

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ben Benyamin Malool

(b) County of Residence of First Listed Plaintiff Essex County, NJ

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Christopher A. Dodd, Dodd Law Office, LLC, 500
Marquette Ave. NW, Suite 1330, Albuquerque, NM 87102

DEFENDANTS

Dora Castro, Mary De Anda-Ybarra, Todd Lyons, Kristi
Noem, Pamela J. Bondi

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government
Plaintiff☐ 3 Federal Question
(U.S. Government Not a Party)☒ 2 U.S. Government
Defendant☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff

(For Diversity Cases Only)

Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place
of Business in This StateCitizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place
of Business in Another StateCitizen or Subject of a
Foreign Country ☐ 3 ☐ 3 Foreign Nation☐ 4 ☐ 4☐ 5 ☐ 5☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	☐ 310 Airplane	☐ 625 Drug Related Seizure	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 315 Airplane Product	☐ 626 of Property 21 USC 881	☐ 423 Withdrawal	☐ 376 Qui Tam (31 USC
☐ 130 Miller Act	☐ 320 Assault, Libel & Slander	☐ 690 Other	☐ 28 USC 157	☐ 3729(a))
☐ 140 Negotiable Instrument	☐ 330 Federal Employers' Liability		INTELLECTUAL PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine		☐ 820 Copyrights	☐ 410 Antitrust
☐ 151 Medicare Act	☐ 345 Marine Product Liability		☐ 830 Patent	☐ 430 Banks and Banking
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 350 Motor Vehicle	LABOR	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 355 Motor Vehicle	☐ 710 Fair Labor Standards Act	☐ 840 Trademark	☐ 460 Deportation
☐ 160 Stockholders' Suits	☐ 360 Other Personal Injury	☐ 720 Labor/Management Relations	☐ 880 Defend Trade Secrets Act of 2016	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 190 Other Contract	☐ 362 Personal Injury - Medical Malpractice	☐ 740 Railway Labor Act	SOCIAL SECURITY	☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 195 Contract Product Liability		☐ 751 Family and Medical Leave Act	☐ 861 HIA (1395ff)	☐ 485 Telephone Consumer Protection Act
☐ 196 Franchise		☐ 790 Other Labor Litigation	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
		☐ 791 Employee Retirement Income Security Act	☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/Exchange
REAL PROPERTY	CIVIL RIGHTS	IMMIGRATION	☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	☐ 462 Naturalization Application	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 220 Foreclosure	☐ 441 Voting	☐ 465 Other Immigration Actions	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 442 Employment		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 240 Torts to Land	☐ 443 Housing/Accommodations		☐ 871 IRS—Third Party	☐ 896 Arbitration
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment		☐ 26 USC 7609	☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other			☐ 950 Constitutionality of State Statutes
	☐ 448 Education			
	PRISONER PETITIONS			
	☒ 463 Alien Detainee			
	☐ 510 Motions to Vacate Sentence			
	☐ 530 General			
	☐ 535 Death Penalty			
	Other:			
	☐ 540 Mandamus & Other			
	☐ 550 Civil Rights			
	☐ 555 Prison Condition			
	☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 2241(c)(5)

Brief description of cause:

Emergency Petition for Writ of Habeas Corpus ad Prosequendum

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

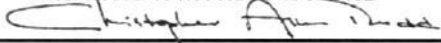
JUDGE James D. Barretto, Peabody District Court, MA

DOCKET NUMBER 2586CR000054

DATE

4/28/2025

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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

BEN BENYAMIN MALOOL,

Petitioner,

v.

DORA CASTRO, Warden, Otero County Processing Center; MARY DE ANDA-YBARRA, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement; TODD LYONS, Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA J. BONDI, United States Attorney General, *in their official capacities*,

Respondents.

CASE NO.

