UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE

Petitioner,

v.

CRAIG A. LOWE, in his official capacity as Warden of Pike Country Correctional Facility;

MICHAEL T. ROSE, in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Philadelphia Field Office;

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and

PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

Civil Action No._____

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

INTRODUCTION

1. Petitioner ("Petitioner" or "Mr. John Doe" or "Mr. Doe.")[1] petitions this Court for a writ of habeas corpus to remedy his 12 months of unlawful, prolonged detention by Respondents, immigration authorities. Mr. Doe—who is married to a U.S. citizen, has no criminal convictions, and is HIV positive—has been detained under 8 U.S.C. § 1231(a)(6) without independent review of his custody since January 27, 2025. Absent intervention from this Court, Mr.

[1] Motion to proceed with pseudonym forthcoming.

Doe's unreviewed civil detention—which is in fact incarceration at a criminal jail, Pike County Correctional Facility ("PCCF" or "Pike")—will continue indefinitely because Mr. Doe is statutorily ineligible for a bond hearing.

2. On March 5, 2024, Petitioner was diagnosed with HIV. Immigration and Customs Enforcement ("ICE"), officials detained him shortly after, at a routine check-in appointment on April 18, 2024. While in immigration detention, Mr. Doe's health deteriorated rapidly. He was eventually hospitalized, and ICE subsequently released him from detention in or around July 2024. While at liberty, Mr. Doe complied with all the conditions of his release, including attending another routine check-in on January 27, 2025.
3. At that check-in on January 27, 2025, ICE, suddenly and without explanation, re-detained Mr. Doe. This blindsided Petitioner as ICE had released him from immigration custody only 7 months prior in July 2024. In previously releasing him, ICE necessarily found that he was not a danger to the community or flight risk. *See Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001) (noting that civil immigration detention only has two valid purposes: preventing flight and protecting the community). Nothing in his circumstances had changed since his last release.
4. Respondents did not proffer a basis for re-detaining Mr. Doe and have not done so at any point in the past 12 months that he has remained detained.
5. Mr. Doe fled persecution and violence in Venezuela based on his sexual orientation and [redacted]. A U.S. asylum officer found Mr. Doe had a reasonable fear of persecution and torture. Mr. Doe has been fighting since to remain in this country with his U.S. Citizen husband, with the help of counsel before the immigration agency. But because of the posture of his case—based on the reinstatement of an old removal order— he is ineligible for a bond

hearing. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021) (holding that 8 U.S.C. § 1231, not 8 U.S.C. § 1226, governs the detention of non-citizens subject to reinstated orders of removal and that reinstatement applicant was, therefore, not entitled to a bond hearing).

6. As a result, ICE has never had to independently come forward, in one year of detention, to establish that Mr. Doe is a danger to the community or a flight risk. He is neither. Mr. Doe has never been convicted of a crime. He has been arrested on a single occasion, and the district attorney's office declined to prosecute the case. Moreover, Petitioner has every incentive to pursue his immigration case and remain compliant to stay unified with his U.S. citizen husband and seek protection from persecution.
7. Mr. Doe's final immigration court hearing is currently scheduled for February 3, 2026. Depending on the outcome of that hearing, Mr. Doe may appeal to the Board of Immigration Appeals and the U.S. Court of Appeals, prolonging detention for many months or years.
8. Mr. Doe's ongoing mandatory detention without individualized review therefore has become unreasonably prolonged, violating the Due Process Clause of the Fifth Amendment. As his health declines in detention, he seeks a writ of habeas corpus ordering his immediate release, or, in the alternative, a prompt bond hearing before an Immigration Judge ("IJ") at which the Department of Homeland Security ("DHS") bears the burden of justifying his continued detention by clear and convincing evidence.

PARTIES

9. Petitioner Mr. John Doe is a native and citizen of Venezuela. Ex. A, Declaration of Ashley Pinilla, Esq,, ¶ 6. He has been in ICE custody since January 27, 2025. He is currently detained at Pike County Correctional

Facility ("PCCF," "Pike") in Lords Valley, Pennsylvania. *Id.* at ¶ 4. Mr. Doe is awaiting a hearing date and adjudication of his application for relief from the Immigration Court. His merits hearing, or "individual hearing," has been adjourned and cancelled by the Court twice after it was originally scheduled for May 2025. It is now scheduled for February 3, 2026. Ex. C, Notices of Hearing.

10. Respondent Craig A. Lowe is the Warden of Pike County Correctional Facility. In his capacity as Warden, he oversees the administration and management of PCCF. Accordingly, Respondent Lowe is the immediate custodian of Petitioner. Petitioner brings this action against Respondent Lowe in his official capacity.

11. Respondent Michael T. Rose is the Acting Field Office Director of the ICE Enforcement and Removal Operations ("ERO") Philadelphia Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Pennsylvania, Delaware, and West Virginia and has the authority to make custody determinations regarding individuals detained there. Respondent Rose is a legal custodian of Petitioner. Petitioner brings this action against Respondent Rose in his official capacity.

12. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of non-citizens throughout the United States. Ms. Noem is the ultimate legal custodian of Petitioner. Petitioner brings this action against Respondent Noem in her official capacity.

13. Respondent Pamela Bondi is the Attorney General of the United States. As the Attorney General, she oversees the immigration court system, including all Immigration Judges and the Board of Immigration Appeals, and has

authority over immigration detention. Petitioner brings this action against Respondent Bondi in her official capacity.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the Constitution; and the All Writs Act, 28 U.S.C. § 1651. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[] on [Petitioner's] individual liberty," *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973), such that he is "in custody in violation of the . . . laws . . . of the United States," 28 U.S.C. § 2241.

15. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review—see 8 U.S.C. § 1252(a)(1), (b)—the federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

16. The Supreme Court has held that it has jurisdiction to review statutory claims by non-citizens subject to mandatory detention pursuant to, *inter alia*, 8 U.S.C. § 1231, concluding that neither 8 U.S.C. § 1252(b)(9) nor § 1226(e) deprived the federal courts of jurisdiction to review the non-citizens' claims. *See Guzman Chavez*, 141 S. Ct. at 2284 n.4; *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).

17. Venue properly lies in the Middle District of Pennsylvania. *See* 28 U.S.C. § 2241(c)(3) and 28 U.S.C. §1391(e). Mr. Doe is detained by ICE at Pike County Correctional Facility, which is located within the Middle District of

Pennsylvania. *See e.g. Ologbenala v. Lowe*, No. 3:25-CV-1351, 2025 WL 2375272 at *1 (M.D. Pa. Aug. 14, 2025) ("Petitioner . . . is currently detained at Pike County Correctional Facility in Lords Valley, Pennsylvania.").

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. No exhaustion requirement applies to the claims raised in this petition because the immigration judge and Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *See, e.g., Sewak v. INS,* 900 F.2d 667, 670 (3d Cir. 1990); *Bonhometre v. Gonzales*, 414 F.3d 442, 447 n.7 (3d Cir. 2005); *Qatanani v. Att'y Gen. United States of Am.*, 144 F.4th 485, 499–500 (3d Cir. 2025) (recogniz[ing] that the exhaustion of administrative remedies is not required where . . . the petitioner advances a due process claim); *Matter of Valdovinos*, 18 I&N Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute). Exhaustion is required only when the BIA is "capable of granting the remedy sought by the [noncitizen]." *Bonhometre*, 414 F.3d at 447. Thus, in Mr. Doe's case, there is an "exception to the requirement of exhaustion [because] there is no administrative forum in which an alien could advance a due process claim." *Marrero v. I.N.S.*, 990 F.2d 772, 778 (3d Cir. 1993).

