,since being placed in ICE Custody,has submitted written requests for parole seeking his release from custody pending removal proceeding seeking his release from custody on three separate occasion: 11/16/23, 03/11/24, 07/22/24

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Lecker, Susan, T.,Assistant Chief Counsel , U.S Immigration U.S Department of Homeland Security, Atlanta, Georgia. and Rey Caldes,Carmen M., Immigration Judge

(b) Docket number, case number, or opinion number: petitioner seeking parole denying by ICE

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*: 1225(b)of the title of the U.S code authorizes detention of certain aliens authorizes seeking to enter the country. section 1225(b)(1) applies to aliens initially determined to be inadmissible due the fraud, misrepresentation,or lack of valid documentation, and to certain aliens designated by the Attorney general in discretion.

(d) Date of the decision or action:

Your Earlier Challenges of the Decision or Action

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not appeal:

8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a second appeal:

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☑ No

If "Yes," provide:

(1) Date of filing: 04/02/2025

(2) Case number:

(3) Result: pending to the BIA

(4) Date of result:

(5) Issues raised: Mr. Ceide's Mandatory detention has Exceeded a reasonable period of time and he is Entitled to a bond hearing. because of the delay:the court should also consider by the Government has failed to participate actively in the removal proceedings or sought continuances by filling Extension. this has cause delays the progress. Errors by the Immigration Judge and the BIA, unnecessary delays "Alien should [not] be punished for avenues of relief and appeal" Mr. Ceide's case has been pending in Removal proceedings since Dec,1,2022.

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☑ Yes ☐ No

If "Yes," provide:

(a) Kind of petition, motion, or application: MOTION FOR STAY OF REMOVAL (PFR)

(b) Name of the authority, agency, or court: United States Court of Appeals for the Eleven circuit Jean Claude Ceide V, Pamela Bondi, Attorney General ,

(c) Date of filing: 08/26/2025

(d) Docket number, case number, or opinion number: No. 25-12909-B (11th cir.)

(e) Result:

(f) Date of result:

(g) Issues raised: petitioner believes he is likely to succeed in his application for the deferral Removal under The the Convention Against Torture because Petitioner believes that there would Irreparable Harm if he were Removed Because Petitioner believes that it is in the Public interest to not remove him from the United States .

If "Yes," provide:
(1) Name of court:
(2) Case number:
(3) Date of filing:
(4) Result:
(5) Date of result:
(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:
(1) Name of court:
(2) Case number:
(3) Date of filing:
(4) Result:
(5) Date of result:
(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

II. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☑ Yes ☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: **11/07/2022**

(b) Date of the removal or reinstatement order: **03/24/2025**

(c) Did you file an appeal with the Board of Immigration Appeals?

☑ Yes ☐ No

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: In any event, regardless of whether §1231, §1226, governs detention where a removal order has been stayed pending judicial review, Mr.Celde's removal is judicially stayed is entitled to a bond hearing as a matter of both due process and statutory construction. As recognized in prolonged detention without adequate review raises serious constitutional concerns as it begins to exceed a "reasonable period". prolonged detention.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

His prolonged detention more than six month without a meaningful review of his detention in accordance with federal regulations violated his right to procedural due process under the Fifth Amendment; Id. the Due Process Clause is not offended by the mandatory detention of Aliens without Hearing for the "brief Period necessary for . . . Removal Proceeding." The Fifth Amendments Due Process clause forbids the Federal Government from depriving any person . . . of liberty . . without due process of law" "Freedom from the govemment imprisonment"

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes ☑ No

GROUND TWO: The period judicial review inevitably extends far beyond these "reasonable" periods. Because there is no evidence in §1226(a), § 1226(c) or §1231that congress intended to authorized the prolonged detentio tion of Non-citizens removal proceedings who are stayed removal pending judicial review,without all three deten tion statutes must be construed as requiring such a hearing whenever detention becomes unreasonable prolong..

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Mr. Celde's civil immigration detention in absence of an individualized determination of the flight or danger, is substantially unjustified and become unduly prolonged in the violation of the due process clause of the Fifth Amendment of the U.S. Constitution. Accordingly, he should receive a bond hearing before an Immigration Judge("IJ") during which the department of Homeland Security ("DHS") bears the burden of providing by clear and convincin g evidence that no condition or alternatives to detention exist to mitigate any risk of flight or danger he may pose

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes ☑ No

GROUND THREE: "Removal proceedings" before the IJ & BIA. In contrast, §1226(a) governs detention "pending a decision on whether Mr. Celde is to be removed from the United states"-a period which includes not only the Administrative removal process but also the process of judicial review. Moreover , §1226(a) affords Mr Celde a bond hearing before the IJ.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner claims that his continued detention violated the Fifth and Fourteenth Amendments to the Constitution of The United States. Petitioner also claims that his detention violates the Immigration nationality Act and its implementing regulations. However, the Court clear that the individual does not to file a Habeas petition in order to obtain a bond hearing. Instead, the Government itself is obligated to make a bond determination when mandatory detention has extended beyond a reasonable period.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes ☑ No

GROUND FOUR: Under these Circumstances, Mr.Ceide's Detention violates both Substantive and procedual due process.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

to justify Mr Ceide's ongoing prolonged detention, due process requires the Government to establish, at an individualized hearing before a neutral decision-maker, that Mr. Ceide's detention is justified, taking into consideration whether conditions of release might mitigate risk of flight and ability to pay a bond. Mr.Ceide detention without a bond hearing, which has lasted for nearly 34 months and could last for many more months as proceedings remain administratively closed and even if restored could last for many month is not reasonably related to the statutory purpose of unsuring his apperance for removal proceeding or preventing danger to Community

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes ☑ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: under the law § 1226(C) now includes a temporal limitations against the unreasonably prolonged detention of a Criminal aliens without a bond hearing the Government does not need to wait for a §2241 petition to be filed before affording an alien opportunity to obtain bond. the Government Regulations is already responsible for implementing the bond mechanism regulations for non-Criminal aliens and is equipped to the same context, as

Request for Relief

15. State exactly what you want the court to do: Mr. CEIDE'S REQUEST IS AN IMMIDIATE RELEASE OR IN THE ALTERNATIVE A BOND HEARING, BECAUSE HE IS CONTINUES MANDATORY DETENTION UNDER 8 U.S.C.S 1225(b AND/OR 8 U.S.C.S 1226(c) WITHOUT A BOND HEARING VIOLATES THE FITH AMENDMENT HE IS ENTILES HIM TO A BOND HEARING UNDER THESE STATUTES.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 09/24/2025

CEIDE,JEAN CLAIUDE [redacted]

Signature of Petitioner

Signature of Attorney or other authorized person, if any

Angel Garite, AFOD EPSPC
8915 Montana Ave.
El Paso, TX 79925

Mary De Anda-Ybarra FOD
ICE El Paso Field Office
11541 Montana Ave., Suite E
El Paso, TX 79936

The Honorable Kristi Noem
Secretary of Homeland Security
US Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington DC 20528

US Attorney General Pam Bondi
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Instructions

1. **Who Should Use This Form.** You should use this form if
   - you are a federal prisoner and you wish to challenge the way your sentence is being carried out *(for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits)*;
   - you are in federal or state custody because of something other than a judgment of conviction *(for example, you are in pretrial detention or are awaiting extradition)*; or
   - you are alleging that you are illegally detained in immigration custody.

2. **Who Should Not Use This Form.** You should not use this form if
   - you are challenging the validity of a federal judgment of conviction and sentence *(these challenges are generally raised in a motion under 28 U.S.C. § 2255)*;
   - you are challenging the validity of a state judgment of conviction and sentence *(these challenges are generally raised in a petition under 28 U.S.C. § 2254)*; or
   - you are challenging a final order of removal in an immigration case *(these challenges are generally raised in a petition for review directly with a United States Court of Appeals)*.

3. **Preparing the Petition.** The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**

4. **Answer all the questions.** You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**

5. **Supporting Documents.** In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.

6. **Required Filing Fee.** You must include the $5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.

7. **Submitting Documents to the Court.** Mail your petition and ____ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.

   If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

8. **Change of Address.** You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.

JUDGE KATHLEEN CARDONE

FILED

2025 OCT 29 AM 11:51

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS DIVISION
EL PASO

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

EP25CV0500

[redacted]
JEAN CLAUDE CEIDE
Petitioner
v.
Angelo Garite, Warden SPC, ICE Processing center, and assistant field office director of the U.S. Immigration and Customs Enforcement and Removal Operations EL Paso Field, Mary-De-Andra Office director of the Immigration El Paso, Kristi Noem, Secretary of The Department Homeland Security, Pamela Bondi, Attorney General of The United States
Respondents
(name of warden or authorized person having custody of petitioner)

Case No. _____
(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. Petitioner Jean Claude Ceide ("Mr Ceide" or "Petitioner") who has been DETAINED by U.S. Immigration and Customs Enforcement ("ICE") under 1225(b) 1226(c) for over two years and ten-months without a bond hearing.

2. Mr. Ceide's civil Immigration detention in the absence of an individualized determination of the flight risk or danger, is substantially unjustified and has become unduly prolonged in the violation of due process clause of the Fifth Amendment of the U.S. Constitution. Accordingly, he should receive a bond hearing before an Immigration Judge ("IJ") during which the department of Homeland Security ("DHS") bears the burden of providing by clear and convincing evidence that no condition or alternatives to detention exist to mitigate any risk of flight or danger he may pose.

I. Parties

3. Petitioner, Mr. Jean Claude, a native and citizen of Haiti, is currently detained at SPC ICE Processing Center ("SPC") in SPC El Paso, Texas. He is under the Direct control of respondents and their agents.

4. respondent, Angel Garite is the warden of SPC processing Center, El Paso in his official capacity as Assistant Field Office Director of the Immigration and Customs. Respondent Garite, Mr. Ceide's immediate custodian, is sued in his official capacity.

5. Mary De-Anda Ybarra is sued in her official capacity as the director of the el paso field office of ICE Enforcement and Removal Operations ("ERO"). In this capacity, she has responsibilty for the authority over the detention and removal of non-citizens detained at SPC Processing Center El Paso, Texas, is authorized to release Mr. Ceide, and is an immediate and legal custodian of Mr. Ceide.

6. Respondent Krisiti Noem is sued in her official capacity as the secretary of the DHS. DHS is responsible for the administration and enforcement of immigration laws. Respondent has supervisory responsibility and authority over detention and removal of non citizens throughput the United States of America. ICE is a subdivision of DHS, and respondent, Kristi Noem is legal custodian of Mr. Ceide.

7. Respondent, Pamela Bondi is sued in her official capacity as the attorney general of the United States and head of the US department of justice, which encompasses the BIA and the IJs as submits of the Executive Office of Immigration Review ("EOIR"). Respondent Pamela Bondi supervises IJs. Including those who preside over the Texas Immigration Court, which have jurisdiction over bond proceedings for individuals in ICE Custody at SPC El Paso. EOIR has authority to provide Mr. Ceide with a bond hearing and routinely does so when a federal District Court orders.

II. JURISDICTION AND VENUE

8. "'Federal courts are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" Gunn v. Minton, U.S. , 133 S. Ct. 1059, 1064, 185 L. Ed. 2d 72 (2013) (quoting Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994)). Because federal courts are "'duty-bound to examine the basis of subject matter jurisdiction sua sponte,'" this Court must determine if it has jurisdiction to hear Petitioner's claims, even though the parties have not raised the issue. See Lane v. Halliburton, 529 F.3d 548, 565 (5th Cir. 2008) (quoting Union Planters Bank Nat. Ass'n v. Salih, 369 F.3d 457, 460 (5th Cir. 2004)); see also Gonzalez v. Thaler, 565 U.S. 134, 132 S. Ct. 641, 648, 181 L. Ed. 2d 619 (2012) ("When a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented." (citing United States v. Cotton, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002))). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3); see also 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); Avitts v. Amoco Prod. Co., 53 F.3d 690, 693 (5th Cir. 1995) (explaining that a case must be dismissed if jurisdiction is lacking, because jurisdiction "is mandatory for the maintenance of an action in federal court").

9. Title 28 U.S.C. § 2241 grants this Court jurisdiction to hear habeas corpus petitions from aliens claiming they are held "in violation of the Constitution or laws or treaties of the United States." See 28 U.S.C. § 2241(c)(3); Zadvydas v. Davis, 533 U.S. 678, 687, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001) (citing 28 U.S.C. § 2241(c)(3)). However, in 2005, Congress passed the Real ID Act, which divests district courts of jurisdiction to hear petitions under § 2241 that attack final orders of removal. Rosales v. Bureau of Immigration and Customs Enf't, 426 F.3d 733, 735-36 (5th Cir. 2005). Under the Real ID Act, district courts must transfer pending § 2241 cases to the appropriate court of appeals, where they are converted to petitions for review of the removal order. Andrade v. Gonzales, 459 F.3d 538, 542 (5th Cir. 2006) (citing Rosales, 426 F.3d at 736).

10.The Real ID Act "does not, however, preclude habeas review of challenges to detention that are independent of challenges to removal orders." Baez v. Bureau of Immigration and Customs Enf't, 150 F. App'x 311, 312 (5th Cir. 2005) (citing H.R. Rep. No. 109-72, at 300 (2005)); see also Geronimo v. Mukasey, 535 F. Supp. 2d 808, 811-12 (W.D. Tex. 2008) ("The REAL ID Act, however, does not preclude a district court from exercising jurisdiction over constitutional claims or questions of law which do not challenge a final order of removal."). Thus, even after the passage of the REAL ID Act

11. district courts retain the power to hear statutory and constitutional challenges to civil immigration detention under § 2241 when those claims do not challenge a final order of removal, but instead challenge the detention itself. Baez, 150 F. App'x at 312.

12. Even though this Court has jurisdiction to decide statutory and constitutional challenges to civil immigration detention, this Court does not have jurisdiction to review the discretionary decisions of the Attorney General. Zadvydas, 533 U.S. at 688 (citing 8 U.S.C. § 1252(a)(2)(B)(ii) ("[N]o court shall have jurisdiction to review . . . any other decision or action of the Attorney General . . . the authority of which is specified under this subchapter to be in the discretion of the Attorney General."); see also Kambo v. Poppell, No. SA-07-CV-800-XR, 2007 U.S. Dist. LEXIS 77857, 2007 WL 3051601, at *6, *8 (finding that parole and bond determinations are discretionary decisions not subject to review).

13. Mr. Ceide, who is currently held in ICE custody, first claimed that his "continued detention is a violation of his constitutionally protected due process rights, "as protected by the Fifth and Fourteenth Amendments tho the United States Constitution. Because the constitutionality of Mr. Ceide detention can be adjudicated without touching on the merits of any final order of removal, jurisdiction of this claim is not precluded by the REAL ID Act. See baez , 150 F. App'x at 312 ; see also Reeves v. Johnson. No. CIV.A. 15-1962 SRC, 2015 U.S. Dist. LEXIS 38060, 2015 WL 1383942, at *1 (D.N.J. Mar 24, 2015) ("28 U.S.C. § 2241(c)(3) provides jurisdiction for district courts to grant a writ of habeas corpus if the petitioner is in custody in violation of the Constitution, or laws or treaties of the United States."); Kambo, 2007 U.S. Dist. LEXIS 77857, 2007 WL 3051601, at *9 (W.D. Tex. Oct. 18, 2007) (explaining that the REAL ID act does not preclude habeas jurisdiction over cases that do not involve review of an order of removal).

