

interview just a few days ago on May 28, 2025 before the Arlington Asylum Office, part of the same agency as USCIS, namely the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) now wishes to ignore the statute, ignore the regulations, and ignore Congressional mandates to hold in custody, and then deport, someone who is not subject to being detained at all-let alone subject to removal. Such actions are unlawful and unconstitutional

- 3 This action seeks habeas, declaratory, and injunctive relief to find that Respondents’ actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law ICE has acted impermissibly and unlawfully when they arrested and detained Petitioner contrary to his valid status as an asylum applicant that allows him to stay and work in the United States during the pendency of his application. Petitioner is not removable from the United States while his application is pending as there were no triggers that warranted his detention and Defendants detention of him is in violation of law.
4. The plain language of the regulations, and even USCIS’s own website make clear that asylum applicants have the right to remain and lawfully work in the US while their application is pending, provided they have not committed a crime, and have complied with all biometric and reporting change of address requirements.
5. Petitioner, by virtue of his pending asylum application, is allowed to stay and work in the United States and Respondent’s failure to recognize this grant and instead unlawfully detain him and further threaten to remove him is contrary to law. Petitioner seeks immediate relief to prevent harm that flows from his unlawful detention.

II. JURISDICTION

6. This action arises under the Constitution of the United States and the Immigration and

Nationality Act (INA), 8 U.S.C. § 1101 et seq.

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 et seq (declaratory action) and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause)
8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq, the Administrative Procedure Act, 5 U.S.C. § 701, et seq, and the All Writs Act, 28 U.S.C. § 1651.
9. 8 U.S.C. § 1252(a)(5), INA § 242(a)(5), provides that “a petition for review filed with an appropriate court of appeals in accordance with this section, shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act[.]” As the present action is not an action to review a removal order but an action challenging the unlawful conduct of DHS in unlawfully arresting, and detaining Petitioner contrary to his lawful authorized stay in the US, this Court retains original jurisdiction under the APA and 28 U.S.C. § 1331, as well as for declaratory relief under 28 U.S.C. § 2201

III. VENUE

10. Venue is proper because Petitioner is detained at the Farmville ICE detention facility in Farmville, Virginia, which is within the jurisdiction of this District.
11. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States reside and a substantial part of the events or omissions giving rise to his claims occurred in this District. No real property is involved in this action. 28 U.S.C. § 1391(e).

IV. REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN ORDER TO SHOW CAUSE

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause

(OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added)

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
14. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondent should not be ordered to release Petitioner from detention.
15. Pending adjudication of these claims, Petitioner asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the Washington Field Office of the Immigration & Customs Enforcement (“ICE”) Office of Enforcement and Removal Operations (“ERO”) and this District.

V. PARTIES

16. Petitioner is currently detained at the Farmville ICE Detention Facility, in Farmville, VA. He was arrested and detained on May 31, 2025 from his residence by ICE officers, who allegedly claimed that he has overstayed his B-2 visa and that they have no record of his pending

asylum application, despite Petitioner trying to provide them with his immigration related paperwork. He is currently an asylum applicant that he affirmatively filed on July 24, 2015. Petitioner and his dependent family members have maintained valid employment authorization documents for the past ten years the asylum application has been pending.

17. Respondent Russell Hott is named in his official capacity as the Acting Field Office Director of the Washington Field Office for Immigration and Customs Enforcement (“ICE”) within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. Respondent Hott’s address is Washington ICE ERO Field Office, 14797 Murdock St , Chantilly, VA 20151
18. Respondent Jeffrey Crawford is the Director of the Farmville Detention Center where, upon information and belief, Petitioner is detained. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner. Respondent Crawford’s address is Farmville Detention Center, 508 Waterworks Dr., Farmville, VA 23901.
19. Respondent Todd Lyons is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Eastern District of Virginia; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St SW, Mail Stop 5900, Washington, DC 20536-5900.
20. Respondent Erik S. Siebert, Acting U.S. Attorney for Eastern District of Virginia (EDVA). As the chief federal law enforcement officer for the District, he supervises litigation of CIS matters in which the federal government has an interest. 8 U.S.C. § 1329. This action is

brought against him in his official capacity. Respondent Siebert's address is US District Court, Eastern District of Virginia, 2100 Jamieson Ave, Alexandria, VA 22314

- 21 Respondent Kristi Noem is sued in her official capacity as the Secretary of the U S Department of Homeland Security (DHS) In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's arrest and detention. Respondent is a legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr Ave. SE, Washington, DC 20528-0485.

