

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

MOHAMMAD HADI NOORI,

Petitioner,

v.

Case No. 4:25-CV-100-CDL-AGH

TERRANCE DICKERSON, *et al*

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Mohammad Hadi Noori (Mr. Noori), through counsel, submits this Reply in support of his Petition for Writ of Habeas Corpus, ECF No. 1. Despite having no criminal history and having been granted asylum by an Immigration Judge (IJ), Mr. Noori has now been detained for over thirteen months without a bond hearing or even the Government's proper consideration of his release under its own binding Directive. He is likely to remain separated from his wife (who has also been granted asylum) and needlessly detained, at great cost to himself and to the Government, for months to come, absent this Court's intervention. Despite Respondents' contorted arguments to the contrary, this Court can and should grant Mr. Noori's Petition and order a constitutionally adequate bond hearing, or at least order Respondents to comply with their own binding Directive in reviewing Mr. Noori's custody.

ARGUMENT

Respondents contend that Mr. Noori's habeas petition should be denied because his due process rights are limited to the existing parole procedures, while simultaneously arguing that the Government cannot be held to such procedures. *See generally* ECF 5. Their arguments fail to

appreciate the key distinctions between (1) challenges to detention versus the denial of immigration relief, and (2) as-applied prolonged detention claims versus facial challenges to detention schemes. Respondents further articulate an impossible scheme that leaves “arriving” noncitizens—including those who have lived in the United States for years—without recourse regardless of how long they are detained.

Respondents now claim that they are in the process of reviewing Mr. Noori’s custody, and that they conducted a parole interview with Mr. Noori on April 17, 2025. But over a week later, Respondents have still not made a decision on a case that could not be more straightforward. *Cf.* ECF 5-8 at 2 (“Following your interview, you will be notified in writing of ICE’s decision, usually within 7 days.”). In any case, it is entirely unclear under what standard ICE is reviewing his custody, and whether such a review is consistent with its own Directive requiring Mr. Noori’s release unless the Field Office Director finds “exceptional circumstances” justifying his continued detention. Respondents would have the Court believe that a decision will issue in due course and that this Court is powerless to order any relief for Mr. Noori in the meantime. Their position is plainly contradicted by the law and by the common practice of this Court and district courts across the country to regularly order agencies to comply with their own binding policies. Their position is also fatally undermined by their own failures or refusals to decide Mr. Noori’s prior parole requests. Based on their past behavior in this case, there is no serious reason to believe they will adjudicate his current parole request in the coming weeks or months, let alone under the correct standard.

Mr. Noori is therefore entitled to habeas relief in the form of a constitutionally adequate bond hearing because his unreasonably prolonged 8 U.S.C. § 1225(b) detention violates his rights under the Due Process Clause. Moreover, ICE’s failure to comply with the Directive violates the

Due Process Clause and the Administrative Procedure Act (APA) pursuant to *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

I. Mr. Noori's Prolonged Mandatory Detention Violates His Due Process Rights.

A. Precedent Does Not Foreclose Mr. Noori's As-Applied Constitutional Challenge to His Prolonged Detention

1. Respondents Rely on Inapposite Caselaw to Support Their Erroneous Claim that Mr. Noori Has No Due Process Rights

Respondents assert that a series of Supreme Court decisions having to do with challenges to removal procedures somehow limit arriving noncitizens' due process rights with respect to challenging their prolonged detention. Troublingly, Respondents argue that arriving noncitizens lack *any* due process rights other than those specified by statute. *See* ECF 5 at 5 ("The Supreme Court has long held that arriving aliens' due process rights are limited to the procedures provided by statute, and the Court's decisions define those due process rights broadly based on fundamental principles *which apply in all contexts.*") (emphasis added). Under this framework, Congress could pass legislation subjecting arriving noncitizens to summary executions and torture without any apparent recourse. *See Rosales-Garcia v. Holland*, 322 F.3d 386, 410 (6th Cir. 2003) ("If excludable aliens were not protected by even the substantive component of constitutional due process, as the government appears to argue, we do not see why the United States government could not torture or summarily execute them."). The caselaw Respondents cite concerns judicial review of final immigration merits decisions as to whether a noncitizen will be permitted to enter or remain in the United States; it does not deal with direct challenges to their prolonged detention. *See* ECF No. 5 at 6 (noting the plenary power of Congress and the Executive over "the *admission* of arriving [noncitizens]"); *DHS v. Thuraissigiam*, 591 U.S. 103, 106–07 (2020) (considering whether due process guarantees judicial review of a negative credible fear determination); *Landon*

v. Plasencia, 459 U.S. 21, 25 (1982) (seeking review of exclusion); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 209 (1953) (same); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 539–40 (1950) (same); *Ekiu v. United States*, 142 U.S. 651, 660 (1892) (same).

