

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS John Jairo Galvin Viancha</p> <p>(b) County of Residence of First Listed Plaintiff <u>Utah County</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Alec S. Bracken, Contigo Law, P.O. Box 249, Midvale, UT 84047, 801-980-9430</p>	<p>DEFENDANTS Kristi Noem et. al.</p> <p>County of Residence of First Listed Defendant <u>Prince George</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) Unknown</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input checked="" type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
 28 U.S.C. § 2241

Brief description of cause:
 Petitioner is currently in custody of ICE under an unlawful ICE hold

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE: 01.22.2026 SIGNATURE OF ATTORNEY OF RECORD: /s/ ALEC S. BRACKEN

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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Phone: 801-980-9430
Email: alec@contigo.law
Attorney for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

John Jairo Galvin Viancha,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

EVAN TJADEN, in his official capacity as
Acting ICE Field Deputy Officer Director,

Mike Smith, in his official capacity as the
warden of the Utah County Jail,

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: 2:26-cv-59

VERIFIED PETITION FOR HABEAS
CORPUS AND DECLARATORY ACTION

IMMIGRATION HABEAS CASE

INTRODUCTION

1
2 1. Petitioner is a noncitizen lawfully present in the United States in F-1 nonimmigrant student
3 status, admitted for duration of status (“D/S”), and currently maintaining valid status. He has not
4 violated the terms of his admission, has not overstayed, and has not engaged in conduct rendering him
5 removable under the Immigration and Nationality Act (“INA”). Notwithstanding this lawful status,
6 Petitioner is presently subject to an ICE detainer, which operates to restrain his liberty and to mandate
7 his continued and imminent custody by federal immigration authorities.
8

9 2. Federal immigration detention authority is strictly statutory. ICE may detain a noncitizen
10 only where Congress has affirmatively authorized detention under the Immigration and Nationality
11 Act. For noncitizens present within the United States, detention authority generally arises under 8
12 U.S.C. § 1226, which permits arrest and detention of an alien “pending a decision on whether the alien
13 is to be removed.” That authority presupposes that the government can lawfully initiate removal
14 proceedings and articulate a cognizable ground of removability under 8 U.S.C. § 1227. Where no such
15 ground exists, detention exceeds statutory authority. Civil immigration detention is not punitive and
16 may be imposed only to serve legitimate regulatory purposes—most commonly, ensuring appearance
17 at removal proceedings or effectuating removal itself.
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20 3. Conversely, ICE lacks authority to detain individuals who are lawfully present, maintaining
21 valid immigration status, and not removable under 8 U.S.C. § 1227. Arrest alone does not trigger
22 detention authority, nor do pending criminal charges. Detention under 8 U.S.C. § 1226 must be tethered
23 to an actual or imminent removal determination; it cannot be justified as a generalized investigatory
24 tool or as a precaution untethered to removability. Where the government cannot plausibly charge
25 removability, continued detention—or the imposition of an immigration detainer that mandates future
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1 custody—is ultra vires, arbitrary, and inconsistent with the limited detention authority Congress
2 conferred.

3 4. Under 8 U.S.C. § 1227, a noncitizen who has been lawfully admitted to the United States
4 may be ordered removed only if the government can show that the individual falls within one of the
5 classes of deportable aliens identified by Congress. 8 U.S.C. § 1227(a) provides that an alien who, after
6 admission, engages in specific conduct—such as violating the terms of their nonimmigrant status,
7 committing specified criminal offenses, or engaging in conduct constituting a crime involving moral
8 turpitude, an aggravated felony, or a crime of domestic violence, stalking, or child abuse—may be
9 subject to removal.
10

11 5. For lawfully admitted noncitizens like Petitioner, mere arrest or pending criminal charges do
12 not independently make them removable. To trigger removal authority under 8 U.S.C. § 1227, the
13 charged conduct must fall squarely within one of the enumerated deportability categories *and* reach the
14 level of conduct that the statute and controlling case law recognize as a ground for removal. Absent
15 such a statutory basis, the Attorney General has no legal authority to detain or remove a noncitizen on
16 that ground.
17

18 6. Petitioner was arrested on state criminal charges in Utah. On January 7, 2026, Petitioner was
19 granted bail in the amount of \$1,380. Those charges—even if they were to result in convictions—do
20 not constitute aggravated felonies, crimes involving moral turpitude, crimes of domestic violence, or
21 any other offense rendering Petitioner removable under 8 U.S.C. § 1227. Nor do the charges trigger
22 mandatory detention under the Immigration and Nationality Act. As a matter of law, ICE lacks statutory
23 authority to arrest or detain Petitioner based on the charged conduct.
24

25 7. Nevertheless, ICE has lodged and continues to maintain an immigration detainer against
26 Petitioner. That detainer ensures that Petitioner will not be released from state custody and that, upon
27
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1 any release, he will be held for up to forty-eight hours before being transferred into immigration
2 custody. 8 C.F.R. § 287.7(d). As a result, Petitioner is deprived of his liberty solely because of federal
3 immigration action, despite the absence of any lawful basis for removal or immigration detention. ICE
4 lodged the detainer solely on the basis of Petitioner's arrest and pending state charges, without
5 identifying any charge of removability under 8 U.S.C. § 1227 or any violation of Petitioner's
6 nonimmigrant status.
7

8 8. Under longstanding Supreme Court precedent, habeas corpus relief is available whenever the
9 government imposes a significant restraint on liberty, even if the petitioner is not yet in physical federal
10 custody. *Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (finding that parole after release from custody
11 constituted "confinement" for the purpose of a habeas petition); *Hensley v. Municipal Court*, 411 U.S.
12 345, 351 (1973) (restraints imposed on petitioner constituted "custody" for the purposes of a habeas
13 petition); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (a habeas petition need not be limited to
14 release from physical custody). The ICE detainer here constitutes such a restraint. It forecloses
15 Petitioner's release from criminal custody, mandates his imminent transfer to ICE custody, and subjects
16 him to civil detention that is neither authorized by statute nor justified by any legitimate immigration
17 purpose.
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20 9. Civil immigration detention must be tethered to statutory authority and must serve a valid
21 regulatory objective. Where, as here, the government lacks authority to detain because the noncitizen
22 is not removable and maintains valid immigration status, continued restraint becomes arbitrary, ultra
23 vires, and unconstitutional. The ICE detainer functions as a mechanism of unlawful civil confinement,
24 imposed without process and without legal justification. ICE has not initiated removal proceedings
25 against Petitioner and has identified no statutory basis upon which such proceedings could lawfully be
26 commenced.
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1 10. Petitioner therefore seeks a writ of habeas corpus under 28 U.S.C. § 2241 declaring the ICE
2 detainer unlawful and ordering Respondents to immediately withdraw and remove the detainer, thereby
3 eliminating the unlawful restraint on Petitioner’s liberty and restoring him to the position he would
4 occupy absent ICE’s unauthorized intervention.

