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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Aleksei KIM, Petitioner, v. ERIC ROKOSKY, in his official capacity as Warden of Elizabeth Detention Center; RUBEN PEREZ, in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Newark Field Office; TODD LYONS, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; and KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, Respondents.	Case No. **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

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

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner is an asylum seeker from Russia, who is in the custody of the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), and is currently detained at the Elizabeth Detention Center ("EDC" or the "Facility").

2. Petitioner has been detained in immigration custody for over twenty months without a hearing conducted by a neutral decisionmaker—a federal judge or an immigration judge—to determine whether this lengthy incarceration is warranted based on danger or flight risk. He faces months of further detention as he challenges the Department of Homeland Security's successful appeal of his second asylum grant by an immigration judge.

3. ICE claims the authority to indefinitely detain Petitioner without a bond hearing under the Immigration and Nationality Act ("INA") § 235(b), 8 U.S.C. § 1225(b)(1). In separate subsections, that statute provides for the detention of asylum seekers who pass a credible fear interview "for further consideration of the application for asylum," *id.* § 1225(b)(1)(B)(ii), as well as detention of all other noncitizens whom an immigration official believes are not "clearly and beyond a

doubt entitled to admission for a proceeding under 1229a of this title [removal proceedings before an immigration judge]." *id.* § 1225(b)(2)(A). Noncitizens who are apprehended at a port-of-entry while seeking admission are designated as "arriving aliens" and are ineligible for bond under 8 U.S.C. § 1225(b). 8 C.F.R. § 1.2; 8 C.F.R. § 1003.19(h)(2)(i)(B); *see also Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018).

4. Petitioner's prolonged detention pending removal proceedings without a hearing to assess danger and flight risk violates the Fifth Amendment because it deprives Petitioner of liberty without due process of law.

5. Additionally, Petitioner submits that Respondents' refusal to release him on parole under 8 U.S.C. § 1182(d)(5)(A) is inconsistent with ICE's own long-standing policy, thereby violating the Administrative Procedure Act (APA) and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

6. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's release from custody. In the alternative, Petitioner requests that this Court conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d Cir. 2020).

PARTIES

7. Petitioner Aleksei Kim is a noncitizen currently detained by Respondents pending removal proceedings.

8. Respondent Eric Rokosky is the Warden of EDC. He is an employee of CoreCivic, the private company that contracts with ICE to run EDC. In his capacity as Warden, he oversees the administration and management of EDC. Accordingly, Mr. Rokosky is the immediate custodian of Petitioner. He is sued in his official capacity.

9. Respondent Ruben Perez is named in his official capacity as the Acting Newark Field Office Director for ICE. In this capacity, Respondent Perez is responsible for administration and management of ICE Enforcement Removal Operations in New Jersey and exercises control over Petitioner's custody at EDC. Respondent Perez's office is located at 970 Broad Street, 11th Floor, Newark, New Jersey, 07102.

10. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations, and, as such, he is a legal custodian of Petitioner. Respondent Lyons's office is located at 500 12th Street, S.W., Washington, D.C. 20536.

11. Respondent Kristi Noem is the Secretary of the U.S. 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 Petitioner. She is sued in her official capacity. Respondent Noem's office is located at U.S. Department of Homeland Security, Washington, D.C. 20528.

JURISDICTION AND VENUE

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

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 16.

14. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.

15. Venue is proper in this District because the Petitioner is detained in this district. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary.

17. In making that decision, the Court should consider the urgency of the need for immediate review. "Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

18. Moreover, the exhaustion "doctrine is not without exception." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). "Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question." *Id.* at 666-67.

19. By regulation, arriving aliens are ineligible for bond. 8 C.F.R. § 1003.19(h)(2)(i)(B). Exhaustion before the BIA would therefore be futile. *See* 8 C.F.R. § 1003.1(d) (providing that the BIA is governed by applicable regulations).

20. Further, "the BIA does not have jurisdiction to adjudicate constitutional issues . . . ." *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002)

(citation omitted); *see also Ashley v. Ridge*, 288 F. Supp. 2d at 667 (citation omitted). Therefore, any administrative proceedings would be futile because petitioner raises a constitutional due process claim. *Hoxha v. Holder*, 559 F.3d 157, 161 (3d Cir. 2009) (holding that no exhaustion is required if the BIA does not have jurisdiction to consider the claim).

