**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MINNESOTA**

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| **PETITIONER**,  Petitioner,  v.  **William BARR**, U.S. Attorney General;  **Chad WOLF**, Acting Secretary, Department of Homeland Security;  **Matthew ALBENCE**, Acting Director, Immigration and Customs Enforcement;  **Peter BERG**, Director, St. Paul Field Office, Immigration and Customs Enforcement; and  **Joel BROTT**, Sheriff, Sherburne County,  Respondents. | Civil Action No: 20-cv-  **PETITION FOR**  **WRIT OF HABEAS CORPUS** |

**INTRODUCTION**

1. Petitioner RESPONDENT (“Mr. RESPONDENT”) seeks a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful detention by the Department of Homeland Security (“DHS”) in violation of the Immigration and Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment to the United States Constitution.
2. The Department of Homeland Security (“DHS”) and its agents with Immigration and Customs Enforcement (“ICE”) arrested Mr. RESPONDENT on or about January 30, 2019, and have incarcerated him since that date in a county jail for a period that has now exceeded 450 days without opportunity for bond and with no end in sight to his detention. *See* Ex. A, I-213 Record of Deportable/Inadmissible Alien, at 4. ICE says the mandatory detention statute at 8 U.S.C. § 1226(c) authorizes its agents to jail Mr. RESPONDENT for the entire duration of his ongoing administrative removal proceedings because Mr. RESPONDENT poses a danger to the community due to his criminal history. ICE is wrong. The federal government’s application of 8 U.S.C. § 1226(c) to Mr. RESPONDENT violates his fundamental right to liberty under the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
3. Mr. RESPONDENT has been in the United States since October 9, 2012 when he entered the country lawfully as a refugee. *See* Ex. B, IJ’s February 5, 2020 Order, at 1. On May 16, 2018 ICE placed an ICE detainer (I-247) on Mr. RESPONDENT with the Hennepin County Jail. *See* Ex. A, Record of Deportable at 2. On October 15, 2018, Hennepin County transferred Mr. RESPONDENT to MCF St. Cloud after sentencing on his 5th Degree Assault conviction, and the ICE detainer transferred with Mr. RESPONDENT. *Id.* at 2. On January 30, 2019, ICE took custody of Mr. RESPONDENT at MCF St. Cloud after MCF St. Cloud notified ICE that Mr. RESPONDENT was set to be released from their custody. *Id.* On January 31, 2019, the Department of Homeland Security (DHS) issued Mr. RESPONDENT a Notice to Appear (NTA) alleging Mr. RESPONDENT was removable under: (1) INA 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), because his conviction for 5th Degree assault is an aggravated felony as defined in INA § 101(a)(43)(F), 8 U.S.C. § 1101(a)(43)(F), and, (2) INA § 237(a)(2)(A)(i), 8 U.S.C. § 1227(a)(2)(A)(i), because his conviction for Terroristic Threats is a Crime Involving Moral Turpitude.[[1]](#footnote-1) *See* Ex. D, Notice of Appeal at 3. After subsequent appeals and procedures as more thoroughly described herein, Mr. RESPONDENT was ultimately granted protection under the Convention Against Torture (CAT) on February 5, 2020, because of his mental illness and the treatment he would inevitably face if returned to Somalia. *See* Ex. B at 5 – 10.
4. Mr. RESPONDENT’s continued and prolonged detention – now exceeding 450 days (and it will be at least several more months before the BIA decides DHS’s second appeal) – violates the Due Process Clause of the Fifth Amendment, especially considering he has already won CAT relief from Somalia because of his mental health. ICE and DHS have far exceeded the scope of their limited authority to deprive Mr. RESPONDENT of his physical liberty without affording him the most basic due process protections—an individualized bond hearing before an impartial arbiter. Accordingly, Mr. RESPONDENT brings this Petition for Writ of Habeas Corpus to challenge his continued detention on statutory and constitutional grounds.

**JURISDICTION AND VENUE**

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 (federal question); 1361 (federal employee mandamus action), § 1651 (All Writs Act), and §2241 (habeas corpus); U.S. Const. art. I, §9, cl. 2 (Suspension Clause); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act).
2. Because Mr. RESPONDENT seeks to challenge his custody as a violation of the Constitution, laws, or treaties of the United States, jurisdiction is proper in this Court. Federal district courts have jurisdiction to hear habeas corpus claims by individuals challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019); *Moallin v. Cangemi*, 427 F. Supp. 2d 908, 918-21 (D. Minn. 2006).
3. Venue is proper in this District under 28 U.S.C. § 1391 because at least one of the Respondents is a resident of this District, Mr. RESPONDENT is detained within this District at the Sherburne County Jail in Elk River, Minnesota, and a substantial part of the events giving rise to the claims in this action took place in this District. 28 U.S.C. §§ 1391(b), (e)(1); 2241(d).

