NATIONS LAW GROUP
Nicolás A. Olano
Alaska Bar No. 2105042
2525 Blueberry Road, Suite 207
Anchorage, AK 99503
Telephone: (907) 770-0909
Fax: (907) 770-0902
E-Mail: nicolas@nationslawak.com

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF ALASKA**

ALBERT KHAMITOV

*Plaintiff*

v.

PAM BONDI, Attorney General of the United States in her official capacity; KRISTI NOEM, Secretary of the Department of Homeland Security in her official capacity; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement in his official capacity; DREW BOSTOCK, Director of the Seattle Field Office of ICE's Enforcement and Removal Operations (ERO) in his official capacity; ARLANDO HERNANDEZ, Superintendent Anchorage Correctional Complex in his official capacity

*Defendants*

Case No_____

**PETITION FOR HABEAS CORPUS RELIEF**

## INTRODUCTION

1. This is an action for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy the prolonged and unlawful detention of Petitioner Albert Khamitov, a noncitizen currently in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Alaska Corrections Complex (ACC) in Anchorage, Alaska. *See* Exhibit A (ICE Detainee Locator Printout).

2. Petitioner prevailed in his removal proceedings and was granted asylum by Immigration Judge Vicenta Banuelos-Rodriguez on September 12, 2024. Yet, despite that final adjudication — and in the absence of a removal order or criminal record — Petitioner has remained detained for over twelve months, without any individualized determination by a neutral decision maker as to whether his continued incarceration serves any compelling governmental interest. *See* Exhibit B (Asylum Grant Decision).

3. On March 13, 2025, the Board of Immigration Appeals ("BIA") placed the government's appeal in Petitioner's case on hold, citing the need for background checks under 8 C.F.R. § 1003.1(d)(6)(ii). Those checks are governed by 8 C.F.R. § 1003.47(b), which requires DHS to complete security investigations before the BIA may affirm a grant of relief. *See* Exhibit C (BIA Order Placing Case on Hold).

4. Under 8 C.F.R. § 1003.1(d)(6)(ii), DHS bears sole responsibility for completing identity and security investigations for detained individuals.

Despite Petitioner's continuous presence in ICE custody and multiple written and electronic parole requests, including a formal ICE Case Review submitted by prior counsel, DHS has taken no action to effectuate his release, advance the case, or provide the information required by the BIA under 8 C.F.R. § 1003.1(d)(6)(ii). *See* Exhibit D (Declaration by Albert Khamitov) and Exhibit E (Request for Parole, January 16, 2025).

5. Petitioner has made multiple good-faith parole requests, all of which DHS has denied. The most recent was submitted in Tacoma, Washington, on March 14, 2025 — just one day after the BIA placed the government's appeal on hold to obtain the information required under 8 C.F.R. § 1003.47(b). *See* Exhibit F (Request for Parole, March 14 of 2025).

6. None of Petitioner's efforts before DHS have led to his release. Meanwhile, DHS delayed its obligation to provide background checks to the BIA — information that would likely result in a favorable resolution of the appeal that, ironically, DHS itself filed. *See* Exhibit G (Notice of Appeal by DHS).

7. Petitioner's continued detention violates the Constitution, the Immigration and Nationality Act, and applicable agency regulations. Without judicial intervention, he will face indefinite and unjustified confinement, despite having lawfully prevailed in his asylum claim. The Constitution and the rule of law demand more.

8. Petitioner respectfully requests that this Court: (1) issue a writ of habeas corpus declaring his continued detention unlawful and unconstitutional, and ordering his immediate release.

9. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus)

10. Nothing in the Immigration and Nationality Act (INA) strips this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), 1252(f)(1), or 1226(e). Congress has expressly preserved judicial review of challenges to prolonged immigration detention. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018) (holding that 8 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar judicial review of such challenges).c

## VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the District of Alaska, the judicial district in which Petitioner is currently in custody.

12. Venue is also proper in this District under 28 U.S.C. § 1391 because at least one Respondent is an employee, officer, or agency of the United States, and because part of the events or omissions giving rise to the claims occurred in the District of Alaska.

