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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ATCHA AGBA KITITI,

Petitioner,

v.

Tony NORMAND, Warden of Folkston ICE Processing Center, in his official capacity;
George STERLING, Deputy Field Office Director of the Atlanta Field Office, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as acting Director of U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; Pamela BONDI, U.S. in her official capacity as U.S. Attorney General; Daren MARGOLIN, Director of Executive Office for Immigration Review

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 4) Mr. Kititi's prolonged detention without a bond hearing and without adequate
2 custody reviews violates due process under established Eleventh Circuit precedent and this
3 Court's caselaw. *See Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1212 (11th Cir. 2016), *vacated on*
4 *other grounds*, 890 F.3d 952 (11th Cir. 2018); *Dorley v. Normand*, No. 5:22-cv-62, 2023 WL
5 3620760 (S.D. Ga. Apr. 3, 2023) (applying *Sopo* to find 20-month detention without bond
6 unreasonable). Having already been detained for approximately 13 months without a bond
7 hearing, Mr. Kititi's detention is likely to continue for months to come because the delays caused
8 by the Government, and the likelihood of an appeal after his Individual Calendar Hearing,
9 despite the fact that he is more likely than not to ultimately prevail. Virtually, all of the delay in
10 Mr. Kititi's case is attributable to the Government's actions or inactions. Meanwhile, he is
11 detained in prison-like conditions at Folkston ICE Processing Center ("Folkston") without
12 adequate medical care for his numerous ailments, and without release in sight.

13 5) Additionally, Mr. Kititi's continued detention violates 8 U.S.C. § 1231(a)(6), as
14 interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his
15 removal is not reasonably foreseeable. Mr. Kititi's hearings has been continued over ten times,
16 due to the actions or inaction of the government. Appeal of the IJ's decision is without legal
17 basis, and any attempts to remove him to alternative countries would be futile.

18 6) Finally, ICE's failure to conduct custody reviews required by its own regulations
19 and policies violates the Administrative Procedure Act (APA). *See Accardi v. Shaughnessy*, 347
20 U.S. 260, 266 (1954).

21 7) As a remedy, Mr. Kititi requests immediate release from ICE custody. Petitioner
22 suffers irreparable harm by being detained for a prolonged period without a bond hearing, due
23 both to the deprivation of liberty without due process and the physical and mental harm the
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1 petitioner currently suffers while detained. Alternatively, and at a minimum, he requests a bond
2 hearing before an IJ at which ICE bears the burden of proving by clear and convincing evidence
3 that he is a current flight risk or danger to the community.

4 **JURISDICTION**

5 8) Petitioner is in the physical custody of Respondents. Petitioner is detained at the
6 Folkston ICE Processing Center (Main).

7 9) This Court has jurisdiction under 28 U.S.C. § 2241 (the general grant of habeas
8 authority to the district court); Art. 1, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); and
9 28 U.S.C. § 1331 (federal question jurisdiction).

10 10) This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
11 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

12 **VENUE**

13 11) Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
14 500 (1973), venue lies in the United States District Court for the Southern District of Georgia,
15 the judicial district in which Petitioner currently is detained.

16 12) Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
17 Respondents are employees, officers, and agencies of the United States, and because a
18 substantial part of the events or omissions giving rise to the claims occurred in the Southern
19 District of Georgia.

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21 **REQUIREMENTS OF 28 U.S.C. § 2243**

22 13) The Court must grant the petition for writ of habeas corpus or order Respondents
23 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an
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1 order to show cause is issued, Respondents must file a return “within three days unless for good
2 cause additional time, not exceeding twenty days, is allowed.” *Id.*

3 14) Habeas corpus is “perhaps the most important writ known to the constitutional
4 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
5 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
6 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
7 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
8 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

9 **PARTIES**

10 15) Petitioner ATCHA AGBA KITITI is a native and citizen of Togo, who has been
11 unlawfully detained at the Folkston ICE Processing Center in Folkston, Georgia, since January
12 2025. He is under the direct control of the Respondent and their agents.

13 16) TONY NORMAND is the warden of Folkston ICE Processing Center, which is
14 operated by GEO Group, Inc. Mr. Normand has direct physical custody of Mr. Kititi’s and is his
15 immediate custodian. He is sued in his official capacity.

16 17) Respondent George Sterling is the Acting Director of ICE’s Atlanta Field Office,
17 which has jurisdiction over ICE detention facilities in Georgia, including the Folkston ICE
18 Processing Center. He exercises authority over Petitioner’s detention and is sued in his official
19 capacity.

