**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW HAMPSHIRE**

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| PATRICE COMPERE,<br><br>Petitioner,<br><br>KIRSTJEN M. NIELSEN,<br>Secretary of Homeland Security,<br>TODD LYONS,<br>Immigration and Customs Enforcement,<br>Boston Field Office Director,<br>CHRISTOPHER BRACKETT,<br>Superintendent Strafford County Department of Corrections,<br>MATTHEW G. WHITAKER,<br>Acting United States Attorney General,<br>UNITED STATES DEPARTMENT OF HOMELAND SECURITY,<br><br>Respondents. | Civ. No.<br><br>**PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 REQUESTED** |

**(EXPEDITED HEARING REQUESTED)**

Petitioner Mr. Compere (hereinafter "Petitioner" or "Mr. Compere") brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; and Article I, Section 9, of the Constitution of the United States. Mr. Compere challenges his prolonged detention without a bond hearing on constitutional grounds.

## PRELIMINARY STATEMENT

1. Patrice Compere has been detained by ICE for 13 months, since October 3, 2017.

2. Respondents have charged Mr. Compere as an "arriving alien" on his Notice to Appear. See Notice to Appear attached as Exhibit A. Based on that charge, Respondents have

taken the position that Mr. Compere is not eligible to seek a bond hearing from an Immigration Judge. See Hearing Transcript p 11, line 17 – p 12 line 4 attached as Exhibit B.

3. Mr. Compere does have a criminal record consisting of several drug convictions, the most recent of which was over two years prior to being taken into custody by Immigration Customs and Enforcement (hereinafter "ICE"). None of these convictions have included arms or violence. This criminal history is not dispositive of his claim for relief of deferral of removal nor his habeas petition.

4. Mr. Compere is currently and continuously opposing his removal based on the Convention Against Torture, as he would be subject to torture by the Haitian Government due to his status as a criminal deportee and as the nephew of a well-known political opponent to the Haitian government.

5. Mr. Compere does not present as a flight risk or a danger. His entire family is in the United States – his mother, grandmother, and siblings are all citizens. He also has two children residing in Massachusetts who are United States Citizens. Furthermore, at the time Mr. Compere was taken into ICE custody, he was working on getting an education and a job and staying out of the legal system completely. In fact, it was Mr. Compere who reached out to ICE, at the suggestion of his parole officer, in order to gain assistance in obtaining work authorization.

6. The Supreme Court's holding in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) does not change the unconstitutionality of the Petitioner's detention. The Supreme Court's decision in *Jennings* focused strictly on reviewing the Ninth Circuit's application of the constitutional avoidance canon of statutory construction. 138 S. Ct. at 843-51. It merely found that the mandatory detention provisions in 8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(c) were not susceptible to an interpretation imposing a temporal limitation on detention absent a bond

hearing. *See Id*. The Supreme Court reversed and remanded the Ninth Circuit judgment in *Jennings* and shortly thereafter, the First Circuit vacated and remanded its analogous decision in *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016).

7. In remanding *Jennings* to the Ninth Circuit, the Supreme Court said "the Court of Appeals in this case adopted implausible constructions of the three immigration provisions at issue" and therefore found that there was no statutory right to "periodic bond hearings." *Jennings*, 138 S.Ct. at 836.

8. The Court, however, was clear that it was not analyzing mandatory detention on constitutional grounds, which is why the case was remanded. Id. at 851 (The Ninth Circuit "had no occasion to consider respondents' constitutional arguments on their merits . . . we do not reach those arguments. Instead, we remand the case to the Court of Appeals to consider them in the first instance."). As a result, *Jennings* does not preclude Mr. Compere's petition. The District of Massachusetts has recently re-certified the *Reid* class to include all those who have been detained in Massachusetts and New Hampshire pursuant to 8 USC 1226(c) for over six months. *Reid v. Donelan*, 2018 U.S. Dist. LEXIS 181700 *23-24; 2018 WL 5269992 (D. Mass. October 23, 2018). In her decision to re-certify the class, Judge Saris noted that the class continued to present a valid legal question whether their continued detention without an individualized bond hearing was reasonable under the Fifth Amendment's Due Process Clause and the Eighth Amendment's prohibition against excessive bail. *Reid*, 2018 U.S. Dist. LEXIS at *14-15. For the same reasons that prolonged detention without a hearing under § 1226(c) presents valid constitutional questions, Mr. Compere's continued detention under § 1225(b) for over one year without a hearing also presents a valid constitutional question for this Court's review.