III. FACTS & PROCEDURAL HISTORY

A. INTRODUCTION

Summer of 2024 saw the Rapid and painful deterioration of Haiti's political stability to brutally violent and or gangs taking over Por--au-Prince and spreading their control throughout the country. Against this backdrop. Mr. Ceide who was Previously Incarcerated in Haiti and has served an extended Criminal sentence here in the U.S. raised additional Claims about his fear of torture by gang members, Vigilante groups, and police if Forced to return in Haiti. [redacted] and criminal deportees Status, accordingly, Mr. Ceide appeal should sustained and the matter remanded for further Proceedings.

15. Mr. Ceide filed persecution in Haiti and Was extradited by U.S FBI

Mr Ceide was born in Haiti in 1977. [redacted]

16. Around 2006, [redacted] Involved Mr. Ceide in a kidnapping scheme, [redacted]

.Mr. Jean Claude, Ceide Pleaded Guilty on kidnapping hostage.

17. Five days later he was arrested and beaten by police Enforcement in Haiti. Following the FBI's interview, Mr. Ceide spent two years at Haitian Penitentiary until he was extradited to the United States in 2008.

18. Mr Ceide, was appointed a public defender, who informed that he could sentenced up to 25 or life sentence of incarceration if convicted. Facing the risk of a lonely sentence a facade family separation if he went to trial, on September 18,2009 Mr. Ceide was charged in the United States District Court, District of Columbia (Washington, DC) pleaded guilty to Conspiracy to commit hostage taking under 8 U.S.C §1203(a) one charge, counts 1,2,3, (180 months) And five years Probation. Special Assessments to $ 100 Restitution of $ 16.000.

19.. having completed his Sentence of incarceration in jet sup Georgia, Federal Correction Facility,Mr Ceide could have been released, instead, Ice took Custody of Mr Ceide and Transferred him to the South Georgia, ICE Processing center in Folkston Georgia ('folkston ') on November 7, 2022. he was detained for almost 29 months until April 3, 2025, at which point he was transfer without notice to the SPC ICE Processing center in SPC, El Paso Texas. Mr Ceide is currently detained at SPC.

Mr. Ceide has no Connection to El Paso Texas and knows no one in the State. His sister reside in Indianapolis. El Paso is too far Away for her to come to over visit.

20. Since Mr. Ceide extradition, Gangs violence and control in Haiti has grown exponentially, where He arrived to Criminal custody in the United States Mr. Ceide was in rough shape physically. Exb. 27, Tab A2, Bureau of prisons Medical Records.He was incarcerated in the Correctional treatment facility and received treatment for tuberculous *id*. In the course of routine intake bloodwork, in 2009 learned that he was HIV Positive i*d*. He was also diagnosed with [redacted] Id. He currently [redacted] Exb 27,tab A3, folkston Medical records.

21. The medication, which is specifically designed to treat [redacted] is not available in Haiti or administered by heath Through walls in Haiti's prison, exb 27 Tab A9 **at** 4 [redacted]

22. Mr Ceide Faced immigration proceedings

in Nov 7, 2022, Mr. Ceide was transferred to Immigration and Customs Enforcement (" ICE") Custody at folkston ICE Processing center in Georgia and issue a notice to appear. On November 21, 2022, the Arlington asylum Office conducted a Credible fear interview and Mr. Ceide was found to have a credible fear of torture. Mr. Ceide filed a *pro Se* Form I-589, Application for Asylum Office Withholding of Removal and protection under the Convention Against Torture (CAT) based on the violence and Traits against his life that he Experience in Haiti on January 2023. The Stewart Immigration Court Conducted an individual merits hearing on Mr. Ceide's Case on April 25,2023, and May 12, 2023.

23. On November 23,2022 DHS initiated Proceeding Against Mr Ceide via the filing of a notice Appear ("NTA").Ex 1. the Notice to Appear Charged respondent as removal from the U.S. under INA§212(a)(7)(B)(i)(I)or(II) as a Non-immigrant not possessing a Passport, Identification Document, or travel document valid for a minimum of six months from the expiration of his admission. *Id.*

24. on January 18,2023, DHS added charge under INA §212(a)(7)(i) in that Respondent was an immigrant not possessing a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid enter Document required by the act and under INA §212(a)(2)(A)(i)(I) in that respondent was convicted of or Committed a crime involving moral turpitude... .Ex 2.

25.. On February 1, 2023, The DHS additionally charged Respondent under INA 212(a)(3)(B)(ii)(I) in that respondent engaged in terrorist activity, Ex. 5. On January, 25, 2023, petitioner Submitted a new Form I-589, Application for Asylum Withholding of Removal, and protection Under the Convention Against Torture (CAT) based on the violence and Traits against his life that he Experience in Haiti. Which he amended on April 12,2023. Esh 13, 18.

26. On April 25,2023, Stewart Immigration Court Conducted an individual merits hearings this Case, Followed by a second hearing on May 12, 2023, to Complete the testimony.

27. on June 26, 2023 the IJ Issue a written decision **Granting** Petitioner's Application for deferral Under Convention Against ('DCAT'). The IJ found "Upon Consideration of Totality of the Circumstances "Mr. Ceide was Credible.

28. on June 26, 2023, Immigration decision at 12.The IJ **Granted** Mr. Ceide Deferral Under the Convention. Id. Unfortunately, the Digital audio Record ('DAR') for the may 12, 2023, Hearing was preserved, So on October 31, 2023, the Board Of Immigration Appeals ('BIA or Board') Remanded this matter to Correct or Supplement the penitentiary record. The Parties Prepared a consent order which summarized the testimony taken from respondent and his expect Expert Mr. Brian Concannon. See exh 21

29. On December 7, 2023 the IJ then Reissued her decision **Granting** Mr. Ceide's application for DCAT. She found that petitioner was likely to Experience torture in custody from Government Official.

30. December 7,2023, IJ Decision at [redacted]

31 The Department Of Homeland Security ('DHS or Department') Appealed this decision, and on may 29,2024,the Board Sustained the appeal, reversing the I'Js Credibility finding , and remanding for Additional proceedings. Followings remand, at the master Calendar hearing on June 13, 2024, the IJ granted counsel's oral motion to reopen the penitentiary record. Tr, **at** 2-4.

32. Parties filled country conditions evidence. 24-27. Respondent also offered a report and testimony from ms. Michelle karshan . The Department moved to exclude ms karshan's evidence and also filed

rebuttal. See Exhs. 28-29. respondent offered rehabilitation evidence. Exh. 31. After voir dire and reserving ruling . IJ ultimately admitted Ms. Karshan's evidence and qualified her as an expert on issues related to criminal deportees in Haiti. IJ **at** 10.

33. Respondent's continued merits hearing was conducted on August 13. August 14. August 20, August And 27, 2024. On Marsh 24, 2025, the IJ Issue a written decision denying Mr. Ceide's application for deferral under the Convention Against torture. The IJ found that the BIA's remand order limited her ability to consider only his HIV -related claim. IJ **at** 11. Although the IJ that individuals in detention in Haiti are likely deprived of medical care. The IJ ruled that such conduct lacked the requisite intent to constitute torture under the CAT. IJ at 14-16. the reversed her prior finding that Mr. Ceide was likely to detained upon arrival. IJ **at** 14 .Mr Ceide timely appealed

ISSUES PRESENTED

A. whether the IJ legally erred in limiting her analysis on remand to Mr Ceide's HIV claim alone where changed country conditions created an independent factual basis for Mr. Ceide's fear of Gang violence?

B. whether the IJ erred in giving limited weights to Ms. Karhsan's testimony after qualifying her as an Expert?

C. whether the IJ legally erred in Impermissibly heightening the burden of proof falling to Support her prior finding of the likelihood of Mr. Ceide's detention in Haiti and Ignoring record evidence of the likelihood of detention for someone with Mr. Ceide's risk Factors?

D. whether the IJ clearly erred in finding Mr. Ceide could access life-saving HIV medication if non - detained during widespread gang violence which is preventing community clinic operation and access to medical supplies?

E. whether the IJ legally erred in finding the government Of Haiti does not process the requisite specific intent for torture when government Officials withheld and stole food and medical supplies specifically for detainees?

IV. STANDARD OF REVIEW

The Board reviews an IJ's factual findings for clear error. 8 C.F.R. §1003.1(d)(3)(i). The BIA reviews questions of law. Discretion. And judgment and all other issues de novo. 8 C.F.R.§1003.1(d)(3)(i-ii). De novo review requires the BIA to "make an independent determination of the issues" United States v. first city Nat'l bank. 386 U.S.361,368(1967) mixed question of fact and law received a hybrid standard of review: the Board reviews the underlying factual findings for clear error and whether those facts meet a legal threshold de novo. Jean-Pierre v. Antony General.,500 f. 3d 1315, 1321(11th.2007).

V. REQUEST FOR THREE MEMBER PANEL REVIEW

review by a three-member panel is required in this Matter because it involves the need to review an IJ's decision that is not in conformity with the law or with applicable Precedents; the need to review an IJ's clearly erroneous factual determinations; and the need to resolve a complex, novel unusual, or recurring issue of law or facts. See 8 C.F.R. §1003.1(e)(6)

Mr. Ceide's Prolonged ICE Detention, Continued Family Separation, and lack of access to counsel.

34. Mr. Ceide has been Spent over 34 months in immigration detention, following Completion of the 180 months of time served in prison for his federal conviction, in addition to two years served in prison of Haiti penitentiary before extradition to United States.

35. During this time he has not been able to see his two children [redacted], he has not been able to hug them on birthdays. He has been able to gift them with books or toys in person since 2008, when he left in Haiti.

36. Mr. Ceide's inability to be with his family as a result of his Prolonged Detention is a source of deep grief. He wishes to wash he children grow, impart good and moral values to them, and be present as an attentive father figure.

37. Mr Ceide receives the same meals every week and is obligated to follow the strict schedule set by the Detention facility. Exh. A '[11-14. Over two year and ten- months of repeated activities, extremely limited in-prison contact with the outside world, and repeating meals have resulted in a loss of appetite, fatigue, and grief.

38. Mr. Ceide is required to wear a gab at all times. A '[9-10. he is held in a pot with multiple individuals detainees, and overcrowd. inside there, Mr. Ceide sharing one bunk bed to another individuals detainees, a toilet that has no privacy curtain , similar the same with the shower. one nightstand A '[13. the facility has complete control over the unit during the activities with the lights On to 5: 30 am to 11: 00 Pm.

39. Mr. Ceide can only speak to his children and his counsel over the telephone or facility-approved and Pr-scheduled Microsoft teams video calls.

ICE Has Denied Mr. Ceide' Release requests.

41. Mr. Ceide submitted his first Comprehensive release to ICE on November 16,2023, the request include medical records, letters of support from family members and friends, the request also aligned with Ice's own directive and DHS enforcement priorities.

40. Mr Ceide's Second release request was submitted on March 11,2024, this request also included Medical record's, letters of support from family members and friends, and psychological evaluations. ICE denied the release request on July 15, 2024, with the same priority language as the previous denied.

41 Mr. Ceide's Third release request was submitted on July 22, 2024, included updated and more recent affidavits from Mr. Ceide's records, letters of support, and proof from Mr. Ceide's Medical Case Manager, as well as Medical records, letters of supports and proof. ICE denied the release request on February 15,2025. Again simply stating that Mr. Ceide's case "falls within the current priorities set by the Department Homeland Security.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

42. [W]here congress does not say there is a jurisdiction bar, there is none."Santiago -Lugo v. Warden, 785 F.3d 467,473 (11th cir. 2015) "congress knows how to limit courts' Subjects matter jurisdiction to decided subject jurisdiction to decide§ 2241 petitions when it wish to do so. The fact that it did not limit court limits courts' subjects matter jurisdiction to decide un-exhausted §2241 claims compels the conclusions that any failure of the [the respondent]to exhaust administrative remedies is not a jurisdictional defect." id at 474.

43. in the absence of a statutorily mandates exhaustion requirement, whether to apply a common law exhaustion requirement is a decision that rests soundly within the broad discretion of districts courts.

See J.N.C.G. v. warden, Stewart detention cir., No. 4:20-cv- 62,2020 WL 5046870, at *39 (M.D. Ga august. 26, 2020) (citing McCarthy v. Madigan, 503 U.S. 140, 144 (1992); see also Richardson v.

Reno,162 F. 3d 1338, 1374 (11th cir. 1998); Yahweh v. U.S. Parole comm'n, 158 F. supp. 2D 1332,1341 (S.D. Fla. 2001)

44. here, there is no reason to require exhaustion of administrative remedies, as Mr. Ceide has no meaningful administrative remedy to request. Mr Ceide's Prolonged detention raises constitutional issues. "[A] Petitioner need not exhaust their administrative remedies where the administrative remedy will not provide relief commensurate with the claims." Boz v. United States, 248 F. 3d 1299, 1300 (11th cir. 2001). thus, "[b]ecause the BIA does not have the power to decide the constitutional Claims- like the validity of a Federal statute- . . . certain due Process claims need not be administratively exhausted." Warsame v. U.S. Attorney General., 796 F. App'x. 993,1006 (11th cir 2020); see also Haitian Ctr.., Inc.., v. Nelson, 872 F.2d 1555,1561(11th cir. 1989), aff'd sub nom. McNary V. Haitian Refugee Crt., Inc., 498 U.S. 479 (1991) (holding) that Exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the INS); J.N.C.G., WL 5046870, at *3 ("the court will not required petitioner to remain detained while awaiting the BIA's ruling before allowing him to raise a Constitutional challenge to the length of that detention, as such a requirement would verge on Orwellian.); see also Matter of G-K-, 26 I&N Dec. 88, 96-97(BIA).

45. Nevertheless, as detailed above, Mr. Ceide already sought release though available administrative avenues, in November 16, 2023, in March 11, 2024, in July 22, 2024, on each occasion, Mr. Ceide requested that ICE release him as an exercise of prosecutorial discretion per ICE directives and each request was promptly denied with little explanation.

46. thus, this court has jurisdiction over Mr. Ceide's § 2241 action because administrative exhaustion is not required and the petition raises constitutional issues have that cannot be addressed administratively. Even if exhaustion were required, any administrative remedies been exhausted .s removal proceedings.'

SUBSTANTIVE DUE PROCESS

47."Substantive due process analysis must begin with a careful description of the asserted right." Reno v. Flores, 507 U.S. 292, 302, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) (internal quotation marks omitted). "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects." Zadvydas, 533 U.S. at 690 (citing Foucha v. Louisiana, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992)). In order to determine Petitioner's liberty interest, however, the Court first determines Petitioner's legal status in the United States as well as the statutory and regulatory framework that authorizes Petitioner's detention. The Court then considers the current Supreme Court precedent regarding civil detention of aliens to determine whether the detention of Petitioner for over thirty-four months is constitutional.

