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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
CARLOS ROBERTO VILORIO, x

Petitioner,

-against-

PAMELA JO BONDI, in her official capacity as  
Attorney General of the United States;  
KRISTI NOEM, in her official capacity as  
Secretary of the U.S. Department of Homeland  
Security; TODD M. LYONS, in his official  
capacity as Acting Director of U.S. Immigration  
and Customs Enforcement; JUDITH ALMODOVAR,  
in her official capacity as Field Office Director,  
Enforcement and Removal Operations, New  
York City, U.S. Immigration and Customs  
Enforcement; PAUL ARTETA, in his official  
capacity as Sheriff of the Orange County Sheriff's  
Office; LAWRENCE CATLETTI, in his official  
capacity as Colonel of the Corrections Division  
at the Orange County Correctional Facility;

Respondents.

A- 

Civil Action No.:

\_\_\_\_\_  
x

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR  
IMMEDIATE RELEASE

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## I. PRELIMINARY STATEMENT

This is an emergency petition for a writ of habeas corpus under 28 U.S.C. § 2241, seeking the immediate release of Petitioner Carlos Roberto Vilorio, who is unlawfully detained by Immigration and Customs Enforcement (ICE) despite holding a final, judicially granted deferral of removal under Article III of the Convention Against Torture, issued on June 12, 2024. Petitioner's detention is unlawful because ICE arrested him solely on the basis of a long-standing final order of removal, even though that order has been legally deflected by his CAT deferral and cannot be executed unless and until DHS complies with the termination procedures mandated by 8 C.F.R. § 1208.17(d). No such procedures were initiated.

Petitioner has lived in the United States for almost a decade, consistently compliant with every requirement imposed on him by immigration authorities. He posted bond, attended all hearings, maintained a stable residence, and was lawfully working under his deferral while submitting an initial application for employment authorization. ICE seized him at his biometrics appointment in the Federal Building in Central Islip, New York, without warning, notice, or legal basis, and transported him into custody.

During a brief call ICE permitted him to make on Thursday, an ICE officer addressed Petitioner in a forceful and intimidating tone, telling him that his attorney was "lying to him," that "deferral is not withholding," that "deferral does not protect him," that "your attorney knows there is nothing he can do," and that counsel would "scam you for money." These statements were legally incorrect and delivered in a manner plainly intended to confuse Petitioner, intimidate him during confinement, and undermine his trust in counsel. Such conduct constitutes coercive interference with the attorney-client relationship.

Petitioner was permitted another short call on Friday, December 5, 2025, during which he reported he was still detained at the Federal Building in Central Islip, before ICE again transferred him without providing notice to counsel or family. On Saturday, December 6, Petitioner contacted family and stated that ICE had moved him to the Orange County Correctional Facility (OCCF), located at 110 Wells Farm Road, Goshen, NY 10924, and that officers warned he might be transferred to New Jersey on Monday. On Sunday December 7, 2025, Petitioner confirmed he remained at OCCF, and his information finally appeared in the ICE detainee locator after having been previously absent, reflecting OCCF as the current facility.

ICE has presented no individualized assessment of danger or flight risk. Instead, the agency relies solely on a removal order that federal law prohibits it from executing. Petitioner's continued detention is unlawful, arbitrary, and unconstitutional.

As such, immediate release is required.

## II. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner challenges the legality of his present physical custody. Jurisdiction is further supported by the Suspension Clause of the United States Constitution, as no other remedy is available to challenge the lawfulness of his detention.

Venue lies in the Southern District of New York because Petitioner is currently detained at the Orange County Correctional Facility (OCCF), located at 110 Wells Farm Road, Goshen, New

York 10924, which is within this judicial district. Venue is therefore proper under 28 U.S.C. § 1391 and habeas venue principles designating the district of confinement as the proper forum.

### III. CUSTODY STATEMENT

Petitioner is currently detained at the Orange County Correctional Facility (OCCF) under ICE authority. His detention is now listed in the ICE locator as: 110 Wells Farm Road, Goshen, NY 10924. ICE previously concealed his location and has repeatedly transferred him without notice.

### IV. PARTIES

Petitioner: Carlos Roberto Vilorio,  a native and citizen of El Salvador, granted deferral of removal under CAT on June 12, 2024.

