

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT  
JUDGE LEON SCHYDLOWER

Sergo Khasaia,

*Petitioner*

v.

Warden, El Paso Camp East Montana  
Detention Facility; Mary DE ANDA-  
Ybarra, in her official capacity as Field

*Respondent*

*(name of warden or authorized person having custody of petitioner)*

**EP 25 CV 0754**

Case No. \_\_\_\_\_  
*(Supplied by Clerk of Court)*

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

**Personal Information**

1. (a) Your full name: Sergo Khasaia  
(b) Other names you have used: Not applicable
2. Place of confinement:  
(a) Name of institution: El Paso Camp, E.M.D.F.,  
(b) Address: 6920 Digital Road El Paso, TX 79936
- (c) Your identification number: 
3. Are you currently being held on orders by:  
 Federal authorities     State authorities     Other - explain:  
Unlawful order of the ICE/ERO FOD in New York Field Office
4. Are you currently:  
 A pretrial detainee (waiting for trial on criminal charges)  
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
If you are currently serving a sentence, provide:  
(a) Name and location of court that sentenced you: \_\_\_\_\_  
(b) Docket number of criminal case: \_\_\_\_\_  
(c) Date of sentencing: \_\_\_\_\_  
 Being held on an immigration charge  
 Other (explain): \_\_\_\_\_

**Decision or Action You Are Challenging**

5. What are you challenging in this petition:  
 How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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

**Instructions**

1. **Who Should Use This Form.** You should use this form if
  - you are a federal prisoner and you wish to challenge the way your sentence is being carried out (*for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits*);
  - you are in federal or state custody because of something other than a judgment of conviction (*for example, you are in pretrial detention or are awaiting extradition*); or
  - you are alleging that you are illegally detained in immigration custody.
  
2. **Who Should Not Use This Form.** You should not use this form if
  - you are challenging the validity of a federal judgment of conviction and sentence (*these challenges are generally raised in a motion under 28 U.S.C. § 2255*);
  - you are challenging the validity of a state judgment of conviction and sentence (*these challenges are generally raised in a petition under 28 U.S.C. § 2254*); or
  - you are challenging a final order of removal in an immigration case (*these challenges are generally raised in a petition for review directly with a United States Court of Appeals*).
  
3. **Preparing the Petition.** The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**
  
4. **Answer all the questions.** You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**
  
5. **Supporting Documents.** In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.
  
6. **Required Filing Fee.** You must include the \$5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.
  
7. **Submitting Documents to the Court.** Mail your petition and \_\_\_\_\_ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.  
  
If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.
  
8. **Change of Address.** You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

- Pretrial detention
- Immigration detention
- Detainer
- The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- Disciplinary proceedings
- Other (explain):  
 \_\_\_\_\_  
 Not applicable-- See Accompanying more formal petition

6. Provide more information about the decision or action you are challenging:

- (a) Name and location of the agency or court: \_\_\_\_\_
- (b) Docket number, case number, or opinion number: \_\_\_\_\_
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):  
 \_\_\_\_\_  
 \_\_\_\_\_
- (d) Date of the decision or action: \_\_\_\_\_

**Your Earlier Challenges of the Decision or Action**

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- Yes                       No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: \_\_\_\_\_
- (2) Date of filing: \_\_\_\_\_
- (3) Docket number, case number, or opinion number: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

Not applicable-- See Accompanying more formal petition

(b) If you answered "No," explain why you did not appeal: \_\_\_\_\_

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

- Yes                       No

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(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

Not applicable-- See Accompanying more formal petition

(b) If you answered "No," explain why you did not file a second appeal: \_\_\_\_\_

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes  No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

Not applicable-- See Accompanying more formal petition

(b) If you answered "No," explain why you did not file a third appeal: \_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes  No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes  No

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If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date of filing: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

- Yes  No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date of filing: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

Not applicable-- See Accompanying more formal petition

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

Not applicable-- See Accompanying more formal petition

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

- Yes  No

If "Yes," provide:

- (a) Date you were taken into immigration custody: \_\_\_\_\_
- (b) Date of the removal or reinstatement order: \_\_\_\_\_
- (c) Did you file an appeal with the Board of Immigration Appeals?

- Yes  No

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If "Yes," provide:

- (1) Date of filing: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Result: \_\_\_\_\_
- (4) Date of result: \_\_\_\_\_
- (5) Issues raised: \_\_\_\_\_

Not applicable-- See Accompanying more formal petition

(d) Did you appeal the decision to the United States Court of Appeals?

