

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ABDIKADIR ABDULAHI MOHAMED,

Petitioner,

v.

KIRSTJEN NIELSEN, Secretary, U.S.
Department of Homeland Security;

WILLIAM BARR, Attorney General, U.S.
Department of Justice;

KEVIN K. MCALEENAN, Commissioner,
U.S. Customs and Border Protection;

MATTHEW T. ALBENCE, Executive
Associate Director for Enforcement and
Removal Operations, Immigration and
Customs Enforcement;

JOHN TSOUKARIS, Field Office Director
for Enforcement and Removal Operations,
Newark Field Office;

ORLANDO RODRIGUEZ, Warden,
Elizabeth Contract Detention Facility;

LUIS A. RIVERA, Officer, Customs and
Border Protection,

Respondents.

ORAL ARGUMENT REQUESTED

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

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Abdikadir Abdulahi Mohamed is the husband of his U.S. citizen wife, and father of his young daughters, both U.S. citizens. On December 13, 2017, Mr. Mohamed landed and was admitted to the United States with an immigrant visa, elated to finally reunite with his family. Instead, he has spent almost 16 months in immigration detention, miles from his family, where ICE's negligence caused him to develop a life-threatening disease for which he was hospitalized for nearly two weeks. Mr. Mohamed petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1651, and the Suspension Clause (Article I, Section 9, Clause 2) of the United States Constitution. Mr. Mohamed's prolonged detention without a hearing before an impartial arbiter violates the U.S. Constitution's due process guarantee. Mr. Mohamed similarly challenges the legality of his detention under the Immigration and Nationality Act and its regulations, the Administrative Procedures Act (APA), and other provisions of the U.S. Constitution. Unless habeas corpus relief is granted, Mr. Mohamed faces the prospect of prolonged, unlawful, and life-threatening detention.

INTRODUCTION

1. This case involves the unjustified detention of a young Muslim man who traveled to the United States on a valid immigrant visa to reunite with his pregnant wife and daughter who are both U.S. citizens.

2. From its inception in 2017, Petitioner Abdikadir Abdulahi Mohamed's detention has been unlawful. After more than fifteen months, it has now become unconstitutional.

3. Further, the conditions of his prolonged confinement are dangerous and unlawful. Mr. Mohamed has fallen increasingly ill over the course of his detention, due almost entirely to ICE's negligence.

4. Because of ICE's wholly inadequate medical treatment, Mr. Mohamed developed active tuberculosis, a life-threatening illness from which he continues to suffer. He spent eleven days in a hospital with dark fluid in his lungs, incommunicado and chained to a bed by three

limbs. His grave illness could have been avoided if Mr. Mohamed had been released, or if ICE medical personnel had followed the clear guidelines from the Center for Disease Control.

5. Instead, his current regimen requires that he take four pills each day. Some of these pills call for regular blood and liver monitoring, which has not been done, and is impossible to do in his current facility. As a result, Mr. Mohamed is now at risk for sudden liver failure, which could be fatal. A reasonable, safe alternative is immediately available. Upon release, Mr. Mohamed would live with his U.S. citizen wife and daughters in Columbus, Ohio sixteen minutes from the Ben Franklin Tuberculosis Clinic in Columbus, Ohio where he would receive regular treatment.

6. Mr. Mohamed, a Somali national, had duly obtained an immigrant visa on November 29, 2017 from the U.S. Consulate in Johannesburg, South Africa, after months of extensive consular vetting. As required by South African law, Mr. Mohamed cancelled his pending application for asylum in South Africa before emigrating. He sold his belongings and booked his travel to the United States.

7. On December 4, 2017, President Trump's Presidential Proclamation barring immigration to citizens of six Muslim majority countries, including Mr. Mohamed's native Somalia, went into effect. Mr. Mohamed's immigrant visa – issued five days before – remained valid and unaffected.

8. After twenty-seven hours of travel, on December 13, 2017, Mr. Mohamed landed at John F. Kennedy International Airport ("JFK"). From JFK, Mr. Mohamed was due to connect to Columbus, Ohio where his wife, Malyuun, and daughter, both U.S. citizens, were waiting to welcome him at John Glenn Columbus International Airport. Mr. Mohamed never made it to Columbus.

9. At JFK, U.S. Customs and Border Protection ("CBP") officers inspected Mr. Mohamed for admission in primary and secondary screening, and ultimately stamped his

immigrant visa “Admitted – NYC.” His visa read: “Upon Endorsement Serves as Temporary I-551 Evidencing Permanent Residence For 1 Year.” He submitted his blue customs declaration form to another CBP officer, collected his luggage, and passed through all necessary CBP checkpoints.

10. While rushing to board his connecting flight, a roving CBP officer called out to Mr. Mohamed. He asked if Mr. Mohamed was “from Mogadishu,” pulled him into an interview room, and interrogated Mr. Mohamed for 15 hours without a Somali interpreter, despite repeated requests for one.

11. When CBP agents attempted to coerce Mr. Mohamed to sign documents in English, including one which would have withdrawn his application for admission, Mr. Mohamed refused.

12. The agents changed course, put Mr. Mohamed in expedited removal proceedings, and told him that they would be sending him on the first flight to Somalia. Terrified, Mr. Mohamed reiterated his fear of being sent to a country where he fears persecution, torture, and death – a country that he had avoided for seven years.

13. Mr. Mohamed was subsequently transferred to Elizabeth Detention Center, where an asylum officer interviewed him about his experience at the airport and his fear of returning to Somalia. The asylum officer, the first official to interview Mr. Mohamed with an interpreter since his arrival to the United States, found him entirely credible, and referred him to an Immigration Judge.

14. Mr. Mohamed thrice applied for parole, and was been summarily denied twice with no interview or individualized basis. ICE recently denied Mr. Mohamed’s third parole request, again with no interview, and without considering whether he would be a flight risk or a danger to the community. This is in clear violation of Immigration and Custom Enforcement’s (“ICE”) internal policy and a recent federal court order.

15. His detention has been prolonged owing to a significant backlog in the immigration court, inadequate interpretation, and government delay. Mr. Mohamed has now been detained for one year, three months, and twenty nine days. Unless this Court orders relief, Mr. Mohamed will be detained for more than seventeen months at his next asylum hearing date, and could be detained for much longer, at great risk to his health.

16. Over the course of his more than fifteen months of detention, Mr. Mohamed has missed precious milestones in the life of his first daughter; he missed the birth of his second daughter, and is now rapidly missing key moments in her life as well. He has been unable to support his wife Malyuun in caring for their children, or his family in Somalia who depended on Mr. Mohamed as their main source of income.

17. For the reasons discussed herein, Mr. Mohamed's detention is unauthorized under the Immigration and Naturalization Act, the Administrative Procedures Act, and violates the First and Fifth Amendments of the U.S. Constitution.

18. Mr. Mohamed respectfully petitions this Court for a writ of habeas corpus to remedy his unlawful detention. He respectfully requests that this Court order his immediate release or a bond hearing before this Court. In the alternative, he asks the Court to order a bond hearing before an impartial immigration judge.

JURISDICTION AND VENUE

19. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction), 1651, 2241 and 2243 (writ of habeas corpus) and the Suspension Clause of the U.S. Constitution (U.S. Constitution, Art. 1, § 9, cl. 2). 28 U.S.C. § 2241 contains no jurisdictional exhaustion requirement, and Mr. Mohamed has exhausted all administrative remedies for which exhaustion would not be futile. *Gambino v. Morris*, 134 F.3d 156, 171 (3d Cir. 1998) (holding that exhaustion is not required when it would be futile); *Lamas v. McKenzie*, No. Civ-07-6035 (SDW), 2008 WL 346138 at *6 n.13 (D.N.J. 2008) (holding that

prudential exhaustion is within the “sound discretion of the court” and is not required where it “would be futile”).

20. Although only federal courts of appeal have jurisdiction to directly review removal orders in immigration proceedings, *see* 8 U.S.C. § 1252(a)(1), (b), federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness of their detention by immigration officials. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001).

21. Venue is proper in the District of New Jersey because a substantial part of the events or omissions giving rise to this action occurred in the District. 28 U.S.C. § 1391(b)(2). Mr. Mohamed is currently held at Elizabeth Detention Center, and is in removal proceedings before the Elizabeth Immigration Court. Aside from the present action, no civil complaint or petition for habeas corpus has been filed in any court.

