


Robert Jackel, Esq.
LEGAL SERVICES OF NEW JERSEY
100 Metroplex Drive, Suite 101
Edison, New Jersey 08817
rjackel@lsnj.org
(848) 274-0842
Pro Bono Attorneys for Petitioner

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

Moh
A ,
Petitioner,

v.

ERIC ROKOSKY, in his official capacity as
Warden of Elizabeth Detention Center;
RUBEN PEREZ, in his official capacity as
Acting Field Office Director of the
Immigration and Customs Enforcement,
Enforcement and Removal Operations
Newark Field Office; TODD LYONS, in his
official capacity as the Acting Director of U.S.
Immigration and Customs Enforcement; and
KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

Respondents.

Case No.

**VERIFIED PETITION
FOR WRIT OF
HABEAS CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner’s unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner is an asylum seeker from Sudan, who is in the custody of the United States Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), and is currently detained at the Elizabeth Detention Center (“EDC” or the “Facility”).

2. Petitioner has been detained in immigration custody for twelve months without a hearing conducted by a neutral decisionmaker—a federal judge or an immigration judge—to determine whether this lengthy incarceration is warranted based on danger or flight risk. He faces months of further detention as he is appealing the denial of his asylum application.

3. ICE claims the authority to indefinitely detain Petitioner without a bond hearing under the Immigration and Nationality Act (“INA”) § 235(b), 8 U.S.C. § 1225(b). In separate subsections, that statute provides for the detention of asylum seekers who pass a credible fear interview “for further consideration of the application for asylum,” *id.* § 1225(b)(1)(B)(ii), as well as detention of all other noncitizens whom an immigration official believes are not “clearly and beyond a doubt entitled to admission for a proceeding under 1229a of this title [removal

proceedings before an immigration judge].” *id.* § 1225(b)(2)(A). Noncitizens who are apprehended at a port-of-entry while seeking admission are designated as “arriving aliens” and are ineligible for bond under 8 U.S.C. § 1225(b). 8 C.F.R. § 1.2; 8 C.F.R. § 1003.19(h)(2)(i)(B); *see Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018).

4. Petitioner’s prolonged detention pending removal proceedings without a hearing to assess danger and flight risk violates the U.S. Constitution’s Fifth Amendment because it deprives Petitioner of liberty without due process of law.

5. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner’s release from custody, with appropriate conditions of supervision if necessary. In the alternative, Petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d Cir. 2020).

PARTIES

6. Petitioner Mohammed Ibrahim is a noncitizen currently detained by Respondents pending removal proceedings.

7. Respondent Eric Rokosky is the Warden of EDC. He is an employee of CoreCivic, the private company that contracts with ICE to run EDC. In his capacity as Warden, he oversees the administration and management of EDC. Accordingly, Mr. Rokosky is the immediate custodian of Petitioner. He is sued in his official capacity.

8. Respondent Ruben Perez is named in his official capacity as the Acting Newark Field Office Director for ICE. In this capacity, Respondent Tsoukaris is responsible for administration and management of ICE Enforcement Removal Operations in New Jersey and exercises control over Petitioner's custody at EDC. Respondent Perez's office is located at 970 Broad Street, 11th Floor, Newark, New Jersey, 07102.

9. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations, and, as such, he is a legal custodian of Petitioner. Respondent Lyons's office is located at 500 12th Street, S.W., Washington, D.C. 20536.

10. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate

legal custodian of Petitioner. She is sued in her official capacity. Respondent Noem's office is located at U.S. Department of Homeland Security, Washington, D.C. 20528.

JURISDICTION AND VENUE

11. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

13. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.

14. Venue is proper in this District because the Petitioner is detained in this district. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango*

Marquez v. I.N.S., 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary.

16. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

17. Moreover, the exhaustion “doctrine is not without exception.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question.” *Id.* at 666-67.

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

19. Further, “the BIA does not have jurisdiction to adjudicate constitutional issues” *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002) (citation omitted); see also *Ashley v. Ridge*, 288 F. Supp. 2d at 667 (citation omitted). Therefore, any administrative proceedings would be unquestionable futile because petitioner raises a constitutional due process claim. *Hoxha v. Holder*, 559 F.3d 157,


161 (3d Cir. 2009) (holding that no exhaustion is required if the BIA does not have jurisdiction to consider the claim).