Respondents’ citations only underscore the Supreme Court’s focus on *admission* (an immigration benefit) rather than *detention*. See, e.g., *Thuraissigiam*, 591 U.S. at 140 (“For these reasons, [a noncitizen] in respondent’s position has only those rights *regarding admission* that Congress has provided by statute.”) (emphasis added); *Plasencia*, 459 U.S. at 32 (“This Court has long held that [a noncitizen] seeking initial admission to the United States requests a privilege and has no constitutional rights *regarding his application*, for the power to admit or exclude [noncitizens] is a sovereign prerogative.”) (emphasis added). Of these decisions, only *Mezei* and *Ekiu* touch on detention, but only detention stemming from *permanent* exclusion from the United States. See *Mezei*, 345 U.S. at 209; *Ekiu*, 142 U.S. at 663. Neither contested detention during the pendency of immigration proceedings, nor did they involve noncitizens who had been granted asylum in the United States, as Mr. Noori has.

Here, Mr. Noori does not seek review of his removal proceedings, which remain pending at the BIA after the government’s appeal of the IJ’s grant of asylum. He only seeks review of his detention, and the Cold War-era national security concerns in *Mezei* are not present here. See, e.g., *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (“Unlike Mr. Mezei, Petitioner is not alleged to present national security concerns, has not been permanently excluded from the United States, and seeks a bond hearing prior to a conclusive decision on his application for admission. As such, the Court finds *Mezei* inapposite.”); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 846 (E.D. Va. 2020) (“[B]ecause Mezei had already been definitively determined to be barred from entering the United States on national security grounds, the Court did not consider directly the

constitutionality of his indefinite detention that resulted from that final determination.”); *Leke*, 521 F. Supp. 3d at 604 (“[*Mezei*] is distinguishable, as the underlying rationale there for denial of a bond hearing was the potential disclosure of sensitive national security information, a factor not applicable here.”); *Lett v. Decker*, 346 F. Supp. 3d 379, 386 (S.D.N.Y. 2018) (“*Mezei* may compel the conclusion that arriving aliens already excluded on national security grounds are not entitled to a bond hearing prior to their arranged deportation. However, *Mezei* does not compel the categorical conclusion that all arriving aliens may be subject to prolonged confinement without a bond hearing.”), *vacated as moot on appeal*, No. 18–3714, 2020 WL 13558956 (2d Cir. July 30, 2020).

Given the key distinctions between these Supreme Court decisions and habeas petitions challenging prolonged § 1225(b) detention, district courts across the country have recognized the continued viability of the latter. *See, e.g., Akhmadjanov v. Oddo*, No. CV 3:25-35, 2025 WL 660663, at *3 (W.D. Pa. Feb. 28, 2025); *A.L. v. Oddo*, No. 3:24-cv-00302-SLH-KAP, 2025 WL 352471, at *2 (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*, 521 F. Supp. 3d at 605; *Kydyrali*, 499 F. Supp. 3d at 772–73; *Mbalivoto*, 527 F. Supp. 3d at 850.