A. Petitioner is Being Detained as an arriving aliens Pursuant To 8 U,S,C. §1225(b)(2)(A)

48. "The term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry . . . ." 8 C.F.R. § 1001.1(q). Arriving aliens are inspected immediately upon arrival in the United States and, unless "'clearly and beyond a doubt entitled to be admitted,'" are placed in "removal proceedings to determine admissibility." Clark v. Martinez, 543 U.S. 371, 373, 125 S. Ct. 716, 160 L. Ed. 2d 734 (2005) (quoting 8 U.S.C. § 1225(b)(2)(A)).

49. According to the statute, arriving aliens are subject to expedited removal and are not entitled to a hearing or appeal on this decision. 8 C.F.R. § 1235.3(b)(1)(i), (b)(2)(ii). Generally, aliens subject to expedited removal are to be removed immediately, but arriving aliens who express an intention to apply for asylum or a fear of persecution are referred to an asylum officer for a credible fear interview.

49. 8 U.S.C. § 1225(b)(1)(A)(ii), (b)(1)(B)(i).

If the alien is found to have a "credible fear of persecution,"the alien remains detained, subject to the Parole the alien remains detained, subject to the parole provisions for arriving aliens mentioned above, pending consideration of the asylum application. 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the [asylum] officer determines at the time of the interview that an alien has a credible fear of persecution . . . , the alien shall be detained for further consideration of the application for asylum."); 8 U.S.C. § 1182(d)(5)(A) (explaining that the Attorney General may grant parole "for urgent humanitarian reasons or significant public benefit"). Upon a positive credible fear determination, an alien is placed in section 240 removal Proceedings,[1] rather than the expedited removal proceedings described above, for a determination of the asylum claim. See 8 C.F.R. § 1235.6(a)(1)(ii); see also 8 C.F.R. §1208.30(g)(2)(iv)(B) (explaining that, when a negative credible fear finding by an asylum officer is reversed by an immigration judge, the Government, "may commence removal proceedings under section 240 of the Act, during which time the alien may file an application for asylum and withholding of removal"); In Re X-K-, 23 I.&N. Dec. 731, 734 (BIA 2005) ("The requirement that aliens who had initially been screened for expedited removal be placed in full section 240 removal proceedings after a final positive credible fear determination is clearly stated in the regulations.").

50. Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens-including those with a positive credible fear determination-are to be detained unless one of the limited statutory exceptions applies, allowing the Government to release the alien on parole. Rodriguez v. Robbins, 715 F.3d 1127, 1132 (9th Cir. 2013) ("Rodriguez I") ("Although Section 1225(b) generally mandates the detention of aliens seeking admission pending their removal proceedings, individuals detained under the statute may be eligible for discretionary parole from ICE custody."); see also 8 U.S.C. §1225(b)(2)(A) ("[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond doubt entitled to be admitted, the alien shall be detained

for a proceeding under section 1229a of this title."); 8 C.F.R. § 1235.3(c) ("Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act."); Clark, 543 U.S. at 373 (explaining that the detention of an "alien arriving in the United States " is "subject to the Secretary's discretionary authority to parole him into the country").

51.The Attorney General can temporarily parole an alien who is applying for admission to the United States "for urgent humanitarian reasons or significant public benefit," "to meet a medical emergency[,] or . . . for a legitimate law enforcement objective." 8 U.S.C.§1182(d)(5)(A); 8 C.F.R.§1235.3(b)(2)(iii). Whether the Government decides to parole an arriving alien or keep him detained, the regulations state that an immigration judge does not have authority to review the custody determination. 8 C.F.R.§1003.19(h)(2)(i)(B) ("[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens: . . . (B) Arriving aliens in removal proceedings, including aliens paroled after pursuant to section 212(d)(5) of the Act . . . . "); see also In Re X-K-, 23 I.&N. Dec. at 732("There is no question that Immigration Judges lack [custody] jurisdiction over arriving aliens who have been placed in section 240 removal proceedings, because they are specifivally listed at 8 C.F.R. §1003.19(h)(2)(i)(B) as one of the excluded categories."). Thus, unless an arriving alien asylum applicant is granted parole, he will remain in detention pending the grant or denial of his asylum application. See 8 U.S.C.§1225()(2)(A).

B. ALIENS ARE ENTITLED TO SOME DUE PROCESS

52. Having determined that Petitioner is an arriving alien detained pursuant to § 1225(b)(2)(A), the Court must decide the amount of due process, if any, to which arriving aliens are entitled. Mr. Ceide is an arriving alien whom the Government has determined is inadmissible ("inadmissible alien"). See also 8 U.S.C. § 1182(a)(7)(A)(i)(I) (explaining that an immigrant not in possession of a valid entry document at the time of application for admission is inadmissible). The Supreme Court has stated that inadmissible aliens are not afforded the same breadth of rights as citizens or as aliens who are already present in the United States. See Zadvydas, 533 U.S. at 693. In Zadvydas, the court explained:

53.The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.

54. Id. Cf. Demore v. Kim, 538 U.S. 510, 547, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003) (Souter, J., dissenting) ("The statement that '[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens,' cannot be read to leave limitations on the liberty of aliens unreviewable."). However, inadmissible aliens seeking entry, such as Petitioner, are subject to the "entry fiction." See Zadvydas, 533 U.S. at 693. Under the "entry fiction" aliens who have been denied admission to the United States yet are present within its borders are "treated, for constitutional purposes, as if stopped at the border," and are thus

entitled to the full range of constitutional protections to which citizens and aliens who has been Admitted are entitled. Id. (quotation marks omitted).

55. Although inadmissible aliens are not entitled to the full protection of the Constitution, the Supreme Court has also made clear that "the Fifth Amendment entitles aliens to due process of law in deportation proceedings." Demore, 538 U.S. at 523 (quotation marks omitted). However, the Supreme Court has explained that this entitlement to due process is somewhat limited, stating that "when the Government deals with deport-able aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." Id. at 528.

56. Additionally, the Supreme Court has made clear that inadmissible aliens are entitled to less due process than are resident aliens. Id. at 547 (O'Connor, J., concurring) ("[L]egal permanent residents ("LPRs") are entitled to claim greater procedural protections under [the Due Process Clause] than alien seeking initial entry."). So although Petitioner is entitled to some modicum of due process as an inadmissible alien seeking entry, he may not be entitled to the same level of due process as afforded to the resident aliens in Demore and Zadvydas.

57.In Zadvydas, the Court found that indefinite post-removal-period detention was unconstitutional for "aliens who were admitted to the United States but subsequently ordered removed," explaining that "[a]liens who have not yet gained initial admission to this country would present a very different question." 533 U.S. at 682. In Clark, the Supreme Court extended the application of Zadvydas to inadmissible aliens but did not address the constitutional issue, instead deciding the case based on statutory interpretation. Clark, 543 U.S. at 378 (holding that the statute applies to both inadmissible an removable aliens and cannot be interpreted to apply to differently to these different categories of aliens).

58. However, at least one circuit-the Sixth Circuit-has held that the indefinite detention of inadmissible aliens raised the same constitutional concerns as did the indefinite detention of the removable resident aliens in Zadvydas. Rosales-Garcia v. Holland, 322 F.3d 386, 412 (6th Cir. 2003) (en banc). In Rosales-Garcia, the Sixth Circuit explained that "the Zadvydas Court left open the question whether the indefinite detention of excludable[2] aliens raises the same constitutional concerns . . . as the indefinite detention of aliens who have entered the United States." Id. The Sixth Circuit held that aliens, whether inadmissible or deportable are entitled to substantive due process:

59. If excludable aliens were not protected by even the substantive component of constitutional due process, as the government appears to argue, we do not see why the United States government could not torture or summarily execute them. Because we do not believe that our Constitution could permit persons living in the United States-whether they can be admitted for permanent residence or not-to be subjected to any government action without limit, we conclude that government treatment of excludable aliens must implicate the Due Process Clause of the Fifth Amendment.

Id.

60. In looking at post-removal-period detention, specifically, the Sixth Circuit concluded that the same constitutional concerns did arise in regard to inadmissible aliens and, consequently, extended the

holding of Zadvydas to inadmissible aliens. Id. 408-10 (explaining that, in addition to relying on statutory construction to extend the holding of Zadvydas to inadmissible aliens, "constitutional concerns would independently compel us to construe [the statute's] post-removal-period detention provision to contain a reasonableness limitation for excludable aliens").

61. Thus, the question remains open as to what extent the constitutional dimensions of Zadvydas apply to inadmissible aliens. Even so, it is clear that aliens-even inadmissible aliens-are entitled to some constitutional protections, including some amount of due process. See Zadvydas, 533 U.S. at 693; Demore, 538 U.S. at 523; see also Rosales-Garcia, 322 F.3d **at** 410 n.29 ("[N]o circuit has concluded that the Due Process Clauses of the Fifth and Fourteenth Amendments do not apply to excludable aliens."); Chi Thon Ngo v. I.N.S., 192 F.3d 390, 396 (3d Cir. 1999), amended (Dec. 30, 1999) ("Even an excludable alien is a 'person' for purposes of the Fifth Amendment and is thus entitled to substantive due process."); see also Lynch v. Cannatella, 810 F.2d 1363, 1374 (5th Cir. 1987) ("[W]hatever due process rights excludable aliens may be denied by virtue of their status, they are entitled under the due process clauses of the fifth and fourteenth amendments to be free of gross physical abuse at the hands of state or federal officials.").

C. ZADVYDAS PROHIBITS INDEFINITE DETENTION OF ALIENS

62. Having determined that Petitioner, even as an inadmissible alien, is entitled to some due process, The Court turns to the merits of Petitioner's constitutional claim. In support of his constitutional claim, Petitioner argues that the Supreme Court in Zadvydas "imposed a six-month limit on what may be considered a 'reasonable' period of detention to ensure that an alien is available for pending immigration proceedings." (citing Zadvydas in arguing that his current detention "vastly exceeds the six-month limitation").

63. In Zadvydas, the Supreme Court of the United States considered substantive due process limitations on the civil detention of aliens. See generally 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653. In Zadvydas, the petitioners-two resident aliens who had been convicted of crimes-were detained under § 1231 after receiving final orders of removal. Id. **at** 684-86. Because the petitioners did not have citizenship in any country, neither could be deported; instead, the Government continued to detain them past the statutory ninety-day removal period. Id. The petitioners each filed a petition for writ of habeas corpus under § 2241 claiming that their indefinite detention violated due process. Id.

64. The Supreme Court noted that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." Id. **at** 690. Because the statute's primary purpose for detaining aliens was to ensure an alien's presence for removal, the Zadvydas Court construed § 1231 to allow detention of post-removal aliens only for "a period reasonably necessary to bring about [an] alien's removal from the United States." Id. **At** 689.

65. The Supreme Court "construe[d] the statute to contain an implicit 'reasonable time' limitation, the application of which is subject to federal-court review" and held that six months was a presumptively reasonable detention period. Id. At 682, 701.After this six month period, once the aliens provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,

The government must respond with evidence sufficient to rebut that showing." Id. Several years later, the Supreme Court extended Zadvydas to find that inadmissible aliens held in post-removal detention are also entitled to this type of individualized review once their detention exceeds six months. See generally Clark, 543 U.S. 371, 125 S. Ct. 716, 160 L. Ed. 2d 734.

66. Turning to the instant case,as the Government points out, Petitioner is detained during the pendency of his removal proceedings, while the aliens in Zadvydas were detained after receiving a final order of removal. See also Zadvydas 533 U.S. at 684-86. Thus, Petitioner is detained pursuant to § 1225(b)(2)(A), while the aliens in Zadvydas were detained pursuant to § 1231. See Rodriguez I, 715 F.3d at 1132; Zadvydas 533 U.S. at 684-86 as a result ;while the zavydas court did impose a six-month presumptively reasonable time limit on civil detention of aliens in that case, the Court did not indicate that this presumption would apply outside the context of § 1231 detention. See Zadvydas, 533 U.S. at 701 (looking to Congressional intent regarding § 1231 to determine that "Congress previously doubted the constitutionality of detention for more than six months").

67. Thus, the six-month limit set out in Zadvydas is not clearly applicable to all civil immigration detention, or to § 1225(b)(2)(A) detention, as the Petitioner suggests.[3] However, the Zadvydas Court did clearly state that, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem," without limiting this statement to detention pursuant to § 1231. See 533 U.S. at 690.

D. Demore Condones only brief mandatory detention during Pending removal proceedings

68.Subsequent to zavydas, in Demore v. kim the Supreme court considered the constitutionality of mandatory detention pending the resolution of removal proceedings under 1226 (c) , a statute that provides for mandatory detention of aliens have been "convicted of one of a specified set of crimes." See Demore ,538 U.S at 513. Like aliens detained pursuant to §1225(b)(2)(A), aliens detained pursuant to §1226 (c) are not untitled to an individualized bond hearing to determine if their detention is appropriate under their circumstances. See id. at 514.

69. In Demore, the respondent-a resident alien-was undergoing removal proceedings and had not been issued a final order of removal. Id. at 513. Because the respondent had been convicted of crimes, he was subject to mandatory pre-removal detention without an individualized determination that "he posed either a danger to society or a flight risk." Id. at 513-14. The Supreme Court found that "Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that persons such as respondent be detained for the brief period necessary for their removal proceeding." Id. At 513.

distinguishing the case from Zadvydas, the Court noted that the mandatory detention at issue occurred prior to the issuance of a final order of removal. Id. **at** 527-28. Therefore, unlike the detention in Zadvydas, the detention in Demore was still closely related to the purpose of ensuring the alien's availability for removal. Id. **at** 528.

70. Additionally, the Court distinguished the case from Zadvydas explaining that the detention was "of a much shorter duration" than the indefinite and potentially permanent detention in Zadvydas. Id. Indeed, the Demore Court repeatedly referenced the limited period of time most aliens were detained pending removal proceedings. Id. **at** 513, 523, 526, 528, 529 n.12. The Court explicitly found that detention under § 1226(c) "lasts roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which an alien chooses to appeal." Id. at 530. Thus, the Court found that mandatory detention of aliens under § 1226(c) did not violate the Constitution. Id. At 531.

71. In his concurrence, Justice Kennedy also commented that longer terms of detention might become an issue, explaining that:Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then 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.

Id. at 532-33 (Kennedy, J., concurring).