**VERIFIED EMERGENCY
PETITION FOR WRIT OF
HABEAS CORPUS *AD
PROSEQUENDUM*,
PURSUANT TO 28 U.S.C. §§
2241(c)(5), 2243, AND 1651(a),
FOR TRANSPORTATION OF
PETITIONER TO THE
PEABODY DISTRICT
COURT FOR TRIAL**

INTRODUCTION

1. Petitioner Ben Benyamin Malool (“Mr. Malool”) respectfully petitions this Court for a writ of habeas corpus *ad prosequendum*, pursuant to 28 U.S.C. § 2241(c)(5), directing the custodian of the Otero County Processing Center (OCPC) to bring him to Massachusetts on or before May 27, 2025, so that he may stand trial in Peabody (Massachusetts) District Court to stand trial on theft and attempted theft charges.

2. Mr. Malool is an Israeli citizen who, until the time of his arrest by United States Immigration and Customs Enforcement (ICE) on February 12, 2025, lived with his wife and three young children. Mr. Malool split his time between Massachusetts and Florida. He and his

wife own and operate a number of skin-care stores in the Greater Boston area, and in November, 2024, he got in a dispute with a woman who was in his store purchasing skin-care products. The purchaser wanted her money back for the products; Mr. Malool immediately credited her account with the funds. Any “victim” has been made whole.

3. Despite this, an overzealous mall police officer filed charges against Mr. Malool for theft and attempted theft. Mr. Malool was arraigned on these charges (one count of Larceny Over \$1200, and one count of Attempted Larceny), and he posted bail in the Peabody District Court for the amount of \$20,000. Mr. Malool looked forward to challenging these charges in court. However, ICE had other plans. They arrested him and shipped him to the Otero County Processing Center (OCPC) in Chapparral, New Mexico, where he currently remains, awaiting deportation.

4. Mr. Malool’s criminal case in the Peabody District Court is scheduled for jury trial on May 27, 2025. However, he will be unable to exercise his right to trial unless he is physically present in the Peabody District Court on that date. Additionally, because the allegations constitute a crime of moral turpitude, the outcome of the criminal case directly affects his pending immigration matter.

5. Because of his status in ICE custody, however, Mr. Malool cannot transport himself to the Peabody District Court on May 27 to stand trial on the state court allegations.

6. Mr. Malool thus faces a legal catch-22, as he is unable to defend himself against the state court charges (because he cannot return to Massachusetts on his own volition while detained by ICE), and simultaneously, he is unable to fully defend himself in his immigration case while the state court charges remain open and pending.

7. Mr. Malool thus moves for a writ of habeas corpus *ad prosequendum*, pursuant to 28 U.S.C. § 2241(c)(5), directing the custodian of the Otero County Processing Center (OCPC) to bring him before the court in the District of Massachusetts on May 27, 2025, so that he may be transported to the Peabody District Court to stand trial on the charges of Larceny Over \$1200 and Attempted Larceny.

CUSTODY

8. Petitioner is in the physical custody of Respondents. Petitioner is detained in Otero County Processing Center (OCPC) in Chapparral, New Mexico. Petitioner is under the direct control of Respondents and their agents. *See* 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”).

JURISDICTION

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241.

10. Venue is proper because Petitioner is presently detained in the District of New Mexico by United States Immigration and Customs Enforcement (ICE), under the immediate physical custody and control of ICE officials in New Mexico.

PARTIES

11. Petitioner Ben Benyamin Malool is a citizen of Israel who is currently detained by Respondents at OCPC. On February 11, 2025, Petitioner was arraigned in the Peabody District Court on one count of Larceny Over \$1200, and one count of Attempted Larceny. Petitioner has been detained in ICE Custody since February 12, 2025, the day that he posted bail in the Peabody District Court criminal case.

12. Respondent Dora Castro is the Warden of Otero County Processing Center in Chapparral, New Mexico, and is the custodian of Petitioner's detention. She is named in her official capacity.

13. Respondent Mary De Anda-Ybarra is the Field Office Director responsible for the El Paso Field Office of ICE with administrative jurisdiction over petitioner. She is a legal custodian of Petitioner and is named in her official capacity.

14. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement. He is legally responsible for pursuing efforts to remove Petitioner. He is a legal custodian of Petitioner and is named in his official capacity.

15. Respondent Kristi Noem is the Secretary of Homeland Security. She is a custodian of Petitioner and is named in her official capacity.

16. Respondent Pamela J. Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity,

STATEMENT OF FACTS

17. Petitioner was originally arraigned on February 11, 2025 in the Peabody District Court on one count of Larceny Over \$1200 and one count of Attempted Larceny. *See Commonwealth v. Bob Benito Malool*, 2586CR000054.

18. After arraignment, Petitioner's bail was set at \$20,000, with the additional condition that he surrender his passport to the Peabody District Court. After his arraignment, Petitioner was remanded to the custody of the Essex County Sheriff's Department.

19. Petitioner subsequently posted the bail. Upon his release from custody by the Essex County Sheriff's Department on February 12, 2025, he was immediately arrested by ICE, and subsequently transported to OCPC, where he is presently detained.

20. Petitioner intends to exercise his full due process rights, including his right to a trial by jury and confrontation of the witnesses against him, in the state criminal case scheduled for jury trial on May 27, 2025. The estimated length of Petitioner's jury trial is one to two days.¹

21. However, Petitioner cannot do so unless he is transported from OCPC to the Peabody District Court on the date of his jury trial. That transportation is impossible without a writ of habeas corpus *ad prosequendum*, directing Petitioners' custodians to facilitate his transport from OCPC to Peabody District Court on the day of trial.

22. The writ is particularly important in this case because Petitioner's ability to resolve the state court case will directly affect his federal immigration case. It is counsel's understanding that, because the allegation involves a crime of moral turpitude, it will likely affect the outcome of his upcoming final removal hearing, even if the case has not yet been tried. Put simply, the charges alone—without any due process—mean that Mr. Malool is more likely to be subject to deportation, much to the dismay of his wife and young children. Mr. Malool's only hope is to beat the charges at trial (which he is confident on doing), but he cannot do so if he does not first appear at the trial in Massachusetts.

23. Petitioner's next Master Calendar in his immigration case hearing is currently scheduled on April 30, 2025. At that hearing, the immigration court will schedule his Individual Hearing to determine whether he is removable.

24. Petitioner therefore seeks a writ of habeas corpus *ad prosequendum* so that he may be transported to his criminal trial in the Peabody District Court on May 27, 2025. Without

¹ At the scheduling hearing, the Court ordered an in-person writ of habeas corpus issued for the date of Petitioner's jury trial but has previously expressed verbally that it does not have the power to order a federal facility to transport Mr. Malool from federal court to state court. Accordingly, Mr. Malool is filing this writ to ensure that he may attend his trial.

this writ, Petitioner will be legally unable to exercise any of his Constitutional rights in the pending criminal matter, as he will not be able to attend his upcoming trial.

LEGAL FRAMEWORK

25. Under 28 U.S.C. § 2241(c)(5), the writ of habeas corpus shall not extend to a prisoner “unless it is necessary to bring him into court to testify *or for trial*” (emphasis added).

26. 28 U.S.C. § 2241(c)(5), in conjunction with the All Writs Act, 28 U.S.C. § 1651, permits a federal court to exercise its discretion to issue a writ of habeas corpus *ad prosequendum*, directing the custodian of an incarcerated person to bring that prisoner before a court. *See United States v. Mauro*, 436 U.S. 340, 360 (1978); *Carbo v. United States*, 364 U.S. 611, 617-18 (1961); *see also United States v. Kelly*, 661 F.3d 682, 686 (1st Cir. 2011) (“Habeas corpus *ad prosequendum*, a writ derived from English common law, has historically been “issue[d] when it [wa]s necessary to remove a prisoner, in order to prosecute ... in any court, or to be tried in the proper jurisdiction wherein the fact was committed.”) (quoting 3 William Blackstone, *Commentaries* 130). “In the United States, this writ has ‘a long history, dating back to the First Judiciary Act.’” *Kelly*, 661 F.3d at 686 (quoting *Mauro*, 436 U.S. at 360).