Respondents’ reliance on *D.A.V.V.* is misplaced because that case is evidently distinguishable. First, unlike in *D.A.V.V.*, Mr. Noori has not even had meaningful access to the parole procedures prescribed by statute and regulation. Despite their novel claim to the contrary, ECF 5 at 19, Respondents have failed or refused to make a single parole determination since he entered detention, despite his multiple requests. *See D.A.V.V.*, 2020 WL 13240240, at *2 (describing multiple denials of parole requests). Second, as a person granted asylum, Mr. Noori has greater due process rights and a greater liberty interest than the petitioner in *D.A.V.V.*, whose

asylum application had been twice denied. *See, e.g., Sopo v. U.S. Atty Gen.*, 825 F.3d 1199, 1212 (11th Cir. 2016), *vacated*, 890 F.3d 952 (11th Cir. 2018) (recognizing the significant liberty interest of a habeas petitioner whose asylee status had been terminated); *see also* 8 CFR § 1208.24 (procedures for terminating asylee status, in recognition of the due process rights of people granted asylum). As a remedy, Mr. Noori seeks a bond hearing before an IJ, consistent with the statutory parole procedures he has thus far been denied. *See Leke*, 521 F. Supp. 3d at 604 (“[T]he 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.”).

Conflating the availability of judicial review of prolonged mandatory detention with that of immigration relief runs contrary to Supreme Court precedent and leads to absurd results. There is no doubt that noncitizens with final removal orders can obtain judicial review of their prolonged detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001), even if judicial review of such removal orders themselves is unavailable. Indeed, the Supreme Court rejected the Government’s argument that “statutory provisions that limit the circumstances in which judicial review of deportation decisions is available” extended to judicial review of the petitioners’ detention. *Id.* at 687. Accordingly, existing statutory procedures do not define Mr. Noori’s due process rights concerning his prolonged detention.

2. The *Sopo* Factors and, Alternatively, *Mathews v. Eldridge*, Are Applicable to Mr. Noori’s As-Applied Due Process Claim

Respondents claim that neither *Sopo* nor *Mathews* can be used to assess Petitioner’s claim. *See* ECF 5 at 8-13. Respondents’ arguments are unconvincing and even alarming when taken to their logical ends. As this Court concluded in a different context, the “[a]doption of Respondent’s position would effectively insulate the executive branch from due process challenges” to

prolonged mandatory detention. *S.C. v. Warden, Stewart Det. Ctr.*, No. 4:23-CV-64-CDL-MSH, 2024 WL 796541, at *5 (M.D. Ga. Jan. 5, 2024), *report and recommendation adopted*, No. 4:23-CV-64 (CDL), 2024 WL 790377 (M.D. Ga. Feb. 26, 2024). The Government could allow a case like Mr. Noori's to "wither for years without judicial review," *id.*, because according to Respondents, "detention during [removal] proceedings is a constitutionally valid aspect of the process." ECF 5 at 10 (quoting *Demore*, 538 U.S. at 523). This Court should reject Respondents' extreme position and apply either the *Sopo* or *Mathews* test, both of which strongly favor Mr. Noori.

Respondents claim that Mr. Noori's detention is not indefinite. But neither was the detention in *Sopo* declared to be "indefinite" in the same way as the detention in *Zadvydas*. Yet the *Sopo* court insisted on a limit to otherwise boundlessly prolonged detention. 825 F.3d at 1212-14. Similarly, Mr. Noori's detention has become unreasonably prolonged and will likely continue for months or years into the future, absent intervention from this Court. Respondents' appeal to the BIA, filed on the last day possible, continues to needlessly prolong Mr. Noori's detention.¹ If the BIA eventually remands Mr. Noori's case back to the Immigration Judge, this will add even

¹ Mr. Noori acknowledges that the Department of Homeland Security (DHS) did submit a brief in this appeal on March 4, 2025. ECF 5-7. His prior allegations to the contrary were based on the information available to him at the time, based on the immigration court's own website. *See* ECF 1-15. However, Mr. Noori maintains that DHS' appeal is baseless, given that DHS has only argued that the Immigration Judge (IJ) erred in finding Mr. Noori credible and in concluding that he has a well-founded fear of future persecution at the hands of the Taliban. *See* Ex. 15 (attached hereto), Unredacted Excerpt from DHS' BIA Appeal Brief. Because the IJ's credibility determination and factual findings regarding what will happen to Mr. Noori if he is returned to Afghanistan are both subject to the highly deferential standard of "clear error" review, DHS' appeal is unlikely to succeed. 8 C.F.R. § 1003.1(d)(3)(i) ("Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous."); *see also Matter of Z-Z-O-*, 26 I&N Dec. 586, 589-90 (BIA 2015) (IJ's predictions of future events are factual findings subject to clear error review).

more time via a subsequent appeal from ICE or from Mr. Noori, depending on whether the IJ grants protection again or not. If the BIA decides to reverse the IJ's asylum grant and finalize an order of removal, Mr. Noori will seek review of that decision before the Eleventh Circuit Court of Appeals and will likely be able to secure a judicial stay of removal from that Court during the pendency of his petition for review. This will also add months to Mr. Noori's detention.

