

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2025 JUL 10 PM 1:41

CLERK
BY CDC
DEPUTY CLERK

ESTHER NGOY TEKELE,

Petitioner,

-against-

THERESA MESSIER, SUPERINTENDENT, CHITTENDEN REGIONAL CORRECTIONAL FACILITY – SOUTH BURLINGTON; DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; PATRICIA HYDE, IN HER OFFICIAL CAPACITY AS ACTING BOSTON FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; VERMONT SUB-OFFICE DIRECTOR OF IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; TODD M. LYONS, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; PETE R. FLORES, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER FOR U.S. CUSTOMS AND BORDER PROTECTIONS; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND PAMELA BONDI, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL,

Respondents.

Case No.

2:25-cv-637

**PETITION FOR WRIT
OF HABEAS CORPUS**

**ORAL ARGUMENT
REQUESTED**

INTRODUCTION

1. This Petition for a Writ of Habeas Corpus is respectfully submitted on behalf of Ms. Esther Tekele Ngoy (“Ms. Tekele” or “Petitioner”), who was allegedly subjected to an unlawful, warrantless arrest by agents of U.S. Customs and Border Protection (“CBP”) in Highgate Springs, Vermont. Upon information and belief, Ms. Tekele was subsequently transported to the CBP facility located in Highgate Center, Vermont, and thereafter transferred to the Chittenden Regional Correctional Facility, where she remains in custody at the time of this filing.

2. Ms. Tekele was born and raised in the Democratic Republic of the Congo, where she resided until her arrival in the United States in 2021.

3. Petitioner is a Lawful Permanent Resident of the United States and is currently on a pathway toward naturalization. She was lawfully admitted to the United States as a permanent resident at the Newark, New Jersey port of entry on July 20, 2021.

4. This matter arises from the government’s failure to provide a clear and lawful basis for the continued detention of Ms. Tekele.

5. On or about July 5, 2025, Ms. Tekele departed the United States near St. Albans, Vermont, accompanied by her brother, for the purpose of visiting family in Canada. At the time of her departure, Ms. Tekele was in possession of her valid, unexpired Lawful Permanent Resident (LPR) card, which she had previously used to cross the United States–Canada border on multiple occasions without incident.

6. Upon her return to the United States, Ms. Tekele was abruptly detained by U.S. Customs and Border Protection at the Saint Albans Service Port.

7. Days later she was transferred to the County Correctional Facility where she is currently being held.

8. Upon information and belief, Respondents intend to continue detaining Ms. Tekele; however, the legal basis for her continued detention remains unclear, as she was denied access to legal counsel for several days following her apprehension.

9. Accordingly, in order to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant Petition for a Writ of Habeas Corpus.

10. Absent immediate intervention by this Court, undersigned counsel believes that Petitioner faces imminent risk of being transferred out of this jurisdiction and/or removed from the United States.

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), 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.*, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

9. Venue is proper because Petitioner is detained at Chittenden County Correctional Facility in South Burlington, Vermont, within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

10. 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).

11. 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).

PARTIES

12. Petitioner Esther Ngoy Tekele is a Democratic Republic of Congo national and has lived in Vermont for the last four years. Petitioner is currently detained in Vermont. She is in the custody, and under the direct control, of Respondents and their agents.

13. Respondent Theresa Messier is the Superintendent of Chittenden Regional Correctional Facility – South Burlington and, therefore, she is the immediate custodian of Petitioner. *See Ozturk v. Trump*, — F. Supp. 3d —, 2025 WL 1145250, at *8 (D. Vt. Apr. 18, 2025) (discussing immediate custodian rule).

14. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and the Department of Homeland Security. At all

relevant hereto, Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

15. Respondent Patricia Hyde is sued in her official capacity as the Acting Director of the Boston Field Office of U.S. Immigration and Customs Enforcement. Respondent Hyde is a legal custodian of Petitioner and has authority to release Ms. Perez Alfaro.

16. Respondent the Director of the Vermont Sub-Office of ICE Enforcement and Removal Operations, David W. Johnston, is named in his or her official capacity as the Director of the Vermont Sub-Office of the Boston 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 within the district of Vermont and is a custodian of Petitioner. At all relevant times, the Director's address is 64 Gricebrook Road, St. Albans, VT 05478.

17. Respondent Pete R. Flores is named in his official capacity as the Acting Commissioner of CBP. In this capacity, Respondent Flores leads CBP employees who are responsible for the administration of immigration laws and the execution of detention and removal determinations within its area of authority. At all relevant times, the Commissioner's address is 1300 Pennsylvania Avenue NW, Washington, DC 20229.

18. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Vermont, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

19. 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 and U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

20. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

Background on Ms. Tekele

21. Ms. Tekele is a citizen and national of the Democratic Republic of the Congo. Since her admission to the United States, she has resided in Vermont.

22. Ms. Tekele is 24 years old and has no criminal history.

23. According to the EOIR system, Ms. Tekele is currently not in immigration removal proceedings.

24. Ms. Tekele was unable to communicate with legal counsel for several days while in detention—a situation further exacerbated by the fact that she does not speak English.

25. At this time, it is entirely unclear why the government continues to detain Ms. Tekele after almost a week.

26. Ms. Tekele maintains strong community ties and has demonstrated consistent involvement in local community activities since her arrival in Vermont.

27. Ms. Tekele is the primary caregiver for her two-year-old U.S. citizen child, who relies on her for daily care and support, including transportation to and from daycare.

28. Ms. Tekele is also the primary caregiver for her elderly and infirm mother, who also lives in Burlington, Vermont.

**VIOLATION OF FOURTH AMENDMENT TO THE UNITED STATES
CONSTITUTION**

29. Petitioner realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

30. On information and belief, CBP agents detained Ms. Tekele and arrested Petitioner without probable cause or a warrant, violating her constitutional right against warrantless seizure and arrest.

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT
TO THE UNITED STATES CONSTITUTION**

31. Petitioner realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

32. The Due Process Clause of the United States Constitution applies to “all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

33. Immigration detention must further the twin goals of ensuring a noncitizen's appearance during removal proceedings and preventing danger to the community.

34. In light of these goals, Ms. Tekele's detention is wholly unjustified. Indeed, It *bears no reasonable relation to any legitimate government purpose.*

35. Ms. Tekele is not a flight risk. She does not own a valid passport and has legitimate fears of persecution in the Democratic Republic of Congo.

36. Ms. Tekele is not a danger to the community. She is a hard-working individual who has an overwhelming amount of community ties and support.

37. Because Ms. Tekele's detention bears no reasonable relation to a legitimate government purpose, it is punitive.

38. While the Notice to Appear seems to allege a disputed basis for her possible removal, at this time, it is completely unclear what the basis of her ongoing detention is or whether the government actually intends to put her in removal proceedings. This is tantamount to indefinite detention.

VIOLATION OF 8 USC 1226(a)

39. Petitioner realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

40. Respondents are unlawfully detaining Petitioner under 8 U.S.C. § 1226(a) because at the time of her arrest and current—upon information and belief—she was not arrested on a warrant issued by the Attorney General.

41. Section 1226(a) provides the executive authority to detain a foreign national if and when the executive issues a warrant and a notice to appear for removal proceedings. Section 1226(a) states as follows:

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--

(1) may continue to detain the arrested alien; and

(2) may release the alien on--

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

42. Because Respondents did not have a warrant issued by the Attorney General at the time of her arrest, Respondents cannot rely upon 8 U.S.C. § 1226(a) for authority to detain Petitioner.

43. Further, upon information and belief, there is no pending decision on whether Petitioner is to be removed from the United States—and therefore, there can be no justification for civil detention intended to restrain the Petitioner during the course of removal proceedings (because no removal proceedings were pending at the time of her arrest). *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001) (holding a statute no longer authorizes detention when the detention does not serve the statute’s intended purpose).

44. Respondents cannot remedy this error by issuing a warrant now because the statute requires a warrant and a notice to appear as a precondition to arrest and detention.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

- (2) Order that Petitioner shall not be transferred outside the District of Vermont;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) Declare that Petitioner's detention violates the Fourth Amendment right against warrantless seizure; and the Fifth Amendment right to due process.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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20 Allen Street FL 3
Burlington, Vermont 05401
207-319-6050
jaredkcarter@gmail.com
Counsel for Petitioner

/s/ Jared K. Carter
Jared Carter, Esq.
20 Allen Street FL 3
Burlington, Vermont 05401
207-319-6050
jaredkcarter@gmail.com
Counsel for Petitioner



Dated: July 10, 2025

** Motion for admission pro hac vice forthcoming*

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, ESTHER NGOY TEKELE, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 10th day of July, 2025.

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[Handwritten signature]
/s/Jared Carter

Jared Carter, Esq.

** Motion for admission pro
hac vice forthcoming*