20 18) Respondent Todd Lyons is the Acting Director of ICE. He is responsible for the
21 overall administration of ICE and for the implementation and enforcement of the immigration
22 laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is
23 sued in his official capacity.

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1 26) On January 27, 2025, an Asylum Officer attempted to complete a credible fear
2 interview but could not find a Tchamba language interpreter. Mr. Kititi was unable to complete
3 the CFI, and DHS issued a Notice to Appear (“NTA”) that same day. Ex. 2, Notice to Appear.

4 27) Since the commencement of INA §241 removal proceedings, Mr. Kititi’s
5 hearings haven been continued or cancelled over ten times: March 10, 2025; April 14, 2025;
6 May 5, 2025; May 12, 2025; June 23, 2025; July 14, 2025; July 28, 2025; August 12, 2025;
7 September 25, 2025; October 10, 2025; December 8, 2025; and January 30, 2026.

8 28) On December 8, 2025, Mr. Kititi was scheduled for his merits hearing. The
9 Immigration Judge admitted and closed evidence, and Mr. Kititi completed direct examination.
10 Because the hearing was expected to continue past 5:00PM, the IJ continued the hearing so that
11 Mr. Kititi could complete cross examination and both parties could present closing arguments.
12 The hearing was reset to January 30, 2026.

13 29) However, ICE filed a Motion to Pretermit on January 23, 2026, only four business
14 days before the final hearing. In their motion, they requested the Immigration Judge to pretermit
15 Mr. Kititi’s case based on an Asylum Cooperative Agreement with Uganda, even though he
16 completed direct examination and evidence had closed. The Immigration Judge admitted this
17 into evidence, and continued the hearing solely to address the motion. The next hearing is
18 scheduled for February 10, 2026. Ex. 3, DHS Motion to Pretermit.

19 30) Mr. Kiti, through counsel, has requested parole and Custody Determination
20 documents. Counsel received a response from an unknown deportation officer but has yet to get
21 a decision or any documentation regarding his ongoing detention. Ex. 4, Emails with Deportation
22 Officers.

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1 31) Because he was placed in Expedited Removal, Mr. Kititi is not eligible to request
2 a bond from an IJ and can only request release from ICE. Mr. Kititi requested his release,
3 through counsel, on various occasions. He has also, through counsel, requested the Form I-286
4 (Notice of Custody Determination). A deportation officer said that he would forward the request,
5 but Mr. Kititi never got any response to his requests.

6 32) Independently of any parole requests. ICE was required to review Mr. Kititi's
7 custody under 8 C.F.R. § 241.4 after 90 days of detention, again at 180 days of detention, and a
8 third time at 540 days of detention. ICE was also required to serve each of these custody review
9 decisions on Mr. Kititi and to personally interview Mr. Kititi at least once prior to the 180-day
10 review. *See infra*, Legal Background 11.b. But Mr. Kititi has never received any such custody
11 decision or interview. On information and belief, ICE has not conducted any of the required
12 custody reviews under 8 C.F.R. § 241.4 in the entire time Mr. Kititi has been detained.

13 33) At Folkston, Mr. Abad is confined to a large cell with 60 other people for
14 approximately 22 hours a day, with limited time for meals and recreation. The people detained
15 at Folkston wear different colors of prison garb according to their security classification and are
16 constantly monitored through frequent head counts. Mr. Kititi is 49 years old and has a severe
17 tooth decay that has not been adequately treated at Folkston. He has persistent pain in his tooth
18 and has only been given pain medication to fight the pain from the decay.

19 34) Mr. Kititi's experience is consistent with DHS's own observations. According to a
20 2022 report by the DHS Office of the Inspector General (OIG), "Folkston did not meet standards
21 for facility conditions, medical care, grievances, segregation, staff-detainee communications, and
22 handling of detainee property" and these violations "compromised the health, safety, and rights of
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1 detainees”.¹ Specifically, the report noted the following:

2 Folkston facilities were unsanitary and dilapidated, with torn
3 mattresses, water leaks and standing water, mold growth and water
4 damage, rundown showers, mold and debris in the ventilation
5 system, insect infestations, lack of access to hot showers, inoperable
6 toilets, an inoperable thermometer display on a kitchen freezer, and
7 an absence of hot meals. Facility medical staff did not provide timely
8 access to specialty care or adequate mental health care for detainees.
9 Folkston did not provide timely or complete responses to detainee
10 grievances and requests. Folkston also did not consistently provide
11 required services to detainees in segregation and inappropriately
12 handcuffed detainees. Further, ICE did not consistently respond to
13 detainee requests in a timely manner and did not provide detainees
14 with paper grievance forms and submission boxes as required. ICE
15 also did not provide detainees sufficient contact with deportation
16 officers. Lastly, the facility has improperly handled detainee
17 property. In addition, Folkston has not met staffing levels required
18 by the contract with ICE to ensure proper detainee oversight. In
19 addressing COVID-19, Folkston did not consistently enforce use of
20 masks and social distancing. *Id.*