VI. STATEMENT OF FACTS

- 22 Petitioner, Arthur Victor Newmark (formerly Artur Markarian) first entered the United States on May 8, 2015, with a valid B-2 nonimmigrant visa with duly inspection, accompanied by his wife, Kristina Newmark (formerly Kristina Markarian) and two children, Eva Newmark (formerly Eva Markarian) and Victor Newmark (formerly Viktor Markarian) On July 24, 2015, while still in valid status, Petitioner affirmatively applied for asylum, Form I-589 because of his fear of harm upon returning to his country of citizenship, Russia.
23. In August 2015, the Petitioner and his dependent spouse and children complied with USCIS biometric requirement and after 150 days wait period submitted their initial applications for employment authorization document, which was approved by USCIS on February 26, 2019. Until present time, Petitioner and his family have timely filed for renewal of their EADs For the next almost 10 years, petitioner and his family remained in the US, well settled despite lack of permanent immigration status. Petitioner and his wife worked lawfully and timely filed their taxes, their children went to school in VA, where they achieved academically and in extracurricular activities. Petitioner and his wife also had their third child in the US, Agasi

Newmark (formerly Agasi Markarian) born on March 5, 2015.

24. Petitioner patiently waited for almost ten years to be invited for an interview, but the Arlington Asylum Office allegedly had other priority cases and lack of resources to accommodate interviews. In February 2024, the Petitioner submitted a request for expedited interview with the Arlington Asylum Office, which was denied without providing any specific reason on February 15, 2024. On March 8, 2024, Petitioner once again submitted a request to the Arlington Asylum Office to reconsider the office's decision and to schedule him for an interview due to the length of time he had waited for adjudication of his case. The Arlington Asylum Office never responded to that request.
25. On March 4, 2025, the Arlington Asylum Office scheduled the case for an interview, but the notices were sent to the Petitioner's former address and Counsel's former office address, despite both addresses being updated with the USCIS. After email correspondence with the office and the Petitioner's in-person visit to the Arlington Asylum Office to update his address, the case was rescheduled for interview for March 28, 2025.
26. As scheduled, the Petitioner and his family attended the interview that took place from 8:30AM until 5:45PM, during which time he presented his overwhelming evidence and gave detailed testimony of his case. As described above, the interviewing officer informed the Petitioner that he can return to the office in two to three weeks to pick up the decision notice. The next day, Counsel's office received a call from the same officer, who informed that the Petitioner does not need to return to the office in person and the decision notice will be mailed instead.
27. According to the Petitioner's wife's account, on Saturday morning of May 31, 2025 around 9:00AM, ICE officers showed up at their home and took away the Petitioner in handcuffs in front of his family. According to information and belief, the officers orally told the Petitioner

that he had overstayed his B-2 visa for about ten years and when he explained that he had a pending asylum application, the officers insisted that they see no record of such and alleged that he must have just filed it recently to avoid deportation.

28. Furthermore, the Petitioner's wife asserts that they had noticed the same car the ICE officers took the Petitioner in during the arrest had been following them for few days, including on the day of the asylum interview. She asserts that the car followed them all the way to the Arlington Asylum office, even stopped when they stopped at a store to purchase water and then followed them home after the interview was completed.
29. The fact that ICE officers had been following the Petitioner around for days, including to his interview at the asylum office and given that ICE is part of the same Department of Homeland Security with access to asylum application records, it is apparent that ICE was well aware of his pending asylum application and other details of his case, but decided to deny his assertion when he informed them and detain him anyway. It was a targeted move with malicious intent, done to make sure he is in detention or worse expeditiously removed before his application can be approved.
30. Based on the recent pattern of ICE practice, we believe Petitioner is at risk of being wrongfully removed from the United States to his country of citizenship, where he fears serious harm or to a third country that he has no connection with.