19. Nor is further action with the agency necessary when pursuing administrative remedies would be futile, or the agency has predetermined a dispositive issue. *See, e.g., Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (citing *Babcock & Wilcox Co. v. Marshall,* 610 F.2d 1128, 1138 (3d Cir. 1979); *Honig v. Doe,* 484 U.S. 305, 327 (1988) (noting that parties "may bypass the administrative process where exhaustion would be futile or inadequate"); *Grant v. Zemski*, 54 F. Supp. 2d 437, 442 (E.D. Pa. 1999) (citing *In re Garvin–Noble,* Int. Dec. 3301, 1997 WL 61453 (BIA 1997)).

20. Mr. Doe raises procedural and substantive due process claims in this Petition, arguing that the prolonged and unreasonable nature of his detention by Respondents without independent review renders it unconstitutional. Mr. Doe can expect no relief from the agency itself, which is bound by statute to deny him a bond hearing. *See, e.g.*, *Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827, 1830 (2022); *Guzman Chavez*, 141 S. Ct. at 2291; *Jennings*, 138 S. Ct. at 846. Moreover, there are no administrative mechanisms through which he can seek neutral review of whether his ongoing detention is justified.

21. Further, Mr. Doe has exhausted any administrative remedies that were available to him. The only analysis of his continued custody has occurred through non-appealable, internal reviews performed by ICE itself, including two post-order custody reviews that ICE is obligated to conduct for non-citizens detained under 8 U.S.C. § 1231(a)(6), *see* 8 C.F.R. § 241.4.

22. On or about April 29, 2025, ICE conducted a 90-day custody redetermination interview with Mr. Doe as part of its post-order custody review process. *See* 8 C.F.R. § 241.4(k)(1)(i); Ex. D, ICE Custody Determinations 1–3. ICE informed Mr. Doe on or about April 29, 2025, that he would remain detained. *Id.*

23. On or about July 16, 2025, ICE conducted a 180-day custody redetermination interview with Mr. Doe as part of its post-order custody review process. *See* 8 C.F.R. § 241.4(k)(2)(ii); Ex. D at 3. ICE denied release on or about August 11, 2025. *Id* at 4.

24. Accordingly, Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

25. Petitioner is a 29-year-old native and citizen of Venezuela. Ex. A, ¶ 6. He is a gay man and is HIV positive. *Id.* Prior to his detention, Mr. Doe lived in New York City with his U.S. Citizen husband. *Id.* at ¶ 7. He last lived in his native Venezuela around April 2019, before fleeing due to persecution and violence he suffered on account of his sexual orientation and [redacted] *Id.* at ¶ 8.

26. In Venezuela, Mr. Doe suffered serious harm and discrimination in Venezuela due to his sexual orientation. He was beaten by family members and [redacted]. *Id.*

27. In addition, Mr. Doe was [redacted] After he was outed as gay at work, his superiors punished him in various ways, including beating him, throwing water on him while he slept, and making him exercise continuously for hours without break. [redacted]

[redacted]

28. Mr. Doe first entered the United States on or about November 7, 2023. Upon arrival he was detained by CBP officials who asked him if he was afraid return to Venezuela. Mr. Doe responded that he was. Despite this, CBP did not afford him a "Credible Fear Interview," [2] placed him in expedited removal

[2] Credible Fear Interviews ("CFI") are provided to noncitizen asylum-seekers who express fear of removal to their home country and do not have an order of removal. 8 C.F.R. § 208.30(d); *see also* 8 U.S.C. § 1225(b)(1)(A)(ii), (B). Reasonable Fear

proceedings, ordered him removed from the United States, and put him on a bus to Mexico. *Id.* at ¶ 11.

29. Mr. Doe re-entered the United States on or about December 3, 2023. *Id.* at ¶ 12. DHS reinstated his removal order. Ex. B. He was detained again and this time he was told he would be given a Reasonable Fear Interview.[3] Ex. A, ¶ 12. On or around December 29, 2023, an Asylum Officer conducted a Reasonable Fear Interview. *Id.* Mr. Doe was found to be credible and to have a reasonable fear of future persecution if he were to be removed to Venezuela. He was placed in "withholding-only" removal proceedings and subsequently released from detention on or about January 18, 2024. *Id.*

30. Mr. Doe arrived in New York City in February 2024. *Id.* at ¶ 13. Soon after, he met and started dating his future husband, who he married on December 30, 2024. *Id.* at ¶ 7.

31. Mr. Doe was scheduled for a non-detained preliminary hearing with the immigration court on March 4, 2024. *Id.* at ¶ 14. Around that time, Petitioner had begun feeling ill. *Id.* He had fevers and learned that a previous partner had been diagnosed with HIV. *Id.* He was tested for HIV on March 5, 2024, and the test was positive. *Id.*; Ex. E, Diagnosis.[4] Mr. Doe's mental health significantly declined after being diagnosed with HIV. Ex. A, ¶ 10. On March 4, 2024, he did not attend his hearing with the immigration court as he was ill and was ordered removed in absentia by the Immigration Judge. *Id.* at ¶ 14.

Interviews ("RFI") on the other hand, are provided to noncitizens who express fear or removal to their home country, but who have a prior order of removal. 8 C.F.R. § 208.31(d); *see also* 8 U.S.C. § 1231(b)(3)(A). RFIs are provided to individuals whose removal orders are being reinstated. *See infra.* Statutory and Legal Framework.

[3] *See id.*

[4] Exhibit D will be filed under seal with an accompanying motion.

32. Upon learning that he had been ordered removed, he immediately sought an immigration attorney to represent him. *Id.* at ¶ 15. His friend recommended a private practitioner, who submitted a Motion to Reopen his removal proceedings with the immigration court on March 27, 2024. *Id.* That attorney failed to attach vital medical documents to the Motion to Reopen, failed to comply with her ethical obligations, and did not inform the court that she, an attorney, had drafted the motion. *Id.* Mr. Doe's Motion to Reopen was subsequently denied.

33. On March 21, 2024, Mr. Doe was arrested by the New York City Police Department and charged with Petit Larceny and criminal possession of stolen property in the fifth degree, both misdemeanors. *Id.* at ¶ 16. On April 15, 2024, the New York District Attorney's Office declined to prosecute the charges and the case was dropped. *Id.* Mr. Doe has not been arrested at any other point in the United States or in any other country. He has no convictions. *Id.*

34. Following his arrest, on April 18, 2024, Mr. Doe was re-detained by ICE at a check-in appointment. *Id.* at ¶ 17. He was detained by Respondents at the Elizabeth Detention Center in New Jersey. *Id.* He was held for about 3 months, during which time his health worsened due to his HIV. *Id.* Mr. Doe was ultimately hospitalized in Newark, New Jersey. *Id.* Following his hospitalization, ICE released him. He was placed on an ankle monitor. *Id.*

35. In early 2025, Mr. Doe's ankle monitor was malfunctioning. *Id.* at ¶ 18. An ICE officer told him to come to their office to fix it or get a new one. *Id.* Mr. Doe complied and went to an ICE check-in on January 27, 2025. *Id.* Instead of fixing his ankle monitor, ICE re-detained Mr. Doe again. *Id.* ICE did not give Mr. Doe a basis for his re-detention. *Id.* Petitioner was initially detained at Orange County Jail in Goshen, New York then was transferred to the Pike County Correctional Facility in or around early April 2025. *Id.*

36. On March 4, 2025, Mr. Doe submitted a second Motion to Reopen with the assistance of the New York Legal Assistance Group. *Id.* at ¶ 20. He argued that the first Motion to Reopen his removal proceedings was denied due to ineffective assistance of counsel from his first attorney. *Id.* On this date, Mr. Doe also filed his I-589 Application for Withholding of Removal, and protection under the Convention Against Torture. *Id.*

37. The Immigration Judge reopened his removal proceedings on March 24, 2025. *Id.* at ¶ 21. Soon after, Mr. Doe retained counsel at The Bronx Defenders. *Id.*

38. As discussed *supra*, Mr. Doe has been provided two internal ICE custody redetermination reviews since his detention on January 27, 2025: one on April 29, 2025, and the second on July 16, 2025. *Id.* at ¶ 22. These custody reviews were conducted by ICE and did not afford Mr. Doe an opportunity to orally present arguments. *Id.* The first custody redetermination review was solely document based. *Id.* For both reviews, Mr. Doe was not allowed to call witnesses or examine or challenge the government's evidence against him. *Id.* Both custody reviews resulted in a denial of release, and the statute does not permit appeals. *Id.* Mr. Doe will be eligible for his next custody redetermination review in or around July 2026. *See* 8 C.F.R. § 241.4(k)(2)(iii). That hearing will take place 18 months after his date of detention.