PARTIES

22. Petitioner ABDIKADIR ABDULAHI MOHAMED is a Somali national who was issued an Immigrant Visa, authorizing reunification as a permanent resident with his U.S. citizen wife and daughter in Columbus, Ohio. He is a practicing Sufi Muslim. Mr. Mohamed arrived at JFK Airport on December 13, 2017, and was stamped in admitted as a lawful permanent resident to the United States on the same day. He was taken into custody by the U.S. government, and is currently detained at the Elizabeth Detention Center.

23. Respondent KIRSTJEN NIELSEN is the Secretary of the U.S. Department of Homeland Security (“DHS”). DHS is a cabinet-level agency of the United States federal government responsible for, among other things, administering and enforcing the nation’s immigration laws. Respondent Nielsen is a custodian of Mr. Mohamed and has the authority to order his release. She has authority over DHS, ICE and CBP, including but not limited to

determinations regarding custody and parole. Respondent Nielsen is sued in her official capacity.

24. Respondent WILLIAM BARR is the Attorney General of the United States. He has authority over the Department of Justice, including the Executive Office for Immigration Review and the Elizabeth Immigration Court, and the authority to order Mr. Mohamed's release. Respondent Barr is sued in his official capacity.

25. Respondent KEVIN K. MCALEENAN is Commissioner of U.S. Customs and Border Protection ("CBP"). CBP is an agency within DHS responsible for, among other things, "facilitating lawful international travel" into and out of the United States. Respondent McAleenan was a custodian of Mr. Mohamed during his time in CBP custody at JFK and had authority to order his release. Respondent McAleenan is sued in his official capacity.

26. Respondent JAMES MCHENRY is Director of the Executive Office for Immigration Review. He has authority over the Elizabeth Immigration Court, and to order Mr. Mohamed's release. Respondent McHenry is sued in his official capacity.

27. Respondent MATTHEW T. ALBENCE is Executive Associate Director for U.S. Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations. Respondent Albence is a custodian of Mr. Mohamed at Elizabeth Detention Center and has authority to order his release. Respondent Albence is sued in his official capacity.

28. Respondent JOHN TSOUKARIS is the Field Office Direct for Enforcement and Removal Operations, Newark Field Office, ICE. He has authority over Mr. Mohamed's parole determinations. He is a custodian of Mr. Mohamed and has the authority to order his release. Respondent Tsoukaris is sued in his official capacity.

29. Respondent ORLANDO RODRIGUEZ is the Warden of Elizabeth Detention Center and the immediate custodian of Mr. Mohamed. He has the authority to order his release. Respondent Rodriguez is sued in his official capacity.

30. Respondent LUIS RIVERA is a CBP Officer who was assigned to JFK Terminal 8 at the time Mr. Mohamed landed on December 13, 2017. He was a custodian of Mr. Mohamed during his time in CBP custody of JFK and had authority to order his release. Respondent Rivera is sued in his official capacity.

STATUTORY AND REGULATORY FRAMEWORK

Immigrants' Admission to the United States

31. An individual is admitted when he effects a “lawful entry ... into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A).

32. Immigrants to the United States are normally issued machine-readable visas. “A machine-readable immigrant visa (MRIV) usually has the following text on it: ‘UPON EDORSEMENT SERVES AS A TEMPORARY I-551 EVIDENCING PERMANENT RESIDENCE FOR 1 YEAR.’ When a new immigrant enters the U.S., U.S. Customs and Border Protection (CBP) will stamp the passport with an admission stamp that indicates the immigrant has permanent resident status and has the date the new immigrant entered the U.S.” United States Citizenship and Immigration Services, Temporary I-551 Stamps and MRIVs, <https://www.uscis.gov/i-9-central/temporary-i-551-stamps-and-mrivs> (last visited Feb. 15, 2019).

The Customs and Border Protection Admissions Process

33. Upon arrival by air to a United States port of entry, travelers are generally required to present themselves to Customs and Border Protection for primary inspection. 8 C.F.R. § 1235.1(d)(1); 62 Fed. Reg. 10312-01, 10318 (Mar. 6, 1997); Department of Homeland Security, Privacy Impact Assessment for the TECS System: CBP Primary and Secondary Screening (Dec. 22, 2010) at 4, 7 (“Privacy Assessment”), available at <https://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-cbp-tecs.pdf> (last visited on Feb. 16,

2019). Until the point of admission, a non-citizen arriving at a port of entry is considered an arriving alien, or an applicant for admission. 8 U.S.C. § 1225(b)(1)(ii); 8 U.S.C. §1225(a).

34. At primary inspection, CBP officers obtain a traveler's information through travel documents and verbal communication with the traveler in order to assess admissibility to the United States. 62 Fed. Reg. 10312-01, 101318 (March 6, 1997); Privacy Assessment at 4,7.

35. If the CBP officer at primary inspection determines that a traveler is admissible, that traveler is admitted. 62 Fed. Reg. 10312-01, 101318 (March 6, 1997) Privacy Assessment at 7.

36. If the CBP officer at primary inspection determines that additional inspection is needed, the traveler is referred to secondary inspection. 62 Fed. Reg. 10312-01, 10318 (March 6, 1997); Privacy Assessment at 4, 7.

37. At secondary inspection, CBP officers gather additional information to determine a traveler's admissibility to the United States. 62 Fed. Reg. 10312-01, 10318 (March 6, 1997); Privacy Assessment at 7.

38. If the CBP officer at secondary inspection determines the traveler is admissible, that traveler is stamped in as admitted, and permitted to proceed. Privacy Assessment at 7.

Civil Detention of Non-Citizens

39. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" *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."). Due process therefore requires "adequate procedural

protections” to ensure that the government’s asserted justification for its conduct infringing on protected interests “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotation marks omitted).

40. Federal courts have authority under 28 U.S.C. § 2241 to decide habeas corpus petitions challenging the statutory and constitutional legality of civil immigration detention. *See* 28 U.S.C. § 2241(c)(3); *Zadvydas v. Davis*, 533 U.S. 678, 687 (citing 8 U.S.C. §2241(c)(3)).

41. Non-citizens who have been admitted to the United States, have no criminal convictions, and are not otherwise deportable, are not subject to detention. The detention of a noncitizen in such a situation is unlawful, and his immediate release would be required.

42. To the extent such an admitted person is deemed deportable, he may *only* be detained under section 236 of the Immigration and Naturalization Act. 8 U.S.C. § 1226(a); INA § 236(a). Admitted non-citizens who are detained as deportable are generally eligible for bond hearings. 8 U.S.C. § 1226 (a); INA § 236(a); 8 C.F.R. § 236.1(d)(1). Any detention of an admitted noncitizen under INA § 235, regardless of his deportability, is unlawful.

43. In contrast, individuals who are not admitted may be placed in “expedited removal” proceedings. Individuals in “expedited removal” proceedings who subsequently demonstrate a “credible fear” of persecution are detained pursuant to section 235 of the Immigration and Naturalization Act “for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii); INA § 235(b)(1)(B)(ii). Section 235 of the INA provides that an individual “shall be detained” and does not specify the duration of detention. 8 U.S.C. § 1225(b)(1)(B)(ii). Unless DHS decides to grant parole to an individual detained under INA § 235, that individual will remain detained for the duration of his removal hearing, without a court reviewing the legality of his detention. 8 U.S.C. § 1225; INA § 235.

44. Still, courts have widely held that there is a constitutional limit to prolonged civil detention without an impartial hearing, including for those non-citizens subject to mandatory detention. *See, e.g., Chavez-Alvarez v. Warden York Cnty. Prisons*, 783 F.3d 469 (3d Cir. 2015); *Diop v. ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011); *Barthelemy v. Doll*, No. 3:17cv1508, 2018 WL 1008408, at *3 (M.D. Pa. Feb. 22, 2018); *Thomas C.A. v. Green*, No. 18-1004 (JMV), 2018 WL 4110941, *5 (D.N.J Aug. 29, 2018).

45. “At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001).

STATEMENT OF FACTS

46. The U.S. government granted Petitioner Abdikadir Abdulahi Mohamed an immigrant visa to unite with his pregnant wife and daughter, both U.S. citizens. Instead, since his admission to his new home country one year, three months and twenty nine days ago, Mr. Mohamed has been detained at Elizabeth Detention Center, separated from his wife and baby daughters.

Mr. Mohamed’s Marriage and Immigrant Visa Process

47. Mr. Mohamed was born in Barawe, Somalia in 1987. He is a Somali citizen.

48. Mr. Mohamed grew up in extreme poverty. He never attended school, and never took an English class in his life.

49. In 2010, at the age of 23, Mr. Mohamed fled devastating conditions in Somalia to Pretoria, South Africa.

50. Upon his arrival in South Africa, Mr. Mohamed became an “asylum seeker,” pursuing recognition and protection as a refugee. For the duration of his time in South Africa, Mr.