21 35) If released, Mr. Abad plans to return to live with his uncle in New York, who
22 operates a business, in which Mr. Kititi can obtain employment upon receipt of the legal
23 authorization to do so.

24 ARGUMENT

25 36) Mr. Kititi’s continued detention violates § 1231(a)(6) as interpreted by *Zadvydas*
26 because it has far exceeded six months, and his removal is not reasonably foreseeable. Under
27 *Zadvydas* and the regulations implementing it, this Court should order Mr. Kititi’s immediate
28 release under reasonable conditions of supervision.

29 37) Alternatively, Mr. Kititi’s detention without a bond hearing violates due process
30 because it has become unreasonably prolonged under the *Sopo* factors. While *Sopo* involved a
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¹ This report is also available online: DHS Office of the Inspector General, Violations of ICE Detention Standards at Folkston ICE Processing Center (June 30, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-07/0 IG-22-47-Julv22.pdf>.

1 noncitizen detained under 8 U.S.C. § 1226(c), this Court should apply the *Sopo* factors to Mr.
2 Kititi's detention under 8 U.S.C. § 1231(a)(6) because he is in the functionally identical
3 situation of prolonged detention without bond during ongoing proceedings.

4 38) Finally, ICE's failure to conduct custody reviews required by its own regulations
5 and policies violates the Administrative Procedure Act (APA). *See Accardi*, 347 U.S. at 266.

6 **I. Mr. Kititi's continued detention violates 1231(a)(a)(6) under *Zadvydas***
7 **and he is entitled to immediate release**

8 39) Mr. Kititi's continued detention violates § 1231(a)(6) as interpreted by *Zadvydas*
9 because it has far exceeded six months, and his removal is not reasonably foreseeable. Under
10 *Zadvydas* and the regulations implementing it, this Court should order Mr. Kititi's immediate
11 release under reasonable conditions of supervision.

12 40) "Freedom from imprisonment—from government custody, detention, or other
13 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the
14 Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. Indefinite detention, in particular, raises
15 a "serious constitutional problem" and violates the Due Process Clause. *Id.* at 689–90. The Due
16 Process clause applies to all persons in the United States, "whether their presence here is lawful,
17 unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. In *Zadvydas*, the Supreme Court
18 emphasized, "[f]reedom from imprisonment—from government custody, detention, or other
19 forms of physical lies at the heart of the liberty that [the Due Process] Clause protects." 533 U.S.
20 at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Court noted, "[a] statute
21 permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.*; *see*
22 *also Plyer v. Doe*, 457 U.S. 202, 210 (1982) ("Aliens, even aliens whose presence in this country
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1 is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth
2 and Fourteenth Amendments.”).

3 41) The Due Process Clause requires that the deprivation of Petitioner’s liberty be
4 narrowly tailored to serve a compelling government interest. See *Reno v. Flores*, 507 U.S. 292,
5 301–02 (1993) (holding that due process “forbids the government to infringe certain
6 ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement
7 is narrowly tailored to serve a compelling state interest”).

8 42) The six-month presumption “does not mean that every alien not removed must be
9 released after six months.” *Zadvydas*, 533 U.S. at 701. But if an alien is detained beyond six
10 months, the reasonable presumption no longer exists. At that point, “if ‘the alien provides good
11 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
12 future, the Government must respond with evidence sufficient to rebut that showing’ or release
13 the alien.” *Castaneda*, 95 F.4th at 756 (quoting *Zadvydas*, 533 U.S. at 701); see also *Menghua*
14 *Wan v. Crawford*, No. 1:13-cv-1473 (JCC), 2014 WL 970180, at *3 (E.D. Va. Mar. 12, 2014)
15 (explaining the burden-shifting test established in *Zadvydas* to assess the constitutionality of
16 detention following the presumptively reasonable six-month period).