39. As of the filing of this petition, the immigration court has not conducted an individual merits hearing for Mr. Doe. The Elizabeth Immigration Court first scheduled Mr. Doe for a final merits hearing on September 22, 2025. Ex. C. The Court then rescheduled the hearing to October 6, 2025. *Id.* at 5. On the morning of October 6, the Court cancelled Mr. Doe's individual hearing for the second time. On November 18, 2025, after a month of no action, the Elizabeth Immigration Court scheduled Mr. Doe for a new hearing date on

February 3, 2026. *Id.* at 6–7. The merits hearing is therefore scheduled for over a year after Mr. Doe was detained by ICE.

40. Mr. Doe is currently detained at Pike, where individuals are grouped into different categories of security and treated differently according to their security level. *See* Ex. A. at ¶ 19. Mr. Doe's movement is severely restricted, and he is frequently locked in his cell for hours or even days at a time without warning. *Id.* Mr. Doe has been locked in his cell for a variety of reasons including as a punishment for saving food, when other detained individuals fight, when receiving medicine, and during maintenance. *Id.* Whether they are held as noncitizen detainees or as inmates convicted of crimes, people incarcerated at Pike are only allowed to go outside for one hour a day. *Id.*

41. Mr. Doe has struggled with his physical and mental health while in custody. *Id.* at ¶ 24. For the initial months of his re-detention, ICE was not regularly providing Mr. Doe with Biktarvy, the daily HIV medication he had been prescribed and had been taking for months prior to his detention in January 2025. *Id.; see also* Ex. E, Dr. Miranda Report. Biktarvy works by preventing HIV from multiplying in the body, which helps to lower the viral load. Ex. E, Dr. Miranda Report. Mr. Doe has lost a significant amount of weight while detained, and two of his toenails have completely fallen off. Ex. A at ¶ 24. Since mid-November, Mr. Doe has experienced inexplicable red bumps covering his face and arms. *Id.* at ¶ 25. The facility prescribed him an allergy medication to treat them, but the bumps have not diminished and continue to spread. *Id.* Mr. Doe also reports unsanitary conditions, such as dirty water and moldy food, which he worries could adversely affect his weakened immune system and lead to HIV-related diseases. *Id.* at ¶ 26. While Mr. Doe sees nurses regularly at Pike, he is only provided with an appointment with a doctor

every few months. *Id.* Finally, Mr. Doe reports ongoing anxiety and depression connected to his prolonged detention. *Id.* at ¶ 28.

STATUTORY AND LEGAL FRAMEWORK

A. Reinstatement of Removal and Withholding-Only Proceedings

42. When a non-citizen facing persecution in their home country flees to the United States after having been previously removed, they are subject to a process called "reinstatement of removal" whereby DHS reinstates the non-citizen's prior removal order and seeks to immediately remove them without a hearing. *See* 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. These non-citizens are often referred to as being "in reinstatement."

43. But pursuant to treaty obligations codified into U.S. law that prevent governments from removing individuals to countries where they face persecution and/or torture, a non-citizen in reinstatement is entitled to seek to avoid immediate removal by requesting a Reasonable Fear Interview ("RFI"). *See* 8 C.F.R. § 241.8(e). To pass the RFI, the non-citizen must demonstrate "a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal." 8 C.F.R. § 208.31(c).

44. If an Asylum Officer ("AO") finds that the non-citizen has demonstrated a reasonable possibility of persecution or torture at the RFI, the non-citizen is referred to an IJ for a circumscribed hearing at which they seek to demonstrate their eligibility for withholding of removal under 8 U.S.C. § 1231(b)(3) or CAT protection under 8 C.F.R. §§ 1208.16, 1208.17. If the AO makes a negative decision regarding reasonable fear, the non-citizen may seek review of this determination with an IJ. 8 C.F.R. § 208.31(g). The IJ may vacate the

AO's negative decision and order the same circumscribed hearing. *Id.* § 208.31(g)(2). These proceedings are often referred to as "withholding-only proceedings," because asylum is outside the scope of relief available.

45. Withholding-only proceedings can last for many months or even years. *See, e.g., Guerrero Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 212 (3d Cir. 2018) (noting that petitioner's withholding-only proceedings lasted more than 53 months), *abrogated by Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). Typically, it takes a few months before a non-citizen in withholding-only proceedings has an individual merits hearing at which the IJ decides whether to grant relief. Once the IJ reaches a decision, both the non-citizen and DHS have the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). Many more months may pass before the BIA either sustains, dismisses, or remands back to the IJ. *See Guzman Chavez*, 141 S. Ct. at 2294 (Breyer, J., dissenting) (citing data finding that withholding-only proceedings typically last "114 days when neither party appealed the immigration judge's final decision, 301 days when at least one party appealed and the BIA rendered a final decision, and 447 days when the BIA remanded the case and the immigration judge made a final decision").

46. To be granted withholding or deferral under the CAT, a non-citizen must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c) (withholding under the CAT); *see also* 8 C.F.R. § 1208.17(a) (deferral under the CAT). If a non-citizen is granted CAT protection by the IJ, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of torture, unless DHS later brings forward sufficient evidence demonstrating that the non-citizen is no longer at risk of torture. *See* 8 C.F.R § 1208.17(d). In practice, this means that a non-citizen granted CAT protection will likely

never be removed from the United States. *See Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting) ("[O]nly 1.6% of noncitizens granted withholding-only relief [are] actually removed to an alternative country.")[5]

B. Immigration Detention Under 8 U.S.C. § 1231

47. Congress authorized civil detention of non-citizens in removal proceedings for specific, non-punitive purposes. *See Jennings*, 138 S. Ct. at 833; *Demore*, 538 U.S. 510; *Zadvydas*, 533 U.S. at 690. Detention is either discretionary, *see* 8 U.S.C. § 1226(a), or mandatory, *see* §§ 1225(b) (non-citizens seeking admission), 1226(c) (non-citizens inadmissible or deportable for certain offenses), 1231(a) (non-citizens ordered removed).

48. Under the discretionary detention statute, a non-citizen may request a bond hearing at any time to contest whether he is a danger or a flight risk and thus properly detained during the pendency of his removal proceedings. *See* § 1226(a).

49. In 2021, the Supreme Court ruled that non-citizens in withholding-only proceedings after a reinstated removal order are detained under 8 U.S.C. § 1231 rather than § 1226(a). *Guzman Chavez*, 141 S. Ct. 2271. *Guzman Chavez* abrogated a Second Circuit decision which held that non-citizens like Mr. Doe who are in withholding-only proceedings are detained under the discretionary statute, § 1226(a), and therefore eligible for bond hearings at the outset of their detention. *See Guerra v. Shanahan*, 831 F.3d 59, 64 (2d Cir. 2016).

