

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Rene L. Valladares
Federal Public Defender
Nevada State Bar No. 11479
*Sylvia Irvin
Assistant Federal Public Defender
CA Bar No. 230302; FL Bar No. 15379
411 E. Bonneville Ave., Ste. 250
Las Vegas, Nevada 89101
(702) 388-6577
Sylvia_Irvin@fd.org

*Attorneys for Petitioner Kingsley Ariegwe

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Kingsley Ariegwe,

Petitioner,

v.

PAMELA BONDI, Attorney General of the
United States; KRISTI NOEM, Secretary,
United States Department of Homeland
Security; MICHAEL BERNACKE, Field
Director, Salt Lake City Office; TODD
LYONS, Acting Director; JOHN MATTOS,
Warden, Nevada Southern Detention
Center,

Respondents.

Case No. 2:25-cv-2478-ART-EJY

**AMENDED PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28
U.S.C. § 2241**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

INTRODUCTION

Kingsley Ariegwe is a 58-year-old Gulf War U.S. Army Veteran from Nigeria who has been detained by ICE since on or about September 24, 2025, and is currently detained at the Nevada Southern Detention Center (NSDC).¹ He was diagnosed with prostate cancer in December 2024,² and has received no treatment for his cancer while he’s been in ICE custody.³ He also suffers from several medical ailments including debilitating osteoarthritis such that he can walk only short distances with a walker, and otherwise must use a wheelchair. He is being denied basic and essential cancer treatment and other necessary medical treatment by ICE, who also refuses to release him in compliance with ICE’s own policies, which favor the release of detainees with serious medical issues like cancer, and which should take into consideration the detainee military veteran’s combat service. This Court should grant the petition and order Mr. Ariegwe’s release or, at minimum, order a bond hearing in immigration court.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (granting general habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the “Suspension Clause”); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S. 678 (2001). Federal courts also have federal question jurisdiction, through the APA to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an

¹ Petition, ECF Doc. No 1-1 at 3.

² *See* Sealed Exhibit 1 at 1.

³ *See* Sealed Exhibit 2 at 2.

1 abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
2 APA claims are cognizable in habeas. 5 U.S.C. § 703. Importantly, the APA affords
3 a right of review to a person who is “adversely affected or aggrieved by agency
4 action.” 5 U.S.C. § 702. Petitioner’s continued detention violates his constitutional
5 due process rights, constitutes arbitrary and capricious agency action, and is an
6 abuse of discretion.

7 Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28
8 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at
9 the Nevada Southern Detention Center.

10 Accordingly, Petitioner’s habeas petition is properly before this Court.

11 **PARTIES**

12 Kingsley Ariegwe is a native of Nigeria who is currently detained at the
13 NSDC in Pahrump, Nevada.

14 James Mattos is the Warden of NSDC. Mattos, in his official capacity, is the
15 immediate custodian of Mr. Ariegwe.

16 Michael Bernacke is the Field Director of the West Valley City Office of
17 Immigration and Customs Enforcement (ICE) Enforcement and Removal
18 Operations, which has jurisdiction of enforcement and removal operations over
19 detention facilities in Nevada, including Nevada Southern Detention Center where
20 Sahin is detained. Bernacke, in his official capacity, is a legal custodian of Mr.
21 Ariegwe.

22 Todd Lyons is the Acting Director of ICE, which is responsible for
23 administering and enforcing immigration laws, including the detention and removal
24 of immigrants. Lyons, in his official capacity, is a legal custodian of Mr. Ariegwe.

25 Kristi Noem is the Secretary of the Department of Homeland Security (DHS),
26 which oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of
27 Mr. Ariegwe.

1 Pamela Bondi is the Attorney General of the United States. She oversees the
2 immigration court system, which is housed within the Executive Office for
3 Immigration Review (EOIR) and includes all immigration courts and the Board of
4 Immigration Appeals (BIA). She is named in her official capacity.

5 **STATEMENT OF FACTS⁴**

6 Kingsley Ariegwe is a citizen of Nigeria, who legally came to the United
7 States in September 1985 when he was 17 years old. He earned an athletic
8 scholarship to Wayland University in Plainview, Texas, and then transferred to the
9 University of Montana to run track at a larger university. However, he injured his
10 quadriceps and could no longer compete. At or around 1988, he became a Legal
11 Permanent Resident.

