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Mohammed IBRAHIM,
A [redacted]

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. 2:25-cv-17189-JKS

REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Honorable Jamel K. Semper

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PRELIMINARY STATEMENT

Petitioner Mohammed Issa Ibrahim ("Mr. Ibrahim") respectfully submits this reply in response to Respondents' ("the Government's") memorandum of law in opposition to his petition for writ of habeas corpus. Contrary to the Government's position, Mr. Ibrahim is entitled to a bond hearing or immediate release, as his detention meets all the factors the Third Circuit set out in *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020). Additionally, Respondent's refusal to grant parole violates the *Accardi* doctrine and also warrants release. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954).

ARGUMENT

As a threshold matter, Petitioner does not dispute that he is subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(1), because he is an "arriving alien." Pet. at ¶¶ 3, 19, 45. Instead, he argues that his ongoing detention without the opportunity for a bond hearing has become unlawfully prolonged and violates the Due Process Clause.

I. Mr. Ibrahim's Detention Has Become Unconstitutionally Prolonged.

Mr. Ibrahim's detention without a bond hearing has become unreasonably prolonged, and violates due process. Pet. at ¶¶ 46-53; *see generally German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d 203 (3d Cir. 2020). He has been

detained for thirteen months. *Exh* A, K. Detention without a bond hearing "becomes more and more suspect after five months." *German Santos*, 965 F.3d at 211; *see also Nunez v. Oddo,* No. 25-CV-143J, 2025 WL 2443437, at *4 (W.D. Pa. Aug. 25, 2025)(finding that a detention "just over of 14 months" "weighs strongly in favor of granting habeas relief."); *Gonzalez-Espinoza v. York C'ty Prison*, No. 3:17-cv-661, 2017 WL 2592402, at *1 (M.D. Pa. June 15, 2017) (granting a hearing after eight months) District courts in this Circuit have found similar periods of detention to be unreasonable; *Sisilano-Lopez v. Lowe*, 448 F. Supp. 3d 419, 425 (M.D. Pa. 2020) (holding that detention of twelve months "escaped the realm of reason"); *Kleinauskaite v. Doll*, No. 4:17-cv-02176, 2019 WL 3302236, at *6 (M.D. Pa. July 23, 2019) (same); *Bah v. Doll*, No. CV 3:18-1409, 2018 WL 5829668, at *1 (M.D. Pa. Nov. 7, 2018) (granting petition when detention exceeded fourteen months).

Application of the other *German Santos* factors shows that Mr. Ibrahim's detention has now become unconstitutionally prolonged. He has just filed his appeal to the Board of Immigration Appeals, so his "removal proceedings are unlikely to end soon." *German Santos*, 965 F.3d at 211. This "suggests that continued detention without a bond hearing is unreasonable." *Id.* The Government engaged in dilatory conduct when they raised new issues in the first instance on the day of Mr. Ibrahim's merits hearing, triggering a three-month delay in his proceedings. Pet. Br. ¶51. Finally, the conditions of confinement at Elizabeth Detention Center are similar to

those imposed for criminal punishment. This is especially so as Mr. Ibrahim is being denied medical treatment for a condition that was diagnosed during his detention. Pet at ¶ 52.

Respondent does not meaningfully address the habeas petition's unreasonably prolonged detention argument. While conceding that *German Santos* applies to etention and that the determination of whether a detention is unreasonably prolonged is "a 'highly fact-specific inquiry' without a bright line," Respondents then decline to address the facts in this case. Resp. at 11. Respondents do not address the likelihood that Mr. Ibrahim's detention is unlikely to end soon given that his appeal to the Board of Immigration Appeals does not yet have a briefing schedule (Pet. ¶49); the dilatory actions of the Government in prolonging his detention (Pet. ¶¶50-51); or the conditions of confinement and the lack of adequate medical care Mr. Ibrahim is receiving while indefinitely detained (Pet. ¶ 52; *Exhs F, K)*.

The Government seems to argue that, because Mr. Ibrahim "has received due process while detained"[1] his detention is "presumptively reasonable." Resp. at 11. If correct, the Government's position would mean that all detentions are presumptively reasonable provided that some process would continue along the way. This is contrary to *German Santos*, which states that counting time spent challenging

[1] Again, the Government ignores its own dilatory actions which have extended the length of the detention.

detention as reasonable "would effectively punish [a noncitizen] for pursuing applicable legal remedies." *German Santos*, 965 F.3d at 211; *see also Leslie v. Att'y Gen. of the U.S.*, 678 F.3d 265, 271 (3d Cir. 2012).