Yes  No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Date of filing: \_\_\_\_\_
- (3) Case number: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

Not applicable-- See Accompanying more formal petition

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes  No

If "Yes," provide:

- (a) Kind of petition, motion, or application: \_\_\_\_\_
- (b) Name of the authority, agency, or court: \_\_\_\_\_
- (c) Date of filing: \_\_\_\_\_
- (d) Docket number, case number, or opinion number: \_\_\_\_\_
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_
- (g) Issues raised: \_\_\_\_\_

Not applicable-- See Accompanying more formal petition

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**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE:**

Not applicable-- See Accompanying more formal petition

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Not applicable-- See Accompanying more formal petition

(b) Did you present Ground One in all appeals that were available to you?

Yes  No

**GROUND TWO:**

Not applicable-- See Accompanying more formal petition

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Not applicable-- See Accompanying more formal petition

(b) Did you present Ground Two in all appeals that were available to you?

Yes  No

**GROUND THREE:**

Not applicable-- See Accompanying more formal petition

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Not applicable-- See Accompanying more formal petition

(b) Did you present Ground Three in all appeals that were available to you?

Yes  No

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**GROUND FOUR:**

Not applicable-- See Accompanying more formal petition

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Not applicable-- See Accompanying more formal petition

(b) Did you present Ground Four in all appeals that were available to you?

Yes

No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Not applicable-- See Accompanying more formal petition

**Request for Relief**

15. State exactly what you want the court to do:

Not applicable-- See Accompanying more formal petition

SERGO KHASAIA  
C/o National Immigration Appellate Project  
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Westlake Village, CA 92359-0664  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

Sergo Khasaia, (“S.K.”),

*Petitioner,*

v.

Warden, El Paso Camp East Montana Detention Facility; Mary DE ANDA-Ybarra, in her official capacity as Field Office Director of the Immigration and Customs Enforcement (“ICE”); Kristi NOEM, in her official capacity as Secretary of the Department of Homeland Security (“DHS”); and Pamela BONDI, Attorney General (“AG”) and Chief Law Enforcement for the Department of Justice (“DOJ”),

*Respondents.*

Civil Action No.:

**PETITION FOR WRIT OF  
HABEAS CORPUS**

### **Introduction**

1. Petitioner files herewith this petition for a writ of habeas corpus under the authority of 28 U.S.C. § 2241 alleging that he is in the civil physical custody of the Warden for the El Paso Camp–East Montana Detention Facility (“EPC-EMDF”) unlawfully. The custody is unlawful because is in violation of the Due Process Clause of the 5<sup>th</sup> amendment to the United States Constitution, the Immigration and Nationality Act (“INA”), Title 8 U.S.C., §§1101-1537; the federal regulations that implement it under Title 8 C.F.R; the Accardi doctrine (United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954)) requires federal agencies to follow their own rules, regulations, and binding policies when those rules protect individual rights or constrain discretion. If an agency disregards those rules in adjudicating a case, the resulting decision can be invalidated (and in the 5<sup>th</sup> Circuit, where it is shown that the failure of the agency to follow its own rules results in prejudice).

2. Petitioner respectfully seeks this Court’s consideration of the petition and accordingly intervene to compel the Warden (and all of its named co-respondents) to show cause why petitioner should not be released from unlawful custody.

### **Statement of Pertinent Facts**

3. The administrative record reflects that Petitioner is a 34-year-old male national and citizen of the Republic of Georgia, domiciled in Brooklyn, New York.

4. The record further shows that prior to being taken into DHS custody on 8/29/2025, Petitioner’s presence in the United States was authorized by DHS and that he was lawfully employed as a truck driver for BSL Express Trucking Inc, 1316 Marquette

Dr Romeoville, ILLINOIS, 60446.

5. The record further shows that Petitioner first came into contact with border patrol agents of the Customs and Border Protection (“CBP”) near San Luis, Arizona in or about January 2022. Petitioner was then taken into DHS custody by those agents, booked and processed for placing him in formal removal proceedings before an immigration judge (“IJ”); and he then filed an application for asylum, withholding of removal and Convention Against Torture (“CAT”) as a statutory relief from removal.

6. And after CBP determined<sup>1</sup> that petitioner did not pose a danger to the community or a flight risk, the CBP released him from custody on his own recognizance (“ROR”) subject to monitoring and maintenance of status, such as continuing to appear when ordered to do so by the courts or the DHS.

7. One of the conditions for his ROR was to report to the DHS Immigration and Customs Enforcement (“ICE”) Field Office in New York City, New York for its continuing further monitoring.

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<sup>1</sup> 8 C.F.R. § 1236.1(c)(8) provides that a noncitizen not subject to mandatory detention may be released—only if— it is determined that release “would not pose a danger to property or persons, and that the noncitizen is likely to appear for any future proceeding.” Matter of Guerra, 24 I&N Dec. 37 (BIA 2006)(setting out a non-exclusive list of bond factors the IJ may consider under INA 236(a), including: fixed address, length of residence, family ties, employment history, record of appearance, criminal record and the seriousness of offenses, immigration violations, and apparent eligibility for relief.)