Mohamed's application for permanent refugee status was pending. Refugees Act 130 of 1998 s. 1; 22 (S. Afr.).

51. While in South Africa, despite the constant threat of xenophobic violence, Mr. Mohamed worked long hours to support himself and his family in Somalia.

52. In January 2014, Mr. Mohamed met Malyuun Mahamed online. Ms. Mahamed lives in Columbus, Ohio, and is a U.S. citizen.

53. Mr. Mohamed and Ms. Mahamed spoke regularly by phone, text message, and online chat. Their relationship grew stronger, and they decided to get married.

54. Ms. Mahamed visited Mr. Mohamed in South Africa in February 2016.

55. She and Mr. Mohamed had a religious marriage ceremony, and were civilly married on May 6, 2016. Soon thereafter, they were thrilled to learn that Ms. Mahamed was pregnant with a baby girl. Together, they agreed to build a life and family together in the United States.

56. In June 2016, as a first step in that process, Ms. Mahamed submitted an I-130 Petition for Alien Relative, sponsoring Mr. Mohamed – her husband – for an immigrant visa. Ex. 1, I-130, Petition for Alien Relative.

57. On November 30, 2016, Ms. Mahamed's I-130 petition for Mr. Mohamed's visa was approved, Ex. 1, I-130, Petition for Alien Relative, three days after she gave birth to their first daughter. While Mr. Mohamed was devastated to miss the birth of their daughter, he was relieved to learn that his family was closer to reuniting.

58. On June 1, 2017, Mr. Mohamed attended his visa interview at the U.S. Consulate General in Johannesburg, South Africa, with a Somali language interpreter.

59. In October 2017, Ms. Mahamed visited Mr. Mohamed in South Africa, this time with their daughter. Mr. Mohamed was delighted to see and hold his daughter for the first time.

60. Shortly thereafter, they learned that Ms. Mahamed was pregnant with their second child.

65. On November 8, 2016, approximately three weeks before Ms. Mahamed's I-130 petition was approved, Trump was elected President of the United States.

66. On January 20, 2017, Trump was inaugurated as the 45th President of the United States.

67. On January 27, 2017, President Donald J. Trump signed his first executive order banning foreign nationals from seven predominantly Muslim countries, including Somalia, from traveling to the United States.

68. On March 6, 2017, in response to a nationwide injunction on his first travel ban, President Trump signed a second executive order banning foreign nationals from six predominantly Muslim countries, including Somalia, from traveling to the United States.

69. On March 16, 2017, a federal district court issued a nationwide injunction blocking the second travel ban.

70. On May 25, 2017, approximately one week before Mr. Mohamed's interview at the consulate in Johannesburg, South Africa, a federal court of appeals upheld the nationwide injunction blocking the second travel ban.

71. On September 24, 2017, Trump signed a Presidential Proclamation banning foreign nationals from six predominantly Muslim countries, including Somalia, from traveling to the United States.

72. On December 4, 2017, the Supreme Court allowed the third version of the travel ban to go into effect, pending adjudication on the merits. This travel ban had no legal effect on Mr. Mohamed, as his visa had been issued five days prior to the Supreme Court's ruling.

Mr. Mohamed's Admission to the United States

73. On December 12, 2017, Mr. Mohamed boarded a flight in Johannesburg, South Africa, headed to join Ms. Mahamed and their daughter in Columbus, Ohio.

74. On December 13, 2017 at approximately 3:00 PM, Mr. Mohamed landed at JFK Airport, Terminal 8 in New York City. He arrived behind schedule to board a connecting flight to Columbus at 3:35 PM. He carried a small carry-on bag, his immigrant visa, his ICRC travel document, and a standard sealed immigrant packet,¹ which he had been given upon issuance of his visa at the U.S. Consulate in Johannesburg. He also carried a blue customs declaration form, which he had completed on the airplane.

75. A CBP officer processed Mr. Mohamed in primary inspection. Mr. Mohamed handed all of his documents and the sealed packet to the CBP Officer. After reviewing the documents, the primary CBP officer referred Mr. Mohamed to secondary inspection.

76. A second CBP officer took Mr. Mohamed's documents and escorted Mr. Mohamed from the primary inspection area to secondary inspection, a smaller room in which Mr. Mohamed observed other travelers sitting and waiting. The second CBP officer handed Mr. Mohamed's documents to a third CBP officer, and instructed Mr. Mohamed to wait until his name was called.

77. The third CBP officer called Mr. Mohamed's name, "Mohamed," and stamped his immigrant visa "ADMITTED – NYC." He wrote Mr. Mohamed's Alien Number under the stamp, as well as the date that his endorsed I-551 would expire, and returned the visa document to Mr. Mohamed. He also returned the blue customs declaration form to Mr. Mohamed.

78. Mr. Mohamed exited secondary inspection without CBP escort. An airline agent walked with Mr. Mohamed to facilitate the process of reaching his connecting flight, she had helped to rebook for a later time.

¹ U.S. Department of State, Immigrant Visa Process, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visaprocess/interview/after-the-interview.html> (last visited on Mar. 4, 2019) "Sealed Immigrant Packet – You will also receive a sealed packet containing documents that you must present to U.S. Customs and Border Protection at a port-of-entry (often an airport) upon your arrival in the United States. You must not open the sealed packet."

79. As Mr. Mohamed left secondary, he handed his blue customs form to a fourth CBP officer – the last required point of contact with a government official – and continued to an area from which he retrieved his checked luggage, in order to drop it off for his connecting flight. Mr. Mohamed headed toward his connecting flight to Columbus.

80. Having been inspected in primary and secondary screening, and having received a stamp of admission on his immigrant visa, Mr. Mohamed was admitted to the United States as a Lawful Permanent Resident.² After he passed the last required CBP checkpoint handing in his blue customs form, Mr. Mohamed’s admission was complete as he was free from any certain CBP restraint. 8 U.S.C. § 1101(a)(13)(A); *see Doe v. Rodriguez*, No. 17-1709, 2018 WL 620898 (D.N.J. Jan. 29, 2018) (non-citizen was not free from official restraint where he had not left secondary screening); *Matter of Quilantan*, 25 I. & N. Dec. 285 (BIA 2010) (holding that, post IIRIRA “by themselves, the terms ‘admitted’ and ‘admission,’ as defined in section 101(a)(13)(A) of the Act, continue to denote procedural regularity for purposes of adjustment of status, rather than compliance with substantive legal requirement”); *Matter of Areguillin*, 17 I. & N. Dec. 308 (BIA 1980) (holding that “[a]dmission occurs when the inspecting officer communicates to the applicant that he has determined that the applicant is not inadmissible”).

CBP Officers Attempt to Subvert Mr. Mohamed’s Admission to the United States

² In the case of a traveler with an immigrant visa, upon admission, the traveler becomes a lawful permanent resident of the United States. United States Citizenship and Immigration Services, Temporary I-551 Stamps and MRIVs, <https://www.uscis.gov/i-9-central/temporary-i-551-stamps-and-mrivs> (last visited on Feb. 16, 2019). (“A machine-readable immigrant visa (MRIV) usually has the following text on it: ‘UPON ENDORSEMENT SERVES AS TEMPORARY I-551 EVIDENCING PERMANENT RESIDENCE FOR 1 YEAR.’ When a new immigrant first enters the U.S., U.S. Customs and Border Protection (CBP) will stamp the passport with an admission stamp that indicates the immigrant has permanent resident status and has the date the new immigrant entered the U.S.”); Department of State, Immigrant Visa Process, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visaprocess/interview/after-the-interview.html> (last visited on Feb. 16, 2019) (“When you are admitted, you will enter as a Lawful Permanent Resident, also called a green card holder, and will be permitted to work and live permanently in the United States.”).

81. After his admission, as Mr. Mohamed made his way to his connecting flight, he was approached by roving CBP Officer Ted Sornthong. Officer Sornthong greeted Mr. Mohamed kindly, and asked him his name and where he was going. Mr. Mohamed answered with his name, and that he was going to meet his wife and daughter in Columbus, Ohio.

82. Mr. Mohamed was holding his visa in his hand. Officer Sornthong asked for the visa, and Mr. Mohamed handed it to him. Officer Sornthong reviewed the stamped visa and handed it back to Mr. Mohamed.

83. As he continued to his connecting flight, a second roving CBP Officer, Luis Rivera, approached Mr. Mohamed. Officer Rivera then asked: "Are you from Mogadishu?" Officer Rivera asked to review the stamped visa document. Mr. Mohamed provided it to him.

84. Officer Rivera asked to see Mr. Mohamed's cellular phones. Mr. Mohamed unlocked the phones and provided them to him. At some point, Officer Sornthong joined.