72. Justice Kennedy's concurrence echoes the majority's concern that while brief detention of aliens under § 1226(c) was constitutional, longer detention might not be. Id. at 530, 532-33. Thus, while brief detention is acceptable under Demore, 538 U.S. **at** 513, the constitutionality of much longer mandatory detention may well present a problem. See Diop v. ICE/Homeland Sec., 656 F.3d 221, 232 (3d Cir. 2011) (explaining that § 1226(c) requires mandatory detention without a bond hearing and stating that "the constitutionality of this practice is a function of the length of the detention"); Tijani v. Willis, 430 F.3d 1241, 1242 (9th Cir. 2005) (finding that the detention of an alien under § 1226(c) for two years and eight months was "constitutionally doubtful"); Shokeh v. Thompson, 369 F.3d 865, 872 (5th Cir.) ("Shokeh I") (explaining that "[t]he Zadvydas Court was troubled by the "potentially Permanent nature of the detention," and that the Demore Court upheld the civil detention, "in part, because of the 'very limited time of the detention at stake'" (citing Zadvydas, 533 U.S. **at** 690; Demore, 538 U.S. at 510)), vacated, 375 F.3d 351 (5th Cir. 2004) ("Shokeh II"); Ly v. Hansen, 351 F.3d 263, 267-68 (6th Cir. 2003) (explaining that Zadvydas "made clear that limited civil detention, without bond, is constitutional as applied to deportable aliens" but that longer civil detention required a "strong special justification").

73. Indeed, the Demore Court relied heavily on the brevity of the alien's detention even when defining the alien's claim, repeatedly framing the issue as one involving the alien's detention for the "limited" or "brief" period of his removal proceedings. Demore, 538 U.S. at 510, 513, 523, 526, 531 ("The INS detention of respondent, a criminal alien who has conceded that he is deportable, for the limited period of his removal proceedings, is governed by these cases." (emphasis added)). As noted earlier, the Demore Court also relied on brevity in distinguishing the case from Zadvydas. Id. **at** 528 ("While the period of detention at issue in Zadvydas was 'indefinite' and 'potentially permanent,' the detention here

is of a much shorter duration." (citations omitted)). Ultimately, the Demore Court tied its holding to this brevity: "We hold that Congress . . . may require that persons such as respondent be detained for the brief period necessary for their removal proceedings." Id. at 513 (emphasis added).

74. Because the Demore Court focused on the brevity of the mandatory detention in finding that such detention was constitutional, id. at 513, 531, a number of courts have subsequently held that mandatory detention pursuant to § 1226(c) is subject to a reasonable time limitation. See, e.g., Diop, 656 F.3d at 235 (reading a reasonableness limitation into § 1226(c) and finding that a nearly three-year detention under § 1226(c) was unreasonable, and therefore, unconstitutional); Ly, 351 F.3d at 273 (reading a reasonableness limitation into § 1226(c) and finding that detention for one and half years under § 1226(c) was unreasonable);Uritsky v. Ridge, 286 F. Supp. 2d 842, 846-47 (E.D. Mich. 2003) (reading a reasonableness limitation into § 1226(c) and finding that eleven to twelve month detention under § 1226(c) was unreasonable); Reid v. Donelan, 991 F. Supp. 2d 275, 277 (D. Mass. 2014) reasonableness limitation into § 1226(c) and finding that detention over six months is presumptively unreasonable).

75. By reading a reasonableness limitation into mandatory detention pursuant to § 1226(c), several courts have found that when detention pursuant to § 1226(c) is not brief, the alien should be granted habeas relief in the form of a bond hearing or release from detention. See Diop, 656 F.3d at 231 (applying the canon of constitutional avoidance to hold that § 1226(c) does not authorize prolonged detention without a bond hearing, but that it only "authorizes detention for a reasonable amount of time, after which the authorities must make an individualized inquiry into whether detention is still necessary"); Ly, 351 F.3d at 268 ("Therefore, we hold that the INS may detain prima facie removable aliens for a time reasonably required to complete removal proceedings in a timely manner. If the process takes an unreasonably long time, the detainee may seek relief in habeas proceedings."); Tijani, 430 F.3d at 1242 (applying the canon of constitutional avoidance to hold that § 1226(c) only applies to expedited removal of criminal aliens and granting the petitioner release or a bond hearing upon finding that "[t]wo years and .ten months of process is not expeditious");Rodriguez I, 715 F.3d at 1138

76. ("Despite the Supreme Court's holding that mandatory detention under § 1226(c) without an Individualized determination of dangerousness or flight risk is constitutional under some circumstances, our subsequent decisions applying Demore make clear that Demore's reach is limited to relatively brief periods of detention."); Reid, 991 F. Supp. 2d at 276 ("Because detention pursuant to § 1226(c) for over six months is presumptively unreasonable, the court will grant Plaintiff's Petition for Habeas Corpus . . . ."); Ramirez v. Watkins, No. CIV.A. B:10-126, 2010 U.S. Dist. LEXIS 142508, 2010 WL 6269226, at *1 (S.D. Tex. Nov. 3, 2010) (finding an "implicit statutory reasonableness requirement contained in § 1226(c)" and holding that a detention of almost nineteen months violated that requirement); Bourguignon v. MacDonald, 667 F. Supp. 2d 175, 182 (D. Mass. 2009) ("In sum, the clear import of the Demore decision is not that an alien can be detained indefinitely under § 1226(c) while deportation proceedings are pending, without the right to a bond hearing, but merely that an alien can be detained without a hearing so long as the detention is reasonable, by which the court meant (among other things perhaps) of limited duration.").

77. In addition, at least one panel of judges of the Fifth Circuit viewed Zadvydas and Demore as allowing brief mandatory detention while, at the same time, doubting the constitutionality of longer detention. Shokeh I, 369 F.3d at 872. In Shokeh I, an alien remained in detention pursuant to § 1231 solely because he was unable to afford bond. Id. The Fifth Circuit remanded the case to the District Court to determine if the amount of bond was reasonable, explaining that the Zadvydas Court's concern over indefinite detention "is not ameliorated by release conditional on bond that the immigrant is unable to pay." Id. at 872-73.

78. The Fifth Circuit stated that the duration of the detention was essential to the Court's holdings in Demore and Zadvydas, explaining: The Zadvydas Court was troubled by the "potentially permanent" nature of the detention . . . . The Supreme Court again emphasized the importance of the duration of detention in Demore v. Kim. In Kim the Court upheld mandatory detention during removal proceedings of immigrants previously convicted of certain criminal offences, in part, because of the 'very limited time of the detention at stake under [the challenged statute].'*Id.* at 872

79. Although Shokeh Iwas later vacated, it was vacated because the Government had released the alien without bond before the Fifth Circuit's opinion was filed, rendering the case moot. Shokeh II, 375 F.3d at 351. Thus, the reasoning of Shokeh I is still persuasive, even if the case is no longer precedential. In Shokeh I, although the Fifth Circuit did not clearly state that mandatory immigration detention is subject to a reasonableness limit, it expressed doubts as to the constitutionality of prolonged mandatory immigration detention. Shokeh I, 369 F.3d at 872.

Detention under § 1225(b) or 1226(c) is subject to a reasonable time limitation

80. In addition to reasonableness limitations on § 1226(c) detention, courts have also read reasonableness limitations into other immigration detention statutes, including mandatory detention of aliens pursuant to § 1225(b)(2)(A), to which Petitioner is subject. See Rodriguez v. Robbins, 804 F.3d 1060, 1078-85 (9th Cir. 2015) ("Rodriguez II") (reading a reasonableness limitation into detention pursuant to §§ **1225(b)(2)(A), 1226(a), and 1226(c)** and requiring bond hearings after six months of detention under these statutes). See also Rosales-Garcia, 322 F.3d at 415 (reading a reasonableness limitation into § 1231 detention as it applies to inadmissible aliens); Kasneci v. Dir., Bureau of Immigration & Customs Enf't, No. 12-12349, 2012 U.S. Dist. LEXIS 119683, 2012 WL 3639112, at *5 (E.D. Mich. Aug. 23, 2012) (reading a reasonableness limitation into § 1225(b)(2)(A) detention); Bautista v. Sabol, 862 F. Supp. 2d 375, 377 (M.D. Pa. 2012) (reading a reasonableness limitation into § 1225(b)(2)(A) detention); Lakhani v. O'Leary, No. 1:08 CV 2355, 2010 U.S. Dist. LEXIS 83480, 2010 WL 3239013, at *9 (N.D. Ohio Aug. 16, 2010) (reading a reasonableness limitation into § 1226(a) detention), vacated, No. 1:08 CV 2355, 2010 U.S. Dist. LEXIS 97641, 2010 WL 3730157 (N.D. Ohio Sept. 17, 2010) (vacating the previous order because the alien was no longer being held pursuant to § 1226(a)).

81. The Ninth Circuit explained its decision to read reasonableness into several immigration detention statutes by comparing civil immigration detention with civil detention due to incompetency, stating that

"the state may detain a criminal defendant found incapable of standing trial, but only for 'the reasonable period of time necessary to determine whether there is a substantial probability that he will attain [the] capacity [to stand trial] in the foreseeable future.'" Rodriguez II, 804 F.3d at 1075 (quoting Jackson v. Indiana, 406 U.S. 715, 738, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972)).

82. This Court agrees with the circuit and district courts that have found that civil detention of aliens is subject to a reasonable time limitation. See, e.g., Diop, 656 F.3d at 235 ("We do not believe that Congress intended to authorize prolonged, unreasonable, detention without a bond hearing."); Rosales-Garcia, 322 F.3d at 415 (explaining that "constitutional concerns . . . compel us to construe IIRIRA's post-removal-period detention provision to contain a reasonableness limitation"); Ly, 351 F.3d at 270 (avoiding a constitutional problem by reading a reasonableness limitation into the period of mandatory detention allowed pursuant to § 1226(c)); Uritsky, 286 F. Supp. 2d at 846-47

83.(reading a reasonableness limit into § 1226(c)); Reid, 991 F. Supp. 2d at 277 (reading a reasonableness limitation into § 1226(c)); Kasneci, 2012 U.S. Dist. LEXIS 119683, 2012 WL 3639112, at *5 (reading a reasonableness limitation into § 1225(b)(2)(A)); Lakhani, 2010 U.S. Dist. LEXIS 83480, 2010 WL 3239013, at *9 (reading a reasonableness limitation into § 1226(a) and finding that the nearly two-year detention of an arriving alien during the pendency of his removal proceedings was unreasonable). See also Shokeh I, 369 F.3d at 872 (stating that the Demore Court "upheld mandatory detention during removal proceedings of immigrants previously convicted of certain criminal offenses in part, because of the 'very limited time of the detention at stake under [the challenged statute].'" (citing Demore, 538 U.S. at 510)). Specifically, this Court finds, as does the Ninth Circuit, that the detention of aliens pursuant to § 1225(b)(2)(A) is subject to a reasonable time limitation. See Rodriguez II, 804 F.3d at 1082.

84. A reasonable time limitation serves to alleviate the Supreme Court's concern in Zadvydas of over breadth of detention. The Zadvydas Court found that preventing danger to the community was not an adequate justification for indefinite detention of aliens under § 1231 where "the provision authorizing detention does not apply narrowly to a small segment of particularly dangerous criminals, say, suspected terrorists, but broadly to aliens ordered removed for many and various reasons, including tourist visa violations." Zadvydas, 533 U.S. at 691. This same reasoning applies to § 1225(b)(2)(A){2) under § 1225(b)(2)(A), the Government detains all arriving aliens pending removal proceedings, without regard to their danger to society or lack thereof or to the manner in which aliens were seeking to enter the United States-whether legal or illegal.[4]

85. See Rodriguez I, 715 F.3d at 1132 (explaining that "Section 1225(b) generally mandates the detention of aliens seeking admission pending their removal proceedings"). Further, the reasoning of courts that have read Zadvydas and Demore together to apply reasonable time limitations to § 1226(c) detention applies even more clearly to § 1225(b)(2)(A) detention, because-unlike § 1226(c) detention which applies only to criminal aliens-detention pursuant to § 1225(b)(2)(A) applies to both criminal and non-criminal aliens. See Demore, 538 U.S. at 513; Rodriguez I, 715 F.3d at 1132.

86.One of the issues with placing Petitioner in the same category as aliens who have committed crimes abroad and aliens who have entered illegally or violated the terms of their visas, is that Petitioner-like all aliens detained under § 1225(b)(2)(A)-has no way of obtaining an individualized review of his custody determination. See 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 1003.19(h)(2)(i)(B). Both the Zadvydas Court and the Demore Court explained that there are two justifications for immigration detention-(1) ensuring the appearance of aliens at future immigration proceedings, and (2) preventing danger to the community. Zadvydas, 533 U.S. at 692; Demore, 538 U.S. at 513, 519.

87.Yet Petitioner has never had a hearing to determine if these two justifications do, in fact, apply to his detention. In finding that indefinite detention without review would invoke constitutional concerns, the Zadvydas Court took into account not only the justifications for immigration detention, but also looked to the lack of procedural protections for the aliens' right to be free from physical restraint. See 533 U.S. at 692. In deciding to read a reasonableness limitation into the statute to avoid a constitutional problem, the Zadvydas Court noted that administrative proceedings were not sufficient to protect the aliens from the indefinite deprivation of liberty:

88.[T]he sole procedural protections available to the alien are found in administrative proceedings, where the alien bears the burden of proving he is not dangerous, without (in the Government's view) significant later judicial review. This Court has suggested, however, that the Constitution may well preclude granting an administrative body the unreviewable authority to make determinations implicating fundamental rights. The Constitution demands greater procedural protection even for property. The serious constitutional problem arising out of a statute that, in these circumstances permits an indefinite, perhaps permanent, deprivation of human liberty without any such protection is obvious.

Id. (internal citations and quotation marks omitted).

89.In addition, the Zadvydas Court discussed the importance of procedural protections when explaining that civil detention based solely on dangerousness-"preventive detention"-had been upheld by the Court "only when limited to specially dangerous individuals and subject to strong procedural protections." Id. at 690-91.

90.The Zadvydas Court certainly saw this lack of individualized determination regarding the appropriateness of detention to be an issue, because the Supreme Court decided such a determination was necessary under § 1231. Id. at 701 (explaining that after the presumptively reasonable six-month period of post-removal-order detention, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing").

91.'Likewise, although aliens detained pursuant to § 1226(c) do not have a mechanism for individualized review of the appropriateness of their detention, they are entitled to a hearing to determine if they are appropriately placed in the category of aliens subject to mandatory detention under § 1226(c). See Demore, 538 U.S. at 547 n.3 (explaining that a "'Joseph hearing' is immediately

provided to a detainee who claims that he is not covered by § 1226(c)"). Further, detention authorized under Demore is necessarily "brief," as explained above, making an individualized review less important. See Demore, 538 U.S. at 513, 523, 526, 528, 529 n.12.

