**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF PENNSYLVANIA**

MIGUEL ROBLES CORCUERA,

*Petitioner-Plaintiff*,

v.

Craig LOWE, in his official capacity as Warden of the Pike County Correctional Facility, MICHAEL T. ROSE, in his official capacity as Acting Assistant Field Office Director of the Philadelphia Field Office for Immigration and Customs Enforcement; TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States,

*Respondent-Defendant*.

Case No. __:25-cv-_____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

**PETITIONER-PLAINTIFF'S VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. Petitioner Miguel Robles Corcuera ("Mr. Robles Corcuera") was detained by Immigration and Customs Enforcement ("ICE") on October 6, 2023 and is currently confined at the Pike County Correctional Facility ("PCCF"), in Lords Valley, Pennsylvania. Petitioner has been detained for over twenty-seven (27) months and has been subjected to prolonged detention because he was designated as an "arriving alien" by ICE.

2. Petitioner is a native and citizen of Mexico who fled Mexico in April 2023 after being brutally attacked by gang members. He entered the United States on or about April 10, 2023 via the "CBPOne" application[1]. He was paroled into the United States and issued a Notice to Appear dated April 10, 2023, charging him as being an "arriving alien." Exh. 1, Notice to Appear.

3. On or about October 6, 2023, Petitioner was re-detained by U.S. Immigration and Customs Enforcement (ICE) at the Moshannon Valley Processing Center in Philipsburg, Pennsylvania. *See* Exh. 2, Forms I-200 and I-286. He was

[1] "In October 2020, U.S. Customs and Border Protection (CBP) launched a mobile device app called CBP One to provide travelers with access to certain CBP functions prior to their arrival in the United States. Former President Joe Biden's administration later expanded CBP One so that migrants without entry documents could schedule appointments at designated ports of entry on the southern border. During these appointments, CBP personnel inspected migrants, and allowed them to access the U.S. asylum process. Starting in May 2023, CBP One became the primary method by which asylum seekers could enter the United States at ports of entry through the end of the Biden administration." CBP One: An Overview, American Immigration Council (Mar. 24, 2025), https://www.americanimmigrationcouncil.org/fact-sheet/cbp-one-overview/.

transferred to Pike County Correctional Facility on or about March 6, 2024, then to the Philadelphia Federal Detention Center on or about February 17, 2025, then back to Pike County Correctional Facility on or about November 25, 2025.

4. When presented with a motion for bond redetermination in November 2024, the immigration court determined that it lacked jurisdiction to determine bond. Exh. 10, Order of the Immigration Judge; Exh. 11, Immigration Judge Bond Memorandum. The court made a cursory finding in the alternative that Petitioner was a danger and a flight risk, despite significant evidence to the contrary, denying him a meaningful opportunity to seek bond. Petitioner filed an appeal of the immigration court's decision to the Board of Immigration Appeals ("BIA"), and the BIA dismissed the appeal on January 31, 2025. Exh. 12, BIA Decision. Petitioner filed three (3) parole requests with ICE; all three requests were denied. Exhs. 14, 15, Parole Request Email Chains.

5. Petitioner has been detained for over 27 months in total, since October 2023, and for over 14 months since his bond hearing in November 2024. Moreover, his detention is likely to continue for many more months during the pendency of his remand from the Third Circuit Court of Appeals to the Board of Immigration Appeals. He has been transferred to Pike County Correctional Facility, where he is detained under conditions that are indistinguishable from criminal confinement. Therefore, pursuant to *German Santos* and the Third Circuit's prior precedents, Mr.

Robles is entitled to immediate release or a bond hearing at which the Government must prove by clear and convincing evidence that his continued detention is necessary. 965 F.3d at 214.

## JURISDICTION & VENUE

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

7. 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.

8. The Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has authority under at least the Constitution, Article I, § 9, cl. 2 and the All Writs Act, 28 U.S.C. § 1651 to issue and enforce the writ of habeas corpus.

9. Venue is proper in this District under 28 U.S.C. § 2241(d) ("the application [for habeas corpus] may be filed in the district court for the district wherein such person is in custody"); 28 U.S.C. § 1391(b) (venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred"); and 28 U.S.C. § 1391(e)(1) (venue is proper in the district in

which "a substantial part of the events or omissions giving rise to the claim occurred"). Venue is proper in this District because Petitioner is presently detained within this District.

10. Under 28 U.S.C. § 2243, a court hearing a petition for a writ of habeas corpus must issue the writ or an order to show cause to the Respondent "forthwith." 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require the Respondent to respond "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

## PARTIES

11. Petitioner is a Mexican national who was detained by ICE on October 6, 2023 and is presently held in this District at the Pike County Correctional Facility, located at 175 Pike County Blvd, Lords Valley, Pennsylvania. He is in the custody of Respondents and under their direct control.

12. Respondent Craig Lowe is named in his official capacity as Warden of the Pike County Correctional Facility (PCCF), a correctional facility under contract with ICE to house noncitizen detainees. In this capacity, he is responsible for the oversight and custody of detainees at the PCCF. He is therefore the physical custodian of Petitioner, who is detained at the PCCF. Respondent Lowe's office is located at 175 Pike County Blvd, Lords Valley, PA 18428.

13. Respondent Michael T. Rose is named in his official capacity as the Philadelphia Field Office Director for ICE. In this capacity, Respondent Rose is responsible for administration and management of ICE Enforcement and Removal Operations in Pennsylvania and exercises control over Petitioner's custody at PCCF. He is therefore a legal custodian of Petitioner. Respondent McShane's office is located at 114 N. 8th Street, Philadelphia, PA 19107.

14. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE within DHS. In this capacity he 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.

15. Respondent Kristi Noem is named in her official capacity as the Secretary of DHS. In her official capacity, Ms. Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); routinely transacts business in the Middle District of Pennsylvania; is legally responsible for pursuing any effort to remove Petitioner; and is a legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, D.C. 20528.

