

not at issue,¹⁴ rather, the representations made during the sale and the delays during processing of the application are at the center of the dispute. Plaintiffs' allegations of NBA's involvement are sufficient to state valid claims. Counts I and II involve concealment and misrepresentation, actions of which anyone is capable. Count III relies on a statute, 73 Pa. Stat. § 201-2, and "incorporated or unincorporated associations" are included within its scope. The breach of contract and promissory estoppel claims in Count VI are not specific to particular kinds of entities. Therefore, the claims in Counts I-IV will survive against both remaining Defendants.

V. Order

AND NOW, this ____ day of _____, 2002 **IT IS ORDERED THAT:**

1. Defendant American National Life Insurance Company of Texas's motion to dismiss Plaintiffs' amended complaint (Doc. No. 21) is **DENIED** as to **COUNTS I-IV** and **GRANTED** as to **COUNTS V-VIII**.
2. Defendant National Business Association's motion to dismiss Plaintiffs' second amended complaint (Doc. No. 43) is **DENIED** as to **COUNTS I-IV** and **GRANTED** as to **COUNTS V-VIII**.
3. A telephone conference will be held to set a schedule for this matter. The telephone conference will be held on _____, 2002 at _____. Plaintiffs' counsel shall initiate the call.



14. The exception is whether the hypertension

Julio SOTO-RAMIREZ, Petitioner,

v.

John D. ASHCROFT, Christine G. Davis, and Michael A. Zenk, Warden, Respondents.

Civil No. 1:CV-01-1555.

United States District Court,
M.D. Pennsylvania.

Oct. 29, 2002.

Alien whose immigration parole as part of Mariel boatlift had been revoked for criminal convictions brought writ of habeas corpus to challenge his indefinite detention pending removal. The District Court, Conner, J., held that: (1) alien who had been granted entry to United States on immigration parole was not admitted alien; (2) continued detention pending removal was within Attorney General's statutory authority; (3) continued detention did not violate due process; and (4) continued detention did not violate Eighth Amendment's prohibition against cruel and unusual punishment.

Writ denied.

1. Aliens ⇔53.6(1)

Alien who was granted entry to United States on immigration parole as part of Mariel boatlift, was not legal alien who had formally "entered" or been "admitted" to United States, but had no rights beyond those of alien at territorial borders. Immigration and Nationality Act, § 212(d)(5)(A), as amended, 8 U.S.C.A. § 1182(d)(5)(A).

2. Constitutional Law ⇔252

Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is

is covered. See note 3 supra.

lawful, unlawful, temporary, or permanent. U.S.C.A. Const.Amend. 5.

3. Constitutional Law ¶252

Due Process Clause does not apply equally to foreign citizens seeking admission to the United States. U.S.C.A. Const. Amend. 5.

4. Constitutional Law ¶82(1)

Physical presence in the United States alone, by grace of the executive giving temporary harborage, does not extend the constitutional protections to an inadmissible alien which are due every person legally admitted to the United States. U.S.C.A. Const.Amend. 5.

5. Aliens ¶53.9

Reasonably foreseeable removal limitation placed on continued detention of admitted aliens pending removal did not apply to inadmissible Mariel Cuban whose immigration parole had been revoked for criminal convictions; thus, Attorney General had statutory authority to detain alien indefinitely. Immigration and Nationality Act, § 241(a)(6), as amended, 8 U.S.C.A. § 1231(a)(6).

6. Aliens ¶53.9

Constitutional Law ¶274.3

Indefinite detention pending removal of inadmissible alien whose immigration parole had been revoked for criminal convictions and whose country of origin would not accept repatriation did not violate Due Process Clause, where appropriate provisions for parole review had been followed through annual reviews, which included consideration of his mental health, criminal convictions, and conduct since being taken into custody. Immigration and Nationality Act, § 241(a)(6), as amended, 8 U.S.C.A. § 1231(a)(6); 8 C.F.R. § 212.12.

1. Inexplicably, petitioner also claims that his detention is in violation of his rights under the Tenth Amendment. Noting that the Tenth Amendment reserves certain rights to the States and that petitioner is detained in feder-

7. Aliens ¶53.9

Sentencing and Punishment ¶1582

Indefinite detention of inadmissible alien whose immigration parole had been revoked for criminal convictions, subject to annual reviews for parole release, did not constitute cruel and unusual punishment in violation of his Eighth Amendment rights. U.S.C.A. Const.Amend. 8.