92. Yet, aliens detained under § 1225(b)(2)(A), such a Petitioner, have no such review process available to them. In fact, Petitioner does not currently have the benefit of any type of proceedings, much less the type of proceedings now required for those detained over six months under § 1231 or for those detained pursuant to § 1226(c). See Zadvydas, 533 U.S. at 692; Demore, 538 U.S. at 547 n.3 (discussing "Joseph hearings"). Instead, Petitioner can now only request discretionary parole from the Attorney General. See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 1003.19(h)(2)(i)(B). An Immigration Judge has no jurisdiction to review this decision, and there is no review process in the statute or regulations for denials of parole. See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 1003.19(h)(2)(i)(B). Indeed, the Ninth Circuit has found this reliance on parole to protect the liberty interests of those detained under § 1225(b)(2)(A) to be insufficient:

93. Because parole decisions under § 1182 are purely discretionary, they cannot be appealed to [Immigration Judges] or courts. This lack of review has proven especially problematic when immigration officers have denied parole based on blatant errors: In two separate cases identified by the petitioners, for example, officers apparently denied parole because they had confused Ethiopia with Somalia. And in a third case, an officer denied parole because he had mixed up two detainees' files. Rodriguez II, 804 F.3d at 1081.

94. As a result, the Ninth Circuit held that "the mandatory provisions of § **1225(b)** simply expire at six months, at which point the government's authority to detain the alien shifts to § **1226(a)**, which is discretionary and which we have already held requires a bond hearing." Id. at 1082 (internal quotation marks omitted). The lack of an adequate process for reviewing decisions to detain aliens has also been central to other courts' decisions to grant habeas relief to aliens pending the determination of their removal proceedings. See, e.g., Diop, 656 F.3d at 235 ("We do not believe that Congress intended to authorize prolonged, unreasonable, detention without a bond hearing."); Diouf v. Napolitano, 634 F.3d 1081, 1092 (9th Cir. 2011) ("We hold that an alien facing prolonged detention under § 1231(a)(6) is entitled to a bond hearing before an immigration judge and is entitled to be released from detention unless the government establishes that the alien poses a risk of flight or a danger to the community."); Lakhani, 2010 U.S. Dist. LEXIS 83480, 2010 WL 3239013, at *9 ("Even if Petitioner were still being detained under § 1226(c), his detention without a bond hearing would not comply with procedural due process."); Cuello v. Adduci, No. 10-13641, 2010 U.S. Dist. LEXIS 112190, 2010 WL 4226688, at *5 (E.D. Mich. Oct. 21, 2010) (granting habeas relief to an alien detained under § 1226(a) because he was never granted a bond hearing and finding that his "continued detention and lack of meaningful custody review does not comport with due process").

95. Likewise, some courts have relied on the availability of a bond hearing in denying habeas relief. See, e.g., Contant v. Holder, 352 F. App'x 692, 695 (3d Cir. 2009) ("To the extent [the alien] relies on [Demore] to contrast his lengthy detention with the average detention period for persons detained pursuant to § 1226(c), that comparison is inapposite. Unlike the mandatory detention statute at issue in Kim, § 1226(a) provides for individualized detention determinations."); Prieto-Romero v. Clark, 534 F.3d 1053, 1068 (9th Cir. 2008) ("Prieto-Romero has not been denied procedural due process while in custody:

He received a bond hearing that afforded him an individualized determination of the government's interest in his continued detention by a neutral decisionmaker."); Nepomuceno v. Holder, No. CIV. 11-6825 WJM, 2012 U.S. Dist. LEXIS 28645, 2012 WL 715266, **at** *4 (D.N.J. Mar. 5, 2012) (denying habeas petition "because Petitioner is not mandatorily detained pursuant to the exception set forth in § **1226(c)**, and because the Immigration Judge conducted two bond hearings in accordance with § 1226(a)"). Because aliens detained under **§ 1225(b)(2)(A)** have no access to an individualized determination regarding whether they are properly placed in the § **1225(b)(2)(A)** category or properly detained because they present a flight risk and a danger to the community, the Court finds that detention pursuant to § **1225(b)(2)(A)** is subject to a reasonable time limitation.

F. Petitioner's detention is unreasonable

96. Now that the Court has determined that § 1225(b)(2)(A) or 1226(c) detention is subject to a reasonable time limitation, the Court must consider whether Petitioner's detention of more than tirty-four months is unreasonable. Petitioner asserts that his detention is unreasonable because it has lasted longer than the six-month presumptive limit for immigration detention established by Zadvydas.

97. The Third Circuit, in finding that the nearly three year detention of an alien was unreasonable, explained that "individual actions by various actors in the immigration system, each of which takes only a reasonable amount of time to accomplish, can nevertheless result in the detention of a removable alien for an unreasonable, and ultimately unconstitutional, period of time." Diop, 656 F.3d at 223. This Court agrees that what may be reasonable actions during the course of removal proceedings can combine to create what is ultimately an unreasonable length of detention. In determining whether the thirty-four month detention of Petitioner is reasonable, the Court looks to see how courts of appeal have made determinations regarding reasonableness of the length of detention.

98. The Ninth Circuit applied the six-months presumptive limit on civil detention in Zadvydas to detention under § 1225(b), § 1226(a), and § 1226(c). Rodriguez II, 804 F.3d at 1078 ("Following Zadvydas, we have defined detention as 'prolonged' when 'it has lasted six months and is expected to continue more than minimally beyond six months." (quoting Diouf, 634 F.3d at 1092)).

99. The Ninth Circuit states that all aliens, no matter which statute they are being detained under, must receive a bond hearing after six months. See Rodriguez II, 804 F.3d at 1078-1085 (requiring bond hearings after six months of detention under §§ 1225(b)(2)(A), 1226(a), and 1226(c))). While the Ninth Circuit has established a bright-line rule for a reasonable length of detention, id., other circuits look at reasonableness on a case-by-case basis. See Ly, 351 F.3d at 271 (6th Cir.) ("A bright-line time limitation, as imposed in Zadvydas, would not be appropriate for the pre-removal period."); Diop, 656 F.3d at 233 (3d Cir.) ("We decline to establish a universal point at which detention will always be considered unreasonable.").

100,This Court need not decide, and indeed is in no position to decide, whether to apply a bright line reasonableness limit of six months or whether reasonableness should be evaluated on a case-by-case basis, because the Court finds that Petitioner's detention of more than twenty-six months is unreasonable under either standard

101. As a result, Petitioner is no longer subject to expedited removal proceedings, but instead, is subject to Section 240, non-expedited, removal proceedings. See In Re X-K-, 23 I. & N. Dec. 731, 734 (BIA 2005) (explaining "that aliens who had initially been screened for expedited removal [are] placed in full section 240 removal proceedings after a final positive credible fear determination"). Thus, under this regulatory scheme, arriving alien asylum applicants may be detained for years with no opportunity for an individualized review to determine the appropriateness such prolonged detention.

102. The holdings of Zadvydas and Demore cannot be read to condone such a result. Indeed, the holding of Demore condoned mandatory detention only for aliens in expedited removal. See Rodriguez v. Hayes, 591 F.3d 1105, 1116 (9th Cir. 2010) ("Section 1226(c) provides for mandatory detention of criminal aliens for expedited removal."); see also Casas-Castrillon v. Dep't of Homeland Sec., 535 F.3d 942, 948 (9th Cir. 2008) (concluding that "the mandatory, bureaucratic detention of aliens under § 1226(c) was intended to apply for only a limited time"); Tijani, 430 F.3d at 1242 (holding that the authority to detain pursuant to § 1226(c) only applies "to expedited removal of criminal aliens" and finding that "[t]wo years and eight months of process is not expeditious"); Shokeh I, 369 F.3d at 869-70 (explaining that the Demore Court's decision to uphold mandatory § 1226(c) detention was partly based on the brevity of the detention at issue in the case).

103. The "brief" period of detention of concern in Demore lasted "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal." Demore, 538 U.S. at 530. In that case, the alien's detention was "somewhat longer than the average-spending six months in INS custody." Id. at 531. Although

G. The appropriate remedy is a bond hearing

103. Now that this Court has determined that Petitioner's twenty-six month mandatory detention pursuant to § 1225(b)(2)(A) is unreasonable, the Court must determine what remedy is appropriate. Petitioner asks this Court to direct the Government to release him from custody and to "[g]rant any additional relief that the Court deems appropriate."

104. However, many courts have found that bond hearings-in which the Immigration Judge determines whether the alien will "pose a danger to the community or a flight risk-are appropriate habeas relief when an alien's detention is prolonged. See Casas-Castrillon, 535 F.3d **at** 944. For example, several circuit and district courts have granted bond hearings where detention pursuant to § 1226(c) was held to be unreasonable. See, e.g., Tijani, 430 F.3d **at** 1242 ("We remand to the district court with directions to grant the writ unless the government within 60 days of this order provides a hearing to Tijani before an Immigration Judge with the power to grant him bail unless the government establishes that he is a flight risk or will be a danger to the community."); Casas-Castrillon, 535 F.3d at 944 (remanding to the district court with instructions to grant the habeas petition, unless the Government provides petitioner with a bond hearing or provides evidence that petitioner has already received a bond hearing); Reid, 991 F. Supp. 2d at 277 (holding that "§ 1226(c) includes a 'reasonableness' restriction on the length of time an individual can be detained without a bond hearing"); see also Diop, 656 F.3d at 235 ("Should the length of his detention become unreasonable, the Government must justify its continued authority to detain him at a hearing at which it bears the burden of proof.").

105. hearings after six months of detention"); Chen, 917 F. Supp. 2d at 1018 (finding that the detention of an alien detained pursuant to § 1225(b) and "who intends to appeal the now-issued removal order to the Board of Immigration Appeals, which would further extend his detention-does raise a due process concern sufficient to make an individualized bond hearing appropriate"); Bautista, 862 F. Supp. 2d at 382 (granting habeas relief in the form of a bond hearing where alien was detained for twenty-six months pursuant to § 1225(b)(2)(A)); Centeno-Ortiz v. Culley, No. 11-CV-1970-IEG POR, 2012 U.S. Dist. LEXIS 5910, 2012 WL 170123, at *9 (S.D. Cal. Jan. 19, 2012) (ordering that an alien who was detained pursuant to § 1225(b)(2)(A), but who was later paroled, should be provided with an individualized bond hearing before an immigration judge if his parole is revoked, explaining that "once the presumptively reasonable detention period expires, the government must justify any further detention by meeting its burden before a neutral decisionmaker").

106. Petitioner does not specifically request a bond hearing, but instead requests release from detention. . However, this Court finds that a bond hearing before an Immigration Judge is more appropriate than release in this case "to provide a minimal procedural safeguard" because an immigration judge is in a better position to conduct the sort of individualized review that is necessary to determine if Petitioner should be released during the pendency of his asylum case. See Rodriguez II, 804 F.3d at 1090. The Zadvydas Court stated that civil detention should be subject to "strong procedural protections," and granting a bond hearing will ensure that Petitioner receives these procedural protections. See Zadvydas, 533 U.S. at 690-91.

107. Petitioner has been detained for over thirty -four months without a bond hearing or any type of process to determine if the justifications for civil immigration detention-ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community-properly apply to him such that continued detention is appropriate. This Court finds that a bond hearing is the appropriate remedy in Petitioner's case.

F. LEGAL FRAMEWORK AND ARGUMENT

Detention Under 8 U. S.C.S.§ 1226 (c)

108. 1226(c) of title 8 the U.S. code mandates the detention of non-citizens who have committed certain criminal Offenses. Pursuant to § 1226(c)(1)(B), the government "shall take into custody any" non-citizen who is deportable "by reason of having committed [an aggravated felony],"as defined in §1227(a)((2)(A)(iii). According to the statute, a subject to mandatory detention may be released only under circumstances inapplicable here . See 8 U.S.C. § 1226(c)(2) (creating exception to mandatory detention where release is necessary for witness cooperation and protection).

109. the supreme Court has had several occasions to review the parameters of 8 U.S.C. § 1226(c). the court held in Demore, based on the assumption that detention under § 1226(c) has " a definite termination point," 538 U.S. at 529, that § 1226(c) is not unconstitutional on its face therefore the Due process Clause does not require an individualized hearing for all individuals detained under its authority. Id at 531. Yet in a concurring opinion in Demore, Justice Kennedy stated that due process might required "an individualized determination as to [a noncitizens's risk of flight and dangerousness if the continued detention became unreasonable or unjustified." id at 532 (Kennedy, J, concurring) (emphasis added);

110. the court in *Demore* relied on data provided by the government that indicated the "very limited time of . . . detention" under § 1226(c), finding it meaningful that "in the majority of cases it lasts for less than . . . 90 days. "538 U.S. **at** 529 & n. 12. the Government's data conveyed that:

> in 85% of the cases in which [non-citizen]s are detained pursuant to § 1226(c), removal proceedings are completed in an average time of 47 days and a median of 30 days. In the remaining 15% of case, in which the [non-citizen] appeal of the Immigration Judge to the Board of Immigration Appeals, appeal takes an average of four months, with a median time that is slightly shorter.

Id **at** 529 (emphasis added). However, in 2016 the solicitor general admitted that this data was erroneous and that new calculations " yield an average an median of 382 and 272 days, respectively, for the total completion time in cases where there was an appeal." [4]

111.the supreme court again considered 8 U.S.C.§1226(c) in Jennings V. Rodriguez,138 S. ct. 830 (2018). in Jennings, the petitioners argued that the statute implicitly requires bond hearings after detention has becomes unreasonably prolonged and, alternatively, that the statute is unconstitutional as applied when it bars bond hearings after detention has become unreasonably prolonged. Id **at** 839. interpreting the plain language of § 1226(c), the court rejected when the use of the canon of constitutional avoidance from which the courts below had read an implicit six month limit on detention without an individualize bond hearing into the statute. Id. **At** 842. The court remanded the case of Appeals for the Ninth circuit to consider, among other issues, the constitutional arguments on theirs merits. Id **at** 851.

112. Most recently, the supreme court analyzed 8 U.S.C§ 1226 (c) in Nelson v. prep,139 S. ct. 954 (2019), in which it examined whether an individual who was taken into ICE custody sometime after her release from criminal custody would be subject to mandatory detention. The Court held that the mandatory detention statute applies to individuals who have been taken into Custody at any time so long as they are described in 8 U.S.C. § 1226(c)(1). Id **at** 965. In so ruling, the Court Provided that it "does not foreclose as- applied challenges-that is, constitutional challenges to applications of the statute as we have now read it. Id **at** 972.

113. We first describe the relevant statutes in 8 U.S.C. §§ 1226 and 1231 to compare how Congress has constructed different, though noticeably interrelated, frameworks for detaining criminal and non-criminal aliens.Section 1226 authorizes the detention of aliens during the removal proceedings. While § 1226(a) controls non-criminal aliens' detentions, § 1226(c) controls criminal aliens' detentions. See INA § 236(a), (c), 8 U.S.C. § 1226(a), (c). Once an alien's removal proceedings are completed, ICE's detention authority shifts to § 1231, which also distinguishes between non-criminal and criminal aliens. See INA § 241, 8 U.S.C. § 1231.Understanding these statutes is key to reading the two major Supreme Court cases about immigration detention and to our deciding this case.