16. Respondent Pamela Jo Bondi is named in her official capacity as Attorney General of the United States and the senior official of the U.S. Department of Justice. In her official capacity, Ms. Bondi is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Middle District of Pennsylvania and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is a legal custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

## FACTS AND PROCEDURAL BACKGROUND

### Petitioner's Removal Proceedings

17. Mr. Robles is a 26-year-old citizen of Mexico. He fled Mexico after [redacted] He fled Mexico for the United States in April 2023, after [redacted]

18. Mr. Robles entered the United States on or about April 10, 2023 as an applicant for admission via the CBPOne application. He was paroled into the United States and issued a Notice to Appear dated April 10, 2023, charging him as being an

"arriving alien." *See* Exh. 1, Notice to Appear. On or about October 6, 2023, he was re-detained by U.S. Immigration and Customs Enforcement (ICE) at the Moshannon Valley Processing Center in Philipsburg, Pennsylvania.

19. Mr. Robles appeared for his first master calendar hearing before IJ Tamar Wilson at the Elizabeth Immigration Court on December 1, 2023. At that hearing, IJ Wilson informed Mr. Robles of his right to an attorney, asked Mr. Robles if he wanted additional time to seek an attorney, provided him a list of pro bono attorneys, and reset the case to December 15, 2023. Exh. 5, Third Circuit Opinion.

20. On December 15, 2023, Mr. Robles appeared for his second master calendar hearing before IJ Wilson. At that hearing, IJ Wilson asked Mr. Robles if he had hired an attorney. Mr. Robles replied that he had a phone call with an attorney, and that "they told [him] to request additional time." IJ Wilson reset the hearing to January 12, 2024. *Id.*

21. On January 12, 2024, Mr. Robles appeared again before IJ Wilson. Mr. Robles requested additional time to retain an attorney that he spoke to the day before, who told him that she would look into his case. IJ Wilson did not respond to Mr. Robles's request for additional time and, instead, ruled on pleadings, concluded that he was not eligible for asylum and ordered Mr. Robles removed from the United States. *Id.*

22. Mr. Robles reserved the right to appeal and retained *pro bono* counsel from Rutgers Law School, who filed a timely Notice of Appeal on his behalf. The BIA dismissed Mr. Robles's appeal on May 9, 2024.

23. Mr. Robles subsequently filed a Petition for Review and a Motion for Stay of Removal before the Third Circuit Court of Appeals. The Third Circuit granted the Motion for Stay of Removal on August 22, 2024. Exh. 6, Order Granting Stay. The Third Circuit granted the Petition for Review on October 15, 2025 and issued the mandate on January 8, 2026, which means that the case will be remanded to the Board of Immigration Appeals (BIA), which could take several months. Exhs. 5, 6, Third Circuit Opinion and Mandate Order.

**Petitioner's Bond and Parole Requests**

24. On July 12, 2024, Mr. Robles filed a motion for custody redetermination hearing, and appeared at a custody hearing before the immigration court on July 19, 2024. Through counsel, Mr. Robles withdrew his bond request, so that counsel could conduct research on the issue of whether the court has jurisdiction to set bond, given that the Department of Homeland Security (DHS) designated Mr. Robles as an "arriving alien" on the Notice to Appear (NTA).

25. Mr. Robles filed a subsequent motion for custody redetermination hearing on November 1, 2024, including legal reasoning on the jurisdictional issue. Exh. 7, Motion for Custody Redetermination Hearing. The court scheduled Mr.

Robles for a custody redetermination hearing for November 6, 2024, and denied bond on the same day. Exh. 8, Notice of Hearing; Exh. 10, Order of the IJ. The court concluded that it did not have jurisdiction to set bond, and made an alternative finding that Mr. Robles constituted a danger and a flight risk.

26. Mr. Robles filed a timely Notice of Appeal and the court issued a bond memorandum on November 22, 2024. Exh. 11, IJ Bond Memorandum. On January 31, 2025, the Board of Immigration Appeals issued a decision dismissing Mr. Robles' bond appeal. Exh. 12, BIA Bond Decision.

27. Mr. Robles filed three parole requests with U.S. Immigration and Customs Enforcement: on July 23, 2024, December 18, 2024, and November 20, 2025. Exhs.14, 15, Parole Request Email Chains. Mr. Robles attached evidence of his ties to the United States and his intention to appear for all immigration proceedings. In the November 6, 2025 parole request, Mr. Robles further included proof that his criminal case had been resolved and that the Third Circuit Court of Appeals had granted his Petition for Review. ICE denied all three parole requests.

**Petitioner's Transfers and Conditions of Confinement**

28. Mr. Robles was initially detained at the Moshannon Valley Processing Center in Philipsburg, Pennsylvania, where he remained from October 2023 to March 2024.

29. In March 2024, Petitioner was transferred from Moshannon Valley Processing Center to Pike County Correctional Facility in Lords Valley, Pennsylvania.

30. In February 2025, Petitioner was transferred from the Pike County Correctional Facility to the Philadelphia Federal Detention Center in Philadelphia, Pennsylvania.

31. In November 2025, Petitioner was again transferred back to Pike County Correctional Facility, where he remains to date.

## LEGAL FRAMEWORK

### Detention of "Arriving Aliens" Under 8 U.S.C. § 1225(b).

32. Pursuant to 8 U.S.C. § 1225, a noncitizen "who arrives in the United States or is present in this country but has not been admitted, is treated as an applicant for admission." *Jennings v. Rodriguez*, 138 S.Ct. 830, 836 (2018); 8 U.S.C. § 1225(a)(1). Any applicant for admission "must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law." *Id.* at 836-837 (quoting 8 U.S.C. § 1225(a)(3).