5
6 **JURISDICTION AND VENUE**

7 11. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331
8 because Petitioner raises claims arising under the Constitution and laws of the United States, including
9 28 U.S.C. § 2241 and Title 8 of the United States Code. This Court has authority to grant habeas relief
10 where a petitioner is in custody in violation of the Constitution or laws of the United States. 28 U.S.C.
11 § 2241(c)(3). This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment
12 Act, 28 U.S.C. §§ 2201–2202. Although the Declaratory Judgment Act does not independently confer
13 subject-matter jurisdiction, jurisdiction exists under 28 U.S.C. § 1331 because Petitioner’s claims arise
14 under the Constitution and laws of the United States, including Title 8 of the United States Code and
15 the Administrative Procedure Act. An actual, ongoing case or controversy exists between the parties
16 regarding the legality of the ICE detainer and the validity of 8 C.F.R. § 287.7(d). Declaratory relief
17 will clarify the parties’ rights and obligations, resolve uncertainty regarding Respondents’ asserted
18 detention authority, and provide effective prospective relief in conjunction with Petitioner’s request for
19 habeas relief.
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22 12. Petitioner satisfies the “in custody” requirement of 28 U.S.C. § 2241 because the ICE
23 detainer lodged against him imposes a present and significant restraint on his liberty. The detainer
24 prevents his release from state custody and mandates his continued and imminent detention by federal
25 immigration authorities. A petitioner need not be in physical federal custody to invoke habeas
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1 jurisdiction where government action imposes restraints that significantly confine liberty. *See Jones v.*
2 *Cunningham*, 371 U.S. 236, 243 (1963); *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

3 13. This Court also has authority under the All Writs Act, 28 U.S.C. § 1651(a), to issue all writs
4 necessary or appropriate in aid of its jurisdiction, including orders directing federal officials to cease
5 unlawful restraints on liberty.
6

7 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because Respondents are
8 officers or agencies of the United States acting in their official capacities, Petitioner is confined within
9 this District as a result of the challenged detainer, and the events giving rise to this action occurred
10 within this District.
11

12 15. No exhaustion of administrative remedies is required before seeking habeas relief under 28
13 U.S.C. § 2241, particularly where, as here, Petitioner challenges the government's statutory authority
14 to impose the detention and where exhaustion would be futile. *See McCarthy v. Madigan*, 503 U.S.
15 140, 147–48 (1992); *Zadvydas*, 533 U.S. at 688.
16

17 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

18 16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
19 (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
20 If an OSC is issued, the Court must require Respondents to file a return “within three days unless for
21 good cause additional time, not exceeding twenty days, is allowed.” *Id.*
22

23 17. Courts have long recognized the significance of the habeas statute in protecting individuals
24 from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ
25 known to the constitutional law of England, affording as it does a swift and imperative remedy in all
26 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).
27
28

PARTIES

PETITIONER

18. Petitioner is a citizen and national of Colombia who is lawfully present in the United States in F-1 nonimmigrant student status, admitted for duration of status (“D/S”), and currently maintaining valid status.

19. Petitioner is presently confined in state criminal custody in Utah on pending criminal charges and is subject to an active immigration detainer lodged by Immigration and Customs Enforcement, which prevents his release from custody.

RESPONDENTS

20. Respondent Kristi Noem (Secretary Noem) is the Secretary of the Department of Homeland Security, the parent agency of Immigration and Customs Enforcement which responsible for the ICE detainer. Respondent Kristi Noem is sued in her official capacity as an agent of the United States Government.

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

22. Respondent Evan Tjaden is the Acting Deputy Field Office Director of Immigration and Customs Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees in the Utah District Court. Respondent Officer Tjaden is sued in his official capacity as an agent of the United States Government.

23. Respondent Mike Smith is the warden of the Utah County Prison and thus has custody over the Petitioner. Respondent Mike Smith is sued in his official capacity as an agent of the United States.

1 24. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for
2 ICE detainees.

3 **LEGAL FRAMEWORK**

4 25. Federal immigration detention is a form of civil, nonpunitive confinement and is lawful
5 only to the extent expressly authorized by Congress. The Supreme Court has repeatedly emphasized
6 that immigration detention must be closely tethered to a legitimate regulatory purpose and may not be
7 imposed arbitrarily or without statutory authorization. Detention authority must therefore be grounded
8 in, and limited by, the provisions of Title 8 of the United States Code.

9
10 26. For noncitizens present within the United States, detention authority generally arises under
11 8 U.S.C. § 1226, which permits the arrest and detention of an alien “pending a decision on whether the
12 alien is to be removed.” Section 1226 presupposes the existence of a lawful removal inquiry and does
13 not confer free-floating authority to detain individuals absent a plausible basis for removability. Where
14 the government cannot lawfully pursue removal, detention under § 1226 exceeds statutory authority.

15
16 27. Whether a lawfully admitted noncitizen may be removed is governed by 8 U.S.C. § 1227,
17 which sets forth the exclusive grounds of deportability. Under that provision, a noncitizen may be
18 ordered removed only if the government can establish that the individual falls within one of the
19 categories of deportable aliens identified by Congress. Absent applicability of a ground enumerated in
20 § 1227, the government lacks authority to remove the noncitizen and, correspondingly, lacks authority
21 to detain the noncitizen for purposes of removal.

22
23 28. Importantly, arrest, investigation, or pending criminal charges do not themselves create
24 removability under § 1227. Detention authority under § 1226 cannot be justified by speculation,
25 investigative convenience, or the mere possibility that future events might render a noncitizen
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1 removable. Civil immigration detention must instead be tied to an actual or imminent removal
2 determination authorized by statute.

3 29. Federal courts retain jurisdiction under 28 U.S.C. § 2241 to review the legality of
4 immigration detention and other restraints on liberty. Habeas corpus relief is available whenever
5 government action imposes a significant restraint on liberty, even if the petitioner is not yet in physical
6 federal custody. The “in custody” requirement is satisfied where the challenged government action
7 prevents release from custody or mandates imminent detention by federal authorities.
8

9 30. Where immigration officials act *ultra vires*—by detaining or restraining an individual
10 without statutory authority—habeas relief is appropriate to remedy the unlawful restraint. Courts may
11 order the cessation of unlawful detention practices and the removal of mechanisms, such as
12 immigration detainers, that impose unauthorized restraints on liberty.
13

14 31. A noncitizen who has been lawfully admitted to the United States may be removed only if
15 the government can establish that the individual falls within one of the exclusive grounds of
16 deportability set forth by Congress in 8 U.S.C. § 1227. That statute governs removal of admitted
17 noncitizens and reflects Congress’s deliberate choice to limit removability to specific, enumerated
18 categories of conduct. Absent applicability of a ground listed in § 1227, a lawfully admitted noncitizen
19 is not subject to removal.
20

21 32. The grounds of deportability in 8 U.S.C. § 1227(a) include, among other things, (1)
22 violations of immigration status or conditions of admission; (2) convictions for certain specified
23 criminal offenses, such as crimes involving moral turpitude, aggravated felonies, controlled substance
24 offenses, or crimes of domestic violence; and (3) limited security-related or document-fraud grounds.
25 Importantly, many of these provisions require not merely conduct, but a conviction, a particular *mens*
26 *rea*, or the imposition of a sentence of sufficient length before removability may attach. Congress thus
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1 chose to make removability depend on concrete, legally defined events—not on speculation or arrest
2 alone.

