

United States District Court
for the
District of Arizona

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CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

Andrei Kolesnikov

Petitioner

V.

Kristi Noem, Secretary of

the Department of Homeland Security;

DHS/ICE Office of Chief Counsel - SDC,

U.S. Department of Homeland Security;

U.S. IMMIGRATION AND CUSTOMS

ENFORCEMENT

Respondents

Case No. CV-25-00926-PHX-SMB--ESW

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

INTRODUCTION

Petitioner, Andrei Kolesnikov (A-number [REDACTED]), is currently in detention at Stewart Detention Center, Lumpkin, Georgia. She respectfully submits this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging the legality of her continued detention. Petitioner has been in detention for more than 9,5 months.

PARTIES

1. Petitioner: Andrei Kolesnikov (A-number [REDACTED]), currently detained at Stewart Detention Center,

146 CCA Road, P.O. Box 248, Lumpkin, GA 31815

2. Defendants:

Kristi Noem, Secretary of the U.S. Department of Homeland Security;

DHS/ICE Office of Chief Counsel - SDC,

U.S. Department of Homeland Security;

U.S. Immigration and Customs Enforcement (ICE).

FACTUAL BACKGROUND

1. On May 27, 2024, the Petitioner Andrei Kolesnikov (A-number [REDACTED]) arrived at the Port of Nogales together with his wife pursuant to their scheduled CBP-1 appointment. They provided all documentation establishing their identities and their right to meet with an ICE officer.
2. Despite providing the necessary documents and passing an interview with a CBP officer at the border, the main Petitioner together with his legal wife Anna Kolesnikova (A-number [REDACTED]), were detained and sent to immigration detention center.
3. In the early of June, 2024, the Petitioner had credible fear interview and received a "positive" response. Despite this, the Petitioner was not released from custody and has remained in custody for over 9,5 months. At the present moment the Petitioner locates at Eloy Detention Center, 1705. E. Hanna Rd, Eloy, Az 85131.
4. The Petitioner provided the documents required for release on parole under the care of a sponsor, but the request for release was denied. Subsequent requests by the Petitioner to be considered for release are ignored.
5. The Petitioner was not provided with an official document obliging his to go through all immigration processes in the detention center.
6. The Petitioner had the right to have his detention status reviewed after 180 days from the date of his detention, however, the Petitioner was not given such this opportunity.
7. The Petitioner does not pose a threat to society, is not a criminal record in any country in the world.
8. The continued detention of Petitioner may extend more than 9,5 months.

GROUND FOR PETITIONER

A. Violation of 28 U.S.C. § 2241

Under 28 U.S.C. § 2241, federal courts have the authority to review the legality of detention. The Petitioner's continued detention, despite the lack of objective reasons and grounds, is unlawful.

B. Violation of the Fifth Amendment to the U.S. Constitution

Petitioner's continued detention violates the Fifth Amendment's guarantee of due process. The government has failed to provide any objective and valid reasons for his ongoing detention.

C. Relevant Precedents

1. Zadvydas v. Davis 533 U.S. 678 (2001)

The U.S. Supreme Court ruled that immigrants cannot be held in detention indefinitely. If detention is prolonged and the government cannot justify it is necessity, the immigrant should be released under supervision.

Application: Andrei Kolesnikov has been unlawfully detained for almost 10 months without sufficient justification for his detention.

2. *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013)

The Ninth Circuit Court of Appeals ruled that prolonged detention of immigrants without the right to release violates the U.S. Constitution.

Application: Andrei Kolesnikov poses no threat and has every reason to be released.

3. *Demore v. Kim*, 538 U.S. 510 (2003)

The U.S. Supreme Court confirmed that immigration authorities may detain immigrants, but only if there is a proven threat to society.

Application: Andrei Kolesnikov has no criminal history, has a sponsor, and guarantees compliance with all release conditions.

4. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018)

The U.S. Supreme Court ruled that detained immigrants have the right to a hearing on their detention.

Application: The refusal to release Andrei Kolesnikov violates this precedent.

5. *Flores v. Reno*, 507 U.S. 292 (1993)

Established minimum standards for the detention of immigrants in the U.S.

Application: The conditions at Eloy Detention Center do not meet these standards.

6. *Nielsen v. Preap*, 139 S. Ct. 954 (2019)

The U.S. Supreme Court ruled that the detention of immigrants must meet clear criteria and not be arbitrary.

Application: Andrei Kolesnikov was detained without objective grounds.

7. *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015)

Determined that detained immigrants have the right to a hearing for release within 6 months of detention.

Application: Andrei Kolesnikov has been unlawfully detained for longer than this period.

8. *Guerra v. Shanahan*, 831 F.3d 59 (2d Cir. 2016)

Confirmed that detention must be justified by substantial facts, not just an administrative decision.

Application: There are no justified reasons for Andrei Kolesnikov's detention.