33. Generally speaking, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Id.* at 837. Noncitizens "arriving in the United States" and "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation" fall

under the provisions at 8 U.S.C. § 1225(b)(1). *Id*; 8 U.S.C. § 1225(b)(1)(A)(i). Such individuals are ordered removed "without further hearing or review" unless they "indicate[] either an intention to apply for asylum . . . or a fear of persecution[,]" in which case they are referred for further proceedings regarding their claim to asylum. 8 U.S.C. § 1225(b)(1)(A)(i); 8 C.F.R. § 235; 8 C.F.R. § 208.30; *see also Jennings*, 138 U.S. at 837. All applicants for admission "not covered by § 1225(b)(1)[,]" including Mr. Robles, fall under the "broader . . . catchall provisions" at 8 U.S.C. § 1225(b)(2). *Id.* at 837. If an "examining immigration officer" determines an individual under § 1225(b)(2)(A) "is not clearly and beyond a doubt entitled to be admitted" to the United States, they are referred for full removal proceedings before an IJ. 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.6(a)(i); *see also* 8 U.S.C. § 1229a; *Jennings*, 138 S.Ct. at 837.

34. Regardless of whether § 1225(b)(1) or § 1225(b)(2) applies, the statutory text "mandate[s] detention of aliens throughout the completion of applicable proceedings[.]" *Jennings*, 138 S.Ct. at 845; 8 U.S.C. §§ 1225(b)(1)(B)(1)(B)(ii) (stating that upon determination that an individual "has a credible fear of persecution, the alien *shall be detained* for further consideration of the application for asylum.") (emphasis added); § 1225(b)(2)(A) (stating that upon determination that an individual "is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under [8 U.S.C. §] 1229a").

Release in the form of parole is only allowed "for urgent humanitarian reasons or significant public health benefit," 8 U.S.C. 1182(d)(5)(A), and parole determinations fall exclusively within the Department of Homeland Security's exercise of discretion. *Id.*; 8 C.F.R. §§ 235.3(b)(2)(iii), § 235.3(c); *see also id.* at § 212.5(b); *Jennings*, 138 S.Ct. at 837. As such, IJs are fully divested of jurisdiction to grant bond to detainees held under § 1225(b) or review DHS' decision to deny or terminate parole. *Matter of X–K–*, 23 I&N Dec. 731, 732 (BIA 2005) ("There is no question that IJs lack jurisdiction over arriving aliens who have been placed in section 240 [8 U.S.C. 1229a] removal proceedings, because they are specifically listed at 8 C.F.R. § 1003.19(h)(2)(i)(B) as one of the excluded categories."); 8 C.F.R. § 1003.19(h)(2)(i)(B) (stating that "an immigration judge may not redetermine the conditions of custody imposed by the Service with respect to . . . arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5)(A)]").

35. Mr. Robles has now been detained under 8 U.S.C. § 1225(b)(2)(A) since October 6, 2023—over 27 months. DHS has refused to grant his release on parole, and he has no procedural protections outside of this Court. *See Matter of X–K–*, 23 I&N Dec. 731, 732 (BIA 2005); 8 C.F.R. § 1003.19(h)(2)(i)(B). The only available remedy for Mr. Robles' unconstitutionally prolonged detention is through a writ of habeas corpus.

**Petitioner Has Exhausted All Administrative Remedies.**

36. Petition has exhausted all administrative remedies, including an appeal to the BIA and several parole requests with ICE. The BIA dismissed his appeal, and ICE denied his parole requests.

37. Accordingly, Petitioner has exhausted all available administrative remedies.

## RESPONDENTS' MANDATORY DETENTION OF PETITIONER UNDER 8 U.S.C. § 1225(b) VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

38. Mr. Robles's prolonged detention without a bond hearing violates the Fifth Amendment's guarantee that "[n]o person shall be…deprived of life, liberty, or property, without due process of law."[2]

39. It is "well-established" that the Fifth Amendment's Due Process Clause protects the rights of noncitizens like Mr. Robles to due process of law during removal proceedings. *Demore*, 538 U.S. at 523 (internal citations omitted); *Jamal A. v. Whitaker*, 358 F.Supp.3d 853, 857-858 (D. Minn. 2019) (holding that noncitizens detained under 8 U.S.C. § 1225(b)(2)(A) are entitled to Due Process

[2] In *Jennings*, the Supreme Court held that "subject only to express exceptions, [the language of] §§ 1225(b) and 1226(c) authorize[s] detention until the end of applicable [removal] proceedings." 138 S. Ct. at 842 (reversing Ninth Circuit's interpretation requiring automatic periodic bond hearings under §§ 1225(b) and 1226(c)). The Supreme Court remanded to the Ninth Circuit, however, to address the Petitioner's alternative argument—that his prolonged detention violated the Due Process Clause of the Fifth Amendment. *Id.* at 851. Here, like the Petitioner in *Jennings*, Mr. Robles argues that his prolonged mandatory detention violates the Due Process Clause of the Fifth Amendment.

protection against prolonged detention); *Pierre v. Doll*, 350 F.Supp.3d 327, 332-333 (M.D. Pa. 2018) (holding that noncitizen detained under 8 U.S.C. § 1225(b)(1) "ha[d] a due process right to avoid unreasonably prolonged detention"); *Lett v. Decker*, 346 F.Supp.3d 379, 386 (finding "no logical reason to treat individuals . . . under § 1225(b), like Petitioner, differently than other classes of detained aliens").

40. "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) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Due Process requires that detention "bear[] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697

41. At this point, Mr. Robles has already suffered a severe and unreasonable deprivation of liberty, having been detained for more than 27 months without a meaningful bond hearing, and 14 months since the IJ made a cursory alternative finding that he constituted a danger to the community and a flight risk. *See, e.g., Ahad v. Lowe*, 235 F. Supp. 3d 676 (M.D. Pa. 2016)(finding that detention of 20 months was presumptively unreasonable warranting individualized bond hearing); *Ahmed v. Lowe*, No. 3:16-cv-2082, 2017 U.S. Dist. LEXIS 83276 (M.D.

Pa. May 31, 2017)(holding that the petitioner's "prolonged mandatory detention exceeds the one-year period at which point detention is presumed excessive"). Moreover, it is highly unlikely that ICE will ever obtain a removal order against Mr. Robles, given his strong and meritorious claims for asylum. *See Gonzalez v. O'Connell*, 355 F.3d 1010, 1019-1021 (7th Cir. 2004) (explaining that the Supreme Court's analysis in *Demore* "left open the question of whether mandatory detention under § 1226(c) is consistent with due process when a detainee makes a colorable claim that he is not in fact deportable[,]" which would present "a wholly different case").