8. Ever since his January 2022 ROR from DHS custody in San Luis, Arizona, Petitioner has been in compliance with the release conditions. Indeed, there is no valid factual or legal circumstances warranting Petitioner's re-arrest on 8/29/2025 while his application for relief in removal proceedings before the immigration court continues its timely adjudication.

9. The timeline for fully adjudicating an application for asylum, withholding of removal and CAT involves (1) a fully adjudicated application process, consisting of a merits hearing and a decision from an IJ; assuming the IJ grants relief, the case terminates against the noncitizen applicant at that time. Assuming on the other hand that the IJ denies the application for relief, the adjudicatory process continues in a different phase or stage, namely (2) administrative appeal process before the BIA; and if the BIA decision is adverse to the noncitizen applicant, the (3) phase or stage involves a judicial review of the agency decision.

10. As a result, the timeline generally required to complete the due process cycle for a noncitizen to obtain a final order on the application for relief may take no less than 2 or 3 years to complete, most commonly perhaps in a period of 3-4 or more years depending on a variety of geographical and other factors.

11. On 8/29/2025, Petitioner (whose case remains in the first phase or stage of the referenced proceedings) appeared for a check-in order instructing him to come to the ICE district office at 26 Federal Plaza, New York City, N.Y., for his regular check-in.

12. Petitioner was then arrested by ICE agents at the Varick Street Field Office of ICE in New York and has been informed by ICE agents that he will remain in ICE

detention until he is deported (removed) from the United States or in the alternative until his removability is resolved in his favor—i.e., until such time when the due process procedures in place by statute and regulation have been exhausted—or, no less than 2 or 3 years from today.

13. According to current trends involving ICE detention policies nationwide, ICE plans to transfer and indeed does transfer detainees out of the initial facilities where they might have been temporarily housed when they are taken into ICE custody and are transferred away to remote locations—the most popular one for ICE being La Salle Detention Center in Jena, Louisiana.

14. The main reason for transferring detainees is not only for creating a far-deeper wedge between the housing locations of the detained noncitizens and the offices of their legal representatives, but also as ICE's preferred means to exercise coercive pressure for the detainee to give up his or her legal fight given the (sometimes) abhorrent conditions of the facilities in which they are detained.

15. There are no genuine new facts or new statutory grounds within the administrative agency record warranting the re-arrest of petitioner after his being released from ICE custody in 2022, when CBP first determined that he was neither (i) a “danger” to the national security of the United States; (ii) a “danger” to the community; or (iii) a “flight risk.” INA § 236(a); 8 U.S.C. § 1226(a); 8 C.F.R. Part 1236.1 *et seq.*; Matter of Guerra, *supra*, 24 I. & N. Dec. 37, 40. Because no single fact (including no change in law) has changed in the agency record to warrant petitioner's re-arrest after concluding that he neither pose a danger to the community or a flight risk in 2022 when he was first

released from custody, the ICE agents' re-arrest of petitioner is an apparent effort by the local ICE agents to satiate the thirst of their ruler, respondent NOEM. This is particularly unlawful in instances such as here where not only there are no new circumstances to revoke his prior eligibility determination of ROR but his pending applications before the IJ.

16. Petitioner challenges his detention as a violation of the various INA provisions referenced above as well as a continuing violation of the Due Process Clause of the Fifth Amendment. Petitioner requests therefore that this Court grants him a Writ of Habeas Corpus and order Respondents to release him from ICE custody forthwith or issue an order to show cause. Petitioner seeks habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. Zadvydas v. Davis, 533 U.S. 678, 687-88 (2001).

### **JURISDICTION**

17. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. 1331; 28 U.S.C. 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2. Additional authority to consider remedies in this petition is found under the Administrative Procedures Act ("APA"), § 701 et sequm.

### **VENUE**

18. Venue over this petition is proper in the Western District of Texas under 28 U.S.C. 1391 and 28 U.S.C. 2242 because at least one respondent (the Warden for the EPC-EMDF, is located in this District, if not all, and petitioner is detained in this District,

and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally* Rumsfeld v. Padilla, 542 U.S. 426, 434 (2004) (“the proper respondent to a habeas petition is ‘the person who has custody over the petitioner’”) (citing 28 U.S.C. 2242) (cleaned up).

## **PARTIES**

19. Petitioner is detained by the respondents at the aforementioned location in El Paso, Texas. He has been in ICE custody most recently since August 29, 2025, when he was arrested at the N.Y. Field Office for ICE after his complying with an order from the respondents summoning him to appear before them on that date.