STATEMENT OF FACTS

21. Mr. Kim is a 44-year-old native and citizen of Russia who is of Korean descent. Exh. A, Notice to Appear. Despite his Korean ethnicity, he does not have Korean citizenship as he and his parents were born and raised in Russia. Exh. D, Decision of the Immigration Judge, August 27, 2025.

22. In September 2022, Mr. Kim left Russia because of persecution due to his political opinion. *Id.* He briefly resided in South Korea on a temporary visa before deciding to seek protection in the United States. *Id.* He left South Korea in September 2024 when he learned that the Russian government had initiated an extradition request. *Id.* Fearing that the Korean government would ultimately comply with the extradition request from Russia, and in light of his uncertain immigration status in South Korea, Mr. Kim decided to travel to the United States. *Id.*

23. On April 21, 2024, Mr. Kim presented himself at the southern border of the United States pursuant to an appointment scheduled through the CBP One application. Exhs. A-B. The CBP One system is a mobile application developed by

U.S. Customs and Border Protection (CBP). Until recently, its primary purpose was to request appointments for inspection and potential access to the U.S. asylum process.[1]

24. CBP detained Mr. Kim and placed him in expedited removal proceedings. *See* Exhs. A-C. When Mr. Kim expressed fear of returning to his country due to past persecution, he was afforded a credible fear interview. *See* Exhs. A-B. The asylum officer found Mr. Kim's fear of return to be credible and transferred his case to immigration court for further proceedings to determine if he qualified for asylum. *Id.*

25. ICE Directive 11002., Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture applied to Mr. Kim's case. However, DHS decided to continue his detention.

26. Mr. Kim's detained removal proceedings took place before the La Salle Immigration Court in Jena, Louisiana. Exh. D. He pursued asylum, withholding of removal and protection under the Convention Against Torture in defense to his removal. *Id.* Mr. Kim appeared at his merits hearing on August 27, 2024. *Id.* After the hearing, the Immigration Judge (IJ) issued an oral decision granting Mr. Kim's application for asylum. *Id.*

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[1] *See* https://www.cbp.gov/sites/default/files/assets/documents/2023-Jan/CBP%20One%20Fact%20Sheet_English_3.pdf

27. The DHS appealed the IJ's decision to the Board of Immigration Appeals (BIA). Exh. E, Decision of the Board of Immigration Appeals, October 17, 2025. Its sole contention on appeal was that the IJ had erred in finding that Mr. Kim was not firmly resettled in South Korea. *Id.* The BIA sustained DHS's appeal and remanded the case for further consideration on the issue of firm resettlement. *Id.*

28. On April 4, 2025, the IJ held a hearing to address the issues in the BIA's remand order. Exh. E. The IJ determined that Mr. Kim had rebutted DHS's prima facie showing that the firm resettlement bar applied to him. *Id.* The IJ again concluded that Mr. Kim qualified for asylum. *Id.* This time, however, he also granted withholding of removal to Russia, as an alternative to asylum. *Id.*

29. DHS once again appealed the IJ's decision to the BIA. Exh. E. On October 17, 2025, the BIA sustained DHS's appeal, vacated the IJ's relief grant, and ordered Mr. Kim's removal to Russia. *Id.*

30. Mr. Kim timely petitioned the U.S. Circuit Court of Appeals for the Fifth Circuit to review the BIA's October 17 order. Exh. F, Docketing Letter. On November 20, 2025, that court stayed Mr. Kim's removal pending its decision on the merits. Exh. G, Order of the U.S. Circuit Court of Appeals for the Fifth Circuit, November 25, 2025.

31. Mr. Kim has been continuously detained since he entered the United States on April 21, 2024. He was transferred to the Elizabeth Detention Center on November 16, 2025.