42. Currently, the government cannot execute a removal order as a matter of law as the Third Circuit Court of Appeals granted a stay of removal in Mr. Robles's case. The Third Circuit also granted Mr. Robles's Petition for Review on October 15, 2025 and issued the mandate on January 8, 2026, meaning that his case will be remanded to the Board of Immigration Appeals, where the proceedings could thus last several more months, or even years. It is manifestly unreasonable to keep Mr. Robles detained in the interim.

**Petitioner's Prolonged Detention Without Bond Is Unconstitutional**

43. 27 months of mandatory civil detention is extreme. As detention grows in length, the justification for the increasingly severe deprivation of individual liberty must also grow stronger. *See Kansas v. Hendricks*, 521 U.S. 346, 363–64

(1997); *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 474 (3d Cir. 2015), *abrogated in part and on other grounds by Jennings*, 138 S.Ct. at 847 (citing *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232, 234 (3d Cir. 2011)). Moreover, as Justice Kennedy acknowledged in *Demore*, the ultimate purpose of immigration detention here—to effect removal upon a final order—is "premised upon the alien's deportability." 538 U.S. at 531 (Kennedy, J., concurring).

44. The Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979); *United States v. Salerno*, 481 U.S. 739 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 80–83 (1992). Due process therefore will require "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).

45. Mr. Robles's mandatory detention under § 1225(b)(2)(A) for over 27 months is unreasonable. The Supreme Court has not yet considered the constitutionality of prolonged detention under § 1225(b) or the other immigration detention provisions. *See Jennings*, 138 S.Ct. at 851. However, this Court and others have treated and analyzed as-applied challenges to § 1225(b)(2)(A) detention similarly to as-applied challenges raised by noncitizens detained under § 1226(c).

*See, e.g., Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018)(quoting *Singh v. Sabol*, 2017 U.S. Dist. LEXIS 64888, 2017 WL 1659029, *4 (M.D. Pa. Apr. 6, 2017))("arriving aliens detained pre-removal pursuant to § 1225(b) have a due process right to an individualized bond consideration once it is determined that the duration of their detention has become unreasonable"); *Destine v. Doll*, 2018 U.S. Dist. LEXIS 125032, 2018 WL 3584695 (M.D. Pa. July 26, 2018) (finding that arriving aliens have Due Process rights and that petitioner's twenty-one month detention pursuant to § 1225(b) was unreasonable, and ordering an individualized bond hearing); *Fatule-Roque v. Lowe*, 2018 U.S. Dist. LEXIS 125031, 2018 WL 3584696, at *6 (M.D. Pa. July 26, 2018) (finding that § 1225(b) detainees enjoy basic due process rights, but finding that petitioner's detention was not so unduly prolonged that it rendered § 1225(b) unconstitutional as applied to him); *Lett v. Decker*, 346 F. Supp. 3d 379, 2018 U.S. Dist. LEXIS 175441, 2018 WL 4931544 (S.D.N.Y. Oct. 10, 2018) (finding that arriving aliens have Due Process rights and that petitioner's nearly ten month detention pursuant to § 1225(b) was unreasonable); *Perez v. Decker*, 2018 U.S. Dist. LEXIS 141768, 2018 WL 3991497 (S.D.NY. Aug. 20, 2018) (finding that arriving aliens have Due Process rights and that petitioner's nearly one year detention pursuant to § 1225(b) was unreasonable, and ordering an individualized bond hearing). The Court should do the same here now.

46. While the Supreme Court held in *Demore* that *brief* mandatory detention under § 1226(c) without a bond hearing did not violate due process, this holding was specifically premised on the short period for which the noncitizen had been detained, as well as—now discredited—evidence that, at the time, § 1226(c) detention was neither indefinite nor prolonged. 538 U.S. at 529-531 (relying on evidence provided by the Government that, at the time, removal proceedings were completed in an average time of 47 days and a median time of 30 days in 85% of cases, and that the remaining 15% of cases in which there was an appeal were completed in an average of four months);[3] *see also Muse v. Sessions*, --- F.Supp.3d ---, 2018 WL 4466052 at *3 (D. Minn. 2018) ("Woven throughout *Demore* are repeated references to the brevity of detention under § 1226(c).")

[3] While *Jennings v. Rodriguez* was being briefed, the government informed the Supreme Court that it had "made several significant errors in calculating" the statistics which it provided to the Court in *Demore* and which the Court relied upon in its decision. Letter from Ian Heath Gershengorn, Acting Solicitor General, to Hon. Scott S. Harris, Clerk, Supreme Court (Aug. 26, 2016), *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), available at http://on.wsj.com/2mtjnUP. The government had represented in *Demore* that cases of detained noncitizens involving a BIA appeal took on average "about five months;" however, those statistics did not acknowledge that cases took much longer at the IJ stage when there was an appeal, and that other time in those cases was unaccounted for. *Id.* at 3. The government's revised statement is that total completion time in cases where there was an appeal averaged 382 days, with a median of 272 days. *Id.*; *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 869 (2018) (Breyer, J., dissenting) ("The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did. And, as I have pointed out, thousands of people here are held for considerably longer than six months without an opportunity to seek bail.").

47. As the crucial fifth vote in *Demore*, Justice Kennedy acknowledged in his concurrence that "if continued detention bec[omes] unreasonable or unjustified," a noncitizen could be "entitled to an individualized determination as to his risk of flight or dangerousness." 538 U.S. at 532 (Kennedy, J., concurring); *see also id.* at 532-33 ("Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary to then inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons."). Since *Demore*, the time that each immigrant spends in detention has risen substantially. *See, e.g.*, *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 234 (3d Cir. 2011) (explaining that mandatory detention becomes more constitutionally "suspect" as it extends beyond the brief detention periods considered by the Supreme Court in *Demore*).