85. Officer Rivera asked Mr. Mohamed to come with him to answer some questions. Officer Sornthong stated: "Just let him go." Officer Rivera insisted, and Mr. Mohamed followed them.

86. Officers Rivera and Sornthong walked Mr. Mohamed to another room. The CBP officer who had admitted Mr. Mohamed and stamped his immigrant visa expressed surprise that Mr. Mohamed had not proceeded to his flight to Columbus.

87. Over the course of the next 15 hours, Mr. Mohamed waited in different rooms as CBP officers walked in and out. At some point, Officer Rivera sat behind a computer, asked Mr. Mohamed to raise his right hand, and began asking questions. On multiple occasions throughout Officer Rivera's questioning, Mr. Mohamed requested an interpreter. Officer Rivera refused to provide an interpreter.

88. Officer Rivera questioned Mr. Mohamed about two e-mails on Mr. Mohamed's phone which mentioned an organization called the Ogaden National Liberation Front ("ONLF").³ Mr. Mohamed did not write either message. One e-mail was the text of a press release describing peace negotiations between the ONLF and the Ethiopian government that Mr. Mohamed had found online, and sent to himself. The second was an e-mail and attachment forwarded to Mr. Mohamed by a friend, vaguely referring to a set of meetings held by supporters of the Ethiopian government – and opponents of the ONLF – including efforts undertaken to orchestrate boycotts of the ONLF. Officer Rivera did not know who sent either message, and he failed to understand the context or content of either message.

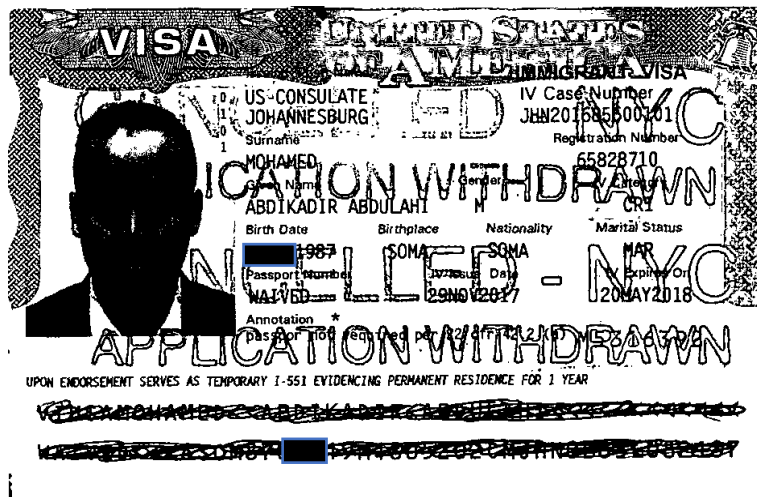
89. Based on those e-mails, Officer Rivera – at the time a sixth-year CBP Officer with no background or expertise in the politics of East Africa – summarily concluded that Mr. Mohamed was affiliated with the ONLF.

90. Mr. Mohamed is not and has never been a member of the ONLF but rather is ethnically Ogaden. He did his best to communicate that to Officer Rivera without the benefit of an interpreter. The first opportunity he had to explain himself with an interpreter – days later, when he was interviewed by Asylum Officer Emily Ma – Mr. Mohamed clarified that while he was born a member of the Ogaden clan, he reviles the tactics and beliefs of the ONLF. *See infra* at ¶ 101. Officer Ma found Mr. Mohamed credible, and that, accordingly, no bars to asylum applied in his case, including any bars related to the ONLF.

³ The Ogaden National Liberation Front is currently a political party in the Ethiopian government. Historically, the ONLF sought self-determination for the Somali people of the eastern-most regional state of Ethiopia, sometimes called the Somali Regional State, and sometimes called the Ogaden region. In its quest for self-determination, the ONLF employed both violent and non-violent means. Until very recently, the Ethiopian government, and their regional Liyu police, viciously persecuted individuals they labeled members of the ONLF. Tobias Hagmann, Rift Valley Institute, *Talking Peace in the Ogaden* (July 16, 2018); Human Rights Watch, *"We Are Like The Dead": Torture and Human Rights Abuses in Jail Ogaden* (July 4, 2018). The ONLF operates freely and openly in countries around the world, including in the United States. Neither the United States, the EU, or the United Nations has ever listed the ONLF as a terrorist organization.

91. At some point during the interrogation, Officer Rivera urged Mr. Mohamed to voluntarily withdraw his application for admission.

92. Officer Rivera presented Mr. Mohamed with a document to sign which would withdraw his application for admission. Mr. Mohamed could not understand what was written in the document. He tried to explain to Officer Rivera that the United States was now his home, and that he was supposed to join his pregnant wife and their daughter in Ohio. Mr. Mohamed refused to withdraw his application or to sign the document. Nevertheless, CBP officers stamped Mr. Mohamed's passport "Application Withdrawn."



93. CBP is not required to ask travelers withdrawing their application for admission about their fear of removal. 8 C.F.R. § 235.4. However, in expedited removal proceedings, a CBP officer is required to ask the traveler if he or she has a fear of persecution or torture, or a fear of returning to his or her country. 8 C.F.R. § 1235.3(b)(2)(i); 8 C.F.R. § 1235.3(b)(4); 8 C.F.R. § 235.3(b)(4).⁴

⁴ The CBP Officer is required to record the answer to those questions in Form I-867B, Jurat for Record of Sworn Statement in Proceedings. 8 C.F.R. § 1235.3(b)(2)(i). If the traveler expresses fear, he or she is to be referred to an asylum officer for a credible fear interview. 8 C.F.R. § 1235.3(b)(4). Upon interview by the asylum officer, if the traveler established a credible fear of persecution or torture to the satisfaction of the asylum officer, he or she is placed in removal proceedings governed by INA Section 240. 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f).

94. Mr. Mohamed did not withdraw his application for admission, be it voluntarily or involuntarily. *See also* 8 C.F.R. § 235.4 (a non-citizen’s “decision to withdraw his or her application for admission must be done voluntarily”).

95. After Mr. Mohamed refused to withdraw his application for admission, in the early hours of December 14, 2017, CBP officers began to process his case as an expedited removal.

96. A CBP officer is required to take a sworn statement from a traveler in expedited removal using Form I-867A, Record of Sworn Statement in Proceedings under 235(b)(1) of the Act. 8 C.F.R. § 1235.3. The CBP officer is required to have the traveler read or have read to him or her the entire statement. *Id.* The CBP Officer is required to have the traveler sign and initial each page of the statement. *Id.* The CBP Officer is required to offer the traveler an opportunity to answer the charges against him in the sworn statement. *Id.*⁵

97. Officer Rivera failed to comply with these regulations. Officer Rivera never showed Mr. Mohamed the I-867A he composed; he never read back the I-867A to Mr. Mohamed, and he did not endeavor to have Mr. Mohamed sign and initial each page of the statement. He did not give Mr. Mohamed an opportunity to understand or answer the claims on the form with the assistance of an interpreter.

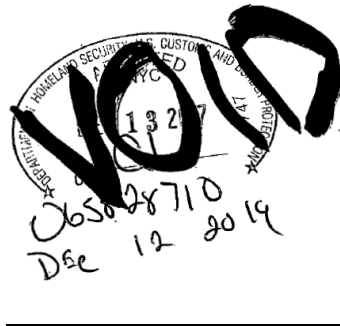
98. At that point, CBP Officers were required to, and did, inquire as to Mr. Mohamed’s fear of return to Somalia. Mr. Mohamed expressed that he was terrified of returning to Somalia. Mr. Mohamed also reiterated that he was now a Lawful Permanent Resident of the United States.

99. While Mr. Mohamed underwent this 15-hour ordeal, Ms. Mahamed waited for his arrival at John Glenn Columbus International Airport. Mr. Mohamed was due to arrive at 5:00 PM. Ms. Mahamed and their daughter waited until 10:00 P.M. with no information – at first excited, then exhausted, and finally terrified.

Mr. Mohamed's Immigration Court Proceedings

100. Upon information and belief, at 5:00 A.M. on December 14, 2017, Mr. Mohamed was transferred from JFK Airport to Varick Street Detention Facility in New York, New York for processing. DHS confiscated all of Mr. Mohamed's belongings, including all of his paperwork.

101. At some point prior to providing Mr. Mohamed copies of some of his documents in his immigration court proceedings, a DHS official wrote the word "VOID" across Mr. Mohamed's admission stamp.