LEGAL FRAMEWORK

I. Prolonged detention without a bond hearing pending removal proceedings violates procedural due process.

32. The Immigration and Nationality Act contains several provisions authorizing detention of noncitizens. Section 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an Immigration Judge to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Noncitizens who are removable by virtue of certain criminal convictions are detained pursuant to § 1226(c). Section 1231 governs the detention of noncitizens with a final order of removal. Lastly, § 1225(b), the statute under which Petitioner is detained, requires the detention of noncitizens arriving at a designated port of entry as well as certain other noncitizens who are treated as "applicants for admission." In stark contrast to § 1226(a), other detention provisions do not authorize a bond hearing. *See generally Jennings*, 583 U.S. at 281.

33. "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). "Freedom from imprisonment—from government custody, detention, or other forms of physical

restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693.

34. Due process therefore 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 quotation marks omitted). 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 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes. As Justice Kennedy made clear in his concurrence in the 5-4 decision in *Demore*, "since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien such as respondent could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." *Id.* at 532 (Kennedy, J., concurring).

35. After *Zadvydas* and *Demore*, courts around the country, including the Third Circuit, applied the canon of constitutional avoidance and held that the statutes authorizing detention required a bond hearing when detention became prolonged. *See Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 226 (3d Cir. 2018) (requiring bond hearings after six months of detention under § 1231(a)(6)), *abrogated by Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (requiring bond hearings after six months of detention under § 1225(b)); *Chavez-Alvarez v. Warden York C'ty Prison*, 783 F.3d 469, 474-75 (3d Cir. 2015) (requiring bond hearings when detention under § 1226(c) became unreasonable), *abrogated in part by Jennings*, 583 U.S. at 281; *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232-33 (3d Cir. 2011) (same), *abrogated in part by Jennings*, 583 U.S. at 281.

36. In 2018, the Supreme Court held that, as a matter of statutory construction, sections 1225(b) and 1226(c) mandate detention for the length of proceedings and do not require bond hearings. *Jennings*, 138 S. Ct. at 844. *Jennings*, however, did not address whether unreasonably prolonged detention without a bond hearing may violate due process, and left it to the lower courts to address the issue in the first instance. *Id.* at 312.

37. Following *Jennings*, the Third Circuit held that its constitutional analysis of prolonged mandatory immigration detention remained undisturbed and

reaffirmed its conclusion that the Constitution requires bond hearings when "detention becomes unreasonable." *German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020). The court ruled that its decisions in *Chavez-Alvarez* and *Diop* remain good law for as-applied constitutional challenges, with *Jennings* abrogating those cases only to the extent they read the statute to implicitly limit the length of detention without a bond hearing to "a reasonable amount of time." *Id.* Other courts have similarly held that prolonged detention without a bond hearing is unconstitutional. *See Black v. Decker*, 103 F.4th 133, 150-51 (2d Cir. 2024) (holding that courts should apply the *Mathews v. Eldridge* framework to determine when detention has become unconstitutionally prolonged); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (declining to create a bright-line rule but "adher[ing] to the notion that the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention under section 1226(c)") (cleaned up).

38. Guided by the analysis in *Diop* and *Chavez-Alvarez*, the Third Circuit identified the following four factors to consider in determining whether a noncitizen's detention has become unreasonably prolonged: 1) the length of detention; 2) whether detention is likely to continue; 3) the reasons detention has been prolonged (including errors or bad faith by either party); 4) and whether the

conditions of confinement are similar to those imposed as criminal punishment. *German Santos*, 965 F.3d at 211.

39. If detention without a bond hearing has become unreasonably prolonged, the noncitizen is entitled to a bond hearing. At that bond hearing, due process requires certain minimal protections to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention and the noncitizen's ability to pay a bond. *Id.* at 213-214.

40. A court in this district recently confirmed that *German Santos*'s holding applies in the context of § 1225(b) detention, because both § 1225(b) and § 1226(c) deprive noncitizens of their liberty without an individualized determination about whether continued detention is necessary. *See Maksaddzhon A. v. Pittman*, No. 2:25-13734, 2025 WL 3658710 (D.N.J. Dec. 17, 2025). Other courts have reached similar conclusions. *See also Akhmadjanov v. Oddo*, No. 3:25-35, 2025 WL 660663, at *4 (W.D. Pa. Feb. 28, 2025) (applying *German Santos* to prolonged detention under § 1225(b)); *A.L. v. Oddo*, 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025) (same); *Tuser E.*, 370 F. Supp. 3d at 442 ("Petitioner, like all arriving aliens detained pre-removal pursuant to § 1225(b), has a due process right to an individualized bond consideration once it is determined that the duration of his detention has become unreasonable."); *Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018) (same).

