

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Mark Anthony REID; Robert WILLIAMS;)
and Leo Felix CHARLES, on behalf of)
themselves and others similarly situated,)

Petitioners-Plaintiffs,)

v.)

Christopher DONELAN, Sheriff,)
Franklin County, Mass.; Lori STREETER,)
Superintendent, Franklin County Jail &)
House of Correction; Kirstjen M.)
NIELSEN, Secretary of the)
Department of Homeland Security;)
Thomas D. HOMAN, Acting Director of)
Immigration and Customs Enforcement;)
Rebecca J. ADDUCCI, Interim Director,)
Immigration and Customs Enforcement)
Boston Field Office; Thomas HODGSON,)
Sheriff, Bristol County, Mass.; Joseph)
McDONALD, Jr., Sheriff, Plymouth)
County, Mass.; Steven TOMPKINS,)
Sheriff, Suffolk County, Mass.;)
David DUBOIS, Sheriff, Strafford County,)
N.H.; Christopher BRACKETT,)
Superintendent, Strafford County House of)
Corrections; Jefferson B. SESSIONS, III,)
Attorney General of the United)
States; James McHENRY, Director of the)
Executive Office for Immigration Review;)
and THE EXECUTIVE OFFICE FOR)
IMMIGRATION REVIEW,)

Case No. 3:13-cv-30125-PBS

Dated: October 24, 2018

Defendants-Respondents.)

**FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

This class action challenges the government's unconstitutional practice of detaining individuals in immigration proceedings for more than six months without a bond hearing, under 8 U.S.C. § 1226(c). The government incarcerates people for six months, and sometimes far longer, without any individualized inquiry into whether their detention serves its purpose of preventing flight risk or danger to the community. Even individuals who pose no such risk and have meritorious challenges to removal remain imprisoned without any opportunity even to ask for release on bond.

The government's practices separate Plaintiffs from their families, obstruct their ability to seek immigration relief, and impose significant psychological and physical harm from poor detention conditions.

Plaintiffs originally filed this action in 2012, a time when Immigration & Customs Enforcement ("ICE") held all or nearly all Section 1226(c) detainees who were within the administrative jurisdiction of the ICE Boston Field Office at four county jails in the Commonwealth of Massachusetts. Plaintiffs sought, and Judge Ponsor granted, certification of a class of such individuals and granted summary judgment, interpreting Section 1226(c), in light of the Due Process Clause, to require bond hearings for class members. The First Circuit reversed in part and remanded, but then stayed its decision pending the Supreme Court's resolution of *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). After *Jennings*, the First Circuit vacated its prior opinion and remanded anew.

Plaintiffs' amended complaint includes new class representatives and expands the class to include detainees at a fifth county jail in New Hampshire, where the ICE Boston Field Office now also holds Section 1226(c) detainees whose cases are decided in Boston Immigration Court.

Staff of the New Hampshire jail also regularly detain these putative class members within Massachusetts, when transporting the detainees to and from Boston Immigration Court or ICE offices in Massachusetts and when providing courthouse security. Plaintiffs also seek an alternative form of relief under the original causes of action.

The original lead Plaintiff in this case was Mark Anthony Reid. He is a lawful permanent resident and veteran of the U.S. Army Reserve who moved to the United States at the age of fourteen and has lived here since that time, for forty years. He has been in removal proceedings continuously since November 13, 2012, and his immigration case remains pending. On the government's view of this case he should have been detained for all of it—five years and seven months—despite the immigration judge's determination that he presents no danger or flight risk. Mr. Reid was released from ICE custody under Section 1226(c) after 469 days, following an individualized bond hearing that Judge Ponsor ordered. Mr. Reid is now seeking relief in the form of cancellation of removal, asylum and withholding of removal, and relief from removal under the Convention Against Torture (“CAT”).

Additional named representatives Robert Williams and Leo Felix Charles are among the most recent victims of the government's refusal to provide long-term detainees with a bond hearing. Mr. Williams, a lawful permanent resident who has lived in the United States for over a decade, has been held in immigration detention since December 6, 2017 without an individualized bond hearing. No court has ever determined whether Mr. Williams is a danger or a flight risk. If Mr. Williams were released, he would live with his sister, nephew, and niece—all of whom are U.S. citizens—and return to his job as a pastry chef. Similarly, Mr. Charles, a painter who has lived in the United States for more than 35 years, has been in ICE custody since February 2, 2018 without a bond hearing; while in detention, he has been unable to access

critical medical care. He is pursuing relief from removal under CAT and would reside in Bridgeport, Connecticut, if released.

