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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

ELHADJI ALIOUNE TOP, Petitioner, v. BRET BRADFORD, Houston Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); WARDEN OF THE HOUSTON CONTRACT DETENTION FACILITY; TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States, Respondents.	Case No.: **4:25-cv-6109** Agency No.: [redacted] **PETITION FOR WRIT OF HABEAS CORPUS** ORAL ARGUMENT REQUESTED Expedited Hearing Requested

INTRODUCTION

1. Elhadji Alioune Top ("Petitioner") is a 46-year-old citizen of Senegal. Petitioner [redacted] Fearing for his life, he came to the United States to seek protection. The United States government is arbitrarily detaining Petitioner in violation of its international human rights and refugee law obligations—obligations which should be considered in applying domestic law.

2. Petitioner arrived into the United States and applied for admission on November 29, 2023, over two years ago; he was detained by Respondents. On December 2, 2023, DHS released Petitioner on his own recognizance. He then applied for asylum before the U.S. immigration authorities. Respondents commenced removal proceedings against him in immigration court, entitling him to present his asylum claim with the due process rights under 8 U.S.C. § 1229a. Yet, in a deceptive sleight of hand Respondents detained him without probable cause, so that they can rapidly deport him.

3. Respondents do so based not on Petitioner's personal circumstances or individualized facts but because of Respondents' interpretation of President Trump's whim and categorical determination that, the Fifth Amendment notwithstanding, noncitizens are not entitled to due process.[1]

4. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts

[1] *See, e.g.,* NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514 (in response to a question whether noncitizens deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 2 million trials.").

to re-detain him are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing his transfer out of this district, and to release him.

JURISDICTION

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

6. 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).

7. 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., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

8. Venue is proper because Petitioner is in Respondents' custody in Houston, Texas. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

9. For these same reasons, divisional venue is proper under Local Rule 3-2.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 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 OSC 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.*

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).

12. Petitioner is "in custody" for the purpose of § 2241 because he is arrested and detained by Respondents.

PARTIES

13. Elhadji Alioune Top ("Petitioner") is a 46-year-old citizen of Senegal. He is a resident of Houston, Texas, and is present within the state of Texas as of the time of the filing of this petition.

14. Respondent Bret Bradford is the Field Office Director for the Houston Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The Houston Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. Respondent Bradford is a legal custodian of Petitioner.

15. Respondent Warden of the Houston Contract Detention Facility is the official with immediate custody over Petitioner and exercises direct control over the conditions and fact of Petitioner's confinement. Respondent has the authority to release Petitioner from custody and to respond to any order issued by this Court.

16. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Bret Bradford and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

18. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

19. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

20. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

21. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

22. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

23. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a

legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

24. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

25. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

26. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

27. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, see 8 U.S.C. §1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

28. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

29. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq*.

30. Because liberty should be guaranteed for asylum-seekers other than in exceptional circumstances, Petitioner's detention is unlawful under international standards. As with many other asylum seekers, Petitioner has been re-detained without an individualized determination that re-detention is necessary.

31. Due process requires a pre-detention hearing before re-detention.

32. Furthermore, through this detention, the government is violating international law norms that prohibit refoulement (or return) of refugees to danger. The government is engaging in constructive refoulement by creating conditions that are so unbearable that they force abandonment of the asylum claim and return to a country of persecution.

I. International human rights and refugee law standards should be considered when interpreting U.S. Constitutional and statutory law in connection with Petitioner's re-detention.

33. Both U.S. law and the consensus of international human rights and refugee law standards prohibit arbitrary detention of asylum-seekers and lay out the principle of non-refoulement. The court should consider these international law standards in analyzing the legality of Petitioner's re-detention under U.S. law. The international law norms should be considered, because: (a) they are binding as a matter of international law, (b) they are similar to U.S. law and

so do not force the court to go outside of U.S. law norms but rather enrich its analysis, and (c) U.S. courts follow rules of interpretation that require them to be considered.

A. The right to liberty and the principle of non-refoulement are found in treaties and customary international law sources that are binding as a matter of international law.

34. The United States is bound by two sources of international law: treaties to which the United States is a party and customary international law. *Chew Heong v. U.S.,* 112 U.S. 536, 539–40 (1984); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 103 (Am. Law. Inst. 1987). Both forms of international law guarantee the right to liberty and prevent refoulement and thus are applicable in determining U.S. obligations relating to the detention of asylum-seekers such as Petitioner.

1. International treaties binding on the United States prohibit arbitrary re-detention and refoulement.

35. There are a number of treaties ratified by the United States which prohibit arbitrary deprivation of liberty and refoulement to a country of danger and thus offer standards that are relevant to the analysis in the instant case. First among the relevant treaties is the International Covenant for Civil and Political Rights ("ICCPR"), which was ratified by the United States in 1992. ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, Art. 9 ("everyone has the right to liberty and security of person" and "shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful"); *id*. at Arts. 7, 13 (prohibiting torture and limiting expulsions without fair process).

36. The U.N. Refugee Convention and its Protocol, which incorporates and extends the terms of the Refugee Convention and which the United States ratified in November of 1968, also guarantee these rights. Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S.