Julio Soto-Ramirez, White Deer, PA,
pro se, for Petitioner.

Bruce Brandler, U.S. Attorney's Office,
Harrisburg, PA, for Respondents.

Marty Carlson, U.S. Attorney's Office,
Harrisburg, PA, pro se.

MEMORANDUM

CONNER, District Judge.

Before the court is petitioner Julio Soto-Ramirez's petition for writ of habeas corpus under 28 U.S.C. § 2241. Petitioner has been detained by the Immigration and Naturalization Service ("INS") and is currently being held in custody at Federal Correctional Institution Allenwood, in White Deer, Pennsylvania. (Doc. 1).

In the instant petition, Soto-Ramirez claims that his continued detention while awaiting removal is beyond the Attorney General's statutory authority, violates his Fifth Amendment right to due process of law and constitutes cruel and unusual punishment in violation of the Eighth Amendment.¹

I. Background

Petitioner is a Cuban national who came to the United States in the Mariel Boatlift

al custody under federal law, we will deny the petition to the extent it relies on a violation of the Tenth Amendment without further analysis or comment.

of 1980.² Petitioner was paroled into the United States upon his arrival. But his parole was revoked in 1988 when he was convicted of assault. (Doc. 6, Exhibit 4, pg. 3). Upon his release, petitioner “demonstrated a propensity to engage in assaultive criminal behavior.” (Doc. 6, Exhibit 7). He has been arrested on 12 separate occasions for assault, disorderly conduct and criminal damage to property. *Id.* In 1991 and 1992 respectively, petitioner received two separate felony convictions: indecent assault and battery on a child under the age of 14 (1991), and assault and battery by means of a dangerous weapon (1992). (Doc. 6).

On March 7, 1996, while serving his sentence on the above mentioned felony convictions, petitioner’s parole was revoked for a second time when the Immigration and Naturalization Service (“INS”) deemed him excludable, under 8 U.S.C. §§ 1182(a)(2)(A)(i)(I); 1182(a)(7)(A)(i)(I),³ and took him into custody pending a removal hearing before an Immigration Judge (“IJ”). On May 3, 1996, the IJ denied petitioner’s request for asylum and ordered petitioner removed. (Doc. 6, Exhibit 2). Petitioner appealed the IJ’s denial of asylum to the Board of Immigration Appeals (“BIA”). On January 17, 1997,

2. For background information about the Mariel Cuban Boatlift of 1980, see *Damas-Garcia v. United States*, 2001 WL 1231480, *1 (D.N.J. 2001); *Moret v. Karn*, 746 F.2d 989, 990 (3d Cir.1984).

3. In 1996, the INA was overhauled by passage of the Antiterrorism and Effective Death Penalty Act (“AEDPA”), Pub.L. No. 104–132, 110 Stat. 1214, *et seq.*, and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub.L. No. 104–208, 110 Stat. 3009–546 *et seq.* As noted by the Third Circuit, “Immigration law is sufficiently labyrinthian without jumbled cross-references to the sections of the Immigration Act, IIRIRA, AEDPA, and the United States Code. When

petitioner’s order of removal became administratively final when the BIA dismissed his appeal, stating that “applicant’s felony convictions of indecent assault and battery on a child, and assault and battery by means of dangerous weapon, are on their face ‘particularly serious crimes,’ barring him from asylum” (Doc. 6, Exhibit 3) (citations omitted).

Since his removal order became final, petitioner has remained in INS custody at FCI–Allenwood awaiting removal. Petitioner has had annual custody reviews in accordance with the requirements of 8 C.F.R. § 212.12. (*See* Doc. 6, Exhibits 4–7). To be granted parole, the review panel must find that

- (i) The detainee is presently a nonviolent person;
- (ii) The detainee is likely to remain nonviolent;
- (iii) The detainee is not likely to pose a threat to the community following his release; and
- (iv) The detainee is not likely to violate the conditions of his parole.