20. Petitioner utilized the only available avenue for release available to him – request for parole “for urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5)(a). *Jennings*, 583 U.S. at 288; *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 441 (D.N.J. 2019) (citation omitted) (“[T]he only statutory parole relief available to § 1225(b) detainees is set forth in 8 U.S.C. § 1182(d)(5)(A); that provision authorizes the Attorney General, through DHS, to parole such detainees into the United States if ‘urgent humanitarian reasons or significant public benefit’ so warrant.”). He filed an initial parole request on November 4, 2025. Ex K. There is no hearing, no record, and no administrative appeal from a negative parole decision, even to correct manifest errors. *See Rodriguez v. Robbins*, 804 F.3d 1060, 1081 (9th Cir. 2015), *reversed by Jennings*, 583 U.S. at 281. Petitioner has therefore exhausted all available administrative remedies.

STATEMENT OF FACTS

21. Petitioner Mohammed Ibrahim is a citizen and national of Sudan, who came to the United States on October 28, 2024 to request asylum. Ex. A, Notice to Appear.

22. CBP detained Mr. Ibrahim and placed him in expedited removal proceedings. *See* Ex. A. When Mr. Ibrahim expressed fear of returning to his country

due to past persecution based  he was afforded a credible fear interview. *See* Ex. B, Credible Fear Determination. The asylum office found Mr. Ibrahim's fear of return to be credible and transferred his case to immigration court for further proceedings to determine if he qualified for asylum. *See* Exs. A-B. Mr. Ibrahim has been detained at the Elizabeth Detention Center in Elizabeth, New Jersey since October 28, 2024.

23. In his detained removal proceedings, Mr. Ibrahim pursued asylum. Mr. Ibrahim's merits hearing for his asylum claim was scheduled for May 9, 2025. Ex. G. Mr. Ibrahim prepared a pre-hearing statement and submitted evidence and arranged for an expert witness to appear for the May 9, 2025 hearing. However, at that merits hearing, DHS raised for the first time new issues related to Mr. Ibrahim's eligibility for asylum, and for the first time suggested that they would designate Chad as well as Sudan as Mr. Ibrahim's country of removal. The immigration court continued the case until June 17, 2025, and ordered additional briefing on these issues, with the understanding that DHS would brief their arguments and Mr. Ibrahim would be given time to respond. Ex. H. However, DHS never filed any briefing, and Mr. Ibrahim was left to respond to a nonexistent brief. Ex. I. The Immigration court denied DHS's argument and rescheduled the merits hearing for August 8, 2025. Ex. J.

24. On September 24, 2025, an Immigration Judge denied his application and ordered removal. *See* Ex. C, Immigration Judge’s Decision from September 24, 2025. Mr. Ibrahim appealed the grant to the Board of Immigration Appeals. *See* Ex. D, BIA Appeal Receipt Notice. The appeal is currently pending.

25. Since his detention on October 28, 2024, Mr. Ibrahim has filed a request for release on parole under 8 C.F.R. § 212.5(b) as implemented by ICE Directive 11002., Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture, each time providing additional evidence favoring his release. *See* Ex. K. His request is pending.

LEGAL FRAMEWORK

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

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

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

27. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693.

28. Due process therefore requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of

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

29. After *Zadvydas* and *Demore*, courts around the country, including the Third Circuit, applied the canon of constitutional avoidance and held that these statutes required a bond hearing when detention became prolonged. See *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 226 (3d Cir. 2018) (requiring bond hearings after six months of detention under § 1231(a)(6)), *abrogated by Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (requiring bond hearings after six months of detention under § 1225(b)); *Chavez-Alvarez v. Warden York C'ty Prison*, 783 F.3d 469, 474-75 (3d Cir. 2015) (requiring bond hearings when detention under § 1226(c) became unreasonable), *abrogated in part by Jennings v. Rodriguez*, 583 U.S. at 281; *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232-33 (3d Cir. 2011) (same), *abrogated in part by Jennings v. Rodriguez*, 583 U.S. at 281.

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

proceedings and do not require bond hearings. *Jennings*, 138 S. Ct. at 844. *Jennings*, however, did not address whether unreasonably prolonged detention without a bond hearing may violate due process, and left it to the lower courts to address the issue in the first instance. *Id.* at 312.