150, Art. 31 ("The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who . . . enter or are present in their territory without authorization, [or] apply to the movements of such refugees restrictions other than those which are necessary."); *id*. at Art. 33 ("No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.").

37. The United Nations Convention Against Torture ("CAT"), which the US Senate ratified in 1990, also sets forth rights that are important to the analysis. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S.85, 113, Art. 3 ("No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."). An additional relevant international law instrument is the American Declaration of the Rights and Duties of Man. Organization of American States, American Declaration of the Rights and Duties of Man, Art. I, adopted May 2, 1948, 2 U.S.T. 2394 (entered into force Dec. 13, 1951) ("American Declaration"), Art. 1 ("Every human being has the right to life, liberty and security of his person"); *id*. at Art. XXV ("every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court").

38. International treaties to which the United States is a party, including the ICCPR, CAT and the Refugee Convention via the Protocol, "bind the United States as a matter of international law." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 735 (2004). This is so even if the treaties are not self-executing and so cannot be directly enforced in U.S. courts. *Id*.; *see also I.N.S. v. Stevic*, 467 U.S. 407, 416 (1984). Similarly, while the American Declaration is not a binding

treaty, it is considered a source of similar binding international obligations for members of the Organization of American States, including the United States. *See* I/A Ct. H.R., Advisory Opinion OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, at 42-47 (July 14, 1989) (establishing that the member states of the OAS are bound by the Declaration as a legal matter).

2. Customary international law norms binding on the United States prohibit arbitrary detention and refoulement.

39. Customary international law also provides important norms relating to the treatment of asylum-seekers in detention. Both the prohibition against arbitrary detention and the principle of non-refoulement have acquired the status of customary international law. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702(e), cmt. h (enumerating prolonged arbitrary detention as a violation of customary international law of human rights); *see also, Rodriguez-Fernandez v. Wilkinson,* 654 F.2d 1382, 1388 (10th Cir. 1981) (referencing "accepted international law principles that individuals are entitled to be free of arbitrary imprisonment"); UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, ¶ 15 (Jan. 26, 2007) ("2007 UNHCR Advisory Opinion") ("the prohibition of refoulement of refugees…constitutes a rule of customary international law"); International Comm. of the Red Cross, *Note on Migration and the Principle of Non-Refoulement*, International Review of the Red Cross, 2 (2018) ("In the ICRC's view, the core of the principle of *non-refoulement* has also become customary international law.") [hereinafter *ICRC Note on Migration*].

40. Customary international law (CIL) binds the United States and all other nations, almost by definition. CIL is derived from the "widespread and consistent practice of states following norms and principles to which they comply out of a sense of legal obligation." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §102.

3. The right to liberty and freedom from arbitrary detention is enshrined in the Fifth Amendment.

41. The only exception to the binding nature of CIL exists where a state has dissented from the principles at issue during their development as CIL. *Id.* at § 102, CMT. d. That exception does not apply to the United States' obligations in connection with the liberty and non-refoulement norms at issue here.

B. The international human rights and refugee law standards at issue parallel requirements already imposed by U.S. law.

42. Not only are the international standards on arbitrary detention and refoulement binding on the United States as a matter of international law, they are fully consistent with U.S. law and in some cases have been directly incorporated into U.S. law. Thus, these international standards do not diverge from U.S. law but rather enrich the interpretation of U.S. law norms by offering additional understandings of key principles that have been accepted by the international community. As such, they are highly relevant in considering the detention of asylum seekers in cases like this one.

43. The prohibition against arbitrary deprivation of liberty and the necessity for court review of detention, as articulated in the international instruments cited in this Petition, embody fundamental liberty principles also protected under U.S. Constitutional due process as enshrined

in the Fifth Amendment. The Supreme Court has held that substantive due process applies to immigration detention and has further held that a deprivation of liberty in the immigration context may not be arbitrary but instead may only take place where there is special government justification. *See Wong Wing v. United* States, 163 U.S. 228, 241 (1896); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim,* 538 U.S. 510, 523 (2003). As such, because detention is civil and non-punitive, the government has no authority to detain immigrants as a constitutional matter for any purpose other than prevention—that is, when necessary to address demonstrable risks of flight or danger to the community. *Zadvydas*, 533 U.S. at 694–95. Constitutional standards also set forth that immigration detainees are generally entitled to individualized determinations regarding the need for detention, with review. *See Demore,* 538 U.S. 510, 531 (Kennedy, J., concurring) (setting out the general rule requiring "individualized procedures to ensure there is . . . sufficient justification to detain"); *see also Bustos-Torres v. I.N.S.,* 898 F.2d 1053, 1055 (5th Cir. 1990) (due process applies in removal proceedings).

1. The obligation of non-refoulement has been implemented in U.S. federal law.

44. Similarly, non-refoulement principles are found in U.S. law. The United States specifically incorporated into domestic law the relevant protections against refoulement at issue in this brief. The United States codified the relevant terms of the UN Refugee Convention and Protocol into U.S. law when it passed the Refugee Act of 1980, which amended §243(h) of the Immigration and Nationality Act (INA) to "conform the language of [§243(h)] to the [1951 Convention.]". H. REP. NO. 608, 96th Cong. 1st Sess. 17-18 (1979). The key non-refoulement norms are contained in Article 33(1) of the 1951 Convention; these protections are now a part of U.S. law. *I.N.S. v. Cardoza-Fonseca,* 480 U.S. 421, 429 (1987).