**PARTIES**

1. Petitioner Mr. RESPONDENT is a citizen of Ethiopia. Mr. RESPONDENT has been in the United States since October 9, 2012 as a refugee. *See* Ex. A at 2. On April 24, 2014, Mr. RESPONDENT retroactively adjusted his status to Legal Permanent Resident. *Id.* Mr. RESPONDENT’s administrative removal proceedings remain ongoing as a result of DHS’s appeal of the relief granted to Mr. RESPONDENT under CAT. *See* Ex. D, DHS Notice of Appeal. He is currently in the physical and legal custody of Respondents at the Sherburne County Jail at 13880 Business Center Drive NW, Elk River, Minnesota, 55330.
2. Respondent William Barr is the Attorney General of the United States and the head of the Department of Justice, which encompasses Immigration Judges and the Board of Immigration Appeals as a subunit—the Executive Office for Immigration Review. Attorney General Barr shares responsibility for the administration and enforcement of the immigration laws, including the statutes authorizing detention within the INA, along with Respondent Chad Wolf. Attorney General Barr is a legal custodian of Mr. RESPONDENT and is named in his official capacity. His official address is 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.
3. Respondent Chad Wolf is the Acting Secretary of DHS. Acting Secretary Wolf is responsible for the administration and enforcement of the immigration laws, 8 U.S.C. § 1103(a), including pursuing Mr. RESPONDENT’s detention and removal. Acting Secretary Wolf is a legal custodian of Mr. RESPONDENT and is named in his official capacity. His official address is 245 Murray Lane, SW, Washington, D.C. 20528.
4. Respondent Matthew Albence is the Acting Director of ICE, a subunit of DHS. Acting Director Albence is the head of the federal agency detaining Mr. RESPONDENT and has supervisory authority over ICE personnel in Minnesota. Acting Director Albence is a legal custodian of Mr. RESPONDENT and is named in his official capacity. His official address is 500 12th St., SW, Washington, D.C. 20024.
5. Respondent Peter Berg is the Field Office Director for the St. Paul Field Office for ICE within DHS. Field Office Director Berg has supervisory authority over the ICE agents responsible for detaining Mr. RESPONDENT. Field Office Director Berg is a legal custodian of Mr. RESPONDENT and is named in his official capacity. The address for the St. Paul Field Office is 1 Federal Drive, Suite 1601, Fort Snelling, MN 55111.
6. Respondent Joel Brott is the Sherburne County Sheriff. Mr. RESPONDENT is detained at the Sherburne County Jail pursuant to its contract with ICE. Sheriff Brott is a legal custodian of Mr. RESPONDENT and is named in his official capacity. The address for the Sherburne County Jail is 13880 Business Center Drive NW, Elk River, Minnesota, 55330.

**EXHAUSTION**

1. ICE asserts authority to jail Mr. RESPONDENT pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c).
2. No statutory requirement of exhaustion applies to Mr. RESPONDENT’s challenge to the lawfulness of his detention. *See,* *e.g.*, *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) (“There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention.”).
3. To the extent that prudential consideration may require exhaustion in some circumstances, Mr. RESPONDENT has exhausted all effective administrative remedies available to him. Prudential exhaustion is not required when to do so would be futile or “the administrative body . . . has . . . predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006). Here, no remedies exist to challenge Mr. RESPONDENT’s detention as the government will continue to assert detention authority under 8 U.S.C. § 1226(c). *See,* *e.g.*, *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 712 (D. Md. 2016) (“In light of the Government’s consistent position upholding categorical detention without any meaningful individualized bail review, exhaustion here would be futile.”); *Sengkeo v. Horgan*, 670 F. Supp. 2d 116, 121-23 (D. Mass. 2009) (collecting cases and concluding that “the BIA has clearly and repeatedly upheld the denial of a bond hearing under the view that § 1226(c) mandates detention without bond”).
4. Prudential exhaustion is also not required in cases where “a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim.” *McCarthy*, 503 U.S. at 147. Every day that Mr. RESPONDENT is unlawfully detained causes him and his family irreparable harm. *Jarpa*, 211 F. Supp. 3d at 711 (“Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion.”); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that “a loss of liberty” is “perhaps the best example of irreparable harm”); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018), *rev’d on other grounds*, 946 F.3d 975 (6th Cir. 2020) (holding that “detention has inflicted grave” and “irreparable harm” and describing the impact of prolonged detention on individuals and their families).
5. Prudential exhaustion is additionally not required in cases where the agency “lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute.” *McCarthy*, 503 U.S. at 147-48. Immigration agencies have no jurisdiction over constitutional challenges of the kind Mr. RESPONDENT raises here. *See,* *e.g.*, *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *Matter of Akram*, 25 I&N Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 I&N Dec. 343, 345 (BIA 1982).
6. Because requiring Mr. RESPONDENT to exhaust administrative remedies would be futile and would cause him irreparable harm, and because the immigration agencies lack jurisdiction over Mr. RESPONDENT’s constitutional claims, this Court should not require exhaustion as a prudential matter.