17 43) As the length of detention grows, the period of time that would be considered the
18 “reasonably foreseeable future” shrinks. See, e.g., *Zadvydas*, 533 U.S. at 701 (stating that as the
19 length of time in detention grows “what counts as the ‘reasonably foreseeable future’ conversely
20 would have to shrink”); *Senor*, 401 F. Supp. 3d at 430 (“[T]he passage of time combined with’
21 the ‘government [being] no closer to . . . repatriating [a detainee] than they were once they first
22 took him into custody’ [is] sufficient to meet that ‘initial burden.’”); *Lawrikow*, 2009 WL
23 2905549, at *12.

1 **a. *Zadvydas* applies to Mr. Kititi's detention.**

2 44) Mr. Kititi's continued detention violates 8 U.S.C. § 1231(a)(6) because his
3 removal is not reasonably foreseeable.

4 45) After six months of post-removal order §1231 detention, a noncitizen is
5 entitled to relief under *Zadvydas* if there is "good reason to believe that there is no
6 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. The
7 Supreme Court and courts across the country have analyzed the foreseeability of removal on
8 a sliding scale. *See Zadvydas*, 533 U.S. at 701 ("[F]or detention to remain reasonable, as
9 the period of prior post removal confinement grows, what counts as the 'reasonably
10 foreseeable future' conversely would have to shrink."); *Hassoun v. Sessions*, No. 18-cv-
11 586-FPG, 2019 WL 78984, at *4 (W.D. Y. Jan. 2, 2019) ("[T]he government's burden
12 becomes more onerous the longer an alien is detained, because it must show that removal
13 will be effectuated sooner in the future").

14 46) Though *Zadvydas* has traditionally been applied to noncitizens whose
15 removal is hindered by practical barriers such as the inability to secure travel documents
16 from the noncitizen's home country, the *Zadvydas* framework applies with equal force to
17 noncitizens facing extensions of their detention due to ICE's unnecessary delays. Prolonged
18 detention is constitutionally suspect regardless of the reason for delay. *See Oyedeji v.*
19 *Ashcroji*, 332 F. Supp. 2d 747, 753 (M.D. Pa. 2004) ("Prolonged incarceration for an alien
20 whose potentially meritorious challenge to removal is part of a congested docket is
21 indistinguishable from lengthy incarceration because the alien's native country refuses to
22 issue travel documents").
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1 47) Courts have applied the *Zadvydas* standard to grant habeas relief to
2 noncitizens in ongoing proceedings. *See Garcia Diaz v. Acuff*, 507 F. Supp. 3d 991,997
3 (S.D. Ill. 2020) ("Because Garcia Diaz cannot be removed during the pendency of his
4 withholding case, there is no significant likelihood that he will be removed in the
5 reasonably foreseeable future."); *Quezada-Martinez v. Moniz*, No. 23-cv-12503, 2024 WL
6 IO18451, at *4 (D. Mass. Mar. 8, 2024) (finding no significant likelihood of removal
7 when removal hinged on 'outcome of several lengthy remand and appeal proceedings");
8 *D'Alessandro v. Mukasey*, 628 F Supp. 2d 368, 386 (W.D.N.Y 2009) (applying *Zadvydas* to
9 noncitizen detained under § 1231(a)(6) with temporary stay of removal while pursuing
10 circuit court review).

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12 48) Though the question has never been directly presented to the Supreme Court,
13 the Court has indicated on several occasions that it would apply the *Zadvydas* test outside of
14 its original context. First, in *Clark v. Martinez*, the Court held that *Zadvydas* applies to
15 inadmissible noncitizens detained under § 1231(a)(6), rejecting the Government's attempts
16 to confine *Zadvydas* to only admissible noncitizens and observing that "[the Government]
17 cannot justify giving the *same* detention provision a different meaning when such
18 inadmissible noncitizens are involved." 543 U.S. 371, 380 (2005). To exclude Mr. Kititi
19 from *Zadvydas* reach would be similarly inconsistent and would "effectively punish [Mr.
20 Kititi] for pursuing applicable legal remedies." *Oyedeji*, 332 F. Supp. 2d at 753.

21 49) Second, in *Cuzman Chavez*, the Court refuted the argument that "there is a
22 difference between the Government's inability to remove [a noncitizen] due to the grant of
23 withholding-only protection and its inability to remove [a noncitizen] because of the
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1 geopolitical and practical concerns that prevented removal in that case, noting that "the same
2 lack of certainty [of removal] existed in *Zadvydas* ... for geopolitical or practical reasons as
3 in ongoing proceedings where it is not certain that the Government will actually be able to
4 remove the [noncitizen] from the country." 141 S. Ct. at 2287 n.7.