3 33. Mere arrest, investigation, or pending criminal charges do not render a lawfully admitted
4 noncitizen removable under 8 U.S.C. § 1227. The statute does not authorize removal based on unproven
5 allegations or the possibility of future convictions. Instead, removability attaches only when the
6 government can plead and prove that the noncitizen’s conduct squarely satisfies the elements of a
7 deportability ground enumerated in § 1227. Where the charged conduct—even if resulting in
8 conviction—would not fall within one of those categories, the noncitizen remains lawfully present and
9 not subject to removal.
10

11 34. Because removability under 8 U.S.C. § 1227 is a necessary predicate to civil immigration
12 detention for purposes of removal, the absence of a viable deportability ground forecloses not only
13 removal itself but also detention premised on effectuating removal. In such circumstances, continued
14 restraint on liberty is untethered to statutory authority and exceeds the limited powers Congress has
15 conferred on immigration officials.
16

17 35. A lawfully admitted noncitizen may be removable based on a crime involving moral
18 turpitude (“CIMT”) only if the offense falls within the narrow categories specified in 8 U.S.C. §
19 1227(a)(2)(A). The statute does not define “moral turpitude,” but courts and the Board of Immigration
20 Appeals have long recognized that a CIMT generally requires inherently base, vile, or depraved
21 conduct, accompanied by a sufficiently culpable mental state, such as intent to harm, fraud, or
22 conscious disregard of a substantial and unjustifiable risk.
23

24 36. Not all crimes—even serious ones—qualify as CIMTs. Offenses that criminalize negligent
25 or reckless conduct, simple assault, or conduct lacking an element of intent to injure or defraud
26 generally do not constitute CIMTs. Likewise, crimes that can be committed by minimal or non-
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1 depraved conduct, or that encompass a broad range of behavior including non-turpitudinous acts, fall
2 outside the CIMT category. The analysis turns on the minimum conduct criminalized by the statute,
3 not the facts alleged in a particular case.

4 37. Importantly, arrest or pending charges do not establish removability under 8 U.S.C. §
5 1227(a)(2)(A). Even where a conviction is required, removability attaches only if the elements of the
6 offense, as defined by statute, categorically match a CIMT. Where the statute of conviction permits
7 conviction for conduct that is not inherently morally turpitudinous, the offense cannot serve as a basis
8 for removal.
9

10 38. A separate and more severe ground of removability applies to noncitizens convicted of an
11 aggravated felony, as defined in 8 U.S.C. § 1101(a)(43) and referenced in 8 U.S.C. § 1227(a)(2)(A)(iii).
12 Congress defined aggravated felonies narrowly and by reference to specific categories of crimes, many
13 of which require not only particular elements but also the imposition of a minimum term of
14 imprisonment of at least one year.
15

16 39. For example, an offense qualifies as an aggravated felony “crime of violence” only if it both
17 meets the statutory definition of a crime of violence and results in a sentence of one year or more.
18 Where the maximum possible sentence is less than one year, or where the statute permits conviction
19 for conduct involving recklessness rather than intentional use of force, the offense cannot qualify as an
20 aggravated felony under Title 8.
21

22 40. Similarly, fraud-based aggravated felonies require proof that the offense involved fraud or
23 deceit and that the loss to the victim exceeded \$10,000. Congress thus made clear that not every fraud-
24 related or property offense rises to the level of an aggravated felony; only those meeting the specific
25 statutory thresholds may serve as a basis for removal.
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1 41. Beyond CIMTs and aggravated felonies, 8 U.S.C. § 1227(a)(2) enumerates additional
2 criminal grounds of removability, including certain controlled substance offenses, firearms offenses,
3 and crimes of domestic violence, stalking, or child abuse. These grounds are likewise narrowly defined
4 and require satisfaction of specific statutory elements.

5
6 42. For example, a “crime of domestic violence” under 8 U.S.C. § 1227(a)(2)(E) must qualify
7 as a crime of violence under federal law and must involve a qualifying domestic relationship. Where a
8 statute permits conviction based on reckless conduct or does not require the use of violent force, it does
9 not categorically qualify. Congress did not authorize removal based on generalized allegations of
10 domestic conduct or on offenses that do not meet the precise statutory definitions.

11
12 43. Crucially, none of these provisions authorize removal—or detention for purposes of
13 removal—based solely on pending criminal charges. Removability attaches only where the government
14 can plead and prove that the offense of conviction squarely fits within one of the enumerated categories
15 in 8 U.S.C. § 1227(a)(2).

16
17 **PROCEDURAL AND FACTUAL BACKGROUND**

18 44. Petitioner is a citizen and national of Colombia who was lawfully admitted to the United
19 States in F-1 nonimmigrant student status and admitted for duration of status (“D/S”). Petitioner has
20 continuously maintained valid F-1 status and has not violated the terms of his admission.

21 45. On or about January 2026, Petitioner was arrested in Utah on state criminal charges that
22 remain pending. Petitioner has not been convicted of any offense arising from those charges. On
23 January 7, 2026, Petitioner was granted a bail in the amount of \$1,380.
24

25 46. The charged conduct does not constitute an aggravated felony, a crime involving moral
26 turpitude, a crime of domestic violence, or any other offense that would render Petitioner removable
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1 under 8 U.S.C. § 1227, even if the charges were to result in conviction. Nor do the charges trigger
2 mandatory detention under any provision of Title 8.

3 47. Following Petitioner's arrest, ICE lodged an immigration detainer with the Utah County
4 Jail. ICE did so solely on the basis of Petitioner's arrest and pending criminal charges and without
5 identifying any statutory ground of removability under 8 U.S.C. § 1227 or any violation of Petitioner's
6 nonimmigrant status.
7

8 48. The ICE detainer prevents Petitioner's release from state custody and mandates that, upon
9 any release, Petitioner be held for up to forty-eight hours for transfer to ICE custody pursuant to 8
10 C.F.R. § 287.7(d). As a result, Petitioner remains confined and subject to imminent federal detention
11 despite the absence of any lawful basis for removal or immigration detention.
12

13 49. ICE has not issued a Notice to Appear or otherwise initiated removal proceedings against
14 Petitioner. ICE has also not articulated any statutory authority under Title 8 that would permit
15 Petitioner's arrest or detention for purposes of removal.
16

17 50. Petitioner remains in custody solely as a result of the ICE detainer and the resulting restraint
18 on his liberty. But for the detainer, Petitioner would be eligible for release from state custody under
19 applicable state law.