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

1. Mr. RESPONDENT has been living in the United States as a refugee since October 9, 2012. *See* Ex. A, Record of Deportable at 2. On April 24, 2014, he adjusted his status to that of a lawful permanent resident, retroactive to his date of entry. *Id.*
2. After entering the United States, Mr. RESPONDENT settled in Minnesota. Thereafter he was arrested and convicted of several criminal charges and has been in and out of various counties’ custody. *See* Ex. A, Record of Deportable at 3. Relevant to his immigration proceedings are two of Mr. RESPONDENT’s recent convictions. On March 27, 2017, Mr. RESPONDENT was convicted of “terroristic threats-reckless disregard” in violation of Minnesota State Statute 609.713.1, and on October 15, 2018 he was convicted of felony assault – 5th degree, in violation of Minnesota Statute 609.224.4(b). He was taken into custody at Hennepin County Jail. *See* Ex. C, Notice to Appear at 3.
3. On January 31, 2019, DHS issued a Notice to Appear (NTA), Form I-862, charging Mr. RESPONDENT with removability pursuant to INA § 237(a)(2)(A)(iii), 8 U.S.C. § 1227 (a)(2)(A)(iii), and INA § 237(a)(2)(A)(i), 8 U.S.C. § 1227(a)(2)(A)(i). *See* Ex. C at 3. Mr. RESPONDENT made applications for asylum under INA § 208, 8 U.S.C. § 1158, Withholding of Removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture. *See* Ex. B at 1-2. On March 20, 2019, Immigration Judge (“IJ”) Kristin W. Olmanson sustained the charges of removability. *Id.* Subsequent to IJ Olmanson’s decision on removability, Mr. RESPONDENT appealed his 2018 conviction for assault in the fifth degree, which served as the basis for the aggravated felony charge. *Id.* As a result, the Immigration Court reversed IJ Olmanson’s ruling with respect to removability under INA §237(a)(2)(A)(iii). *Id*. However, the Court upheld IJ Olmanson’s decision with regard to removability under INA § 237(a)(2)(A)(i) based on Mr. RESPONDENT’s 2017 conviction for terroristic threats. *Id.*
4. In an oral decision on May 20, 2019, the Court granted Mr. RESPONDENT’s application for asylum finding that he had a well-founded fear of persecution if returned to Somalia because he had a mental illness and the propensity for erratic tendencies. *See* Ex. B at 2. DHS filed a timely appeal to the Board of Immigration Appeals (BIA). While the appeal was pending, Mr. RESPONDENT’s criminal appeal was dismissed, making his assault conviction final. *Id.* at 2. DHS and Mr. RESPONDENT jointly requested the BIA remand the case to the IJ because of these new factual and legal issues. The BIA ordered remand on October 11, 2019. *Id.* While the new conviction did not affect Mr. RESPONDENT’s removability (he had already been found removable under another ground), the judge had previously found a conviction under this statute to be an aggravated felony, one considered a “particularly serious crime” and thus a bar to asylum. *Id.* at 3.
5. On remand, the IJ had to consider whether Mr. RESPONDENT qualified for other relief including Withholding of Removal and/or protection under CAT. *See* 8 U.S.C. 1158(b)(2)(B)(i). *Id*. at 4-5.After arguments and briefing, on February 5, 2020, IJ Sarah B. Mazzie found Mr. RESPONDENT’s criminal conviction constituted a particularly serious crime and a bar for Withholding of Removal, but fortunately granted Mr. RESPONDENT relief under CAT. *See* Ex. B, February 5, 2020 Order.
6. On February 27, 2020 DHS appealed IJ Mazzie’s February 5, 2020 Order. *See* Ex. D. The parties are awaiting a briefing schedule from the BIA. Mr. RESPONDENT is prepared to aggressively defend the appeal and will generally argue that IJ Mazzie was correct in granting him protection under CAT.
7. As of May 4, 2020, Mr. RESPONDENT has been detained by ICE for 460 days – over 14 months – and it will be at least several more months before the BIA decides DHS’s second appeal. The only reason Mr. RESPONDENT remains in custody is not because he is a danger[[2]](#footnote-2) or a flight risk, but because DHS chose to appeal his second grant of relief. He has further not had a bond hearing and his request for a custody redetermination by the IJ was withdrawn on March 20, 2019 because he was not eligible for bond.
8. When released Mr. RESPONDENT has access through various public services organizations to a team of medical providers and social workers to keep him on all medications, continue with his treatment, and provide the support he needs to move in a positive direction with his life.
9. Mr. RESPONDENT is also concerned about the conditions at Sherburne County Jail as they relate to the current COVID-19 pandemic. Despite concerted efforts by the state to limit the spread of COVID-19 in Minnesota, the virus remains a serious threat to public health. As of May 6, 2020, there are 7,851 confirmed cases of COVID-19 in Minnesota and 455 COVID-19-related deaths. Sherburne County, in which Mr. RESPONDENT is detained, has reported 200 confirmed cases. Though there are no reported positive cases of COVID-19 yet in any immigration detention facility in Minnesota, to our knowledge, only one COVID-19 test has been performed on any immigration detainee in Minnesota—and at a different facility—rendering that statistic meaningless. COVID-19 is spreading rapidly in detention facilities throughout the country. As of May 6, 2020, ICE has reported 674 confirmed COVID-19 cases among detainees in 35 ICE detention facilities nationwide. Further, ICE reports 39 confirmed cases of COVID-19 among ICE employees working in ICE detention facilities and 102 among ICE employees not assigned to detention facilities. In all, detainees or ICE staff have tested positive at 48 detention facilities which house approximately 60% of ICE’s detainees nationally. As of May 5, 2020, the Federal Bureau of Prisons reports 2,066 federal inmates and 359 staff members who have confirmed positive test results for COVID-19 nationwide. The numbers will continue to grow exponentially in county jails and detention centers where detainees are held in such close quarters.
10. In Sherburne County Jail, where Mr. RESPONDENT is detained, proper social distancing is impossible and the ability to practice the hygiene necessary to limit exposure to COVID-19 is very difficult. It is not in dispute that conditions in jails and detention facilities are of particular concern and present a significant threat to the public health. *See* Ex. E, L. Ogawa Declaration. There is also growing medical concern that mitigation efforts to combat COVID-19 in detention centers could have serious psychological consequences to detainees with psychiatric concerns or diagnoses. *See* Ex. F at 2 (*Expert Dec. Submitted by Experts in Psychology & Social Work on the Known Impact of Adverse Experiences, Extreme Social Isolation & Public Health Pandemics*, Denver, CO Mar. 30, 2020.)

