UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LUIS ANTONIO FALCON TENELEMA,

Petitioner,

v.

JOSEPH E. FREDEN, in his official capacity as ICE Deputy Field Office Director; KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

Case No. 25-cv-902

VERIFIED AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Luis Antonio Falcon Tenelema is an Ecuadoran national with a pending I-914 Application for T Nonimmigrant Status. Upon information and belief, he was unlawfully detained by federal immigration agents on September 17, 2025, and is currently detained at the Buffalo Federal Detention Facility in Batavia, New York.

2. The Department of Homeland Security ("DHS") has indicated through Immigration and Customs Enforcement ("ICE") that they plan to immediately carry out the removal order for which the Motion to Reopen was denied on November 20, 2025.

3. Accordingly, to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus.

4. Petitioner alleges violations of the Fourth Amendment, Fifth Amendment, and the Administrative Procedure Act ("APA"), and the Immigration and Nationality Act ("INA").

5. Petitioner asks this Court to find that his arrest and detention are illegal and order

his immediate release, a stay of transfer outside of the District of Western New York, and a reasonable award of attorney's fees.

JURISDICTION

6. This action arises under the Constitution of the United States, the APA, 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). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner is a noncitizen and whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1).

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 the Buffalo Federal Detention Facility ("BFDF") in Buffalo, New York, which is within the jurisdiction of this District.

10. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, and Petitioner resides in this District. There is no real property involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

11. 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).

12. 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

13. Petitioner has a pending I-914 Application for T non-immigrant status based on his victimhood of labor trafficking. Petitioner is a resident of Massachusetts but is currently detained at the BFDF in Batavia, New York.

14. Respondent, Joseph E. Freden, is the ICE Deputy Field Office Director and is the senior ICE officer in charge of the BFDF in Batavia, New York. He is Mr. Falcon Tenelema's immediate custodian, and, upon information and belief, resides in the Western District of New York.

15. Respondent Todd Lyons is sued in his official capacity as Acting Director of the United States Immigration and Customs Enforcement. In this capacity, Respondent Lyons oversees all detention of noncitizens held in ICE custody and is a legal custodian of petitioner with the authority to release him.

16. Respondent Kristi Noem is sued in her official capacity as 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 ICE,

the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

17. 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 Board of Immigration Appeals

STATEMENT OF FACTS

18. Petitioner is a 31-year-old citizen of Ecuador. Petitioner has resided in the United States for approximately 11 years with his wife, two U.S. citizen children, and numerous other family members.

19. Around May 6, 2014, Petitioner entered the United States through Mexico without inspection. Petitioner was apprehended by Customs and Border Patrol. It is unclear if Petitioner was paroled or released on his own recognizance. After his release, Petitioner moved to Massachusetts where he has resided since.

20. On or about March 18, 2024, Petitioner filed Form I-914, Application for T Nonimmigrant Status and Form I-192, Application for Advance Permission to Enter as a nonimmigrant.

21. The basis for Petitioner's Petition for T Nonimmigrant status was that the Petitioner was recruited, harbored, and coerced for the purpose of involuntary servitude and was physically present in the United States on account of his trafficking.

22. An immigration judge issued Petitioner has an order of removal in abeyance. This order later became final when Petitioner failed to timely appeal it.

23. On or about September 17, 2025, Petitioner was detained by the Respondents in Lowell, Massachusetts. At some point thereafter, Petitioner was transferred to the Buffalo Federal Detention Facility in Batavia, New York, where he was detained when the original petition was filed.

24. On or about September 20, 2025, Petitioner filed a petition for a writ of habeas corpus with this court.

25. On or about September 26, 2025, Petitioner filed a motion to reopen with the immigration court which stayed his removal.

26. On or about November 20, 2025, an immigration judge denied Petitioner's motion to reopen his case.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fourth Amendment Reasonable Search and Seizure

27. The allegations in the above paragraphs are realleged and incorporated herein.

28. The Department arrested and detained Petitioner in violation of his right to be free from unreasonable search and seizure. Fourth Amendment protections extend to non-citizens. *See Cotzojay v. Holder,* 725 F.3d 172, 181 (2d Cir. 2013) ("[I]t is uncontroversial that the Fourth Amendment applies to aliens and citizens alike.") A party claiming a Fourth Amendment violation must establish both that a seizure occurred and that the seizure was unreasonable. *Sodal v. Cook County* 506 U.S. 56, 71 (1992). A seizure is unreasonable if a balance of public and private interests implicated by the seizure favors the asserted private interest. *See id.*

29. Petitioner asserts a private interest to apply for lawful status in the United States. The balance of Petitioner's asserted private interest outweighs the government interest.

