

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

MOHAMMAD HADI NOORI,

Petitioner,

v.

TERRANCE DICKERSON, *in his official capacity as Warden of Stewart Detention Center*; LADEON FRANCIS, *in his official capacity as Field Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations Atlanta Field Office*; KRISTI NOEM, *in her official capacity as Secretary of Homeland Security*; PAMELA J. BONDI, *in her official capacity as Attorney General of the United States.*

Respondents.

**PETITION FOR A WRIT OF
HABEAS CORPUS**

Case No.

INTRODUCTION

1. Petitioner Mohammad Hadi Noori (Mr. Noori), a 34-year-old man from Afghanistan who served his country as part of the U.S.-backed government there, has been detained without a bond hearing by Respondents at Stewart Detention Center (Stewart) for exactly one year, since March 20, 2024. As a former civil servant, an advocate for women's rights, and a member of an ethnic minority group in Afghanistan, Mr. Noori fears persecution by the Taliban should he be returned to Afghanistan. In December 2024, an Immigration Judge (IJ) granted Mr. Noori asylum based on his well-founded fear of persecution by the Taliban, but the Department of Homeland Security (DHS) appealed that decision to the Board of Immigration Appeals (BIA). Despite Mr. Noori having no criminal history and no reason to abscond, DHS has refused to release him from custody during the past year, causing him significant physical pain, emotional/mental distress, and unnecessary and unreasonable deprivation of his liberty.

2. Mr. Noori is detained under 8 U.S.C. § 1225(b) and is therefore ineligible for a bond hearing before an IJ under the Attorney General's current interpretation of that statute. *See Matter of M-S-*, 27 I&N Dec. 509, 515-17 (A.G. 2019) (noncitizens who are originally placed in expedited proceedings and then transferred to full removal proceedings after establishing a credible fear of persecution are not eligible for bond upon transfer).

3. ICE has a binding policy directive for noncitizens like Mr. Noori: "it is ICE policy to favor release of [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement to detain under the law." ICE Directive 16004.1 *Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed* (Directive). No such "exceptional concerns" exist in Mr. Noori's case, yet ICE has inexplicably refused to follow this policy in this case.

4. Given that his case is still pending before the BIA, Mr. Noori's detention is likely to continue for many more months, if not years. His prolonged detention without bond violates the Due Process Clause of the Fifth Amendment under the factors enumerated in *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199 (11th Cir. 2016), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the three-part test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Further, under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), ICE's failure to follow its Directive violates the Administrative Procedure Act (APA) and the Due Process Clause of the Fifth Amendment.

5. To remedy his unconstitutionally prolonged detention, Mr. Noori is entitled to an immediate individualized bond hearing before an IJ, at which the Government bears the burden by clear and convincing evidence and the IJ considers Mr. Noori's ability to pay and alternatives to

detention. Alternatively, based on his *Accardi* claim, this Court should conduct an individualized analysis of Mr. Noori's parole eligibility under the Directive and order his release.

JURISDICTION & VENUE

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

7. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

8. This action is also brought under the APA. Jurisdiction is proper under the judicial review provisions of the APA, 5 U.S.C. § 702.

9. Venue is proper in this district and division under 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Noori is detained within this district at Stewart in Lumpkin, Georgia.

EXHAUSTION OF REMEDIES

10. Mr. Noori is not required to exhaust administrative remedies for his constitutional claims challenging his continued detention under 28 U.S.C. § 2241, and it is in the sound judicial discretion of this Court to exercise jurisdiction in this case. *See Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 & n.5 (11th Cir. 2015). Furthermore, there is no avenue by which Mr. Noori can present a constitutional challenge to his detention before agency authority, as he will not be afforded a bond hearing without this Court's intervention. *See J.N.C.G. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-62-MSH, 2020 WL 5046870, at *3 (M.D. Ga. Aug. 26, 2020) (rejecting respondents' argument that administrative exhaustion was required for prolonged detention claim

as “verg[ing] on Orwellian”). Mr. Noori has exhausted his APA claim by seeking release through parole multiple times and there is no mechanism for administrative appeal.

PARTIES

11. Mr. Noori is a native and citizen of Afghanistan who won his asylum case. He is currently detained at Stewart.

12. Terrance Dickerson is the warden of Stewart, a detention center operated privately by CoreCivic that contracts, via an intergovernmental services agreement with Stewart County, Georgia, with ICE to detain noncitizens. Warden Dickerson oversees Stewart’s administration and management. Warden Dickerson is Mr. Noori’s immediate custodian. He is sued in his official capacity.

13. LaDeon Francis is the Field Office Director of the ICE Enforcement and Removal Operations (ICE ERO) Atlanta Field Office and is the federal agent charged with overseeing all ICE detention centers in Georgia, including Stewart. Mr. Francis is a legal custodian of Mr. Noori. He is sued in his official capacity.

14. Kristi Noem is the Secretary of the Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Mr. Noori. She is sued in her official capacity.

15. Respondent Pamela J. Bondi is the Attorney General of the United States. Attorney General Bondi oversees the immigration court system, including the IJs who conduct bond hearings as her designees. She is sued in her official capacity.

STATEMENT OF FACTS

16. Mr. Noori is a 34-year-old native and citizen of Afghanistan. Ex. 1, Immigration Judge Oral Asylum Decision (IJ Decision). He has never been arrested or convicted of any crime anywhere in the world, and he is not a member of any criminal organization. *Id.* at 25.

17. Mr. Noori belongs to the Hazara ethnic group in Afghanistan. *Id.* at 21. Hazara people have been targeted and persecuted by the Taliban in the past, including a massacre in 1998, during which the Taliban killed 5,000-10,000 Hazara people and jailed many others, including Mr. Noori's father. *Id.* at 20, 22.

18. Mr. Noori obtained a bachelor's degree in law and political science in 2013 from Kabul University and a master's degree in political science/international relations in 2016 from Kateb University (also in Kabul). Ex. 2, Kabul University B.A. Degree; Ex. 3, Kateb University M.A. Degree. He speaks fluent English. Ex. 1, IJ Decision at 5.

19. In 2016, Mr. Noori became involved with the Youth Thinkers' Society Organization ("YTSO"), an organization funded by the U.S., Canada, United Kingdom, and European Union Delegation in Afghanistan to empower Afghan youth, especially girls, in civil society and human rights advocacy. *Id.* at 22. As part of his volunteer work for the YTSO, Mr. Noori also organized conferences dedicated to women's rights. *Id.* Mr. Noori continued this work until the fall of Afghanistan to the Taliban in August 2021. *Id.*

20. In 2017, Mr. Noori began serving as head of the Legal Advice Department at the Afghan Government's Ministry of Refugees and Repatriations ("MoRR"). *Id.* at 21. As part of his job, Mr. Noori prepared human rights reports to present to national committees. *Id.* Mr. Noori continued working at the MoRR until the fall of Afghanistan to the Taliban in August 2021. *Id.*

21. Mr. Noori's wife was able to board an evacuation flight out of Kabul in October 2021 and eventually made her way to the U.S., but Mr. Noori could not go with her at that time.

Ex. 1, IJ Decision at 23-24. Mr. Noori's wife was granted asylum in the U.S. in separate immigration proceedings on March 26, 2024. *Id.* at 21. She currently lives in Minnesota. *Id.*

22. In February 2022, Mr. Noori was able to flee Afghanistan and travel to Islamabad, Pakistan. *Id.* at 25. Mr. Noori was in Pakistan for about a year before traveling to Brazil on a humanitarian visa in November 2023. *Id.* at 13. Because his intention was always to rejoin his wife in the U.S., Mr. Noori only stayed at the airport in Brazil for less than 10 days before continuing towards the United States. *Id.* at 13, 16.