9. The Due Process Clause of the Fifth Amendment requires that Mr. Compere be afforded an individualized review of his detention before a neutral arbiter. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005). This right has to review has been explicitly extended to those paroled into the United States like Mr. Compere. *Clark v. Martinez*, 543 U.S. at 374 (describing petitioners as two Cuban entrants who had been paroled into the United States.) *Jennings* did not disturb the decisions in *Zadvydas* or *Clark*. 138 S. Ct. at 834-35. Moreover, since *Jennings*, courts in this Circuit have found that the constitution compels an individualized hearing to determine whether the detention is justified. *Jimenez v. Cronen*, 317 F.Supp.3d 626, 638 (D. Mass 2018). In *Jimenez*, Judge Wolf held that, "although 'Congress's broad immigration powers allow it to pass a law authorizing an alien's initial detention ... those implementing the statute [must] provide individualized procedures through which an alien might contest the basis of his detention.' *Jimenez*, 317 F.Supp. at 638 *citing Diop v. ICE*, 656 F.3d 221, 232 (3d Cir. 2011); *Demore v. Kim*, 538 U.S. 510, 532, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)(Kennedy, J., concurring). Judge Wolf reasoned, "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id. citing Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

10. In this case, Mr, Compere was afforded no meaningful review of his continued detention. His attempt to request a bond hearing before the Immigration Court was denied. *See* Hearing Transcript p 11, line 17 – p 12 line 4 attached as Exhibit B. In addition, his attempt to request parole from ICE was initially denied and a request made through counsel was never answered. *See*, Letter to Officer Ojja attached at Exhibit C.

11. This Court should hold, pursuant to the reasoning in *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Clark v. Martinez*, 543 U.S. 371 (2005) and *Jimenez v. Cronen*, 317 F.Supp.3d 626,

638 (D. Mass 2018) that due process protections require that mandatory detention of arriving aliens under § 1225(b) be limited to the presumptively reasonable period of six months. But even if this Court declines to draw this bright line rule, it should hold that Mr. Compere's detention, which has already well surpassed six months and is likely to extend far beyond that is unconstitutional. Mr. Compere has already been detained for over a year and his attempts to seek review before the Immigration Court and ICE were either summarily denied or ignored.

12. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus, determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger, and order Petitioner's release.

13. In the alternative, Petitioner requests that this Court issue a writ of habeas corpus and order Petitioner's release within 30 days unless Respondents schedule a constitutionally adequate hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger; and (2) if the government cannot meet its burden, the immigration judge orders Petitioner's release on appropriate conditions, taking into account Petitioner's ability to pay a bond.[1]

## PARTIES

14. Petitioner Patrice Compere was detained by ICE on October 2, 2017. He remains in immigration custody at the Strafford County Department of Corrections in Dover, New Hampshire.

[1] *Brangan v. Commonwealth*, 477 Mass. 691, 80 N.E.3d 949 (2017). ("…where a judge sets bail in an amount so far beyond a defendant's ability to pay that it is likely to result in long-term pretrial detention, it is the functional equivalent of an order for pretrial detention, and the judge's decision must be evaluated in light of the same due process requirements applicable to such a deprivation of liberty.")

15. Respondent Kirstjen M. Nielsen is the Secretary of the United States Department of Homeland Security and is Petitioner's ultimate legal custodian. She is sued in her official capacity. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the District of Massachusetts; she supervises Respondent Lyons and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is a legal custodian of Petitioner.

16. Respondent Todd Lyons is the Acting Field Office Director for ICE Enforcement and Removal Operations in ICE's Boston Field Office. He is one of Petitioner's legal custodians, and is sued in his official capacity. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations.

17. Respondent Christopher Brackett is the Superintendent of the Strafford County Department of Corrections and is Petitioner's immediate custodian. He is sued in his official capacity.

18. Respondent Matthew G. Whitaker is the Acting United States Attorney General. He is sued in his official capacity. In this capacity, he is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the District of Massachusetts and is legally responsible for administering Petitioner's removal and custody redetermination proceedings and the standards used in those proceedings. As such, he is a legal custodian of Petitioner.

19. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for enforcing Petitioner's continued detention pending his removal proceedings.

## JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; the All Writs Act, 28 U.S.C. § 1651; Article I, Section 9, Clause 2, of the United States Constitution; and the Administrative Procedure Act, 5 U.S.C § 701. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that Petitioner is "in custody for purposes of the habeas corpus statute." *Hensley v. Mun. Court, San Jose Milpitas Judicial Dist., Santa Clara Cty., Cal.*, 411 U.S. 345, 351 (1973).