30. Furthermore, the Respondents lacked reliable information of changed or exigent circumstances that would justify his arrest after federal immigration authorities had already decided he could pursue his claims for immigration relief at liberty when they released him from custody in 2014 after his encounter with Customs and Border Protection. And Petitioner has already filed the appropriate application for T Nonimmigrant status which is for victims of human trafficking. For these reasons, Petitioner's arrest and detention violates the Fourth Amendment.

COUNT TWO
Violation of Fifth Amendment Right to Due Process

31. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth therein.

32. 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).

33. The Respondents' detention of the Petitioner is unjustified. The government has not demonstrated that the Petitioner must be detained. 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). The government must provide argument that the Petitioner cannot be safely released back to his community.

34. For a person in Petitioner's circumstances, detention without any individualized process also does not satisfy the procedural due requirements of *Mathews v. Eldridge*, 424 U.S. 319 (1976). First, he has a weighty liberty interest to be free from custody, and to live and work in the United States and to rejoin his family. *See Landon*, 459 U.S. at 34. "Freedom 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*, 533 U.S. at 695. Second,

there is a risk of erroneous deprivation since there will be no individualized determination of whether he is a danger or flight risk. Third, the Government has no interest in the blanket detention of Petitioner without establishing dangerousness or a risk of flight, and the Government has 11 years to detain him for removal but chose not to.

35. For all the foregoing reasons, as applied to Petitioner, mandatory or discretionary detention violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

36. Should this Court hold a bond hearing or alternatively require that the immigration judge hold a bond hearing, due process requires that the Government prove that Petitioner is a danger by clear and convincing evidence and a flight risk by preponderance of the evidence. The Government must prove by clear and convincing evidence that no reasonable alternative to detention existed that would ensure the safety of the community, and by preponderance of the evidence that conditions of release cannot ensure Petitioner's return to court, and the court must inquire into his ability to pay. *See Ousman D. v. Decker*, Civil No. 20-9646 (JMV), 2020 U.S. Dist. LEXIS 171243, at *9–10 (D.N.J. Sept. 18, 2020) (bond hearing failed to comply with due process where immigration judge did not consider less restrictive alternatives to detention); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (holding that due process requires immigration judge to consider whether less restrictive alternatives to detention would address the Government's legitimate purposes); *Davis v. Garland*, No. 22-CV-443-LJV, 2023 U.S. Dist. LEXIS 20490 (W.D.N.Y. Feb. 7, 2023) ("[T]he decisionmaker must consider—and must address in any decision—whether there is clear and convincing evidence that there are no less-restrictive alternatives to physical detention, including release on conditions, that could reasonably address the government's interest in detaining [the petitioner]."); *O.F.C. v. Decker*, No. 22 Civ.

2255, 2022 U.S. Dist. LEXIS 177255, at *35 (S.D.N.Y Sept. 12, 2022) (finding that the IJ must consider alternative conditions of release in determining whether to grant bond).

COUNT THREE
Violation of the Administrative Procedure Act

37. The allegations in the above paragraphs are realleged and incorporated herein.

38. The Administrative Procedure Act (APA) provides that a court "shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their own "existing valid regulations." *United States ex rel. Accardi Shaugnessy*, 347 U.S. 260, 266, 268 (1954). The Accardi doctrine also obligates agencies to comply with procedures it outlines in its internal manuals. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

39. A court reviewing agency action "must assess ... whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment; it must "examine[e] the reasons for agency decisions- or, as the case may be, the absence of such reasons." *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

40. The APA authorizes courts to "set aside" agency action that is "in excess of statutory jurisdiction, authority, limitations, or statutory right" or otherwise "not in accordance with law." 5 U.S.C. § 706(2)(A), (C). It directs courts to "decide all relevant questions of law" and to "interpret constitutional and statutory provisions." *Id* at § 706. Courts perform this review *de novo* and therefore afford agency interpretation of the statute no deference when determining its meaning. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024).

41. Here, the governing statute orders the executive to promulgate regulations that require noncitizens on supervised orders of release to do four things. 8 U.S.C § 1231(a)(3). Those requirements include appearing before an immigration officer periodically for identification, submitting, if necessary, to medical and psychiatric examination at the expense of the U.S. government, giving information under oath about the alien's nationality, circumstances, habits, associations, and other information the Attorney General considers appropriate, and obeying reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the noncitizen. 8 U.S.C § 1231(a)(3)(A), (B), (C), (D).