31. Following *Jennings*, the Third Circuit held that its constitutional analysis of prolonged mandatory immigration detention remained undisturbed and reaffirmed its conclusion that the Constitution requires bond hearings when “detention becomes unreasonable.” *German Santos v. Warden Pike C’ty Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020). The court ruled that its decisions in *Chavez-Alvarez* and *Diop* remain good law for as-applied constitutional challenges, with *Jennings* abrogating those cases only to the extent they read the statute to implicitly limit the length of detention without a bond hearing to “a reasonable amount of time.” *Id.* Other courts have similarly held that prolonged detention without a bond hearing is unconstitutional. *Black v. Decker*, 103 F.4th 133, 150-51 (2d Cir. 2024) (holding that courts should apply the *Mathews v. Eldridge* framework to determine when detention has become unconstitutionally prolonged); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (declining to create a bright-line rule but “adher[ing] to the notion that the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention under section 1226(c)”) (cleaned up).

32. Guided by the analysis in *Diop* and *Chavez-Alvarez*, the Third Circuit identified the following four factors to consider in determining whether a noncitizen's detention has become unreasonably prolonged: 1) the length of detention; 2) whether detention is likely to continue; 3) the reasons detention has been prolonged (including errors or bad faith by either party); 4) and whether the conditions of confinement are similar to those imposed as criminal punishment. *Id.* at 211.

33. If detention without a bond hearing has become unreasonably prolonged, the noncitizen is entitled to a bond hearing. At that bond hearing, due process requires certain minimal protections to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention and the noncitizen's ability to pay a bond. *Id.* at 213-214.

34. *German Santos*'s holding applies in the context of § 1225(b) detention, because both § 1225(b) and § 1226(c) deprive noncitizens of their liberty without an individualized determination about whether continued detention is necessary. *See Akhmadjanov v. Oddo*, No. 3:25-35, 2025 WL 660663, at *4 (W.D. Pa. Feb. 28, 2025) (applying *German Santos* to prolonged detention under § 1225(b)); *A.L. v. Oddo*, 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025) (same); *Tuser E.*, 370 F. Supp. 3d at 442 (“Petitioner, like all arriving aliens detained pre-removal pursuant to

§ 1225(b), has a due process right to an individualized bond consideration once it is determined that the duration of his detention has become unreasonable.”); *Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018) (same).

35. Some courts in this district have held that arriving aliens who are paroled into the United States are deemed as a matter of law to have never entered the United States and are thus “entitled to something less than the full array of rights usually conferred by the Due Process Clause.” *Tuser E.*, 370 F. Supp. 3d at 442; *see also Otis v. V. Green*, No. 18-742, 2018 WL 3302997, at *7 (D.N.J. July 5, 2018). However, the Supreme Court has recently explained that the this “entry fiction” serves to protect the “sovereign prerogative” to determine which noncitizens to admit or exclude, and thus limits noncitizens’ due process rights related to their applications for admission, not to their detention. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (holding that an arriving noncitizen “has only those rights *regarding admission* that Congress has provided by statute”) (emphasis added); *see A.L.*, 761 F. Supp. 3d at 825. The Third Circuit has similarly made clear that while noncitizens seeking initial admission to the United States have limited rights in relation to that application, the government may not detain them indefinitely or otherwise mistreat them. *Castro v. U.S. Dep’t of Homeland Sec.*, 835 F.3d 422, 449 & n.32 (3d Cir. 2016); *see also Wong Wing v. United States*, 163 U.S. 228, 235-36 (1896); *Rosales-Garcia v. Holland*, 322 F.3d 386, 412-14 (6th Cir.

2003) (en banc). Therefore, noncitizens subject to § 1225(b) are “persons” within the meaning of the Due Process Clause and, like noncitizens detained under § 1226(c), may not be subjected to unreasonably prolonged detention without a bond hearing. *A.L.*, 761 F. Supp. 3d at 825; *see also, e.g., Leke v. Holt*, 521 F. Supp. 3d 597, 602 (E.D. Va. 2021); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020); *Perez v. Decker*, No. 18-cv-5279, 2018 WL 3991497, at *3 (S.D.N.Y. 2018).

36. Indeed, even those courts that have indicated that the rights of detainees under § 1225(b) are limited in some respects have acknowledged that they “still possess some rights under the Due Process Clause which may be impugned should detention under the statute become unduly and unreasonably prolonged,” *Tuser E.*, 370 F. Supp. 3d at 442, and have applied similar factors to make that determination. *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858 (D. Minn. 2019) (stating that “it is not clear what, if anything, turns on this dispute, at least as a practical matter”).

37. In sum, prolonged detention without a bond hearing violates due process, regardless of the statutory basis for the detention. Courts in this circuit apply a multi-factor test to determine whether detention has become unreasonable and a bond hearing is necessary. *German Santos*, 965 F.3d at 211.