[5] It is unclear whether this statistic applies only to individuals granted withholding of removal under 8 U.S.C. § 1231(b)(3) or whether it encompasses individuals granted any type of withholding-only relief, including CAT relief under 8 C.F.R. § 1208. Regardless, the statistic illustrates that the theoretical availability of third country removal very rarely occurs in reality.

50. That same term, the Supreme Court also issued *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022), holding that the statutory text of 8 U.S.C. § 1231(a)(6) did not provide for bond hearings after six months of detention. *Arteaga-Martinez* abrogated a Third Circuit case, *Guerrero Sanchez v. Warden York Cty. Prison*, which had held otherwise. 905 F.3d 208, 226 (3d Cir. 2018) ("We therefore adopt a six-month rule here—that is, an alien detained under § 1231(a)(6) is generally entitled to a bond hearing after six months (*i.e.*, 180 days) of custody.").

51. The Supreme Court, however, did not decide whether individuals detained under 8 U.S.C. § 1231(a)(6), which governs the long-term detention of non-citizens after a removal order and now includes non-citizens in reinstatement, may be entitled to bond hearings on due process grounds after prolonged detention. *See Arteaga-Martinez*, 596 U.S. at 583 ("The courts below did not reach Arteaga-Martinez's constitutional claims because they agreed with him that the statute required a bond hearing. We leave them for the lower courts to consider in the first instance.").

52. Accordingly, as-applied constitutional challenges to detention under § 1231 like Mr. Doe's petition remain viable.

53. Section 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). Absent circumstances not applicable here, the "removal period" begins once a removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). For a non-citizen in withholding-only proceedings, the removal period therefore begins, at the latest, on the date that their removal order is reinstated. *See Guzman Chavez*, 141 S. Ct. at 2284.

54. The removal period lasts for 90 days, during which DHS "shall remove the alien from the United States" and "shall detain the alien" as they carry out the

removal. 8 U.S.C. § 1231(a)(1)–(2). If DHS does not remove the non-citizen within the 90-day removal period, the statute provides that they "shall" be released on conditions, 8 U.S.C. § 1231(a)(3), unless they are removable based on certain specified grounds or "have been determined . . . to be a risk to the community or unlikely to comply with the order of removal," in which case they "*may* be detained beyond the 90-day removal period," *id.* § 1231(a)(6) (emphasis added). The only authority for detaining non-citizens in withholding-only proceedings for more than 90 days is § 1231(a)(6).

55. The government does not provide bond hearings for those detained under § 1231(a)(6).

56. The DHS regulations that implement § 1231 provide for only limited custody review, before officials from ICE, the agency that arrests, jails, and prosecutes non-citizens, including those in withholding-only proceedings. *See* 8 C.F.R. § 241.4 (referring to this review as a "post-order custody review" or "POCR").

57. The regulations provide for an initial custody determination within 90 days of detention under § 1231. 8 C.F.R. § 241.4(k)(1)(i). That custody determination is conducted by a local ICE official and is based on a "records review" to determine whether release is appropriate. 8 C.F.R. § 241.4(c)(1), (h)(1), (h)(5).

58. If an individual is detained beyond the initial 90-day period, a second administrative review of the individual's detention occurs around 180 days (or six months) of incarceration. 8 C.F.R. § 241.4(c)(2), (k)(2)(ii), (k)(2)(iv). The authority to conduct the 180-day review is transferred from the local ICE official to a particular unit of ICE headquarters, the Headquarters Post-Order Detention Unit ("HQPDU"). *See* 8 C.F.R. § 241.4 (c)(2), (i).

59. This review process entails few procedural safeguards. It begins with a records review, and if release is not authorized after this records review, the detained individual is interviewed by a panel of three ICE deportation officers. 8 C.F.R.

§ 241.4(i)(1)-(3). The panel asks a series of questions and records the individual's answers, and then prepares a recommendation on whether the individual should remain in custody, which is then passed to the ultimate decisionmaker—an officer at ICE's Washington, D.C. headquarters—who does not directly interview or hear from the detained person or their representative. 8 C.F.R. § 241.4(c)(2), (i)(4)-(6).

60. Although an attorney or representative is permitted to attend the interview, 8 C.F.R. § 241.4(d)(3), (i)(3), and an individual may submit evidence on their behalf, *id.* § 241.4(i)(3)(ii), there are no provisions authorizing presentation of argument, calling of witnesses or viewing or confronting the government's evidence. *See generally* 8 C.F.R. § 241.4(i)(3) (describing the interview process).

61. The burden is on the individual non-citizen to demonstrate that they are neither a danger nor a flight risk. 8 C.F.R. § 241.4(d)(1).

62. There is no right to appeal the agency's determination. *Id.* § 241.4(d), (g)(2).

63. The ultimate decision to release is discretionary even if an individual establishes that his or her release does not pose a danger to the community or a significant flight risk. *Id.* § 241.4(d)(1) (explaining that the agency "may release" or "may also . . . continue [] custody . . ." for such individuals).

64. A subsequent review is only commenced by ICE "within approximately one year" of the 180-day review, after approximately 18 months of confinement. *See* 8 C.F.R. § 241.4(k)(2)(iii). A non-citizen may submit a written request once every three months between the annual reviews based on a "material change in circumstances," and ICE may take approximately 90 days—another three months—to respond. *Id.*

C. Due Process Limits Indefinite Prolonged Detention

65. "It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Demore*, 538 U.S. at 523 (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*, 533 U.S. at 690. This fundamental protection applies to all persons present in the United States, including both removable and inadmissible non-citizens. *See id.* at 721 (Kennedy, J., dissenting) ("both removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious").

66. As such, detention pursuant to immigration proceedings—which are civil, not criminal—is constitutionally permissible only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [detained] individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal citation omitted).

67. In the immigration context, the Supreme Court has recognized only two valid purposes for detaining non-citizens: to mitigate the risk of danger to the community and to prevent flight. *Zadvydas*, 533 U.S. at 690–91; *see also Demore*, 538 U.S. at 515, 527–28.

68. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed the detention provision in § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." *Id.* at

689. *Zadvydas* established a six-month threshold, after which a non-citizen's detention becomes unreasonable and unlawful if the non-citizen's removal is "not reasonably foreseeable." *Id.* at 699.

69. Following *Zadvydas* and "to avoid the serious due process concerns," the Third Circuit found in 2018 that non-citizens in reinstatement proceedings subject to mandatory detention under § 1231(a)(6) are entitled to bond hearings after six months. *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 226 (3d Cir. 2018) ("We therefore adopt a six-month rule here—that is, an alien detained under § 1231(a)(6) is generally entitled to a bond hearing after six months (i.e., 180 days) of custody."). In 2020, the Ninth Circuit similarly found a presumptive six-month temporal limit to reinstatement detention. *See Aleman Gonzalez v. Barr*, 955 F.3d 762, 785 (9th Cir. 2020).

70. In June 2022, the Supreme Court abrogated these decisions, holding that the text of § 1231(a)(6) did not require the government to provide bond hearings after six months. *Johnson v. Arteaga-Martinez*, S. Ct. 1827, 1834 (2022).

71. The Supreme Court explicitly declined to address the "serious due process concerns" of indefinite detention under § 1231(a)(6) without a hearing. *Id.* at 1834–35. And it declined to rule on whether someone detained under § 1231(a)(6) "is presumptively entitled to release under *Zadvydas* because, in view of the length of time that withholding-only proceedings tend to take, [their] removal is not reasonably foreseeable." *Id.* at 1835.