A. Section 1226(a) and Non-Criminal Aliens During Removal Proceedings

114. The Attorney General has the discretion to detain a non-criminal alien "pending a decision on whether the alien is to be removed from the United States." INA § 236(a), 8 U.S.C. § 1226(a). The Attorney General may detain the alien for the duration of the removal proceedings, or release the alien on bond or conditional parole. INA § 236(a)(1)-(2), 8 U.S.C. § 1226(a)(1)-(2). The Attorney General's decision regarding detention, bond, or parole is not reviewable by the courts. INA § 236(e), 8 U.S.C. § 1226(e).

115. In connection with § 1226(a), the Department of Homeland Security ("DHS") promulgated regulations setting out the process by which a non-criminal alien may obtain release. The regulations provide that, in order to obtain bond or conditional parole, the "alien must demonstrate to the satisfaction of the [decision maker] that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). The District Director makes the initial custody determination, and the alien has the right to appeal an adverse decision to the IJ, and then to the BIA. Id. § 1236.1(d)(1), (3).

B. Section 1226(c) and Criminal Aliens During Removal Proceedings

116. Although the Attorney General has broad discretion to release non-criminal aliens during their removal proceedings, the INA limits the Attorney General's discretion in the case of criminal aliens. In relevant part, § 1226(c) mandates that "[t]he Attorney General shall take into custody any alien who is

deport-able by reason of having committed [an aggravated felony, among other offenses]." INA § 236(c)(1)(B), 8 U.S.C. § 1226(c)(1)(B) (emphasis added). Section 1226(c) provides that the Attorney General may release a criminal alien "only if" necessary for narrow witness protection purposes. INA § 236(c)(2), 8 U.S.C. § 1226(c)(2).

117. Under § 1226(c), custody is mandatory for criminal aliens throughout the entirety of their removal proceedings, and there is no statutory possibility for release on bond. In that way, subsection (c) of § 1226 serves as an exception to the flexible rule in subsection (a) of § 1226 that applies to all other aliens during removal proceedings those that do not fall into this specific subcategory by virtue of having a qualifying criminal conviction. Compare INA § 236(a), 8 U.S.C. § 1226(a), with INA § 236(c), 8 U.S.C. § 1226(c).

118. Because the Supreme Court's framework for analyzing the constitutionality of immigration detention statutes turns on subtle distinctions between the types of detention at play, we examine § 1231 to understand the broader statutory scheme.

C. Section 1231 and the 90-Day Removal Period

119. Section 1231 contains a 90-day window that is called the "removal period." INA § 241(a)(1)(A), 8 U.S.C. § 1231(a)(1)(A). Generally, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." Id. But this statutory 90-day

"removal period" in § 1231 does not begin until the latest of three dates

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. INA § 241(a)(1)(B), 8 U.S.C. § 1231(a)(1)(B) (emphasis added). Thus, if a court stays an alien's removal during judicial review of the alien's removal order, the statutory 90-day "removal period" does not begin until the court's final order. See INA § 241(a)(1)(B)(ii), 8 U.S.C. § 1231(a)(1)(B)(ii).

120. During the 90-day "removal period," the statute mandates that "the Attorney General shall detain the alien." INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) (emphasis added). "Under no circumstance during the removal period shall the Attorney General release [a criminal alien]." Id. If a criminal alien is already detained under § 1226(c) during removal proceedings, detention pursuant to § 1231 does not begin until the date the "removal period" begins, which is the latest of the three dates outlined above. Notably, if the Attorney General is unable to remove an alien within the 90-day removal period, § 1231 differentiates between non-criminal and criminal aliens. Compare INA § 241(a)(3), 8 U.S.C. § 1231(a)(3), with INA § 241(a)(6), 8 U.S.C. § 1231(a)(6). If a non-criminal alien is not removed during the 90-day removal period, the Attorney General must release the non-criminal alien "subject to supervision." INA § 241(a)(3), 8 U.S.C. § 1231(a)(3)

121. However, if the Attorney General is unable to remove a criminal alien within the 90-day removal period, she may continue detaining the criminal alien as a matter of discretion. See INA § 241(a)(6), 8 U.S.C. § 1231(a)(6). Section 1231(a)(6) provides that criminal aliens "may be detained beyond the removal period and, if released, shall be subject to the terms of supervision" governing non-criminal aliens not removed during the 90-day period. Id. Therefore, on the face of the statute, the Attorney General may detain a criminal alien indefinitely without providing an opportunity for supervised release. See id.

122. .In sum, the statutory framework in § 1226 and § 1231 grants the Attorney General broad discretion to release non-criminal aliens both during removal proceedings and even after a final removal order. In stark contrast, Congress has mandated the detention of criminal aliens throughout the entire process. We now review the Supreme Court decisions addressing the constitutionality of Congress's mandates in these statutes.

A. Supreme Court Decisions

123. In Zadvydas v. Davis, 533 U.S. 678, 688-89, 121 S. Ct. 2491, 2498, 150 L. Ed. 2d 653 (2001), the Supreme Court addressed § 1231(a)(6), which authorizes the Attorney General to detain criminal aliens after the expiration of the 90-day removal period. The Supreme Court applied the doctrine of

constitutional avoidance and construed the statute to contain an implicit temporal limitation on the Attorney General's detention of criminal aliens. Zadvydas, 533 U.S. at 682, 689, 121 S. Ct. at 2495, 2498.

124. This case arose after the government failed to remove petitioner Zadvydas, a criminal alien, during that 90-day removal window. Id. at 684, 121 S. Ct. at 2496. Zadvydas was born to Lithuanian parents in a displaced persons camp in Germany, and neither Germany nor Lithuania regarded him as a citizen. Id. at 684, 121 S. Ct. **at** 2495-96. Both countries refused to at 684, 699, 121 S. Ct. at 2496, 2504.

125. The government maintained that § 1231(a)(6) allowed the Attorney General to detain Zadvydas, and similarly situated criminal aliens, indefinitely, but the Supreme Court held otherwise. See id. **at** 682, 689, 121 S. Ct. at 2495, 2498. The Supreme Court began by emphasizing that "[f]reedom from imprisonment from government custody, detention, or other forms of physical restraintlies at the heart of the liberty [the Due Process] Clause protects." Id. at 690, 121 S. Ct. **at** 2498. It also clarified that "the Due Process Clause applies to all 'persons' within the United States, including aliens." Id. at 693, 121 S. Ct. at 2500.

126. The Supreme Court stated that immigration proceedings and detention "are civil, not criminal, and . . . nonpunitive in purpose and effect." See id. **at** 690, 121 S. Ct. at 2499. Under the Due Process Clause, civil detention is permissible only when there is a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." Id. (quotation marks omitted). The Supreme Court could discern no special justification for indefinitely holding criminal aliens in civil detention who were not especially dangerous, and who had little chance of actually being removed. Id. at 690-91, 121 S. Ct. **at** 2499.

127. The Supreme Court reiterated the rule that "[i]t is a cardinal principle of statutory interpretation . . that when an Act of Congress raises a serious doubt as to its constitutionality, this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."Id. **at** 689, 121 S. Ct. **at** 2498 (quotation marks omitted). As "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem" under the Fifth Amendment's Due Process Clause, the Supreme Court determined that Congress must have included an implicit temporal limitation in § 1231(a)(6). Id. **at** 682, 690, 699, 121 S. Ct. **at** 2495, 2498, 2503. That limitation, in turn, allowed for habeas relief after the criminal alien's detention exceeded the "period reasonably necessary to secure removal." Id. **at** 682, 699, 121 S. Ct. **at** 2495, 2504.

128. The Supreme Court further instructed that the reasonableness of the length of a criminal alien's detention should be measured "primarily in terms of the statute's basic purpose." Id. **at** 699, 121 S. Ct. **at** 2504. It provided a bright-line rule for administrative ease, and held that, after six months in post-removal-order status, if the criminal alien provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." Id. **at** 701, 121 S. Ct. **at** 2505. If the government does not meet its burden, the criminal alien must be released from confinement. See id.

129. Two years after Zadvydas, the Supreme Court took up Demore, which examined the mandatory detention statute at issue here§ 1226(c), which authorizes detention of criminal aliens during the entirety of the removal proceedings. Demore, 538 U.S. at 513, 123 S. Ct. at 1712. The Supreme Court distinguished the "potentially permanent" detention period at issue in Zadvydas from detention during the pendency of removal proceedings, and upheld § 1226(c) as facially constitutional. Id. at 528-29, 531, 123 S. Ct. at 1720-22 (quotation marks omitted). The Supreme Court based its holding on two factors.

130. First, the Supreme Court emphasized that the purpose of the mandatory detention in § 1226(c) is to prevent deportable criminal aliens from absconding and from committing more crimes before they are removed. See id. at 518-20, 527-28, 123 S. Ct. at 1714-15, 1719-20. The Supreme Court explained that "Congress adopted this provision against a backdrop of wholesale failure by the INS to deal with increasing rates of criminal activity by aliens." Id. at 518, 123 S. Ct. at 1714. The evidence before Congress showed that 77 percent of removable criminal aliens were arrested at least once after their original offense and before their removal, and 45 percent were arrested multiple times. Id. at 518, 123 S. Ct. at 1715. On top of that, approximately 20 percent did not appear for their removal proceedings. Id. at 519, 123 S. Ct. at 1715.

131. As the Immigration and Naturalization Service ("INS") was unable to identify, much less remove, criminal aliens, Congress provided for mandatory detention. Id. at 518, 521, 123 S. Ct. at 1715-16. The Supreme Court observed that, unlike the detention of the petitioner in Zadvydas (where it was impossible to effectuate § 1231(a)(6)'s goal of removing the criminal alien), the continued detention of petitioner Demore under § 1226(c) still served Congress's purposes, because it ensured that he would come to his removal proceedings instead of remaining at large where he could commit more crimes. See id. at 518, 527-28, 123 S. Ct. at 1715, 1719-20.

132. Second, the Supreme Court stressed the length of the detention in distinguishing between § 1226(c)'s constitutionality and § 1231(a)(6)'s unconstitutionality. It noted that there were statistics showing that, in the majority of cases, a criminal alien's removal proceedings lasted less than 90 days. Id. at 529, 123 S. Ct. at 1720. In 85 percent of cases in which the government held the alien under § 1226(c), "removal proceedings [were] completed in an average time of 47 days and a median of 30 days. In the remaining [percent] of cases, in which the alien appeal[ed] the decision of the Immigration Judge . . . appeal [took] an average of four months, with a median time that [was] slightly shorter." Id. at 529, 123 S. Ct. at 1721 (citation omitted).

133. The Supreme Court concluded: "In sum, the detention at stake under § 1226(c) lasts roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal." Id. at 530, 123 S. Ct. at 1721. It found that this was a limited period of time and materially different from the indefinite detention discussed in Zadvydas. See id. at 528, 123 S. Ct. at 1720.

Based on these critical observations, the Supreme Court held that "Congress . . . may require that persons . . . be detained for the brief period necessary for their removal proceedings," without the opportunity to argue for bond.7 See id. at 513, 123 S. Ct. at 1712 (emphasis added).

134. Justice Kennedy provided the fifth vote for the majority opinion, but wrote a concurrence, which is "especially relevant" to our reading of Demore. See Pesci v. Budz, 730 F.3d 1291, 1297 n.2 (11th Cir. 2013). Justice Kennedy suggested that, though the mandatory detention of criminal aliens under § 1226(c) was facially constitutional, there was still room for as-applied challenges in unique circumstances. See Demore, 538 U.S. at 532-33, 123 S. Ct. at 1722 (Kennedy, J., concurring). His analysis was that, "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, 123 S. Ct. at 1722 (Kennedy, J., concurring) (emphasis added). He added that, "[w]ere there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then 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."Id. at 532-33, 123 S. Ct. at 1722 (Kennedy, J., concurring) (emphasis added).

135.While Demore upheld § 1226(c)'s provision mandating detention of criminal aliens during removal proceedings, it did so with a strong constitutional caveat about due process concerns as to continued mandatory detention where the duration of the removal proceedings is unreasonably long or delayed. Outside of Justice Kennedy's Demore concurrence, the Supreme Court has never addressed how long under § 1226(c) the government can detain a criminal alien, here an aggravated felon.

B. Implicit Temporal Limitation in § 1226(c)

136. Because Demore upheld the constitutionality of § 1226(c), the government takes the position that § 1226(c) mandates the detention of criminal aliens during their entire removal proceedings, no matter how long they last. The government ignores that this is a civil detention case and the profound liberty interest at stake. "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, 533 U.S. at 690, 121 S. Ct. at 2498.

137. Reading Demore and Zadvydas together, and as a matter of constitutional avoidance, five other circuits have rejected the government's position and construed § 1226(c) to contain an implicit temporal limitation and to authorize criminal aliens' detention, not indefinitely, but for a reasonable amount of time after which a bond hearing is necessary to fulfill the purposes of the mandatory detention statute.

138. See Reid v. Donelan, 819 F.3d 486, 494 (1st Cir. 2016) (stressing the concept that "a categorical, mandatory, and indeterminate detention raises severe constitutional concerns" in recognizing' that the Due Process Clause imposes some form of 'reasonableness' limitation upon the duration of detention that can be considered justifiable under that statute," and finding "it necessary to read an implicit

reasonableness requirement into the statute"); Lora v. Shanahan, 804 F.3d 601, 606 (2d Cir. 2015) ("[W]e hold that, in order to avoid significant constitutional concerns surrounding the application of section 1226(c), it must be read to contain an implicit temporal limitation."), petition for cert. filed, 84 U.S.L.W. 3562 (U.S. Apr. 21, 2016) (No. 15-1307); Rodriguez v. Robbins, 715 F.3d 1127, 1138 (9th Cir. 2013) ("[W]e conclude that, to avoid constitutional concerns, § 1226(c)'s mandatory language must be construed to contain an implicit reasonable time limitation . . . ." (quotation marks omitted)); Diop v. ICE/Homeland Sec., 656 F.3d 221, 231-32 (3d Cir. 2011) ("[W]e conclude that the statute implicitly

139. authorizes detention for a reasonable amount of time, after which the authorities must make an individualized inquiry into whether detention is still necessary to fulfill the statute's purposes of ensuring that an alien attends removal proceedings and that his release will not pose a danger to the community."); Ly v. Hansen, 351 F.3d 263, 267-68, 270-71 (6th Cir. 2003) ("Therefore, we hold that the INS may detain prima facie removable aliens for a time reasonably required to complete removal proceedings in a timely manner. If the process takes an unreasonably long time, the detainee may seek relief in habeas proceedings.").

140. In so holding, these circuits have acknowledged the realities of immigration detention and how the entire process of removal proceedings has lengthened. Prior to Demore, in 2001, the average time that an alien was detained while awaiting a final order of removal or release, under any statutory detention provision, was 39 days. Lora, 804 F.3d at 605. By 2003, the year of Demore, criminal aliens specifically were spending an average of 47 days in detention. See id. While the government has not provided statistics in recent years, academic researchers estimate that in 2012 the average amount of time an alien with a criminal conviction spent in removal proceedings (and likely in detention) was 455 days. See Mark Noferi, Cascading Constitutional Deprivation: The Right to Appointed Counsel for Mandatorily Detained Immigrants Pending Removal Proceedings, 18 Mich. J. Race & L. 63, 81 (2012) (relying on data from Syracuse University's Transactional Records Access Clearinghouse). This represents a dramatic increase since the Supreme Court decided Demore a decade earlier and since Congress enacted § 1226(c) in 1996. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, 3009-585 to -87; Demore, 538 U.S. 510, 123 S. Ct. 1708, 155 L. Ed. 2d 724.