45. Similarly, in 1998, Congress passed the Foreign Affairs Reform and Restructuring Act (FARRA), which codified the United States' obligations under CAT. Pub. L. 105-277, Div., G., Title XXII. § 2242, 112 Stat. 2681-822 (codified as note to 8 U.S.C. § 1231). FARRA specifically incorporated into U.S. law the Convention Against Torture's non-refoulement principle, providing that "[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." *Id*. at § 2242(a). It also ordered that regulations should be promulgated to implement Article 3 of the Convention Against Torture, which is the non-refoulement article. *Id*. at § 2242(a-b). CAT, Art. 3(1).

C. The federal courts employ international law to give greater meaning to U.S. constitutional and statutory provisions.

46. Given that the international human rights and refugee law standards this brief relies upon are already binding as an international law matter and are reflected in U.S. law, this court should give weight to international law norms when interpreting domestic law. The Supreme Court first condoned a statutory canon of construction that references international law in interpreting U.S. law almost two centuries ago. *See Murray v. Schooner Charming Betsy,* 6 U.S. (2 Cranch) 64 (1804); *see also, The Paquete Habana*, 175 U.S. 677, 700 (1900) (holding further that international law should in certain instances be directly administered in the federal courts). Since then, the judicial practice of construing U.S. standards in harmony with international law has become deeply embedded in American jurisprudence. Notably, the Supreme Court has increasingly turned to international law to assist in interpreting domestic Constitutional provisions. *See Graham v. Florida,* 560 U.S. 48, 80 (2010)*; Roper v. Simmons,* 543 U.S. 551, 575–78 (2005); *see also*

Lawrence v. Texas, 539 U.S. 558, 573-576 (2003). This court should do the same in analyzing the legality of Petitoner's detention.

II. In cases like Petitioner's, re-detention for immigration purposes without an individualized determination of necessity, or meaningful independent review, constitutes an arbitrary deprivation of liberty.

47. Under international human rights and refugee law, detention of asylum-seekers is generally prohibited and is permitted only in rare circumstances. Liberty is the norm, and detention may only be justified when an individual asylum-seeker poses a unique flight risk or danger to the public that may only be addressed by resorting to detention. Furthermore, asylum-seekers who are detained are entitled to prompt automatic court review of their detention and regular review of the need for continued detention. These norms were not met in the present case, and are generally not met for arriving asylum seekers under current interpretation of U.S. law. The categorical re-detention of asylum seekers without individualized determinations and review, and Petitioner's re-detention specifically, violates international norms. The re-detention should be deemed unlawful, resulting in release.

A. Under international human rights and refugee law, detention of asylum seekers is generally prohibited and may be invoked only as an exceptional measure.

48. The international human rights and refugee law that binds the United States guarantees the right to liberty. Refugee Convention, Art. 31; ICCPR, Art. 9; American Declaration, Art. I. To guarantee this right to liberty, international law establishes quite plainly that asylum seekers should presumptively not be detained.

49. Thus, the United Nations High Commissioner for Refugees ("UNHCR"), which is the authoritative interpretative body for the U.N. Refugee Convention, has interpreted the Refugee

Convention to mean that, "asylum-seekers should not be detained." UNHCR, "Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention," Guidelines 2 and 3 (2012) ("UNCHR Detention Guidelines"). UNHCR has further clarified that "detention of asylum-seekers should be a measure of last resort, with liberty being the default position." *Id*. at Guideline 2.

50. Similarly, international bodies interpreting the ICCPR have held that there is a presumption against the detention of asylum-seekers. *See, e.g.,* UN Human Rights Council, *Report of the Working Group on Arbitrary Detention on its visit to the United States of America*, A/HRC/36/37/Add.2, paras. 21, 30, 32 (Jul. 17, 2017) (stating that "immigration detention should be the exception rather than the rule" and expressing concern about "mandatory detention" of arriving asylum seekers). These bodies have held that detention is impermissible beyond a "brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt." UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person),* para. 18 (Dec. 16, 2014); *see also Bakhtiyari v. Australia*, CCPR/C/79/D/1069/2002, paras. 9.2–9.3, UN Human Rights Committee (HRC), (Nov. 6, 2003) ("The purposes of detention of unlawful arrivals is to ensure availability for processing protection claims, to enable essential identity, security, character and health checks to be carried out."). Other interpretations of binding international law confirm the strong presumption against detention of asylum seekers. *See* Inter-American Commission on Human Rights (IACHR), *Report on Immigration in the United States: Detention and Due Process*, 30 December 2010, OEA/Ser.L/V/II. Doc. 78/10, para. 104 ("The generalized use of detention in the case of asylum-seekers does not comport with the right to personal liberty").