21. While only the federal courts of appeal have jurisdiction to review removal orders directly through petitions for review federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. See 8 U.S.C. § 1252; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Aguilar v. U.S. Immigration and Customs Enforcement Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007).

22. Venue is proper in the District of New Hampshire because Petitioner is currently detained at the Strafford County House of Correction in Dover, Massachusetts, under color of the authority of the United States, in violation of the Constitution, laws or treaties thereof. 28 U.S.C. §§ 1391, 2241.

**EXHAUSTION OF ADMINSTRATIVE REMEDIES**

23. There is no statutory requirement of exhaustion of administrative remedies where a non-citizen challenges the lawfulness of his detention. *Sengkeo v. Horgan*, 670 F.Supp.2d 116, 121 (D. Mass. 2009); *Campbell v. Chadbourne,* 505 F.Supp.2d 191, 197 (D. Mass. 2007) Moreover, the immigration courts are bound by agency regulation and Board of Immigration Appeals (hereinafter "BIA") precedent to find that Mr. Compere is subject to detention without

bond. See 8 C.F.R. § 1003.19(h)(2)(b) (immigration judges may not redetermine custody for "arriving aliens" in removal proceedings). In this case, ICE initially denied Mr. Compere's request for review of his detention and then failed to answer a redetermination request made through counsel. *See* Letter to Officer Ojja attached as Exhibit C. Furthermore, the Immigration Judge also ruled that he had no authority to review Mr. Compere's decision. *See* Hearing Transcript p 11, line 17 – p 12 line 4 attached as Exhibit B. Where the agency has predetermined a dispositive issue, no further action with the agency is necessary for exhaustion. *See McCarthyv. Madigan,* 503 U.S. 140, 148, 112 S.Ct. 1081 (1992); *Sengkeo*, 670 F.Supp.2d at 122 (finding that non-citizen's request for a bond redetermination had "virtually no chance" of success because the Immigration Judge had already ruled it had no jurisdiction); cf. *Campbell*, 505 F.Supp.2d at 198 This is precisely the case here. Regulations prohibit an Immigration Judge from reviewing the custody determination of non-citizens like Mr. Compere who are classified as "arriving aliens." See 8 C.F.R. § 1003.19(h)(2)(b) (immigration judges may not redetermine custody for "arriving aliens" in removal proceedings); *Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1998) (same).

24. Furthermore, Respondents have already taken the position that Mr. Compere is not eligible to seek a bond hearing from an Immigration Judge. *See* Hearing Transcript p 11, line 17 – p 12 line 4 attached as Exhibit B; Letter to Officer Ojja attached as Exhibit C.

25. To the extent that any prudential concerns lead the Court to require exhaustion as a matter of discretion, Mr. Compere has exhausted any and all effective administrative remedies available to him.

## FACTS

26. Patrice Compere has been in detention for 13 months. He was detained on

October 3, 2017. Throughout this time Mr. Compere has not received any hearing regarding release or bond.

27. Mr. Compere's immigration proceedings are still ongoing and continue to be challenged. Due to the circumstance, Mr. Compere will continue to be detained with no end in sight.

28. Born in Haiti, Mr. Compere entered the United States on humanitarian parole on August 7, 1989 at the age of two. He has lived in the United States since. His grandmother, mother, and all of his siblings are United States Citizens and reside in Massachusetts. He also has two children residing in this state that are United States Citizens.

29. Mr. Compere speaks very little Haitian Creole. His main language is English and he considers himself an American. He has no recollection of Haiti, as he has spent the majority of his life in the United States.

30. Mr. Compere was taking rehabilitative steps when he was detained by ICE on October 3, 2017. After being serving a criminal sentence in early 2017, Mr. Compere was attempting to find work. He asked his parole officer about how to obtain a work authorization, and his parole officer responded suggesting that Mr. Compere contact ICE. Mr. Compere followed his parole officer's advice and contacted Officer Hamel in the summer of 2017. After his first meeting with Officer Hamel, Mr. Compere was released and told to submit documents to ICE like his mother's naturalization certificate, his birth certificate, and proof of entry. Mr. Compere complied with these requests. After not hearing from Officer Hamel for two months, Mr. Compere called Officer Hamel on October 3, 2017 and the officer told him that he would need to have a hearing with the immigration judge. Thinking that he needed to appear in Immigration Court immediately, Mr. Compere went to the Immigration Court located in Boston

at 15 New Sudbury Street and then called Officer Hamel. Hamel indicated that Mr. Compere's hearing would not take place that day and asked Mr. Compere to wait at the Immigration Court for him. Mr. Compere complied and was arrested and taken into ICE custody by Officer Hamel later that same day.