8 C.F.R. § 212.12(d)(2). Petitioner has been denied parole after each review. He has been denied parole for a variety of reasons, including his criminal record, history of violence while incarcerated,⁴ and mental instability.⁵ (Doc. 6, Exhibits 4–7).

referring to statutory provisions, we therefore cite only to the United States Code whenever possible.” *Ngo v. I.N.S.*, 192 F.3d 390, 395 n. 3 (3d Cir.1999). The court will follow the Third Circuit’s recommendation for statutory citations.

4. For example, petitioner’s 1999 (Doc. 6, Exhibit 6) and 2000 (Doc. 6, Exhibit 7) annual reviews refer to citations for inmate fighting and assault of a prison guard as factors which led to the denial of parole.

5. Petitioner received a comprehensive mental health evaluation in July 2000. (Doc. 6, Exhibit 8). In this evaluation, the mental health professional diagnosed petitioner with “possi-

Petitioner now argues that his continued detention is unconstitutional.

II. Discussion

A. Petitioner's Status as a Mariel Cuban.

[1] As a threshold matter, the court must address petitioner's misapprehension of his legal status as an "inadmissible"⁶ alien. In his petition, Mr. Soto-Ramirez contends:

The cases involving indefinite detention of excludable aliens simply [sic] do not support the constitutionality of indefinite detention of aliens *who have entered the United States*. To the contrary, our case law makes clear that, as a general matter, aliens *who have entered the United States*, legally or illegally, are entitled to the protection of the Fifth Amendment.

(Doc. 1) (citations omitted) (emphasis added).

Although it is an understandable mistake considering he has lived within our borders for approximately twenty-two years, petitioner incorrectly states that he has "entered" the United States. As a paroled Cuban, petitioner was never admitted to the United States. *See Ngo v. I.N.S.*, 192 F.3d 390, 392 (3d Cir.1999) ("[Parole] amounts to permission by the Attorney General for ingress into the country but is not a formal 'admission.'") (citations omitted); *Damas-Garcia v. U.S.*, 2001 WL 1231480, *1 (D.N.J.2001) ("Individuals who are granted entry into the United States on immigration parole, such as the Mariel Cubans, are not considered legal aliens, but rather are considered the same as individuals who have only just

ble bipolar disorder" and "antisocial personality disorder." *Id.*

6. Prior to 1996, the INA referred to aliens who never officially entered our country and whose parole status was revoked as "excluda-

arrived at the U.S. border.") (citing 8 U.S.C. § 1182(d)(5)(A)); *Chavez-Rivas v. Olsen*, 207 F.Supp.2d 326, 328 (D.N.J.2002) ("We tempered our welcome, however, by treating these Cuban immigrants as though they were still in the perpetual legal limbo of an immigrant just outside our territorial borders, with all the limitations on personal rights and liberties that derive from that status.").

Section 1182(d)(5)(A) provides:

The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

As noted above, Soto-Ramirez entered United States territory on immigration parole in 1980. In 1996, his parole was revoked as a result of two felony convictions, which followed a history of aberrant, criminal behavior. Accordingly, he now stands, although physically well within the United States border, on the same legal footing as an immigrant at the door, seek-

ble" aliens. *Ngo*, 192 F.3d at 390, 395 n. 4. (3d Cir.1999). Under the INA as amended, the terminology used for these aliens has been changed from "excludable" to "inadmissible." *Id.*

ing admission to the United States. 8 U.S.C. § 1182(d)(5)(A); *Chavez-Rivas v. Olsen*, 207 F.Supp.2d at 328. With this misunderstanding out of the way, the court turns to petitioner's statutory challenge.

B. Application of *Zadvydas v. Davis* to the Detention of Inadmissible Aliens Subject to a Final Removal Order.

The first question raised by the instant petition is whether the Supreme Court's interpretation of 8 U.S.C. § 1231(a)(6), in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001), controls the detention of inadmissible aliens who are now subject to a final removal order. Petitioner contends that *Zadvydas*' holding applies equally to all aliens and, hence, mandates the issuance of a writ of habeas corpus.

When an alien is ordered removed, the Immigration and Nationality Act ("INA") provides that "the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A).⁷

The removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration pro-

cess), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

During the removal period, the Attorney General must detain the alien. 8 U.S.C. § 1231(a)(2). But if the alien is not removed during the removal period, the Attorney General has two options—supervised release (8 U.S.C. § 1231(a)(3)) or, at times, continued detention (8 U.S.C. § 1231(a)(6)).