## PARTIES

13. Petitioner ALBERT KHAMITOV is a citizen of Russia who entered the United States on May 2, 2024. He is currently detained at the Anchorage Correctional Complex.

14. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

15. Respondent PAMELA BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

16. Respondent KRISTI NOEM is the Secretary of the DHS. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner' s detention. Ms. Noem has ultimate custodial authority over Petitioner and is named in her official capacity.

17. Respondent TODD LYONS, Director of ICE, is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. He is a legal custodian of Petitioner and is named in his official capacity.

18. Respondent DREW BOSTOCK is the Director of the Seattle Field Office of ICE's Enforcement and Removal Operations (ERO), the division that

oversees Alaska. As such, Mr. Bostock is a legal custodian of Petitioner's detention and is named in his official capacity.

19. Respondent, ARNALDO HERNANDEZ, is the Superintendent of the Anchorage Correctional Complex and Petitioner's immediate custodian. He is named in his official capacity.

## FACTUAL ALLEGATIONS

20. Petitioner Albert Khamitov is a noncitizen in the custody of Immigration and Customs Enforcement ("ICE") at the Anchorage Corrections Complex ("ACC") in Anchorage, AK. *See* Exhibit A (ICE Detainee Locator Printout).

21. Petitioner has been in DHS custody since May 2, 2024, when he entered the U.S. after applying for admission via the CBP One Application at or near Calexico, CA. DHS issued a Notice to Appear (NTA) on May 22, 2024, and served it upon Mr. Khamitov on May 23, 2024. *See* Exhibit H (Notice to Appear).

22. Mr. Khamitov was granted asylum on September 12, 2024, by Immigration Judge Vicenta Banuelos-Rodriguez, who found him credible and gave full evidentiary weight to his testimony. Despite this grant of asylum, he has remained in detention. *See* Exhibit B (Asylum Grant Decision).

23. DHS filed an appeal with the Board of Immigration Appeals ("BIA") challenging the grant of asylum. That appeal was initially rejected, but later

refiled on October 15, 2024. Petitioner has remained in detention throughout the pendency of the appeal. *See* Exhibit G (Notice of Appeal by DHS).

24. On March 13, 2025, the BIA issued a notice placing the appeal on hold pursuant to 8 C.F.R. § 1003.1(d)(6)(ii), pending DHS's completion and submission of the mandatory background checks required under 8 C.F.R. § 1003.47(b). *See* Exhibit C (Notice of Hold by BIA).

25. On June 17, 2025 – after being advised of this impending lawsuit – the Defendant's complied with their obligation to update the Board of Immigration Appeals as per 8 C.F.R. § 1003.1(d)(6)(ii). *See* Exhibit K (DHS notice to BIA of BCR)

26. In IJ Banuelos-Rodriguez's oral decision — as confirmed by DHS counsel in their Notice of Appeal and subsequent brief — background checks were conducted during the underlying proceedings, as required by 8 C.F.R. § 1003.47(b). Those checks confirmed that Petitioner had no criminal record. *See* Exhibit B (Asylum Grant Decision).

27. At the time of the Immigration Judge's grant of asylum and consideration of the background checks required under 8 C.F.R. § 1003.47(b), Petitioner was — and remains — in the physical custody of ICE. *See* Exhibit B (Asylum Grant Decision).

28. On January 16, 2025, Mr. Khamitov, through counsel, submitted a formal ICE Case Review request. ICE responded on January 29, 2025, stating that the agency was exercising its broad discretion and denying the request after reviewing the submitted materials and the available case information. *See* Exhibit E (Request for Parole, January 16, 2025).

29. Mr. Khamitov was transferred to the Northwest ICE Processing Center in Tacoma, Washington, where he submitted another parole request on March 14, 2025. Aside from an automatically generated receipt from the ICE e-service portal, there was no response. On April 23, 2025, prior counsel contacted Petitioner's Deportation Officer to confirm receipt of the request, but received no reply. That request remains unadjudicated. *See* Exhibit F (Request for Parole, March 14, 2025).

30. On April 9, 2025, a Tacoma Immigration Judge determined that the Immigration Court lacked jurisdiction to consider a bond reconsideration request under 8 U.S.C. § 1226(c). *See* Exhibit I (ECAS Printout Order in Bond Proceedings).