23. On his way to the U.S., Mr. Noori sustained a severe lower-back injury while traversing the jungle in Panama, which left him with excruciating pain in his back and numbness in his left leg. Ex. 4, Mr. Noori's Asylum Declaration (Asylum Declaration) at 6. He was able to get to Mexico City, where an MRI confirmed that he had injured two disks in his back. *Id.* With physical therapy and other treatments, he was able to partially recover, before continuing on to the United States. *Id.* Since being detained at Stewart, he has not received adequate medical treatment for this injury, which likely requires surgery to resolve, beyond basic pain medication. *Id.*

24. Mr. Noori entered the United States through a prescheduled appointment via the via the U.S. government's CBPOne app at the San Ysidro Port of Entry on March 20, 2024. *Id.* at 6.

25. Because he arrived at a port of entry without a valid visa or other entry document, U.S. border officials detained Mr. Noori, charged him as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), and issued an expedited removal order against him. However, because he expressed a fear of returning to Afghanistan, Mr. Noori was entitled to a credible fear interview with an asylum officer to assess whether there was a reasonable possibility that he would qualify for asylum. While awaiting the credible fear interview, DHS officials transferred Mr. Noori first

to Otay Mesa Detention Center in New Mexico, and then, in or around April 2024, to Stewart Detention Center, where he remains today.

26. While at Stewart, Mr. Noori secured pro bono counsel for his immigration proceedings, Attorney Paula Reyes (Attorney Reyes). On April 15, 2024, Attorney Reyes submitted a parole request to ICE, with exhibits showing that Mr. Noori's wife had already received asylum and that Mr. Noori was neither a danger to the community nor a flight risk. Ex. 5, Parole Request. Attorney Reyes followed up on this request twice, and in responses on April 16, 2024, and April 26, 2024, ICE officials told Attorney Reyes that the "request was received and submitted to your client's case officer for review." Ex. 14, Email Exchange re Parole Request.

27. On April 22, 2024, an asylum officer conducted a credible fear interview with Mr. Noori, represented by Attorney Reyes, and found that Mr. Noori established a credible fear of persecution and/or torture at the hands of the Taliban, the police, or other government officials should he return to Afghanistan. Ex. 6, Credible Fear Determination.

28. The day after the asylum officer's decision, DHS officials issued a Notice to Appear (NTA) to Mr. Noori, alleging Mr. Noori's removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an applicant for admission who did not possess a valid immigrant visa or other valid entry document when he presented himself at the border on March 20, 2024. Ex. 7, NTA. DHS did not classify Mr. Noori as an "arriving alien" on this NTA. *Id.* This NTA transferred jurisdiction over Mr. Noori's case to the IJ, who would hear and receive additional evidence in support of Mr. Noori's asylum claim.

29. On May 2, 2024, ICE Deportation Officer Roddreck Kitchens (Office Kitchens) responded to Attorney Reyes' emails and stated that he would "submit the parole request for" Mr. Noori. Ex. 14, Email Exchange re Parole Request. Attorney Reyes followed up again on the status

of the parole request on May 9, May 30, and June 6, 2024. *Id.* In response to Attorney Reyes' repeated follow-up emails, Officer Kitchens repeatedly stated that Mr. Noori's parole request was "with management," on May 10, May 30, and June 7, 2024. *Id.*

30. On June 25, 2024, Mr. Noori timely filed an asylum application with the immigration court. Ex. 1, IJ Decision at 16. An individual merits hearing on Mr. Noori's claims for asylum and related protection occurred on November 6, 2024, during which Mr. Noori testified about the reasons he was afraid to return to Afghanistan. *Id.* at 2. The IJ granted Mr. Noori's application for asylum in a detailed and thoroughly reasoned decision on December 20, 2024. *Id.* at 1-37.

31. Following the IJ's decision, Attorney Reyes reached out to ICE to inform them of this development and to again request that ICE release Mr. Noori. Ex. 8, Second Email Exchange re Parole Request. On December 23, 2024, an unnamed ICE official responded to say, "Your request was received and submitted to your client's case officer for review." *Id.* Attorney Reyes followed up again on January 2, 2025. *Id.* ICE did not respond to her email and has apparently still not adjudicated the request, more than eleven months after Mr. Noori first submitted it and more than three months after Mr. Noori won asylum.

32. On the very last day of the appeal period, January 21, 2025, ICE appealed the IJ's grant of asylum to the Board of Immigration Appeals (BIA). Ex. 9, EOIR Case Status Print-Out. On March 4, 2025, Mr. Noori, through his immigration counsel, submitted a brief to the BIA arguing that the IJ's decision should be affirmed and that ICE's appeal should be dismissed. *Id.* ICE did not bother to submit a brief in support of its appeal. *Id.* The appeal remains pending. *Id.*

LEGAL FRAMEWORK

I. Asylum, Withholding of Removal, and Relief under the Convention Against Torture

33. Noncitizens in immigration removal proceedings can seek three main forms of fear-based relief: asylum, withholding of removal, and relief under the Convention Against Torture (CAT). There are several eligibility restrictions for asylum, 8 U.S.C. § 1158(a)(2), fewer restrictions on eligibility for withholding of removal under the Immigration and Nationality Act (INA) and CAT, 8 U.S.C. § 1231(b)(3)(B)(iii); 8 C.F.R. § 1208.16, and no restrictions on eligibility for CAT deferral of removal, 8 C.F.R. § 1208.17(a).

34. In removal proceedings, the noncitizen presents their claims for protection before an IJ during their individual merits hearing. 8 U.S.C. § 1229a(c)(4). The IJ then issues a decision, which the noncitizen or DHS has the right to appeal to the BIA within 30 days. 8 U.S.C. § 1229a(c)(1); 8 C.F.R. §§ 1003.1(b), 1003.38(b). If the BIA denies relief, the noncitizen can petition for review in the relevant federal circuit court of appeals. 8 U.S.C. § 1252(b). But if the BIA grants relief, DHS cannot seek judicial review, and that relief is final. *See id.* (providing only for judicial review of “an order of removal”).

II. Noncitizens Designated as “Applicants for Admission”

35. Mr. Noori has been designated as an “applicant for admission” under 8 U.S.C. § 1225(b). When a noncitizen presents themselves at a port of entry and asserts an asylum claim, DHS typically classifies them as “applicants for admission” and places the noncitizen in expedited removal proceedings under 8 U.S.C. § 1225(b). In these proceedings, they first undergo a credible fear interview (CFI) with an asylum officer to screen for fear-based relief eligibility. 8 U.S.C. § 1225(b)(1)(B)(i). If the noncitizen passes their CFI, the asylum officer refers them to immigration court for full removal proceedings under 8 U.S.C. § 1229a. § 1225(b)(1)(B)(ii).

36. Under the Attorney General’s current interpretation of the INA, applicants for admission are detained pending adjudication of their claims for relief and are not statutorily

entitled to a bond hearing. *See Matter of M-S-*, 27 I&N Dec. at 515-17 (reading 8 U.S.C. § 1225(b) to require detention without bond for the entire duration of an applicant for admission’s asylum proceedings).¹ Instead, under this interpretation, they can only apply for temporary release through discretionary parole “for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see also* 8 C.F.R §§ 212.5(b), 235.3. The relevant regulations set forth categories of noncitizens whose parole “would generally be justified only on a case-by-case basis for ‘urgent humanitarian reasons’ or ‘significant public benefit,’ provided [they] present neither a security risk nor a risk of absconding,” including “(1) Aliens who have serious medical conditions in which continued detention would not be appropriate” and “(5) Aliens whose continued detention is not in the public interest as determined by . . . [certain DHS officials.]” 8 C.F.R §§ 212.5(a), (b).