As with Mr. Reid, the prolonged, no-bond detention of Mr. Williams and Mr. Charles violates their rights under the Due Process Clause of the Fifth Amendment and the Excessive Bail Clause of the Eighth Amendment. On behalf of themselves and others similarly situated, Petitioners seek from this Court an order declaring prolonged no-bond detention unconstitutional, a writ of habeas corpus requiring their release absent the provision of bond hearings consistent with constitutional requirements, and related injunctive relief to remedy the harms caused by the government's practice.

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343, 1361, 2201–02, and 2241, and Article III of the United States Constitution.

2. Venue is proper in the District of Massachusetts. Mr. Reid, Mr. Williams and Mr. Charles have all been incarcerated under ICE Custody in detention facilities in Massachusetts.

PARTIES

3. Petitioners Mark Anthony Reid, Robert Williams, and Leo Felix Charles are representatives of a class of all individuals currently held for more than six months in mandatory ICE custody in Massachusetts or New Hampshire under 8 U.S.C. § 1226(c), and all individuals in Massachusetts or New Hampshire in future mandatory immigration custody for more than six months pursuant to Section 1226(c).

4. Mr. Reid is a citizen of Jamaica and a Lawful Permanent Resident (“LPR”) of the United States. He was previously detained by ICE at the Franklin County Jail and House of

Correction in Greenfield, Massachusetts, until his release on bond pursuant to Judge Ponsor's grant of his petition for habeas corpus and a subsequent individualized bond determination.

5. Mr. Williams is a citizen of Jamaica and an LPR of the United States. He has been detained at the Franklin County Jail in Greenfield, Massachusetts and is currently detained by ICE at Strafford County House of Corrections in Dover, New Hampshire.

6. Mr. Charles is a citizen of Haiti. He is currently detained by ICE at the Bristol County House of Corrections in North Dartmouth, Massachusetts.

7. Defendant-Respondent Christopher Donelan is the Sheriff of Franklin County, Massachusetts. Sheriff Donelan has custody of Mr. Williams, Mr. Charles, and other members of the class. He is sued in his official capacity.

8. Defendant-Respondent Lori Streeter is the Superintendent of Franklin County Jail and House of Correction. Superintendent Streeter has custody of Mr. Williams, Mr. Charles, and other members of the class. She is sued in her official capacity.

9. Defendant-Respondent Kirstjen M. Nielsen is the Secretary of Homeland Security. ICE is a unit of the Department of Homeland Security ("DHS"). Secretary Nielsen has custody of Mr. Williams, Mr. Charles, and other members of the class. She is sued in her official capacity.

10. Defendant-Respondent Thomas D. Homan is the Acting Director of ICE. Acting Director Homan has custody of Mr. Williams, Mr. Charles, and other members of the class. He is sued in his official capacity.

11. Defendant-Respondent Rebecca J. Adducci is the Interim District Director of ICE's Boston Field office. Interim District Director Adducci has custody of Mr. Williams, Mr. Charles, and other members of the class. She is sued in her official capacity.

12. Defendant-Respondent Thomas Hodgson is the sheriff of Bristol County, Massachusetts. Sheriff Hodgson has custody of members of the class. He is sued in his official capacity.

13. Defendant-Respondent Joseph McDonald, Jr. is the sheriff of Plymouth County, Massachusetts. Sheriff McDonald has custody of members of the class. He is sued in his official capacity.

14. Defendant-Respondent Steven Tompkins is the sheriff of Suffolk County, Massachusetts. Sheriff Tompkins has custody of members of the class. He is sued in his official capacity.

15. Defendant-Respondent David Dubois is the sheriff of Strafford County, New Hampshire. Sheriff Dubois has custody of members of the class. He is sued in his official capacity.

16. Defendant-Respondent Christopher Brackett is the superintendent of the Strafford County House of Corrections. Superintendent Brackett has custody of members of the class. He is sued in his official capacity.