102. On December 15, 2017, two days after being detained at JFK airport, Mr. Mohamed was transferred from Varick Street Detention Facility to the Immigration and Customs Enforcement Elizabeth Contract Detention Facility ("Elizabeth Detention Center" or "EDC") in Elizabeth, New Jersey. As of this filing, Mr. Mohamed remains detained at EDC.

103. On December 18 and 21, 2017, Mr. Mohamed had an interview with Asylum Officer Emily Ma to assess the credibility of his fear of return to Somalia. Ex. 2, I-870, Record of Determination/Credible Fear Worksheet. This was the first time that Mr. Mohamed had access to an interpreter since arriving in the United States. *Id.* Officer Ma determined that Mr. Mohamed's fear of returning to Somalia – and his full-throated disavowal of the ONLF – were credible. *Id.* at 4 ("Applicant found credible.").

104. On December 26, 2017, the Department of Homeland Security served Mr. Mohamed with DHS Form 1-862, Notice to Appear ("NTA"). Ex. 3, I-862, Department of Homeland

Security Notice to Appear. In the NTA, DHS classified Mr. Mohamed as an “arriving alien,” and charged him as inadmissible pursuant to Sections INA §§ 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) (8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I)). *Id.*

105. Mr. Mohamed has never sought a continuance in his removal case. Government delay and backlog have caused significant prolongation of Mr. Mohamed’s case, and will assuredly continue to prolong his detention.

106. On January 11, 2018, on his 30th day of detention, Mr. Mohamed appeared with counsel before Immigration Judge Mirlande Tadal (“IJ Tadal”) at Elizabeth Immigration Court for a master calendar hearing. Counsel for Mr. Mohamed, in the interest of judicial efficiency, agreed to move forward with the initial calendar hearing in the absence of an interpreter. Mr. Mohamed objected to his classification as an “arriving alien.” Ms. Mahamed, five months pregnant, drove for ten hours from Ohio to be present for her husband’s hearing. The hearing lasted less than five minutes. The case was adjourned until March 6, 2018 to begin Mr. Mohamed’s removal hearing. IJ Tadal allotted just three and a half hours of hearing time for the adjourned date, despite requests for more time by counsel.

107. On March 6, 2018, on his 84th day of detention, Mr. Mohamed appeared before IJ Tadal for his first removal hearing date.⁶ Ms. Mahamed, now seven months pregnant, drove for ten hours from Ohio to be present for the hearing. A Somali language interpreter was present. *Id.* IJ Tadal agreed to bifurcate the hearing. The first part of the hearing would be about whether or not Mr. Mohamed was in fact admitted to the United States. The second part of the hearing, if necessary, would focus on Mr. Mohamed’s admissibility.

108. At the first hearing date, counsel for DHS introduced, for the first time, crucial evidence to which Mr. Mohamed did not have access, including but not limited to photographs

⁶ At every removability hearing before IJ Tadal, an attorney for CBP was present at counsel’s table.

of the terminal layout at JFK Airport where Mr. Mohamed had been admitted, and a last-second amendment to CBP Officer Luis Rivera's declaration, which had been submitted two weeks earlier. IJ Tadal allowed the late-in-time evidence to be admitted over the objection of Mr. Mohamed's counsel, and never ultimately addressed these evidentiary irregularities.

109. Mr. Mohamed's hearing was then adjourned for more than two months, until May 22, 2018. The long delay was at the request of DHS counsel, as CBP Officer Luis Rivera – a witness in DHS' case – was out of the country until that date. Ms. Mahamed's due date was May 20, 2018. Though Mr. Mohamed intended to call her as a witness, he agreed to the adjourned date.

110. In mid-2018, after more than 155 days of Mr. Mohamed's detention, Ms. Mahamed gave birth to their second daughter. Mr. Mohamed was devastated to miss the birth of his second daughter.

111. On May 22, 2018, on his 161st day of detention, Mr. Mohamed again appeared before IJ Tadal to continue his removal hearing. For the first time, and at the insistence of counsel for Mr. Mohamed, IJ Tadal allocated a full day of hearing time. A Somali language interpreter was present. Ms. Mahamed, still recovering from giving birth, testified by telephone. When testimony closed on the first part of the bifurcated hearing regarding admission, counsel for Mr. Mohamed requested a decision on Mr. Mohamed's status as an "arriving alien" before proceeding to the second part. If resolved in his favor, Mr. Mohamed would have been released and the case terminated, obviating the need for new evidence before IJ Tadal regarding admissibility. IJ Tadal refused.

112. On May 29, 2018, on his 168th day of detention, Mr. Mohamed again appeared before IJ Tadal to continue his removal hearing. Mr. Mohamed's counsel had secured this second close-in-time date months in advance, imploring the court to provide Mr. Mohammed with two dates to ensure testimony would be completed expeditiously, and that the case would not be

adjourned for months. A new Somali language interpreter was present on that date. Within 20 minutes of testimony, it became clear that the Somali language interpreter was inadequate. For example, at one juncture, when Mr. Mohamed said “xenophobic attacks” in Somali, the interpreter translated it to “haters” in English. At counsel’s insistence, IJ Tadal halted the hearing. In the interest of judicial efficiency, Mr. Mohamed offered to testify by and through a telephonic interpreter. The Court was unable to locate one. The Court adjourned Mr. Mohamed’s hearing for more than two months, until July 24, 2018, over the strenuous objection of Mr. Mohamed’s counsel. Mr. Mohamed requested seven hours of hearing time for the July date; IJ Tadal allocated only three and a half.

113. On June 19, 2018, IJ Tadal issued a decision on the first portion of the bifurcated hearing. The first part of the bifurcated hearing was meant to address only the fact of Mr. Mohamed’s physical *admission* to the United States – whether he effected a “lawful entry ... into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). IJ Tadal heard no evidence in the first part of the bifurcated hearing as to Mr. Mohamed’s *admissibility* into the United States – whether he falls into a category of inadmissibility defined at INA § 212, 8 U.S.C. § 1182. Nevertheless, in her June 19, 2019 decision, IJ Tadal erred and, based on evidence unrelated to the question of *admissibility*, concluded that Mr. Mohamed was “not admissible as charged under 212(a)(7)(A)(i)(I).”

114. On July 24, 2018, on his 224th day of detention, Mr. Mohamed again appeared before IJ Tadal to continue the second portion of the bifurcated hearing. A Somali language interpreter was present. After Mr. Mohamed had finished his direct testimony, IJ Tadal adjourned the hearing with nearly 45 minutes remaining in the allocated time slot. Mr. Mohamed objected, seeking to maximize precious time before the court. IJ Tadal refused, and again adjourned Mr. Mohamed’s hearing for more than two months, this time until October 16, 2018.

115. On October 16, 2018, on his 308th day of detention, Mr. Mohamed again appeared before IJ Tadal to continue his removal hearing. IJ Tadal again allocated only three and a half hours of hearing time despite counsel's request for additional time. A Somali language interpreter was present. Testimony closed on the second part of the bifurcated hearing. IJ Tadal ordered written closing arguments submitted by November 1, 2018, and adjourned proceedings until November 15, 2018.

116. On November 15, 2018, on the 338th day of Mr. Mohamed's detention, counsel for Mr. Mohamed again appeared before IJ Tadal. Upon arrival at EDC, counsel for Mr. Mohamed were informed, for the first time, that Mr. Mohamed had been transported to the hospital three days earlier, on November 12, 2018. Counsel for Mr. Mohamed asked to be heard on the question of Mr. Mohamed's hospitalization. Instead, within a minute and a half of going on the record, IJ Tadal abruptly adjourned the court proceeding without setting an adjourned date.

117. On November 20, 2018, on the 343rd day of Mr. Mohamed's detention, IJ Tadal issued an opinion regarding the second part of the bifurcated hearing, finding Mr. Mohamed inadmissible a second time, under section 212(a)(6)(c)(i).

118. On December 12, 2018, Mr. Mohamed submitted his application for asylum before IJ Tadal.

119. On December 13, 2018, Mr. Mohamed appeared before IJ Tadal. IJ Tadal set the asylum hearing in Mr. Mohamed's case for April 2, 2019.

120. On April 2, on his 476th day of detention, Mr. Mohamed appeared before IJ Tadal for the first day of his asylum hearing. His wife Ms. Mahamed again drove ten hours from Ohio to be present for the hearing, this time with their two-and-a-half year-old, and ten-month old daughters in tow. Mr. Mohamed testified for eight hours. The hearing was adjourned until May 21, 2019, the 525th day of Mr. Mohamed's detention, for the testimony of three additional

witnesses. IJ Tadal allocated three and a half hours on that day. In the absence of an order from this court, Mr. Mohamed is likely to be detained far longer.⁷

Mr. Mohamed's Parole Applications

121. During Mr. Mohamed's nearly sixteen months of detention, he has sought parole from ICE three times.

122. A non-citizen that has satisfied credible fear "should be paroled if ... the alien's identity is sufficiently established, the alien poses neither a flight risk nor a danger to the community, and no additional factors weigh against release of the alien." U.S. Immigration and Customs Enforcement, Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009) *available at* https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf (last viewed March 7, 2019).