III. ICE’s Policy Directive for Individuals Who Have Been Granted Relief

37. Long-standing ICE policy favors the prompt release of noncitizens who have been granted asylum, withholding, or CAT relief. In 2004, ICE issued a policy memorandum (the Directive) stating that “it is ICE policy to favor the release of [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.” Ex. 12, ICE Policies at 1.

38. ICE reaffirmed this policy in a 2012 announcement, clarifying that the 2004 ICE memorandum is “still in effect and should be followed” and that “[t]his policy applies at all times

¹ In *Matter of M-S-*, former Attorney General William Barr overturned a prior decision of the BIA, *Matter of X-K-*, 23 I&N Dec. 731, 736 (BIA 2005), which had held that only a subset of applicants for admission – those designated by DHS as “arriving aliens,” as defined at 8 C.F.R. § 1001.1(q) – were ineligible for bond, and that other applicants for admission, like Mr. Noori, who were not so designated could seek a bond hearing before an IJ. Mr. Noori does not challenge the Attorney General’s decision in *Matter of M-S-* in this petition.

following a grant of protection, including during any appellate proceedings and throughout the removal period.” *Id.* at 2. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the “longstanding policy” that “absent exceptional circumstances, . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released.” *Id.* at 3. This policy remains in effect.

IV. Constitutional Rights of Noncitizens

39. The Fifth Amendment to the U.S. Constitution affords protection to detained noncitizens. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). The Supreme Court has held that the Fifth Amendment’s guarantee of Due Process applies to all persons physically within the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

40. These Due Process protections constrain the government’s detention authority. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” which Due Process protects. *Id.* at 690. To comport with due process, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 538. Due process thus requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotations omitted).

41. In *Jennings v. Rodriguez*, the Supreme Court considered a challenge to prolonged detention under §§ 1226(c) and 1225(b), and resolved the case on statutory grounds, holding that the Ninth Circuit had erred by interpreting these statutory sections to implicitly require bond hearings after six months of detention. 138 S. Ct. 830 (2018). The Court did not address whether the Due Process Clause requires bond hearings in such cases and remanded to the Ninth Circuit to address the issue in the first instance. *Id.* at 851. Upon remanding to the district court to address the constitutional question, the Ninth Circuit cast “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

42. Although *Jennings* left this question open, courts across the country, including this Court, have subsequently agreed that Due Process requires noncitizens to be provided with a bond hearing when their detention during removal proceedings becomes unreasonably prolonged. *See, e.g., Black v. Decker*, 103 F.4th 133, 145 (2d Cir. 2024) (granting habeas relief for petitioners detained pursuant to § 1226(c) because their detention had become unconstitutionally prolonged after “read[ing] *Zadvydas*, *Demore*, [and] *Jennings*, . . . to suggest strongly that due process places *some* limits on detention under section 1226(c) without a bond hearing”); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (“In sum, even after *Jennings*, [a noncitizen] lawfully present but detained under § 1226(c) can still challenge his detention under the Due Process Clause.”); *Velasco Lopez v. Decker*, 978 F.3d 842, 846 (2d Cir. 2020) (upholding grant of habeas relief to petitioner challenging unconstitutionally prolonged detention under § 1226(a)); *Hernandez-Lara v. Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021) (same); *J.N.C.G.*, 2020 WL

5046870, at *7 (ordering bond hearing for noncitizen detained for over 16 months pursuant to § 1226(c)).

43. Numerous district courts have held that this standard applies equally to noncitizens detained under 8 U.S.C. § 1225(b) like Mr. Noori and ordered bond hearings to remedy their unconstitutionally prolonged detention. *See, e.g., Akhmadjanov v. Oddo*, No. CV 3:25-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *A.L. v. Oddo*, No. CV 3:24-302, 2025 WL 352471, at *3 (W.D. Pa. Jan. 6, 2025); *Ortiz-Castillo v. United States*, No. 2:23-cv-01485-RFB-MDC, 2024 WL 756075, at *4 (D. Nev. Feb. 23, 2024); *Leke v. Hott*, 521 F. Supp. 3d 597, 605 (E.D. Va. 2021); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 852 (E.D. Va. 2020); *Kydrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020); *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549, 554 (W.D.N.Y. 2020); *Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917, 930 (W.D. Wash. 2020); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019); *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 442-43 (D. N.J. 2019); *Kouadio v. Decker*, 352 F. Supp. 3d 235, 241 (S.D.N.Y. 2018); *Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018); *Perez v. Decker*, 2018 WL 3991497, at *6 (S.D.N.Y., Aug. 20, 2018); *see also Barillas v. Field Off. Dir. for ICE Miami Off. of Enforcement & Removal Operations*, 697 F. App'x 624, 625 (11th Cir. 2017) (recognizing that arriving noncitizen released on parole with conditions “has an interest in a determination that she, despite her status . . . is entitled to basic procedural protections when her liberty is denied” and district “court could grant effectual relief—for instance, a hearing at which [she] could challenge her parole conditions” and remanding for further proceedings”) (internal quotation marks omitted).

44. In *DHS. v. Thuraissigiam*, 591 U.S. 103, 103-05 (2020), the Supreme Court ruled that the INA’s limitation of habeas review in expedited removal proceedings did not violate the

U.S. Constitution's Suspension Clause and that noncitizens subjected to expedited removal lack a due process right to judicial review of a negative credible fear determination. The Supreme Court did not weigh in on the due process rights of noncitizens with regard to detention given that Mr. Thuraissigiam only sought judicial review of his negative credible fear determination. *See* 591 U.S. at 115 ("His petition made no mention of release from custody."). In fact, throughout the decision, the Supreme Court emphasized the distinction between habeas petitions challenging detention versus those seeking judicial review of removal proceedings. *See id.* at 117-38.

45. Accordingly, courts have concluded that *Thuraissigiam* is inapposite for arriving noncitizens challenging their *detention* via habeas. *See, e.g., Leke*, 521 F. Supp. 3d at 604 ("Quite clearly, *Thuraissigiam* does not govern here, as the Supreme Court there addressed the singular issue of judicial review of credible fear determinations and did not decide the issue of an Immigration Judge's review of prolonged and indefinite detention."); *Mbalivoto*, 527 F. Supp. 3d at 848 ("[T]he Court concludes, based on *Zadvydas*, *Demore*, and *Thuraissigiam*, that Petitioner is not foreclosed from the relief he seeks with respect to his detention either because he is an entering alien, as opposed to an entered alien, or because there remains a discernable statutory purpose for his detention."); *Kydrali*, 499 F. Supp. 3d at 772 (rejecting Government's argument post-*Thuraissigiam* "that Petitioner is not entitled to a bond hearing because arriving aliens, like Petitioner, are entitled to only that process authorized by Congress—here, mandatory detention subject only to the Department of Homeland Security's discretion to grant him humanitarian parole").

46. Prior to *Jennings*, the Eleventh Circuit in *Sopo* reviewed the issue of whether an individualized bond hearing was ever required for noncitizens detained under § 1226(c). The *Sopo* Court highlighted that, "[u]nder the Due Process Clause, *civil detention* is permissible only where

there is a ‘special justification’ that ‘outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” *Sopo*, 825 F.3d at 1210 (emphasis in original). Looking to Justice Kennedy’s concurring opinion in *Demore*, the Eleventh Circuit reiterated the constitutional issues that may result from “unreasonable and unjustified” detention, emphasizing that *Demore* included “a strong constitutional caveat about due process concerns as to continued mandatory detention where the duration of the removal proceedings is unreasonably long or delayed.” *Id.* at 1212.