27. The writ “allows the issuing court to ‘obtain temporary custody of the prisoner.’” *Kelly*, 661 F.3d at 686 (quoting *Mauro*, 436 U.S. at 362). “The nature of the writ is such that the ‘sending state retains full jurisdiction over the prisoner since the prisoner is only ‘on loan’ to the prosecuting jurisdiction.”” *Id.* (quoting *Flick v. Bevins*, 887 F.2d 778, 781 (7th Cir. 1989)).

28. “A court, justice, or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

29. Once issued, the writ is directed to “the person having custody of the person detained,” and “shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.” 28 U.S.C. § 2243.

30. Because Petitioner is held without bond in ICE custody in New Mexico, he is unable to appear in Peabody District Court in Peabody, Massachusetts on his own volition. A writ of habeas is thus necessary to permit him to attend his trial.

31. As the Defendant, Petitioner is a necessary party at his own criminal trial in the state court, and he cannot appear remotely.

32. If Petitioner cannot attend his trial, he will be deprived of his rights under the state and federal constitutions. The Fifth Amendment to the United States Constitution, in conjunction with the Fourteenth Amendments, guarantee a defendant’s right to due process of law in a criminal trial. *See* U.S. Const. amend. V (“No person shall . . . be deprived of life, liberty, or property, without due process of law”); U.S. Const. amend. XIV. The Sixth Amendment, in conjunction with the Fourteenth Amendment, guarantees a defendant’s right to a trial by jury and the right to confront the witnesses against him. *See* U.S. Const. amends. VI; XIV. In Massachusetts, those rights are also guaranteed to a defendant by article 12 of the Massachusetts Declaration of Rights.

33. Rule 18(a) of the Massachusetts Rules of Criminal Procedure also guarantees a defendant the right to be present at all critical stages of a court proceeding, including trial. *See Commonwealth v. Ng*, 491 Mass. 247, 253 (2023) (citing *Vazquez Diaz v. Commonwealth*, 487 Mass. 336, 344 (2021)) (explaining that “the right is derived from the confrontation and due process clauses of the Sixth and Fourteenth Amendments to the United States Constitution, respectively, and art. 12 of the Massachusetts Declaration of Rights”).

34. Petitioner has been charged with a crime in the Peabody District Court and wishes to assert his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and article 12 of the Massachusetts Declaration of Rights. However, he cannot do so unless he is brought to the Peabody District Court on May 27, 2025 to stand trial.

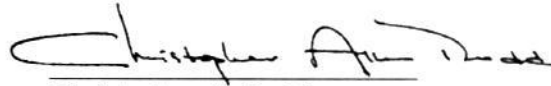
35. Thus, a writ of habeas corpus *ad prosequendum* is necessary to permit Petitioner to attend his criminal trial and exercise his state and federal Constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following emergency relief:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus *ad prosequendum* directing the custodian of Petitioner to produce Petitioner, currently in the custody of the Otero County Processing Center in Chaparral, New Mexico, and;
3. Direct and Authorize the United States Marshal for the District of New Mexico to serve the writ of habeas corpus *ad prosequendum* on Petitioner and his custodian; and
4. Direct and authorize the transportation of Petitioner to the Peabody District Court, 1 Lowell Street, Peabody, Massachusetts, 01960, on May 27, 2025, for the length of the criminal jury trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher A. Dodd". The signature is fluid and cursive, with a long horizontal stroke at the end.

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VERIFICATION BY PERSON ACTING ON PETITIONER'S BEHALF PURSUANT TO
28 U.S.C. § 2242

I verify under penalty of perjury that the foregoing is true and correct. Executed on April
28, 2025

/s/ Eric Rosen

Date: April 28, 2025

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2025, a true copy of the above document was filed via the Court's CM/ECF system and that a copy will be automatically sent to counsel of record.

/s/ Christopher A. Dodd

Date: April 28, 2025