123. Mr. Mohamed submitted his first parole request on March 2, 2018. That request included evidence of his identity – including his birth certificate, marriage certificate, and his daughter S.A.A.'s birth certificate. The request also included evidence that Mr. Mohamed would, if released, reside with his wife and daughter in Columbus, Ohio, where they permanently reside. Finally, in his first request, Mr. Mohamed provided evidence that he has no criminal record and poses no danger to the community, including his credible fear interview with Asylum Officer Ma.

⁷ The Third Circuit recently reversed a decision of IJ Tadal as violating the respondent's due process rights for "interrupting and cabin[ing]" the respondent "during critical testimony," "honing in on various and sundry irrelevant details," "making findings contradicted by the record," and "maintain[ing] a condescend[ing] and belligerent tone throughout the hearing." *Serrano-Alberto v. U.S. Att'y Gen.*, 859 F.3d 208, 224 (3d Cir. 2017). Similar conduct by the IJ in this hearing has prolonged and complicated Mr. Mohamed's efforts to adequately make his case.

124. ICE officers never interviewed Mr. Mohamed in connection with his first parole request. Two weeks later, on March 16, 2018, ICE denied Mr. Mohamed's request via *pro forma* letter from Respondent Tsoukaris, with no personalized basis. Ex. 4, Letter from John Tsoukaris, ICE Field Office Director, Newark Field Office (March 16, 2018). The letter had two boxes ticked: "You have not established to ICE's satisfaction that you will appear as required for immigration hearings, enforcement appointments, or other matters, if you are paroled from detention;" and: "You have not established to ICE's satisfaction you would not pose a danger to the community or U.S. security, if you are paroled from detention." *Id.*

125. The parole denial included no individualized factual basis for the decision. *Id.*

126. For example, the denial did not address Mr. Mohamed's evidence that he would live with his wife in Columbus, and that, in any event, he does not pose a flight risk because his family's presence, their U.S. citizenship, and Mr. Mohamed's underlying claims, all create strong incentives for him to appear for subsequent hearings.

127. Nor did the denial cite any specific basis for determining that Mr. Mohamed may be a "danger to the community or U.S. security," despite his clean criminal record.

128. On July 2, 2018, the U.S. District Court for the District of Columbia ruled that the ICE Newark Field Office, which has jurisdiction over Mr. Mohamed's case, was systematically and unlawfully failing to apply its internal policy on parole. *Damus v. Nielsen*, 313 F. Supp. 3d 317, 335 (D.D.C.) ("During the eight months from February to September 2017, ICE's ... Newark Field Office [] denied 100% of parole applications."). The district court ordered ICE to provide individuals in Mr. Mohamed's position "with parole determinations that conform to all of the substantive and procedural requirements" of ICE's internal parole policy. Order, *Damus v. Nielsen*, No. 18-CV-578 (D.D.C. July 2, 2018), ECF No. 33.

129. In response to this ruling, Mr. Mohamed filed a second parole request on July 31, 2018. Mr. Mohamed submitted over 100 pages of evidence in support of his parole request,

supplementing it with additional affidavits, an expert report, and relevant reports for ICE to consider. Mr. Mohamed waited for an interview by ICE officials.

130. Mr. Mohamed was never interviewed for his parole application. Instead, on August 22, 2018, after more than 8 months of detention, Mr. Mohamed received a second *pro forma* denial letter from Respondent Tsoukaris. Ex. 5, Letter from John Tsoukaris, ICE Field Office Director, Newark Field Office (August 22, 2018). The letter ticked the identical boxes from the March 16, 2018 denial letter, and again failed to provide any factual basis for ICE's determination. *Id.*

131. On October 22, 2018, the U.S. District Court for the District of Columbia ruled once more, finding that there were "significant questions of noncompliance" based on evidence that the number of parole grants to asylum-seekers remained low, and that ICE continued to fail to provide the reasons for denying parole. *Damus v. Neilsen*, No. 18-CV-578, 2018 WL 5251745 at *3 (D.D.C. Oct. 22, 2018).

132. On November 1, 2018, President Trump gave a speech on his administration's policy with respect to detaining asylum applicants. C-SPAN, *President Trump Remarks on Immigration*, Nov. 1, 2018, <https://www.c-span.org/video/?453960-1/president-trump-delivers-remarks-immigration-policy>. Trump described a universal detention policy for asylum applicants. *Id.* ("They merely assert the need for asylum. And then they await a lengthy court process. The court process will take years sometimes...well, we're not releasing them into our country any longer. They'll wait. For long periods of time.")

133. Since his second parole request was denied, Mr. Mohamed has endured life-threatening medical difficulty, described in detail in the section below. Mr. Mohamed's medical condition makes his continued detention a significant humanitarian burden to himself and the other inmates at Elizabeth Detention Center. On that basis, Mr. Mohamed submitted a third parole request on February 6, 2019. Ex. 6, Cover Letter, Parole Request from Main Street

Legal Services, Legal Counsel for Abdikadir Abdulahi Mohamed (February 6, 2018). Like the first two parole requests, in violation of ICE policy, the third was denied without an interview and without a factual basis for the determination that Mr. Mohamed posed a flight risk or danger to the community.

Mr. Mohamed's Development of Active Tuberculosis Due to ICE's Negligent Medical Care

134. Mr. Mohamed has fallen dangerously ill over the course of his fifteen months in ICE detention. Owing to the conditions of his confinement – including ICE's wholly inadequate medical care – Mr. Mohamed developed active tuberculosis, for which he is still being treated. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019). ICE detention caused Mr. Mohamed's sickness. Now, apart from the length of his confinement, the conditions of Mr. Mohamed's detention make his necessary medical care impossible. *Id.*

135. On December 25, 2018, Dr. Chanelle Diaz, an independent physician, visited Mr. Mohamed at Elizabeth Detention Center to conduct an in-person medical examination. She was accompanied by a Somali language interpreter. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019). She and Dr. Elizabeth Chuang thoroughly reviewed Mr. Mohamed's medical records. *Id.* Doctor Chuang is a specialist in bioethics and internal medicine, who teaches and practices at the Montefiore-Einstein Center for Bioethics. She has "significant experience with the diagnosis and treatment of patients with tuberculosis." *Id.* Dr. Diaz is a resident physician at Montefiore Medical Center, who has "diagnosed and treated many cases of pulmonary tuberculosis while working at the Kisoro District Hospital in Kisoro Uganda." *Id.* Drs. Chuang and Diaz provided a detailed letter pursuant to their full examination and assessment. *Id.* In their letter, for the reasons

described in further detail below, Drs. Chuang and Diaz conclude that Mr. Mohamed is unable to receive appropriate treatment while detained at Elizabeth Detention Center. *Id.*

136. Mr. Mohamed was in good health when he entered Elizabeth Detention Center on December 15, 2017. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019). Before his detention he was extremely active – he worked long hours, played soccer, and had never been seriously ill. *Id.*

137. Mr. Mohamed received an initial medical examination upon his admission to Elizabeth Detention Center. As part of that workup, Mr. Mohamed was sent to University Hospital for a pulmonary x-ray because he had a “positive PPD” – he tested positive for latent tuberculosis. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019). While there was no evidence of active tuberculosis at the time, a competent course of medical treatment would have treated Mr. Mohamed for his latent infection, lest he develop an active, dangerous version of the disease. *Id.* (“The Center for Disease Control and Prevention recommends treatment of latent TB infection [i.e. anyone with a positive PPD and normal chest x-ray] to prevent active tuberculosis disease for people from countries with a high burden of tuberculosis.”). This was even more important for Mr. Mohamed who, as an incarcerated individual, was at an increased risk of developing active tuberculosis. *Id.*

138. ICE never provided Mr. Mohamed such vital treatment, despite the initial warning signs like the positive PPD test, Mr. Mohamed’s significant weight loss, or consistent complaints from Mr. Mohamed to ICE medical personnel of symptomatic pain, starting as early as January 2018, and continuing through October 2018. At no time during his medical treatment at Elizabeth Detention Center was Mr. Mohamed assisted by a Somali language interpreter. Independent physicians examining Mr. Mohamed concluded that this language barrier could have contributed to EDC medical personnel minimizing the source of Mr.