72. Accordingly, as-applied constitutional challenges to prolonged detention like this instant petition remain viable.

D. The *German Santos* Test Applies in Mr. Doe's Case

73. Following the Supreme Court's decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 15 (2018), which declined to read 8 U.S.C. § 1226(c) to require bond hearings for all non-citizens after six months of detention, the Third Circuit issued *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203 (3d Cir. 2020).

74. *German Santos* held that when immigration detention under 8 U.S.C. § 1226(c)— another mandatory detention statute—becomes unreasonably prolonged, due process requires a bond hearing where the Government bears the burden of proving by clear and convincing evidence that continued detention is necessary to prevent flight or danger to the community. *Id.* at 210, 213–14.

75. Further, "[t]he decision in *German Santos* does not preclude granting . . . immediate release." *Tropskii v. Bondi*, No. CV 25-3226, 2025 WL 3016518, at *5 (E.D. Pa. Oct. 28, 2025) (granting immediate release to a habeas petitioner).

76. *German Santos* reaffirmed previous decisions in the Third Circuit which upheld that the Fifth Amendment's Due Process Clause limits prolonged immigration detention without bond. *See Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 475–78 (3d Cir. 2015).

77. In *German Santos*, the Third Circuit articulated a four-factor, non-exhaustive, case-by-case balancing test for determining whether a non-citizen's mandatory detention has become unreasonably prolonged. The four factors, which borrow from *Diop* and *Chavez-Alvarez*, *see Diop*, 656 F.3d at 234; *Chavez-Alvarez*, 783 F.3d at 474, are (1) the "duration of detention" (2)

"whether the [non-citizen]'s detention is likely to continue"; (3) the reasons for any delay, particularly "whether either party made careless or bad-faith errors in the proceedings that cause[d] unnecessary delay"; and (4) "whether the [non-citizen]'s conditions of confinement are meaningfully different from criminal punishment." *Id.* at 211.

78. *German Santos* specifically concerns detention under Section 1226(c), but Courts in the Third Circuit have applied *German Santos* to decide prolonged detention cases in which petitioners like Mr. Doe were detained without a bond hearing under 8 U.S.C. § 1231(a)(6). *See Michelin v. Oddo*, No. 3:23-CV-22, 2023 WL 5672278, at *2 (W.D. Pa. Sept. 1, 2023), *appeal dismissed sub nom. Michelin v. Warden Moshannon Valley Corr. Ctr.,* No. 23-2966, 2024 WL 1904350 (3d Cir. Feb. 2, 2024) ("the Court agreed with Petitioner that, given Respondents' position that his continued detention is authorized under § 1231(a)(6) because his circumstance is distinguishable from the petitioners in *Zadvydas* (whom the government could not remove because no country would accept them), the *German Santos* framework applied to evaluate his as-applied due process claim"); *Rivas v. Oddo*, No. 3:22-CV-223, 2023 WL 4361140, at *2 (W.D. Pa. June 27, 2023) (noting that the *German Santos* factors apply to a petitioner detained under § 1231(a)(6) and mandating a bond hearing); *Taglioni v. Oddo*, No. 23-CV-85J, 2023 WL 7928212, at *2 (W.D. Pa. Nov. 16, 2023) (government arguing that the *German Santos* factors should be applied to petitioner's case because he was detained under § 1231).

79. Courts in this circuit have also extended the *German Santos* analysis to petitioners detained under other sections of the INA other than § 1226(c). *See, e.g., A.L. v. Oddo*, 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025) (holding that the detention of the petitioner under § 1225(b) without a bond hearing for nearly

ten months constituted an unconstitutionally prolonged detention and mandating a bond hearing); *Asolo v. Prim*, No. 21 CV 50059, 2021 WL 3472635, at *5 (N.D. Ill. Aug. 6, 2021) (applying the *German Santos* factors to a petitioner detained under § 1226(a), and noting that petitioner's ten months detention weighed in his favor).

80. The first *German Santos* factor—the length of detention without a bond hearing—is the "most important." *German Santos*, 965 F.3d at 211. The Third Circuit has held that mandatory detention without bond "becom[es] unreasonable sometime between six months and one year." *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478); *see also Diop*, 656 F.3d at 234 (holding that mandatory detention "becomes more and more suspect" after five months).

81. Mr. Doe has been detained for 12 months. The Third Circuit and the Middle District of Pennsylvania have repeatedly found detention periods of 7 to 15 months to be unreasonably prolonged. *See, e.g.*, *A.L. v. Oddo*, 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025) (nearly 10 months); *Diaw v. Oddo*, No. 3:25-CV-131, 2025 WL 3110623, at *1 (W.D. Pa. Nov. 6, 2025) (7 months); *C.B. v. Oddo*, No. 3:25-CV-00263, 2025 WL 2977870, at *6 (W.D. Pa. Oct. 22, 2025) (more than 10 months); *Reid v. Oddo*, No. 3:25-CV-237, 2025 WL 3123895, at *7 (W.D. Pa. Nov. 7, 2025) (13 months); *Nunez v. Oddo*, No. 25-CV-143J, 2025 WL 2443437, at *4 (W.D. Pa. Aug. 25, 2025) (14 months); *Rivas v. Oddo*, No. 3:22-CV-223, 2023 WL 4361140, at *2 (W.D. Pa. June 27, 2023) (15 months); *Nyamekye v. Oddo*, No. 22-240J, 2023 WL 9271844, at *4 16 (W.D. Pa. Mar. 28, 2023), *report and recommendation adopted as modified*, No. 3:22-CV-240, 2023 WL 9271879 (W.D. Pa. May 4, 2023) (14 months); *Davydov*, 2020 WL 969618, at *8 (14 months); *Kleinauskaite v. Doll*, No. 4:17-CV-02176, 2019 WL 3302236, at *6 (M.D. Pa. July 23, 2019) (12

months); *Bah v. Doll*, No. 3:18-CV-1409, 2018 WL 6733959, at *7 (M.D. Pa. Oct. 16, 2018) (14 months), *report and recommendation adopted*, 2018 WL 5829668 (M.D. Pa. Nov. 7, 2018); *Sassmannshausen v. Doll*, No. 3:17-CV-1244, 2017 WL 4324836, at *1, *3 (M.D. Pa. Aug. 10, 2017) (13 months), *report and recommendation adopted*, No. 3:17-CV-1244, 2017 WL 4310177 (M.D. Pa. Sept. 28, 2017).

82. Similarly, district courts in neighboring circuits employing multi-factor tests like *German Santos* have consistently found that mandatory immigration detention approaching or surpassing one year is unreasonable and warrants a bond hearing consistent with due process. *See, e.g.*, *Wahi v. Pittman, et al.*, No. CV 25-2207 (MAS), 2025 WL 2918948, at *2 (D.N.J. Oct. 15, 2025) (nearly one year); *Mansaray v. Perry*, No. ELH-21-1044, 2021 WL 2315415, (D. Md. June 7, 2021) (13 months); *Deng v. Crawford,* No. 2:20-CV-199, 2020 WL 6387010, at *6 (E.D. Va. Sept. 30, 2020) (11 months), *report and recommendation adopted*, No. 2:20-CV-199, 2020 WL 6387326 (E.D. Va. Oct. 30, 2020); *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018) (8 months); *Jarpa v. Mumford*, 211 F. Supp. 3d 706 (D. Md. 2016) (11 months).