Section 1231(a)(3) provides:

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

- (A) to appear before an immigration officer periodically for identification;
- (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
- (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
- (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

For certain aliens, the INA authorizes continued detention. 8 U.S.C. § 1231(a)(6). While section 1231(a)(6) grants the Attorney General authority to

7. Section 1231(a)(6) applies to petitioner's detention because he was not in removal proceedings "as of" the effective date of the 1996 INA amendments. 8 U.S.C. § 1101 note (2000). See also *Chavez-Rivas*, 207 F.Supp.2d at 333 (finding that the exception

regarding the applicability of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 for aliens in removal proceedings "as of" the amendments' effective date does not apply to section 1231(a)(6)).

detain certain aliens post removal period, it does not explicitly limit the duration of such continued detention. Section 1231(a)(6) reads:

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6).

The Supreme Court interpreted section 1231(a)(6) last year in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).⁸ In construing the statute to avoid a serious constitutional question, the Court held that section 1231(a)(6) implicitly limits the Attorney General's authority to detain a formerly admitted alien, after a final order of removal, to the time when their removal is "reasonably foreseeable." *Id.* at 2505. For sake of "uniform administration in the federal courts," the Court held that removal is presumptively reasonably foreseeable for the first six months after the removal period. *Id.* After six months, there must be an independent determination of the likelihood of removal in the reasonably foreseeable future, taking into consideration factors such as the possibility of a repatriation agreement with the country of origin. *Id.*

Petitioner has been detained by the INS in excess of five years since the date his removal order became final. He argues that the *Zadvydas* Court's narrow con-

struction of section 1231(a)(6) applies to inadmissible aliens whose parole has been revoked. The court disagrees. The facts before the court are clearly distinguishable from those in *Zadvydas*, in that petitioner has never entered the United States while the petitioners in *Zadvydas* had. See note 8, *infra*. Moreover, to expand the holding of *Zadvydas* to inadmissible aliens would disregard decades of immigration law.

[2, 3] Federal courts have long drawn a distinction between those admitted to the United States and those seeking admission. See *Zadvydas*, 121 S.Ct. at 2500 (citations omitted). Although "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent," *Zadvydas*, 121 S.Ct. at 2500 (citing *Plyler v. Doe*, 457 U.S. 202, 210, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596-98, 598 n. 5, 73 S.Ct. 472, 97 L.Ed. 576 (1953); *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 30 L.Ed. 220 (1886); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956 (1953)), it does not apply equally to foreign citizens seeking admission to the United States. See *Mezei*, 345 U.S. at 210, 73 S.Ct. 625 ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Zadvydas*, 121 S.Ct. at 2500 (citing *U.S. v. Verdugo-Urquidez*, 494 U.S. 259, 269, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990) (Fifth Amendment's protections do not extend to

8. In *Zadvydas*, the Court reviewed habeas petitions coming out of the Fifth Circuit (*Zadvydas v. Underdown*, 185 F.3d 279 (5th Cir. 1999)) and the Ninth Circuit (*Kim Ho Ma v. Reno*, 208 F.3d 815 (9th Cir.2000)). Importantly, both *Zadvydas* and *Ma* were legal per-

manent residents (*i.e.*, they had "entered" the United States) before they were ordered removed. *Zadvydas*, 121 S.Ct. at 2495-97. Both were detained after the applicable removal period under authority of section 1231(a)(6).

aliens outside the territorial boundaries.) *Johnson v. Eisentrager*, 339 U.S. 763, 784, 70 S.Ct. 936, 94 L.Ed. 1255 (1950) (same); *Ngo*, 192 F.3d at 395–96 (“It is a truism that [i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”) (citing *Mathews v. Diaz*, 426 U.S. at 79–80, 96 S.Ct. 1883).