Respondents: 1. Pamela Jo Bondi, Attorney General of the United States. 2. Kristi Noem, Secretary of the Department of Homeland Security. 3. Todd M. Lyons, Acting Director, U.S. Immigration and Customs Enforcement. 4. Judith Almodovar, Field Office Director, ICE ERO New York. 5. Paul Arteta, Sheriff of the Orange County Sheriff's Office, whose office operates the Orange County Correctional Facility. He is named in his official capacity. 6. Lawrence Catletti, Colonel of the Corrections Division at the Orange County Correctional Facility, the officer with day-to-day responsibility over Petitioner's custody and his immediate custodian.

### V. STATEMENT OF FACTS

1. Petitioner is a native and citizen of El Salvador. He has resided in the United States for almost a decade, continuously compliant with all immigration requirements. He has never absconded and appeared at every scheduled hearing.
2. On June 12, 2024, an Immigration Judge granted Petitioner deferral of removal under Article III of the Convention Against Torture. This relief prohibits DHS from removing Petitioner to El Salvador unless DHS successfully terminates his protection under the procedures outlined in 8 C.F.R. § 1208.17(d).
3. Petitioner was lawfully working in the United States pursuant to his protection and submitted biometrics in connection with his initial application for an Employment Authorization Document.
4. On the date of his scheduled biometrics appointment at the Federal Building in Central Islip, ICE officers seized Petitioner without warning, asserting only that Petitioner "has a final order of removal." During the ensuing call from custody, an ICE officer interjected in a confrontational tone, claiming that counsel was "lying to him," insisting that "deferral is not withholding" and "does not protect him," stating that counsel "knows there is nothing he can do," and accusing counsel of intending to "scam you for money." These statements were coercive, misleading, and designed to erode Petitioner's access to accurate legal advice.
5. ICE did not issue any Notice of Intent to Terminate his CAT deferral and did not initiate any termination proceedings under 8 C.F.R. § 1208.17(d). No interview, notice, hearing, or finding of changed country conditions occurred.

6. ICE permitted Petitioner to place a brief call on Thursday from his own cellphone, during which the above statements were made. Petitioner was transported at that time to a detention location that had not yet been disclosed to counsel, and his whereabouts remained unclear until later updates.
7. On Friday, December 5, 2025, Petitioner was permitted another short call and reported he was still detained at the Federal Building in Central Islip at that time, before subsequent transfers.
8. On Saturday, December 6, Petitioner contacted family and reported that ICE had transferred him to the Orange County Correctional Facility (OCCF), located at 110 Wells Farm Road, Goshen, NY 10924, and warned he might be moved to New Jersey on Monday. On Sunday, Petitioner contacted his wife again and confirmed that he remained at OCCF, and his information finally appeared in the ICE detainee locator reflecting OCCF as the current facility.
9. Petitioner's arrest and detention occurred without any individualized finding of danger or flight risk. ICE relied solely on the prior removal order, which cannot legally justify detention while CAT deferral remains in effect.
10. Petitioner's detention violates federal regulations, constitutional protections, the Accardi doctrine, and the prohibition against detention inconsistent with CAT obligations.
11. Recent events involving Kilmar Armando Abrego Garcia demonstrate that the danger of DHS disregarding CAT deferral is not theoretical. In that case, an Immigration Judge granted CAT deferral and barred removal to El Salvador, yet DHS nevertheless removed Mr. Abrego Garcia to El Salvador, where he was confined in a high security "terrorism confinement center," before the government acknowledged the removal as an "oversight" and returned him to the United States. See *Noem v. Garcia*, 145 S. Ct. 1017 (LEXIS); *Del Cid Marroquin v. Lynch*, 823 F.3d 933 (9th Cir. 2016) (LEXIS). His case illustrates that when DHS misunderstands or ignores CAT deferral, the result can be unlawful removal in direct violation of binding protection, and the harm suffered is irreparable even if the government later reverses course.

## VI. LEGAL FRAMEWORK

### A. CAT Deferral Regulations

CAT deferral is a mandatory form of protection. Under 8 C.F.R. § 1208.17(d), "the deferral of removal shall be terminated only after notice to the alien and an opportunity to present evidence, followed by a de novo adjudication." See *Khouzam v. Ashcroft*, 361 F.3d 161 (3d Cir. 2004) (LEXIS); *Khouzam v. Attorney General*, 549 F.3d 235 (3d Cir. 2008) (LEXIS). DHS did not follow these procedures.

The government's handling of Kilmar Armando Abrego Garcia confirms the legal importance of strict compliance with § 1208.17(d). In that case, DHS removed a CAT deferral recipient to El Salvador despite an Immigration Judge's prohibition against removal, later calling the removal an "oversight." See *Noem v. Garcia*, 145 S. Ct. 1017 (LEXIS); *Del Cid Marroquin*, 823 F.3d 933

(LEXIS). This illustrates the concrete risk that DHS will ignore mandatory CAT protections unless courts enforce the regulatory safeguards.