In any case, any BIA decision is unlikely to come for many months into the future due to an overwhelming BIA backlog and the recent firings of numerous BIA adjudicators.² In fact, ICE's binding Directive, which Respondents have failed to adhere to, implicitly acknowledges these indefinite delays and the significant costs to the Government of detaining immigrants who are no threat to anyone by establishing that it is "ICE[']s policy to favor release of all [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community." ECF 1-18, ICE Policy Documents at 1.

Respondents also fail to recognize that Mr. Noori is mounting an as-applied challenge to his detention. Although Respondents cite *Demore*, that case merely ruled that mandatory detention under 8 U.S.C. § 1226(c) is *facially* constitutional and did not address an as-applied due process challenge to prolonged detention. *See* 538 U.S. at 523, 531; *id.* at 532–33 (Kennedy, J., concurring) (leaving open possibility of as-applied challenges to § 1226(c) detention "if the continued detention became unreasonable or unjustified"). Recognizing the limits of *Demore*, the *Sopo* court ruled in favor of the petitioner on his as-applied prolonged § 1226(c) detention claim. *See* 825 F.3d

² *See* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ADJUDICATION STATISTICS, "Case Appeals Filed, Completed and Pending," (Oct. 10, 2024), <https://www.justice.gov/eoir/media/1344981/dl?inline> (showing a "cases pending" backlog that exploded from 12,685 at the end of FY2017 to 112,952 at the end of FY2024); *see also* Britain Eakin, *Law360.com*, "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>.

at 1212 (noting *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”).

Other caselaw cited by Respondents is similarly distinguishable. *Carlson* considered legislation giving the Attorney General discretion to deny bail to noncitizens labeled “active alien communists” based on national security concerns. 342 U.S. at 526. The Supreme Court upheld the law on the basis that “the Attorney General is not left with untrammelled discretion as to bail. Courts review his determination. Hearings are had, and he must justify his refusal of bail by reference to the legislative scheme” *Id.* at 543. The Court emphasized that “the problem of habeas corpus after unusual delay in deportation hearings [wa]s not involved in this case.” *Id.* at 546. Here, Mr. Noori is entitled to a bond hearing because he has received none of those procedural protections for his mandatory detention.

Flores involved a facial challenge to a policy limiting release of immigrant children to certain individuals. 507 U.S. at 300. In denying the claims, the Supreme Court rejected the argument that the policy led to prolonged detention because “[t]he period of custody is inherently limited by the pending deportation hearing, which must be concluded with reasonable dispatch to avoid habeas corpus.” *Id.* at 314 (internal quotation marks omitted). In other words, *Flores* blessed the kind of claim that Mr. Noori raises here because the length of his detention without bond has become unreasonable.³

³ The last case that Respondents cite, *Wong Wing v. United States*, 163 U.S. 228 (1896), is completely inapposite here, as it involved a challenge to a law that authorized pre-removal imprisonment of Chinese nationals who were found to be unlawfully present in the U.S. The Court concluded that noncitizens who have been ordered removed are entitled to some substantive due process protections and held unconstitutional the imprisonment of noncitizens as a punishment for having been found removable from the United States. *Id.* at 237-38.