II. ICE’s refusal to release Petitioner on parole as required by the Agency’s policies violates the Administrative Procedure Act and due process.

38. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

39. The requirement that an agency follow its own policies is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if “an examination of the provision’s language, its context, and any available extrinsic evidence” supports the conclusion that it is “mandatory rather than merely precatory.” *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235–36 (applying *Accardi* to violation of an internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) (“Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a ‘Regulation’ . . .”).

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

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

42. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, *see Damus v. Nielsen*, 313 F. Supp. 3d 317, 343 (D.D.C.

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

43. Under 8 U.S.C. § 1182(d)(5)(A), applicants for admission, including arriving aliens, may be released on parole “for urgent humanitarian reasons or significant public benefit.” *See also* 8 C.F.R. § 212.5(b). In 2009, ICE issued a nationwide policy (hereinafter “the Credible Fear Policy”) to release arriving aliens with positive credible fear findings on parole if certain criteria are met. *See* ICE, Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009).¹ The Credible Fear Policy constitutes ICE’s interpretation of the statute governing detention of arriving aliens. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); § 1182(d)(5)(A). A similar 2004 policy specifically addresses the situation of noncitizens who have been granted asylum or other relief, and states that “it is ICE policy to favor release of aliens who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security

¹ Available at https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf.

issues or danger to the community” ICE, Directive No. 16004.1, Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed (Feb. 9, 2004) (hereinafter “the Asylum Policy”);² *see also Akhmadjanov*, 2025 WL 660663, at *4 (discussing this policy).

44. These policies are the type of rules ICE is obligated to follow under *Accardi*. The U.S. District Court for the District of Columbia considered Directive 11002.1 and concluded that it fell “squarely within the ambit of those agency actions to which the [*Accardi*] doctrine may attach,” in part because it “establish[ed] a set of minimum protections for those seeking asylum” and “was intended—at least in part—to benefit asylum seekers navigating the parole process.” *Damus*, 313 F. Supp. 3d at 324, 337-38; *see also Pasquini v. Morris*, 700 F.2d 658, 663 n.1 (11th Cir. 1983) (“Although the [INS] internal operating instruction confers no substantive rights on the [noncitizen]-applicant, it does confer the procedural right to be considered for such status upon application.”).

45. Therefore, Respondents must abide by the policies mandating that an arriving alien with a positive credible fear finding, and particularly a grant of asylum, should be released from detention if he establishes his identity and shows that he does not present a danger to the community or a flight risk. *See* Paragraph 8.3, ICE,

² Available at https://www.ice.gov/doclib/foia/policy/memoDetPolicyAsylumICE_Appealed_02.20.2004.pdf, at 4.

Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009); ICE Directive No. 16004.1.

FIRST CLAIM FOR RELIEF

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

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

47. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. As discussed above, the Third Circuit’s decision in *German Santos* lists four factors for courts to consider when determining whether detention without procedural protections has become unconstitutionally prolonged. *German Santos*, 965 F.3d at 211; *see also A.L.*, 761 F.Supp.3d at 826.

48. The first *German Santos* factor, the length of detention, favors a bond hearing. *See* 965 F.3d at 211-12. Mr. Ibrahim has been detained for over twelve months. Courts have repeatedly recognized that detention without a bond hearing becomes constitutionally-suspect after six months. *See Demore*, 538 U.S. at 529-30 (noting, in upholding § 1226(c) against a facial challenge, that detention usually lasts “roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal”); *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of

detention for more than six months”); *Chavez-Alvarez*, 783 F.3d at 476 (detention presumptively unreasonable if it lasts six months to a year); *Guerrero-Sanchez*, 905 F.3d at 226 (holding that individuals detained pursuant to 8 U.S.C. § 1231(a)(6) are “generally entitled to a bond hearing after six months”); *see also A.L.*, 761 F. Supp. at 826 (holding ten months’ detention under § 1225(b) unreasonable); *Perez*, 2018 WL 3991497, at *5 (same).