47. To avoid the outcome that “§ 1226(c) may become unconstitutionally applied if a criminal [noncitizen]’s detention without even a bond hearing is unreasonably prolonged,” the Eleventh Circuit joined five other Circuit Courts of Appeals in finding an “implicit reasonable time limitation” based on the text of the statute. *Id.* at 1213. The court thus concluded that detention “under § 1226(c) is constitutional for a reasonable period of time to complete the removal proceedings, but as a matter of constitutional avoidance, at some point such detained [noncitizens] become entitled to an individualized bond hearing.” *Id.* at 1202. In 2018, the Supreme Court abrogated *Sopo* to the extent that *Sopo* read a temporal limitation into the text of § 1226(c). *See Jennings*, 138 S. Ct. at 846. Further, the Eleventh Circuit vacated the original *Sopo* decision on rehearing after the appeal was rendered moot by the petitioner being removed from the U.S. *Sopo v. U.S. Att’y Gen.*, 890 F.3d 952, 953-54 (11th Cir. 2018).

48. Although *Sopo* is no longer binding precedent in this circuit, this Court and other district courts in the Eleventh Circuit have recognized that *Sopo*’s reasoning as to what constitutes “unreasonable and unjustified” detention continues to serve as persuasive authority for as-applied constitutional challenges to prolonged detention for noncitizens in removal proceedings. *See, e.g., S.C. v. Warden, Stewart Det. Ctr.*, No. 4:23-CV-64-CDL-MSH, 2024 WL 796541, at *4 (M.D. Ga. Jan. 5, 2024), *report and recommendation adopted*, 2024 WL 790377 (M.D. Ga. Feb. 26,

2024) (collecting cases and acknowledging that “[a]lthough *Sopo* was vacated and its constitutional avoidance rationale rejected by the Supreme Court in *Jennings*, most district courts in the Eleventh Circuit, including this one, have cited it as persuasive authority on due process claims for prolonged detention.”); *J.N.C.G.*, 2020 WL 5046870, at *6 (“For these reasons, the Court concludes that Petitioner’s as-applied due process challenge is best analyzed using the factors outlined in *Sopo*, which, although only persuasive authority, provides useful guidance in evaluating prolonged § 1226(c) detention.”).

V. The *Accardi* Doctrine and Agency Obligations to Comply with Their Own Policies

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

50. The requirement that an agency follow its own policies is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if “an examination of the provision’s language, its context, and any available extrinsic evidence” supports the conclusion that it is “mandatory rather than merely precatory.” *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235-36 (applying *Accardi* to violation of internal agency manual).

51. When agencies fail to adhere to their own policies as required by *Accardi*, courts frame the violation as a due process violation, *see Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual’s constitutional right to due process.”) (internal quotations omitted), or as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielsen*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (“It is clear, moreover, that [*Accardi*] claims may arise under the APA”).

52. Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 (“We hold that [a noncitizen] claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for [the noncitizen’s] benefit and that the INS failed to adhere to them.”).

53. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, *Damus*, 313 F. Supp. 3d at 343 (“[T]his Court is simply ordering that Defendants do what they already admit is required.”), or a court may apply the policy itself and order relief consistent with the policy, *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners’ custody under ICE’s standards because “it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure”).

ARGUMENT

I. MR. NOORI’S DETENTION WITHOUT BOND HAS BECOME UNCONSTITUTIONALLY PROLONGED.

54. Mr. Noori’s one-year-long detention has reached the point of being unconstitutionally prolonged under the Eleventh Circuit’s *Sopo* factors and the three-factor

balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).² Thus, he is constitutionally entitled to a bond hearing before an IJ with the burden on the Government by clear and convincing evidence and with consideration of ability to pay and alternatives to detention.

A. The Eleventh Circuit’s *Sopo* Factors Demonstrate that Mr. Noori’s Continued Detention is Unconstitutional.

55. In *Sopo*, the Eleventh Circuit identified five non-exhaustive factors to “guide a district court in determining whether a particular [noncitizen]’s continued detention, as required by § 1226(c), is necessary to fulfilling Congress’ aims of removing [noncitizens with relevant criminal histories] while preventing flight and recidivism.” *Id.* Under *Sopo*, courts are to analyze (1) length of immigration detention, (2) reason for protracted removal proceedings, (3) likelihood of removal, (4) length of immigration versus criminal detention, and (5) whether the immigration detention facility is meaningfully different from a criminal prison. *Id.* at 1217-19. The Eleventh Circuit further emphasized that this “list of factors is not exhaustive” and “the factors that should

² In *A.M.Y.*, this Court ruled that pursuant to *Thuraissigiam*, arriving noncitizens are only entitled to the INA’s procedural protections and are thus not entitled under due process to a bond hearing to remedy prolonged detention. See Report and Recommendation, *A.M.Y. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-cv-61-CDL-MSH (M.D. Ga. Oct. 13, 2020), ECF No. 47 at 36-37; Order Adopting Report and Recommendation (M.D. Ga. Nov. 4, 2020), ECF No. 49. This decision fails to appreciate *Thuraissigiam*’s emphasis on the distinction between habeas petitions challenging detention versus those seeking judicial review of removal proceedings. Further, “the very relief Petitioner seeks here—a bond hearing before an Immigration Judge—closely resembles the administrative review process *Thuraissigiam* necessarily deemed sufficient to obviate the need for due process.” See *Leke*, 521 F. Supp. 3d at 604 (citing *Thuraissigiam*, 140 S. Ct. at 1965-66).

This Court also previously ruled that an arriving noncitizen’s 17-month detention was not unreasonably prolonged such that it violated due process. *D.A.F. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-79 (CDL), 2020 WL 9460341, at *1 (M.D. Ga. July 24, 2020). Similarly, it denied an arriving noncitizen’s prolonged detention claim partly on the basis that he had previously been released after a bond hearing but had violated the terms of his bond. *Kameron v. DHS*, No. 7:19-CV-16-WLS-MSH, 2020 WL 9460465, at *1 (M.D. Ga. Mar. 27, 2020). Among other key distinctions, unlike Mr. Noori those petitioners did not allege a failure by ICE to follow binding agency policy.

be considered will vary depending on the individual circumstances present in each case.” *Id.* at 1218. While Mr. Noori is detained pursuant to § 1225(b), rather than § 1226(c), the *Sopo* factors provide a fitting framework for analyzing his pre-removal order detention and demonstrate that his continued detention without bond violates due process. This is so because Mr. Noori is functionally in the same situation as someone detained under § 1226(c), and in any case, the statute of detention should not affect the extent of a noncitizen’s due process rights when faced with prolonged detention without bond.

1. Length of Detention

56. First, the “critical factor is the amount of time that the [noncitizen] has been in detention without a bond hearing.” *Id.* at 1217. The *Sopo* court explained that “there is little chance that a [noncitizen]’s detention is unreasonable until at least the six-month mark” and “detention without a bond hearing may often become unreasonable by the one-year mark.” *Id.* Thus, “[t]he need for a bond inquiry is likely to arise in the six-month to one year window.” *Id.*

57. Mr. Noori has been detained since March 20, 2024, i.e. for one year. Accordingly, the first factor weighs strongly in his favor. *See id.*; *J.N.C.G.*, 2020 WL 5046870, at *6 (concluding that “length of detention . . . weighs decidedly in Petitioner’s favor” where he had “been detained for over 16 months . . . well beyond the one year presumptively unreasonable period identified in *Sopo*”).

2. Reason for Protracted Removal Proceedings

58. Second, courts should evaluate “why the removal proceedings have become protracted.” *Id.* at 1219. DHS bears responsibility for the majority of the delays in Mr. Noori’s removal proceedings, and he has done nothing but diligently pursue his rights under the law.