12 In October 1989, he enlisted in the U.S. Army, and went to basic training at
13 Ft. Leonard Wood, Missouri. His military occupational specialty (MOS) was medical
14 specialist. Shortly after his advanced MOS training, he was sent to Iraq. From
15 December 1990–March 1991, he served in Operation Desert Storm with the 311th
16 Field Hospital, where his unit was deployed to provide surgical, trauma and
17 medical care in the field. The conditions were harsh and stressful. When he
18 returned from deployment, he struggled and was later diagnosed with PTSD.⁵ He
19 served in the Army for eight years; he was discharged; and he’s a Gulf War
20 Veteran.⁶

21
22
23 ⁴ Any factual allegations that do not cite to an attached exhibit are made on
the basis of information and belief.

24 ⁵ See Sealed Ex. 2 at 2, listed under the heading, “Active Problem List.”

25 ⁶ A Gulf War Veteran is one who served in active military duty in Southwest
26 Asia during the Gulf War from August 2, 1990 to the present. This includes
27 Veterans like Petitioner who served in Iraq and surrounding countries during
Desert Shield, Desert Storm, Operation Iraqi Freedom, and Operation New Dawn.
See U.S. Department of Veterans Affairs, *Gulf War Service*,

1 During this time, he settled in Montana, married an American citizen, and
2 they had four children, all U.S. Citizens. Though he and his wife later divorced, Mr.
3 Ariegwe maintains regular contact with his adult daughters, including one who still
4 lives in Montana. In 2023, his only son passed away unexpectedly at age 21 of a
5 cardiac event.⁷

6 As mentioned, Mr. Ariegwe reports suffering PTSD⁸ and Gulf War Syndrome,
7 now called “Gulf War Veterans’ Medically Unexplained Illnesses.”⁹ Many of the
8 friends he served with died by suicide. He also attempted to take his own life.¹⁰ His
9 struggles then took an unexpected turn.

10 In February 2003, Mr. Ariegwe was arrested and charged by amended
11 information with felony attempted sexual intercourse without consent. He
12 maintained his innocence, and after a jury trial, he was found guilty on both counts
13 and sentenced to 50 years in Montana State Prison, with 15 years suspended. He
14 continues to maintain his innocence and currently has a pending appeal before the
15 Montana Supreme Court in Case No. 25-0666.¹¹

16 On September 4, 2025, he was set to be released from state prison in
17 Montana to begin his term of parole. Upon release, he planned to immediately

18
19 [https://www.publichealth.va.gov/PUBLICHEALTH/exposures/gulfwar/military-
service.asp](https://www.publichealth.va.gov/PUBLICHEALTH/exposures/gulfwar/military-service.asp) (last visited Jan. 30, 2026).

20 ⁷ <https://www.gearty-delmores.com/obituaries/andrew-ariegwe>.

21 ⁸ See Sealed Exhibit 2 at 2, listed under the heading, “Active Problem List.”

22 ⁹ U.S. Department of Veterans Affairs, *Gulf War Veterans’ Medically*
23 *Unexplained Illnesses*,
24 [https://www.publichealth.va.gov/exposures/gulfwar/medically-unexplained-
illness.asp](https://www.publichealth.va.gov/exposures/gulfwar/medically-unexplained-illness.asp) (last visited Jan. 30, 2026). “A prominent condition affecting Gulf War
25 Veterans is a cluster of medically unexplained chronic symptoms that can include
26 fatigue, headaches, joint pain, indigestion, insomnia, dizziness, respiratory
27 disorders, and memory problems.”

¹⁰ See Sealed Exhibit 2 at 2, listed under the heading, “Active Problem List.”

¹¹ See ECF No. 1-2 and 1-3.

1 contact the Fort Harrison VA Medical Center to restart his veterans' benefits and
2 get treatment for his prostate cancer, osteoarthritis, PTSD, and other ailments. He
3 also planned to contact a local nonprofit to help him secure suitable housing in
4 compliance with his parole conditions. Instead of being released, Mr. Ariegwe was
5 held for some 20 days and then turned over to ICE custody. He was moved to
6 several detention centers and is currently detained at NSDC.