[4] Furthermore, physical presence in the United States alone, by grace of the executive giving temporary harborage, does not extend the constitutional protections to an inadmissible alien which are due every person legally admitted to the United States. See *Mezei*, *supra*. In *Mezei*, a former legal permanent resident, who for all intents and purposes was the legal equivalent of an alien seeking his first admission into the United States, was denied entry. Instead, he was found excludable⁹ and ordered removed. He was then detained on Ellis Island pending his ultimate removal. When no other country would allow the United States to remove him to their territory, he filed a habeas petition challenging his detention on due process grounds. The Supreme Court concluded that “respondent’s transfer from ship to shore on Ellis Island conferred no additional rights; in fact, no alien so situated ‘can force us to admit him at all.’” *Mezei*, 345 U.S. at 210, 73 S.Ct. 625 (quoting *United States ex rel. Mezei v. Shaughnessy*, 195 F.2d 964 (2d Cir.1952)) (L.Hand, J. dissenting). The Court further stated: “this Court has long considered such temporary arrangements as not affecting an alien’s status; he is treated as if stopped at the border.” *Id.* at 215, 73 S.Ct. 625. Ultimately, the Court held that

the indefinite, potentially permanent detention of such an alien does not offend the constitution. *Zadvydas*, 121 S.Ct. at 2500 (explaining *Mezei*, 345 U.S. at 215–16, 73 S.Ct. 625).

[5] Because petitioner’s argument would largely eliminate this historical distinction between admitted and inadmissible aliens, this court does not believe that the Supreme Court intended its interpretation of section 1231(a)(6) in *Zadvydas* to apply to formerly paroled aliens. See *Zadvydas*, 121 S.Ct. at 2500 (explaining that *Mezei*’s excludable status “made all the difference.”). See also *Hoyte–Mesa v. Ashcroft*, 272 F.3d 989, 991 (7th Cir.2001) (per curiam) (ruling that *Zadvydas* does not abrogate Seventh Circuit precedent upholding indefinite detention of inadmissible aliens); *Chavez–Rivas*, *supra*. But see *Borrero v. Aljets*, 178 F.Supp.2d 1034 (D.Minn.2001) (holding that the *Zadvydas*’ reasonably foreseeable removal limitation does apply to Mariel Cubans whose parole has been revoked). Consequently, *Zadvydas* does not apply to petitioner’s detention. The court finds that the Attorney General, in detaining petitioner, is acting within the scope of his authority under section 1231(a)(6) and, therefore, petitioner’s statutory claim fails.

C. Petitioner’s Due Process Claim.

[6] Petitioner next claims that “indefinite” detention under section 1231(a)(6) is unconstitutional. The Third Circuit has dealt specifically with the constitutionality of prolonged detention of inadmissible aliens whose country of citizenship will not allow repatriation. *Ngo*, 192 F.3d 390. In *Ngo*, the petitioner was a Vietnamese citi-

9. As stated in note 6, *infra*, the 1996 amendments to the INA changed the terminology used to describe the legal status of aliens such as the Mariel Cubans from “excludable” to “inadmissible.” See 8 U.S.C. § 1182. How-

ever, due to the prevalent use of the term “excludable,” the court is constrained to use both terms when discussing applicable case-law.

zen whose parole was revoked because of criminal convictions. For unspecified reasons, the United States was unable to remove the petitioner promptly to Vietnam. In denying the constitutional challenge to Mr. Ngo's detention, the Third Circuit held that "excludable aliens with criminal records as specified in the Immigration Act may be detained for lengthy periods when removal is beyond the control of the INS, provided that appropriate provisions for parole are available." *Id.* at 398. See also *In re Mariel Cuban Habeas Corpus Petitions*, 822 F.Supp. 192 (M.D.Pa.1993).

This court is bound by Third Circuit precedent. As noted previously, petitioner, like Mr. Ngo, entered the United States on immigration parole under 8 U.S.C. § 1182(d)(5)(A). Also like Mr. Ngo, petitioner's parole was revoked because of criminal convictions. Therefore, petitioner's detention is constitutional if it meets the parole review requirements outlined in *Ngo*.

Petitioner contends that the Cuban Review Panel "is illegal and only takes place to frustrate and victimize petitioner and all prisoners who are subject to this INS panel's partiality and unfairness." (Doc. 1). *Ngo* held that there is no constitutional impediment if the parole review process provides "reasonable assurance of fair consideration" of the application for parole. *Ngo*, 192 F.3d at 398. Under *Ngo*, each individual's review must be meaningful. *Ngo*, 192 F.3d at 398 ("The stakes are high and we emphasize that grudging and perfunctory review is not enough to satisfy the due process right to liberty, even for aliens.").