5 50) This Court should follow these authorities and analyze Mr. Kititi's
6 prolonged detention under the *Zadvydas* framework, focusing on whether there is a
7 significant likelihood of removal in the reasonably foreseeable future.

8 **b. Mr. Kititi's removal is not reasonably foreseeable under**
9 ***Zadvydas*.**

10 51) Mr. Kititi has been detained for thirteen months, more than *two times* the
11 presumptively reasonable six-month detention period. Thus, this Court should be particularly
12 stringent in determining whether Mr. Kititi's removal is reasonably foreseeable. *See*
13 *D'Alessandro*, 628 F. Supp. 2d at 406 ("[After sixteen months] the reasonably foreseeable future
14 has nearly shrunk to the point of being the present time."); *Shefqet v. Ashcroft*, No. 02-cv-7737.
15 2003 WL 1964290, at *4 (N.D. Ill. April 28, 2003) ("The period of Petitioner's post-final-order
16 detention has at this time exceeded seventeen months and so the 'reasonably foreseeable future'
17 must now come very quickly.").

18 52) DHS placed Mr. Atcha Kititi in Expedited Removal under 8 CFR § 235.3(b) in
19 December 2024, but because they continue to prolong immigration proceedings, and their refusal
20 to release him to his uncle in New York, he has remained detained for more than thirteen
21 months.

22 53) Most recently, DHS filed a motion to pretermit, in the middle of his Individual
23 Calendar Hearing, after direct examination had concluded. Instead of denying the motion as
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1 unlawful, prejudicial, and untimely, the Immigration Judge (“IJ”) stopped mid-hearing to
2 schedule another hearing just to address the merits of the Motion to Preterm. This was after the
3 Immigration Judge had previously continued the case on more than ten occasions. Therefore, Mr.
4 Kititi's removal is not reasonably foreseeable after thirteen months of detention because he has
5 not been allowed an opportunity to have a fair hearing.

6 **c. Mr. Kititi must be immediately released under *Zadvydas*.**

7 54) Because Mr. Kititi has been detained under § 1231 for thirteen months and his
8 removal is not reasonably foreseeable. *Zadvydas* requires that he be immediately released. *See*
9 533 U.S. at 692 (reviewing district court decisions ordering release); 8 U.S.C. § 1231(a)(6)
10 (authorizing release “subject to ... terms of supervision”).

11 55) Release is the most common and appropriate remedy for a *Zadvydas* violation.
12 *See Hassoun*, 2019 WL 78984, at *8 (ordering release subject to "reasonable conditions of
13 supervision" determined by Respondents); *D'Alessandro*, 628 F. Supp. 2d at 406
14 (recommending that petitioner be "released immediately pursuant to reasonable conditions
15 of supervision and bond, as determined by DHS, subject to review and oversight by the
16 District Court"), *report and recommendation adopted*, 2009 WL 931164 (W.D.N.Y. Apr.
17 2, 2009).

18 56) To order Mr. Kititi's immediate release, this Court need only determine
19 that his removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether
20 Mr. Kititi is a danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 699-
21 700 (“[I]f removal is not reasonably foreseeable, the court should hold continued
22 detention unreasonable and no longer authorized by statute.”). To the extent that this
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1 Court considers the risk of danger or flight, Mr. Kititi clearly does not pose either risk
2 as he has no meaningful criminal history, has U.S. citizen family members, and has an
3 asylum case pending before the immigration court. In any case, "the [noncitizen]'s
4 release may and should be conditioned on any of the various forms of supervised
5 release that are appropriate in the circumstances." *Zadvydas*, 533 U.S. at 700.

7 **II. In the alternative, due Mr. Kititi's prolonged detention without a
8 bond hearing violates due process and he is entitled to a bond hearing
9 before a neutral arbiter.**

9 38. If this Court does not find that Mr. Kititi is entitled to an immediate release
10 under *Zadvydas*, it should alternatively hold that a constitutionally adequate bond hearing
11 under *Sopo* is required.

12 39. In *Johnson v. Arteaga-Martinez*, the Supreme Court declined to adopt a per se
13 rule construing § 1231(a)(6) to require bond hearings with the burden of proof on the
14 Government for all noncitizens detained for more than six months under that provision. 142 S.
15 Ct. 1827 (2022). Thus, noncitizens detained under § 1231(a)(6) may bring as-applied due process
16 challenges to their prolonged detention under the statute.