20. Respondents Warden, EPC-EMDF; Mary DE ANDA-Ybarra, Field Office Director of ICE; Kristi NOEM, DHS Secretary; and BONDI, “AG” all share the same responsibilities that any Warden of this facility would where petitioner is currently detained. They are the legal custodians of petitioner and are named herein in their official capacity as respondents in this action.

## **LEGAL FRAMEWORK**

21. Two decades after the Accardi doctrine was first enunciated, the Supreme Court revisited it in Morton v. Ruiz, 415 U.S. 199, 232, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974), this time striking down a Bureau of Indian Affairs benefits determination because it did not comply with the procedures set forth in the agency's internal manual. In doing so, the Court noted that Accardi's doctrine applies with particular force in those cases in which “the rights of individuals are affected,” stating that – “it is incumbent upon agencies to follow their own procedures... even where [they] are possibly more rigorous than

otherwise would be required.” Id. at 235, 94 S.Ct. 1055.

22. The Federal Circuit in the District of Columbia *for example* has observed in Battle v. FAA, 393 F.3d 1330, 1336 (D.C. Cir. 2005) that “Accardi has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others.” Steenholdt v. FAA, 314 F.3d 633, 639 (D.C. Cir. 2003) (“The Accardi doctrine requires federal agencies to follow their own rules, even gratuitous procedural rules that limit otherwise discretionary actions.”); Wilkinson v. Legal Servs. Corp., 27 F.Supp.2d 32, 34 n.3 (D.D.C. 1998) (citing Accardi and stating that “government agencies are bound to follow their own rules, even self-imposed procedural rules that limit otherwise discretionary decisions”); Vanover v. Hantman, 77 F.Supp.2d 91, 103 (D.D.C. 1999), *aff’d*, 38 F. App’x 4 (D.C. Cir. 2002) (judicial review under Accardi available for “claims that an agency has acted in violation of its own binding procedures where those procedures are promulgated for the protection of individuals, even where the procedures were not issued as formal regulations”); Jefferson v. Harris, 285 F.Supp.3d 173, 185 (D.D.C. 2018). And, in the immigration context, the Second Circuit has explained that the Accardi doctrine’s “ambit is not limited to rules attaining the status of formal regulation,” and that it can be applied to internal agency guidance. *See* Montilla v. INS, 926 F.2d 162, 167 (2d Cir. 1991); *see also* Zhang v. Slattery, 840 F.Supp. 292, 296 (S.D.N.Y. 1994) (requiring that [the legacy] INS adhere to internal procedures in parole memorandum). The Third Circuit has gone further and announced it would not require a demonstration of prejudice for purposes of nullifying and reversing agency action in similar circumstances. Chlomos v. INS, 516 F.2d 310, 314 (3d Cir. 1975)

(right not subject to prejudice test).

23. The 5<sup>th</sup> Circuit has consistently followed the Accardi doctrine in cases such as Chevron Oil Co., v. Andrus, 588 F.2d 1383 (5th Cir. 1979); Hall v. Schweiker, 660 F.2d 116, 119 (5th Cir. 1981); Newton v. Apfel, 209 F.3d 448, 459–60 (5th Cir. 2000); Richardson v. Joslin, 501 F.3d 415, 418 (5th Cir. 2007) (reiterating the doctrine); more recently in Francois v. Garland, No. 20-61134 (5th Cir. Oct. 24, 2024) holding the BIA violated its own regulations (standard-of-review error) and vacated under a straightforward Accardi-type application; Alamo Exp., Inc. v. United States, 613 F.2d 96, 98 (5th Cir. 1980) (finding APA violation by Interstate Commerce Commission because it failed to comply with internal procedure). And most recently, the 5<sup>th</sup> Circuit reaffirmed its agreement with the Accardi doctrine in National Automobile Dealers Associations and Texas Automobile Dealers Association v. Federal Trade Commission, No. 24-60013 (5th Cir. Jan. 27, 2025) vacating an FTC rule for failing to follow the agency’s own promulgation procedures citing the Accardi doctrine.

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**I. Unlawful Detainee Transfers out of Corresponding Area of Responsibility (AOR) to Distant Locations Places Violations Within the Reach of the Accardi Doctrine as Arbitrary, Capricious and Abuse of Discretion Detainee Transfers.**

24. In 2009, John T. Morton, Assistant Secretary of ICE issued a memorandum in response to concerns from nongovernmental organizations asserting that detainee transfers by ICE were being made noncompliant with ICE National Detention Standards (“ICE-NDS”) creating a series of hardships for detainees and their families. The memorandum made several recommendations after finding numerous issues with

unintended adverse consequences. See Exhibit A, Letter Report: Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers (OIG-10-13); see also ICE Response to Office of Inspector General Draft Report: “Immigration and Customs Enforcement Policies and Procedures to Detainee Transfer” essentially concurring with Mr. Morton’s recommendations, also included in Exhibit A.