17. Defendant-Respondent Jefferson B. Sessions, III, is the Attorney General of the United States. The Attorney General oversees the operation of the Executive Office for Immigration Review (“EOIR”). Attorney General Sessions shares responsibility for the implementation and enforcement of the immigration laws with the Secretary of Homeland Security. He is sued in his official capacity.

18. Defendant-Respondent Executive Office for Immigration Review is an agency within the U.S. Department of Justice with the primary mission of adjudicating immigration cases, including cases involving detained immigrants. One of EOIR’s immigration courts is the

Hartford Immigration Court, located at 450 Main Street in Hartford, Connecticut. Another is the Boston Immigration Court, located at 15 New Sudbury Street in Boston, Massachusetts. All the Immigration Judges in Boston and Hartford are members and employees of EOIR.

19. Defendant-Respondent James McHenry is the Director of EOIR and is responsible for EOIR's policies, practices, and procedures. Director McHenry is sued in his official capacity.

FACTS AND PROCEDURAL BACKGROUND

Named Plaintiff Mark Anthony Reid

20. Mr. Reid was born in Jamaica on April 7, 1964. He came to the United States in 1987 as an LPR, at the age of fourteen. Mr. Reid served in the U.S. Army Reserve after enlisting at age twenty out of a desire to serve his country. Upon his honorable discharge six years later, he believed that he had become a U.S. citizen.

21. Following his honorable discharge, Mr. Reid pursued post-secondary education and held several jobs. He has taken courses in business administration, paralegal skills, and criminalistics. He earned a certificate as a loan originator from Walter and Associates, a financial services firm in New Haven. He has worked in mortgage services, construction, and asbestos removal.

22. Between 1986 and 2010, Mr. Reid received a number of convictions, including a conviction in 2010 for one count of sale of an illegal drug, one count of third-degree burglary, and one count of failure to appear. Following that conviction, Mr. Reid served approximately two years and was paroled by the Connecticut Department of Corrections on November 13, 2012 to ICE custody. Mr. Reid first became aware that he was not a U.S. citizen when he learned that he was subject to an ICE detainer.

23. ICE charged Mr. Reid with two grounds of removability, as a noncitizen convicted of an aggravated felony and a controlled substance violation. Upon taking custody of Mr. Reid, ICE refused to set any bond for him.

24. Mr. Reid has litigated his removal proceedings since 2012. While he conceded the factual allegations and charges, he has sought relief from removal under the Convention Against Torture (“CAT”). The Immigration Judge (“IJ”) denied Mr. Reid CAT relief three times, and the Board of Immigration Appeals (“BIA”) reversed that denial each time, remanding to the IJ.

25. After the last of those three reversals, Mr. Reid moved to terminate his removal proceedings in light of the Supreme Court’s decision in *Mathis v. United States*, 136 S. Ct. 2243 (2016), a case concerning how to classify state criminal convictions for immigration law purposes. The IJ denied the motion for termination but concluded that none of the convictions are aggravated felonies under *Mathis*. Mr. Reid is therefore now eligible for asylum, withholding of removal, and cancellation of removal for LPRs. Mr. Reid intends to apply for each of those forms of relief, in addition to continuing to pursue his application for CAT relief. His individual hearing on those claims is scheduled for November 7, 2018.

26. On September 18, 2018, Mr. Reid filed a Motion to Reconsider the IJ’s decision regarding Mr. Reid’s removability in light of new legal authority and evidence. His next master calendar hearing on this issue is scheduled for October 29, 2018.

27. In Mr. Reid’s initial bond proceeding, the IJ refused to consider whether Mr. Reid was a danger or a flight risk, and instead held that he lacked jurisdiction to determine whether Mr. Reid was entitled to a bond hearing under Section 1226(c).

28. On January 9, 2014, Judge Ponsor granted Mr. Reid’s individual habeas petition and ordered DHS to provide a bond hearing. *See Reid v. Donelan (Reid I)*, 991 F. Supp. 2d 275

(D. Mass. 2014), *aff'd in relevant part*, No. 14-1270 (1st Cir. May 11, 2018). On February 3, 2014, the Immigration Judge set bond for Mr. Reid in the amount of \$25,000. Mr. Reid posted bond shortly thereafter and was released.