20 51. Because the ICE detainer imposes a present and ongoing restraint on Petitioner's liberty
21 without statutory authorization, Petitioner seeks habeas relief under 28 U.S.C. § 2241 to terminate the
22 unlawful restraint and restore him to the position he would occupy absent ICE's unauthorized action.
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ARGUMENTS

I. PETITIONER IS “IN CUSTODY” FOR PURPOSES OF HABEAS REVIEW BECAUSE THE ICE DETAINER IMPOSES A PRESENT RESTRAINT ON HIS LIBERTY

52. Habeas jurisdiction under 28 U.S.C. § 2241 extends to any situation in which the government imposes a significant restraint on liberty, even if the petitioner is not yet in physical federal custody. The Supreme Court has repeatedly rejected a narrow conception of custody and has held that habeas relief is available where government action places an individual under a present restraint that is both concrete and inevitable. See *Hensley v. Mun. Ct.*, 411 U.S. 345, 351 (1973); *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

53. Here, Petitioner is subject to an active ICE detainer. That detainer mandates that, upon release from state custody, Petitioner will be seized, held for up to 48 hours, and transferred to ICE custody. This is not speculative or hypothetical; it is automatic, imminent, and certain. As a result, Petitioner is unable to secure release from state custody on otherwise-available conditions and remains incarcerated solely because of federal immigration action.

54. Courts have consistently recognized that immigration detainers impose sufficient restraints on liberty to satisfy the “in custody” requirement where, as here, the detainer has a direct and immediate effect on the petitioner’s freedom. See, e.g., *Gonzales v. ICE*, 975 F.3d 788, 806–07 (9th Cir. 2020) (detainer constituted sufficient restraint where it prevented release); *Simmonds v. INS*, 326 F.3d 351, 354–55 (2d Cir. 2003). The ICE hold operates as a present restraint on Petitioner’s liberty and therefore places him squarely within this Court’s habeas jurisdiction.

55. Moreover, in the current immigration enforcement climate, the ICE detainer not only prevents Petitioner’s release outright but also chills his ability to post bond or otherwise seek release from custody. Recent enforcement policies have drastically reduced the availability of bond hearings

1 and opportunities for release, leaving many detained noncitizens effectively unable to obtain
2 conditional release even where they would otherwise qualify. Courts and advocacy groups have noted
3 that ICE and the Department of Justice have pursued policies limiting bond eligibility and resisting
4 compliance with bond hearings, resulting in prolonged detention for individuals who otherwise pose
5 minimal risk or have strong community ties. *See, e.g.*, Federal Court Affirms Nationwide Class Has
6 Right to Bond Hearings, ACLU, [https://www.aclu.org/press-releases/federal-court-affirms-](https://www.aclu.org/press-releases/federal-court-affirms-nationwide-class-has-right-to-bond-hearings)
7 [nationwide-class-has-right-to-bond-hearings](https://www.aclu.org/press-releases/federal-court-affirms-nationwide-class-has-right-to-bond-hearings) (Dec. 22, 2025) (noting rulings affirming bond rights
8 after policies sought to restrict them).

9
10 56. Detention conditions in federal immigration custody have also been widely documented to
11 involve inhumane treatment, medical neglect, and punitive confinement practices that create real
12 physical and psychological hardships for detainees, further discouraging noncitizens from exposing
13 themselves to ICE custody. *See* ACLU, *ICE and Border Patrol Abuses*,
14 <https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses> (describing civil
15 liberties harms, family separation, and community fear). Collectively, these conditions and policy
16 trends make the restraint imposed by the ICE detainer not merely a temporary procedural hurdle, but a
17 significant and foreseeable hardship that weighs heavily on Petitioner's liberty interests and his
18 practical ability to seek release through bond.

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21 **II. ICE LACKS STATUTORY AUTHORITY UNDER 8 U.S.C. § 1227 TO DETAIN**
22 **PETITIONER BECAUSE HIS CHARGES—EVEN IF RESULTING IN**
23 **CONVICTION—DO NOT RENDER HIM REMOVABLE**

24 57. ICE's authority to detain noncitizens inside the United States is not plenary. It must be
25 tethered to a lawful ground of removability authorized by Congress. 8 U.S.C. § 1227 enumerates the
26 exclusive categories of conduct that render a noncitizen removable after admission.

1 58. Petitioner is lawfully present in the United States in F-1 nonimmigrant status and admitted
2 for duration of status. He has not violated the terms of that status. Critically, none of the charges
3 pending against him—nor any plausible conviction under those statutes—would trigger removability
4 under 8 U.S.C. § 1227.

5
6 **A. Assault Under Utah Code § 76-5-102 Does Not Render Petitioner Removable**

7 59. As charged, Petitioner faces class B misdemeanor assault—an offense that categorically
8 fails to meet any removability ground under 8 U.S.C. § 1227.

9 1. Not an aggravated felony

10 60. An aggravated felony “crime of violence” requires both that the offense meet the federal
11 definition of a crime of violence and that it result in a term of imprisonment of at least one year. 8
12 U.S.C. § 1101(a)(43)(F). Utah class B misdemeanors carry a maximum sentence of six months, and
13 class A misdemeanors carry a maximum sentence of 364 days. Accordingly, no conviction under Utah
14 Code § 76-5-102 can qualify as an aggravated felony.

15
16 2. Not a categorical crime involving moral turpitude

17 61. Simple assault under § 76-5-102(1), including reckless conduct causing bodily injury or
18 creating a risk of bodily injury, does not categorically involve moral turpitude. Tenth Circuit precedent
19 confirms that reckless assault without serious bodily injury does not qualify as a crime involving moral
20 turpitude. *See Birhanu v. Wilkinson*, 990 F.3d 1242, 1255 (10th Cir. 2021).

21
22 3. Not a crime of domestic violence

23 62. While 8 U.S.C. § 1227(a)(2)(E)(i) includes crimes of domestic violence as a ground of
24 removability, the Utah assault statute is overbroad and divisible. The minimum conduct criminalized—
25 particularly under § 76-5-102(1)(b)—does not require the intentional use of violent force as defined by
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1 federal law. *See Leocal v. Ashcroft*, 543 U.S. 1 (2004); *United States v. Zuniga-Soto*, 527 F.3d 1110,
2 1124 (10th Cir. 2008).

3 63. Accordingly, ICE cannot lawfully detain Petitioner based on the assault charge under any
4 theory recognized by 8 U.S.C. § 1227.

5
6 **B. Criminal Mischief Under Utah Code § 76-6-106 Does Not Render Petitioner
Removable**

7 64. Petitioner's criminal mischief charge involves alleged pecuniary loss under \$500 and is
8 charged as a class B misdemeanor.

9
10 1. Not an aggravated felony

11 65. There is no fraud or deceit element triggering 8 U.S.C. § 1101(a)(43)(M), and no possible
12 sentence of one year or more. As such, the offense cannot constitute an aggravated felony.

13
14 2. Not a crime involving moral turpitude

15 66. Property damage offenses lacking fraudulent intent, malicious intent, or a substantial risk
16 of serious bodily harm are not crimes involving moral turpitude. The minimum conduct criminalized
17 under § 76-6-106(2)(c) includes non-malicious damage to property and lacks the "evil or depraved
18 intent" required for moral turpitude.