141. These other circuits have concluded that Congress constitutionally can require mandatory detention during a criminal alien's removal proceedings as a general rule, but § 1226(c) may become unconstitutionally applied if a criminal alien's detention without even a bond hearing is unreasonably prolonged. In other words, § 1226(c) must contain an "implicit reasonable time limitation, the application of which is subject to federal court review." Cf. Zadvydas, 533 U.S. at 682, 121 S. Ct. at 2495 (quotation marks omitted). Construing the statute in this fashion avoids "serious doubt[s]" about the constitutionality of indefinite detention. See id. at 689, 121 S. Ct. at 2498.

142. Other circuits have also concluded that this construction is "fairly possible" because Congress has not clearly demonstrated an intent to empower the Attorney General to indefinitely detain criminal aliens. See id. at 689, 121 S. Ct. at 2498; see, e.g., Diop, 656 F.3d at 235 (stating that a court cannot interpret a statute to avoid constitutional concerns when doing so would be inconsistent with clear

congressional intent, but concluding that there was no issue in this context because there is evidence that Congress intended to indefinitely detain aliens under § 1226(c)); cf. Reid, 819 F.3d at 494 ("[C]ourts interpret statutes with the presumption that Congress does not intend to pass unconstitutional laws." (alteration in original) (quotation marks omitted)).

143. Ceide's case illustrates how protracted some removal proceedings have become in recent years due, in part, to the complexity of immigration issues. ICE's continuous mandatory detention of Ceide without a bond hearing has lasted for 34 months, including through two BIA remands to the IJ, and patently raises serious constitutional concerns. Therefore, as a matter of constitutional avoidance, join other circuits in holding that § 1226(c) "implicitly authorizes detention for a reasonable amount of time, after which the authorities must make an individualized inquiry into whether detention is still necessary to fulfill the statute's purposes of ensuring that an alien attends removal proceedings and that his release will not pose a danger to the community." Diop, 656 F.3d at 231.

144. We too construe § 1226(c) to contain an implicit temporal limitation at which point the government must provide an individualized bond hearing to detained criminal aliens whose removal proceedings have become unreasonably prolonged. See Demore, 538 U.S. at 532, 123 S. Ct. at 1722 (Kennedy, J., concurring).now turn to the more challenging issue of discerning the trigger point at which a detained criminal alien's removal proceedings and concomitant mandatory detention become unreasonably prolonged, triggering the need for an individualized bond hearing.

VI. TRIGGER POINT

A. Approaches of Other Circuits

145. Courts throughout the country have adopted one of two general approaches for evaluating when a criminal alien's due process rights are violated by mandatory civil detention without a bond hearing under § 1226(c). refer to these as the "bright-line" and "case-by-case" approaches.

146. The Second and Ninth Circuits use the bright-line approach. The Ninth Circuit requires that, at the six-month mark, the government shall provide all criminal aliens detained under § 1226(c) with a bond hearing. See Rodriguez v. Robbins, 804 F.3d 1060, 1065, 1079-81 (9th Cir. 2015), petition for cert. filed sub. nom., Jennings v. Rodriguez, 84 U.S.L.W. 3562 (U.S. Mar. 25, 2016) (No. 15-1204). The Second Circuit also adopted the six-month rule, reasoning that it eliminates "inconsistency and confusion" and ensures that "similarly situated detainees receive similar treatment." Lora, 804 F.3d **at** 614-16.

147. At the bond hearing stage, the Ninth Circuit requires the government to "prove by clear and convincing evidence that [a criminal] alien is a flight risk or a danger to the community to justify denial of bond." Rodriguez, 804 F.3d at 1087 (quotation marks omitted). The Second Circuit requires the government, at the bond hearing before an IJ, to carry the burden of proof to establish by clear and convincing evidence that the criminal alien is a flight risk or a danger to the community. Lora, 804 F.3d at 616.

148. For the case-by-case approach, we look to the First, Third, and Sixth Circuits, which have rejected a bright-line rule and held that whether detention of a criminal alien has become unreasonable depends on the factual circumstances of the case. Those courts have held that, because each criminal alien's removal proceedings raises a unique set of facts and issues, making the length of the proceedings unpredictable, it would be unwise to set a universal or bright-line timeline for when mandatory detention shifts from being reasonable to unreasonable. See Reid, 819 F.3d at 496 (rejecting a bright-line six-month rule on multiple grounds, including the fact that the Zadvydas six-month period "was predicated on there being no foreseeable hope of removal,"

149. the detention was "potentially permanent," and "there were simply no metrics by which to judge just how much longer towards eternity could be considered 'reasonable,'" warranting a bright-line rule (quotation marks omitted)); Diop, 656 F.3d at 232-33 (noting that the inquiry into whether detention has become unreasonable "will necessarily be a fact-dependent inquiry that will vary depending on individual circumstances" and "declin[ing] to establish a universal point at which detention will always be considered unreasonable"); Ly, 351 F.3d at 271 ("A bright-line time limitation . . . would not be appropriate . . . . [C]ourts must examine the facts of each case[] to determine whether there has been unreasonable delay in concluding removal proceedings.").

150. These three circuit courts instruct that a criminal alien may file a § 2241 petition when he contends that his removal proceedings and continued civil detention without a bond hearing have become protracted and thus violate the Due Process Clause. See Reid, 819 F.3d at 498-99; Diop, 656 F.3d at 233, 235; Ly, 351 F.3d at 272-73. Then, a federal court, examining the individual circumstances of the case, will decide whether the criminal alien's continued detention has become unreasonable. See Reid, 819 F.3d at 500-01; Diop, 656 F.3d at 234; Ly, 351 F.3d at 272-73.

151. Under this configuration, if the district court grants the criminal alien's § 2241 petition, it then orders the government to provide an opportunity for the alien to obtain bond. At that point, the Third Circuit shifts the burden of proof from the petitioner to the government. See Diop, 656 F.3d at 233. The Third Circuit ruled that there must be a bond hearing "at which the Government bears the burden of proving that continued detention is necessary to fulfill the purposes of the detention statute." Id.

152. The Sixth Circuit has not explicitly defined the mechanism by which the government must make an individualized bond determination; but, in Ly, it affirmed a district court order that directed the agency to hold a hearing. 351 F.3d at 266, 273. The First Circuit also affirmed a district court order directing the government to hold a bond hearing. Reid, 819 F.3d at 491-92.

153. The First Circuit's Reid decision contains the most extensive discussion of why an individualized case-by-case approach adheres more closely to the relevant legal precedent. The First Circuit reasoned that, "while the Second and Ninth Circuits claim to have read an implicit 'reasonableness limitation' into § 1226(c), we think it more accurate to say that they have simply read an implicit 'six-month expiration' into § 1226(c)." Id. at 497.

154. The First Circuit viewed "Demore as implicitly foreclosing our ability to adopt a firm six-month rule" because "[i]n Demore, the Supreme Court declined to state any specific time limit in a case involving a detainee who had already been held for approximately six months." Id. In addition, "[t]heDemore Court also briefly discussed facts specific to the detainee, such as his request for a continuance of his removal hearing." Id. (citing Demore, 538 U.S. at 530-31 & n.15, 123 S. Ct. at 1721 & n.15).

155. The First Circuit concluded that, "[t]aken together, Zadvydas, Demore, and the inherent nature of the 'reasonableness' inquiry weigh heavily against adopting a six-month presumption of unreasonableness." Id. It added that the practical advantages of the bright-line approach are "persuasive justifications for legislative or administrative intervention, not judicial decree." Id. at 498.

B. Adoption of the Case-by-Case Approach

156. to join the First, Third, and Sixth Circuits and adopt the case-by-case approach. To begin with, "[r]easonableness, by its very nature, is a fact-dependent inquiry requiring an assessment of all of the circumstances of any given case." Diop, 656 F.3d at 234. A bright-line approach strips away the essence of a reasonableness standard.

157. For example, Justice Kennedy's concurrence in Demore examined the factual specifics of the case at hand. It did not attempt to impose a one-size-fits-all solution. His concurrence indicated that there may be situations in which the government delays the removal proceedings and then continues to detain the alien for non-statutory purposes. See Demore, 538 U.S. at 532-33, 123 S. Ct. at 1722 (Kennedy, J., concurring). Turning to the facts of petitioner Demore's case, his concurrence concluded that a court could not draw such an inference "from the circumstances of that case." See id. at 533, 123 S. Ct. at 1726.

158. Further, § 1226(c) does not come ready-made with a time cutoff the way § 1231 does, suggesting that a case-by-case approach is more appropriate in this context. Specifically, the § 1231 statute in Zadvydas already had a 90-day limitation, to which the Supreme Court appended another 90 days, creating a 6-month cutoff. In contrast, the § 1226(c) statute contains no time limitation at all on which to base a firm cutoff.

159. In opposing a bright-line rule, the government also points out that, were we to impose a strict cutoff, a criminal alien could deliberately cause months of delays in the removal proceedings to obtain a bond hearing and then abscond and avoid removal altogether. Aliens in post-removal-period detention, on the other hand, do not have the opportunity to engage in such gamesmanship.

160. In addition, the complex course of events during removal proceedings is markedly different from the limited nature of what must happen in the 90-day removal period. To implement the last discrete step of removal to another country, the government follows roughly the same process for each alien. It gathers travel documents and arranges for transportation. The government controls that removal process. The detained alien cannot go back home or anywhere without the government doing its job. The § 1231 statute gave the government 90 days, and the Supreme Court gave it 90 more, for a 6-month limit to accomplish this discrete task.

161. But even then, as the First Circuit emphasized, the Supreme Court in Zadvydas did not actually adopt a six-month cutoff. As to this point, the First Circuit explained: The [Supreme] Court pointed out that not every alien to be removed would be released after six months. To the contrary, an alien may be

held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. If six months has passed and the alien had demonstrated no significant likelihood of removal in the reasonable] foreseeable future, then the government was required to respond with evidence sufficient to rebut that showing. If the government could demonstrate a reasonably foreseeable termination point, the detention continued. Reid, 819 F.3d at 496 (citations omitted) (quotation marks omitted).

162. In contrast to the 90-day removal period, removal proceedings involve many more exigencies and the conduct of the criminal alien can equally affect the duration of that alien's removal proceedings. Even though criminal aliens have aggravated felonies making them promptly removable, criminal aliens may apply for different forms of purely discretionary relief. Some ask for multiple continuances, some choose to file frivolous appeals while others do not, and each IJ has a docket with different demands. There is little consistency in the pace of immigration proceedings from case to case. This difference necessitates a different approach to detention of criminal aliens during removal proceedings one flexible enough to account for the circumstances of each case.

163. Critics of the case-by-case approach claim that the standard is too difficult for the federal courts to administer and creates inconsistencies in § 2241 proceedings. But federal courts have the institutional competence to make fact-specific determinations, and they have great experience applying reasonableness standards. To agree with the First Circuit that the reasonableness standard adheres more closely to legal precedent, and the practical advantages of the bright-line approach are"persuasive justifications for legislative or administration intervention, not judicial decree." Id. at 498.

C. Reasonableness Factors for the District Courts to Consider in § 2241 Cases

164 . As instructed by Zadvydas and Demore, to begin with the core principle that "the reasonableness of any given detention pursuant to § 1226(c) is a function of whether it is necessary to fulfill the purpose of the statute." Diop, 656 F.3d at 234. Several factors should guide a district court in determining whether a particular criminal alien's continued detention, as required by § 1226(c), is necessary to fulfilling Congress's aims of removing criminal aliens while preventing flight and recidivism.

165. First, one critical factor is the amount of time that the criminal alien has been in detention without a bond hearing. Given that Congress and the Supreme Court believed that most removal proceedings would be completed within five months, and the Supreme Court provided for a six-month rule in Zadvydas, "the constitutional case for continued detention without inquiry into its necessity becomes more and more suspect as detention continues past those thresholds." See id. (emphasis added). Accordingly, there is little chance that a criminal alien's detention is unreasonable until at least the six-month mark.

166. Looking to the outer limit of reasonableness, a criminal alien's detention without a bond hearing may often become unreasonable by the one-year mark, depending on the facts of the case. See Chavez-Alvarez v. Warden York Cty. Prison, 783 F.3d 469, 478 (3d Cir. 2015) ("[B]eginning sometime after the

six-month timeframe considered by Demore, and certainly by the time [the alien] had been detained for one year, the burdens to [the alien's] liberties outweighed any justification for . . . detain[ing] him without a bond to further the goals of the statute."). The need for a bond inquiry is likely to arise in the six-month to one-year window, at which time a court must determine whether the purposes of the statute preventing flight and criminal acts are being fulfilled, and whether the government is incarcerating the alien for reasons other than risk of flight or dangerousness. See Demore, 538 U.S. at 532-33, 123 S. Ct. at 1722 (Kennedy, J., concurring). The government is not required to free automatically a criminal alien who obtains a bond hearing; but the government must at least afford the alien an individualized bond inquiry.

167. A second factor in the reasonableness evaluation is why the removal proceedings have become protracted. Courts should consider whether the government or the criminal alien have failed to participate actively in the removal proceedings or sought continuances and filing extensions that delayed the case's progress. See id. at 532, 123 S. Ct. at 1722 (Kennedy, J., concurring); Diop, 656 F.3d at 234; Ly, 351 F.3d at 272. Errors by the immigration court or the BIA that cause unnecessary delay are also relevant. See Leslie v. AG of the United States, 678 F.3d 265, 269 (3d Cir. 2012); Diop, 656 F.3d at 234; Ly, 351 F.3d at 272; cf. Demore, 538 U.S. at 532, 123 S. Ct. at 1722 (Kennedy, J., concurring).

168. We are not saying that aliens should be punished for pursuing avenues of relief and appeals. See Ly, 351 F.3d at 272 ("[A]ppeals and petitions for relief are to be expected as a natural part of the process. An alien who would not normally be subject to indefinite detention cannot be so detained merely because he seeks to explore avenues of relief that the law makes available to him."). However, the district court may examine the record to determine whether the alien sought repeated or unnecessary continuances, or filed frivolous claims and appeals. See Diop, 656 F.3d at 234

169. ("[T]he reasonableness determination must take into account a given individual detainee's need for more or less time . . . ."). Evidence that the alien acted in bad faith or sought to deliberately slow the proceedings in hopes of obtaining release cuts against the alien. See Chavez-Alvarez, 783 F.3d at 476; Ly, 351 F.3d at 272.