Therefore, the Court should apply *Sopo* here and conclude that all of the *Sopo* factors weigh strongly in Mr. Noori's favor. While *Sopo* is no longer binding, this Court and other district courts in this circuit have continued to apply the *Sopo* factors as persuasive authority for as-applied due process challenges to prolonged detention. *See, e.g., S.C.*, 2024 WL 796541, at *4 (M.D. Ga. Jan. 5, 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. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-62-MSH, 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.”). Other district courts have also found it reasonable to apply frameworks for analyzing prolonged detention under § 1226(c) to detention under § 1225(b) as well. *See, e.g., A.L.*, 2025 WL 352471, at *3 (applying Third Circuit’s test for § 1226(c) detention, which is similar to *Sopo*, to § 1225(b) detention); *Mbalivoto*, 527 F. Supp. 3d at 850 (considering § 1225(b) detention pursuant to court’s factors for § 1226(c) detention). Further, as demonstrated in Mr. Noori’s habeas petition, an application of the *Sopo* factors weighs strongly in Mr. Noori’s favor and underscores his unconstitutionally prolonged detention. ECF 1 at 19-27.

In the alternative, the *Mathews* test applies here and favors Mr. Noori. Respondents essentially argue that *Mathews* does not apply here because, per their flawed reading of *Thuraissigiam* and prior precedent, Mr. Noori has no due process rights. ECF 5 at 12. This argument thus repeats the errors noted above in Section I.A.1, *supra*. Further, the Supreme Court has explicitly left the door open for as-applied due process challenges to prolonged mandatory

detention pending removal proceedings. *See Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.”); *Jennings*, 585 U.S. at 312 (remanding to evaluate claim that petitioners’ prolonged mandatory detention under § 1226(c) violated due process); *Demore*, 538 U.S. at 532 (Kennedy, J., concurring). Two circuits have subsequently held that unreasonably prolonged detention without a bond hearing under § 1226(c) does indeed violate due process. *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020). And several circuits have concluded that prolonged pre-removal order detention claims should be resolved by applying *Mathews*. *See Black*, 103 F.4th at 147–48 (collecting cases); *see also Ortiz–Castillo*, 2024 WL 756075, *2 (applying *Mathews* to due process challenge to prolonged § 1225(b) detention). There is no reason that this Court cannot also apply *Mathews* to Mr. Noori’s case, and any reasonable application of that test leads to a conclusion in Mr. Noori’s favor, as outlined in his petition. ECF 1 at 27-30.

3. Mr. Noori is Entitled to a Bond Hearing to Remedy His Unreasonably Prolonged Detention

Respondents claim that *Jennings* does not permit bond hearings in this context. ECF 5 at 13. However, *Jennings* only ruled on whether § 1226(c) and § 1225(b) should be read to require a bond hearing after six months of detention as a matter of constitutional avoidance. In rejecting these *statutory* claims, the Court did not rule on an *as-applied due process* claim and instead remanded to the Ninth Circuit to consider that claim in the first instance. 583 U.S. at 312. As discussed in Mr. Noori’s habeas petition, courts across the country, including this Court, subsequently agreed that due process requires noncitizens to be provided with a bond hearing when

their detention during removal proceedings becomes unreasonably prolonged. *See* ECF 1 at ¶¶ 42-43.

B. Mr. Noori is entitled to a bond hearing where the Government bears the burden and the IJ considers ability to pay and alternatives to detention

Due to his unconstitutionally prolonged detention, Mr. Noori is entitled to a bond hearing 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. Respondents contend that because *Sopo* declined to place the burden on the Government at the court-ordered bond hearing, this Court should do the same. ECF 5 at 14-15. However, the remedy ordered by the *Sopo* court was for violation of a statute, § 1226(c), which the court read "as a matter of constitutional avoidance" to include "an implicit temporal limitation" after which a bond hearing is required. 825 F.3d at 1213-14. Here, Mr. Noori's prolonged detention claim is based solely in constitutional due process. Thus, this Court is not bound by *Sopo*'s ruling regarding bond procedures for detention that violates § 1226(c) in remedying Mr. Noori's *unconstitutionally prolonged* § 1225(b) detention.⁴

The two circuit courts that have authorized bond hearings as a remedy for as-applied due process challenges to prolonged immigration detention have placed the burden on the Government at those bond hearings, concluding that such a burden-shift provide "the appropriate level of procedural protection" where "potential injury is as significant as the individual's liberty." *Velasco Lopez*, 978 F.3d at 856; *see also 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"); *German Santos*, 965

⁴ Respondents' misconstrue Mr. Noori's argument as being "that a bond hearing under *Sopo* requires ICE to bear the burden of proof." ECF 5 at 15 (emphasis added). Rather, Mr. Noori argues that *Mathews* requires the burden-shifting he requests and that nothing in *Sopo* prevents the Court from imposing that burden shift.