83. The second *German Santos* factor 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. 965 F.3d at 211. The Third Circuit and district courts within it have repeatedly held that this factor favors the petitioner in cases where "proceedings remain in their infancy" and decisions and appeals are pending. *Morgan v. Oddo*, No. 3:24 CV 221, 2025 WL 1134979, at *3 (W.D. Pa. Apr. 17, 2025). Where the petitioner's immigration case is not yet decided or is currently on appeal at the BIA, courts in this circuit have consistently found that it is likely the petitioner's detention

will continue into the foreseeable future. *See, e.g.*, *German Santos*, 965 F.3d at 212 (noting that petitioner would "stay in prison as long as it takes the [BIA] to issue its decision."); *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 length detention considerably longer."); *Acevedo v. Decker*, No. 1:20-CV-01679, 2021 WL 120473, at *3 (M.D. Pa. Jan. 13, 2021) (noting that when "there is potential for extensive litigation in the underlying removal proceeding," the second factor favors the petitioner); *Clarke v. Doll*, 481 F. Supp. 3d 394, 398 (M.D. Pa. Aug. 24, 2020) (finding that second factor favored petitioner where petitioner was "likely to be detained for an additional period of time" pending BIA appeal). This is particularly true when the BIA remands a case to the Immigration Judge. *See Elyardo v. Lechleitner*, No. 1:23-CV-01089, 2023 WL 8259252, at *3 (M.D. Pa. Nov. 29, 2023).

84. The third *German Santos* factor considers whether either party caused unnecessary delay by "carelessness or bad faith" in petitioner's underlying immigration case. *German Santos*, 965 F.3d at 211. 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 Abioye v. Oddo*, 704 F. Supp. 3d 625, 631 (W.D. Pa. 2023) ("While the record reflects that a six-week delay occurred when Abioye secured counsel and another three-week delay occurred when counsel was granted an extension of the briefing schedule from the Court of Appeals for the Fourth Circuit, the Court cannot find that the delay is attributable to any bad faith on the part of Abioye or the Government. Rather, Abioye is exercising his right to pursue a defense to his removal by seeking

judicial review of the denial of his request for cancellation of removal."); *Rad v. Lowe*, No. 1:21-cv-00171, 2021 WL 1392067, at *4 (M.D. Pa. Apr. 13, 2021); *Davydov*, 2021 WL 1392067, at *4.

85. This factor often favors neither side. Yet detention "can still grow unreasonable even if the Government handles removal proceedings reasonably." *German Santos*, 965 F.3d at 211. The Middle District of Pennsylvania has repeatedly found detention unreasonable in the absence of governmental bad faith. *See, e.g., Clarke*, 481 F. Supp. 3d at 397–98; *Davydov*, 2020 WL 969618, at *5.

86. The fourth and final *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) (cleaned up). In many cases, courts have found that this factor favors the petitioner because civil immigration detention often closely resembles criminal custody. *See, e.g.*, *id.* at 213 (finding that ICE detention at Pike County Correctional Facility resembles criminal custody where individuals held for ICE alongside individuals with criminal convictions); *Buleishvili v. Hoover*, No. CV 1:20-1694, 2021 WL 674226, at *4 (M.D. Pa. Feb. 22, 2021) (same finding for Clinton County Correctional Facility); *Jarpa*, 211 F. Supp. 3d at 719 (same finding for Worcester County Detention Center in Maryland).

87. This factor requires an individualized, fact-specific inquiry that evaluates whether petitioner's civil detention "looks penal" in nature; considering, among other factors, whether ICE detainees are housed directly alongside criminal detainees. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020); *cf. Johan G.A. v. Cirillo*, No. CV 21-12972

(JMV), 2022 WL 190668, at *3-4 (D.N.J. Jan. 20, 2022) (finding that this fourth factor weighed in favor of petitioner who was held in three different detention facilities—two mixed-use facilities housing ICE detainees and regular prisoners, and Krome Detention Center, a dedicated ICE detention facility—because the conditions were "not meaningfully different from criminal punishment" due to facilities' use of solitary confinement, restrictions on detainees' movement, recreation time, and law library usage; assignment of uniforms and prisoner numbers; and use of restraints on petitioner and other immigrant detainees); *Daley v. Choate*, No. 22-CV-03043-RM, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023) (finding that the conditions of confinement factor weighed in favor of the petitioner detained at the ICE Aurora Contract Detention Facility, based, in part, on evidence that "the facility has a history of violating medical standards, resulting in the deaths of some detainees, as well as of violating ICE's own detention standards.")

88. In addition to the *German Santos* four factor test, the Due Process Clause subjects prolonged detention under § 1231(a)(6) under statutory scrutiny. The Supreme Court construed the detention provision in § 1231(a)(6) to contain an implicit time limit. *Zadvydas*, 533 U.S. at 682. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." *Id.* at 689. *Zadvydas* established an "implicit 'reasonable time limitation" of six months of detention, after which a non-citizen's detention becomes unreasonable and unlawful if the non-citizen's removal is "not reasonably foreseeable." *Id.* at 699.

E. Any Bond Hearing Must Have Adequate Procedural Safeguards to be Constitutionally Sound

89. The Third Circuit has previously addressed the statutory procedures for a petitioner in Mr. Doe's position and found them to be deficient. *See Guerrero-Sanchez v. Warden, York Cty. Prison*, 905 F.3d 208, 225–27 (3d Cir. 2018) ("The DHS regulations . . . themselves raise serious constitutional concerns."), *abrogated by Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827 (2022). The Ninth Circuit has similarly found inadequate safeguards for individuals held in prolonged detention pursuant to § 1231(a). *See Diouf v. Napolitano* 634 F.3d 1081, 1090–91 (9th Cir. 2011) ("The regulations do not afford adequate procedural safeguards because they do not provide for an in-person hearing, they place the burden on the [non-citizen] rather than the government, and they do not provide for a decision by a neutral arbiter such as an immigration judge."); *see also Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *6 (S.D.N.Y. Feb. 6, 2023) (Post-order custody reviews "suffer from [] significant shortcomings.").

90. The Supreme Court has repeatedly recognized that civil detention must be carefully limited to avoid due process concerns. To ensure that such detention is constitutional, the government must bear the burden of justifying the ongoing liberty deprivation. The Supreme Court has accordingly placed the burden of proof on the government in many different contexts. *See, e.g., Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (upholding involuntary civil commitment of certain sex offenders but requiring "strict procedural safeguards" including a right to a jury trial and proof beyond a reasonable doubt); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more

substantial than mere loss of money.") (citation and quotation marks omitted); *Foucha v. Louisiana*, 504 U.S. 71, 80–83 (1992) (striking civil insanity detention statute because it placed the burden on the detainee to prove eligibility for release); *Addington v. Texas,* 441 U.S. 418, 423 (1979) (state must justify civil detention of allegedly dangerous individual with mental illness by clear and convincing evidence); *see also U.S. v. Salerno*, 481 U.S. 739, 750–52 (1987) (upholding federal bail statute permitting pretrial detention where statute required strict procedural protections, including prompt hearings where government bore the burden of proving dangerousness by clear and convincing evidence).

91. A bond hearing, therefore, must include certain safeguards and meet certain standards for it to provide meaningful due process for an individual subject to prolonged detention. DHS must demonstrate by "clear and convincing" evidence that an individual presents an unjustifiable risk of flight or danger to the community to continue detention beyond six months. *See German Santos*, 965 F.3d, 213–14; *see also Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); (placing the burden on DHS by clear and convincing evidence at a § 1226(c) bond hearing because where a noncitizen "stands to lose his liberty, even temporarily, we hold the Government to a higher burden of proof").

92. If a petitioner's mandatory detention is deemed unreasonable under *German Santos*, the petitioner is entitled to a bond hearing where the Government bears the burden of justifying continued detention by clear and convincing evidence. 965 F.3d at 213–14. To do so, the Government must provide sufficient evidence that the petitioner presently poses a danger to the community or a flight risk. *Id.* at 214; *see also German Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *3 (M.D. Pa. Aug. 6, 2020) (noting that past criminal history does not place petitioner "forever beyond redemption"

and that due process does not permit the decision-maker to "presume dangerousness to the community . . . based solely on [petitioner's] past record").