51. Given that liberty is the norm for asylum seekers, detention must be used only in exceptional circumstances and be neither unlawful nor arbitrary. UNHCR Detention Guidelines, Guideline 4; HRC, *General comment no. 35*, para. 11; *see also van Alphen v. the Netherlands (Communication No. 305/1988),* CCPR/C/39/D/305/1988, para. 5.8, UN Human Rights Committee (HRC) (Jul. 23, 1990). Arbitrariness must be interpreted "broadly to include elements of inappropriateness, injustice and lack of predictability." *Id.* The specific standard developed by the United Nations Human Rights Committee, charged with interpreting the ICCPR, is that "detention must be justified as reasonable, necessary and proportionate in the light of the circumstances." HRC*, General comment no. 35*, para. 18; *see also A. v. Australia*, CCPR/C/59/D/560/1993, paras. 9.3–9.4, UN Human Rights Committee (HRC) (Apr. 3, 1997).

52. Assessing the arbitrariness of detention—that is, the reasonableness, necessity, and proportionality of the detention—requires individualized consideration of the unique circumstances concerning each non-citizen detainee. Thus, detaining asylum-seekers "while their claims are being resolved [is] arbitrary in the absence of particular reasons specific to the individual." *See* HRC*, General comment no. 35*, para. 18*; see also A v. Australia* (finding arbitrary detention under ICCPR Art. 9(1) where the State did not advance any grounds particular to the detainee that justified his continued detention); *Kwok Yin Fong v. Australia,* CCPR/C/97/D/1442/2005, UN Human Rights Committee (HRC) (Nov. 23, 2009) (Australia violated ICCPR where it put forward only "general reasons" to justify detention); *Shafiq v. Australia,* CCPR/C/88/D/1324/2004, UN Human Rights Committee (HRC) (Nov. 13, 2006) (violation of ICCPR where state tried to justify asylum seeker's detention on the ground that its "general experience" was that "asylum seekers abscond if not retained in custody"); Inter-American Commission on Human Rights (IACHR), "Report on Immigration in the United States:

Detention and Due Process," 30 December 2010, OEA/Ser.L/V/II. Doc. 78/10, para. 39 (discussing the requirement of case-specific evaluation before detention); *see also* Rep. of the UN Special Rapporteur on the Human Rights of Migrants (Apr. 2, 2012) *and* UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, A/HRC/10/21, para. 67 (Feb.16, 2009) (both concluding that the detention of asylum-seekers should be exhaustively justified).

53. The individualized justification requirement also means that the decision to detain "[can]not be based on a mandatory rule for a broad category." HRC*, General comment no. 35*, para. 18; *see also Baban v. Australia*, CCPR/C/78/D/1014/2001, para. 7.2, UN Human Rights Committee (HRC) (Sep. 18, 2003) (concluding that detention was arbitrary where the only justification was domestic law mandating detention of non-citizens without an entry permit until removal or a permit is granted). In other words, sweeping immigration detention of categories of asylum seekers, such as arriving asylum seekers, is arbitrary as it is not reasonable, necessary, or proportionate.

54. The justifications for detention to be considered in the individualized determination are also limited. Critically, detention may not be used as a penalty for illegal entry or presence in the United States. UNHCR Detention Guidelines, para. 32 ("detention for the sole reason that the person is seeking asylum is not lawful . . . Illegal entry or stay of asylum-seekers does not give the State automatic power to detain"). The U.N. Human Rights Committee has held that the legitimate reasons for detention are generally limited to "an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security." HRC, *General comment no. 35*, para. 18. Therefore, detention may only be deemed necessary in the limited instances that it is shown to be required in an individual case in order to prevent flight or other harm to the integrity

of the adjudication proceedings or to halt a danger to the community. *van Alphen v. the Netherlands*, para. 5.8. The presumptive detention of arriving asylum seekers without assessing these specific risks in individual cases is impermissible under these standards.

55. Furthermore, even when concerns regarding flight risk or danger are present in a particular case, detention may still be unnecessary and therefore unlawful. States should resort to detention only as a last available measure. UNHCR Detention Guidelines, para. 21; UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, E/CN/1999/63, para. 78 (Dec. 18, 1998). States, including the United States, are obligated to take into account less invasive means of counteracting the flight risk or public danger, "such as reporting obligations, sureties or other conditions to prevent absconding." HRC*, General comment no. 35*, para. 18; *C. v Australia*, CCPR/C/76/D/900/1999, UN Human Rights Committee (HRC) (Nov. 13, 2002). Where these alternatives are not fully considered, detention is arbitrary and unlawful.

B. Based on international standards, Petitioner should be released immediately because his re-detention is not based on an individualized determination that re-detention is necessary.

56. Under these circumstances, Petitioner's detention constitutes an arbitrary deprivation of liberty. DHS had already determined, pursuant to INA § 236(a), that Petitioner was neither a danger nor a flight risk and released him on recognizance. ICE nevertheless re-detained Petitioner at a routine check-in without identifying any new evidence or changed circumstances, and without conducting an individualized custody analysis. Such summary re-detention, untethered to individualized findings, violates basic principles of procedural due process.

57. In fact, the government has presented no evidence in this case that indicates Petitioner poses a flight risk or danger. ICE detained Petitioner to await the final merits hearing on his asylum claim without providing any description or justification for detention. In the absence of any individualized findings relating to flight risk or danger, it must be assumed that Petitioner presented none and should never have been detained.