41. Prior to the decision in *Maksaddzhon A.*, some courts in this district have held that arriving aliens who are paroled into the United States are deemed as a matter of law to have never entered the United States and are thus "entitled to something less than the full array of rights usually conferred by the Due Process Clause." *Tuser E.*, 370 F. Supp. 3d at 442; *see also Otis v. V. Green*, No. 18-742, 2018 WL 3302997, at *7 (D.N.J. July 5, 2018). However, the Supreme Court has recently explained that the this "entry fiction" serves to protect the "sovereign prerogative" to determine which noncitizens to admit or exclude, and thus limits noncitizens' due process rights related to their applications for admission, not to their detention. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (holding that an arriving noncitizen "has only those rights *regarding admission* that Congress has provided by statute") (emphasis added); *see A.L.*, 761 F. Supp. 3d at 825. The Third Circuit has similarly made clear that while noncitizens seeking initial admission to the United States have limited rights in relation to that application, the government may not detain them indefinitely or otherwise mistreat them. *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 449 & n.32 (3d Cir. 2016); *see also Wong Wing v. United States*, 163 U.S. 228, 235-36 (1896); *Rosales-Garcia v. Holland*, 322 F.3d 386, 412-14 (6th Cir. 2003) (en banc). Therefore, noncitizens subject to § 1225(b) are "persons" within the meaning of the Due Process Clause and, like noncitizens detained under § 1226(c), may not be subjected to unreasonably

prolonged detention without a bond hearing. *A.L.*, 761 F. Supp. 3d at 825; *see also, e.g.*, *Leke v. Holt*, 521 F. Supp. 3d 597, 602 (E.D. Va. 2021); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020); *Perez v. Decker*, No. 18-cv-5279, 2018 WL 3991497, at *3 (S.D.N.Y. 2018).

42. Indeed, even those courts that have indicated that the rights of detainees under § 1225(b) are limited in some respects have acknowledged that they "still possess some rights under the Due Process Clause which may be impugned should detention under the statute become unduly and unreasonably prolonged," *Tuser E.*, 370 F. Supp. 3d at 442, and have applied similar factors to make that determination. *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858 (D. Minn. 2019) (stating that "it is not clear what, if anything, turns on this dispute, at least as a practical matter").

43. In sum, prolonged detention without a bond hearing violates due process, regardless of the statutory basis for the detention. Courts in this circuit apply a multi-factor test to determine whether detention has become unreasonable and a bond hearing is necessary. *German Santos*, 965 F.3d at 211.

II. The Administrative Procedure Act and due process require ICE to follow its own policies relating to parole of asylum applicants.

44. 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 rules that affect the fundamental rights of individuals, even 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.").

45. 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 an internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' . . . .").

46. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171, 175 (3d Cir. 2010) (holding that "rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency," and a failure to follow those

rules without explanation is arbitrary, capricious, and an abuse of discretion), or as a due process violation, s*ee 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).

47. Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 ("We hold that an alien 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 alien's benefit and that the INS failed to adhere to them."); *Heffner*, 420 F.2d at 813 ("The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

48. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, *see Damus v. Nielsen*, 313 F. Supp. 3d 317, 343 (D.D.C. 2018) ("[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. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards).

49. Under 8 U.S.C. § 1182(d)(5)(A), applicants for admission, including arriving aliens, may be released on parole "for urgent humanitarian reasons or significant public benefit." *See also* 8 C.F.R § 212.5(b). In 2009, ICE issued a nationwide policy (hereinafter "the Credible Fear Policy") to release arriving aliens with positive credible fear findings on parole if certain criteria are met. *See* ICE, Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009).[2] The Credible Fear Policy constitutes ICE's interpretation of the statute governing detention of arriving aliens. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); § 1182(d)(5)(A). A similar 2004 policy specifically addresses the situation of noncitizens who have been granted asylum or other relief, and states that "it is ICE policy to favor release of aliens who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community . . . ." ICE, Directive No. 16004.1, Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed (Feb. 9, 2004) (hereinafter "the Asylum Policy");[3] *see also Akhmadjanov*, 2025 WL 660663, at *4 (discussing this policy).