59. Mr. Noori first requested asylum when he presented himself to U.S. border officials on March 20, 2024, yet DHS did not conduct his CFI with the asylum officer until April 22, 2024, over one month later. *Cf.* Ex. 7, NTA (noting entry date of March 20, 2024) *with* Ex. 6, CFI Determination (completed on April 22, 2024). He passed his CFI on April 22, 2024, yet the immigration court did not hold an initial hearing in his removal proceedings until June 3, 2024, approximately six weeks later.³ Ex. 1, IJ Decision at 2. Thus, due to government delays, 10 weeks elapsed between the day that Mr. Noori presented himself at the border at the time appointed to him via the CBPOne app and his first appearance in immigration court.

60. At a preliminary “master calendar” hearing on June 3, 2024, the IJ resolved the allegations and removability charged in the NTA, to which Mr. Noori admitted and conceded, and scheduled a follow-up master hearing for June 26, 2024, by which date Mr. Noori had to submit his asylum application to the immigration court. Mr. Noori timely filed his asylum application with the court, and at the follow-up hearing the next day, the IJ scheduled an individual merits hearing on Mr. Noori’s asylum application for August 8, 2024.

61. On July 30, 2024, Mr. Noori, through counsel, sought a brief continuance of his individual merits hearing so that he could continue gathering additional evidence in support of his asylum application. Ex. 1, IJ Decision at 3. DHS opposed this motion, but the IJ granted the motion and re-scheduled Mr. Noori’s individual merits hearing for Nov. 6, 2024. Ex. 10, IJ Continuance Order. This is the only delay which Mr. Noori has caused in his removal proceedings, and the delay was, per the IJ’s order, for “good cause.” *Id.*

³ The NTA that DHS issued to Mr. Noori on April 23, 2024, indicated that his first hearing in immigration court would occur on May 13, 2024. Ex. 6, NTA. The exact reason for the delay in the initial hearing is unknown, but certainly Mr. Noori did nothing to cause such delay.

62. Mr. Noori's individual merits hearing took place on November 6, 2024. Ex. 1, IJ Decision at 3. At the close of the hearing, the IJ held the record open for two weeks (until Nov. 20, 2024) to allow the parties to submit written closing arguments and scheduled a hearing for December 3, 2024, during which he would deliver his oral decision. Ex. 11, Excerpt from Immigration Court Transcript ("I will issue the decision on December the 3rd at 10:00 a.m."). However, the IJ ultimately issued its decision granting Mr. Noori's asylum application on December 20, 2024, approximately 4 weeks after the record was closed. Ex. 1, IJ Decision.

63. Then, ICE needlessly prolonged these proceedings by several additional months by appealing the IJ's decision without any reasonable ground for doing so. ICE waited until the last possible day to file their appeal with the BIA, January 21, 2025. After the BIA issued a briefing schedule, ICE did not even bother to submit a brief in support of their appeal (Mr. Noori submitted his brief to the BIA on March 4, 2025). Worse, ICE has failed or refused to conduct a custody review for Mr. Noori under the Directive – which favors release of individuals in Mr. Noori's position – during the pendency of the appeal, thereby arbitrarily keeping Mr. Noori detained, at significant cost to both himself and the Government. *See A.L.*, No. CV 3:24-302, 2025 WL 352471, at *5 ("[T]he delay resulting from Respondents failure to follow their own policies lies squarely on Respondents. . . . Respondents have offered no rationale as to why they are not following their own internal policies in [this] case.").

64. In total, the Government's delays at the beginning and the end of Mr. Noori's case – approximately 10 weeks from the time he arrived in the U.S. to his first hearing in immigration court and 17 weeks between the closing of the record in immigration court and today – have contributed to approximately 27 weeks of Mr. Noori's total time in detention (52 weeks), i.e. more than half of the total time. In contrast, Mr. Noori's requested continuance resulted in his individual

merits hearing taking place on November 6, 2024, instead of the originally scheduled August 8, 2024 – a delay of approximately 12 weeks. The Government thus bears responsibility for the vast majority of the delays in this case.

65. Moreover, Mr. Noori’s decision to seek asylum – and to seek a continuance that was necessary for him and his counsel to be sufficiently prepared to pursue his asylum claims – should not be held against him. As the Eleventh Circuit stated in *Sopo*, “[w]e are not saying that [noncitizen]s should be punished for pursuing avenues of relief and appeals.” 825 F.3d at 1218. Rather, it is “repeated or *unnecessary* continuances, or [...] *frivolous* claims and appeals,” as well as “[e]vidence that the [noncitizen] acted in bad faith or sought to deliberately slow the proceedings in hopes of obtaining release [that] cuts against the [petitioner].” *Id.* (emphasis added). Here, there is no evidence that Mr. Noori sought unnecessary continuances or purposely delayed his removal proceedings. To the contrary, it is DHS that has unnecessarily and unreasonably delayed.

66. Accordingly, the second factor also weighs strongly in Mr. Noori’s favor. *See id.* at 1220-21 (finding second factor in favor of petitioner where he sought asylum and “requested continuances” but “the delays he caused were negligible compared to the amount of time it took for his case to move back and forth between the IJ and the BIA three times” and “the government did not respond to [his] FOIA request for months”); *J.N.C.G.*, 2020 WL 5046870, at *6 (second factor “weighs heavily in Petitioner’s favor” where DHS filed its brief late, BIA delayed in issuing decision, and “Petitioner has—at the very least—pursued a good faith, non-frivolous argument”).

3. Likelihood of Removal

67. Third, courts should evaluate “whether it will be possible to remove the [noncitizen] after there is a final order of removal.” *Sopo*, 835 F.3d at 1218. As an initial point, it is highly unlikely that DHS will secure a removal order against Mr. Noori, given that an IJ has already

granted him asylum and ICE did not even bother to file a brief in support of its pending appeal before the BIA. Even in the unlikely scenario that Mr. Noori is somehow ordered removed, it is quite unlikely that DHS will be able to effectuate his removal to Afghanistan. Deportations to Afghanistan from the U.S. have been exceedingly rare since the U.S. military withdrew from that country in August 2021.⁴ Thus, this factor either favors Mr. Noori or is neutral and less relevant than the other *Sopo* factors. *See Khan v. Whiddon*, No. 2:13-CV-638-FTM-29MRM, 2016 WL 4666513, at *6 (M.D. Fla. Sept. 7, 2016) (for third *Sopo* factor, analyzing likelihood of final removal order and concluding that “even assuming that there is a high likelihood that petitioner’s appeal will result in removal, this factor standing alone does not supersede the other factors that weigh in petitioner’s favor”); *J.N.C.G.*, 2020 WL 5046870, at *6 (granting habeas relief and ordering bond hearing under *Sopo* despite finding “no impediment to Petitioner’s removal to El Salvador once a removal order became final”).

68. The Eleventh Circuit also noted with approval the First Circuit’s articulated factor of the “foreseeability of proceedings concluding in the near future (or the likely duration of future detention).” *Sopo*, 835 F.3d at 1218 (citing *Reid v. Donelan*, 819 F.3d 486, 500 (1st Cir. 2016)); *see also Lukaj v. McAleenan*, 420 F. Supp. 3d 1265, 1275-76 (M.D. Fla. 2019) (recognizing under *Sopo* “[a]nother factor relevant to the reasonableness analysis, is the procedural posture of the removal proceedings”), *vacated as moot on reconsideration*, No. 3:19-CV-241-J-34MCR, 2020 WL 248724 (M.D. Fla. Jan. 16, 2020). Here, Mr. Noori’s proceedings are likely to continue for

⁴ “ICE deportations to Afghanistan are extremely rare. In the fiscal year of 2020, before the U.S. armed forces left the country, the agency had deported just 25 Afghans. That number dropped to 14 in the following year and 12 in the 2022 fiscal year, which ended in September [2022.]” Hamed Aleaziz, *LA Times.com*, “ICE deported him to Afghanistan, then flew him back to L.A.,” (Apr. 13, 2023), <https://www.latimes.com/politics/story/2023-04-13/ice-deported-afghanistan-asylum-seeker-mistake>.

many more months or even years. Given the BIA's backlog,⁵ it could take months for it to rule in his case, protracting his detention even longer. If the BIA grants ICE's appeal and remands to the IJ for further proceedings, that will likewise prolong Mr. Noori's detention for many more months. If the BIA somehow reverses the IJ and orders Mr. Noori's removal, he would file a petition for review with the Eleventh Circuit Court of Appeals and seek a judicial stay of removal. Accordingly, under any of the above scenarios, the third factor weighs in favor of Mr. Noori, or at worst is neutral and of limited weight.