29. Notwithstanding Mr. Reid's requests, made through counsel and before an IJ, that ICE release Mr. Reid or agree to set bond for him, ICE continuously held Mr. Reid in mandatory, no-bond detention from November 13, 2012, until Mr. Reid posted bond following the hearing that resulted from the grant of his habeas petition, 469 days later.

Named Plaintiff Robert Williams

30. Mr. Williams was born in Jamaica and came to the United States in 2005. He is an LPR.

31. Prior to his incarceration, Mr. Williams lived in Bridgeport, Connecticut, where he has close family ties. His sister, niece, and nephew, who are all U.S. citizens, live nearby. In addition to his sister and her children, Mr. Williams has several relatives who are U.S. citizens or LPRs, including his grandmother, who is a citizen, and his parents, who are both LPRs.

32. Mr. Williams worked as a pastry chef in Bridgeport. In his free time, he volunteered with an organization that helps the elderly. Prior to being detained, he helped provide financial support to his sister and his niece and nephew, who are six and nine, respectively.

33. Mr. Williams has been held in immigration detention since December 6, 2017. For the majority of his immigration detention, he was detained at Franklin County Jail and House of Correction in Greenfield, Massachusetts. ICE recently transferred him to Strafford County House of Corrections in Dover, New Hampshire. He is detained pursuant to Section 1226(c).

34. An IJ ordered Mr. Williams removed on February 13, 2018. He appealed to the BIA on March 9, 2018, and his appeal was dismissed on August 2, 2018. His Petition for Review is currently pending before the First Circuit.

35. ICE charged Mr. Williams with removability under INA 237(a)(2)(C) for unlawful possession of a firearm, because he pled guilty to violation of Conn. Gen. Stat. 29-35(a). He served one year for this conviction and was immediately transferred into ICE custody following the completion of his sentence.

36. Mr. Williams had a bond hearing scheduled for June 14, 2018, but the IJ denied his bond request for lack of jurisdiction.

37. Mr. Williams's detention has harmed him and his relatives. He is worried and experiencing stress about his family—in particular, his sister and her two children. His sister is a single mother, and before Mr. Williams was detained, she and her children received financial support from him. He worries about whether she can pay her bills, take care of her children, and make ends meet. Mr. Williams has also suffered psychological harm in detention, and is often frustrated and sad.

38. No family members have been able to visit Mr. Williams in detention. Mr. Williams especially misses his niece and nephew. When he speaks with his niece on the phone and she asks when he is coming home, he has no answer for her.

39. Mr. Williams's detention has also harmed his ability to challenge his removal. He has difficulty communicating with his lawyer, who has to travel from New Haven, Connecticut, to Greenfield, Massachusetts, to visit him. Phone calls are also difficult: sometimes for days at a time, Mr. Williams is unable to call his lawyer, and even when he has been permitted to make calls, those calls have sometimes been limited to 15 minutes.

40. Mr. Williams can no longer bear prolonged detention. After ten months of incarceration with no end in sight, Mr. Williams has acquiesced to ICE's desire to remove him. Rather than remain detained while he fights his immigration case, Mr. Williams is scheduled to be removed to Jamaica on or around October 25, 2018 and will continue fighting his immigration case out of incarceration and from abroad.

Named Plaintiff Leo Felix Charles

41. Mr. Charles was born in Haiti and came to the United States in May 1982 as a nonimmigrant visitor.

42. Prior to his incarceration, Mr. Charles worked as a painter and resided in Bridgeport, Connecticut, near people with whom he is very close and whom he considers family.

43. In 1998, Mr. Charles was convicted of the sale of illegal drugs in violation of Conn. Gen. Stat. 21a-278(a)(b). He was released from incarceration for this conviction in 2009.

44. On February 18, 1999, Mr. Charles received an NTA from the Immigration and Naturalization Service charging him with two grounds of removability, for presence without admission or parole and drug trafficking.

45. An immigration judge granted Mr. Charles relief under CAT on January 9, 2003.

46. In 2013, Mr. Charles was convicted of first-degree assault under Conn. Gen. Stat. 53a-59. After serving a five-year sentence, he was directly transferred into ICE custody at the Franklin County Jail and House of Correction on February 2, 2018. He has been detained by ICE since that date.

47. Mr. Charles suffers from a number of medical issues, which detention at the Franklin County Jail has exacerbated due to lack of access to adequate medical care. In 2017, Mr. Charles underwent a spinal fusion procedure, and he is currently confined to a wheelchair.