7 Over the years that Mr. Ariegwe has been in prison, he developed several
8 medical problems, including prostate cancer, osteoarthritis, emphysema, ulcerative
9 pancolitis, high blood pressure, and glaucoma.¹² He takes several medications for
10 these medical conditions and uses a walker for short distances, but he moves very
11 slowly and it causes him pain and discomfort in his legs.¹³ Since he's been at
12 NSDC, correctional officers move him by wheelchair for long distances such as when
13 he must be moved to and from his cell for attorney visits and video courtroom
14 appearances.

15 LEGAL FRAMEWORK

16 I. Constitutional guarantee to medical care

17 The Fifth Amendment guarantees individuals in civil detention are not
18 subject to conditions of confinement or the denial of medical care that "amount to
19 punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government
20 violates a detained individual's substantive due process rights if it "takes [that]
21 person into custody, severely limiting his ability to care for himself, and then is
22 deliberately indifferent to his medical needs." *Charles v. Orange Cnty.*, 925 F.3d 73,
23 85 (2d Cir. 2019); *see also Helling v. McKinney*, 509 U.S. 25, 32 (1993) ("[W]hen the
24 State by the affirmative exercise of its power so retrains an individual's liberty that
25

26 ¹² See Sealed Exhibit 1 at 2, listed under heading "Non-GU PMH."

27 ¹³ See *id.*, listed under heading "Multi-system Physical Examination."

1 it renders him unable to care for himself, and at the same time fails to provide for
2 his basic human needs—e.g., . . . medical care and reasonable safety—it
3 transgresses the substantive limits on state action set by the Eighth Amendment.”).
4 A court’s intervention is warranted where conditions put the life of a detained
5 individual at risk. *See Basank v. Decker*, 449 F. Supp 3d 205, 210 (S.D.N.Y. 2020)
6 (ordering the release of detained migrants with chronic medical conditions whose
7 health was worsened by detention conditions and viral illnesses).

8 **II. The Administrative Procedures Act mandates that a federal agency**
9 **comply with existing regulations and policies.**

10 The APA provides that a court shall “hold unlawful and set aside agency
11 action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise
12 not in accordance with law.” 5 U.S.C. § 706(2)(A). When the government has
13 promulgated “[r]egulations with the force and effect of law,” those regulations
14 “supplement the bare bones” of federal statutes, such that the agencies are bound to
15 follow their own “existing valid regulations.” *United States ex rel. Accardi*
16 *Shaugnessy*, 347 U.S. 260, 266, 268 (1954). The *Accardi* doctrine additionally
17 obligates agencies to comply with procedures outlined in their own manuals. *See*
18 *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to
19 comply with the procedural rules outlined in its internal manual). Pursuant to the
20 *Accardi* doctrine, courts may set aside agency actions that are not in compliance
21 with their own regulations or internal procedures. *See Lesli v. Att’y Gen. of U.S.*, 611
22 F.3d 171, 175 (3d Cir. 2010).
23
24
25
26
27

1 **III. ICE Policies Concerning the Detention of Persons Suffering from**
2 **Severe Medical Issues.**

3 A December 11, 2006 ICE Directive sets forth ICE's policy allowing for
4 discretion when making custody determinations for "aliens (adults and/or juveniles)
5 transferring from hospitals and social services or law enforcement agencies which
6 have severe medical conditions."¹⁴ Though the policy states, "the Field Office
7 Director (FOD) should weigh the appropriateness of taking that person into federal
8 custody absent a mandatory detention requirement," it then recognizes, "[a]
9 favorable exercise of discretion should be considered on a case-by-case basis
10 whenever a medical or psychiatric evaluation, diagnosis, treatment plan or other
11 documentation provided by the referring agency indicates the existence of extreme
12 disease or impairment."¹⁵ Among the justifications for the case-by-case basis
13 considerations are to "[s]how compassion and humanitarian concern" and to
14 "[r]educe catastrophic health care costs."¹⁶ Included in the specific examples of
15 "medical conditions that should trigger or flag a need for case review and
16 consideration of prosecutorial discretion" is cancer and advanced chronic
17 conditions.¹⁷

18 As the Field Office Director, Michael Bernacke, is responsible for ensuring
19 that discretion is exercised for detainees with cases of extreme or severe medical
20 concerns, like Mr. Ariegwe's.¹⁸ Moreover, "Field officers [like Director Bernacke] are
21

22
23 ¹⁴ See Exhibit 3 at 1. The December 11, 2006 ICE Directive is found at
24 https://www.ice.gov/doclib/foia/dro_policy_memos/discretionincasesofextremeorseveremedicalconcerndec112006.pdf (last visited 1/30/2026).