**LEGAL FRAMEWORK**

**RESPONDENTS’ MANDATORY DETENTION OF MR. RESPONDENT UNDER 8 U.S.C. § 1226(C) VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION.**

1. Mr. RESPONDENT’s detention without a bond hearing violates the Fifth Amendment’s guarantee that “[n]o person shall be…deprived of life, liberty, or property, without due process of law.”[[3]](#footnote-3)
2. It is “well-established” that the Fifth Amendment’s Due Process Clause protects the rights of noncitizens like Mr. RESPONDENT to due process of law during removal proceedings. *Demore*, 538 U.S. at 523 (internal citations omitted). “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) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Due Process requires that detention “bear[] a reasonable relation to the purpose for which the individual [was] committed.” *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). The only legitimate justifications for civil detention in an immigration case like Mr. RESPONDENT’s are mitigating danger to the community or ensuring the noncitizen’s presence for a removal hearing. *Demore*, 538 U.S. at 528.
3. At this point, ICE has detained Mr. RESPONDENT for an unreasonably prolonged period of more than fourteen months without any bond hearing. This is a severe deprivation of liberty, and Mr. RESPONDENT has no procedural protections available outside this Court. Moreover, it is highly unlikely that Mr. RESPONDENT’s immigration proceedings will result in his removal given the IJ Mazzie’s well-founded order granting him relief under Article III of the Convention Against Torture. It is therefore manifestly unreasonable to impose an irrefutable presumption of flight risk and danger that will keep Mr. RESPONDENT detained for months, for a year, or for even longer, while his immigration proceedings are on appeal.

**Mr. RESPONDENT’s Prolonged Detention Without Bond Is Unconstitutional**

1. Over a year of mandatory civil detention is extreme. As detention grows in length, the justification for the increasingly severe deprivation of individual liberty must also grow stronger. *See Kansas v. Hendricks*, 521 U.S. 346, 363–64 (1997); *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 474 (3d Cir. 2015), *abrogated in part and on other grounds by* *Jennings*, 138 S. Ct. at 847 (citing *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232, 234 (3d Cir. 2011)). Moreover, as Justice Kennedy acknowledged in *Demore*, the ultimate purpose of immigration detention here—to effect removal upon a final order—is “premised upon the alien’s deportability.” 538 U.S. at 531 (Kennedy, J., concurring).
2. The Supreme Court “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.”  *Addington v. Texas*, 441 U.S. 418, 425 (1979); *United States v. Salerno*, 481 U.S. 739 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 80–83 (1992). Due process therefore will require “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).
3. Mr. RESPONDENT’s mandatory detention for over fourteen months is unreasonable. The Supreme Court held in *Demore* that *brief* mandatory detention under § 1226(c) without a bond hearing did not violate due process, and this holding was specifically premised on the short period for which the noncitizen had been detained as well as—now discredited—evidence that, at the time, § 1226(c) detention was neither indefinite nor prolonged. 538 U.S. at 529–31 (relying on evidence provided by the Government that, at the time, removal proceedings were completed in an average time of forty-seven days and a median time of thirty days in 85% of cases and that the remaining 15% of cases, in which there was an appeal, were completed in an average of four months).[[4]](#footnote-4)
4. As the crucial fifth vote in *Demore*, Justice Kennedy acknowledged in his concurrence that “if continued detention bec[omes] unreasonable or unjustified,” a noncitizen could be “entitled to an individualized determination as to his risk of flight and dangerousness.” 538 U.S. at 532 (Kennedy, J., concurring); *see also id.* at 532–33 (“Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.”); Since *Demore*, the “time that each immigrant spends in detention has risen substantially.” *Diop*, 656 F.3d at 234 (explaining that mandatory detention becomes more constitutionally “suspect” as it extends beyond the brief detention periods considered by the Supreme Court in *Demore*).
5. The Eighth Circuit has not yet ruled on the constitutionality of prolonged detention under § 1226(c). The Third Circuit in *Diop* held as a constitutional matter that due process prohibits mandatory detention for an unreasonable period of time. *Diop*, 656 F.3d at 232 (“The constitutionality of [detention without a bond hearing] is *a function of the length of the detention*. At a certain point, continued detention becomes unreasonable, and the Executive Branch’s implementation of § 1226(c) becomes *unconstitutional* unless the Government has justified its actions at a hearing inquiring into whether continued detention is consistent with the law’s purposes of preventing flight and dangers to the community.”) (emphasis added).
6. Moreover, prior to the Supreme Court’s ruling in *Jennings*, a number of circuit courts applying the canon of constitutional avoidance had held that serious Fifth Amendment due process concerns required the statutory text of 1226(c) to be interpreted as including an implicit reasonableness limitation on the duration of detention during removal proceedings. *See, e.g.*, *Reid v. Donelan,* 819 F.3d 486 (1st Cir. 2016). *Jennings* abrogated the statutory holdings of such cases because the Supreme Court determined, as a predicate matter, that the text of § 1226(c) was not properly subject to competing interpretations that would permit application of the canon of constitutional avoidance. 138 S. Ct. 830, 842 (2018). However, while no longer good law for this distinct reason following *Jennings*, the separate substantive analysis of due process these decisions provided remains persuasive.
7. Prior to *Jennings*, a number of decisions of this Court—on purely constitutional grounds—had already held that due process places limits on mandatory § 1226(c) detention. *See e.g.*, *Moallin*, 427 F. Supp. 2d at 926 (D. Minn. 2006) (applying principles of *Zadvydas* to § 1226(c) detention); *Bah v. Cangemi*, 489 F. Supp. 2d 905, 920 (D. Minn. 2007) (“This Court believes that allowing unlimited pre-removal-period detention under § 1226 would be inconsistent with the reasoning underlying *Zadvydas*.”); *Nhean v. Brott*, No. 17-cv-28 (PAM/FLN), 2017 WL 5054390 (D. Minn. Aug. 7, 2017) (finding that the alien may not be detained indefinitely after having received a waiver of inadmissibility and adjustment of status); *Phan v. Brott*, No. 17-cv-432 (DWF/HB), 2017 WL 4460752 (D. Minn. Oct. 5, 2017) (granting petition for habeas corpus for petitioner detained pursuant to § 1226(c)); *Tindi v. Sec’y, Dep’t of Homeland Sec.*, 363 F. Supp. 3d 971 (D. Minn. 2017) (finding 14 months of § 1226(c) detention to be constitutionally unreasonable, where petitioner appealed to the circuit court and the circuit court stayed removal pending the outcome of *Dimaya*), *R&R adopted*, No. 17-cv-3663 (DSD/DTS), 2018 WL 704314 (D. Minn. Feb. 5, 2018); *Mohamed v. Sec’y, Dep’t of Homeland Sec.*, 376 F. Supp. 3d 950 (D. Minn. 2018) (indefinite detention impermissible and requires the Court to adopt a “fact-based individualized standard to determine the constitutionality of an alien’s continued pre-removal detention”). *Cf. Davies v. Tritten*, 17-cv-3710 (SRN/SER), 2017 WL 4277145, at \*3-4 (D. Minn. Sept. 25, 2017) (stating that “[a]ll circuit courts of appeal who have addressed the question have read *Demore* and *Zadvydas* to impose a reasonableness requirement on detention before a final removal order,” but denying petition because detention was extended to eight months by an “unusual mistake,” a missing transcript).
8. When assessing as-applied challenges to prolonged § 1226(c) detention similar to Mr. RESPONDENT’s petition here, this Court has used a “fact-based individualized standard to determine the constitutionality of an alien’s continued pre-removal detention.” *Mohamed*, 376 F. Supp. 3d at 957 (citing *Tindi*,2018 WL 704314, at \*3). Relevant factors this Court’s decisions have looked to include “(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays of the removal proceedings caused by the detainee; (5) delays of removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.” *Muse v. Sessions*, 409 F. Supp.3d 707 (D. Minn. 2018) (citing and applying factors articulated in *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016)) (citation omitted).
9. After *Jennings*, this Court has continued to use the *Muse* factors outlined in *Muse*—referred to here and in some decisions as the “*Muse* factors,” a modified version of the *Reid* factors—when assessing as-applied due process challenges to § 1226(c). *See, e.g.*, *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853 (D. Minn. 2019); *Liban M. J. v. Sec’y, Dep’t of Homeland Sec.*, 367 F. Supp. 3d 959 (D. Minn. 2019); *Bolus A. D. v. Sec’y of Homeland Sec.*, 376 F. Supp. 3d 959 (D. Minn. 2019); *Deng Chol A. v. Barr*, — F. Supp. 3d —, No. 19-cv-3143 (DSD/BRT), 2020 WL 1969393 (D. Minn. Apr. 22, 2020). This Court has gone so far as to hold that “the government’s position was not substantially justified” and did not have a “reasonable basis in law and fact” under the Equal Access to Justice Act, 28 U.S.C. § 2412. *Muse v. Barr* (“*Muse II*”), No. 18-cv-54 (PJS/LIB), 2019 WL 4254676 at \*3-4 (D. Minn. Sept. 9, 2019) (awarding attorneys’ fees and finding that this “position has not been accepted by a single court, and it cannot be squared with *Jennings* and *Zadvydas*”). In Mr. RESPONDENT’s case, these factors establish that his constitutional interest in personal liberty is compelling and requires release.