He also suffers from diabetes, high blood pressure, and digestive issues. His spinal fusion procedure requires ongoing follow-up care, but he has been unable to access the necessary treatment while detained. Mr. Charles is also awaiting knee replacement surgery. No date has been set for the surgery.

48. DHS filed a motion to reopen Mr. Charles's case to reconsider whether to terminate the grant of relief from removal under CAT. On February 22, 2018, an IJ terminated Mr. Charles's relief under CAT and ordered him removed.

49. Mr. Charles filed an appeal and motion for stay of removal on February 23, 2018. His appeal to the BIA was dismissed on October 3, 2018. Mr. Charles filed a Petition for Review before the Second Circuit on October 19, 2018.

Class Member Jovanny Pichardo Gomez

50. Other members of the Plaintiff class are similarly separated from their family members and community, restricted in their ability to litigate their removal cases, and subjected to psychological or physical harm in detention.

51. For example, class member Jovanny Pichardo Gomez is a lawful permanent resident and has lived in the United States for approximately twenty years. He has a U.S.-citizen son who is eight years old. Before being imprisoned, he worked delivering wholesale meat to grocery stores and was an active volunteer in the community and member of a church.

52. ICE has detained Mr. Pichardo Gomez for over six months without a bond hearing, in Bristol, Massachusetts. Because the facility is so far from New York City, his family has been unable to visit him there, and he has not seen his son in over a year. Since telephone calls are expensive, he is also unable to speak regularly with his son or other family members.

53. An IJ ordered Mr. Pichardo Gomez removed to the Dominican Republic, which Mr. Pichardo Gomez believes was due to a conviction under Conn. Gen. Stat. § 21a-277(b). He filed an appeal to the BIA, which was received on February 26, 2018, and was dismissed on July 12, 2018.

CLASS AND REPRESENTATIVE HABEAS ACTION ALLEGATIONS

54. Defendants-Respondents have a pattern and practice, custom, and policy of holding individuals in mandatory, prolonged, no-bond detention pursuant to Section 1226(c).

55. Many of the individuals held by ICE in prolonged no-bond detention pursuant to Section 1226(c) are lawfully present in the United States, including LPRs such as Mr. Reid and Mr. Williams.

56. Many individuals subjected to prolonged no-bond detention under Section 1226(c) are indigent, have limited English proficiency, and/or have a limited understanding of the U.S. judicial system. Members of the class lack the ability to obtain the assistance of counsel in challenging their detention under Section 1226(c), even if they are able to determine that such detention is susceptible to legal challenge.

57. ICE routinely detains individuals pursuant to Section 1226(c) for periods longer than six months, including when those detained are in the process of challenging the grounds of their removability.

58. Petitioners Mr. Reid, Mr. Williams, and Mr. Charles seek either certification of a class under Federal Rule of Civil Procedure 23 or certification of a representative habeas, *see United States ex rel. Sero v. Preiser*, 506 F.2d 1115 (2d Cir. 1974); *see also Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2009), to challenge ICE's practice of subjecting individuals to prolonged no-bond detention under Section 1226(c).

59. Mr. Reid, Mr. Williams, and Mr. Charles seek certification of a class consisting of all individuals (1) detained by ICE within the Commonwealth of Massachusetts or the state of New Hampshire and (2) who are or will be mandatorily detained for longer than six months pursuant to Section 1226(c).

60. All class members are detained under the authority of the ICE Boston Field Office, and all undergo removal proceedings at either the Boston Immigration Court in Boston, Massachusetts, or the Hartford Immigration Court in Hartford, Connecticut. In Massachusetts, ICE incarcerates detainees at jails in Franklin County, Bristol County, Plymouth County, and Suffolk County. In New Hampshire, the Strafford County Department of Corrections (“Strafford”), located in Dover, New Hampshire, houses as many as 130 immigration detainees whose cases are heard at Boston Immigration Court.

61. ICE often transfers individuals between New Hampshire and Massachusetts detention facilities as they approach six months in detention.

62. The New Hampshire defendants also regularly transport detained individuals from Strafford to the ICE facility in Burlington, Massachusetts and from Strafford to and from the Boston Immigration Court. The New Hampshire defendants detain class members in Massachusetts during these periods, accompanying them in and out of immigration court and providing courtroom security.