49. Second, Petitioner’s “removal proceedings are unlikely to end soon,” which “suggests that continued detention without a bond hearing is unreasonable.” *German Santos*, 965 F.3d at 211. Petitioner’s detention is likely to continue for many more months pending adjudication of his appeal before the BIA, which is not certain to result in a final agency decision. 8 C.F.R. § 1003.1(d)(4), (e)(5); *see also Matter of Patel*, 16 I&N Dec. 600 (BIA 1978). The appeal process is a lengthy process that is impacted by heavy backlogs. According to EOIR adjudication statistics, in 2025 fiscal year the BIA completed 16,913 and had 160,098 pending appeals at the end of the second quarter.³ Mr. Ibrahim’s appeal was received October 28, 2025. A transcript has not yet been produced and a briefing schedule has not yet been issued. Thus, his detention is likely to continue for significant time during the pendency of the DHS’s appeal and any further proceedings. *See Chavez-Alvarez*, 783 F.3d at 478

³ Executive Office for Immigration Review, Adjudication Statistics: SII Appeals Filed, Completed, and Pending (Apr. 4, 2025), available at <https://www.justice.gov/eoir/media/1344986/dl?inline>.

(noting that it became clear by the time the BIA appeal was filed that it would take “a substantial amount of time”); *accord German Santos*, 965 F.3d at 212.

50. Third, Mr. Ibrahim did not engage in dilatory tactics before the Immigration Judge and raised only good-faith challenges to his removal. *See German Santos*, 965 F.3d at 211. Petitioner filed only one motion to continue his proceedings, shortly after he obtained counsel, in order to allow counsel to adequately brief his complex case. Exh E. This request prolonged his detention but was necessary to protect his rights to fair hearing and should not be considered as a delay that undermines the length of his detention. In assessing this factor, courts may consider whether either party “made careless or bad-faith errors in the proceedings that caused unnecessary delay,” but must be careful not to hold “good-faith challenges to removal” against a petitioner, “even if his appeals or applications for relief have drawn out the proceedings.” *German Santos*, 965 F.3d at 211 (internal quotation marks omitted); see also *Leslie v. Att’y Gen. of U.S.*, 678 F.3d 265, 271 (3d Cir. 2012) (cautioning against “effectively punish[ing] [petitioners] for pursuing applicable legal remedies”). Moreover, detention “can still grow unreasonable even if the Government handles the removal proceedings reasonably.” *German Santos*, 965 F.3d at 211.

51. However, the Government did engage in dilatory conduct. The Government raised new issues in the first instance on the day of Mr. Ibrahim’s merits

hearing, submitting evidence minutes before the hearing proceeded. This prompted the immigration court to issue a briefing schedule, which the Government ignored, declining to brief the issues they raised before the Court. This all ultimately moved Mr. Ibrahim's merits hearing from May to August of 2025.

52. Lastly, the conditions of Mr. Ibrahim's confinement, particularly as the duration of detention increases, weigh strongly in favor of finding his detention to be unreasonable. *See Chavez-Alvarez*, 783 F.3d at 475-77. He has been detained for over ten months and during this period has not received adequate medical care. *See* Ex. F, Petitioner's Medical Records. Despite serious respiratory issues, and despite a medical recommendation that he receive surgery. Mr. Ibrahim has not received the medical care recommended by the doctors who examined him during his detention, despite a detention that has lasted over twelve months. *See* Ex. F.

53. The reasonableness of detention is "highly fact-specific" and must be analyzed based on the totality of circumstances. *German Santos*, 965 F.3d at 210. Considering the length of Mr. Ibrahim's detention, the likelihood that proceedings in his case will continue for several months, the absence of bad-faith actions on his side, and the conditions of his confinement, Mr. Ibrahim's further detention without a bond hearing is unconstitutional. *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 475) (noting that detention "can still grow unreasonable even if the Government handles the removal proceedings reasonably").

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Enjoin Respondents from moving the Petitioner from the jurisdiction of the Newark Field Office while habeas proceedings are pending;
- 3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 4) Issue a Writ of Habeas Corpus and order Petitioner's release within 10 days unless Defendants schedule a hearing before an immigration judge at which, in compliance with *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;
- 5) In the alternative, order Petitioner's immediate release from Custody;
- 6) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

7) Grant such further relief as the Court deems just and proper; and

Dated: July 25, 2025

Respectfully submitted,

/s/Robert Jackel

Robert Jackel, Esq.

Legal Services of New Jersey

100 Metroplex Drive, Suite 101

Edison, New Jersey 08817

rjackel@lsnj.org

(732) 529-8236

VERIFICATION BY SOMEONE ACTING ON PETITIONER’S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner’s attorneys, and I have discussed the claims with Petitioner’s legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 3, 2025

Respectfully submitted,

/s/ Robert Jackel

Robert Jackel

Pro Bono Counsel for Petitioner