58. In any case, Petitioner is able to establish that he does not present a flight risk or danger. He had a stable residence, a counsel who will assure his presence at hearings throughout the asylum proceedings. Petitioner had a stable job, he is a high-qualified auto painter. And Petitioner has no criminal record. Nor has ICE provided any other reason why this court should believe he poses a danger to the public.

59. And even if ICE did put forth legitimate concerns regarding a risk of abscondment or danger, the government failed altogether to consider less invasive alternatives than re-detention to counteract that risk in Petitioner's case. The detention is therefore improper and should be ended.

C. Under international human rights and refugee law, immediate judicial review of detention is necessary, and additional judicial review is required in the case of re-detention.

60. The right to court review is intertwined with the right to liberty in international human rights and refugee instruments. If detention is not subject to judicial review, it will always pose a risk of violating the standards for avoiding arbitrary detention laid out above. International law thus imposes a strict requirement of independent review of immigration detention, as an initial matter and on a continuing basis.

61. Like the right to liberty, the necessity of judicial review of detention determinations is well-founded in the major international and regional human rights instruments. The ICCPR

provides specifically that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". ICCPR, Art. 9(4). Similarly, the American Declaration provides that "every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court." American Declaration, Art. XXV.

62. Given these norms, the UNHCR Detention Guidelines and other treaty interpretations establish an explicit requirement of judicial review of detention for asylum seekers. The Guidelines state that asylum-seekers are entitled "to be brought promptly before a judicial or independent authority to have the detention decision reviewed." UNHCR Detention Guidelines, para. 47(iii). Similarly, the United Nations Working Group on Arbitrary Detention, in its United Nations Basic Principles and Guidelines on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court, interpreted international law to require that "non-nationals . . . be guaranteed access to a court of law, empowered to order immediate release or able to vary the conditions of release." WGAD/CRP.1/2015, para. 60 (May 4, 2015).

63. The required review of detention must be conducted by a court that is independent of the detaining authority and that has the power to order release. UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, WGAD/CRP.1/2015, para. 69 ("The court reviewing the arbitrariness and lawfulness of the detention must be a different body form the one that ordered the detention"); UNHCR Detention Guidelines, para. 47(iii) ("The reviewing body must be independent of the initial detaining authority, and possess the power to order release or to vary any conditions of release"). The court must not only have the authority to order release if the detention is not in compliance with domestic law but also to order release if the

detention is arbitrary under international human rights principles. *See A v. Australia* (finding a violation of ICCPR where federal law stripped the courts of discretion to order the release of asylum-seekers who arrived by boat).

64. Detained asylum seekers are entitled to review of detention "without delay." ICCPR Art. 9(4). UNHCR Detention Guidelines define review "without delay" as one that is ideally automatic, but in any event taking place "in the first instance within 24–48 hours of the initial decision to hold the asylum-seeker." UNHCR Detention Guidelines, para. 47(iii); *see also* UN Working Group on Arbitrary Detention, WGAD/CRP.1/2015, para. 80 ("To ensure . . . an effective opportunity to be heard without delay by a court of law, no substantial waiting period shall exist before a detainee can bring a first challenge to the arbitrariness and lawfulness of detention").

65. Detention not tested through guaranteed initial court review will always be problematic, irrespective of its duration. But that detention without review of necessity becomes even more problematic as it becomes prolonged. To prevent such an injustice, the right to liberty is interpreted to require regular periodic review. The Human Rights Committee thus establishes that a detention decision "must be subject to periodic re-evaluation and review" HRC, *General comment no. 35*, para. 18. Similarly, the UNHCR Detention Guidelines establish that, after initial review, asylum-seekers are entitled to regular periodic review of the necessity of continuation of detention before a court. UNHCR Detention Guidelines, para. 47(iv); *see also*, UN Working Group on Arbitrary Detention, WGAD/CRP.1/2015, para. 82 ("After a court has held that the circumstances justify the detention, the individual is entitled to take the proceedings again on similar grounds after an appropriate period of time has passed").

66. This required continuing review should be automatic and regular, and the reviewing authority should ensure that the detention remains necessary, proportional, lawful, and non-arbitrary under the—potentially changing—relevant circumstances. Those circumstances may include the detainee's health, family life, and protection claims. UN Working Group on Arbitrary Detention, WGAD/CRP.1/2015, para. 61; 104(b). Under best practice, "review would take place every seven days until the one-month mark and thereafter every month until the maximum period [for detention] set by law is reached." UNHCR Detention Guidelines, para. 47(iv).

D. Based on international standards, Petitioner should be released immediately because his re-detention is unlawful since it has not been subjected to judicial review of any kind.

67. Applying these international norms requiring independent review of detention, Petitioner's detention is arbitrary because of the absence of any review of its necessity.

68. Having never been subject to review, Petitioner's continued detention is unlawful. For that reason, it must end immediately.

III. In cases like Petitioner's, arbitrary detention constitutes constructive refoulement in violation of international law.

69. Prolonged arbitrary detention coerces asylum-seekers like Petitioner into abandoning their asylum claims so that they are returned to danger. Detention thus constitutes constructive refoulement and violates international law.