Applicable regulations set forth specific procedures for reviewing, on an annual basis, the possibility of parole for detained Mariel Cubans. 8 C.F.R. § 212.12. The INS has followed these procedures assiduously in the course of petitioner's detention. Petitioner has been interviewed year-

ly since being taken into INS custody. (See Doc. 6, Exhibits 4-8). Petitioner's mental health has been carefully examined. (Doc. 6, Exhibit 7). The review panels have also reviewed petitioner's criminal history (which includes several assault convictions, including one for indecent assault of a person under the age of 14) and his behavior since being taken into custody (which includes numerous fights, assaults and other violent behavior). See notes 4 and 5 *infra*. Each year the review panel has found petitioner to be a risk to society. In light of the panels' thorough reviews, the court finds that petitioner's parole review process meets the rigorous requirements of *Ngo*. Consequently, petitioner's due process challenge will be denied.

D. Petitioner's Eighth Amendment Claim.

[7] Soto-Ramirez's final argument is that his indefinite detention constitutes cruel and unusual punishment in violation of his Eighth Amendment rights. Federal courts have held that detention prior to removal is not punishment at all. See *Ngo*, 192 F.3d at 396-97 (holding that administrative detention of inadmissible aliens ordered removed is not punishment); *Gisbert v. U.S. Atty. Gen.*, 988 F.2d 1437, 1442 (5th Cir.1993) ("Because aliens subject to exclusion are not entitled to the same constitutional protection as resident aliens, *Jean v. Nelson*, 727 F.2d at 968, we conclude that detention pending removal and stemming from exclusion proceedings is not intended as punishment."); *Alvarez-Mendez v. Stock*, 941 F.2d 956, 962 (9th Cir.1991) (holding that detention of a Mariel Cuban ordered removed is not punishment).

That Soto-Ramirez frames it as "indefinite" does not change the character of the detention. In reality, the length of his detention now depends on the outcome of

his annual parole reviews. The Third Circuit has aptly described it as “a series of one-year periods of detention followed by an opportunity to plead the case anew.” *Ngo*, 192 F.3d at 396 (quoting *Barrera-Echavarría v. Rison*, 44 F.3d 1441, 1450 (9th Cir.1995)). The review panels have examined petitioner annually and, to date, they have found sufficient cause to deny his parole. Accordingly, his continued detention does not constitute cruel and unusual punishment. *Alvarez-Mendez*, 941 F.2d at 962. The court will deny petitioner’s Eighth Amendment claim.

For the reasons set forth in this Opinion, the petition for writ of habeas corpus will be denied.

ORDER

AND NOW, this 29th day of October, 2002, it is hereby ORDERED that the petition for writ of habeas corpus is DENIED, and the Clerk of Court shall close this file.



THE LIMITED, INC., Plaintiff

v.

**CIGNA INSURANCE COMPANY,
Defendant**

No. 00-CV-3766.

United States District Court,
E.D. Pennsylvania.

Feb. 23, 2001.

Order Denying Reconsideration
April 5, 2002.

Insured retailer of pressurized shower gel product brought action against insurer under product tampering policy, claiming breach of contract and bad faith and seeking declaration of coverage for costs asso-

ciated with product recall. The District Court, Newcomer, Senior District Judge, held that: (1) defect in dispenser that increased risk that users would spray product in their eyes did not constitute an “adulteration” within coverage for product contamination; and on motion for reconsideration, (2) insured was not entitled to reconsideration on basis of evidence that could have been discovered earlier; and (3) insurer did not act in bad faith in denying coverage.

Motions granted in part and denied in part.

Affirmed, 29 Fed.Appx. 88.

1. Federal Civil Procedure ⇌2534

The standards by which a court decides a summary judgment motion do not change when the parties file cross motions. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

2. Insurance ⇌3575

Under Pennsylvania law, the burden of establishing a valid insurance policy claim falls upon the insured.

3. Contracts ⇌147(2)

Under Pennsylvania law, goal of interpretation is to ascertain the intent of the parties as manifested by the language of the written instrument.

4. Insurance ⇌1832(1)

Under Pennsylvania law, insurance policy provision is to be construed in favor of the insured and against the insurer, where policy provision is ambiguous.

5. Contracts ⇌143(2)

Under Pennsylvania law, ambiguity only exists where an insurance policy provision is reasonably susceptible of more than one meaning, not where the parties differ on meaning.