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[2] Available at https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf.

[3] Available at https://www.ice.gov/doclib/foia/policy/memoDetPolicyAsylumICE_Appealed_02.20.2004.pdf, at 4.

50. These policies are the type of rules ICE is obligated to follow under *Accardi*. The U.S. District Court for the District of Columbia considered Directive 11002.1 and concluded that it fell "squarely within the ambit of those agency actions to which the [*Accardi*] doctrine may attach," in part because it "establish[ed] a set of minimum protections for those seeking asylum" and "was intended—at least in part—to benefit asylum seekers navigating the parole process." *Damus*, 313 F. Supp. 3d at 324, 337-38; *see also 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.").

51. Therefore, Respondents must abide by the policies mandating that an arriving alien with a positive credible fear finding should be released from detention if he establishes his identity and shows that he does not present a danger to the community or a flight risk. *See* Paragraph 8.3, ICE, Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009); ICE Directive No. 16004.1.

III. The Court can remedy these violations by ordering release or holding a bond hearing.

52. Courts are authorized to "dispose of [a habeas petition] as law and justice require," 28 U.S.C. § 2243, and are allowed "broad discretion ... in fashioning the judgment granting relief to a habeas petitioner[.]" *Hilton v. Braunskill*, 481 U.S.

770, 775 (1987). Thus, while "[h]abeas relief cannot fully remedy the indignities associated with" prolonged detention, "the writ's flexibility allows the Court to restore Petitioner to the position he would have occupied had DHS adhered to the law." *Polat v. Soto*, No. 2:25-cv-16893, 2025 WL 3718768, at *4 (D.N.J. Dec. 17, 2025). Indeed, release is the traditional habeas remedy. *M.M. v. Rokosky*, No. 25-18547, 2025 WL 3687941, at *2 (D.N.J. Dec. 19, 2025) (citing *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005)); *Mateo v. Noem*, No. 25-151, 2025 WL 3499062, at *7 (W.D. Ky. Dec. 5, 2025) (citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020)).

53. Therefore, courts around the country have remedied due process violations relating to immigration detention by ordering release. *See, e.g.*, *Kanaut v. Rose*, No. 25-6869, 2026 WL 36690, at *4 (E.D. Pa. Jan. 6, 2026) (ordering release to remedy a procedural due process violation); *De Leon Hernandez v. Bondi*, No. 25-cv-1384, 2025 WL 3217037, at *2-3 (W.D. La. Nov. 18, 2025) (ordering release to remedy a substantive and procedural due process violation); *Jimenez*, 317 F. Supp. at 636 (ordering release as a remedy for ICE's violation of its regulations and of the procedural due process rights); *accord Rodriguez Acurio v. Almodovar*, No. 25-6065, 2025 WL 3314420, at *32 (E.D.N.Y. Nov. 28, 2025); *Singh v. Lewis*, No. 4:25-133, 2025 WL 3298080, at *6 (W.D. Ky. Nov. 26, 2025); *Barco Mercado v. Francis*, No. 25-6582, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025);

Contreras Maldonado v. Cabezas, No. 25-13004, 2025 WL 2985256, at *5 (D.N.J. Oct. 23, 2025); *Rivera Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496, at *10 (D.N.J. Sept. 26, 2025). Release is a particularly appropriate remedy where, as here, a violation occurred at or near the outset of the detention. *See Cabrera Maldonado v. Cabezas*, 2025 WL 2985256, at *6 (D.N.J. Oct. 23, 2025) (holding that a subsequent bond hearing did not cure a prior due process violation).

54. Alternatively, the Court should conduct a bond hearing in the first instance. *See Centeno-Martinez v. Jamison,* No. CV 25-3593, 2025 WL 3157711, at *3 (E.D. Pa. Nov. 12, 2025); *Thaxter v. Sabol*, No. 14-02413, 2016 WL 3077351, at *3 (M.D. Pa. June 1, 2016); *Leslie v. Holder*, 865 F. Supp.2d 627, 638 (M.D.PA 2012); *see also Singh v. Lewis*, No. 4:25-CV-133-DJH, 2025 WL 3298080, at * (W.D. Ky. Nov. 26, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *13 (W.D. Tex. Sept. 22, 2025); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 406 (E.D.N.Y. Jun. 25, 2025). This Court's power to hold its own bond hearing "is a legal and logical concomitant of the court's habeas corpus jurisdiction." *Leslie*, 865 F. Supp.2d at 634. "[I]t would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure." *Jimenez*, 317 F. Supp. 3d at 657.