25. On January 4, 2012, following a series of further investigations and efforts to create a workable ICE NDS, Mr. Morton created such national standard for detainee transfers, entitled “U.S. Immigration and Customs Enforcement, Policy 11022.1: Detainee Transfers” issued on January 4, 2012, effective immediately and superseding all prior policies in this regard. Exhibit B. The Directive remains in full force and effect as of today (*see*, ICE website at <https://www.ice.gov/node/65009?utm.>).

26. Clause 5.2, of Policy 11022.1 denotes clear recognition that “Unless a transfer is deemed necessary by a FOD” ICE Supervisory Immigration Officer(s) will not transfer a detainee when there is documentation to support the following: a) Immediate family within the AOR; b) An attorney of record (Form G-28) . . . within the AOR; c) Pending or on-going removal proceedings . . . within the AOR; or d) Been granted bond or has been scheduled for a bond hearing.” Exhibit B, 5.2 “Transfer Determinations.” Clause 5.3 thereof provides a list of reasons of when a transfer of a detainee may be deemed necessary by a FOD or his or her designee. See *Detainee Transfers* 5.3 subclauses (a) through (g).

27. ICE did transferred Petitioner out of the New York AOR more than 1,500 miles away to a far distant location in El Paso, Texas despite ICE’s own published ICE NDS

providing that ICE Supervisory Officer(s) “will not” transfer a detainee when there is documentation to support keeping the detainee in the corresponding AOR reflected in the detention standards shown in Exhibit C. At the time when ICE transferred petitioner out of the AOR of New York City into the present detention facility in El Paso, ICE had abundant information that the transfer would be contrary to the ICE NDS Clause 5.2, et seq.

28. This transfer in violation of ICE’s own adopted nationwide policy was intended for the express benefit of the noncitizens such as petitioner and it necessarily resulted in the prejudice of the petitioner—amongst them, the loss of counsel of his choice to represent him before the IJ in removal proceedings in N.Y. City where he thus far permanently resides and has been residing ever since early 2022.

## **II. Unlawful Scheme of ICE Decision to Reinterpret Applicable Custody Statutes Converting Discretionary Detention into Mandatory Detention.**

29. On July 8, 2025 ICE announced a new policy guidance entitled Interim Guidance Regarding Detention Authority for Applications for Admission effective immediately, attached and marked as Exhibit C. This guidance is directed to all ICE employees nationwide and asserts that the DHS in conjunction with DOJ, have agreed to treat all noncitizens who are properly considered “applicants for admission” as defined in 8 U.S.C. §1225(a)(1) (unless they have been paroled under 8 U.S.C. §1182(d)(5) for humanitarian reasons) as being subject to mandatory detention under 8 U.S.C. §1225(b)(1)(B)(iii)(IV).

30. Section 1226(a) is the statute that applies to noncitizens who are “arrested and

detained” for potential removal from the United States. Section 1226(a) gives the government discretion to release these detainees on bond while their removal case is pending and most importantly, they are not consider to be under mandatory detention—whether under the expedited removal process of Section 1225 or through the regular removal process of Section 1229a. The longstanding practice of the Executive Branch agencies charged with interpreting and enforcing the INA considered noncitizens like petitioner who entered without inspection and were apprehended thereafter, as subject to Section 1226(a).

31. A noncitizen subject to Section 1226(a) is entitled to being released from ICE custody if ICE determines that the noncitizen is not dangerous to the community or pose a flight risk. 8 C.F.R. § 1236.1(c)(8). However, when ICE has already determined that the noncitizen’s release from custody presents no threat to the community and no risk of flight, any subsequent re-arrest by ICE is unlawful absent new or previously unavailable facts that would lead a reasonable adjudicator to conclude that the person’s liberty now poses a danger to the community or a substantial risk of non-appearance.

32. Federal courts nationwide have rejected ICE and EOIR’s new interpretation of the INA’s detention authorities and have adopted the same reading as the courts in Kostak v. Trump, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at \*6 (W.D. La. Aug. 27, 2025) (where the District Court relied on the reasoning in Jennings to differentiate “between the detention of arriving noncitizens who are seeking entry into the United States under Section 1225 and the detention of those who are already present in the United States under Section 1226.”) Id. at \*6; see also Rodriguez Vazquez v. Bostock,

779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025); Belsai D.S. v. Bondi, No. 25-cv-3682 (KMM/EMB) (D. Minn. Oct 01, 2025); Giron Reyes v. Lyons, No. C25-4048-LTS-MAR (N.D. Iowa Sep 23, 2025); Singh v. Lewis, Civil Action No. 4:25-cv-96-RGJ (W.D. Ky. Sep 22, 2025); Pizarro Reyes v. Raycraft, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); Sampiao v. Hyde, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); Jimenez v. FCI Berlin, Warden, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); Vasquez Garcia v. Noem, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); Zaragoza Mosqueda v. Noem, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); Francisco T. v. Bondi, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025) among hundreds of others nationwide.