A. The principle of non-refoulement, including constructive non-refoulement, dictates that asylum-seekers should not be returned to a country where they would be persecuted.

70. The obligation of non-refoulement "constitutes the cornerstone" of international law on asylum seekers. 2007 UNHCR Advisory Opinion, ¶ 5. Article 33(1) of the UN Refugee Convention prohibits refoulement, stating emphatically:

71. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion. 1951 Convention, art. 33(1).

72. The protection against refoulement applies to asylum-seekers even before they have had their status formally declared. 2007 UNHCR Advisory Opinion, ¶ 6. This standard must apply, because asylum seekers become refugees as soon as they meet the criteria laid out in the 1951 Convention, even if their potential host country has yet to designate them as such. *Id*. Because an asylum seeker may be a refugee, the non-refoulement protections must ensure safety from return to danger during the determination process.

73. The concept of non-refoulement is understood by authoritative international bodies to be sufficiently broad as to encompass refoulement that does not involve a government physically returning an asylum seeker to his or her home country. Thus, procedures that dissuade and deter asylum-seekers from claiming protection function as "constructive refoulement." Constructive refoulement, also known as indirect refoulement, occurs when States subject asylum-seekers to measures that push them to abandon their yet-to-be-adjudicated claims and return to territories where their life or freedom are threatened. UNHCR, *UNHCR Note on the Principle of Non-Refoulement*, November 1997, Part D; UNHCR, *UNHCR monitoring visit to Manus Island, Papua New Guinea, 23 to 25 October 2013* ¶ 119 (Nov. 26, 2013) ("Pressure exerted by persons in authority to return, coupled with poor conditions, and/or the failure to correctly identify the

'voluntariness' of the asylum-seekers return, raises concerns around 'constructive refoulement' under Article 33 of the 1951 Refugee Convention.").

74. There is no doubt that constructive refoulement violates the international law prohibition on refoulement. UNHCR has established in no uncertain terms that state coercion leading to the abandonment of asylum claims and the resulting "involuntary return of refugees" would "in practice amount to refoulement." UNHCR, *Handbook - Voluntary Repatriation: International Protection* chapter 2.3 (January 1996). The International Committee of the Red Cross (ICRC) has also recognized this concept and stated that "if a State cannot lawfully return an individual, the principle of non-refoulement should be understood as also prohibiting indirect measures designed to circumvent this prohibition." *ICRC Note on Migration*, 10 (2018). Other influential bodies in the international law community have weighed in to the same effect. S*ee* United Nations, *Draft articles on the expulsion of aliens, with commentaries* arts. 10(1-2) (2014) (addressing constructive refoulement under the name "disguised expulsion.").

75. International bodies interpreting treaty obligations and customary international law have further specifically concluded that arbitrary or prolonged detention may lead to impermissible constructive refoulement. The UN Committee Against Torture has stated that countries should not:

adopt dissuasive measures or policies, such as detention in poor conditions for indefinite periods, …which would compel persons in need of protection under article 3 of the Convention to return to their country of origin in spite of their personal risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment there.

76. UN Committee Against Torture, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22* CAT/C/CG/4 ¶14 (Sept. 4, 2018). The Working Group on Arbitrary Detention has similarly stated that "detention should

not be used as a tool to discourage asylum applications." UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants* A/HRC/39/45 ¶ 38 (Jul. 2 2018); *see also* UN Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants* ¶ 65, U.N. Doc. A/HRC/20/24 (Apr. 2, 2012) (stating that detainees who give up their claims must do so in a manner that is "fully voluntary . . . particularly if the migrant is in a situation of closed detention"). Accordingly, states that arbitrarily detain asylum-seekers such that they may be compelled to give up their protection claims are violating the binding principles of international law that prohibit refoulement.

B. The negative effects of U.S. immigration detention on asylum seekers cause constructive refoulement.

77. Despite the clear standards prohibiting detention that compels refoulement, the United States government is engaging in constructive refoulement through the prolonged detention of asylum seekers like Petitioner. A detained asylum-seeker in the United States is more likely to abandon his claim than asylum seekers at liberty within the United States, even if he is at risk of persecution or torture upon return home. Mark Noferi, *A Humane Approach Can Work: The Effectiveness of Alternatives to Detention for Asylum Seekers* 11 (2015). The fact and circumstances of detention are so taxing on asylum seekers that they are coerced into giving up their protection claims in order to leave detention, even if it means removal to the home country they originally fled.

78. Confining asylum-seekers to detention centers for an undefined period, often without justification or sufficient review, causes psychological and physical trauma. *Id*. at 6; *R.I.L–R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015); *see also Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The conditions of detention are also often unsafe and abusive. In fact,

ICE detention centers regularly subject detainees to conditions that "undermine the protection of detainees' rights, their humane treatment, and the provision of a safe and healthy environment." U.S. Dep't of Homeland Security, OIG-18-32, *Concerns about ICE Detainee Treatment and Care at Detention Facilities*, 3 (2017); *see generally* U.S. Dep't of Homeland Security, OIG-19-47, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities* (2019) (discussing substandard conditions at detention centers in Louisiana, Colorado, California and New Jersey); U.S. Dep't of Homeland Security, OIG-18-67, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* (2018).