55. In *Thaxter*, the District Court noted that the "remedy of having the Court review whether Petitioner is entitled to release, also serves the historic purpose

of the writ, namely, to relieve detention by executive authorities without judicial trial." *Id.* (cleaned up). This Court is a better venue for an initial bond hearing than an immigration court. As immigration court dockets have increased, the capacity of immigration judges to conduct constitutionally-mandated bond hearings has decreased. *See L.G.M.*, 788 F. Supp. 3d at 407 (proceeding in the first instance given Immigration Judge docket constraints). Additionally, immigration judges typically do not hold bond hearings in which the government bears the burden of proof. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (placing the burden on the noncitizen in a typical bond hearing). As a result, district courts have had to repeatedly review and repeat habeas bond hearings that were not constitutionally adequate. *L.G.M.*, 788 F. Supp. 3d at 407; *see also Saltos-Chiguano v. Lowe*, No. 1:24-cv-2210, 2025 WL 3187161, at *4 (M.D. Pa. Nov. 14, 2025) (holding a bond hearing after two inadequate IJ bond hearings); *Luciano-Jimenez v. Doll*, 543 F. Supp.3d 69, 73 (M.D. Pa. 2021) (granting a motion to enforce and ordering a new bond hearing conducted by the district court); *Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728 at *4 (M.D. Pa. Aug. 6, 2020) (same); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 243 (ordering release after an inadequate IJ bond hearing); *Lopez v. Doll*, No. 1:18-cv-1592, 2018 WL 6696611, at *3 (M.D. Pa. Dec. 20, 2018) (noting that the Court held its own bond hearing because the immigration judge's hearing was legally insufficient); *Wilkins v. Doll*, No. 1:17-cv-2354, 2018 WL

3388032 at *3 (M.D. Pa. July 12, 2018) (ordering its own bond hearing because the IJ's hearing was not sufficiently individualized); *Guerrero Sanchez v. Sabol*, No. 1:15-cv-2423, 2016 WL 7426129 at *9 (M.D. Pa. Dec. 23, 2016) (same); *Walker v. Lowe*, No. 15-0887, 2016 WL 4077269, at *1 (M.D. Pa. Aug. 1, 2016) (holding its own bond hearing because the petitioner was unable to pay the bond amount set by an immigration judge).

56. Finally, there are currently good reasons to question the impartiality of the immigration courts. Experienced immigration judges are being fired or choose to resign and are being replaced with under-qualified candidates.[4] "[N]o court can be fair when judges are operating in what they themselves describe as a 'climate of fear' and an 'all-out attack on the immigration court.'"[5] Instead of entrusting a petitioner's liberty to an agency whose independence is compromised, federal courts

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[4] *See Fairness to Freedom Campaign Warns of "Authoritarian Playbook" as Trump Administration Militarizes Immigration Courts, Vera Institute of Justice* (Sep. 4, 2025), available at https://www.vera.org/newsroom/fairness-to-freedom-campaign-warns-of-authoritarian-playbook-as-trump-administration-militarizes-immigration-courts; X. Bustillo, S. Simon, *The Trump administration fired nearly 100 immigration judges in 2025. What's next?*, NPR WNYC (Jan. 10, 2026), available at https://www.npr.org/2026/01/10/nx-s1-5672386/the-trump-administration-fired-nearly-100-immigration-judges-in-2025-whats-next

[5] R. A. Reyes, *The Trump administration's assault on immigration courts and judges*, The Hill (Dec. 11, 2025), available at https://thehill.com/opinion/immigration/5641257-deportation-judges-immigration-court-reform/

can exercise their habeas jurisdiction to order immediate release or hold their own bond hearing.