42. Petitioner's detention and enforcement action against him under the facts alleged in this suit, including facts showing that he was seized while availing himself of the T-Visa process created under the law and without any individualized evaluation of his case, are and would be arbitrary and capricious under the APA. *See Materano v. Garland*, 2025 U.S. Dist. LEXIS 179608, at *37-40 (holding that respondents violated the APA by revoking the petitioner's parole without the required individualized, case-by-case analysis).

43. Recently, DHS completed the notice-and-comment rulemaking process to update the T-Visa process. After so doing, DHS created a "victim centered approach" in adjudicating claims of potential trafficking victims in removal proceedings or with removal orders. 8 C.F.R 34864, 34888. This approach specifically provided human trafficking victims with protection from removal. The White House, "National Action Plan" Priority Action 2.2.2 (2024). This action plan states, "human trafficking victims should not be removed absent serious adverse factors." *Id.* Furthermore, the rules, while granting ICE discretion surrounding prior orders of removal, emphasize that ICE use a "victim centered approach in which all relevant circumstances are considered." 8 C.F.R §§ 34864, 34888.

44. On January 20, 2025, President Donald J. Trump issued Executive Order "Protecting the American People Against Invasion," that articulates a policy of "'total and efficient enforcement' . . . against all inadmissible and removable aliens." Through ICE Policy 11005.4, ICE purports to implement that Executive Order, and supersedes previous ICE directives 11005.3 and 10076.1, which directed ICE officials to adopt a "victim-centered approach" when engaged in civil immigration enforcement.

45. ICE's sudden and recent policy decision to impede and prohibit some noncitizens, with or without final orders of removal, from applying for protection from trafficking through the process regulation. This improperly alters these substantive rules without notice-and-comment rulemaking. Here, ICE's conduct departed from an approach where they might consider how a victim of trafficking hoodwinked into his own arrest might cause that victim to mistrust law enforcement or experience further trauma. Here, one arm of the government appears to have blocked the other from acting so that it could not make this determination. In addition to shocking traditional notions of fair play and justice, this action violates the APA because it circumvents the required rulemaking process. These policies are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See* 5 U.S.C. § 706(2)(A).

46. Additionally, the regulations promulgated pursuant to 8 U.S.C § 1231(a)(3) go beyond the scope of statutory authority. Here, the governing regulations provide for the continued detention beyond the removal period. 8 C.F.R. § 241.4. Detaining a noncitizen, however, is an *ultra vires* action, not enumerated in 8 U.S.C § 1231(a)(3). When circumstances support a sensible inference that a term left out must have meant to be excluded, courts apply the canon of *expressio unius* statutory interpretation. *See NLRB v. SW Gen., Inc.* 580 U.S. 288, 301 (2017) (the inclusion of certain statutory provisions comes at the necessary exclusion of others). The statute considers

the restraints the executive may place on a noncitizen *after releasing* that person from detention. *See* 8 U.S.C § 1231(a)(3). The relevant section of statute does not contemplate re-detention at all. *Id.* It is sensible to infer that in the context of restrictions affecting a person released from detention, including certain restrictions that fall short of detention excludes detention as an authorization of statute.

47. The government arresting Petitioner without cause over 11 years after his *in absentia* removal order constitutes an abuse of discretion, and is contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C. § 706 (2)(A), (B), (C).

48. Because the regulations governing detention after the government releases a noncitizen on supervised release come in excess of statutory jurisdiction, authority, or limitations, this court should set those regulations aside. Without those regulations, the Respondents have no authority to detain Petitioner.

COUNT FOUR
Violation of 8 U.S.C. § 1231 and Implementing Regulations

49. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

50. A noncitizen's continued detention beyond the removal period is distinguishable from re-detention following their release from ICE custody.

51. Because the government released Petitioner on his own recognizance when he first entered the country, by arresting him in 2025, ICE did not continue his detention but rather initiated a new detention (*i.e.*, re-detained the Petitioner).

52. ICE was not authorized to re-detain Petitioner pursuant to 8 U.S.C. § 1231(a)(6). Section 1231(a)(6) provides that:

> An alien ordered removed who is inadmissible under *section 1182* of this title, removable under *section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4)* of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond* the removal period and, if released, shall be subject to the terms of supervision in [8 U.S.C. § 1231(a)(3)].