79. ICE has also been holding detainees for increasingly prolonged periods. Mica Rosenberg & Kristina Cooke, *Amid pandemic, sharply increased U.S. detention times put migrants at risk*, REUTERS (October 9, 2020); *see also* U.S. Immigration and Customs Enforcement Detention Management, Detention Statistics (2021). ICE's data shows that the average amount of time spent in detention almost tripled between September 2016 and September 2020, and it almost doubled just between September 2019 and September 2020. *See* Rosenberg & Cooke, *supra*. The duration of detention has an "undeniable impact on the conditions of detention." UN General Assembly, *Sixth Report on the Expulsion of Aliens, the Yearbook of the International Law Commission, 62nd session (19 March-28 May and 9 July 2010)*, 2010, A/CN.4/625.

80. These circumstances of detention in poor conditions for lengthy periods lead to abandonment of asylum claims, regardless of eligibility for asylum protection. In fact, at least one U.S. government entity has confirmed that detention forces asylum seekers to give up their claims, leading to removal to the home country and risk of persecution or torture. The United States Commission on International Religious Freedom, a non-partisan federal government commission created in 1998, conducted a study in which it spoke with 45 asylum-seekers who had abandoned

their claims to asylum in the country. A "substantial number reported that the conditions of their detention influenced their decision to withdraw their application for admission." USCIRF, *Statement Of The US Commission On International Religious Freedom On Asylum: Credible Fear And Parole Processes*, at 2 n.3 (December 12, 2013).

81. This governmental study and other evidence suggest that the United States may be purposely detaining asylum-seekers with the goal of coercing them to abandon their claims.1 Regardless of intent, however, the United States engages in constructive refoulement when it detains arbitrarily in a manner that forces asylum seekers to give up their claims to protection. The detention is thus a violation of international law prohibiting refoulement.

82. The lack of other reasonable justification for high levels of detention of asylum seekers is one indicator of such intent. *See* Pew Research Center, *After Surging in 2019, Migrant Apprehensions at U.S.-Mexico Border Fell Sharply in Fiscal 2020* (documenting lower numbers of apprehensions at the border at the same time as detention numbers increased). In addition, public officials have offered statements regarding detention that explicitly invoke deterrence. For example, in 2014, Jeh Johnson—then Secretary of Homeland Security—made announcements explaining the expansion of family detention for asylum-seeking families that made clear a deterrence goal. Emily Ryo, *Detention As Deterrence*, 71 Stan. L. Rev. Online 237, 239 (2019); Julia Preston, *Detention Center Presented as Deterrent to Border Crossings*, N.Y. TIMES (Dec. 15, 2014),; *see also R.I.L–R,* 80 F. Supp. 3d at 170, 189, 191 (recognizing the deterrence rationale for detention and finding it unlawful since "neither those being detained nor those being deterred are certain wrongdoers, but rather individuals who may have legitimate claims to asylum in this country"). Though the Jeh Johnson announcement and the accompanying detention policy focused principally on deterring asylum-seekers from arriving at the U.S. border in the first place, they

could also be understood as encouraging asylum seekers to renounce their claims, once here, through detention.

C. Petitioner should be released, because the United States has violated its non-refoulement obligations under international law through Petitioner's detention.

83. Petitioner's arbitrary detention is causing him to consider abandoning his asylum claim like so many other asylum seekers in detention have done. If he abandons his asylum claim, he will be returned to his home country where he has credibly alleged that he faces danger of persecution and torture. Petitioner's ongoing detention therefore places him at high risk of constructive refoulement. Petitioner must be released from detention in order to end this violation of international law.

84. It is a fundamental principle under international law that liberty should be guaranteed and asylum-seekers should not be detained except in the most unusual of circumstances. ICE has failed in this case, and in general in cases of asylum seekers, to engage in any individualized determination that re-detention is reasonable, necessary, and proportionate. The deprivation of liberty thus violates international law.

85. Additionally, every day that Petitioner, and other asylum seekers like him, languishes in arbitrary detention increases the likelihood of abandonment of his claim. The United States has thus violated its non-refoulement obligations.

86. Detention of asylum seekers in general, and of Petitioner in particular, is anathema to the very bedrock of international refugee and human rights law and is inconsistent with parallel U.S. norms that protect against violations of fundamental rights. Because his detention is unlawful, it must be ended.

87. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

FACTUAL BACKGROUND

88. Petitioner is a citizen of Senegal.

89. [redacted] Fearing for his life, he came to the United States to seek protection.

90. On or about November 29, 2023, Petitioner came to or near the Lukeville, Arizona port of entry to seek asylum. Respondents arrested and detained Petitioner.

91. On or about December 1, 2023, Respondents commenced removal proceedings against Petitioner under 8 U.S.C. § 1229a in Philadelphia, Pennsylvania.

92. On December 2, 2023, Respondent DHS released Petitioner on his own recognizance into the United States pursuant to INA § 236(a), 8 U.S.C. § 1226(a), after determining that he did not pose a danger to the community or a risk of flight.