4. Comparison of Duration of Immigration and Criminal Detention

69. Fourth, under *Sopo*, courts should evaluate “whether the [noncitizen]’s civil immigration detention exceeds the time the [noncitizen] spent in prison for the crime that rendered him removable.” 835 F.3d at 1218. Here, Mr. Noori has never been imprisoned anywhere in the world and is not removable based on any crime. Thus, the fourth *Sopo* factor also weighs strongly in his favor. *See J.N.C.G.*, 2020 WL 5046870, at *6 (finding fourth *Sopo* factor in petitioner’s favor where he was not criminally detained for conviction triggering his mandatory immigration detention).

5. Whether Immigration Detention Facility Is Similar to Criminal Detention

⁵ According to EOIR’s most recent data, the BIA backlog reached an all-time high of 119,131 cases in Fiscal Year 2024, up from 113,604 from the prior fiscal year. Executive Office for Immigration Review Adjudication Statistics, Oct. 10, 2024, <https://www.justice.gov/eoir/media/1344986/dl?inline>. To make matters worse, the Trump Administration recently fired multiple members of the BIA, with no apparent plans to replace them. *See Britain Eakin, Law 360*, “Trump Admin to Nearly Halve Immigration Appeals Board,” (Feb. 20, 2025) <https://immigrationcourtside.com/wp-content/uploads/2025/02/Trump-Admin-To-Nearly-Halve-Immigration-Appeals-Board-Law360.pdf>.

70. Fifth, courts should evaluate “whether the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention.” *Sopo*, 835 F.3d at 1218. Extended civil immigration detention resembling criminal detention renders the immigration detention more unreasonable. The *Sopo* Court specifically determined that Stewart, where Mr. Noori is detained, is “a prison-like facility.” *Id.* at 1221; *see also J.N.C.G.*, 2020 WL 5046870, at *7 (“[N]either party disputes that Petitioner’s current place of confinement—Stewart Detention Center—is not meaningfully different from a prison.”).

71. While Stewart is an immigration detention center exclusively for people in ICE custody, its restrictive conditions make it similar to criminal jails and prisons. Stewart is a medium-security facility, one of the largest for immigrants in the country. Several reports have revealed that Stewart has serious institutional problems, including “deaths, prolonged solitary confinement, sexual abuse and medical neglect.”⁶ It holds the dismal record for the most deaths of all U.S. immigration detention facilities, with twelve individuals dying in custody from 2008 to 2024.⁷ A recently published report details pervasive use of solitary confinement and medical neglect at the facility.⁸

72. In 2023, CoreCivic, which operates Stewart, settled a lawsuit alleging forced labor practices, including daily wages of \$1 to \$4, insufficient food, and punishment of noncitizens who

⁶ Rita Omokha, *Detainees speak out against ‘abusive’ US migrant jail: ‘This place is horrible,’* THE GUARDIAN (Dec. 6, 2023), <https://www.theguardian.com/us-news/2023/nov/28/ice-detainees-lumpkin-georgia>.

⁷ *Deadly Failures: Preventable Deaths in U.S. Immigrant Detention*, ACLU (June 21, 2024), <https://www.aclu.org/publications/deadly-failures-preventable-deaths-in-us-immigrant-detention>.

⁸ Kristen A. Kolenz and Amilcar Valencia, *Invisible Cruelty: Solitary Confinement and Medical Neglect at Stewart Detention Center*, El Refugio (December 2024), <https://static1.squarespace.com/static/5dedd42f60df274331bcd16b/t/675b6118a167665b0436d843/1734041892407/Invisible+Cruelty+Dic2024+FINAL.pdf>.

refused to work with solitary confinement. *See* Notice of Settlement, *Barrientos v. CoreCivic*, 4:18-cv-00070-CDL (M.D. Ga Sept. 29, 2023), ECF No. 397.⁹ Shortly after, over 120 individuals detained at Stewart submitted a petition and accompanying civil rights complaint regarding “inhumane conditions and mistreatment at the detention facility, including mold leading to eye conditions, spoiled food causing food poisoning, denial of hot water and medical care neglect.”¹⁰ These complaints and reports illustrate that Stewart not only resembles criminal detention, but may be even *more* restrictive and punitive than many criminal jails and prisons, where detained individuals would at least have access to resources like educational programming.

73. Thus, given the undeniably harsh and restrictive conditions at Stewart, the fifth *Sopo* factor also weighs in Mr. Noori’s favor.

5. Additional Relevant Factors

74. The Eleventh Circuit emphasized that its “list of factors is not exhaustive” and “the factors that should be considered will vary depending on the individual circumstances present in each case.” *Sopo*, 835 F.3d at 1218. Here, the additional factors of ICE’s failure to follow its own binding Directive, Mr. Noori’s compliance with U.S. immigration procedures, and his serious medical condition (unresolved injury to two disks in his spine) that is worsening in detention further demonstrate the unreasonableness of his continued detention. *See Lukaj*, 420 F. Supp. 3d at 1276 (concluding under *Sopo* factors, “Lukaj’s medical concerns and the purported lack of

⁹ *See also* Lautaro Grinspan, *Immigrant detainees’ forced labor case ends in settlement*, THE ATLANTA J.-CONST. (Oct. 23, 2023), <https://www.ajc.com/news/georgia-news/immigrant-detainees-forced-labor-case-ends-in-settlement/6EHIGVSKJBBOPEPJVIP753I6Y/>.

¹⁰ *Over 100 Detained Immigrants Submit Petition in Response to Dangerous Mold, Medical Neglect, and Other Abuses at Georgia Detention Center*, Freedom for Immigrants (Oct. 19, 2023), <https://www.freedomforimmigrants.org/news/mass-petition-filed-stewart-detention-center>.

treatment, . . . is a factor which supports a finding that his continued indefinite detention without a bond hearing would be unreasonable”), *vacated as moot on reconsideration*, 2020 WL 248724.

75. Accordingly, all five of the enumerated *Sopo* factors, as well as additional factors, weigh strongly in Mr. Noori’s favor and underscore his unconstitutionally prolonged detention.

B. Mr. Noori’s Continued Detention Without Bond is also Unreasonable under the Mathews Test and Must Be Remedied with a Bond Hearing with Proper Procedural Protections.

76. Application of the test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), also demonstrates that Mr. Noori’s continued detention violates due process and the necessity of a bond hearing with the burden on the Government by clear and convincing evidence and consideration of ability to pay and alternatives to detention. To determine whether a noncitizen’s prolonged detention violates due process, some courts consider the three-part balancing test set forth in *Mathews*:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 335; *see Black*, 103 F.4th at 138 (applying *Mathews* to § 1226(c) prolonged detention claim); *Velasco Lopez*, 978 F.3d at 851 (applying *Mathews* to prolonged § 1226(a) detention); *Hernandez-Lara*, 10 F.4th at 35 (same); *Ortiz-Castillo*, 2024 WL 756075, *2 (applying *Mathews* for prolonged § 1225(b) detention); *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549, 563 (W.D.N.Y. 2020) (same); *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga. 2020) (applying *Mathews* to prolonged § 1226(a) detention).