93. To ensure that the burden of proof is properly applied by the IJ at the court-ordered bond hearing, courts in this circuit have retained jurisdiction to review the IJ's custody determination for consistency with the court's order and, if necessary, conduct its own bond hearing. *See, e.g.*, *Clarke*, 481 F.3d at 399 ("The parties shall report to the court the outcome of the individualized bond hearing within seven days of the date of the immigration judge's hearing . . . . If the immigration judge fails to convene an individualized bond hearing within 30 days of the date of this order, the court will reopen this case and conduct its own individualized bond hearing under the standards governing bail in habeas corpus proceedings."); *Vega v. Doll*, No. 3:17-CV-01440, 2018 WL 3765431, at *13 (M.D. Pa. July 11, 2018) ("[I]t is further recommended that the District Court retain the authority to conduct its own individual bond consideration, if necessary"), report and recommendation adopted, No. 3:17-CV-01440, 2018 WL 3756755 (M.D. Pa. Aug. 8, 2018).

94. This Court has the authority to conduct the bond hearing itself in the first instance. *See Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) ("[T]he authority to conduct [a bond] hearing has long been recognized as an essential ancillary aspect of [the Court's] federal habeas corpus jurisdiction."); *Thaxter v. Sabol*, No. 1:14-CV-02413, 2016 WL 3077351, at *3 (M.D. Pa. June 1, 2016) (ordering magistrate to conduct bond hearing in first instance).

95. If this Court orders a bond hearing, due process also requires that the IJ consider ability to pay bond and alternatives to detention in addition to or in lieu of monetary bond, such as release with conditions of supervision. *See*

Mansaray, 2021 WL 2315415, at *11 (ordering IJ to consider "ability to pay and alternatives to detention" in bond hearing). When the Government fails to consider a non-citizen's financial circumstances when setting bond or fails to consider alternatives to detention that would reasonably mitigate flight risk or danger, it runs the risk of impermissibly continuing detention without sufficient justification and based solely on an individual's inability to pay. *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017); *see also Black v. Decker*, 103 F.4th 133, 158 (2d Cir. 2024).

CLAIMS FOR RELIEF

First Cause of Action

Constitutional Violation – Petitioner's Prolonged Detention Violates the Due Process Clause of the Fifth Amendment of the Constitution Under the *German Santos* Test

96. Mr. Doe realleges and incorporates by reference the paragraphs above.
97. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Cont. amend. V.
98. Mr. Doe's detention without a bond hearing, which has lasted for 12 months and will likely span many more months while his viable withholding of removal case is pending a merits hearings and subsequent potential appeals, has become unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment.
99. Mr. Doe is currently detained under 8 U.S.C. § 1231(a)(6) due to his pending withholding of removal application. Mr. Doe has never been afforded a bond hearing at any point during his prolonged detention.

100. The *German Santos* factors apply to his case. The first and most important *German Santos* factor—the length of detention without a bond hearing—favors Mr. Doe, who has been detained for over 11 months and counting. *See Rivas*, 2023 WL 4361140, at *2 (evaluating the first *German Santos* factor at the time of adjudication of the petition). Mr. Doe's length of detention falls within the six-month to one-year timeframe laid out in *Chavez-Alvarez* and reaffirmed in *German Santos*. *See* 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478). Furthermore, Mr. Doe has been detained for as long or nearly as long as numerous habeas petitioners granted relief by courts in this circuit and neighboring circuits. *See, e.g.*, *Kleinauskaite*, 2019 WL 3302236, at *6 (finding detention unreasonable after 12 months); *Sajous*, 2018 WL 2357266, at *11 (finding detention unreasonable after 8 months under a multi-factor test applicable at the time). Finally, as discussed *supra*, Mr. Doe has been detained by the Respondents on four separate occasions for a total of fourteen months and counting.

101. The second factor—the likelihood of continued detention—also favors Mr. Doe, whose withholding of removal case is currently pending a merits hearing. As noted *supra*, between awaiting the merits hearing and subsequent potential appeals and remands, withholding-only proceedings can last for many months or even years. Mr. Doe's case is in the "infancy of its proceedings" and during the pendency of the case, Mr. Doe faces a high likelihood of continued detention. *Morgan*, 2025 WL 1134979, at *3.

102. Whether or not Mr. Doe is granted withholding of removal at his merits hearing, it is likely that the losing party will pursue an appeal. Then, as for several petitioners granted relief under the *German Santos* factors, it would be "reasonably predicted that [Mr. Doe's] appeal [would] take a substantial amount of time, making his already length detention considerably longer."

Chavez-Alvarez, 783 F.3d at 477–78; *see also German Santos*, 965 F.3d at 212. Moreover, there is a high likelihood of continued detention in Mr. Doe's case, regardless of the outcome of a possible BIA decision on appeal. If the BIA reverses the IJ decision on any of the grounds stated in the appeal, it will likely remand to the IJ for further proceedings. *See Elyardo*, 2023 WL 8259252, at *3. If the BIA affirms the IJ decision, Mr. Doe may seek federal circuit court review and an accompanying stay of removal, as is his statutory right. *See* 8 U.S.C. § 1252; *Bah*, 2018 WL 6733959, at *2, *7 (holding that petitioner with circuit court stay of removal was detained under 8 U.S.C. § 1226(c) and finding continued detention unreasonable); *see also Malede*, 2022 WL 3084304, at *6.

103. Mr. Doe has already been erroneously deprived of his liberty without a bond hearing for 12 months, and continued deprivation is all but inevitable without additional safeguards. The only analysis of his continued custody has occurred through non-appealable, internal reviews performed by ICE itself, discussed supra, which ICE is obligated to conduct for non-citizens detained under 8 U.S.C. § 1231(a)(6), *see* 8 C.F.R. § 241.4. Mr. Doe will not be eligible for another custody redetermination review until July 2026. *See* 8 C.F.R. § 241.4(k)(2)(iii). This custody review will come 18 months after Respondents detained Mr. Doe.

104. The third factor—the reason for delays in Mr. Doe's proceedings—also favors Mr. Doe. The Petitioner has diligently litigated his case while intentionally trying to avoid delay. While he was living out in the community, he attended all his scheduled ICE check-ins. He only missed one Master Calendar Hearing on March 4, 2024, due to a severe fever that turned out to be a symptom of his then-undiagnosed HIV. Ex. A, ¶ 14. The next day, March 5, he was tested for and diagnosed with HIV. *Id.* When he learned he had been

ordered removed, Mr. Doe immediately sought legal assistance to reopen his case. *Id.* at ¶ 15. Unfortunately, the first lawyer he worked with provided ineffective assistance of counsel, resulting in his first motion to reopen being denied. *Id.*

105. While detained at Orange County Correctional Facility, Mr. Doe submitted a second motion to reopen along with form I-589 Application for Withholding of Removal and protection under the Convention Against Torture on March 4, 2025. *Id.* at ¶ 20. This second motion to reopen was granted on March 24, 2025, and Mr. Doe promptly retained counsel to pursue withholding of removal. *Id.* at ¶ 21. That he filed a viable motion to reopen and withholding application cannot be "[held] against him" in this Court's reasonableness analysis because to do so would "effectively punish [him] for pursuing applicable legal remedies." *German Santos*, 965 F.3d at 211 (internal quotations omitted); *see also Rad*, 2021 WL 1392067, at *4; *Davydov*, 2021 WL 1392067 at *4.