93. Respondents alleged he was inadmissible to the United States and commanded that he appear for a hearing on April 9, 2025, in the immigration court in in Philadelphia, Pennsylvania.

94. Petitioner applied for asylum before the Philadelphia Immigration Court on May 22, 2024.

95. On December 2, 2024, Respondents issued work authorization to Petitioner pursuant to 8 C.F.R. § 274a.12(c)(8) valid through December 1, 2029.

96. On March 26, 2025, the Master Hearing was cancelled by the Judge. Petitioner was awaiting a re-scheduled immigration hearing date.

97. On information and belief, Petitioner regularly complied with and appeared for ICE check-ins. On December 9, 2025, during a scheduled ICE check-in at the Houston ICE Field Office, Petitioner was arrested and detained. ICE did not provide advance notice, state the basis for the arrest, or afford Petitioner an opportunity to be heard. Although Petitioner was represented by counsel, ICE did not permit access to counsel prior to detention.

98. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

99. On information and belief, Respondents are using the immigration detention system, including extra-territorial transfer and detention, as a means to punish individuals for asserting rights under the Refugee Act.

100. On information and belief, Petitioner has no criminal history.

101. Given that Petitioner was released on recognizance into the United States and has no criminal history, he is not subject to mandatory detention under INA § 235. Indeed, his detention falls squarely within INA § 236. Petitioner is not subject to mandatory detention under the Immigration and Nationality Act. He has no criminal history whatsoever in the United States and has never engaged in any conduct that would render him a danger to the community, a threat to national security, or a flight risk.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

Procedural Due Process

102. Petitioner restates and realleges all paragraphs as if fully set forth here.

103. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

104. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

105. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is "physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen's] status, may apply for asylum." *Id.*

106. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§ 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, *see id.* § 1229a(c)(6)-(7).

107. Immigration detention constitutes a significant restraint on liberty and therefore requires, at a minimum, notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

108. Detention under INA § 236(a), 8 U.S.C. § 1226(a) is discretionary. DHS must make an individualized custody determination, including an assessment of flight risk and danger to the community.

109. Where DHS has released a noncitizen under § 236(a), due process prohibits revocation of that liberty interest without notice, a stated basis for re-detention, and an opportunity to contest the deprivation.

110. Here, DHS released Petitioner on December 2, 2023, on his own recognizance pursuant to INA § 236(a) after determining that he was not a danger to the community and not a flight risk. Petitioner remained in removal proceedings, filed an asylum application, received employment authorization valid through December 1, 2029, and awaited rescheduling of his immigration hearing after the Immigration Judge cancelled the March 26, 2025, Master Calendar Hearing. On December 9, 2025, during a scheduled ICE check-in at the Houston ICE Field Office, Respondents arrested and detained Petitioner.

111. ICE provided no advance notice, did not state the basis for the arrest, and afforded Petitioner no opportunity to be heard before depriving him of his liberty. Although Petitioner had counsel of record, ICE did not permit access to counsel prior to detention.

112. Respondents did not conduct or document any individualized custody determination under § 236(a), did not identify new facts or changed circumstances, and made no finding that Petitioner posed a danger or flight risk.

113. Respondents' actions amounted to a summary revocation of Petitioner's prior release on recognizance and an arbitrary deprivation of liberty without the procedural safeguards required by the Fifth Amendment.

114. Petitioner's detention occurred amid expanded interior enforcement directives following the January 20, 2025, executive actions. On information and belief, Respondents detained Petitioner pursuant to generalized enforcement priorities rather than an individualized assessment, increasing the risk of erroneous deprivation of liberty.

115. Respondents' conduct violated Petitioner's Fifth Amendment right to procedural due process.

COUNT TWO

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Not in Accordance with Law and in Excess of Statutory Authority

Unlawful Detention

116. Petitioner restates and realleges all paragraphs as if fully set forth here.

117. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

118. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

119. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

120. By re-detaining Petitioner without a pre-detention hearing before re-detention, without consideration of his individualized facts and circumstances, Respondents have violated the APA.

121. Respondents have made no finding that Petitioner is a danger to the community.

122. Respondents have made no finding that Petitioner is a flight risk because, in fact, he was arrested while voluntarily appearing at his ICE check-in.

123. By re-detaining the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to his facts or circumstances since the agency made its initial determination to release him on recognizance into the United States that support detention.

124. Respondents have already considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this re-detaining after being released on recognizance.

Exhaustion Is Excused as Futile

125. Petitioner has not sought administrative relief from his detention because exhaustion is not required for habeas petitions brought under 28 U.S.C. § 2241, and, in any event, exhaustion would be futile. Petitioner was summarily arrested and detained at a routine ICE check-in without notice, without an individualized custody determination, and without access to counsel. There is no adequate or timely administrative mechanism by which Petitioner could obtain review of the legality of his detention before suffering continued and irreparable loss of liberty. Any

request for administrative reconsideration would be discretionary, non-binding, and incapable of providing prompt relief. Requiring exhaustion under these circumstances would therefore serve no purpose and would only prolong an unconstitutional detention. Accordingly, exhaustion is excused.

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) Declare that Petitioner's re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

(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: December 17, 2025.

Respectfully submitted,

By: _____

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