17 40. The *Arteaga-Martinez* Court expressly held that "as-applied constitutional
18 challenges [to § 1231 detention] remain available to address 'exceptional' cases." 142 S. Ct. at
19 1835. Following the Supreme Court's instructions, this Court should apply the *Sopo* factors to
20 the clearly exceptional case of Mr. Kititi, who has been detained for thirteen months without
21 bond, who has not received the post-order custody reviews to which he is entitled, and who has
22 an asylum application pending.

23 41. Other courts have done the same. For example, in *Michelin*, the U.S. District
24 Court for the Western District of Pennsylvania considered the habeas petition of a noncitizen

1 with a final removal order who had been detained for 18 months and whose motion to reopen
2 was pending before the BIA for more than a year. 2023 WL 5044929, at *2. After recognizing
3 that Mr. Michelin was detained under § 1231(a)(6), the Court analyzed his as-applied due
4 process claim under the factors established in *German Santos v. Warden Pike Cty. Corr. Facility*,
5 965 F.3d 203 (3d Cir. 2020) — the Third Circuit equivalent of *Sopo. Id.* at *6. The Court also
6 rejected the Government's argument that any due process violation in Mr. Michelin's prolonged
7 detention had been remedied by ICE's post-order custody reviews; the Court found that these
8 custody reviews were marred by ICE's failure to follow agency procedures and therefore "did
9 not provide [Mr. Michelin] with meaningful and adequate process. *Id.* at *8.

10 42. In the analogous context of detention without bond under 8 U.S.C. § 1226(c), the
11 Eleventh Circuit established a multi-factor, case-by-case balancing test for determining whether
12 a noncitizen's mandatory detention has become unreasonably prolonged in violation of due
13 process. The five factors are (1) the duration of detention, (2) the reason for delay, (3) the
14 feasibility of removal, 4) the comparison between the length of immigration detention and
15 criminal custody, and 5) "whether the facility or the civil immigration detention is meaningfully
16 different from a penal institution or criminal detention." *Sopo*, 825 F.3d at 1218.

17 43. In 2018, the Supreme Court abrogated *Sopo* to the extent that it employed
18 constitutional avoidance. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018). However,
19 *Sopo*'s analysis of what constitutes "unreasonable and unjustified" detention continues to serve
20 as persuasive authority for as-applied due process challenges in this Court. *See Clue v.*
21 *Greenwallt*, No. 5:21-cv-80, 2022 WL 17490505, at *4 (S.D. Ga. Oct. 24, 2022) (finding *Sopo*
22 analysis "highly instructive as to determining if prolonged detention under § 1226(c) does, in
23 fact, violate a petitioner's right to procedural due process.")

1 44. Like the petitioner in *Michelin*, Mr. Kititi has never had a bond hearing in his
2 thirteen months of detention. And unlike Mr. Michelin, he has never had any post-order custody
3 reviews under 8 C.F.R. § 241.4, let alone fully compliant reviews that satisfied due process. It
4 appears that ICE is unaware of their obligation to perform these custody reviews for someone in
5 Mr. Kititi’s situation — putting him in a legal limbo in which he is ineligible for bond due to his
6 expedited removal order yet not receiving the custody reviews to which all noncitizens with final
7 removal orders are entitled.

8 45. Neither has the ICE Atlanta Field Office reviewed Mr. Kititi’s custody under ICE
9 Directive 16004.1, which specifically mandates that the Field Office Director approve the
10 continued detention of any non-citizen granted fear-based protection. Given that Mr. Kititi has
11 no meaningful criminal history, there are evidently no “exceptional circumstances” justifying his
12 continued detention, and it is virtually certain that ICE would release him if they were to perform
13 this custody review as required.

14 a. **Mr. Kititi’s detention is unreasonable under *Sopo* factors**

15 46. The *first* factor—the length of detention without a bond hearing—favors Mr.
16 Kititi because he has been detained for thirteen months. Mr. Kititi’s length of detention far
17 exceeds the one-year cutoff described in *Sopo*. 965 F.3d at 217 (“[D]etention without a bond
18 hearing may often become unreasonable by the one-year mark.”). Furthermore, Mr. Kititi has
19 been detained for as long, or nearly as long, as numerous habeas petitioners granted relief by this
20 Court. See, e.g., *Dorley*, 2023 WL 3620760, at *5 (20 months); *Clue*, 2022 WL 17490505, at *4
21 (24 months).