VII. CLAIMS FOR RELIEF

Count I - Violation of Fifth Amendment Rights to Due Process

31. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
32. The Petitioner, as an asylum applicant, who had timely filed his application, complied with all

biometric and reporting of change of address requirements and dutifully attended his scheduled asylum interview by immigration authorities, has a liberty interest in being able to obtain the protection the law provides him. This protected liberty interest flowed from the statute and regulations which permitted asylum applicants to stay and legally work in the US during the pendency of their application, provided that they adhere to certain legal requirements and abide by the law.

33. Defendants' efforts to now unilaterally and without due process strip him of those protections, separating him from his family without due cause is unlawful under the Fifth Amendment of the Constitution.
34. Petitioner has complied with each and every requirement USCIS and Defendants have imposed upon him, but despite such fact, Defendants never alerted Petitioner to any issues or concerns at any point prior to their unlawful detention and threats to remove him, without notice and without justification. In fact, from the detailed account of the Petitioner's wife regarding the officers' claim that they have no record of his pending asylum application, it is apparent that this arrest took place as soon as he had his asylum interview to make sure he was unable to get the benefits the law grants him if his application is approved.
35. Procedural due process requires, in most cases, a hearing of some kind. *Mathews v Eldridge*, 424 U.S. 319, 332-333, 96 S.Ct. 893, 901-902 (1976). The process due depends on three factors:

[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. 424 U.S. at 335, 96 S.Ct. at 903.

- 36 The government has not demonstrated that the Petitioner—a husband, father of three young children (one of whom is a US citizen), and with no criminal history—needs to be detained, while awaiting for the adjudication of his application for asylum. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen’s appearance during removal proceedings and (2) preventing danger to the community) There is no credible argument that the Petitioner cannot be safely released back to his family.
37. The procedures employed by Defendants offered Petitioner no hearing, no notice, and no opportunity to be heard.
38. Defendants had multiple other means available to achieve its objective without denying the Petitioner procedural fairness.
39. The cost and administrative burden of adopting these alternate procedures would be minimal, as the Respondents already possess an entire agency dedicated to processing removal cases
- 40 Instead, Respondents have acted with complete disregard to due process by unlawfully acting in a way to unlawfully detain him under a threat of removal Such unlawful actions threaten Petitioner’s interests in his interim benefits in the short term and his permanent status if his asylum application is approved.
41. Given the Petitioner’s rights and interests, the Government’s interests, and the cost and availability of alternate means of protecting the Government’s objectives, the procedures employed by the Government violated the Due Process clause of the Fifth Amendment.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Honorable Court.

- 1 Assume jurisdiction over the matter,

- 2 Issue an Order to Show Cause, ordering Respondents to show cause why this Petition should not be granted within 3 days
3. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the Eastern District of Virginia pending the resolution of this case;
- 4 Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 8 U.S.C. § 1101(a)(15)(U); see also 8 C.F.R. § 214.14, et al.
- 5 Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- 6 Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- 7 Grant any further relief this Court deems just and proper.

June 1, 2025

Respectfully submitted,
/s/

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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

Respectfully submitted,

June 1, 2025

/s/

Elizaveta Krukova, Esquire

LIST OF EXHIBITS

Exhibit	Description
1	Copy of I-589 Receipt Notice, Acknowledging Receipt of Petitioner's Asylum Application on July 24, 2015, Along with Evidence of Completed Biometrics for Each Member of the Family
2	Fairfax Circuit Court Orders, Granting the Petitioner and His Family Members' Name Change Petitions.
3	Evidence Related to Petitioner's Requests with Arlington Asylum Office for an Expedited Interview of His Asylum Application and Response from Arlington Asylum Office
4	Copy of I-589 Asylum Interview Notice for March 28, 2025 Before the Arlington Asylum Office and USCIS Case Status Online, Showing the Case is Pending Decision After the Interview was Completed