Respondents cite to *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), to argue that Mr. Ibrahim has received due process in his removal proceedings. This misses the point of the present petition. Addressing Respondents' argument about *Thuraissigiam* specifically, that decision limited the rights of noncitizens "regarding their admission" but did not address challenges to detention. Resp. at 16 (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). As a Court in this Circuit recently explained:

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

A.L. v. Oddo, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025). Mr. Ibrahim's habeas claim relate only to his detention, not to his admission to the United States, so he has a right to due process in this context. *See Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 449 n.32 (3d Cir. 2016) (drawing this distinction).

Moreover, the case the Government cites in support of this position, *Kabine F. v. Green* is inapposite. No. 19-16614 (JMV), 2019 WL3854304, at *5 (D.N.J.

Aug. 15, 2019. *Kabine*, which was decided prior to *German Santos* and did not apply the same factors, concerned a habeas petition filed within two months of the beginning of detention, and did not address prolonged detention at all. The Government does not cite a single case which applies the *German Santos* factors to conditions similar to Mr. Ibrahim's. However, courts have applied *German Santos* to detention under §1225(b) in similar circumstances and have found detention to be unreasonable. In *A.L. v. Oddo*, a judge in the Western District of Pennsylvania found a ten month detention unreasonable under §1225(b) where the petitioner's appeal of the denial of his asylum application was pending before the Board of Immigration Appeals and where his request for humanitarian parole also remained pending. *A.L.*, 761 F. Supp. at 826. Other courts have applied *German Santos* and found that detentions of similar length to Mr. Ibrahim's were unreasonably prolonged, especially where appeals were pending. *Reid v. Oddo*, No. 3:25-CV-237, 2025 WL 3123895, at *7 (W.D. Pa. Nov. 7, 2025) (holding that a thirteen month detention, while an appeal before the Board of Appeals was pending, was unreasonably prolonged); *C.B. v. Oddo*, No. 3:25-CV-00263, 2025 WL 2977870, at *8 (W.D. Pa. Oct. 22, 2025) (a ten-month detention under § 1225(b) without an individualized bond hearing is a violation of the petitioner's Fifth Amendment right to due process); *Nunez v. Oddo*, No. 25-CV-143J, 2025 WL 2443437, at *4 (W.D. Pa. Aug. 25, 2025) (same, for fourteen months).

Considering all the relevant factors, Mr. Ibrahim's detention without a bond hearing has become unconstitutionally prolonged. The appropriate remedy is a bond hearing at which the government bears the burden by clear and convincing evidence, *German Santos*, 965 F.3d at 214. This Court should hold that hearing in the first instance. The ability to hold its own bond hearing is a "legal and logical concomitant" of this Court's habeas jurisdiction. *Leslie v. Holder*, 865 F. Supp. 2d 627, 634-35 (M.D. Pa. 2012). Courts have exercised this authority, "particularly where delay risks perpetuating the constitutional injury" and immigration court dockets are "exploding." *Centeno-Martinez v. Jamison*, 25-3593, 2025 WL 2157711, at *3 (E.D. Pa. Nov. 12, 2025); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 407 (E.D.N.Y. 2025). Since, as discussed above, noncitizens typically bear the burden in bond hearings, immigration judges are not used to allocating the burden to the government and may not do so correctly, necessitating further federal court proceedings. *See, e.g.*, *Saltos Chiguano v. Lowe*, No. 1:24-cv-2210, 2025 WL 3187161, at *4 (M.D. Pa. Nov. 14, 2025) (deciding to hold a hearing before the district court after two different IJs failed to apply the appropriate burden of proof). Therefore, this Court should hold a constitutionally-adequate bond hearing in the first instance.

II. Petitioner's Detention Without Parole Violates the *Accardi* Doctrine.

A. Petitioner Has Standing to Bring His *Accardi*/APA Claim Through Habeas.

Respondents' refusal to release Mr. Ibrahim on parole did not comply with its own polices, in violation of the *Accardi* doctrine. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954). "[A] government agency is not free to disregard its own regulations" or policies, and if it does so, it violates the APA. *De Jesus Martinez v. Nielsen*, 341 F. Supp. 3d 400, 410 (D.N.J. 2018); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (requiring agencies to follow their own internal procedures); *Doe #1 v. Noem*, 781 F. Supp. 3d 246, 261 (D.N.J. 2025).

Respondents' argument that Mr. Ibrahim lacks standing for his APA claim because habeas is the proper vehicle for his claims is inapposite because this is a habeas petition. *See* Resp. at 12-13; *cf. Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (holding that the detainees had to file habeas petitions in their districts of confinement rather than an APA complaint in the District of D.C.). "The text of the APA allows challenges to agency action to be brought in habeas petitions" where the claim has "some relationship to the petitioner's release." *Thieme v. Warden Fort Dix FCI*, 154 F.4th 115, 123 (3d Cir. 2025) (citing 5 U.S.C. § 703). Similarly, "[w]hen presented with a habeas petition, courts may invalidate an agency action in violation of the *Accardi* doctrine." *N-N- v. McShane*, No. 25-5494, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025). Indeed, *Accardi* itself was a habeas case.