22 47. The *second* factor similarly favors Mr. Kititi because the Government is
23 predominantly responsible for the delays prolonging his immigration proceedings. Mr. Kititi’s
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1 proceedings would be over, and he likely would have been released by now, if DHS had not filed
2 a Motion to Pretermit in the middle of his merits hearing. He would also likely be released if the
3 Immigration Court would have previously provided a TChamba interpreter. While ICE is entitled
4 to file a motion, the fact that the immigration court had admitted and closed evidence; and the
5 fact that Mr. Kititi finished direct examination, enhances the due process problem with his
6 continued detention. *See Jarpa v. Mumford*, 21 F. Supp. 3d 706, 722 (D. Md. 2016) (“[T]he
7 length of [petitioner's] detention now exceeding ten months, coupled with the unique
8 circumstances of this case— particularly that he stands adjudicated lawful permanent resident—
9 supports this Court's determination that Petitioner's continued detention without an
10 individualized bail hearing under § 1226(c) is no longer reasonable”).

11 48. With respect to the *third* factor, Mr. Kititi has an expedited removal order, but
12 DHS referred him to immigration court without his release. The immigration court has continued
13 his case over ten times, and DHS has filed a motion that extends his detention even further.
14 Additionally, the outcome of the merits hearing is not final, as either party has the ability to
15 appeal. Therefore, this factor—which focuses broadly on the “possibility of removal” —favors
16 Mr. Kititi. *Dorley*, 2023 WL 3620760, at *5.

17 49. The *fourth Sopo* factor favors Mr. Kititi because his “civil immigration detention
18 exceeds the time [he] spent in prison for the crime that rendered him removable.” *Sopo*, 825 F.3d
19 at 1218. There is no crime that made Mr. Kititi removable, nor even a crime that triggered his
20 immigration detention; he is in ICE custody merely because he entered the United States due to
21 political persecution in Togo.

22 50. The *fifth* factor favors Mr. Kititi because the conditions of his confinement at
23 Folkston are not “meaningfully different from a penal institution for detention.” *Sopo*, 825 F.3d
24

1 at 1218. This Court has twice found that the conditions at Folkston resemble criminal detention
2 and that this factor favors the non-citizen petitioner. *See, e.g., Dorley*, 2023 WL 3620760, at *6;
3 *Clue*, 2022 WL 17490505, at *5. In *Dorley*, this Court referenced the same OIG report
4 mentioned in this petition, finding that it supported the petitioner's assertions on the fifth factor.
5 *Dorley*, 2023 WL 3620760, at *5.

6 51. Mr. Kititi's experience has been no different than the petitioners in those cases.
7 He wears prison garb associated with his security level, is subject to frequent head counts, and
8 must remain in his cell with more than 60 other people for approximately 22 hours a day. *See*
9 *Clue*, 2022 WL 17490505, at *5 (finding that fifth factor favored petitioner detained at Folkston
10 where he presented evidence that "his movement is restricted in ways similar to those in criminal
11 detention, his living conditions are similar, and even his permitted clothing is similar.").

12 52. Moreover, Mr. Kititi's lack of access to adequate medical care, corroborated by
13 the OIG report, is another hallmark of punitive criminal detention. ICE refuses to authorize
14 operations that Mr. Kititi needs and that he would presumably have access to if Folkston were
15 less restrictive than a prison.

16 53. In summary, all five *Sopo* factors are squarely in Mr. Kititi's favor. Therefore,
17 Mr. Kititi's twenty-month detention without a bond hearing has become unreasonably prolonged
18 in violation of due process. *See Sopo*, 825 F.3d at 1220-21 (finding that four of five factors
19 favored petitioner and ordering bond hearing); *Dorley*, 2023 WL 3620760, at *6 (finding that
20 four of five factors favored petitioner and ordering bond hearing); *Clue*, 2022 WL 17490505, at
21 *6 (finding that three of five factors favored petitioner and ordering bond hearing).

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2 **III. ICE's failure to review Mr. Kititi's continued detention under its own regulations and policies violates the APA.**

3 54. Under the *Accardi* doctrine, which originated in the context of an
4 immigration case and has been developed through subsequent immigration caselaw.
5 agencies are bound to follow their own policies that affect the fundamental rights of
6 individuals, including self-imposed policies and processes that limit otherwise discretionary
7 decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations
8 in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights
9 of individuals are affected, it is incumbent upon agencies to follow their own
10 procedures ... even where the internal procedures are possibly more rigorous than
11 otherwise would be required."); *Pasquini v. Morris*, 700 F.2d 658, 663, n.1 (11th Cir.
12 1983) ("Although the INS] internal operating instruction confers no substantive
13 rights on the [noncitizen]-applicant, it does confer the procedural right to be considered
14 for such status upon application.") ICE has failed to conduct *at least three* custody reviews
15 expressly required under 8 C.F.R. § 241.4. *See supra* 24. Moreover, the Atlanta ICE Field
16 Office has failed to review Mr. Kititi's detention under ICE's long-standing policy requiring
17 the Field Office Director to personally approve the continued detention of each non-citizen
18 granted withholding of removal, and only if they find "exceptional circumstances" justifying
19 such detention.
20
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22 55. ICE's failure to review Mr. Kititi's custody appropriately is prejudicial.
23 Prejudice can be presumed because ICE's custody review regulations and policies implicate
24