*Length of Detention*

1. “[C]ourts have described the first factor, which looks at the length of detention, as the most important.” *Portillo v. Hott*, 322 F. Supp. 3d 698, 708 (E.D. Va. 2018). The length of Mr. RESPONDENT’s detention favors granting relief. Mr. RESPONDENT has been in custody for more than 450 days, over 14 months, *see* Ex. B, and the government has never made any individualized determination as to his dangerousness or flight risk. This Court and others have granted writs of habeas corpus in cases involving challenges to periods of 1226(c) detention that were comparable to or shorter than Mr. RESPONDENT’s. *See e.g.*, *Muse*, 409 F. Supp. 3d at 712 (14 months). As the length of detention increases, the government’s burden to justify the detention should be considered ever harder for it to meet. *See Kansas v. Hendricks*, 521 U.S. 346, 363–64 (1997); *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 474 (3d Cir. 2015), *abrogated in part and on other grounds by* *Jennings*, 138 S. Ct. at 847 (citing *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232, 234 (3d Cir. 2011)).Mr. RESPONDENT’s over 14 months of continuous civil imprisonment by ICE strongly support his claim for habeas relief.

*Conditions of Detention*

1. The similarity between the conditions of Mr. RESPONDENT’s detention and penal confinement weigh in favor of granting habeas relief. Removal proceedings are civil, not criminal. As such, they are, at least in theory, “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690. However, “merely calling a confinement ‘civil detention’ does not, of itself, meaningfully differentiate it from penal measures.” *Chavez-Alvarez*, 783 F.3d at 478. The more that detention conditions resemble penal confinement, the stronger the argument that detainees are entitled to bond hearings. *Muse*, 409 F. Supp. 3d at 717 (“And ‘[a]s the length of detention grows, the weight given to this aspect of detention increases.’”) (citing *Chavez-Alvarez*, 783 F.3d at 478).
2. Mr. RESPONDENT is currently confined in the Sherburne County Jail in Wilmar, Minnesota. He is detained alongside inmates who are serving criminal sentences and awaiting criminal trials. A county jail is primarily designed to house criminal defendants for the short period of time pending trial; such facilities are not designed to house civil detainees for extensive periods of time. Thus, the character of his confinement conditions is indistinguishable from penal confinement, and this factor weighs strongly in Mr. RESPONDENT’s favor.