## LEGAL FRAMEWORK

### A. "Hold" at the BIA under 8 C.F.R. § 1003.1(d)(6)(ii).

31. Upon the arrest and detention of a non-citizen, DHS undertakes a custody determination under 8 U.S.C. § 1226(a). If the decision by DHS is to deny a bond, the non-citizen may request a reconsideration before an Immigration Judge. See 8 C.F.R. § 1240.31.; 8 C.F.R. § 1003.19

32. For a set of individuals who are under 8 U.S.C. § 1229 proceedings, Immigration Judges are divested of jurisdiction to entertain a bond. 8 C.F.R. § 1003.19(h)(2)(i). In particular, "arriving aliens," defined *inter alia* as "an applicant for admission coming or attempting to come into the United States at a port-of-entry," are left with the only option of requesting "parole" (release) under 8 U.S.C. § 1226(a) from DHS.

33. It has been — and remains, at least on paper — the policy of DHS to release individuals who have been granted asylum, unless there are exceptional concerns. *See* Exhibit J (ICE Memorandum on ICE Policy After IJ Has Granted Relief, dated February 20, 2004).

34. Once an Immigration Judge has granted relief to a non-citizen in removal proceedings, DHS may appeal that decision to the Board of Immigration Appeals within a period of 30 days. 8 C.F.R. § 1003.3(b). If no appeal is filed, the order becomes *final* and the noncitizen retains the status granted by that relief. *Id.*

35. Before the granting of any relief – including Asylum – a background and security check must be completed under 8 C.F.R. § 1003.47. If the

noncitizen does not comply with the biometrics gathering instructions, his application for relief may be deemed abandoned by the immigration judge. 8 C.F.R. § 1003.47(d).

36. In the appeal of an IJ's decision to the BIA, the Board may not affirm the grant of relief unless the security checks mandated by 8 C.F.R. § 1003.47(b) have been completed. *See* 8 C.F.R. § 1003.1(d)(6)(i). If the information required by 8 C.F.R. § 1003.47(b) is needed by the Board, it will place the matter on hold and notify the parties that such procedures must be completed. *See* 8 C.F.R. § 1003.1(d)(6)(ii). Where the noncitizen is detained, the responsibility for obtaining the biometric and biographical information of the noncitizen, as well as providing the information to the BIA, falls upon DHS. *Id.*

**B. No Bond Jurisdiction for Arriving Aliens**

37. Immigration Judges have no jurisdiction to entertain a bond reconsideration request after ICE has denied release. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B).

38. Petitioner presented himself for admission using the CBP One Application and was subsequently "paroled" into the United States, making him an arriving alien and therefore divesting Immigration Judges from considering him for bond reconsideration. *Id.* Because of this, Petitioner is

limited to requesting "parole" from DHS, which it has refused on various occasions. *See* Exhibit D (Declaration by Albert Khamitov).

39. DHS has refused to release Petitioner. At the same time, it has failed to observe the BIA's request under 8 C.F.R. § 1003.1(d)(6)(i) and 8 C.F.R. § 1003.1(d)(6)(ii). Therefore, DHS is impeding Petitioner from either the access to relief or the release from custody.

## C. Due Process Clause of the Fifth Amendment in the United States Constitution

40. The Due Process Clause of the Fifth Amendment provides Petitioner with important protection against arbitrary detention without procedures to determine if he is a flight risk or danger. As the Supreme Court has explained, "[f]reedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

41. The Supreme Court has addressed the constitutionality of mandatory detention. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court denied a facial challenge to mandatory detention under section 1226(c), which asserted that the statute was unconstitutional because it imposed mandatory detention without a custody hearing. However, the Supreme Court emphasized that such detention was typically "brief" in length and

lasted "roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases in which the [non-citizen] chooses to appeal." *Id.* at 513, 530. The Court also upheld the statute in part because it was based on a voluminous congressional record that supported the need for detention for individuals convicted of certain crimes. *Id.* at 518–20.

42. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court again addressed the mandatory provision of section 1226(c), as well as the one at section 1225(b). There, the Court held that, as a matter of statutory interpretation, those sections did not require the government to provide a bond hearing for a detainee subject to prolonged detention. Significantly, the Court did not reach the constitutional question of whether the Due Process Clause requires an opportunity to test the government's justification for detention once detention becomes prolonged.

43. Since the Supreme Court's *Jennings* decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

44. To guard against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

45. In the immigration context, the Supreme Court has recognized two primary purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *see also Demore*, 538 U.S. at 522, 528. The government may not detain a noncitizen based on other justifications.

46. Where the government detains a noncitizen for a prolonged period while the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decision-maker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards)

47. Detention without a bond hearing is unconstitutional when it is prolonged and there is no bail. *See, e.g., Rodriguez*, 909 F.3d at 256; *see also Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months.").

48. The recognition that six months constitutes a substantial period of confinement qualifying as prolonged detention is deeply embedded in the American legal tradition. With few exceptions, "in the late 18th century in America, crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). In line with this history, the Supreme Court has consistently treated six months as the outer limit of criminal confinement that a federal court may impose without the protections of a jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also recognized the six-month threshold in civil contexts. *See McNeil v. Director, Patuxent Institution*, 407 U.S. 245, 249, 250–52 (1972) (holding that six months constitutes the maximum period for confinement without an individualized inquiry in civil commitment proceedings).

49. Both the Supreme Court and the Ninth Circuit have long recognized that prolonged civil detention requires an opportunity to test its legality. As the Ninth Circuit noted in the context of pretrial detention — which, like the present case, involves civil detention —"[i]t is undisputed that at some

point, [civil] detention can 'become excessively prolonged, and therefore punitive,' resulting in a due process violation." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987)). This is particularly true when the original detention lacked adequate procedural safeguards. *See O'Connor v. Donaldson*, 422 U.S. 563, 574–75 (1975) ("Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed."); *McNeil*, 407 U.S. at 249–50 (explaining that as the length of civil detention increases, more substantial safeguards are required).

50. "In the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).

## CAUSE OF ACTION

### COUNT - I

### Violation of Fifth Amendment Right to Due Process

51. The allegations set forth in the above paragraphs 1-51 are realleged herein by reference.

52. The prolonged detention of a non-citizen is only permissible under the Due Process Clause of the Fifth Amendment, where there are "adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017). That detention becomes prolonged after six months. *McNeil*, 407 U.S. at 249–50.

53. Here, Petitioner has been detained for more than a year. That continued detention is due in part by DHS' significant delay in complying with its obligations under 8 C.F.R. § 1003.1(d)(6)(ii). DHS only filed the background information requested by the BIA on June 17, 2025, four months after the BIA placed the case on hold. This unnecessary delay took place while at the same time DHS denied the Petitioner's parole requests.

54. Further, no procedural safeguards exist, as Petitioner's only mechanism to seek relief is via a parole request before the same agency that is detaining him and that has failed to complete the most basic procedural steps, as shown above. Simply, Petitioner is trapped in a Kafkaesque situation where; perhaps due to bureaucratic oversight or a strategic decision to prolong detention, despite the likely availability of relief, DHS has unreasonably held him for an extended period without providing "a

hearing before a neutral decision-maker to determine whether detention remains reasonably related to its purpose." *Demore*, 538 U.S. at 532

55. Defendants are in violation of Petitioner's rights under the Due Process Clause of the Fifth Amendment.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue a Writ of Habeas Corpus and hold a hearing before this Court if warranted, where Defendants must show that Petitioner's detention is justified by clear and convincing evidence, that Petitioner presents a risk of flight or danger in light of available alternatives to detention, and – if Defendant's fail to meet their burden – order Petitioner's release, with appropriate conditions of supervision if necessary, considering his ability to pay a bond;

(3) Issue a declaration that Petitioner's prolonged detention under the present circumstances violates the Due Process Clause of the Fifth Amendment;

(4) Award reasonable costs and attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law;

and

(5) Grant any and all such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 18th day of June 2025,

/s/ Nicolás A. Olano
Nicolás A. Olano

Nations Law Group
2525 Blueberry Road, Suite 207
Anchorage, AK 99503
*Attorney for Petitioner*