9. *Barrera-Echavarria v. Rison*, 44 F.3d 1441 (9th Cir. 1995)

Established that immigrants cannot be held indefinitely without proper judicial proceedings.

Application: Andrei Kolesnikov has been detained for over 9,5 months without lawful grounds.

D. Federal Legislation

10. Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a)

This law gives DHS the authority to detain immigrants but also provides the possibility of release on bond or Parole.

Application: Andrei Kolesnikov poses no threat, and his detention violates this law.

11. INA § 241(a)(6) (8 U.S.C. § 1231(a)(6))

Defines the grounds for prolonged detention of immigrants but requires that it be justified by necessity.

Application: Andrei Kolesnikov's detention is not justified.

12. 8 C.F.R. § 241.4

Regulates the process for reviewing decisions on detention and establishes criteria for release.
Application: Andrei Kolesnikov meets all the criteria for release.

13. United Nations Convention Against Torture (CAT), Article 3

The U.S. is obligated not to return immigrants to countries where they face persecution.

Application: Andrei Kolesnikov has demonstrated a threat of persecution in Russia.

14. Fifth Amendment to the U.S. Constitution (Due Process Clause)

Protects against arbitrary detention and requires fair judicial proceedings.

Application: Andrei Kolesnikov's rights to a fair process have been violated.

15. Eighth Amendment to the U.S. Constitution

Prohibits cruel and unusual punishment, including inhumane detention conditions.

Application: The conditions at Eloy Detention Center can be classified as cruel.

16. Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706

Limits arbitrariness in the actions of government agencies.

Application: ICE and DHS have acted with clear procedural violations in relation to Andrei Kolesnikov.

E. International Norms Relevant to the Case of Andrei Kolesnikov

17. International Covenant on Civil and Political Rights (ICCPR), Article 9

Everyone has the right to liberty and security of person. No one shall be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

Application: Andrei Kolesnikov's detention is arbitrary and illegal, as there are no sufficient legal grounds to justify his prolonged detention under U.S. law. The indefinite nature of her detention violates international standards set out in this provision.

18. European Convention on Human Rights (ECHR), Article 5

Everyone has the right to liberty and security of person. No one shall be deprived of their liberty except in accordance with a procedure prescribed by law.

Application: The detention of Andrei Kolesnikov violates his right to liberty. It is a disproportionate measure since his detention lacks legal justification and extends beyond reasonable limits.

19. UN Refugee Convention, Article 31

States shall not impose penalties on refugees for their illegal entry or presence if they come directly from a territory where their life or freedom was threatened and are seeking asylum.

Application: Andrei Kolesnikov, as an asylum seeker, should not be penalized for irregular entry into the US, as his circumstances meet the criteria for refugee status. His detention while seeking asylum is an unlawful punishment under international law.

20. International Covenant on Economic, Social and Cultural Rights, Article 10

Persons detained shall be protected from cruel, inhuman, or degrading treatment or punishment.

Application: The conditions at Eloy Detention Center, including poor hygiene, inadequate medical care, and prolonged confinement in inhumane conditions, violate the protections provided under this covenant. These conditions subject Andrei Kolesnikov to cruel, inhuman, and degrading treatment.

The Immigration and Nationality Act allows for discretionary detention but requires periodic review of the detention status. Petitioner's continued detention without such review violates federal law.

CONCLUSION

Petitioner respectfully requests that the Court to take account of the attached letters of support, and the documents confirming that Petitioner has no criminal record and poses no threat to the U.S. security. Petitioner also has strong community ties, and individuals are willing to vouch for his good character and guarantee that he will continue to comply with all immigration requirements.

Petitioner respectfully requests that the Court:

1. Issue a writ of Habeas Corpus requiring the immediate release of Petitioner from detention due to the unlawful and unjustified continuation of his detention;

Date: 03/18/2025



Signature of Petitioner

CERTIFICATE OF SERVICE

I, Andrei Kolesnikov hereby certify that on 03/18/25, I sent a copy of this
RESPONDENTS MOTION to the following parties via U.S. Mail:

The Honorable Kristi Noem

Secretary of Homeland Security

U.S. Department of Homeland Security

Washington, D.C. 20528

DHS/ICE Office of Chief Counsel - Eloy Detention Center

1705, E. Hanna Road

Eloy, Arizona 85131

U.S. Department of Homeland Security

Washington, D.C. 20528

U.S. Immigration and Customs Enforcement

500 12th Street SW

Washington, D.C. 20536

Date: 03/18/25

A handwritten signature in black ink, appearing to read 'A. Kolesnikov', written over a horizontal line.

Signature of Petitioner

Case 2:25-cv-00926-SMB--ESW Document 1 Filed 03/20/25 Page 7 of 7
Since I am in custody in detention please send return
correspondence to - Eloy Detention Center, 1405. E. Marina Rd, Eloy,
AZ 85131.

[REDACTED]
Andrei Kolesnikov