**III. Petitioner is being unlawfully detained despite the fact that there has been no factual or lawful statutory changes warranting his rearrest since his initial parole release from ICE detention in 2022.**

33. The INA prescribes three (3) basic detention and custody rules for noncitizens in removal proceedings. First, 8 U.S.C. §1226 authorizes the detention of noncitizens in regular removal proceedings under 8 U.S.C. §1229a. For those noncitizens falling under this provision, Section 1226(a), they are generally entitled to being released by ICE or during a bond hearing before an IJ anytime at the outset of their detention. *See* 8 C.F.R. Sections 1003.19(a), and 1236.1(d), while those who have been arrested, charged with, or convicted of certain crimes are otherwise subject to a mandatory detention provision until their removal proceedings are concluded. Section 1226(c).

34. Second, the INA also provides for mandatory detention of noncitizens that are

subject to “expedited removal proceedings” under 8 U.S.C. §1225(b) or those other recent arrivals that are considered seeking admission and are referred to at 8 U.S.C. § 1225(b)(2), instead of their counterparts subject to Section 1229a. And under the third category, the INA also provides for detention and custody of noncitizens who have received a final order of removal, including individuals in withholding only proceedings under Section 1231(a)-(b).

35. This case only concerns the detention provisions of Sections 1226(a) and 1225(b)(2). The provisions of 8 U.S.C. §§1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

36. Following the enactment of the IIRIRA, the Executive Office for Immigration Review (EOIR) drafted new regulations explaining that, in general, people who entered the country “without inspection” were not considered detained under Section 1225 and that they were instead detained under Section 1226(a). *See Inspection and Expedited Removal of Noncitizens; Detention and Removal of Noncitizens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, noncitizens who are present without having been admitted or paroled (formerly referred to as noncitizens who entered without inspection) will be eligible for bond and bond redetermination”).

37. Thus, in the decades that followed the enactment of IIRIRA, most people who

entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* Section 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that Section 1226(a) simply “restates” the detention authority previously found at Section 1252(a)).

38. The respondents adopted the referenced statutory reinterpretation scheme nationwide on July 8, 2025. Exhibit C. The BIA shortly thereafter issued a published decision, Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025, Sept. 5, 2025) concluding that “Based on the plain language of [. . .] [INA] section 235(b)(2)(A) [. . .], 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” Accordingly, the referenced scheme became an administrative mandate that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for IJ bond hearings under 8 U.S.C. §1225(b)(2)(A).

39. Respondents deem the new policy to apply regardless of when a person is apprehended and affects those who have already resided in the United States for years, and even decades, contrary to the plain meaning of the words used in the statute in question, Section 1225(b). It is estimated that this novel scheme of an interpretation of

the INA would require a person's detention any time that immigration authorities arrest one of the millions of immigrants residing in the United States who entered without inspection and who has not since been admitted or paroled.

40. According to news reports, immigration officials within the Trump administration requested this new policy in response to Congress's recent appropriation of billions of dollars to expand the immigration system, given that the ICE will soon have capacity to detain more than twice as many people on any given day. Nationwide, pursuant to its July 8, 2025, policy, DHS is now asserting that all persons who entered without inspection are subject to mandatory detention under Section 1225(b)(2)(A). While some IJs in other immigration courts have continued to grant bond to people like Petitioner, consistent with its new policy, DHS also has begun filing Form EOIR-43, Notice of Service Intent to Appeal Custody Redetermination. This notice not only appeals any IJ decision granting bond but also triggers an automatic stay of the bond decision during the appeal process. Section 1003.19(i)(2). The "auto-stay" provision of the federal regulations at Section 1003.19(i)(2) prevents noncitizens from posting bond and being released even in jurisdictions where IJs have rejected DHS's unlawful reinterpretation of Section 1225(b)(2) and have granted bond.

41. However, federal courts nationwide have rejected this exact conclusion in other jurisdictions. *See e.g., Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Diaz Martinez v. Hyde*, No. CV 25-11613-

BEM, --- F. Supp. 3d ---- 2025 WL 2084238, at \*9 (D. Mass. July 24, 2025) (ordering release where noncitizen was re-detained based on ICE's assertion of detention authority under Section 1225(b)).

42. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court and other courts explained, the plain text of the statutory provisions demonstrates that Section 1226(a), not Section 1225(b), applies to people like Petitioner. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under Section 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." The text of Section 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. Section 1226(c)(1)(E). Congress recently enacted subparagraph (E) in the Laken Riley Act (LRA) to exclude certain noncitizens who entered without inspection from Section 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under Section 1182(6)(A), *i.e.*, persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a).

43. Moreover, as the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or

parole. By contrast, Section 1225(b) applies to people arriving at a PoE or those who entered the United States within the last two (2) years. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. Section 1225(b)(2)(A); see also Diaz Martinez, 2025 WL 2084238, at \*8 ("[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." (quoting Leng May Ma v. Barber, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." Jennings v. Rodriguez, 583 U.S. 281, 287 (2018).

44. Accordingly, the mandatory detention provision of Section 1225(b)(2) does not apply to people like Petitioner, who have already entered, were thereafter parole from detention and were residing in the United States at the time they were last apprehended. Petitioner therefore challenges his detention as a violation of the various INA provisions referenced above as well as a continuing violation of the Due Process Clause of the Fifth Amendment, including the national standards referenced above. Petitioner requests therefore that this Court grants him a Writ of Habeas Corpus and order Respondents to release him from ICE custody or issue an order to show cause.

45. There is no evidence in the record that hints, let alone, show that Petitioner is a threat to the national security of the US. Indeed, the Respondents are not so alleging either. There is no evidence in the record that establishes that he is a danger to the

community resulting from criminal convictions or arrests without convictions, and he has continuously without default been appearing each and every time he has been ordered by Respondents to so appear. Therefore there is no credible evidence in the record that would lead a trier-of-fact to conclude that Petitioner's presence in the US warrants his immediate arrest.

46. For each of these reasons, this Court should grant the writ and order Petitioner's immediate release. *See* 28 U.S.C. 2241(c)(3) (authorizing writ for people detained in violation of federal law). Should the Court nonetheless choose to address constitutional questions, it should also find that Petitioner's detention violates the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

47. Petitioner's detention violates the Fifth Amendment's protection for liberty, for at least two related reasons. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." Demore v. Kim, 538 U.S. 510, 527 (2003) (citing Zadvydas, 533 U.S. at 690). Where, as here, the government has no authority to deport Petitioner, detention is not reasonably related to its purpose.

48. Second, at a bare minimum, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." Zadvydas v. Davis, *supra* (Kennedy, J., dissenting) (emphasis added). Where federal law does not support to place

an individual in detention, their detention also violates the Due Process Clause.

**IV. ICE is required by its own guidelines to hold petitioner in its custody in the corresponding “area of responsibility” (AOR) in New York and its deliberate violations of these guidelines is correctable by an order returning him to the New York AOR.**

49. As thoroughly shown above, the Respondents have instituted administrative processing guidelines designed to prioritize transfer determinations that “are meant to minimize, to the extent possible, detainee transfers outside the area of responsibility and to provide cost savings to the agency,” and directing all employees of ICE and the DHS to follow when transferring detainees. *See Exhibit B.*

50. Notwithstanding, the clear violation of these guidelines and the Due Process Clause of the Fifth Amendment, the Respondents have in effect violated their own guidelines by unlawfully transferring Petitioner one thousand five hundred miles away from his family and from his administrative counsel from the New York district to a far distant forum of convenience for the Respondents.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **The Detention of Petitioner and Unlawful Transfer out of the Corresponding AOR of New York Violates the Due Process Clause of the Fifth Amendment**

51. All prior allegations of fact set forth in the preceding paragraphs are incorporated by reference.

52. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See*

generally Reno v. Flores, 507 U.S. 292 (1993); Zadvydas and Demore. Petitioner's detention violates the Due Process Clause because it is not rationally related to any immigration purpose; because it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioner; and because it lacks any statutory authorization.

### **COUNT TWO**

#### **The Unlawful Transfer Outside of the Corresponding AOR of New York Violates the Accardi Doctrine and Inherently the Due Process Clause of The Fifth Amendment**

53. All prior allegations of fact set forth in the preceding paragraphs are incorporated by reference.

54. A surreptitious transfer of Petitioner outside the corresponding AOR of New York to a far distant jurisdiction has unnecessarily but intentionally burdened Petitioner's ability to obtaining legal representation to enforce his statutory and constitutional rights in a far distant jurisdiction and has deprived him of a fair opportunity to experience the personal contacts with his wife and minor children while he is being held outside the New York AOR.