8 U.S.C. § 1231(a)(6) (emphasis added).

Section 241.4 of Title 8 of the Code of Federal Regulations provides that:

> (a) Scope. The authority *to continue an alien in custody* or grant release or parole under sections 241(a)(6) and 212(d)(5)(A) of the Act shall be exercised by the Commissioner or Deputy Commissioner, as follows: Except as otherwise directed by the Commissioner or his or her designee, the Executive Associate Commissioner for Field Operations (Executive Associate Commissioner), the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Detention and Removal Field Office or the district director may *continue an alien in custody beyond the removal period* described in section 241(a)(1) of the Act pursuant to the procedures described in this section. Except as provided for in paragraph (b)(2) of this section, the provisions of this section apply to the custody determinations for the following group of aliens:
> (1) An alien ordered removed who is *inadmissible under section 212* of the Act, including an excludable alien convicted of one or more aggravated felony offenses and subject to the provisions of section 501(b) of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978, 5048 (codified at 8 U.S.C. 1226(e)(1) through (e)(3)(1994));
> (2) An alien ordered removed who is removable under *section 237(a)(1)(C)* of the Act;
> (3) An alien ordered removed who is removable under *sections 237(a)(2)* or *237(a)(4)* of the Act, including deportable criminal aliens whose cases are governed by former section 242 of the Act prior to amendment by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Div. C of Public Law 104–208, 110 Stat. 3009–546; and
> (4) An alien ordered removed who the decision-maker determines is *unlikely to comply with the removal order or is a risk to the community.*

8 C.F.R. 241.4 (emphasis added).

53. Section 1231(a)(6) and its concomitant regulation, 8 C.F.R. § 241.4, only authorize the *continuation* of the detention of noncitizen beyond the removal period where the noncitizen had been in custody at the time of the entry of his removal order or was detained during the removal period pursuant to 8 U.S.C. § 1231(a)(2) and 8 C.F.R. § 241.3.

54. Section 1231(a)(6) and 8 C.F.R. § 241.4 do not authorize the re-detention of a noncitizen, like Petitioner, who was previously released from custody unless the government shows by clear and convincing evidence that the noncitizen has become a danger to the community or flight risk. *See Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2411010, at *8 (E.D. Cal. Aug. 20, 2025) (holding that the government "[could] not *re-detain* petitioner unless [it] proves by clear and convincing evidence at a bond hearing before a neutral arbiter that petitioner is a flight risk or danger to the community" where the noncitizen, despite having a reinstated removal order, was previously released from custody (emphasis added)); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) ("Petitioner's *re-detention* without any change in circumstances or procedure establishes a high risk of erroneous deprivation of his protected liberty interest." (emphasis added)).

55. Because ICE has not demonstrated that a change in circumstances renders Petitioner a danger to the community or a flight risk, it lacked authority to re-detain him. Accordingly, this Court should order his immediate release from custody or, in the alternative, a bond hearing before this Court. *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018) (finding a risk of erroneous deprivation in the context of re-detention absent a change in circumstances, procedure, or evidentiary findings); *see also Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *4 (S.D.N.Y. Aug. 15, 2025) (ordering immediate release of the petitioner after holding that, even if ICE has discretionary authority to detain a noncitizen under 8 U.S.C. § 1226(a), it was "required to adhere to basic principles of due process," and failed to do so by detaining him "with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond," which constituted a due process violation").

COUNT FIVE
Release on Bail Pending Adjudication

56. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

57. Federal courts "have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in the criminal habeas case." *Id.* (quoting *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001)). "A court considering bail for a habeas petitioner must inquire into whether the habeas petition raise[s] substantial claims and [whether] extraordinary circumstances exist[ ] that make the grant of bail necessary to make the habeas remedy effective." *Id.* (quoting Mapp, 241 F.3d at 230) (cleaned up).

58. This petition raises constitutional and statutory claims challenging the Petitioner's detention. Upon reason and belief, the Petitioner fears his transfer to a detention facility outside of New York, where his remote location would prevent him from adequately litigating his removal and bond proceeding by limiting his access to counsel.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(3) Order that Respondents shall not move Petitioner from the Western District of New York until the Court rules on this petition;

(4) Declare that Petitioner's arrest and detention violate the Fourth Amendment, the Due Process Clause of the Fifth Amendment, and 8 U.S.C. § 1231;

(5) Issue a Writ of Habeas Corpus and order 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.

Dated: November 26, 2025
Boston, Massachusetts

Respectfully submitted,

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

I represent Petitioner, Luis Antonio Falcon Tenelema, and submit this verification on his 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 25th day of November, 2025.

/s/*Todd C. Pomerleau*
Todd C. Pomerleau