170. Courts conducting this reasonableness analysis have considered three more factors, including: (3) whether it will be possible to remove the criminal alien after there is a final order of removal; (4) whether the alien's civil immigration detention exceeds the time the alien spent in prison for the crime that rendered him removable; and (5) whether the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention. See Chavez-Alvarez, 783 F.3d at 478; Ly, 351 F.3d at 271. The government has ready access to this type of information.

171. Similarly, the First Circuit has listed these as factors a court might examine, inter alia: "the total length of the detention; the foreseeability of proceedings concluding in the near future (or the likely duration of future detention); the period of the detention compared to the criminal sentence; the

promptness (or delay) of the immigration authorities or the detainee; and the likelihood that the proceedings will culminate in a final removal order." Reid, 819 F.3d at 500. We agree with the First Circuit that "[t]here may be other factors that bear on the reasonableness of categorical detention, but we need not strain to develop an exhaustive taxonomy here. We note these factors only to help resolve the case before us and to provide guideposts for other courts conducting such a reasonableness review." Id. at 501.

172. list of factors is not exhaustive. The reasonableness inquiry is necessarily fact intensive, and the factors that should be considered will vary depending on the individual circumstances present in each case. See Diop, 656 F.3d at 232-33 ("At a certain point, continued detention becomes unreasonable . . . . This will necessarily be a fact-dependent inquiry that will vary depending on individual circumstances.").

173. In sum, § 2241 courts must consult the record and balance the government's interest in continued detention against the criminal alien's liberty interest, always seeking to determine whether the alien's liberty interest has begun to outweigh "any justification for using presumptions to detain him without bond." See Chavez-Alvarez, 783 F.3d at 478. If the balance tips in the alien's favor, the district court must grant the § 2241 habeas petition and order the government to afford the criminal alien an individualized bond inquiry.

VII. BOND REGULATIONS

174. When detained criminal aliens become entitled to a bond hearing, the agency shall conduct a bond inquiry under the procedures outlined in 8 C.F.R. § 1236.1(c)(8) and (d). These are the existing regulations governing bond proceedings for non-criminal aliens detained under § 1226(a). three primary reasons for using the existing regulations that govern non-criminal aliens.

175. First, subsection (c) of § 1226 is an exception to subsection (a). Generally, the Attorney General has the discretion to release aliens in removal proceedings on either bond or conditional parole. INA § 236(a)(2), 8 U.S.C. § 1226(a)(2). Congress, however, circumscribed the Attorney General's discretion for that subset of aliens in removal proceedings who have committed certain criminal offenses. INA § 236(c), 8 U.S.C. § 1226(c). It therefore makes sense that, once the government can no longer constitutionally detain a criminal alien under subsection (c) without a bond hearing, the criminal alien's detention defaults to subsection (a) that governs the detention of non-criminal aliens. And subsection (a) carries with it regulations governing bond.

176. Second, to formulate from scratch, the bond procedures to be used, and decision to instead defer to the agency's preexisting regulations, comports with basic principles of administrative law. Courts afford agencies considerable deference in their policy realms and do not rewrite or create regulations for them to follow. See Bureau of Alcohol, Tobacco & Firearms v. Fed. Labor Relations Auth., 464 U.S. 89, 98 n.8, 104 S. Ct. 439, 444 n.8, 78 L. Ed. 2d 195 (1983) ("[A]n agency acting within its authority to make policy choices consistent with the congressional mandate should receive considerable

deference from courts . . . ."); Defs. of Wildlife v. U.S. Dep't of the Navy, 733 F.3d 1106, 1115 (11th Cir. 2013) ("The court's role is to ensure that the agency came to a rational conclusion, not to conduct its own investigation and substitute its own judgment for the administrative agency's decision." (quotation marks omitted)). DHS has already determined how to fairly and efficiently administer bond hearings, and we do not disturb its reasoned judgment.

177. Third, while Mr. Ceide asks the court to shift the burden of proof to the government, that would give criminal aliens a benefit that non-criminal aliens do not have. See Reid v. Donelan, 22 F. Supp. 3d 84, 92-93 (D. Mass. 2014) (explaining why the bond regulations that apply to non-criminal aliens should apply to criminal aliens once they become entitled to a bond hearing), aff'd in part and vacated in part, 819 F.3d 486 (1st Cir. 2016).recognize that, by the time a criminal alien becomes eligible for a bond hearing, he has already experienced a lengthy detention. That detention, however, occurs because Congress enacted the mandatory detention statute in § 1226(c), a statutory approach that comparatively disadvantages aliens who commit crimes over law-abiding aliens in removal proceedings.

178. Accordingly, the agency shall follow 8 C.F.R. § 1236.1(c) to afford the detainee alien with an opportunity to obtain bond from the District Director, and if necessary, to appeal to the IJ and then to the BIA under the provisions outlined in § 1236.1(d). See 8 C.F.R. § 1236.1(c), (d). Like non-criminal aliens, the criminal alien carries the burden of proof and must show that he is not a flight risk or danger to others. Id. § 1236.1(c)(8).

179. The IJs and the BIA already have experience applying these regulations and have standards to guide them in implementing the regulations. See, e.g., In re Guerra, 24 I. & N. Dec. 37, 40 (BIA 2006) (announcing nine factors for IJs to evaluate when determining if an alien poses a danger or is likely to abscond). We are confident that criminal aliens will have an adequate opportunity to obtain release under the existing regulations that apply to non-criminal aliens.

Having settled on the reasonableness standard and the logistics of bond, turn back to Mr. Ceide and his § 2241 petition.

VIII. CEIDE'S DETENTION

180. Application of the above reasonableness factors to Ceide's case is straightforward. As to the first factor, Ceide has been in continuous detention for two years and ten months without a bond hearing, at least two-and-a-half of which have been under § 1226(c) detention. The sheer length of Ceide's justifications detention on its own is enough to convince that his liberty interest long ago outweighed any justifications for using presumptions to detain him without a bond inquiry. See Chavez-Alvarez, 783 F.3d at 478.

181. "[T]here can be no question that [Ceide's] detention . . . without further inquiry into whether it was necessary to ensure his appearance at the removal proceedings or to prevent a risk of danger to the community, [is] unreasonable and, therefore, a violation of the Due Process Clause." Diop, 656 F.3d at

234-35. Accordingly, I order the government to grant Ceide an individualized bond inquiry within ten days of the filing date of this opinion.

Due Process Requires a Bond Hearing Where the Government Bears the Burden to Justify Mr. Ceide's Continued Detention

182. Where detention detention has become unreasonable, due process requires an opportunity for custody to be meaningfully reviewed. Specifically, after prolonged detention, due process requires (1) that the Government bear the burden to prove the non-citizen's dangerousness and/or risk of flight by clear and convincing evidence, and (2) that the IJ consider the non-citizen's ability to pay and alternatives to detention in lieu of or in addition to monetary bond.

183. The Supreme Court has repeatedly recognized that civil detention must be carefully limited - particularly through placing a heightened burden of proof on the Government to justify detention – to avoid due process concerns. *See, e.g., Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.") (citation and quotation marks omitted); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (holding unconstitutional a state civil insanity detention "statute that place[d] the burden on the detainee to prove that he is not dangerous"). Indeed, "[i]ncreasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered." *Addington v. Texas*, 441 U.s. 418, 427 (1979).

184. Placing the burden of proof on the Government is especially important as a constitutional remedy to prolonged civil detention, where a constitutional harm is ongoing. *See Asolo v. Prim*, No. 21-cv-50059, 2021 WL 3472635, at *6 (N.D. III. Aug. 6, 2021) ("[T]he [C]onstitution requires the government to provide clear and convincing evidence of danger and risk of flights...at the point that detention is no longer reasonable."); *Jarpa*, 211 F. Supp. 3D at 722 ("Placing the burden on Mr. Jarpa at the hearing, therefore, would be inconsistent with having found his continued detention unconstitutional").

185. Countless circuit and district courts examining the issue have placed the burden on the Government at bond hearings following prolonged detention under § 1226(c). *See, e.g., German Santos*, 965 F.3d at 213 (holding that Government must bear burden by "clear and convincing" to prove dangerous and/or flight risk); *Perera v. Jennings*, Case No. 21-cv-04136,2021 WL 2400981, at *4(D. Minn. May 12, 2021) (explaining that the Constitution requires the burden be placed on the Government); *Lopez Santos v. Clesceri*, No. 3:20-cv-20349, 2021 WL 663780, at *8 (N.D. III. Feb. 19, 2021) (same); *M.D.F. v. Johnston*, No. 3;20-cv-0829, 2020 WL 7090125, at *2 (N.D. Tex. Dec. 3, 2020) (same); *Portillo v. Hott*, 322 F. Supp. 3D 698, 709 (E.D. Va.2018) (same).

186. The U.S. District Court has ordered a bond hearing with the burden on the Government in an analogous context under § 1226(c). *J.G.*, 501 F. Supp. 3D at 1341; *see also Brito v. Garland*, 22 F. 4th 240, 256-57 (1st Cir. Dec. 28, 2021) (holding that "if the government refuses to offer release subject to bond to a noncitizen detained pursuant to 8 U.S.C. § 1226(a), it must either prove by clear and

convincing evidence that the noncitizen is dangerous or prove by a preponderance of the evidence that the noncitizen poses a flight risk"); *Velasco Lopez v. Decker*; 978 F.3d 842, 856-57 (2d Cir. 2020) (ordering bond hearing with burden of proof on Government by clear and convincing evidence as remedy for unreasonably prolonged § 1226(a) detention).

187 .The court in *J.G.* reasoned that, under *Mathews v. Eldridge*, 424 U.s. 319 (1976), shifting the burden to the Government was appropriate after balancing the strength of the petitioner's interest in "freedom from physical incarceration" and the risk of erroneous deprivation, where "the onus [is]on opportunity to correct" any erroneous deprivation, against the Government's interest in continued detention without bond. *Id.* at 1335-41.

188. Here, the Petitioner's liberty interest and risk of erroneous deprivation without a burden flip is even greater than in the § 1226(a) context because Mr. Ceide, unlike the *J.G.* petitioner , has never had a bond hearing at which the Government was obligated to justify his detention. *See Brito*, 415 F. Supp. 3D at 267 (concluding that bond hearing ordered on due process grounds following prolonged detention must contain equal safeguards whether under § 1226(a) or §1226(c)); *Velasco Lopez*, 978 F.3d at 854 (same). In *Sopo*, the Eleventh Circuit declined to flip the burden onto the Government because to do so would purportedly "give criminal aliens a benefit that non-criminal aliens do not have." 825 F.3d at 1220. Yet this holding did not did not fully consider the prolonged nature of detention and has since been rendered outdated bu numerous subsequent decisions, citied above, placing the burden of proof on the Government in § 1226(a) bond hearings.

189. Moreover, due process requires that the IJ consider conditions that could be imposed on Mr. Ceide release, in addition to or in lieu of bond. Detention is not reasonably related to the purpose of reducing risk of flight or danger if there exist plausible alternative conditions of release that could mitigate any risk. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017); *Ousman D. v. Decker*, No.20-9646, 2020 WL 5587441, at *4 (D.N.J. Sept. 18, 2020) (finding burden-shifted bond hearing failed to comply with due process because IJ did not consider alternatives to detention); *Brito v. Barr*, 415 F.Supp.3d 258, 271 (D.Mass. 2019) (ordering immigration judges to consider "alternative conditions of release, such as GPS monitoring, that reasonably assure the safety of the community and the alien's future appearances."), declined to adopt for failure to exhaust in *Brito v. Garland*, 22 F. 4th 240, 256 (1st Cir. Dec. 28, 2021); *Bah v. Barr*; 409 F. Supp. 3d. 464, 472 (E.D. Va. 2019)

190. ("The government must prove 'to the satisfaction of the [IJ] that' no condition or combination of conditions, including electronic monitoring, will reasonably assure the appearance of the person as required and the safety of any other person and the community."); *Joseph v. Deker*, No. 18-cv-2640, 2018 WL 6075067, at *13 (S.D.N.Y. Nov. 21, 2018) (requiring IJ to consider "whether alternatives to detention may [better] serve those purpose[s] [of detention]"). As discussed above, Mr. Ceide sentenced in federal court to fifteen years ,in addition two years from prison in Haiti, before he was extradited into United States; and five years of probation.

191. While this time in immigration detention certainly goes towards his probation sentencing , the option of completing the five years of probation release or mandating additional supervised release as a bond condition would be aligned with the federal court's sentencing.

Due process also requires that the IJ consider Mr. Cedie's ability to pay bond. *See Hernandez, 872* F.3d at 1000; *Hernandez v. Decker*, No. 18-cv-5026 (ALC), 2018 WL 3579108, at *12 (S.D.N.Y. Jul. 25, 2018) (holding that Constitution compels "consideration of ability to pay and alternatives to detention" at a bond hearing); *Brito*, 415 F.Supp.3d at 271 (ordering immigration judges "to evaluate the alien's ability to pay in setting bond above $1,500"). Indeed, "refusing to consider financial circumstances

192. would be inexplacable, as the amount likely to secure the appearance of an indigent person obviously differs from the amount necessary to secure the appearance of a wealthy person." *Hernandez*, 2018 WL 3579108, at *12 (internal quotation marks and citations omitted); *cf. Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc)[12] (concluding "[t]he [pretrial] incarceration of those who cannot [pay a set bail amount], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements").

CLAIM FOR RELIEF

COUNT I

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

193. Mr.Ceide re-alleges and incorporates paragraphs 1 through above

194. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Cont. amend. V.

195. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, U.S. 715, 738 (1972)); *Demore*, 538 U.S. at 513. As mandatory detention becomes increasingly prolonged, a "sufficiently strong special justification" is required to outweigh the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91.

196. Mr. Ceide detention without a bond hearing , which has lasted for nearly thirty four month and could last for many more months , is not reasonably related to the statutory purpose of ensuring his appearance for removal proceedings or preventing danger to the community.

197. Under these circumstances, Mr. Ceide's detention violates both substantive and procedural due process.

198. To justify Mr. Ceide's ongoing prolonged detention, due process requires the Government to establish at an individualized hearing before a neutral decision-maker, that Mr. Ceide's detention is justified , taking into consideration whether conditions of release might migrate risk of flight and Mr. Ceide's ability to pay a bond. *See Hernandez*, 872 F.3d at 990.

CERTIFICATE OF SERVICE

I, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send true copies , with corresponding summonses, by USPS Certified Priority Mail to the following individuals:

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The Honorable Kristi Noem
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US Department of Homeland Security
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Dated: 21/10/2025

Respectfully Submitted,

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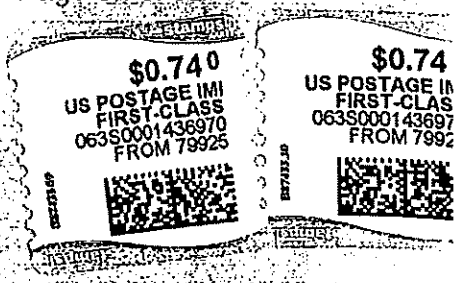

To Philip
Clerk, U.S.
United Sta
Magofin A
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OCT 29 2024