19
20 3. Not a crime of violence

21 67. Several subsections of § 76-6-106 permit conviction based on reckless conduct, which
22 categorically falls outside the federal definition of a crime of violence. *See Zuniga-Soto*, 527 F.3d at
23 1124.

24 68. Thus, even if Petitioner were convicted as charged, no ground of removability under 8
25 U.S.C. § 1227 would attach, and ICE lacks statutory authority to detain him for purposes of removal.
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1 **III. THE ICE DETAINER IS ARBITRARY, ULTRA VIRES, AND VIOLATES DUE**
2 **PROCESS**

3 69. Because Petitioner is not removable under INA § 237, ICE’s decision to lodge and maintain
4 a detainer is ultra vires—beyond its statutory authority. The Constitution does not permit civil detention
5 untethered to lawful statutory power. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

6 70. Civil immigration detention must serve a legitimate regulatory purpose, such as ensuring
7 appearance at removal proceedings. Here, no such purpose exists. ICE cannot initiate removal
8 proceedings against Petitioner because no charge of removability is legally viable. The detainer
9 therefore serves no lawful function and exists solely as a mechanism of arbitrary confinement.
10

11 71. Moreover, the detainer deprives Petitioner of liberty without any process whatsoever. There
12 has been no probable cause determination, no custody review, and no individualized assessment of
13 removability. This violates the Fifth Amendment’s guarantee that no person shall be deprived of liberty
14 without due process of law. *Zadvydas*, 533 U.S. at 693.
15

16 **IV. THE COURT HAS AUTHORITY TO ORDER REMOVAL OF THE ICE**
17 **DETAINDER AS NECESSARY HABEAS RELIEF**

18 72. Federal courts possess broad remedial authority in habeas proceedings to order relief
19 necessary to cure unlawful custody. 28 U.S.C. § 2243. Where the restraint on liberty arises from an
20 ICE detainer that is itself unlawful, courts may order its removal. See *Gonzales*, 975 F.3d at 826–27.

21 73. Because the ICE hold is the sole federal restraint preventing Petitioner’s release, and
22 because that restraint is unsupported by statute or constitution, the appropriate remedy is an order
23 directing Respondents to immediately withdraw the detainer and refrain from re-lodging it absent a
24 lawful ground of removability.
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1 **V. 8 C.F.R. § 287.7(d) IS ULTRA VIRES AS APPLIED HERE BECAUSE IT**
2 **PURPORTS TO AUTHORIZE “HOLD” DETENTION WITHOUT STATUTORY**
3 **AUTHORIZATION**

4 74. An agency “literally has no power to act ... unless and until Congress confers power upon
5 it.” Where an agency regulation purports to authorize custody or detention beyond what Congress has
6 permitted, it is ultra vires and must be set aside as “in excess of statutory jurisdiction, authority, or
7 limitations.” *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 374 (1986); 5 U.S.C. §
8 706(2)(C). Here, the regulation ICE invokes to justify continued custody by a criminal justice agency—
9 8 C.F.R. § 287.7(d)—exceeds Congress’s authorization at least as applied to Petitioner.

10 75. 8 C.F.R. § 287.7(d) provides that when ICE issues a detainer, the receiving agency “shall
11 maintain custody ... for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays,”
12 to permit ICE to assume custody. But Congress has not granted ICE a general, free-floating power to
13 command state or local officials to hold individuals post-release based solely on arrest or pending
14 charges, untethered to any charged removability ground or any pending decision “whether the alien is
15 to be removed.” 8 U.S.C. § 1226(a).

16 76. To the contrary, the only provision in Title 8 that expressly addresses the issuance of
17 immigration detainers—8 U.S.C. § 1357(d)—is narrowly limited to detainers “for violation of
18 controlled substances laws,” and it is triggered only where an alien is arrested for a controlled-substance
19 offense and the arresting official has reason to believe the individual is not lawfully present (and other
20 statutory steps are followed). That limited statutory authorization underscores the absence of
21 congressional approval for the far broader detainer regime reflected in 8 C.F.R. § 287.7(d), particularly
22 when applied to a lawfully present F-1 student arrested on non-drug charges and for whom ICE has
23 identified no plausible charge of removability under 8 U.S.C. § 1227.
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1 77. The Ninth Circuit has recognized the significance of § 1357(d)'s narrow scope in the
2 detainer context, observing that if § 1357(d) were the sole source of authorization for detainers,
3 plaintiffs could argue that ICE acts ultra vires whenever it issues a detainer for an individual "who was
4 not arrested for a controlled substance offense." *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d
5 788 (9th Cir. 2020). This case presents that precise problem: Petitioner is not alleged to have been
6 arrested for any controlled-substance offense, and ICE has not initiated removal proceedings or
7 identified a legally viable basis for removability.

9 78. Moreover, 8 C.F.R. § 287.7(d) purports to require continued custody ("shall maintain
10 custody") even in circumstances where immigration detention authority under Title 8 is not lawfully
11 triggered—i.e., where ICE has not commenced removal proceedings, has not articulated a cognizable
12 removability ground under 8 U.S.C. § 1227, and cannot plausibly claim detention authority "pending
13 a decision on whether the alien is to be removed." 8 U.S.C. § 1226(a). In that posture, the regulation's
14 purported authorization of continued detention functions as an end-run around the statutory limits
15 Congress imposed on immigration custody.
16

17 79. At minimum, § 287.7(d) is invalid as applied where, as here, the detainer is lodged solely
18 on arrest and pending charges, without any identified statutory removability basis and outside the
19 narrow controlled-substance detainer authorization in 8 U.S.C. § 1357(d). Because the detainer and the
20 ensuing hold rest on an ultra vires regulation rather than a valid statute, Petitioner's continued restraint
21 is "in violation of the Constitution or laws ... of the United States," and habeas relief is warranted. 28
22 U.S.C. § 2241(c)(3).
23

24 80. Finally, even putting aside the regulation's validity, courts have rejected the notion that 8
25 C.F.R. § 287.7 compels state or local compliance as a mandatory command. *See Galarza v. Szalczyk*,
26 745 F.3d 634 (3d Cir. 2014) (concluding 8 C.F.R. § 287.7 does not compel state or local law-
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1 enforcement agencies to detain individuals). That practical reality underscores the point: the only
2 “authority” for Petitioner’s continued detention beyond otherwise-available release is an ICE detainer
3 issued without statutory removability grounding—precisely the kind of unauthorized restraint habeas
4 exists to remedy.

5
6 **CAUSES OF ACTION**

7 **1. FIRST CAUSE OF ACTION:**
8 **Violation of Immigration and Nationality Act**

9 81. Petitioner incorporates and realleges the allegations above.

10 82. The Immigration and Nationality Act strictly limits civil immigration detention authority.
11 For a noncitizen present in the United States, detention authority generally arises only under 8 U.S.C.
12 § 1226, which authorizes arrest and detention “pending a decision on whether the alien is to be
13 removed.”