63. The representative class is sufficiently numerous as to make joinder impracticable. There are more than forty class members, including an unknown number of future class members who will continue to join the class so long as ICE persists in subjecting them to prolonged mandatory detention.

64. The representative class presents common questions of law and fact, including (1) whether the government has a policy or general practice of detaining non-citizens in removal proceedings for longer than six months under Section 1226(c) without providing an adequate hearing to determine whether such prolonged detention is justified; (2) whether this detention policy or practice violates the Due Process Clause; and (3) whether this detention policy or practice violates the Excessive Bail Clause.

65. The claims of Mr. Reid, Mr. Williams, and Mr. Charles are typical of the class they seek to represent. Like all class members, Mr. Reid, Mr. Williams, and Mr. Charles are currently in removal proceedings. Mr. Williams and Mr. Charles have been detained pursuant to Section 1226(c) for over six months without being afforded a bond hearing and, absent relief from this Court, will be held in detention for the pendency of their removal cases. Mr. Reid was in the same position until this Court granted his petition for habeas corpus and ordered that DHS afford him a bond hearing.

66. Mr. Reid, Mr. Williams, and Mr. Charles are able to fairly and adequately protect the interests of the representative class. Attorneys and law student interns of the Jerome N. Frank Legal Services Organization at Yale Law School, the ACLU Immigrants' Rights Project, and Anant Saraswat of Wolf Greenfield have extensive experience in litigating complex civil cases and habeas corpus actions involving immigration law, civil rights, and constitutional claims, and will vigorously prosecute the claim on behalf of all members of the class.

67. Defendants-Respondents have "acted or refused to act on grounds that apply generally to the class." Fed. R. Civ. P. 23(b)(2). Moreover, because members of the class will seek bond hearings, final relief is "appropriate respecting the class as a whole," *id.*, to ensure that members of the class are subject to a consistent government policy concerning their detention.

68. Petitioners and members of the class seek a writ of habeas corpus to remedy their illegal and unconstitutional prolonged no-bond detention; declaratory and injunctive relief; reasonable costs and attorney's fees; and any further relief that the Court deems appropriate.

CAUSES OF ACTION

COUNT ONE

(VIOLATION OF FIFTH AMENDMENT SUBSTANTIVE DUE PROCESS)

69. The allegations contained in paragraphs 1 through 68 above are repeated and realleged as though fully set forth herein.

70. Substantive due process principles forbid the infringement of fundamental liberty interests, unless the infringement is narrowly tailored to serve a compelling government interest.

71. Freedom from physical restraint is a liberty interest protected by substantive due process. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The liberty interests of Mr. Reid, Mr. Williams, and Mr. Charles after over six months of detention is a fundamental liberty interest.

72. The prolonged no-bond detention of an individual who, like Mr. Reid, Mr. Williams or Mr. Charles does not pose a danger to the community or a flight risk is not narrowly tailored to serve a compelling government interest. Continued detention without a bond hearing under Section 1226(c) violates their substantive due process rights.

73. Mr. Reid, Mr. Williams, and Mr. Charles bring this cause of action on behalf of themselves and the class.

COUNT TWO

(VIOLATION OF FIFTH AMENDMENT PROCEDURAL DUE PROCESS)

74. The allegations contained in paragraphs 1 through 73 above are repeated and realleged as though fully set forth herein.

75. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of “liberty” interests protected under the Due Process Clause of the Fifth Amendment. Certain procedures constraining governmental action may be required after a consideration of the following three factors: the private interest affected by official action; the risk of erroneous deprivation of that interest and the probable value, if any, of additional or substitute procedural safeguards; and the government’s interest, including the function involved and the fiscal and administrative burdens that additional procedural requirements would entail.

76. The private liberty interest of Mr. Reid, Mr. Williams, and Mr. Charles and that of other members of the class is substantial. The risk that they and other members of the class have been erroneously deprived of liberty is high due to the failure of the IJ to provide them with individualized bond hearings, in which they could present evidence that demonstrates that they are neither flight risks nor dangers to the community.

77. The government’s interest in the continued detention of Mr. Reid, Mr. Williams, Mr. Charles, and other members of the class without an individualized bond hearing is slight since the government has not shown by clear and convincing evidence that they and other members of the class are neither flight risks nor dangers to the community.