48. Like the Supreme Court, the Third Circuit has not yet ruled on the constitutionality of prolonged detention under § 1225(b). The Third Circuit in *Diop* held as a constitutional matter that due process prohibits mandatory detention under § 1226(c) for an unreasonable period of time. *Diop*, 656 F.3d at 232 ("[T]he constitutionality of [detention without a bond hearing] is a *function of the length of the detention*. At a certain point, continued detention becomes unreasonable, and the Executive Branch's implementation of § 1226(c) becomes *unconstitutional* unless the Government has justified its actions at a hearing inquiring into whether continued

detention is consistent with the law's purposes of preventing flight and dangers to the community.") (emphasis added).

49. Moreover, prior to the Supreme Court's ruling in *Jennings*, a number of courts applying the canon of constitutional avoidance held that serious Fifth Amendment due process concerns required the statutory text of both §§ 1225(b) and 1226(c) to be interpreted as including an implicit reasonableness limitation on the duration of detention during removal proceedings. *See, e.g., Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013); *aff'd*, 804 F.3d 1060, 1081-84 (9th Cir. 2015) (reading implicit six-month limitation on the length of detention absent a bond hearing into text of both § 1225(b) and § 1226(c)); *Sing Fon Pan v. Sessions*, 290 F.Supp.3d 250, 253-258 (S.D.N.Y. 2018) ("Section 1225(b) will be read to include a six-month limitation on the length of detention of non-citizen arriving aliens . . . without an individualized bond hearing."); *Abdi v. Duke*, 280 F.Supp.3d 373, 409 (W.D.N.Y. 2017) (same); *Maldonado v. Macias*, 150 F.Supp.3d 788, 805-809 (W.D. Tex. 2015) (reading reasonableness limitation into text of 8 U.S.C. § 1225(b)(2)(A)); *Bautista v. Sabol*, 862 F.Supp.2d 375, 379-381 (M.D. Pa. 2012); *Heredia v. Shanahan*, 245 F.Supp.3d 521, 526-27 (S.D.N.Y. 2017) (same), *vacated on other grounds by Heredia v. Decker*, No. 17-1720, 2018 WL 1163180 (2d Cir. Jan. 2, 2018); *Ahad v. Lowe*, 235 F.Supp.3d 676, 686-688 (M.D. Pa. 2017) (same for individual detained under § 1225(b)(1)); *Reid v. Donelan*, 819 F.3d 486 (1st Cir.

2016) (reading six-month limitation on length of detention absent a bond hearing into text of § 1226(c)). Although *Jennings* abrogated the statutory holdings of such cases because the Supreme Court determined, as a predicate matter, that the text of §§ 1225(b) and 1226(c) were not properly subject to competing interpretations that would permit application of the canon of constitutional avoidance, *see* 138 S.Ct. 830, 842, the separate substantive analysis of due process those decisions provided remains persuasive. *See, e.g., Muse*, --- F.Supp.3d ---, 2018 WL 4466052 at *4 n.3 (D. Minn. 2018).

50. Following *Jennings*, decisions of this Court and other courts across the nation assessing as-applied challenges to prolonged § 1225(b) detention have applied an individualized factor-based analysis the court use to examine prolonged detention under § 1226(c). *See German Santos v. Warden, Pike Cnty. Corr. Facility,* 965 F.3d 203, 210–11 (3d Cir. 2020) (applying multifactor test to mandatory pre-order detention under § 1226(c)); *see also Wahi v. Pittman*, No. 25-CV-2207 (MAS), 2025 WL 2918948, at *2 (D.N.J. Oct. 15, 2025) (applying *German Santos*); *Lett v. Decker*, 346 F.Supp.3d 379, 388 (S.D.N.Y. 2018) (holding that the factors used to analyze detention of "an individual detained under § 1226(c) are equally appropriate in the § 1225(b) context") (internal quotations omitted); *Perez v. Decker*, No. 18-cv-5279, 2018 WL 3991497 at *4 (S.D.N.Y. Aug. 20, 2018) (employing same analysis); *Brissett v. Decker*, 324 F.Supp.3d 444, 451 (S.D.N.Y. 2018) (same); *De Ming Wang*

*v. Brophy*, No. 17-CV-6263, 2019 WL 112346 at *3 (W.D.N.Y. Jan. 4, 2019) (same); *Vargas v. Beth*, 378 F.Supp.3d 716, 726-728 (E.D. Wis. 2019) (same); *Destine v. Doll*, No. 3:17-CV-1340, 2018 WL 3584695 at *4-5 (M.D. Pa. July 26, 2018) (same); *Pierre v. Doll*, 350 F.Supp.3d 327, 331-333 (M.D. Pa. 2018) (same); *Banda v. McAleenan*, 385 F.Supp.3d 1099, 1105-1106 (W.D. Wash. 2019); (same); *Tuser E. v. Rodriguez*, 370 F.Supp.3d 435, 441-443 (D.N.J. 2019) (same); *Franklin K.B. v. Warden, Hudson Cty. Corr. Facility*, No. 18-9933, 2019 WL 2385701 at *4-5 (D.N.J. June 3, 2019) (same).

51. The Third Circuit has provided the following list of factors: (1) the length of detention; (2) "whether the detention is likely to continue;" (3) the "reasons for [any] delay" that prolongs detention; and (4) "whether the [noncitizen's] conditions of confinement are meaningfully different from criminal punishment." *Id.*[4] (quotation marks omitted)

*Length of Detention*

52. The first factor—the length of detention without a bond hearing—is the "most important." *Id.* The Third Circuit has held that mandatory detention without bond "becom[es] unreasonable sometime between six months and one

[4] Courts throughout the country have applied similar multifactor tests to evaluate the reasonableness of detention under § 1225(b). *See, e.g.*, *Bermudez Paiz v. Decker*, No. 18-CV-4759 (GHW) (BCM), 2018 WL 6928794, at *13 (S.D.N.Y. Dec. 27, 2018); *Moore v. Nielsen*, No. 4:18Cv-01722-LSC-HNJ, 2019 WL 2152582, at *9–10 (N.D. Ala. May 3, 2019).

year." *Id.* (citing *Chavez-Alvarez v. Warden York Cnty. Prison,* 783 F.3d 469, 478 (3d Cir. 2015)); *see also Diop v. ICE/Homeland Sec.,* 656 F.3d 221, 234 (3d Cir. 2011) (noting that mandatory detention "becomes more and more suspect" after five months); *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 332 (3d Cir. 2021) (noting that "unreasonably long" detention under 8 U.S.C. § 1226(c) "may be six months or more" (internal quotation marks omitted)); *accord Black v. Decker*, 103 F.4th 133, 150 (2d Cir. 2024) (noting that "any immigration detention exceeding six months without a bond hearing raises serious due process concerns"). Mr. Robles has been detained in ICE's custody for over 27 months in total, and 12 months without a bond hearing, and therefore the first factor weighs in his favor.