*Responsibility for Delays*

1. The two factors related to responsibility for delay neither weigh in favor of nor against Mr. RESPONDENT’s habeas petition because neither Mr. RESPONDENT nor DHS have caused delays in the proceedings.[[5]](#footnote-5)

*Likely Duration of Future Detention & Likelihood of Final Order of Removal*

1. The last two factors, which are closely linked, weigh in favor of granting habeas relief. “The entire process [including administrative and judicial appeals] is subject to the constitutional requirement of reasonability.” *Muse*, 409 F. Supp. 3d at 716–17 (citing *Ly v. Hansen*, 351 F.3d, 263, 272 (6th Cir. 2003)).
2. On February 5, 2020, Immigration Judge Mazzie issued her Order granting Mr. RESPONDENT’s request under CAT for deferral of removal. *See* Ex. B. Mr. RESPONDENT is working with counsel to defend DHS’s appeal. Mr. RESPONDENT has a strong likelihood of success on appeal because IJ Mazzie’s findings establish that Mr. RESPONDENT met his burden of proof under CAT to establish it is more likely than not he would be tortured if removed to Somalia. *See* Ex. B. Of course, Mr. RESPONDENT does not ask this Court to decide the substance of his removal proceedings, and it need not do so to appreciate that the government faces a very steep uphill battle that is likely to take an extended period to be resolved on appeal to the BIA, and, if necessary thereafter, in any appeals before the federal courts.
3. The procedural posture shows that Mr. RESPONDENT is likely facing an extended period of future detention in Sherburne County Jail. DHS already appealed to the BIA. Once the BIA makes a determination it will remand the case back to the IJ for reconsideration. Therefore, Mr. RESPONDENT is facing several more months of unconstitutional civil detention while his proceedings remain pending.
4. In sum, without habeas relief, ICE will continue to detain Mr. RESPONDENT for several months beyond the already unreasonably prolonged period of months he has already been imprisoned. Moreover, Mr. RESPONDENT is not likely to be removed from the United States, which further precludes any legitimate government interest in and justification for detaining him at all, let alone without any bond.
5. Under the *Muse* framework, four of the six factors weigh sharply in Mr. RESPONDENT’s favor, and two are neutral. *See Muse*, 409 F. Supp. 3d at 718 (finding detention violates the Petitioner’s due process rights when four factors weigh in his favor, one weighs against him, and one is neutral). This Court should hold Mr. RESPONDENT’s prolonged mandatory detention unreasonable and unconstitutional.

**Mr. RESPONDENT’s Mandatory Detention Is Unconstitutional Because He Has A Substantial Challenge to Removability**

1. Mr. RESPONDENT’s prolonged mandatory detention also violates due process because it is unreasonable to impose an irrebuttable presumption of flight risk and danger on a noncitizen who, like Mr. RESPONDENT, has a substantial challenge to removability. In *Demore*, the Supreme Court upheld the mandatory detention of “a criminal alien who ha[d] conceded that he [was] deportable, for the limited period of his removal proceedings.” 538 U.S. at 511. The Court held that mandatory detention of “deportable criminal aliens” was permissible to address the heightened flight risk and risk to public safety. *Id.* at 518 (emphasizing the government’s “near total inability to remove deportable criminal aliens” and that “deportable criminal aliens who remained in the United States often committed more crimes before being removed”). However, *Demore* left open the question of whether mandatory detention of a noncitizen violates due process if they have a substantial challenge to their removability.
2. Immigrants who raise substantial challenges to removability are, unlike the petitioner in *Demore*, neither “already subject to deportation,” *id.*, nor at risk of “fail[ing] to appear for their removal hearings,” *id.* at 519. On the contrary, they have strong incentives to appear at their proceedings and litigate those defenses. *See Zadvydas*, 533 U.S. at 690 (calling the “justification” of “preventing flight” “weak or nonexistent where removal seems a remote possibility at best”). Nor is the mandatory detention of individuals with substantial challenges to removability reasonably related to Congress’s goal of “protecting the public from dangerous criminal aliens.” *Demore*, 538 U.S. at 515. By enacting statutory forms of relief and protection such as asylum, cancellation of removal, and adjustment of status, Congress allowed qualified individuals convicted of less serious offenses the opportunity to reside permanently in the United States.[[6]](#footnote-6) If Congress had viewed those individuals as presenting such a heightened danger to the public as to require their mandatory detention, it would not have made them eligible for permanent relief from removal. *See, e.g.*, *Papazoglou v. Napolitano*, No. 1:12-cv-00892, 2012 WL 1570778, at \*5 (N.D. Ill. May 03, 2012) (holding mandatory detention violated due process where IJ had granted lawful permanent resident a new adjustment allowing him to retain this status in the United States). Therefore, in contrast to the detention in *Demore*,[[7]](#footnote-7) it is unreasonable to impose an irrebuttable presumption that noncitizens with substantial arguments against deportability categorically present a heightened flight risk or threat to public safety such that they require mandatory detention without an opportunity for bond.
3. Indeed, the courts to have taken up the issue have found that mandatory detention cannot be applied where the respondent has a substantial argument against removability. *See Tijani v. Willis*, 430 F.3d 1241, 1244–47 (9th Cir. 2005) (Tashima, J., concurring); *Gonzalez v. O’Connell*, 355 F.3d 1010, 1019–21 (7th Cir. 2004); *see also Demore*, 538 U.S. at 578 (Breyer, J., dissenting) (arguing that the “substantial question of law or fact” standard found in the federal bail statute, 18 U.S.C. § 3143(b)(1)(B), should be applied in the immigration context, as it would effectively balance the “special governmental interest in detention” while protecting “a detained alien’s liberty interest”); *Gayle v. Johnson*, 4 F.Supp.3d 692, 721 (D.N.J. 2014). Courts have not addressed the situation presented here, where the alien prevailed at his removal hearing and DHS appealed.
4. Here, Mr. RESPONDENT presents compelling arguments why the BIA will affirm IJ Mazzie’s decision that he is protected under CAT. Accordingly, Mr. RESPONDENT has no incentive to flee anywhere. At the very least, a neutral arbiter should be required to make an individualized determination as to his danger and flight risk.