78. Continued detention of Mr. Reid, Mr. Williams, Mr. Charles, and other members of the class under Section 1226(c) without an individualized bond hearing violates procedural due process.

79. Mr. Reid, Mr. Williams, and Mr. Charles bring this cause of action on behalf of themselves and the class.

COUNT THREE

(VIOLATION OF EIGHTH AMENDMENT EXCESSIVE BAIL CLAUSE)

80. The allegations contained in paragraphs 1 through 79 above are repeated and realleged as though fully set forth herein.

81. The Excessive Bail Clause of the Eighth Amendment prevents prolonged detention without a bond hearing when there is no compelling government interest other than the prevention of flight.

82. Prolonged no-bond detention under Section 1226(c) violates the requirements of the Excessive Bail Clause of the Eighth Amendment.

83. The more than six-month-long, no-bond detention of Mr. Reid, Mr. Williams, and Mr. Charles, none of whom pose a danger to the community or is a flight risk, serves no compelling government interest.

84. The government has no compelling interest in denying all class members any opportunity to receive a meaningful bond hearing before a neutral decision-maker.

85. Petitioners' continued detention violates the Excessive Bail Clause of the Eighth Amendment.

86. Mr. Reid, Mr. Williams, and Mr. Charles bring this cause of action on behalf of themselves and the class.

PRAYER FOR RELIEF

WHEREFORE, Petitioners ask this Court to grant the following relief:

- (1) Certify this case either as a class under Rule 23 or a representative habeas class;
- (2) Enter a judgment declaring that Defendants-Respondents' prolonged no-bond detention of the named representatives and other members of the class is unconstitutional;
- (3) Issue a writ of habeas corpus requiring Defendants-Respondents to release Petitioners immediately unless they are provided constitutionally valid individualized hearings,

either in the form of individualized bond hearings where the government must prove danger and flight risk by clear and convincing evidence, or alternatively, individualized reasonableness hearings where the government must prove by clear and convincing evidence that no-bond detention remains reasonable, followed by hearings on danger and flight risk where the government fails to show that no-bond detention remains reasonable;

- (4) Issue an injunction ordering Defendants-Respondents not to detain Petitioners under 8 U.S.C. § 1226(c) without conducting an individualized bond hearing; or, in the alternative, issue an injunction ordering Defendants-Respondents not to detain Petitioners unless an immigration judge conducts a reasonableness hearing for all class members and an individualized bond hearing for any class member whose no-bond detention is found unreasonable by the IJ;
- (5) Award Petitioners reasonable costs and attorney's fees; and
- (6) Grant any other relief that this Court may deem fit and proper.

Date: October 24, 2018

Respectfully submitted,

/s/ Marisol Orihuela

Erin Drake, Law Student Intern
Clare Kane, Law Student Intern
Aseem Mehta, Law Student Intern*
Amber Qureshi, Law Student Intern
Marisol Orihuela†
Michael Wishnie (BBO# 568654)
Jerome N. Frank Legal Svcs. Org.
P.O. Box 209090
New Haven, CT 06520
Phone: (203) 432-4800
Fax: (203) 432-1426
marisol.orihuela@ylsclinics.org
michael.wishnie@ylsclinics.org

Ahilan T. Arulanantham†
ACLU Immigrants' Rights Project
1313 West 8th Street
Los Angeles, CA 90017
213-977-5211
aarulanantham@aclusocal.org

Anant K. Saraswat (BBO# 676048)
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
Tel: 617-646-8000
Fax: 617-646-8646
anant.saraswat@wolfgreenfield.com

Michael K.T. Tan†
ACLU Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
212-519-7848 (p)
212-549-2654 (f)
mtan@aclu.org

Counsel for Plaintiffs

* Law student appearance forthcoming.

† Admitted *pro hac vice*.

CERTIFICATE OF SERVICE

I hereby certify that, on October 24, 2018, a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of this court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

Date: October 24, 2018

Respectfully submitted,

/s/ Michael J. Wishnie
Michael J. Wishnie (BBO# 568654)
Jerome N. Frank Legal Services Organization
P.O. Box 209090
New Haven, CT 06520
P: (203) 432-4800
F: (203) 432-1426