31. Mr. Compere's NTA charges him with three counts of removability: under INA 212(a)(7)(A)(i)(I) for not having a proper immigrant visa; INA 212(a)(2)(C)(i) for being someone the Attorney General has reason to believe is a trafficker of a controlled substance; and INA 212(a)(2)(A)(i)(II) for being someone who has been convicted of violation any law or regulation relating to a controlled substance. Mr. Compere challenged removability on these grounds but the Immigration Judge (hereinafter "IJ") sustained the charges over Mr. Compere's objections. *See*, Hearing Transcript pp. 30-32 attached as Exhibit B.

32. Mr. Compere then filed an application for relief under the Convention Against Torture which was denied on April 18, 2018. The BIA affirmed that denial on September 24, 2018. Mr. Compere timely filed a Petition for Review which remains pending before the First Circuit.

33. Mr. Compere is fearful of a possible return to Haiti due to the torture he would face upon his arrival. As a criminal deportee and the nephew of a well-known political opponent of the Haitian government, Mr. Compere will be subject to detention and torture by the Haitian government.

34. Mr. Compere does have a criminal record, which consists of four drug-related convictions as well as two convictions for trespassing. None of the incidents included any use of arms or violent activity. Mr. Compere has served all sentences for these convictions and was in the process of seeking out rehabilitation when he was taken into ICE custody.

35. Mr. Compere lacks status due to no fault of his own or lack of his mother's efforts. Mr. Compere entered on humanitarian parole because his mother was entering as a derivative of her mother's immigrant visa (Mr. Compere's grandmother) and he could not be considered a derivative himself. See Letter Granting Humanitarian Parole attached as Exhibit D. After he entered the United States, Mr. Compere's mother attempted to adjust his status and requested a replacement I-94, but the United States Citizenship and Immigration Services (hereinafter "USCIS") at first declined this request and later reversed itself but did not produce the replacement I-94. See Application for Replacement I-94 and subsequent correspondence attached at Exhibit E. It is clear that USCIS did possess evidence of Mr. Compere's entry as Department of Homeland Security Office of Chief Counsel ("OCC") served a copy of Mr. Compere's I-94 as an exhibit to their Brief on Removability. See Brief on Removability attached at Exhibit F. Due to this misconduct by USCIS, Mr. Compere will be filing a Writ of Mandamus in the District of Massachusetts seeking to compel USCIS to accept his adjustment of status application *nunc pro tunc*.

36. Throughout this period, Mr. Compere has been detained at various facilities including currently at Strafford County Department of Corrections. Respondents contend that because Mr. Compere is an "arriving alien," he is subject to mandatory detention under 8 U.S.C. § 1225(b) without the opportunity to seek bond from an Immigration Judge.

## CLAIMS FOR RELIEF

### FIRST CAUSE OF ACTION

### VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT: PETITIONER'S PROLONGED DETENTION WITHOUT A MEANINGFUL INDIVIDUALIZED REVIEW VIOLATES HIS DUE PROCESS RIGHTS.

37. The Due Process Clause protects the substantive due process right to be free from unjustified deprivations of liberty as well as the procedural due process right to a neutral forum in which to contest prolonged detention. *Zadvydas*, 533 U.S. at 690. These rights extend to both "removable and inadmissible," non-citizens. *Zadvydas,* 533 U.S. at 721 (Kennedy, J. dissenting). (holding that both "removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious"); *see Rosales-Garcia* v. *Holland*, 322 F.3d 386, 409 (6th Cir. 2003) ("[E]xcludable aliens—like all aliens—are clearly protected by the Due Process Clauses of the Fifth and Fourteenth Amendments") (citing *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886)). Petitioner's prolonged detention in this case violates his substantive due process rights, including the right to be free from "inhumane treatment," such as "indefinite, hearingless detention." *Castro* v. *U.S. Dep't Homeland Sec.*, 835 F.3d 422, 449 n.32 (3d Cir. 2016); *see also Zadvydas*, 533 U.S. at 693−94; *Lynch* v. *Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987).

38. The discretionary parole process provided for in 8 U.S.C. § 1225(d)(5)(A) is insufficient to safeguard Petitioner's constitutional rights. Courts have consistently found this statutory provision to be an inadequate substitute for an individualized hearing complying with Due Process. *See Zadvydas*, 533 U.S. at 692 (post-order release procedures insufficient to satisfy due process). Indeed, Due Process requires that Mr. Compere receive an independent process before an impartial adjudicator where the government bears the burden of proof.