**Burden of Proof on Standards for Bond**

1. Mr. RESPONDENT asks this Court to order his immediate release. However, if this Court were to determine that it would be more proper for Mr. RESPONDENT to be granted an immediate bond hearing, either before this court or before an IJ, procedural due process should require that the government bear the burden of proving by clear and convincing evidence that the government’s interest in continuing to detain Mr. RESPONDENT—taking into consideration available alternatives to detention—outweighs the severe deprivation of his constitutionally protected interest in liberty. *See,* *e.g.*, *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 720-23 (D. Md. 2016).
2. To justify prolonged immigration detention, the government must prove by clear and convincing evidence that Mr. RESPONDENT is a danger or flight risk. *See, e.g.*, *id.*; *Hernandez v. Decker*, No. 18-CV-5026 (ALC), 2018 WL 3579108, at \*11 (S.D.N.Y. July 15, 2018) (“[D]ue process requires that the government demonstrate dangerousness or risk of flight by a clear and convincing standard at [the alien’s] bond hearing.”); *Portillo*, 322 F. Supp. 3d at 709 (“[A]t the bond hearing, the government must demonstrate that [the alien] is either a flight risk or a danger to the community by clear and convincing evidence.”); *Sajous*, 2018 WL 2357266 (requiring government to prove dangerousness and flight risk by clear and convincing evidence); *Pensamiento v. McDonald*, 315 F. Supp. 3d 684 (D. Mass. 2018) (requiring government to prove dangerousness and flight risk); *see also Foucha*, 504 U.S. at 81–83 (1992) (striking down detention system that placed burden on detainee to prove non-dangerousness); *United States v. Salerno*, 481 U.S. 739, 750–52 (1987) (requiring proof of dangerousness by clear and convincing evidence).
3. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). First, the civil detention authorized by Section 1226(c) deprives Mr. RESPONDENT of his liberty interest. Second, the risk of error is great when detainees like Mr. RESPONDENT are incarcerated in prison-like conditions that severely hamper their ability to gather evidence and prepare for a bond hearing. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to Mr. RESPONDENT’s immigration records and other information that it can use to make its case for continued detention. Therefore, subjecting the government to a heightened burden of proof strikes an appropriate balance between that individual interest and the government’s interest in protecting the community and in effective removal procedures, affording Mr. RESPONDENT the fundamental requirement of due process rights.
4. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See* *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE’s alternative to detention program—the Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

**CAUSES OF ACTION**

**COUNT ONE: MR. RESPONDENT’S MANDATORY DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

1. Mr. RESPONDENT re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
2. Immigration detention violates due process unless such detention is reasonably related to its purpose. *Demore*, 538 U.S. at 513 (2003); *Zadvydas*, 533 U.S. at 690–91 (2001). Moreover, as detention becomes prolonged, the Due Process Clause requires an even stronger justification to outweigh the significant deprivation of liberty, as well as strong procedural protections. *Id*.
3. Mr. RESPONDENT has been detained pursuant to 8 U.S.C. § 1226(c) for over fourteen months. Mr. RESPONDENT’s prolonged detention, in the absence of an individualized determination of his dangerousness or flight risk, lacks sufficient justification and violates his due process rights. This Court has considered six factors to determine whether prolonged pre-final order detention is unreasonable. *See, e.g.*, *Muse*, 409 F. Supp. 3d at 715. Application of the relevant factors to the facts and circumstances in this case—four factors weighing in Mr. RESPONDENT’s favor and two favoring neither party—supports a conclusion that Mr. RESPONDENT’s continued detention without an individualized bond hearing violates due process under the Fifth Amendment.
4. Moreover, Mr. RESPONDENT has a substantial argument against removal. In fact, he has won relief twice. Therefore, the assumption underlying *Demore* that noncitizens who have conceded deportability uniformly present elevated risk of flight and danger does not apply here. Mr. RESPONDENT cannot reasonably be subject to an irrebuttable presumption of flight risk and danger necessitating mandatory detention.
5. For the foregoing reasons, only Mr. RESPONDENT’s immediate release or an immediate bond hearing at which the government bears the burden to prove Mr. RESPONDENT’s danger and flight risk will protect his due process rights and the government’s legitimate interest in detaining a removable alien only when it is necessary to serve the purposes of Section 1226(c).

**COUNT TWO: MR. RESPONDENT’S PROLONGED DETENTION VIOLATES THE EIGHTH AMENDMENT**

1. Mr. RESPONDENT re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
2. The Eighth Amendment prohibits “[e]xcessive bail.” U.S. Const. amend. VIII.
3. The government’s categorical denial of bail to certain noncitizens violates the right to bail encompassed by the Eighth Amendment. *See Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting).
4. For these reasons, Mr. RESPONDENT’s ongoing prolonged detention without a bond hearing violates the Eighth Amendment.