14 83. Detention under 8 U.S.C. § 1226 necessarily presupposes that the government can lawfully
15 pursue removal by charging a cognizable ground of deportability under 8 U.S.C. § 1227. Where the
16 government cannot plausibly charge removability under 8 U.S.C. § 1227, detention is not “pending a
17 decision on whether the alien is to be removed” and exceeds the statutory authority Congress conferred.
18

19 84. Petitioner is lawfully present in the United States in valid F-1 nonimmigrant status, admitted
20 for duration of status. He is not removable under 8 U.S.C. § 1227, and the pending state charges—
21 even if resulting in conviction—do not render him removable under any provision of 8 U.S.C. §
22 1227(a).
23

24 85. ICE has nevertheless lodged and maintained an immigration detainer against Petitioner that
25 prevents his release and mandates his continued confinement and imminent transfer into immigration
26 custody. This restraint is imposed solely on the basis of arrest and pending charges, without any
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1 identified, legally viable basis for removability under 8 U.S.C. § 1227 and without any pending removal
2 proceedings.

3 86. Because Petitioner is not removable under 8 U.S.C. § 1227, ICE lacks statutory authority
4 under 8 U.S.C. § 1226 to detain Petitioner for purposes of removal. The detainer and resulting
5 continued detention therefore violate the Immigration and Nationality Act and constitute custody “in
6 violation of the ... laws ... of the United States.” 28 U.S.C. § 2241(c)(3).

7
8 87. Petitioner is entitled to habeas relief under 28 U.S.C. § 2241 and 28 U.S.C. § 2243, including
9 an order declaring the detainer unlawful and directing Respondents to immediately withdraw and
10 remove the detainer and to cease imposing any restraint on Petitioner’s liberty based on the detainer
11 absent a lawful statutory basis for removability under 8 U.S.C. § 1227.

12
13 **2. SECOND CAUSE OF ACTION:**
14 **Violation of the Administrative Procedure Act**

15 88. Petitioner incorporates and realleges the allegations above.

16 89. The Administrative Procedure Act (“APA”) requires that federal agency action remain
17 within the bounds of authority delegated by Congress. Agency action that is “in excess of statutory
18 jurisdiction, authority, or limitations, or short of statutory right” is unlawful and must be set aside. 5
19 U.S.C. § 706(2)(C).

20
21 90. As set forth above, the Immigration and Nationality Act limits civil immigration detention
22 authority to circumstances in which detention is authorized by statute, including detention under 8
23 U.S.C. § 1226 “pending a decision on whether the alien is to be removed.” Where a noncitizen is not
24 removable under 8 U.S.C. § 1227, continued detention or restraint for purposes of removal exceeds
25 statutory authority.

26
27 91. ICE’s decision to lodge and maintain an immigration detainer against Petitioner—despite
28 the absence of any legally viable ground of removability under 8 U.S.C. § 1227—constitutes agency

1 action taken without statutory authorization. By restraining Petitioner's liberty when Congress has not
2 permitted detention in these circumstances, ICE has acted in excess of its delegated authority.

3 92. Agency action that contravenes the clear limits imposed by Congress in the Immigration
4 and Nationality Act is unlawful under the APA. Because ICE lacks authority under Title 8 to detain
5 Petitioner for purposes of removal, the continued maintenance of the ICE detainer constitutes final
6 agency action that is ultra vires and not in accordance with law. 5 U.S.C. § 706(2)(A), (C).

7
8 93. The APA's prohibition on ultra vires agency action applies with full force where, as here,
9 the challenged agency conduct results in ongoing deprivation of liberty. ICE's maintenance of the
10 detainer operates as a binding directive that prolongs Petitioner's confinement and mandates his
11 imminent transfer into immigration custody, notwithstanding the absence of statutory authority to do
12 so.

13
14 94. Petitioner has suffered and continues to suffer irreparable harm as a result of ICE's unlawful
15 agency action, including continued confinement, loss of liberty, and the chilling of his ability to seek
16 release from state custody. No adequate alternative remedy exists to cure this ongoing statutory
17 violation.

18
19 95. Petitioner is therefore entitled to relief under the Administrative Procedure Act, including a
20 declaration that Respondents' actions violate 5 U.S.C. § 706, and an order setting aside the unlawful
21 agency action by directing Respondents to withdraw and remove the ICE detainer and to refrain from
22 re-lodging it absent lawful statutory authority under 8 U.S.C. § 1227.

23
24 **3. THIRD CAUSE OF ACTION:
Violation of the Due Process Clause of the United States Constitution**

25 96. Petitioner incorporates and realleges the allegations above.

26
27 97. The Due Process Clause of the Fifth Amendment provides that no person shall be deprived
28 of liberty without due process of law. The Supreme Court has long and repeatedly held that noncitizens

1 physically present in the United States are “persons” entitled to the protections of the Due Process
2 Clause, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

3 98. The Supreme Court has further recognized that civil immigration detention implicates a
4 fundamental liberty interest and therefore must be accompanied by constitutionally adequate process.
5 Detention that is arbitrary, indefinite, or untethered to a legitimate regulatory purpose violates due
6 process. *See Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment lies at the heart of the liberty
7 protected by the Due Process Clause.”).

9 99. Due process requires, at a minimum, that the government have lawful authority to restrain
10 liberty and that detention be supported by appropriate procedural safeguards. Where the government
11 lacks statutory authority to detain, continued confinement is constitutionally impermissible. *See*
12 *Demore v. Kim*, 538 U.S. 510, 523 (2003) (civil immigration detention is permissible only where
13 authorized by statute and justified by a legitimate regulatory purpose).

15 100. ICE has lodged and maintained an immigration detainer against Petitioner that continues
16 his confinement and mandates his imminent transfer into federal custody without any constitutionally
17 adequate process. ICE has not initiated removal proceedings, has not issued a Notice to Appear, has
18 not identified any cognizable ground of removability, and has made no individualized determination
19 establishing lawful authority to detain Petitioner.

21 101. The detainer was issued solely on the basis of arrest and pending state criminal charges.
22 There has been no probable-cause determination of removability, no custody hearing, no opportunity
23 to be heard, and no review by a neutral decisionmaker. The Supreme Court has made clear that
24 detention imposed in this manner—without process and without lawful justification—violates the Due
25 Process Clause. *See Zadvydas*, 533 U.S. at 693–94.

1 102. Where, as here, the government lacks statutory authority to detain because the individual
2 is not removable, the continued restraint of liberty is arbitrary and punitive in effect. Detention that
3 serves no legitimate immigration purpose and is imposed without process “would raise serious
4 constitutional concerns.” *See Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).

5
6 103. The ICE detainer further violates due process by foreclosing Petitioner’s ability to seek
7 release from state custody on otherwise-available conditions and by subjecting him to inevitable civil
8 detention without any procedural protections. This coercive restraint on liberty compounds the
9 constitutional violation by denying Petitioner meaningful access to freedom without adjudication.