39. Mr. Compere has not been given any independent process nor will he be able to avail himself of one under the current regulations. First, only employees and officers of DHS are authorized to make parole determinations; there is no independent entity authorized to grant parole. *See* 8 C.F.R. § 212.5 (listing individuals with authority to grant parole under 8 U.S.C. §

1182(d)(5)(A)). Thus, the only individuals authorized to grant parole under § 1182(d)(5)(A) belong to the same agency tasked with effectuating the parole applicant's detention and deportation.

40. Second, the denial of a parole request made under 8 U.S.C. § 1182(d)(5)(A) is not subject to judicial review by an Immigration Judge or, to the extent the denial is discretionary, by federal judicial review. *See* 8 U.S.C. § 1252(a)(2)(B)(ii). Thus, the existence of this parole process does not satisfy Petitioner's right to due process. *See Diop*, 656 F.3d at 231 (requiring "an individualized inquiry into whether detention is still necessary to fulfill the statute's purposes of ensuring that an alien attends removal proceedings and that his release will not pose a danger to the community"); *Leslie v. Attorney Gen. of the U.S.*, 678 F.3d 265, 267 n.2 (3d Cir. 2017) (rejecting as procedurally inadequate a "post order custody review" conducted by DHS, at which neither the respondent nor counsel was present and no hearing was held); *Singh v. Holder*, 638 F.3d 1196, 1200, 1203 (9th Cir. 2016) (holding that the government "must prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond" given "the substantial liberty interest at stake"); *Alaka v. Elwood*, 225 F. Supp. 2d 547, 559 (E.D. Penn. 2002) (rejecting the government's claim that the possibility of parole under 8 U.S.C. § 1182(d)(5)(A) provided adequate due process and holding that "[d]ue process is no satisfied . . . by rubberstamp denials of release based on a cursory review of an alien's file").

Because Mr. Compere's detention has already exceeded six months, and because the parole process is insufficient to satisfy his due process rights, he is entitled to an immediate individualized bond hearing before an impartial adjudicator at which the government bears the burden of demonstrating by clear and convincing evidence that Mr. Compere is a flight risk or danger to society such that no amount of bond or conditions of release are sufficient.

*Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011); s*ee also*, *Neziri v. Johnson*, 187 F. Supp. 3d 211, 217 n.6 (D. Mass. 2016).

**SECOND CAUSE OF ACTION**

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

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

43. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

44. Mr. Compere has challenged all of the charges lodged against him by the government and presented a legal argument that he is eligible for deferral of removal under the Convention Against Torture. He nevertheless has been detained without a bond hearing for over a year and will likely be detained for many additional months.

45. More specifically, Mr. Compere is statutorily eligible for deferral of removal under the Convention Against Torture. As the evidence presented at his hearing showed, Mr. Compere is more likely than not to face torture at the hands of the Haitian government due to his particular vulnerability as a person with drug convictions who also happens to be related to the government's most outspoken critic.

46. To justify Petitioner's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decision-maker, that Petitioner's detention is justified. Because he has received no such hearing, Petitioner's ongoing prolonged detention without a hearing violates due process.

**THIRD CAUSE OF ACTION**

**VIOLATION OF THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION**

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

48. The Eighth Amendment prohibits "[e]xcessive bail." U.S. Const. amend. VIII.

49. The government's categorical denial of bail to certain noncitizens violates the right to bail encompassed by the Eighth Amendment. *See Jennings*, 138 S. Ct. at 862 (Breyer, J, dissenting).

50. For these reasons, Petitioner's ongoing prolonged detention without a bond hearing violates the Eighth Amendment.

## REQUEST FOR ORAL ARGUMENT

51. Petitioner respectfully requests oral argument on this Petition.

## PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

1. That this Court issue a writ of habeas corpus, determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger, and order Petitioner's release;

2. In the alternative, Petitioner requests that this Court issue a writ of habeas corpus and order Petitioner's release within 30 days unless Respondents schedule a constitutionally adequate hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger; and (2) if the government cannot meet its burden, the immigration judge orders Petitioner's release on appropriate conditions, taking into account Petitioner's ability to pay a bond.

3. Enjoin Respondents from removing Petitioner from the United States until he has had an opportunity to receive a decision on his appeal and motion to reopen his immigration proceedings, and to seek judicial review of that determination if necessary;

4. Award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and,

5. Order any further relief this Court deems just and proper.

Respectfully submitted this the 9th day of, November 2018.

Respectfully submitted,

**Patrice Compere**
By and through Counsel,

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Date: November 9, 2018

** *Application for admission pro hac vice forthcoming.*