106. The delay in Mr. Doe's merits hearing is due to the Elizabeth Immigration Court's postponement of the hearing on two occasions: September 22 and October 6, 2025. Ex. C. The hearing has finally been rescheduled to February 3, 2026, at which point, Mr. Doe will have been detained for over one year. *Id.* Still, if this Court determines that the Government has likewise acted reasonably in the removal proceedings, it can and should find continued detention unreasonable. *See German Santos*, 965 F.3d at 211 (finding detention unreasonable where third factor favored neither party); *Clarke*, 481 F. Supp. 3d at 397–98 (rejecting Government's contention that petitioner's pursuit of immigration relief and absence of governmental bad faith precluded relief).

107. The fourth factor favors Mr. Doe because the conditions of his confinement at Pike County Correctional Facility are not "meaningfully different from criminal punishment." *German Santos*, 965 F.3d at 211. At Pike, noncitizens like Mr. Doe are detained alongside individuals incarcerated for criminal offenses. *Id.* at 213. He is detained "in the same prison that caused [the court] to conclude that a petitioner's "detention [was] indistinguishable from criminal punishment." *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).

108. Individuals at Pike are grouped into different categories of security and treated differently according to their security level. *See* Ex. A at ¶ 19. Mr. Doe's movement is severely restricted, and he is frequently locked in his cell for hours or even days at a time without warning. *Id.* He reports being locked in his cell for a variety of reasons including as a punishment for saving food, when other detained individuals fight, when receiving medicine, and during maintenance. *Id.* Whether they are held as noncitizen detainees or as inmates convicted of crimes, people incarcerated at Pike are only allowed to go outside for one hour a day. *Id.*

109. Due to the punitive, deplorable conditions at Pike, Mr. Doe, who is HIV positive, has suffered significantly while in detention. During his first few months detained, he did not have access to his life-saving HIV medication. *Id.* at ¶ 24; *see also* Ex. E, Dr. Miranda Report. He has received insufficient and often moldy, frozen, expired or otherwise inedible food. *Id.* at ¶ 26. He and the other detained individuals are only given three cups of water a day, one with each meal. *Id.* All other water must be purchased.

110. Without sufficient edible food and drinkable water, Mr. Doe is losing weight. *Id.* Last month, Mr. Doe began suffering from a severe rash of unknown origin

covering his arms and face. *Id.* at ¶ 25. When he sought medical treatment, the doctor briefly examined him before prescribing him with allergy medication that has done nothing to mitigate the issue. *Id.* Without adequate medical attention and improper diagnosis and treatment, the marks on Mr. Doe's body are spreading, growing, and becoming more painful and uncomfortable. *Id.*

111. This lack of adequate, hygienic nutrition, weight loss, and proper medical attention is particularly concerning given his HIV diagnosis, and Mr. Doe fears that his immune system will weaken, resulting in a higher HIV viral load. *Id* at ¶ 26. Furthermore, the conditions at Pike are unsanitary, with three people sharing one cell with one toilet and one sink. The sink, which they are forced to drink from frequently because of how little water they are given throughout the day, is located directly above the toilet they all share. *Id.* at ¶ 26.

112. Detained noncitizens at Pike are punished severely for minor disciplinary infractions. When Mr. Doe once tried to save an apple in his pocket to bring back to his cell and eat later, the guards locked him in his cell for 24 hours and did not allow him to use the phone or to go to the vending machines for food. *Id.* at ¶ 27. Violence runs rampant in the facility, and Mr. Doe reports witnessing several fights that resulted in lockdowns in the facility. *Id.* Pike uses solitary confinement for alleged disciplinary infractions, just as is done in prison. *Id.*

113. In sum, all four of the *German Santos* factors are squarely in Mr. Doe's favor. As such, Mr. Doe's 12 months of detention without a bond hearing has become unreasonably prolonged in violation of due process. *See German Santos*, 965 F.3d at 213 (finding detention unreasonable where three of four

factors favored petitioner); *Buleishvili*, 2021 WL 674226, at *3–4 (finding detention unreasonable where two of four factors favored petitioner).

114. To remedy Mr. Doe's unreasonably prolonged detention, when considered under the *German Santos* balancing test, due process requires that he be immediately released, or at minimum, he receive an individualized bond hearing before an IJ at which the Government must justify his continued detention by clear and convincing evidence, taking into consideration his ability to pay and whether conditions of release might mitigate any risk of danger or flight.

Second Cause of Action

Statutory Violation – Petitioner's Prolonged Mandatory Detention Violates 8 U.S.C. § 1231(a)(6) Under *Zadvydas* Because Removal is not Reasonably Foreseeable

115. Under current law, Mr. Doe is detained pursuant to § 1231(a) because he is in withholding-only proceedings following reinstatement of his prior removal order. *See Guzman Chavez*, 141 S. Ct. at 2280. Mr. Doe's 90-day "removal period" therefore began on December 3, 2023, when he was detained by DHS and his removal order was reinstated. *See id.* at 2284. At 12 months of detention—plus about 4 months of prior detentions by ICE after reinstatement of his removal order—Mr. Doe has been detained well past the removal period, and his detention has transitioned into the scope of § 1231(a)(6).

116. In *Zadvydas*, the Supreme Court applied the doctrine of constitutional avoidance to find that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689. After six months of detention, a non-citizen is entitled to relief under *Zadvydas* if there is "good reason to believe that there

is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

117. Mr. Doe has been detained for more than six months after the reinstatement of his removal order. Furthermore, his removal is not significantly likely in the reasonably foreseeable future because he is currently waiting for his February 3, 2026, merits hearing, after the court has canceled and adjourned his hearing on multiple occasions. Furthermore, both Petitioner and Respondent can appeal the immigration judge's eventual decision, adding additional months to Mr. Doe's prolonged detention.

118. Because Mr. Doe has been detained under § 1231(a)(6) for more than six months and his removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See Zadvydas*, 533 U.S. at 692 (reviewing district court decisions ordering release); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to...terms of supervision"); *see also Diaw v. Oddo*, No. 3:25-CV-131, 2025 WL 3110623, at *1 (W.D. Pa. Nov. 6, 2025) (granting a habeas petition finding that "Petitioner has been detained since April 4, 2025, and thus has been detained beyond the presumptively reasonable time period under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (prescribing the presumptively reasonable time period as six months)").

119. Alternatively, if this Court does not find immediate release appropriate, it should order an immigration bond hearing with the burden placed on the Government to justify continued detention by clear and convincing evidence, and with consideration of ability to pay and alternatives to detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the Philadelphia Field Office and the Middle District of Pennsylvania pending the resolution of this case;
3. Declare that Petitioner's prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;
4. Declare that Petitioner's prolonged detention without a bond hearing violates § 1231(a)(6) under *Zadvydas* because his removal is not reasonably foreseeable;
5. Issue a Writ of Habeas Corpus ordering Respondents to, within 14 days, release Petitioner immediately, or, in the alternative, ordering Respondents to provide Petitioner with a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents must prove by clear and convincing evidence that Petitioner's continued detention is justified, with ability to pay and alternatives to detention considered;
6. Retain jurisdiction over this matter to conduct its own bond hearing or order other appropriate remedies should the Government fail to comply with this Court's order;
7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
8. Grant any other and further relief that this Court deems just and proper.

Dated: 01/26/2026
New York, NY

Respectfully submitted,

/s/ Nhu-Y Ngo
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* *pro hac vice motion forthcoming*

EXHIBITS

A. Declaration of Ashley Pinilla, Esq., dated January 26, 2026.

B. Reinstatement Order, dated December 5, 2023

C. Immigration Court Hearing Notices, dated May 5, 2025, August 22, 2025, and November 18, 2025.

D. ICE Release Request Denials, dated April 29, 2025, and August 11, 2025.

E. Medical Records (*motion to file under seal forthcoming*)