10
11 104. Because Respondents have deprived Petitioner of liberty without lawful authority and
12 without constitutionally required process, they have violated the Due Process Clause of the Fifth
13 Amendment.

14
15 105. Petitioner is therefore entitled to habeas relief under 28 U.S.C. § 2241 and 28 U.S.C. §
16 2243, including declaratory and injunctive relief directing Respondents to withdraw and remove the
17 ICE detainer and to cease imposing any restraint on Petitioner’s liberty absent lawful statutory authority
18 and constitutionally adequate process.

19 **4. FOURTH CAUSE OF ACTION:**
20 **Violation of the Due Process Clause of the United States Constitution**

21 106. Petitioner incorporates and realleges the allegations above.

22 107. The Due Process Clause of the Fifth Amendment provides that no person shall be deprived
23 of liberty without due process of law. The Supreme Court has long held that noncitizens physically
24 present in the United States are “persons” entitled to the full protections of the Due Process Clause,
25 including protection against arbitrary detention. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

26
27 108. Freedom from physical restraint lies at the core of the liberty protected by due process.
28 Any detention—civil or criminal—must be authorized by law and accompanied by adequate procedural

1 safeguards. Detention imposed without statutory authority, judicial process, or individualized
2 justification violates the Constitution. *See Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S.
3 71, 80 (1992).

4 109. The ICE detainer regulation, 8 C.F.R. § 287.7(d), purports to authorize continued detention
5 by state or local criminal authorities for up to forty-eight hours after an individual would otherwise be
6 entitled to release—without a criminal charge, without a criminal sentence, and without any judicial
7 determination authorizing continued confinement.

9 110. This regulatory scheme results in continued criminal incarceration after the basis for
10 criminal custody has expired, solely at the request of a civil immigration agency and without any
11 intervening legal process. The Supreme Court has made clear that continued detention following the
12 expiration of lawful criminal custody constitutes a new seizure that must independently satisfy due
13 process. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

15 111. Under § 287.7(d), no warrant is required, no probable-cause determination is made by a
16 neutral magistrate, no hearing is provided, and no statutory standard governs whether continued
17 detention is justified. The regulation thus authorizes a period of incarceration that is neither criminal
18 (because no charge or sentence exists) nor civilly adjudicated (because no removal proceedings or
19 custody determination have commenced).

21 112. The Supreme Court has repeatedly rejected detention regimes that allow confinement
22 without prompt judicial review or individualized findings. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 533
23 (2004) (“[A] state of war is not a blank check for the President when it comes to the rights of the
24 Nation’s citizens.”); *Zadvydas*, 533 U.S. at 692 (civil detention must be accompanied by “adequate
25 procedural protections”).
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1 113. The due process violation is compounded by the fact that § 287.7(d) operates categorically
2 and automatically, without regard to whether the individual is removable, lawfully present, or subject
3 to any lawful immigration detention authority. The regulation thus authorizes detention without any
4 nexus to a legitimate regulatory purpose, rendering it arbitrary and unconstitutional. *See Zadvydas*, 533
5 U.S. at 690.

6
7 114. Because § 287.7(d) authorizes continued incarceration after criminal custody has ended,
8 without charges, sentence, warrant, or hearing, it violates the Due Process Clause on its face and as
9 applied to Petitioner.

10 115. Petitioner seeks declaratory relief under 28 U.S.C. §§ 2201–2202 declaring that 8 C.F.R.
11 § 287.7(d) violates the Due Process Clause of the Fifth Amendment to the extent it authorizes continued
12 detention without judicial process, statutory authority, or individualized findings.¹

13
14 116. Declaratory relief is appropriate and necessary to clarify the parties' legal rights and
15 obligations and to prevent future unconstitutional detention of Petitioner and others similarly situated.

16
17 **5. FIFTH CAUSE OF ACTION:**
Violation of the Administrative Procedure Act

18 117. Petitioner incorporates and realleges the allegations above.

19 118. The Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, authorizes judicial
20 review of agency action and requires courts to “hold unlawful and set aside” agency action that is
21 arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or in excess of
22 statutory jurisdiction, authority, or limitations. 5 U.S.C. § 706(2)(A), (C).

23
24
25
26 ¹ In *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Supreme Court overruled *Chevron U.S.A. Inc. v.*
27 *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and held that courts may not defer to an agency's
28 interpretation of a statute simply because the statute is ambiguous. The Court reaffirmed that “[i]t is emphatically the
province and duty of the judicial department to say what the law is,” and that courts must exercise independent judgment
in determining the meaning of statutes administered by agencies. *Id.* at 2266–68 (quoting *Marbury v. Madison*, 5 U.S. (1
Cranch) 137, 177 (1803)). Accordingly, no deference is owed to the Department of Homeland Security's interpretation of
Title 8 or to regulations purporting to expand detention authority beyond what Congress has expressly authorized.

1 119. 8 C.F.R. § 287.7(d) constitutes final agency action within the meaning of the APA. The
2 regulation represents the consummation of the agency's decisionmaking process regarding
3 immigration detainers and purports to establish binding legal consequences by authorizing continued
4 detention for up to forty-eight hours after an individual would otherwise be entitled to release from
5 criminal custody.
6

7 120. Petitioner challenges the validity of the regulation itself, not merely its application. This
8 claim is brought as part of Petitioner's declaratory judgment action seeking a determination that §
9 287.7(d) is unlawful under the APA and therefore cannot be relied upon to justify continued detention.
10

11 121. Section 287.7(d) exceeds ICE's statutory authority. Congress has not authorized DHS or
12 ICE to mandate continued post-release detention by state or local authorities absent a lawful basis for
13 immigration detention under 8 U.S.C. § 1226 or a valid ground of removability under 8 U.S.C. § 1227.
14

15 122. The only provision in Title 8 that expressly addresses immigration detainers—8 U.S.C. §
16 1357(d)—is narrowly limited to controlled-substance offenses and does not authorize the broad
17 detainer regime reflected in § 287.7(d). The existence of that limited statutory authorization
18 underscores Congress's decision not to confer general detainer authority in other circumstances.
19

20 123. By purporting to authorize continued detention untethered to any pending removal
21 proceedings, charged ground of removability, or lawful detention authority under Title 8, § 287.7(d) is
22 in excess of statutory jurisdiction, authority, and limitations and must be set aside under 5 U.S.C. §
23 706(2)(C).
24

25 124. The regulation is also not in accordance with law under 5 U.S.C. § 706(2)(A) because it
26 conflicts with the statutory framework Congress established in 8 U.S.C. §§ 1226 and 1227, which limit
27 immigration detention to circumstances where the government is lawfully determining whether an
28 individual is removable.

1 125. Section 287.7(d) is further arbitrary and capricious because it authorizes continued
2 detention without requiring any individualized determination of removability, detention authority, or
3 regulatory purpose. The regulation permits continued incarceration based solely on the existence of a
4 detainer request, without regard to whether detention is legally permissible in the first instance.