77. Here, application of the *Mathews* test also shows that Mr. Noori's detention without a bond hearing has become unreasonable. First, "the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment." *See Black*, 103 F.4th at 151 (citing *Velasco Lopez*, 978 F.3d at 851). Thus, the first *Mathews* factor undoubtedly favors Mr. Noori.

78. The second *Mathews* factor, the risk of erroneous deprivation and value of additional safeguards, also heavily favors Mr. Noori. "Here, the almost nonexistent procedural protections . . . markedly increase[s] the risk of an erroneous deprivation of [Mr. Noori's] private liberty interests." *See Black*, 103 F.4th at 151; *see also J.G.*, 501 F. Supp. 3d at 1337 (concluding that "risk of an erroneous deprivation under [regular] bond procedure[s] is high" where burden is placed on noncitizens and "[t]he Government is not required to present a shred of evidence, yet it has substantial resources available"). Similarly, "parole . . . has highly restrictive criteria and limited transparency, is subject to the unreviewable discretion of the Attorney General, and has no opportunity for an actual hearing before a neutral decisionmaker." *Mbalivoto*, 527 F. Supp. 3d at 848; *see also Leke*, 521 F. Supp. at 605 (rejecting respondents' argument that "seek[ing] parole at the unreviewable discretion of the [Government]" is sufficient process for prolonged detention as "both unrealistic and unpersuasive" given "highly restrictive" criteria). It "has none of the features of an individualized bond hearing." *Mbalivoto*, 527 F. Supp. 3d at 848. Here, ICE has provided Mr. Noori with even less process than its already minimal requirements. Contrary to the requirements of its Directive, ICE has failed to provide Mr. Noori with any explanation for its refusal to grant him parole or any indication that it has conducted an individualized analysis based on his arguments and supporting evidence.

79. “Moreover, ‘as the period of . . . confinement grows,’ so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention.” *Velasco Lopez*, 978 F.3d at 853 (citing *Zadvydas*, 533 U.S. at 701). Despite Mr. Noori’s nearly one-year-long detention, his immigration case remains pending before the BIA and is likely to remain pending for at least several additional months before the BIA renders a decision, which may or may not resolve Mr. Noori’s removal proceedings. An individualized bond hearing before the IJ with the Government bearing the burden by clear and convincing evidence and consideration of alternatives to detention and ability to pay would significantly decrease the risk of erroneous deprivation of Mr. Noori’s liberty. *See id.* at 853, 856 (concluding Government’s substantial resources and access to information compared to petitioner “demonstrate[] the value for due process purposes of . . . burden-shifting” at bond hearing and “clear and convincing evidence standard of proof provides the appropriate level of procedural protection” where “potential injury is as significant as the individual’s liberty”); *Black*, 103 F.4th at 158 (ruling that “refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons”); *see also J.G.*, 501 F. Supp. 3d at 1339 (“Shifting the burden of proof . . . can reduce the chances that erroneous detentions will be ordered.”).

80. Third, the Government’s interest and the administrative burden of additional procedures further favors Mr. Noori. Holding an IJ bond hearing with the burden on the Government and consideration of ability to pay and alternatives to detention imposes minimal cost and inconvenience. IJs routinely hold bond hearings in immigration courts across the country. The Government has access to noncitizens’ immigration records and other information that it can use to make its case. While the Government has a legitimate interest in ensuring Mr. Noori’s

appearance in immigration proceedings and protecting the community from danger, it “has not articulated an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight.” *Black*, 103 F.4th at 155 (citing *Velasco Lopez*, 978 F.3d at 854)). “On the contrary, shifting the burden of proof to the Government to justify continued detention promotes the Government’s interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854. Mr. Noori has not received any decision from ICE on his multiple parole requests, nor has he received any explanation of ICE’s refusal to adjudicate his requests. If Respondents are sure that his detention is justified, they should welcome a bond hearing to confirm that they are not using substantial resources to detain him unnecessarily. Accordingly, Mr. Noori’s continued detention without bond is also unreasonable under the *Mathews* test, which requires a bond hearing with sufficient procedural protections.

C. Mr. Noori Is Entitled to a Bond Hearing Where the Government Must Justify His Continued Detention.

81. To remedy Mr. Noori’s unreasonably prolonged detention, this Court should order a bond hearing before an IJ with sufficient procedural protections. When a noncitizen’s detention without bond reaches the point of becoming unconstitutionally prolonged, to lessen the risk of erroneous deprivation of liberty and continued detention based solely on indigency, due process requires a bond hearing at which “(1) the government must bear the burden of proof; (2) the government must prove the noncitizen’s dangerousness by clear and convincing evidence, and the noncitizen’s risk of flight by a preponderance of the evidence; and (3) the “immigration court [must] consider both a [noncitizen]’s ability to pay in setting the amount of bond and alternative conditions of release.” *Reid*, 390 F. Supp. 3d at 224; *see also Black*, 103 F.4th at 138 (on de novo

review, upholding district court ruling ordering bond hearing with Government bearing burden by clear and convincing evidence, consideration of ability to pay and alternatives to detention); *German Santos*, 965 F.3d at 206 (“Because [petitioner’s] detention has become unreasonable, he has a due process right to a bond hearing, at which the Government must justify his continued detention by clear and convincing evidence.”); *Velasco Lopez*, 978 F.3d at 857 (“[T]he district court’s order requiring the Government to prove that Velasco Lopez is a danger to the community or a flight risk by clear and convincing evidence to justify his continued detention ‘strikes a fair balance between the rights of the individual and the legitimate concerns of the state.’”); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (ruling that government bears burden at bond hearing by clear and convincing evidence for danger and preponderance of evidence for flight risk); *see also J.G.*, 501 F. Supp. 3d at 1341 (ordering bond hearing with burden on ICE by clear and convincing evidence).

82. The exceptional circumstances of Mr. Noori’s case also demand the additional procedural protections outlined above, since ICE has disregarded the few procedural protections already in place to safeguard Mr. Noori’s liberty. It has refused to make a decision on his request for parole for months, let alone explain why his continued detention is necessary, despite his repeated requests for an answer. It has baselessly appealed the IJ’s decision to grant him asylum (as evidenced by its failure to file a brief in support of its appeal), and it has flouted its own binding policy that favors the release of people like Mr. Noori in this situation. Given that ICE is continuing to detain Mr. Noori contrary to its own policy, it should at least be obligated to justify Mr. Noori’s continued detention by clear and convincing evidence. *See Jarpa v. Mumford*, 211 F. Supp. 3d 706, 722 (D. Md. 2016) (“Placing the burden on Mr. Jarpa at the hearing, therefore, would be inconsistent with having found his continued detention

unconstitutional”); *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 905 (D. Minn. 2020) (holding that “it would appear to make little sense to afford petitioner less due process than is afforded other civil, and even some criminal, detainees” where petitioner had moved to terminate his removal proceedings based on vacated conviction).

83. This Court has previously ordered a bond hearing with the burden on ICE in an analogous context under § 1226(a), which governs the discretionary detention of non-citizens. *J.G.*, 501 F. Supp. 3d at 1341. The Court in *J.G.* reasoned that, under *Mathews*, shifting the burden onto ICE was appropriate after balancing the strength of the petitioner’s interest in “freedom from physical incarceration” and the risk of erroneous deprivation against ICE’s interest in continued detention without bearing the burden to justify it. *Id.* at 1335-41. The same is true here, and indeed Mr. Noori’s liberty interest is even stronger than the petitioner in *J.G.* because he has *never* had a bond hearing during his detention and has already prevailed in his removal proceedings.