**PRAYER FOR RELIEF**

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

1. Assume jurisdiction over this matter;
2. Expedite consideration of this petition pursuant to 28 U.S.C. §§ 1657 and 2243;
3. Pursuant to 28 U.S.C. § 2243 issue an order directing the Respondents to show cause within three days why the writ of habeas corpus should not be granted;
4. Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody; hold a hearing before this Court if warranted; determine that Petitioner’s detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention; and order Petitioner’s release, with appropriate conditions of supervision if necessary.
5. In the alternative, issue a Writ of Habeas Corpus and order Petitioner’s release within 30 days unless Defendants schedule a hearing before an immigration judge where: (1) 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; and (2) if the government cannot meet its burden, the immigration judge order Petitioner’s release on appropriate conditions of supervision.
6. Grant Mr. RESPONDENT’s reasonable attorneys’ fees, costs, and other disbursements pursuant to the Equal to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and
7. Grant such other relief as the Court deems just and proper.

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| Date: May 7, 2020 | Respectfully submitted,  FIRM  By  SIGNATURE BLOCK  John Bruning (MN # 0399174)  The Advocates for Human Rights  330 Second Avenue South, Suite 800  Minneapolis, MN 55401  (612) 746-4668  jbruning@advrights.org  *Counsel for Petitioner* |

1. Part way through his proceedings, it was discovered that Mr. RESPONDENT’s assault conviction was on appeal in the criminal court and could not be used as a ground of removability on the NTA. The first charge was dropped, but the second charge was sustained, and the case moved forward. [↑](#footnote-ref-1)
2. Mr. RESPONDENT’s criminal conduct occurred while he was not receiving any mental health treatment for severe disabilities. Despite his criminal history, Mr. RESPONDENT is not a danger when his mental illness is well controlled with medication as it is now. [↑](#footnote-ref-2)
3. In *Jennings*, the Supreme Court held that “subject only to express exceptions, §§ 1225(b) and 1226(c) authorize detention until the end of applicable [removal] proceedings.” 138 S. Ct. at 842 (reversing Ninth Circuit’s interpretation requiring automatic periodic bond hearings under §§ 1225(b) and 1226(c)). The Supreme Court remanded to the Ninth Circuit, however, to address the Petitioner’s alternative argument—that his prolonged detention violated the Due Process Clause of the Fifth Amendment. *Id*. at 851. Here, like the Petitioner in *Jennings*, Mr. RESPONDENT argues that his prolonged mandatory detention violates the Due Process Clause of the Fifth Amendment. [↑](#footnote-ref-3)
4. While *Jennings v. Rodriguez* was being briefed, the government informed the Supreme Court it had “made several significant errors in calculating” the statistics which it provided to the Court in *Demore* and which the Court relied upon in its decision. Letter from Ian Heath Gershengorn, Acting Solicitor General, to Hon. Scott S. Harris, Clerk, Supreme Court (Aug. 26, 2016), *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), available at http://on.wsj.com/2mtjnUP. The government had represented in *Demore* that cases of detained noncitizens involving a BIA appeal took on average “about five months;” however, those statistics did not acknowledge that cases took much longer at the IJ stage when there was an appeal, and that other time in those cases was unaccounted for. *Id.* at 3. The government’s revised statement is that total completion time in cases where there was an appeal averaged 382 days, with a median of 272 days. *Id.*; *see also* *Jennings v. Rodriguez*, 138 S. Ct. 830, 869 (2018) (Breyer, J., dissenting) (“The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did. And, as I have pointed out, thousands of people here are held for considerably longer than six months without an opportunity to seek bail.”). For the *Jennings* “mandatory subclass” of individuals like Mr. RESPONDENT, who are subject to 1226(c) detention, “the average detention . . . is nearly ten times the average assumed in *Demore* (427 days). Even for appeals, the average is three times what *Demore* envisioned (448 days).” Resp. Supp. Br., *Jennings v. Rodriguez*, No. 15-1204, 2017 WL 430386, at \*31 (U.S. Jan. 31, 2017). [↑](#footnote-ref-4)
5. Courts do not hold the time required to litigate “avenues of relief that the law makes available” against a detainee. *Ly*, 351 F.3d at 272. Mr. RESPONDENT has raised legitimate defenses to removal, as evidenced by IJ Mazzie’s grant of protection under CAT in her February 5, 2020 Order. [↑](#footnote-ref-5)
6. For example, eligibility for cancellation of removal is predicated on factors such as the absence of an aggravated felony conviction and the length of ties to the community—both of which are factors that correspondingly decrease the risks of flight and danger. *See* 8 U.S.C. § 1229b(b)(1)(A), (C). Similarly, cancellation for immigrants who are not lawful permanent residents requires a showing of “good moral character,” *id.* § 1229b(b)(1)(B), making it unlikely that an immigrant who qualifies for such relief could present a heightened danger to the public. [↑](#footnote-ref-6)
7. The *Demore* Court notably took it for granted that individuals subject to § 1226(c) would be removed eventually, or at least lose their case. *See, e.g.*, 538 U.S. at 528 (“Such detention necessarily serves the purpose of preventing *deportable* criminal aliens from fleeing prior to or during their removal proceedings.”) (emphasis added); *id.* at 529 (“In the remaining 15% of cases, in which the alien appeals the decision of the Immigration Judge to the Board of Immigration Appeals . . . .”); *id.* at 531 (Kennedy, J., concurring) (“[T]he ultimate purpose behind the detention is premised upon the alien’s deportability.”). [↑](#footnote-ref-7)