5
6 126. Under *Loper Bright Enterprises v. Raimondo*, courts owe no deference to agency
7 interpretations that purport to expand statutory authority beyond what Congress has enacted.
8 Accordingly, ICE's reliance on § 287.7(d) as an independent source of detention authority is entitled
9 to no deference and must be rejected.

10 127. Because 8 C.F.R. § 287.7(d) exceeds statutory authority, conflicts with Title 8, and
11 authorizes detention without lawful predicate, it violates the Administrative Procedure Act and must
12 be declared unlawful.

13
14 128. Petitioner seeks declaratory relief under 28 U.S.C. §§ 2201–2202 declaring that 8 C.F.R.
15 § 287.7(d) violates the APA and is invalid, and further seeks an order prohibiting Respondents from
16 relying on that regulation to impose or maintain detention absent express statutory authorization.

17
18 **6. SIXTH CAUSE OF ACTION:**
19 **Violation of the Immigration and Nationality Act**

20 129. Petitioner incorporates and realleges the allegations above.

21 130. The Immigration and Nationality Act (“INA”), codified at Title 8 of the United States
22 Code, establishes a comprehensive and exclusive statutory scheme governing immigration detention,
23 removal, and the circumstances under which the government may restrain the liberty of noncitizens.

24 131. Congress has carefully limited immigration detention authority. For noncitizens present
25 within the United States, detention authority arises principally under 8 U.S.C. § 1226, which authorizes
26 arrest and detention only “pending a decision on whether the alien is to be removed,” and presupposes
27 the existence of a lawful removal inquiry grounded in 8 U.S.C. § 1227.
28

1 132. The INA does not authorize immigration detention—or continued restraint on liberty—
2 where the government lacks a legally viable basis to charge removability under 8 U.S.C. § 1227. Absent
3 such a statutory predicate, detention exceeds the authority Congress conferred.

4 133. 8 C.F.R. § 287.7(d) conflicts with this statutory framework. The regulation purports to
5 authorize continued custody for up to forty-eight hours after an individual would otherwise be entitled
6 to release from criminal custody, even where ICE has not initiated removal proceedings, has not
7 articulated a ground of removability under 8 U.S.C. § 1227, and lacks detention authority under 8
8 U.S.C. § 1226.
9

10 134. Nothing in the INA authorizes such continued detention. To the contrary, Congress
11 expressly addressed immigration detainers in 8 U.S.C. § 1357(d) and limited that authority to a narrow
12 subset of controlled-substance offenses and specified conditions—confirming that Congress did not
13 intend to grant a general, free-standing detainer power applicable to all arrests or pending charges.
14

15 135. By authorizing detention untethered to any pending decision “whether the alien is to be
16 removed,” § 287.7(d) expands immigration detention authority beyond what Congress enacted and
17 thereby contravenes the plain text, structure, and purpose of the INA.
18

19 136. The regulation also undermines Congress’s deliberate choice to make removability—and
20 corresponding detention—depend on concrete statutory criteria, such as convictions, sentences, and
21 specific conduct enumerated in 8 U.S.C. § 1227, rather than on arrest alone or speculative future events.
22

23 137. Because 8 C.F.R. § 287.7(d) authorizes continued detention in circumstances where the
24 INA does not permit detention, the regulation is inconsistent with the INA and invalid as a matter of
25 law.

26 138. This claim is brought as part of Petitioner’s declaratory judgment action pursuant to 28
27 U.S.C. §§ 2201–2202. Petitioner seeks a declaration that 8 C.F.R. § 287.7(d) violates the Immigration
28

1 and Nationality Act and therefore cannot lawfully be relied upon to justify detention or restraint of
2 liberty absent express statutory authorization under Title 8.

3 139. Declaratory relief is appropriate and necessary to resolve the ongoing legal uncertainty
4 created by the regulation, to prevent future unlawful detentions under the same theory, and to ensure
5 that immigration detention remains confined to the limits Congress imposed.²
6

7 **RESERVATION OF RIGHTS**

8 Petitioner reserves the right to add additional allegations of agency error and related causes
9 of action upon receiving the certified administrative record.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioner requests that this Court grant the following relief:

12 A. Assume jurisdiction over this habeas and declaratory action pursuant to 28 U.S.C. §§ 1331, 2241–
13 2243 and 28 U.S.C. §§ 2201–2202, and issue an Order to Show Cause “forthwith” under 28 U.S.C. §
14 2243;
15

16 B. Grant the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and declare that Petitioner is
17 in custody in violation of the Constitution and laws of the United States, including Title 8, due to the
18 ICE detainer lodged against him;
19

20 C. Order Respondents to immediately withdraw, cancel, and remove the ICE detainer lodged against
21 Petitioner, and to provide written confirmation of removal to the Utah County Jail (or other custodian)
22 forthwith;
23

24 D. Enjoin Respondents from re-lodging any ICE detainer against Petitioner absent (i) initiation of
25 removal proceedings by issuance/service of a Notice to Appear, and (ii) identification of a legally
26

27
28

² See fn. 1.

1 cognizable ground of removability under 8 U.S.C. § 1227, and (iii) lawful detention authority under
2 Title 8;

3 E. Declare pursuant to 28 U.S.C. §§ 2201–2202 that 8 C.F.R. § 287.7(d) is unlawful and violates the
4 Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (C), because it is not in accordance with law
5 and exceeds statutory authority;
6

7 F. Declare pursuant to 28 U.S.C. §§ 2201–2202 that 8 C.F.R. § 287.7(d) is inconsistent with and
8 violates Title 8, including the detention and removability framework established in 8 U.S.C. §§ 1226,
9 1227, and the detainer provision in 8 U.S.C. § 1357(d);

10 G. Declare pursuant to 28 U.S.C. §§ 2201–2202 that 8 C.F.R. § 287.7(d) violates the Due Process
11 Clause of the Fifth Amendment to the extent it authorizes continued detention without judicial process,
12 statutory authorization, or individualized findings;
13

14 H. Award Petitioner costs of this action to the extent permitted by law, including costs authorized under
15 28 U.S.C. § 1920 and, where applicable, the Equal Access to Justice Act, 28 U.S.C. § 2412;

16 I. Grant such other and further relief as the Court deems just and proper.
17

18 DATED: January 22, 2026
19
20
21

Respectfully submitted,

22
23 /S/ ALEC S. BRACKEN
24 Alec S. Bracken (UT SBN 17178)
25 Contigo Law
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27 Midvale, UT 84047
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Verification by Someone Acting on Petitioner’s Behalf Pursuant to 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner’s Attorneys. I have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: January 22, 2026

Respectfully submitted,

/S/ ALEC S. BRACKEN
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Certificate of Service

I, Alec S. Bracken, certify that a true and complete copy of this Petition was served on Respondents via email to the United States Attorney's Office for the District of Utah at:

Michael Kennedy - michael.kennedy@usdoj.gov

Dated: December 22, 2025

Respectfully submitted,

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