347 U.S. at 261. Mr. Ibrahim has standing to pursue his APA/*Accardi* claim through the vehicle of a habeas corpus petition, and that is exactly what he did here. The Court should reject Respondents' standing argument.

B. This Court Has Jurisdiction Over Petitioner's *Accardi* Claim.

Contrary to Respondents' suggestion, this claim does not impermissibly ask the Court to review Respondents' exercise of discretion. Resp. at 13 (citing cases that invoke 8 U.S.C. § 1252(a)(2)(B)(ii)). Indeed, *Accardi* itself made clear that even when a decision is ultimately discretionary, Courts can require that the government exercise that discretion in accordance with the law. *Accardi*, 347 U.S. at 268. The Third Circuit has exercised its jurisdiction to ensure that parole decisions comport with Due Process, and other district courts have exercised jurisdiction over similar claims. *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 399 (3d Cir. 1999); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 328 (D.D.C. 2018) (holding that a challenge to the way in which a parole decision is made rather than the substance of that decision is reviewable); *Abdi v. Duke*, 280 F. Supp. 3d 373, 385 (W.D.N.Y. 2017), *vacated in part and on other grounds by Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019). As one court recently explained:

> The Review Statute restricts jurisdiction *only* with respect to the executive's exercise of discretion. It does not limit habeas jurisdiction over questions of law. Accordingly, although the INA precludes direct review of discretionary decisions, it does not bar courts from reviewing predicate legal questions. Such "predicate legal questions" include

> claims that the discretionary process itself was constitutionally or legally flawed.

Y-Z-L-H- v. Bostock, 792 F. Supp. 3d 1123, 1139-40 (D. Or. 2025) (cleaned up). This Court should reach the same conclusion, particularly in light of the presumption in favor of judicial review. *See Reno v. Catholic Social Servs., Inc.*, 509 U.S. 43, 64 (1993). Therefore, this Court has jurisdiction over Mr. Ibrahim's *Accardi\APA* claim.

C. Respondents' Failure to Grant Parole Violated *Accardi*.

On the merits, as noted above, "[u]nder the *Accardi* doctrine, federal agencies must follow their own binding regulations and formally established procedures, even if those procedures provide greater rights than required by the statute." *N-N-*, 2025 WL 3143594, at *4. ICE Directive 11002.1 favors release on parole for noncitizens who have passed credible fear interviews.

Respondents do not address the Petitioner's arguments concerning the failure to comply with the agency's own procedures. Mr. Ibrahim's parole request has been pending since November 4. *Pet. Exh K*. There has been no response from the Government concerning the request. While Mr. Ibrahim has no right to be granted parole, he has a right to have his request adjudicated in accordance with the applicable policy. *Id.* at 337-338; *accord De Jesus Martinez*, 341 F. Supp. 3d at 410.

D. Release is the Appropriate Remedy

Courts in this district and around the country have remedied unlawful re-detention of noncitizens by ordering immediate release. *See, e.g.*, *Garcia Sandoval v. Rokosky*, No. 25-17229, 2025 WL 3204746, at *2 (D.N.J. Nov. 17, 2025); *Contreras Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at *6 (D.N.J. Oct. 23, 2025); *Munoz Materano v. Arteta*, 2025 WL 2630826, at *17, 20 (S.D.N.Y. Sept. 12, 2025); *Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453, at *5 (D. Minn. Aug. 25, 2025); *Y-Z-L-H-*, 792 F. Supp. 3d at 1147

Respondents have had ample opportunity to apply Directive 11002.1 in Mr. Ibrahim's case, during the nearly thirteen months he has been detained since October 28, 2024, but have failed to do so. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 656 (D. Mass. 2018) ("ICE has repeatedly demonstrated an inability to perform lawfully and to decide fairly whether detention is justified for either [petitioner]."). Due to the "flexible nature" of habeas relief, "the Court may fashion a remedy that returns petition to [his] position prior to [his] unlawful detention." *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025). Therefore, the Court should order release.

CONCLUSION

For the foregoing reasons, Mr. Mohammed Ibrahim respectfully requests that the Court grant his petition for writ of habeas corpus and order respondents to release him or to hold a bond hearing at which the Department of Homeland Security bears the burden of showing that his continued detention is necessary.

Dated: November 24, 2025

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

Mohammed IBRAHIM, A[redacted] Petitioner, v. Eric Rokosky ET AL Respondents.	**Case No. 2:25-cv-17189-JKS** **Submitted Electronically** Honorable Jamel K. Semper

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers, and that on November 24, 2025, he served a copy of the attached

REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

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