25 ¹⁵ *Id.*

26 ¹⁶ *Id.*

27 ¹⁷ *Id.* (emphasis in the original).

¹⁸ *Id.* at 1.

1 not only expected to exercise discretion within the authority of the agency, but are
2 expected to do so in a judicious manner at all stages of the enforcement process.”¹⁹

3 Notably, as a part of his discretion, Director Bernake must also take into
4 consideration Mr. Ariegwe’s combat military service.²⁰

6 GROUND FOR RELIEF

7 I. **Ground One: The continued detention of Kingsley Areigwe violates 8 his Fifth Amendment right to due process because ICE’s denial of 9 medical care amounts to a punishment.**

10 Petitioner incorporates the above paragraphs by reference as if fully set forth
11 herein.

12 The Fifth Amendment guarantees detainees are not denied medical care and
13 are not subject to conditions that “amount to punishment.” *Bell*, 441 U.S. at 535.

14 The federal government may not detain an individual and then deny that person
15 medical care through their deliberate indifference. *Charles*, 925 F.3d at 85.

16 Deliberate indifference “involves culpable recklessness, i.e., an act or a failure to act
17 that evinces a conscious disregard of a substantial risk of serious harm.” *Id.* at 87
18 (quoting *Cuoco v. Moritsugu*, 222 F.3d 99, 107) (2d Cir. 2000) (cleaned up).

19 Mr. Ariegwe is suffering from prostate cancer which was diagnosed in
20 December 2024, yet ICE has failed to provide him with necessary follow-up cancer
21 treatment. In December 2024, his PSA levels were 7.5, by October 10, 2025—less
22

23
24
25 ¹⁹ *Id.*

26 ²⁰ Ex. 4, ICE Apr. 10, 2025 Memorandum, “Consideration of U.S. Military
27 Service During Civil Immigration Enforcement Actions,”
<https://www.ice.gov/doclib/foia/policy/10039-3.pdf> (last visited 130/2026).

1 than a year later—his levels were 9.6.²¹ Although the medical report that Mr.
2 Ariegwe received agrees that he has a “history of prostate cases and elevated PSA,”
3 the report concludes that Mr. Ariegwe should just return in 3 months for a follow-up
4 and a new PSA test.²² It does not take into account that Mr. Ariegwe is a Black
5 man with co-occurring medical conditions and that by not proactively treating his
6 prostate cancer puts him at a higher risk of death.²³ The American Cancer Society
7 recently raised these concerns about Black men and the incidence of prostate
8 cancer:
9

10
11 Prostate cancer remains the most commonly diagnosed
12 cancer among Black men in the United States, with an
13 estimated 57,300 cases expected in 2025, accounting for
14 44% of all cancer diagnoses in Black men. Black men have
15 the highest prostate cancer death rate than any other
16 racial or ethnic group, and are over twice as likely to die
17 from prostate cancer than White men. This large
18 disparity in prostate cancer deaths reflect less access to
19 high-quality treatment options; and evidence suggests
20 that ***Black men have equivalent or higher prostate
21 cancer-specific survival rates when they are treated
22 within an equal-access health care system such as
23 the Veterans Health Administration.***²⁴

19 ICE is violating Mr. Ariegwe’s Fifth Amendment guarantees by refusing to provide
20 him with necessary and available cancer treatment that Mr. Ariegwe earned
21 through his military service. Mr. Ariegwe must be immediately released. Releasing
22

24 ²¹ Ex. 1 at 1.

25 ²² *Id.* at 3.

26 ²³ See American Cancer Society, Black Men and Prostate Cancer, Nov. 5,
27 2025 (last visited 1/30/2026), “.

²⁴ *Id.* (emphasis added).

1 Mr. Ariegwe would mean he would be able to receive appropriate care at the VA
2 Medical Center, which by design will provide better care than a detention center.