55. The unlawful transfer out of the corresponding AOR of New York is a violation of ICE's own U.S. Immigration and Customs Enforcement, Detainee Transfers Policy 11022.1 Directive containing nationally adopted specific guidelines with regards to detainee transfers and denies Petitioner of his rights under the Due Process Clause under the Fifth Amendment and the same is correctable by implication under the Accardi

*Doctrine* to ensure that ICE returns him to the proper AOR of New York.<sup>2</sup>

### **COUNT THREE**

#### **Violation of the Right to Due Process of Law to All Persons in the United States**

56. All prior allegations of fact set forth in the preceding paragraphs are incorporated by reference.

57. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Constitution, Amendment V. “Freedom from [unlawful] imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” Zadvydas 533 U.S. at 690. ICE detention of Petitioner violates his right to due process because he is being detained without lawful authority, infringing on his fundamental right to liberty.

### **COUNT FOUR**

#### **Violation of Section 1226(a) for Unlawful Deprivation of Statutory Right to Bond**

58. All prior allegations of fact set forth in the preceding paragraphs are incorporated by reference.

59. The reinterpretation of the detention provisions at Sections 1225(b)(1)(B)(iii)(IV)

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<sup>2</sup> See, e.g., Damus v. Nielsen, 313 F. Supp. 3d 317 (2018) United States District Court for the District of Columbia addressing a Parole Directive and finding it subject to the Accardi doctrine.

and 1226(a) does not apply to noncitizens residing in the United States who are subject to the specific grounds of inadmissibility involved, Sections 1182(a)(6)(C) and 1182(a)(7). As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended or re-apprehended and placed in regular removal proceedings by ICE under Section 1229a.

60. The detention of such noncitizens are governed by Section 1226(a) and are eligible for release on bond, unless they are subject to Section 1225(b)(1), Section 1226(c), or Section 1231. ICE has nonetheless adopted the aforementioned policy and practice of applying Section 1225(b)(2) to Petitioner unlawfully.

#### **COUNT FIVE**

#### **Violation of Section 1357(A)(2) for Warrantless Arrest Without Probable Cause of Flight Risk**

61. All prior allegations of fact set forth in the preceding paragraphs are incorporated by reference heretofore.

62. Respondent ICE rearrested Petitioner in the absence of a warrant and probable cause without making an individualized finding of flight risk (or danger to the community under the proper standard for administrative detention). This finding is an essential determination that is required for purposes of retaken into custody a noncitizen who was released years earlier after having been determined that he was not a flight risk as a satisfactory precondition to parole release.

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**COUNT SIX**

**Violation of 8 C.F.R. Section 287.8(c)(2)(ii) for  
Warrantless Arrest Without Probable Cause of Flight Risk**

63. All prior allegations of fact set forth in the preceding paragraphs are incorporated by reference heretofore.

64. Respondent ICE arrested Petitioner without a warrant and without “reason to believe” that he would “likely escape before a warrant can be obtained” in violation of its own rules at 8 C.F.R. Section 287.8(c)(2)(ii). The reason to believe standard meets the probable cause standard of the Fourth Amendment.

65. Arrests in violation of the applicable regulation is unlawful.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray that this Court grant the following relief:

1. Accept this Petition filed in forma pro se while Petitioner and his family are engaging private counsel to substitute him and appear by *pro hac vice* application on his behalf.
2. Assume jurisdiction over this matter.
3. Order Respondents to show cause why the writ should not be granted within three (3) days, and set a hearing on this Petition within five (5) days of the return, as required by 28 U.S.C. 2243.
4. Declare that Petitioner’s detention arising from the unlawful reinterpretation of statutes and federal regulations to the contrary violates the Due Process Clause of the Fifth Amendment.

5. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody.

6. Enjoin Respondents from continuing to detain Petitioner in violation of the agency's own guidelines, so long as he is in custody outside the AOR of the New York Field Office and from unlawfully transferring him to another jurisdiction that violates their own U.S. Immigration and Customs Enforcement, Detainee Transfers Policy 11022.1.

7. Grant such further relief as this Court deems just and proper.

Respectfully submitted,



Serge Khasaia

Petitioner in pro se

Dated: December 19, 2025

**Serge Khasaia**  
C/o National Immigration Appellate Project  
P. O. Box 3664  
Westlake Village, CA 91359-0664

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December 19, 2025

**U.S. District Clerk's Office**  
525 Magoffin Avenue, Suite 105  
El Paso, Texas 79901

Re: Original Initiating Petition for Writ of Habeas Corpus under 28 USC § 2241

Dear Clerk:

Please find enclosed the referenced petition for a writ of habeas corpus.

Please forward all correspondence in connection with this action to the mailing address above. After the case has been docketed, and pursuant to my review of the pro se manual, a request for permission to file electronically will be filed with this court.

Please also note that I will be paying the petition's filing fee of **\$5,00** shortly by separate mailing (if not included here).

Sincerely

  
Serge Khasaia  
Petitioner in pro se