1 fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261,
2 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation
3 order when the regulation serves a purpose to benefit the [non-citizen]" and the violation
4 affected "interests of the [non-citizen] which were protected by the regulation") (internal
5 quotations omitted). The regulations and the ICE policy provide non-citizens with an
6 opportunity to obtain freedom from detention, and that opportunity has thus far been withheld
7 from Mr. Kititi. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment-from
8 government custody, detention, or other forms of physical restraint-lies at the heart of the
9 liberty that [the Due Process] Clause protects.")

11 56. Therefore, ICE's non-compliance violates the APA. As a remedy, this Court
12 should review Mr. Kititi's custody under 8 C.F.R. § 241.4 and/or ICE Directive 16004.1, and it
13 should order Mr. Kititi's release if appropriate under those standards. *See Jimenez v. Cronen*,
14 317 F. Supp. 3d 626, 657 (D. Mass.2018) ("In these circumstances, it is most appropriate that
15 the court exercise its equitable authority to remedy the violations of petitioners' constitutional
16 rights to due process by promptly deciding itself whether each should be released.").

18 CLAIMS FOR RELIEF

20 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH** 21 **AMENDMENT TO THE U.S. CONSTITUTION**

22 57. The Due Process Clause of the Fifth Amendment forbids the Government from
23 depriving any person of liberty without due process of law. U.S. Const. Amend. V.

24 58. Mr. Kititi's detention without a bond hearing violates due process, which demands

1 that Mr. Kititi receive a bond hearing before a neutral adjudicator at which the Government bears
2 the burden of justifying continued detention by clear and convincing evidence.

3 **VIOLATION OF 8 U.S.C. § 1231(a)(6)**

4 59. Mr. Kititi realleges and incorporates by reference the paragraphs above.

5 60. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*,
6 authorizes detention only for "a period reasonably necessary to bring about the alien's removal
7 from the United States," which is generally no longer than six months. 533 U.S. at 689, 701.

8 61. Mr. Kititi has been detained for far longer than six months and his removal is
9 not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6)
10 and requires his immediate release.

11 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

12 62. Mr. Kititi realleges and incorporates by reference the paragraphs above.

13 63. Courts must "hold unlawful and set aside agency action" that is "arbitrary,
14 capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. §
15 706(2)(A), and "compel agency action unlawfully withheld or unreasonably delayed." *Id.* §
16 706(1).

17 64. ICE's continued detention of Mr. Kititi without reviewing his custody under
18 8 C.F.R. § 241.4 and without the Field Office Director approving his continued detention under
19 ICE Directive 16004.1 violates the APA.
20

21 WHEREFORE, Petitioner prays that this Court grant the following relief:

22 a. Assume jurisdiction over this matter;
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- 1 b. Order that Petitioner shall not be transferred outside the SOUTHERN DISTRICT
- 2 OF GEORGIA while this habeas petition is pending;
- 3 c. Issue an Order to Show Cause ordering Respondents to show cause why this
- 4 Petition should not be granted within three days, pursuant to 28 U.S.C. §2243;
- 5 d. Grant a writ of habeas corpus;
- 6 e. Order the immediate release of Petitioner from ICE detention;
- 7 f. Declare that Petitioner's ongoing detention is unlawful;
- 8 g. Order Mr. Abad's release subject to appropriate conditions or, alternatively, order
- 9 a bond hearing at which the Government bears the burden of proving danger or
- 10 flight risk by clear and convincing evidence;
- 11 h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 12 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 13 law; and
- 14 i. Grant any other and further relief that this Court deems just and proper.

14 DATED this 5th of February, 2026.

15 /s/ Gabriela Picazo Batista
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23
24

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this date, I uploaded the foregoing Petition for a Writ of Habeas
3 Corpus and all attachments to this Court's CM/ECF system, which will send a Notice of
4 Electronic Filing to all counsel of record.

5 Dated: February 5, 2026

6
7 Respectfully submitted,

8
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