Mohamed's months of pain, which put Mr. Mohamed and his fellow detainees at serious risk of exposure. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019).⁸ ICE medical staff never perceived Mr. Mohamed's rapid weight loss as a warning sign, either. They never conducted back or chest x-rays to examine the source of his pain. *Id.*

139. For several days prior to his hospitalization on November 12, 2018, Mr. Mohamed's pain was so severe that he could not get out of bed to eat, or see the nurse at Elizabeth Detention Center. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019). Once he was finally able to see the nurse, Mr. Mohamed was in excruciating pain, experiencing fevers and shaking chills, was using three blankets to keep warm, and was urinating less than normal. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019); Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, pp. 57. He reported experiencing pain on his lower right rib cage that "radiates around the anterior chest" for four or five months prior. *Id.* Nevertheless, EDC medical personnel prescribed him Tylenol and sent him back to his dorm. Ex. 8, Medical Records of Abdikadir Abdulahi Mohamed, Elizabeth Detention Center Medical Department; Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, pp. 57.

⁸ Specifically, Drs. Chuang and Diaz noted the following: "It is likely that the active disease process had been going on for months before (October 2018). Not using appropriate translation services likely contributed to delayed diagnosis since medical staff attributed his symptoms to musculoskeletal pain. Precise and detailed descriptions of symptoms are often necessary to diagnose illnesses correctly. In our experience treating many patients for whom English is not their first language, translation is essential for such precision, even when the patient has fair or good English proficiency."

140. From Friday, November 9 until Sunday, November 11, Mr. Mohamed requested medical attention after complaining of unbearable pain in his chest and ribs, but was told nothing could be done until Monday, November 12.

141. By October 2018 – and likely months before – Mr. Mohamed was very sick from active tuberculosis, a disease that can lead to chronic pain, dangerous and permanent scarring of the lungs, and even death if untreated. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019). Mr. Mohamed’s active tuberculosis, if contagious, left the entire facility at EDC exposed to dangerous risk of infection. *Id.* Mr. Mohamed was finally admitted to University Hospital on November 12, 2018. Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, pp. 6-25.

142. Mr. Mohamed spent 11 days at University Hospital where they extracted dark liquid from his lungs. Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, pp. 53. For the vast majority of his hospitalization, Mr. Mohamed was shackled to his bed by both arms and one leg. Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, pp. 39-41. Two armed guards stood outside of his hospital room at all times. Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, pp. 39-41. Like at EDC, ICE did not facilitate a Somali language interpreter for Mr. Mohamed at University Hospital.

143. Over the course of nearly two weeks of hospitalization, ICE completely restricted attorney-client communication between Mr. Mohamed and his legal team. Mr. Mohamed’s attorneys called the hospital daily in an effort to communicate with him. Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, pp. 41. University Hospital staff had received explicit instructions from EDC to forbid anyone, including and especially Mr. Mohamed’s legal team, from communicating with or visiting Mr. Mohamed. Personnel at

University Hospital repeatedly expressed fear about allowing Mr. Mohamed to communicate with his legal team, despite having a HIPAA Release form on file within days of Mr. Mohamed's hospitalization. Mr. Mohamed's legal team consulted the highest levels of ICE staff at the Newark Field Office, Elizabeth Detention Center's Medical Department, and the warden of Elizabeth Detention Center, and were told in no uncertain terms that they were forbidden from communicating with Mr. Mohamed while he was in the hospital.

144. Mr. Mohamed's wife, Ms. Mahamed, was never contacted by ICE, EDC, or University Hospital to alert her of his hospitalization. Neither ICE, EDC or University Hospital ever called to update her on his condition, despite her diligent effort to gather information. Instead, multiple ICE officials communicated that Mr. Mohamed was "stable."

145. Upon discharge and return to Elizabeth Detention Center on November 22, 2018, Mr. Mohamed was not informed of his active tuberculosis diagnosis for nearly one month. Because he did not have the assistance of an interpreter at University Hospital, Mr. Mohamed did not know which medication he had been discharged with. In fact, University Hospital had discharged Mr. Mohamed with a six-month active tuberculosis regimen, which could cause significant liver damage. Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, pp. 6-13; Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019).

146. According to the University Hospital discharge summary, the doctor who treated Mr. Mohamed at the hospital recommended that Mr. Mohamed's liver function should be monitored through daily blood tests. Ex. 9, Medical Records of Abdikadir Abdulahi Mohamed, University Hospital, p. 3 ("Follow daily LFTs WHILE ON ANTI-tb MEDICATIONS"). Mr. Mohamed did not have any blood tests – let alone daily blood tests – for at least a month and a half after his first hospital discharge. He is still not receiving regular blood tests to monitor liver function. "TB treatment is one of the most common causes of drug induced liver injury

worldwide, and in some cases leads to fulminant liver failure. The failure to monitor this issue continues to place Mr. Mohamed at risk for damage to his liver.” Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019).

147. Beyond the blood tests, Mr. Mohamed’s medical care since his discharge demonstrates a continued lack of concern. Despite potentially devastating consequences, doctors at EDC again took lightly Mr. Mohamed’s health, and interrupted his treatment for three days. Interruption in treatment can lead to drug-resistant tuberculosis, which requires a costly and longer treatment with more serious side effects. Ex. 7, Letter from Dr. Elizabeth Chuang and Dr. Chanel Diaz, Montefiore Medical Center (January 4, 2019).

148. Mr. Mohamed has identified a tuberculosis treatment center, The Ben Franklin Tuberculosis Center, which is approximately sixteen minutes from his family’s home in Columbus, Ohio. There, he could receive the appropriate treatment and monitoring he needs to ensure his safety over the course of his recovery from the disease he tragically contracted on ICE’s watch.

CAUSES OF ACTION

COUNT ONE **UNAUTHORIZED DETENTION** **(IMMIGRATION AND NATIONALITY ACT)**

149. Mr. Mohamed re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as set forth fully herein.

150. On December 13, 2017, Mr. Mohamed arrived in the United States with a valid immigrant visa. After inspection by officers at primary and secondary inspection, he was lawfully admitted as an LPR on the same date.

151. No provision of the Immigration and Nationality Act authorizes or justifies Mr. Mohamed’s detention.

152. This court should therefore order Mr. Mohamed’s immediate release.

COUNT TWO
MISCLASSIFICATION OF AN ADMITTED NON-CITIZEN AS AN “ARRIVING ALIEN” AND UNLAWFUL DETENTION UNDER 8 U.S.C. § 1225(b)(1)(B)(ii) (IMMIGRATION AND NATIONALITY ACT, ADMINISTRATIVE PROCEDURES ACT, FIFTH AMENDMENT DUE PROCESS)

153. Mr. Mohamed re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as set forth fully herein.

154. The government contends that 8 U.S.C. § 1225(b)(1)(B)(ii) governs Mr. Mohamed’s detention. However, this provision applies only to non-citizens who are seeking admission to the United States and have not yet been admitted.

155. Mr. Mohamed was admitted as on December 13, 2017. Accordingly, he is not subject to detention pursuant to any provision of § 1225(b). Thus, his detention pursuant to this provision violates the INA. Because he was admitted, to the extent he may be detained at all, his detention would be governed by 8 U.S.C. § 1226(a).

156. Mr. Mohamed should be immediately released as a lawful permanent resident, or, in the alternative, granted an immediate bond hearing pursuant to 8 U.S.C. § 1226(a).

157. Mr. Mohamed’s misclassification as an “arriving alien” is arbitrary and capricious and violates the Administrative Procedures Act.

158. Mr. Mohamed’s misclassification as an “arriving alien” and detention without a bond hearing violate the Due Process Clause of the Fifth Amendment.

COUNT THREE
UNREASONABLY PROLONGED DETENTION WITHOUT A BOND HEARING (FIFTH AMENDMENT DUE PROCESS)

159. Mr. Mohamed re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as set forth fully herein.

160. The Third Circuit, following the principles set forth by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Demore v. Kim*, 538 U.S. 510 (2003), has held that

unreasonably prolonged detention without a bond hearing violates the Fifth Amendment Due Process Clause. *See, e.g., Chavez-Alvarez v. Warden York Cnty. Prisons*, 783 F.3d 469 (3d Cir. 2015); *Diop v. ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011).

161. Even if Mr. Mohamed were considered an “arriving alien,” he is still entitled to due process under the Fifth Amendment to the United States Constitution. *See Castro v. U.S. Dep’t of Homeland Sec.*, 835 F.3d 422, 449 n.32 (3d Cir. 2016) (“We doubt ... that Congress could authorize, or that the Executive could engage in, the indefinite, hearingless detention of an alien simply because the alien was apprehended shortly after clandestine entrance.”).