3 **II. Ground Two: ICE's continued detention of Kingsley Ariegwe is in**
4 **violation of governing ICE policy concerning the detention of**
5 **medically sensitive detainees mandating his release under the**
6 **Administrative Procedures Act.**

7 A December 11, 2006 ICE Directive sets forth ICE's policy allowing for
8 discretion when making custody determinations for "aliens (adults and/or juveniles)
9 transferring from hospitals and social services or law enforcement agencies which
10 have severe medical conditions."²⁵ Though the policy states, "the Field Office
11 Director (FOD) should weigh the appropriateness of taking that person into federal
12 custody absent a mandatory detention requirement," it then recognizes, "[a]
13 favorable exercise of discretion should be considered on a case-by-case basis
14 whenever a medical or psychiatric evaluation, diagnosis, treatment plan or other
15 documentation provide by the referring agency indicates the existence of extreme
16 disease or impairment."²⁶ Among the justifications for the case-by-case basis
17 considerations are to "[s]how compassion and humanitarian concern" and to
18 "[r]educe catastrophic health care costs."²⁷ Included in the specific examples of
19 "medical conditions that should trigger or flag a need for case review and
20 consideration of prosecutorial discretion" is cancer and advanced chronic
21
22
23

24 ²⁵ See Exhibit 3 at 1. The December 11, 2006 ICE Directive is found at
25 [https://www.ice.gov/doclib/foia/dro_policy_memos/discretionincasesofextremeorsever
27 emedicalconcerndec112006.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/discretionincasesofextremeorsever
26 emedicalconcerndec112006.pdf) (last visited 1/30/2026).

²⁶ *Id.*

²⁷ *Id.*

1 conditions.²⁸ As explained above, Section II (Legal Framework), ICE is required to
2 follow its own regulations and directives, and this court may review a detention
3 decision for compliance with the regulations.
4

5 The analysis here is simple: according to ICE's own directive, they should
6 exercise discretion and not detain persons with serious medical concerns. Pursuant
7 to the December 2006 Directive, Mr. Ariegwe must be released because of his
8 advancing prostate cancer diagnosis, his continued detention does not appear to be
9 required by law, and in any event, the Director has the discretion to allow for his
10 release.
11

12 Because ICE has not complied with its own regulations and because Mr.
13 Ariegwe's case is so urgent given his advancing cancer diagnosis and need for
14 cancer treatment, ICE must release Mr. Ariegwe from custody. In denying Mr.
15 Ariegwe's Constitutional rights and defying its own policies, ICE is threatening the
16 health and safety of Mr. Ariegwe.
17

18 Accordingly, this Court should order that Mr. Ariegwe receive a bond hearing
19 in immigration court or be released.
20

21 **PRAYER FOR RELIEF**


22 Accordingly, Kingsley Ariegwe respectfully requests that this Court:

- 23 1. Declare that Petitioner's continued detention violates the
24 Immigration and Nationality Act, 8 U.S.C. §1231(a)(6); the Administrative
25 Procedure Act, 5 U.S.C. §706(2)(A); and/or the Due Process Clause of the
26 Fifth Amendment to the U.S. Constitution;
27

²⁸ *Id.* (emphasis in the original).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on January 30, 2026. I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following persons:

<p>Kingsley Ariegwe  Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89060</p>	<p>Kristi Noem Secretary of the Department of Homeland Security 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528</p>
<p>John Mattos Warden Nevada Southern Detention Center 2190 E. Mesquite Ave., Pahrump, NV 89060Center</p>	<p>Director Michael Bernacke ICE Enforcement and Removal Operations Field Office 2975 Decker Lake Drive, Suite 100 West Valley City, UT 84119</p>
<p>Todd Lyons Acting Director U.S. Immigration and Customs Enforcement 500 12th Street SW Washington, DC 20536</p>	<p>Pamela Bondi Attorney General U.S. Department of Justice 950 Pennsylvania Ave, NW, Washington, DC, 20530</p>
<p>Summer Allegra Johnson DOJ-USAO 501 Las Vegas Blvd. South, Ste 1100 Las Vegas, NV 89143 Email: summer.johnson@usdoj.gov</p>	<p>Sigal Chattah First Assistant for the District of Nevada 501 Las Vegas Blvd, Ste 1100 Las Vegas, NV 89101 Email: Sigal.Chattah@usdoj.gov</p>

/s/ Victoria Lenzi

An Employee of the
Federal Public Defender