FIRST CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Procedural Due Process: Unreasonably Prolonged Detention Without a Bond Hearing

57. Petitioner re-alleges and incorporates by reference the above paragraphs.

58. As discussed above, as an "arriving alien" Mr. Kim is detained without the opportunity for a bond hearing pursuant to § 1225(b)(1). He remains detained pre-final order of removal, rather than post-final order of removal pursuant to 8 U.S.C. § 1231 during the pendency of his petition for review because he has been granted a stay of removal. *Leslie v. Att'y Gen. of the U.S.*, 678 F.3d 265, 270 (3d Cir. 2012).

59. 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. The Third Circuit's decision in *German Santos* lists four factors for courts to consider when determining whether detention during removal proceedings without procedural protections has become unconstitutionally prolonged. *German Santos*, 965 F.3d at 211; *see also A.L.*, 761 F.Supp.3d at 826.

60. The first *German Santos* factor, the length of detention, favors a bond hearing. *See* 965 F.3d at 211-12. Mr. Kim has been detained for over twenty months.

Courts have repeatedly recognized that detention without a bond hearing becomes constitutionally-suspect after six months. *See Demore*, 538 U.S. at 529-30 (noting, in upholding § 1226(c) against a facial challenge, that detention usually lasts "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months"); *Chavez-Alvarez*, 783 F.3d at 476 (detention presumptively unreasonable if it lasts six months to a year); *Guerrero-Sanchez*, 905 F.3d at 226 (holding that individuals detained pursuant to 8 U.S.C. § 1231(a)(6) are "generally entitled to a bond hearing after six months"). Mr. Kim now has been detained for much longer period of time–a factor that strongly weighs in his favor. *See German Santos,* 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 475-78) ("The most important factor is the duration of detention"); *see also Maksaddzhon A.*, 2025 WL 3648710, at *3 (holding fifteen months' detention under § 1225(b) unreasonable); *A.L.*, 761 F. Supp. at 826 (same, for ten months); *Perez*, 2018 WL 3991497, at *5 (same); *C.B. v. Oddo*, No. 3:25-CV-00263, 2025 WL 2977870, at *5 (W.D. Pa. Oct. 22, 2025) (same); *Frank B. v. Green*, Civ. No. 19-346, 2020 WL 1673026, at *4 (D.N.J. Apr. 6, 2020) (finding eleven month detention unreasonable); *Tuser E.*, 370 F.Supp.3d at 442 (finding nearly twenty month detention unreasonable).

61. Second, Petitioner's "removal proceedings are unlikely to end soon," which "suggests that continued detention without a bond hearing is unreasonable." *German Santos*, 965 F.3d at 211. Petitioner's detention is likely to continue for many more months pending adjudication of his appeal before the U.S. Circuit Court of Appeals. Mr. Kim's opening brief is due on January 29, 2026. After that, the Attorney General will have thirty days to respond and Mr. Kim can then reply within twenty-one days. Fed. R. App. P. 31(a). Moreover, the matter is not certain to result in a final decision. The court may send the case for further consideration to the agency. *See, e.g.*, *Cabrera v. Sessions*, 890 F.3d 153, 164 (5th Cir. 2018). Thus, Mr. Kim's detention is likely to continue for significant time during the pendency of his petition for review before the federal court and any further proceedings.

62. Third, Mr. Kim did not engage in dilatory tactics before the agncy and raised only good-faith challenges to his removal. *See German Santos*, 965 F.3d at 211. Courts may consider whether either party "made careless or bad-faith errors in the proceedings that caused unnecessary delay," but must be careful not to hold "good-faith challenges to removal" against a petitioner, "even if his appeals or applications for relief have drawn out the proceedings." *German Santos*, 965 F.3d at 211 (internal quotation marks omitted); *see also Leslie*, 678 F.3d at 271 (cautioning against "effectively punish[ing] [petitioners] for pursuing applicable legal remedies"). Here, Mr. Kim was detained for months while his asylum grant was

appealed, twice, by DHS. He continues to be detained while he is challenging the BIA's final ruling vacating that grant. Just like DHS, Mr. Kim is utilizing his legal avenues to defend his case. As such, neither party engaged in actions causing unreasonable delays. However, as the Third Circuit noted, detention "can still grow unreasonable even if the Government handles the removal proceedings reasonably." *German Santos*, 965 F.3d at 211.