53. This Court and others have granted writs of habeas corpus in cases involving challenges to periods of 1225(b) detention that were comparable to or shorter than Mr. Robles's. *See e.g. Malede v. Lowe,* 1:22-cv-01031 (SES) (M.D.P.A. Aug. 3, 2022)(18 months); *Elyardo v. Lowe*, 1:23-cv-01089 (YK-LT) (M.D.P.A. Nov. 29, 2023)(19 months); *Baptista v. Lowe*, 1:23-cv-01666 (MEM) (M.D.P.A. May 7, 2024)(20 months); *Jamal A.*, 358 F.Supp.3d 853 (D. Minn. 2019) (19 months); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (nine months); *Perez v. Decker*, 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (nine months); *Lett v. Decker*, 346 F. Supp. 3d 379, 387 (S.D.N.Y. 2018) (ten months); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1105 (W.D. Wash.

2019) (18 months); *Salazar v. Rodriguez*, CV 17-1099 (JMV), 2017 WL 3718380, at *5 (D.N.J. Aug. 29, 2017) (holding detention just over a year was unreasonable); *Gutierrez Cupido v. Barr*, 19-CV-6367-FPG, 2019 WL 4861018, at *2 (W.D.N.Y. Oct. 2, 2019) (16 months); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 443 (D.N.J. 2019) (19 months). As the length of detention increases, the government's burden to justify the detention should be considered ever harder for it to meet. *See Kansas v. Hendricks*, 521 U.S. 346, 363–64 (1997); *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 474 (3d Cir. 2015), *abrogated in part and on other grounds by Jennings*, 138 S.Ct. at 847 (citing *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232, 234 (3d Cir. 2011)). Mr. Robles's 27 months of continuing civil imprisonment strongly support his claim for habeas relief.

*Likelihood of Continued Detention*

54. The second factor under *German Santos* focuses on the likelihood of continued detention. If a petitioner's detention is "unlikely to end soon," continued detention without a bond hearing grows more suspect. *German Santos*, 965 F.3d at 211. This factor favors Mr. Robles, as there is no end in sight to his detention. The Third Circuit Court of Appeals granted Mr. Robles's Petition for Review on October 15, 2025 and the Department of Justice has not filed a petition for rehearing, despite being granted an extension to December 31, 2025. Pursuant to FRAP 41(d), the mandate issues seven (7) days after the rehearing deadline expires, which was

January 7, 2026. Mr. Robles has already been detained 27 months throughout the pendency of his removal proceedings before the immigration court, his appeal before the Board of Immigration Appeals, and his Petition for Review before the Third Circuit Court of Appeals. The Third Circuit agreed that he was deprived of the right to counsel and the right to apply for asylum and granted his Petition for Review, which would thus start his removal hearing process over again from the start. He is therefore faces many, many more months of detention as he continues to fight

55. Statistics from EOIR show that, in cases where an appeal is taken by the non-citizen or DHS, the average length of detention is 382 days. *Chavez-Alvarez*, 783 F.3d at 477-78 (concluding that the parties "could have reasonably predicted that Chavez-Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer"); *Abioye v. Oddo*, 704 F. Supp. 3d 625, 630-31 (W.D. Pa. 2023) (concluding that "additional delay of an undefined duration will continue to accrue pending a ruling by the court of appeals, and any further administrative proceedings that may be necessary following that appellate court decision" (quoting *Bah v. Doll*, No. 3:18-CV-1409, 2018 WL 6733959 at *8 (M.D. Pa. Oct. 16, 2018), *report and recommendation adopted,* No. CV 3:18-1409, 2018 WL 5829668 (M.D. Pa. Nov. 7, 2018)) (internal quotation marks omitted). Thus, it is likely that Mr. Robles's detention will continue far into the future, and therefore the second factor weighs in his favor.

56. Completion of Mr. Robles's removal proceedings—"taking into account the anticipated duration of all removal proceedings, including administrative and judicial appeals"—will take additional months or over a year. *See Muse*, --- F.Supp.3d ---, 2018 WL 4466052 at * 5.

57. In sum, without habeas relief, ICE will continue to detain Mr. Robles for at least several more months beyond the already unreasonably prolonged period of 27 months he has already been imprisoned. Moreover, Mr. Robles is not likely to be ordered removed from the United States, which further precludes any legitimate government interest in and justification for detaining him at all, let alone without any bond.

*Reasons for Delays*

58. The third factor considers whether either party caused "unnecessary delay" by "carelessness or bad faith" in the petitioner's underlying immigration case. *German Santos*, 965 F.3d at 211 (internal quotation marks omitted). On this factor, courts cannot "hold [a non-citizen]'s good-faith challenge to his removal against him, even if his appeals or applications for relief have drawn out the proceedings," *id.*, nor does seeking reasonable continuances or briefing extensions amount to bad faith. *See Rad v. Lowe*, No. 1:21-cv-00171, 2021 WL 1392067, at *4 (M.D. Pa. Apr. 13, 2021); *Davydov v. Doll,* No. 1:19-CV-2110, 2020 WL 969618 at *5, (M.D. Pa. Feb. 28, 2020). Detention "can still grow unreasonable even if the Government

handles the removal proceedings reasonably." *German Santos*, 965 F.3d at 211. Courts in this circuit have repeatedly found detention unreasonable in the absence of governmental bad faith. *See, e.g., Clarke v. Doll*, 481 F. Supp. 3d 394, 397-98 (M.D. Pa. 2020); *Davydov*, 2020 WL 969618, at *5.