162. Mr. Mohamed’s prolonged, indefinite detention without a bond hearing under § 1225(b) violates the Fifth Amendment by depriving him of liberty without due process of law. By the time of his first asylum hearing, on April 2, 2019, Mr. Mohamed will have been detained for nearly sixteen months. His detention is indefinite. His particularly dire medical situation makes his immediate release all the more urgent.

163. This Court should therefore order his release, with appropriate conditions of supervision if necessary. *See, e.g., Barthelemy v. Doll*, No. 17-CV-1508, 2018 WL 1008408, at *3 (M.D. Pa. Feb. 22, 2018) (“arriving alien” granted bond hearing after 16 months of detention without bond hearing); *Martinez-Paredes v. Lowe*, No. 17-CV-353, 2017 WL 4883197, at *4 (M.D. Pa. Oct. 30, 2017) (same, after 22 months); *Pierre v. Doll*, No. 17-CV-1507, 2018 WL 5315203, at *4 (M.D. Pa., Oct. 26, 2018) (same, after 24 months); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *4-5 (S.D.N.Y. Aug. 20, 2018) (same, after 9 months); *Lett v. Decker*, 346 F. Supp. 3d 379 (S.D.N.Y. 2018) (same, after 10 months); *See also Thomas C.A. v. Green*, No. 18-1004 (JMV), 2018 WL 4100941, at *5 (D.N.J. Aug. 29, 2018) (non-citizen subject to mandatory detention granted bond hearing after 15 months of detention without bond hearing); *Carlos A. v. Green*, No. 18-13356 (SDW), 2019 WL 325543,

at *3 (D.N.J. Jan. 25, 2019) (same, after 18 months); *K.A. v. Green*, No. 18-3436 (JLL), 2018 WL 3742631, at *3 (D.N.J. Aug. 7, 2018) (same, after 19 months).

164. In the alternative, the Court should order an immediate, constitutionally-adequate bond hearing before this Court, or a neutral arbiter, to wit, an Immigration Judge other than IJ Tadal.

165. Once detention becomes constitutionally unreasonable, “the Due Process Clause demands a hearing, at which the Government bears the burden of proving that continued detention is necessary to fulfill the purposes of the detention statute.” *Diop*, 656 F.3d at 233; accord *Chavez–Alvarez*, 783 F.3d at 474–75 (“[D]ue process requires us to recognize that, at a certain point . . . the burden to an alien’s liberty outweighs a mere presumption that the alien will flee and/or is dangerous.”). At such a hearing, “[t]he Government must meet its burden . . . by clear and convincing evidence.” *Guerrero–Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, at 224, n.12. (3d Cir. 2018). Moreover, to afford due process, the adjudicator must consider the non-citizen’s financial circumstances and alternative release conditions when setting a bond. See *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).

COUNT FOUR
UNLAWFUL LIFE-THREATENING DETENTION
(FIFTH AMENDMENT DUE PROCESS, SUSPENSION CLAUSE)

166. Mr. Mohamed re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as set forth fully herein.

167. As a result of ICE’s negligent medical treatment, Mr. Mohamed’s confinement has resulted in the development of active tuberculosis – a life-threatening disease which requires intensive medical treatment and medication management. The medicine necessary to treat Mr. Mohamed’s condition puts him at risk of sudden liver failure, which could be fatal. To prevent such a result, upon discharging Mr. Mohamed, the hospital where he was diagnosed after

eleven days of close monitoring instructed EDC that Mr. Mohamed needed to have daily blood and liver tests. Medical personnel at EDC are unwilling and unable to safeguard Mr. Mohamed's life by appropriately treating his condition.

168. Courts have held that habeas is an appropriate remedy "where the specific detention abridge[s] a federally protected interest." *Aamer v. Obama*, 742 F.3d 1023, 1036 (D.C. Cir. 2014). "By placing the petitioner in the wrong prison, denying him treatment, imposing cruel and unusual punishment, impeding his access to the courts, and so on – it is an unlawful detention *and habeas lies to release the petitioner therefrom.*" *Id.* (emphasis in the original); *see also Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) (citing same principle that habeas corpus lies as a cure to unconstitutional restraints during custody).

169. The prolonged confinement of Mr. Mohamed by DHS which has resulted in a life-threatening illness has abridged his federally protected liberty interest in his health. The inability of DHS to adequately treat Mr. Mohamed's active tuberculosis, which he developed as a result of DHS negligence, renders his detention unlawful under the Due Process Clause of the Fifth Amendment and the Suspension Clause of the United States Constitution.

170. This Court should order Mr. Mohamed's immediate release to safeguard his life and health.

COUNT FIVE

DENIAL OF PAROLE WITHOUT ADEQUATE PROCESS (IMMIGRATION AND NATIONALITY ACT, IMPLEMENTING REGULATIONS, DHS DIRECTIVE 11002.1, ADMINISTRATIVE PROCEDURES ACT AND FIFTH AMENDMENT DUE PROCESS)

171. Mr. Mohamed re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as set forth fully herein.

172. As discussed above, DHS thrice summarily denied Mr. Mohamed's parole application without interviewing Mr. Mohamed, or offering an individualized basis for his denial as required by DHS Directive and court order. *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—follow the ICE Directive when adjudicating asylum-seekers’ detention.”).

173. DHS denial of Mr. Mohamed’s parole applications violates the Immigration and Nationality Act, its implementing regulations, and DHS Directive 11002.1. The denial of his second and third parole application also violated the U.S. District Court for the District of Columbia’s order in *Damus v. Nielsen*.

174. DHS’ denial of Mr. Mohamed’s parole applications is arbitrary and capricious and violates the Administrative Procedures Act.

175. By depriving Mr. Mohamed of liberty without fair process, DHS’ denial of Mr. Mohamed’s his applications violates the Due Process Clause of the Fifth Amendment.

COUNT SIX
DISCRIMINATION BASED ON RELIGION AND NATIONAL ORIGIN
(FIFTH AMENDMENT EQUAL PROTECTION)

176. Mr. Mohamed re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as set forth fully herein.

177. The Fifth Amendment to the United States Constitution protects individuals against actions of the federal government that deny equal protection of the laws.

178. Respondents discriminated against Mr. Mohamed, without justification, because he appears Somali, because he is a Somali national, because Somalia is a Muslim-majority country, and because he is a Muslim.

179. Respondents’ arrest and ongoing detention of Mr. Mohamed violate the equal protection guarantees of the Fifth Amendment.

180. Therefore, Mr. Mohamed is entitled to immediate relief.

COUNT SEVEN
DISCRIMINATION BASED ON RELIGIOUS ANIMUS
(FIRST AMENDMENT FREE EXERCISE AND ESTABLISHMENT CLAUSES)

181. Mr. Mohamed re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as set forth fully herein.

182. Respondents' arrest and detention of Mr. Mohamed on the basis of his religion violates the Free Exercise Clause and the Establishment Clause of the United States Constitution.

183. Upon information and belief, days after the Executive Order banning travelers from six Muslim-majority countries went into effect, Mr. Mohamed was arrested, and an attempt was made to coerce him to sign documents that would have led to his immediate departure from this country, despite possessing a valid immigrant visa. Mr. Mohamed's initial stop and his ongoing and prolonged immigration detention are based on his Muslim faith, his identity as a Muslim man, his appearance as a Somali, and his citizenship from a banned Muslim-majority country.

PRAYER FOR RELIEF

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

1. Issue a Writ of Habeas Corpus requiring Respondents to release Mr. Mohamed from custody immediately or requiring an immediate, constitutionally adequate hearing before this Court;
2. As an additional alternative, issue a writ requiring an immediate, constitutionally adequate hearing before a neutral arbiter, to wit, an Immigration Judge other than IJ Tadal at which: (i) the Department of Homeland Security bears the burden to demonstrate, by clear and convincing evidence, that Mr. Mohamed's continued detention is necessary, consistent with the Third Circuit's decisions in *Diop v. ICE/Homeland Sec.* and *Guerrero-Sanchez v. Warden York Cnty. Prison* and (ii) the immigration judge considers Mr. Mohamed's ability to pay a bond;
3. While this Petition is pending, order Mr. Mohamed's immediate release pursuant to the Court's inherent authority to release habeas corpus petitioners on bail;

4. Enter a judgment declaring that Respondents' detention of Mr. Mohamed is unauthorized by statute and contrary to law and the U.S. Constitution;
5. Award Petitioner reasonable costs and attorneys' fees; and
6. Grant any other and further relief that this Court may deem fit and proper.

Dated: April 10, 2019

Respectfully submitted,

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