II. ICE HAS FAILED TO FOLLOW ITS DIRECTIVE FAVORING RELEASE OF NONCITIZENS WHO WIN PROTECTION FROM REMOVAL, THUS VIOLATING THE APA AND MR. NOORI’S DUE PROCESS RIGHTS.

84. In addition to detaining Mr. Noori for an unconstitutionally prolonged duration without bond, Respondent Francis has violated his due process rights and the APA by failing to comply with the Directive. The Directive is binding, and ICE’s noncompliance is cognizable as an *Accardi* claim. See *Heredia Mons v. McAleenan*, Civ. Action No. 19-1593 (JEB), 2019 WL 4225322, at *10 (D.D.C. Sept 5, 2019) (ruling that a similar ICE directive “qualifies as precisely the sort of ‘binding’ agency policy affecting individual rights to which the *Accardi* doctrine may govern” and granting preliminary injunction to plaintiffs on APA claim); *Damus*, 313 F. Supp. 3d at 343 (same); *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 157 (D.D.C. 2018) (same).

85. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own policies that affect the fundamental rights of individuals, including self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”); *Pasquini v. Morris*, 700 F.2d 658, 663, n.1 (11th Cir. 1983) (“Although the [INS] internal operating instruction confers no substantive rights on the [noncitizen]-applicant, it does confer the procedural right to be considered for such status upon application.”)

86. Here, Respondent Francis has flouted the requirements of the Directive in violation of *Accardi* and of Mr. Noori’s rights. Under the Directive, “it is ICE policy to favor release of [noncitizens] who have been granted relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.” Ex. 12, ICE Policies at 1. Additionally, “the Field Office Director must *approve* a decision to keep [a noncitizen] grant protection relief in custody pending appeal.” *Id.* (emphasis added). Despite Attorney Reyes’ direct outreach and ICE’s awareness of Mr. Noori’s situation, ICE has refused for months to adjudicate Mr. Noori’s parole request. Moreover, Respondent Francis, as the Field Office Director for the ICE ERO Field Office in Atlanta, has failed to approve – or apparently to review at all – the choice his subordinates have made to keep Mr. Noori detained. ICE has thus chosen to keep Mr. Noori detained pending ICE’s appeal, but has not provided any

reasons for that decision, nor any reasons why it has deviated from the general policy favoring release under the Directive. This is the very definition of arbitrary and capricious agency action.

87. ICE Respondents' failure to comply with the Directive is prejudicial. Prejudice can be presumed because the Directive implicates fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [noncitizen]" and the violation affected "interests of the [noncitizen] which were protected by the regulation") (internal quotations omitted). The Directive provides noncitizens like Mr. Noori with a discrete opportunity to obtain freedom from detention, an opportunity that has been inexplicably withheld from him. *See Damus*, 313 F. Supp. 3d at 337-38; *Zadvydas*, 533 U.S. at 690 ("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."). Moreover, given the lack of criminal history or any other reason to keep Mr. Noori detained, he would very likely be released immediately if ICE or this Court were to apply the Directive to his case.

88. Accordingly, this Court should review Mr. Noori's custody under the Directive's standards and order him released on parole if appropriate. *See Jimenez*, 317 F. Supp. at 657 ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released."). Alternatively, it should order ICE to conduct an individualized review of Mr. Noori's parole application pursuant to the Directive's requirements. *See Ex. 13, Report and Recommendation, Massenet v. Lowe*, No. 3:23-cv-01472-KM (M.D. Pa. Aug. 29,

2024), ECF No. 25 at 19-21 (recommending that the District Court grant the habeas petitioner's claims under *Accardi* and order ICE to apply the Directive to petitioner's case).

CLAIMS FOR RELIEF

COUNT I

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

**Prolonged Detention without Bond
Against All Respondents**

89. Mr. Noori re-alleges and incorporates paragraphs 1 to 88 above.

90. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

91. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *Demore*, 538 U.S. at 513. As mandatory detention becomes increasingly prolonged, a “sufficiently strong special justification” is required to outweigh the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91.

92. Mr. Noori's detention without a bond hearing, which has lasted for a year and could last for many more months or years while his removal proceedings remain pending, is not reasonably related to the statutory purpose of ensuring his appearance for removal proceedings or preventing danger to the community. Under these circumstances, his detention violates his procedural due process rights.

93. To justify Mr. Noori's ongoing prolonged detention, due process requires the Government to establish, at an individualized hearing before a neutral decision-maker, that Mr.

Noori's detention is justified by clear and convincing evidence, taking into consideration whether conditions of release might mitigate risk of flight and Mr. Noori's ability to pay bond.

COUNT II

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

**Failure to Follow ICE Directive
Against ICE Respondent**

94. Mr. Noori realleges and incorporates by reference paragraphs 1 to 88 above.

95. ICE Respondents have violated their own binding policy in Directive 16004.1 *Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed* by failing to timely adjudicate Mr. Noori's request for release in the form of parole pursuant to the Directive. They have thereby also failed to conduct an individualized assessment as to whether Mr. Noori warrants parole given that he won his asylum case before the IJ, he is not a flight risk or danger, and no other factors counsel in favor of denying parole. Such failures violate Mr. Noori's due process rights under the Fifth Amendment.

COUNT III

**ARBITRARY AND CAPRICIOUS AGENCY ACTION
UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

**Failure to Follow the Parole Directive
Against ICE Respondents**

96. Mr. Noori realleges and incorporates by reference the paragraphs above.

97. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

98. ICE Respondents have violated their own binding policy in Directive 16004.1 *Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed* by

failing to timely adjudicate Mr. Noori's request for release in the form of parole pursuant to the Directive. They have thereby also failed to conduct an individualized assessment as to whether Mr. Noori warrants parole given that he won his asylum case before the IJ, he is not a flight risk or danger, and no other factors counsel in favor of denying parole. This is arbitrary, capricious, and contrary to law in violation of the APA.

PRAYER FOR RELIEF

WHEREFORE, Mr. Noori prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order Respondents to show cause why the writ should not be granted within **three days**, and, if necessary, set a hearing on this Petition within **five days** of the return, pursuant to 28 U.S.C. § 2243;
- c. Grant a writ of habeas corpus;
- d. Declare that Mr. Noori's detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;
- e. Order Mr. Noori's release within 30 days unless Respondents schedule an individualized bond hearing before an Immigration Judge in which DHS bears the burden of establishing that Mr. Noori presents a risk of danger or flight by clear and convincing evidence, even after consideration of alternatives to detention and taking into account Mr. Noori's ability to pay bond;
- f. Declare that ICE Respondents' failure to follow the binding ICE Directive violates the Administrative Procedure Act and the Due Process Clause of the Fifth Amendment;
- g. Conduct a custody re-determination for Mr. Noori pursuant to procedures in the ICE Directive or alternatively, order ICE Respondents to conduct a custody re-determination for Mr. Noori pursuant to the procedures in the Directive;
- h. Award reasonable attorney's fees and costs pursuant to Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- i. Grant such further relief as this Court deems just and proper.

Dated: March 20, 2025

Respectfully submitted,

/s/ F. Evan Benz

F. Evan Benz, Esq.

Georgia Bar No. 820944

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Pro Bono Counsel for Petitioner

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

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 20, 2025

Respectfully submitted,

/s/ F. Evan Benz

F. Evan Benz, Esq.

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send a courtesy copy via email to the office of the United States Attorney for the Middle District of Georgia and send true copies by USPS to the following individuals:

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DATED: March 20, 2025

Respectfully submitted,

/s/ F. Evan Benz
F. Evan Benz, Esq.
Pro Bono Counsel for Petitioner