F.3d 203 at 213-14. There is therefore no reason why this Court should not place the burden on the Government to justify Mr. Noori's continued detention by clear and convincing evidence, and the proper *Mathews* analysis points this Court towards such a burden-shift to help reduce the risk of continued erroneous deprivation of Mr. Noori's liberty interest.

II. Mr. Noori's *Accardi* Claims Regarding the Directive Are Cognizable in Habeas

A. Detention-Related *Accardi* Claims Can Be Brought in Habeas

Respondents assert that Mr. Noori's *Accardi* claims cannot be brought in habeas actions, while failing to mention that *Accardi* was an immigration habeas case. *See* 347 U.S. at 261. They also attempt to frame Mr. Noori's APA and procedural due process claims as seeking "only review of ICE/EROs pace in adjudicating his parole request" and as seeking "procedural relief which is not available in a habeas proceeding." ECF 5 at 17-19. But Mr. Noori's *Accardi* claims regarding the Directive are directly tied to his detention and separate from the merits of his immigration case, and are thus cognizable in habeas.

Respondents argue that "discretionary parole determinations and the pace of those determinations are both 'unrelated to the cause of [Petitioner's] detention'" and claim that the cause of his prolonged detention is his ongoing removal proceedings. ECF 5 at 17 (quoting *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976)). However, at this stage, having already won asylum which the Government is baselessly trying to overturn, the only cause of Mr. Noori's detention is ICE's failure or refusal to follow its long-standing, binding 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." ECF 1-18, ICE Policy Documents at 1. *Pierre* is clearly distinguishable from Mr. Noori's case, as it involved a group of habeas petitioners who sought an injunction related to their

employment authorization, which is an issue concededly “unrelated to the cause” of a noncitizen’s detention. *See Pierre*, 525 F.2d at 935. Similarly, in *Villafuerte*, this Court rejected an *Accardi* claim regarding Deferred Action for Childhood Arrivals (DACA) as not cognizable in habeas because it was unrelated to detention. *See Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640, at *3 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). In contrast, Mr. Noori’s *Accardi* claims concern the very procedures under which ICE would consider his release from detention. In this way, the *Accardi* claim seeking a specific custody review is very similar to his aforementioned due process claim seeking a bond hearing, which Respondents agree is cognizable on habeas.

Additionally, courts in this circuit and elsewhere have recognized that *Accardi* claims can be brought in habeas petitions where the policy at issue concerns detention, including by providing procedures for consideration of release like the Directive. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 638–39 (D. Mass. 2018) (in habeas action, citing *Accardi* in ordering ICE to comply with custody review regulation because “the government, as well as the governed, must follow the law, and in habeas it is the court’s duty to ensure that it does”); *Gayle v. Meade*, No. 1:20-cv-21553-MGC, 2020 WL 2086482, at *6 (S.D. Fla. Apr. 30, 2020) (granting preliminary injunction on *Accardi* claim regarding detention standards in habeas action).

Respondents’ contention that release is the only remedy for habeas is odd given that they do not raise this point in response to Mr. Noori seeking a bond hearing for his due process claim, and would surely vigorously contest any argument for Mr. Noori’s outright release. They fail to cite any precedent ruling that custody reviews are de facto unavailable as a habeas remedy, disregard the significant body of habeas caselaw providing for such relief, and ignore the fact that, like a bond hearing, having his custody properly reviewed according to the Directive would most

likely lead to Mr. Noori's release.⁵ See, e.g., *Black*, 103 F.4th at 155; *German Santos*, 965 F.3d at 206; *Sopo*, 825 F.3d at 1221. Because Mr. Noori is challenging Respondents' alleged authority to continue detaining him at this stage in his removal proceedings (given a binding Directive contradicting that claimed authority) and is seeking release from custody via that procedural mechanism, his claims are entirely in line with the scope of habeas relief available under *Accardi*.