#### B. Accardi Doctrine

Agencies must follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (LEXIS). ICE ignored mandatory CAT termination procedures and violated binding regulations, rendering its conduct *ultra vires*.

#### C. Post-Order Detention (*Zadvydas*)

Detention under 8 U.S.C. § 1231(a)(6) is limited to the period reasonably necessary to effectuate removal. *Zadvydas v. Davis*, 533 U.S. 678 (2001) (LEXIS), holds that detention becomes unconstitutional where removal is not reasonably foreseeable. Courts have applied this principle where removal is legally impossible, including where CAT deferral remains valid and un-terminated.

#### D. Due Process and Agency Misconduct

ICE interference with counsel and coercive statements violate due process. See *Ali v. Mukasey*, 529 F.3d 478 (2d Cir. 2008) (LEXIS); *Mecaj v. Barr*, 776 F. App'x 22 (2d Cir. 2019) (LEXIS). Statements extracted through coercion or interference with legal access are invalid. See *Matter of Garcia* (BIA). Federal regulations independently forbid coercion. 8 C.F.R. § 287.8(c)(2)(vii). Congress created oversight mechanisms recognizing such misconduct as unlawful. See 6 U.S.C. § 205.

#### E. APA Arbitrary and Capricious Standard

Government action must be rational and lawful. *Judulang v. Holder*, 565 U.S. 42 (2011) (LEXIS); *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29 (1983) (LEXIS). ICE's actions here are arbitrary because DHS failed to initiate CAT termination procedures, failed to make individualized custody assessments, and relied on coercive tactics.

#### F. TRO and Anti-Transfer Authority

Immediate injunctive relief is appropriate where transfer threatens the Court's jurisdiction or impedes counsel access. See *Winter v. NRDC*, 555 U.S. 7 (2008) (LEXIS); *Nken v. Holder*, 556 U.S. 418 (2009) (LEXIS); *Farez-Espinoza*, 2009 U.S. Dist. LEXIS 34876. The experience of Kilmar Armando Abrego Garcia makes clear that the threat of unlawful removal is real and immediate. Despite a binding CAT deferral order prohibiting his removal to El Salvador, DHS removed him there and confined him in a "terrorism confinement center" before later acknowledging the removal as an error and facilitating his return. See *Noem v. Garcia*, 145 S. Ct. 1017 (LEXIS); *Del Cid Marroquin*, 823 F.3d 933 (LEXIS). The trauma and danger he faced during that period were irreparable, underscoring that once ICE initiates transfer or removal, the harm cannot be undone by subsequent litigation. This supports the need for an emergency order preventing any transfer or removal here.

## CLAIMS FOR RELIEF

### Claim One – Violation of CAT and 8 C.F.R. § 1208.17(d)

ICE detained Petitioner despite a valid CAT deferral and without initiating mandatory termination procedures. This violates federal law and renders detention unlawful.

### Claim Two – Violation of the Accardi Doctrine

By failing to follow binding regulations governing the termination of CAT deferral and detention procedures, ICE acted ultra vires.

### Claim Three – Unlawful Detention Under Zadvydas

Removal is legally impossible while CAT deferral remains un-terminated. Continued detention violates Zadvydas and 8 U.S.C. § 1231(a)(6).

### Claim Four – Due Process Violations

ICE interfered with the attorney–client relationship, made coercive and misleading statements, concealed Petitioner’s whereabouts, and failed to provide any individualized determination of custody, violating the Due Process Clause.

### Claim Five – Arbitrary and Capricious Agency Action (APA)

ICE’s actions are arbitrary, capricious, and contrary to law under the APA because they lack reasoned explanation and disregard mandatory procedures.

### Claim Six – Emergency Anti-Transfer and Access to Court

ICE’s threatened transfer to New Jersey would undermine jurisdiction and impede legal access, constituting irreparable harm. The Court must enjoin any transfer.

## PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Issue a writ of habeas corpus ordering Petitioner’s immediate release.
2. Enjoin ICE from transferring Petitioner outside this District (the Southern District of New York) during the pendency of these proceedings.
3. Declare ICE’s detention unlawful.
4. Order DHS and ICE to comply with 8 C.F.R. § 1208.17(d).
5. Grant any further relief the Court deems just and proper.

Dated: December 10, 2025

Respectfully submitted,

/s/Roberto L. Pagan-Lopez, Esq.

Attorney for Petitioner