*Conditions of Confinement*

59. Finally, the fourth *German Santos* factor compares the conditions of the petitioner's ICE detention to conditions of criminal custody. This factor favors the petitioner where the conditions of confinement are not "meaningfully different" from criminal punishment. *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478) (internal quotation marks and alteration omitted). Courts have suggested that this factor generally favors the petitioner because civil immigration detention closely resembles criminal custody. *See id.* at 212-13 (finding that ICE detention at Pike County Correctional Facility in Pennsylvania resembles criminal custody); *Rivas v. Oddo*, No. 3:22-cv-223, 2023 WL 4361140, at *2 (W.D. Pa. June 27, 2023) (same finding for Moshannon Valley Processing Center); *Buleishvili v. Hoover*, Civil Action No. 1:20-1694, 2021 WL 674226, at *4 (M.D. Pa. Feb. 22, 2021) (same finding for Clinton County Correctional Facility in Pennsylvania).

60. The similarity between the conditions of Mr. Robles's detention and penal confinement weigh in favor of granting habeas relief. Removal proceedings are civil, not criminal. As such, they are, at least in theory, "nonpunitive in purpose

and effect." *Zadvydas*, 533 U.S. at 690. However, "merely calling a confinement 'civil detention' does not, of itself, meaningfully differentiate it from penal measures." *Chavez-Alvarez*, 783 F.3d at 478. The more that detention conditions resemble penal confinement, the stronger the argument that detainees are entitled to bond hearings. *Muse*, 2018 WL 4466052, at *5 ("As the length of detention grows, the weight given to this aspect of detention increases.") (citing *Chavez-Alvarez*, 783 F.3d at 478).

61. Mr. Robles is currently confined in the Pike County Correctional Facility in Pennsylvania. As the Third Circuit has found, the conditions of confinement at Pike are, "despite its civil label . . . indistinguishable from criminal punishment." *German Santos*, 965 F.3d at 212-12; *see also White v. Warden Pike Cnty. Corr. Facility*, No. 23-2872, 2024 WL 4164269, at *2 (3d Cir. Sept. 12, 2024)(citing *German Santos*, 965 F.3d at 212-13).

62. For these reasons, under the *German Santos* framework, all four factors weigh sharply in Mr. Robles's favor.

*Mr. Robles's Detention is Unreasonably Prolonged under the Mathews Balancing Test*

63. Mr. Robles's detention is also clearly prolonged under the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319. First, as discussed supra, the private interest at stake for Mr. Robles is "the most elemental of his liberty interests – the interest in being free from physical detention." *Hamdi v. Rumsfeld*, 542 U.S.

507, 529 (2004)(citing *Foucha*, 504 U.S. at 80). Second, Mr. Robles faces an acute risk of erroneous deprivation due to the absence, but for action by this Court, of a procedure to challenge his prolonged detention. *See, e.g., Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 225 (3d Cir. 2018), abrogated on other grounds, *John v. Arteaga-Martinez*, 596 U.S. 573 (2022)(noting, in the context of mandatory detention under 8 U.S.C. ¶1231(a)(6), that "the risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial")(internal quotation marks and citation omitted). Third, Respondents do not have an overriding interest in detaining Mr. Robles without the opportunity for a bond hearing. On the contrary, "[t]o require that the Government justify continued detention 'promotes the Government's interest . . . in minimizing the enormous impact of detention in cases where it serves no purpose.'" *Black v. Decker*, 103 F.4th 133, 154 (2d Circ. 2024)(quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020)). Thus, this Court should hold Mr. Robles's prolonged mandatory detention unreasonable and unconstitutional.

*Burden of Proof and District Court Authority to Conduct Bond Hearing*

64. Mr. Robles asks this Court to order his immediate release. However, if this Court were to determine that it would be more proper for Mr. Robles to be granted an immediate bond hearing, Mr. Robles asks this court to conduct the bond hearing. *Ahad v. Lowe*, 235 F. Supp. 3d 676, 688-89 (M.D. Pa. 2016) ("we also

recognize that the district court has an independent responsibility in this case. Indeed, this court has in a number of instances conducted bail review hearings in immigration habeas matters. *Occelin v. District Director*, No. 09-164, 2009 U.S. Dist. LEXIS 51444, 2009 WL 1743742 (M.D. Pa. June 17, 2009)(two years detention, court schedules hearing to review case). In still other instances, the remedy imposed by the court has been an order directing the outright release of the alien. *See, e.g., Madrane v. Hogan*, 520 F. Supp. 2d 654 (M.D. Pa. 2007); *Victor v. Mukasey*, No. 08-1914, 2008 U.S. Dist. LEXIS 96187, 2008 WL 5061810 (M.D. Pa. Nov. 25, 2008); *Nunez-Pimentel v. U.S. Dep't of Homeland Security*, No. 07-1915, 2008 U.S. Dist. LEXIS 49926, 2008 WL 2593806 (M.D. Pa. June 27, 2008.)")

65. Moreover, whether before this court or before an IJ, procedural due process should require that the government bear the burden of proving by clear and convincing evidence that the government's interest in continuing to detain Mr. Robles—taking into consideration available alternatives to detention—outweighs the severe deprivation of his constitutionally protected interest in liberty. *See, e.g., Clarke v. Doll,* 481 F. Supp. 3d 394, 398 (M.D. Pa. 2020)(ordering bond hearing where government "shall bear the burden of putting forth clear and convincing evidence that continued detention is necessary"); *Smith v. Ogle,* No. 3:21-cv-1129, 2023 U.S. Dist. LEXIS 82221, at *11 (M.D. Pa. May 10, 2023)(ordering bond hearing where government must justify continued detention by clear and convincing

evidence, even though petitioner had previously received a bond hearing); *Elyardo v. LeChleitner*, No. 1:23-cv-01089, 2023 U.S. Dist. LEXIS 212591, at *8 (M.D. Pa. Nov. 29, 2023)(ordering bond hearing where government "shall bear the burden of proof").