63. Lastly, the conditions of Mr. Kim's confinement, particularly as the duration of detention increases, weigh in favor of finding his detention to be unreasonable. *See Chavez-Alvarez*, 783 F.3d at 475-77. Mr. Kim has now spent over twenty months in detention with limited means of communication and no ability to work and support his family. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851–52 (2d Cir. 2020) (concluding that a detainee experienced substantial deprivation of liberty in immigration custody because he "could not maintain employment or see his family or friends or others outside normal visiting hours" and "had no access to the internet or email and limited access to the telephone").

64. The reasonableness of detention is "highly fact-specific" and must be analyzed based on the totality of circumstances. *German Santos*, 965 F.3d at 210. Considering the length of Mr. Kim's detention, the likelihood that proceedings in his case will continue for several months, the absence of bad-faith actions on his

side, and the conditions of his confinement, Mr. Kim's further detention without a bond hearing is unconstitutional. *See German Santos*, 965 F.3d at 211.

65. As discussed above, this Court may remedy this constitutional violation by ordering release or, in the alternative, holding its own bond hearing. *See Centeno-Martinez*, 2025 WL 3157711, at *3 (E.D. Pa. Nov. 12, 2025). In Mr. Kim's case, it is particular appropriate for this Court to hold the hearing in the first instance because there is no indication that the immigration judge will be any more familiar with Mr. Kim's case. Mr. Kim's removal proceedings took place in Jena, LA. However, he is now detained in Elizabeth, NJ. As per regulations, his bond hearing would be handled by an immigration judge in Elizabeth, NJ, by a judge who has no familiarity with Mr. Kim's matter. 8 C.F.R. § 1003.19(c). Therefore, this Court should exercise its habeas jurisdiction over any bond hearing in the first instance.

SECOND CLAIM FOR RELIEF
Violation of the Administrative Procedure Act and Procedural Due Process: Failure to Follow Agency Policies Implementing Statutory Provisions

66. Petitioner re-alleges and incorporates by reference the above paragraphs.

67. ICE has failed to follow ICE's national policy with respect to Petitioner's release on parole under 8 U.S.C. § 1182(d)(5)(A), in violation of *Accardi*. According to the Credible Fear Policy, an arriving alien with a positive credible fear finding, like Mr. Kim, *should* be released from detention on parole if

he establishes his identity, poses neither a flight risk nor a danger to the community, and no additional factors weigh against his release. *See* Paragraph 8.3, ICE, Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009). The Asylum Policy additionally favors release of people granted asylum. ICE Directive No. 16004.1. Here, ICE was in possession of Mr. Kim's passport, and confirmed that he had no criminal history that would make him a danger to the community. Exh. B. Moreover, Mr. Kim supplied them with the contact where he was planning to reside. *Id.* However, ICE refused to release him even after he passed his credible fear interview.

68. ICE's failure to release Mr. Kim in accordance with the Credible Fear and Asylum Policies prejudiced him because those policies implicated his 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 [non-citizen]" and the violation affected "interests of the [non-citizen] which were protected by the regulation") (internal quotations omitted).

69. Under the *Accardi* doctrine, ICE's departure from its own policies is arbitrary, capricious, and contrary to law under the APA and violates Mr. Kim's due process rights.

70. As discussed above, since Mr. Kim should have been released years ago, the Court should remedy this violation by ordering his release now. *See Rivas Rodriguez v. Rokosky*, No. 25-17419, 2025 WL 3485628, at *3 (D.N.J. Dec. 3, 2025) (declining to "allow Respondents to transform an unlawful detention in a lawful one"); *Jimenez*, 317 F. Supp. at 636.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Enjoin Respondents from moving the Petitioner from the jurisdiction of the Newark Field Office while habeas proceedings are pending;

3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

4) Issue a Writ of Habeas Corpus and order Petitioner's release. In the alternative, conduct an individualized bond hearing at which, in compliance with *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;

5) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

6) Grant such further relief as the Court deems just and proper.

Dated: January 14, 2026

Respectfully submitted,

/s/Rebecca Hufstader
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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 one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. 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: January 14, 2026

Respectfully submitted,

/s/ Rebecca Hufstader
Rebecca Hufstader
Pro Bono Counsel for Petitioner