B. This Court Has Jurisdiction Over Mr. Noori's *Accardi* Claims

Respondents alternatively claim that this Court lacks jurisdiction over Mr. Noori's *Accardi* claims because ICE parole decisions and the pace of those decisions are discretionary and thus shielded from review under 8 U.S.C. § 1252(a)(2)(B)(ii). Respondents misconstrue Mr. Noori's claim of arbitrary and capricious agency action based on ICE's failure or refusal to follow its binding policy as a claim about undue delay, which Mr. Noori did not bring. An agency delay claim is brought under 5 U.S.C. § 706(1), whereas Mr. Noori has brought a claim under § 706(2). Respondents' reliance on *Kanapuram v. Dir., U.S. Citizenship & Immigr. Servs.*, 131 F.4th 1302, 1306-08 (11th Cir. 2025) is inapposite given that the plaintiffs in those cases sought review of the government's decisions regarding immigration benefits, and did not raise *Accardi* claims or challenge detention. This Court has jurisdiction to review the agency's failure to follow its own policies.. See *Damus v. Nielsen*, 313 F. Supp. 3d 317, 328 (D.D.C. 2018) (finding jurisdiction to review *Accardi* claim regarding Parole Directive); *Heredia Mons v. McAleenan*, No. 1:19-cv-01593-JEB, 2019 WL 4225322, at *4 (D.D.C. Sept 5, 2019) (same); *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 134 (D.D.C. 2018) (same); see also *Samirah v. Holder*, 627 F.3d 652, 664 (7th Cir. 2010) ("[E]ven if the applicable statutes confer complete discretion on agency actors, if those

⁵ Moreover, in *Preap* and *Jennings*, while it had the opportunity, the Supreme Court did not foreclose bond hearings as a habeas remedy. See 139 S. Ct. at 972; 138 S. Ct. at 851.

actors have the authority to constrain their discretion by promulgating legislative rules, and they choose to do so, they have created law that can serve as the basis for judicial review.”) (citation omitted). Here, the Directive – which Respondents do not contest is binding but continue to ignore nonetheless – provides clear, non-discretionary procedures to follow in considering release.

Surprisingly to Mr. Noori, Respondents characterize ICE’s refusal or failure to adjudicate Mr. Noori’s prior parole requests as ICE’s “denials of [Petitioner’s] parole requests.” *Id.* at 19. Apparently, Respondents believe that ICE parole decisions are so discretionary that they can deny parole requests *sub silentio*. Mr. Noori has never received a decision from ICE on his prior parole requests; instead, he was repeatedly told that the requests were being reviewed by Mr. Noori’s case officer or by “management.” *See* ECF 1-11, 1-14, 1-20. Mr. Noori’s immigration counsel emailed ICE on December 20, 2024 – the day he won his asylum case and the day that the Directive began to apply to his case – to inform them of this development and request information about his release. ECF 1-14. More than four months passed before ICE, in response to the filing of this petition, finally bothered to conduct a parole interview with Mr. Noori.

Moreover, Respondents fail to recognize that Mr. Noori is not merely seeking a typical parole determination. Rather, he is seeking a specific custody review through which the Field Office Director must determine whether “exceptional circumstances” justify his continued detention despite a grant of protection. Even if the Government completes the parole determination it alleges is in process, there is absolutely no indication that this determination is consistent with the Directive, which Respondents do not even acknowledge.

Given its prior actions in this case, it is unclear whether ICE ever intends to make a decision on Mr. Noori’s most recent parole request, under what standards the review will be conducted, or even whether it will notify Mr. Noori of its decision, should it be made. According to Respondents,

Mr. Noori has no recourse before this Court while he waits for the Government to conduct the custody review to which he is entitled and which he should have received months ago. Such an outcome surely offends the most basic tenets of our Constitutional order and cannot be allowed.

CONCLUSION

Mr. Noori has been in ICE custody for over thirteen months with no individualized review of his detention through a bond hearing or even through application of ICE's own binding parole procedures. Despite having been granted asylum by an IJ, he remains in custody while the Government needlessly appeals his case. Accordingly, this Court should order a bond hearing or order ICE to comply with its Directive.

Dated: April 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Reply to Response to Petition for Writ of Habeas Corpus and any attachments using the CM/ECF system.

Dated: April 25, 2025

Respectfully submitted,

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