66. To justify prolonged immigration detention, the government must prove by clear and convincing evidence that Mr. Robles is a danger or flight risk. *See, e.g.*, *id.*; *Hernandez v. Decker*, No. 18-CV-5026 (ALC), 2018 WL 3579108, at *11 (S.D.N.Y. July 15, 2018) ("[D]ue process requires that the government demonstrate dangerousness or risk of flight by a clear and convincing standard at [the alien's] bond hearing."); *Portillo v. Hott*, 322 F. Supp. 3d 698, 709 (E.D. Va 2018)("[A]t the bond hearing, the government must demonstrate that [the alien] is either a flight risk or a danger to the community by clear and convincing evidence."); *Sajous v. Decker*, 2018 WL 2357266 (S.D.N.Y. 2018)(requiring government to prove dangerousness and flight risk by clear and convincing evidence); *Pensamiento v. McDonald*, 315 F. Supp. 3d 684 (D. Mass. 2018) (requiring government to prove dangerousness and flight risk); *see also Foucha*, 504 U.S. at 81–83 (1992) (striking down detention system that placed burden on detainee to prove non-dangerousness); *United States v. Salerno*, 481 U.S. 739, 750–52 (1987) (requiring proof of dangerousness by clear and convincing evidence).

67. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). First, the civil detention authorized by Section 1225(b) deprives Mr. Robles of his liberty interest. Second, the risk of error is great when detainees like Mr. Robles are incarcerated in prison-like conditions that severely hamper their ability to gather evidence and prepare for a bond hearing. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to Mr. Robles's immigration records and other information that it can use to make its case for continued detention. Therefore, subjecting the government to a heightened burden of proof strikes an appropriate balance between that individual interest and the government's interest in protecting the community and in effective removal procedures, affording Mr. Robles the fundamental requirement of due process rights.

68. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program—had achieved extraordinary success in ensuring appearance at removal proceedings, reaching

compliance rates close to 100 percent. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

## CAUSES OF ACTION

## COUNT I

## PETITIONER'S MANDATORY DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

69. Mr. Robles re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

70. Immigration detention violates due process unless such detention is reasonably related to its purpose. *Demore*, 538 U.S. at 513 (2003); *Zadvydas*, 533 U.S. at 690–91 (2001). Moreover, as detention becomes prolonged, the Due Process Clause requires an even stronger justification to outweigh the significant deprivation of liberty, as well as strong procedural protections. *Id.*

71. Mr. Robles has been detained pursuant to 8 U.S.C. § 1225(b) for over 27 months. Mr. Robles's prolonged detention, in the absence of an individualized determination of Mr. Robles's dangerousness or flight risk, lacks sufficient justification and violates his due process rights. This Court has considered four factors to determine whether prolonged pre-final order detention is unreasonable.

*See German Santos v. Warden, Pike Cnty. Corr. Facility,* 965 F.3d 203 (3d Cir. 2020). Application of the relevant factors to the facts and circumstances in this case supports a conclusion that Mr. Robles's continued detention without an individualized bond hearing violates due process under the Fifth Amendment.

72. Moreover, Mr. Robles has a substantial argument against removal. Therefore, the assumption underlying *Demore* that noncitizens who have conceded deportability uniformly present elevated risk of flight and danger does not apply here. Mr. Robles cannot reasonably be subject to an irrebuttable presumption of flight risk and danger necessitating mandatory detention.

73. For the foregoing reasons, only Mr. Robles's immediate release or an immediate bond hearing at which the government bears the burden to prove Mr. Robles's danger and flight risk will protect his due process rights and the government's legitimate interest in detaining an alien seeking admission only when it is necessary to serve the purposes of Section 1225(b).

## COUNT II

## PETITIONER'S PROLONGED DETENTION VIOLATES THE EIGHTH AMENDMENT

74. Mr. Robles re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

75. The Eighth Amendment prohibits "[e]xcessive bail." U.S. Const. amend. VIII.

76. The government's categorical denial of bail to certain noncitizens violates the right to bail encompassed by the Eighth Amendment. *See Jennings*, 138 S.Ct. at 862 (Breyer, J., dissenting).

77. For these reasons, Mr. Robles's ongoing prolonged detention without a bond hearing violates the Eighth Amendment.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Exercise jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
3. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
4. In the alternative, grant a Writ of Habeas Corpus ordering an individualized bond hearing at which Respondents must bear the burden of establishing by clear and convincing evidence that continued detention is justified, considering alternatives to detention;
5. Enjoin Respondents from moving Petitioner outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

6. Enjoin Respondents from moving Petitioner outside the United States pending its adjudication of this petition and full and fair adjudication of his immigration case;
7. Declare that Petitioner's detention violates the INA, the regulations implementing INA, the APA, and the Due Process Clause of the Fifth Amendment;
8. Award Petitioner's costs and reasonable attorneys' fees; and
9. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

Dated: January 14, 2026

By: /s/ Rebecca Hufstader

Rebecca Hufstader
**LEGAL SERVICES OF NEW JERSEY**
100 Metroplex Drive, Suite 101
Edison, New Jersey 08818
rhufstader@lsnj.org
732-529-8236
*Attorney for Petitioner*

/s/ Pina N. Cirillo

Pina N. Cirillo*
**RUTGERS LAW SCHOOL IMMIGRANT RIGHTS CLINIC**
123 Washington St, 4th Floor
Newark, New Jersey 07102
pina.cirillo@rutgers.edu
973-353-0668
*Attorney for Petitioner*
**Motion for pro hac vice admission forthcoming.*

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Miguel Robles Corcuera, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 14th day of January, 2026.

*/s/* Pina Cirillo

Pina Cirillo, Esq.*
Rutgers Law School
Immigrant Rights Clinic
123 Washington Street, 4th Floor
Newark, NJ 07102
Pina.cirillo@rutgers.edu
973-353-0668

**pro hac vice forthcoming*