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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
DENVER DIVISION

Erekle Kikilashvili,

Petitioner

v.

Kristi Noem, Secretary for the Department of Homeland Security ("DHS"); Pamela Bondi, Attorney General of the United States ("AG"); Robert Hagan, Acting Field Office Director for the Denver Immigration and Customs Enforcement ("ICE") Field Office; and Juan Baltazar, Warden for the Aurora Contract Detention Center ("Aurora CDC")

Respondents.

Case No.: _____

***VERIFIED* PETITION FOR WRIT OF HABEAS CORPUS BY PERSON IN FEDERAL CUSTODY UNLAWFULLY AND APPLICATION FOR INJUNCTIVE AND DECLARATORY RELIEF**

I. INTRODUCTION

1. This case challenges Respondents' unlawful re-arrest and re-detention by the Respondents on December 30, 2025, after Respondents had released him on his own recognizance ("AOR") in or about April 2024 pursuant to a discretionary determination under 8 U.S.C. § 1226(a) that he posed neither a danger to the community nor a risk of flight. A recent District Court in the 10th Circuit makes clear that civil immigration detention must remain tethered to the statutory justification authorizing it and may not be reinstated arbitrarily once that justification has been resolved. Garcia Abanil v. Baltazar, Case No. 1:25-cv-04029-WJM-STV (D. Colo. Jan. 13–14, 2026) (rejecting Respondents' attempt to treat a noncitizen as detained under 8 U.S.C. § 1225(b)(2)(A) when the contemporaneous custody documents actually placed him under 8 U.S.C. § 1226(a)).

2. Because Respondents identified no intervening change in material facts or governing law, the re-arrest lacks statutory authority and violates due process. The writ should therefore issue forthwith, rather than be remanded, to terminate an ongoing and unlawful deprivation of liberty. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c); Zadvydas v. Davis, 533 U.S. 678, 690 (2001). The United States Constitution guarantees access to the courts through the availability of the writ of habeas corpus "to every individual detained within the United States." Hamdi v. Rumsfeld, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). The Supreme Court treats a petition for habeas corpus as essentially "[A]n attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

3. This case also challenges Respondents' unlawful transfer of Petitioner from the original detention center in New York City, New York across several states and hundreds of miles away to the current detention center where Petitioner is being housed. The transfer was unlawful for violating the Respondents' own published policy under well-established legal principles and in violation of Petitioner's Fifth and Sixth amendment rights as will be shown below. United States ex. rel. Accardi v. Shaughnessy,

347 U.S. 260, 267 (1954).

4. A writ of habeas corpus may be granted to Petitioner who demonstrates that he is in custody in violation of the Constitution or federal law. *See* 28 U.S.C. § 2241(c)(3). Historically, the High Court recognizes "the writ of habeas corpus . . . serve[s] as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." I.N.S. v. St. Cyr, 533 U.S. 289, 301 (2001). Accordingly a district court's habeas jurisdiction includes challenges to unlawful immigration detention. Zadvydas, 533 U.S. at 687.

5. This constitutional right to be free from federal unlawful custody extends to every procedural due process claim (*e.g.,* the manner and conduct in which the federal authorities effect an arrest of persons) and to every substantive due process claim (*e.g.,* the reasons why the person's liberty interest is being deprived by the federal authorities) as these are guaranteed under the Due Process Clause of the fifth amendment to all persons in the United States. Noncitizens are included in the "persons" definition under the plain text of the constitution. Zadvydas 533 U.S. at 687 ("The Fifth Amendment's Due Process Clause forbids the Government to deprive any 'person' of liberty without due process of law. Aliens are 'persons' within the meaning of the provision."); Yick Wo v. Hopkins, 118 U.S. 356 (1886); Matthews v. Diaz, 426 U.S. 67 (1976) (eligible choices between similar class); and Plyler v. Doe, 457 U.S. 202 (1982) (deferential treatment among similar class) all of which arose in the context of the 14th amendment's equal protection clause.

6. Where a court determines that a petitioner is being unlawfully restrained and that the court has the legal authority to halt that restraint, the court must provide relief that promptly and effectively terminates the violation. Remand to the same authority responsible for the unlawful action—under the so-called "ordinary remand rule"—is inappropriate in instances where a remand would permit the continued deprivation of liberty to linger for additional time. *See* McClellan v. Young, 421 F.2d 690, 691 (6th Cir. 1970) (habeas relief is "swift and imperative" once unlawful restraint is shown); Brown v.

Palmer, 441 F.3d 347, 350 (6th Cir. 2006) (recognizing district courts' broad authority to fashion effective habeas relief). Accordingly, upon determining that Petitioner's re-arrest is unlawful in the context that is unsupported by factual or legal basis, the Court should grant the writ and order Petitioner's immediate release. Any lesser remedy would unnecessarily prolong an unlawful restraint on liberty and contravene the fundamental purpose of habeas corpus—to secure prompt judicial relief from illegal detention.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. §§ 2241-43; 28 U.S.C. §§ 2201-02, 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 under the Administrative Procedures Act ("APA"), § 701 *et seq.,* and injunctive relief is available in these proceedings under Fed. R. Civ. Pr. 65.

8. Venue is proper in the Denver Division of the District of Colorado under 28 U.S.C. § 1391 because at least one Federal Respondent is in this district, the Petitioner is imprisoned in this district, and a substantial part of the events giving rise to the claims in this action took place in this district. Venue is also proper in this district under 28 U.S.C. § 2243 because the immediate custodian of Petitioner is said to reside in this district.

9. The unlawfulness of Petitioner's custody is the primary subject of the legal question before the Court. Thus, pursuant to the above cited authorities, Fed. R. Civ. Pr. 65 and pertinent Local Rules of the district where applicable, Petitioner respectfully moves the Court to issue an injunctive order precluding the Federal Respondents, themselves, or by and through any of their delegates, employees, agents, servants, attorneys, and others similarly situated to continue depriving Petitioner unlawfully of his fundamental right to liberty, as each of them individually and all them collectively have done so ever since Petitioner was unlawfully re-arrested by ICE where he remains in the Federal Respondents' custody.

III. PARTIES

10. Petitioner is a national and citizen from the Republic of Georgia, and has lived in the State of New York ever since his arrival in the United States on or about April 24, 2024.

11. Respondent Kristi NOEM, is the Secretary for the Department of Homeland Security ("DHS") and she is being sued in her official capacity because DHS is the federal department charged with the administration and enforcement of the INA, including the policies behind the unlawful Re-Arrest Policy made applicable to Petitioner. Petitioner alleges that the local ICE officers' decision to re-arrest and re-detain him reflects the efforts by the local ICE Field Office in New York to comply with Respondent NOEM's policy directive concerning immigration enforcement, detention and removal that are being pursued by the Trump administration.

12. Respondent Pamela BONDI is the Attorney General of the United States and Chief Law Enforcement Officer of Department of Justice ("DOJ") and is sued in her official capacity because DOJ, through the Executive Office for Immigration Review ("EOIR") exercises authority over immigration court proceedings and related custody determinations affected by the untenable statutory reinterpretation that guided the Trump administration in pursuing the policy directive challenged herein.

13. Respondent Robert Hagan is the Field Office Director for the Denver ICE Field Office and oversees all noncitizens in ICE custody throughout the area of responsibility ("AOR") that falls within his district. Mr. Hogan is being sued in his official capacity because he holds the direct responsibility of the Aurora Contract Detention Center ("Aurora CDC") on behalf of ICE.

14. Respondent Juan Baltazar, is the Warden for the Aurora CDC and the immediate physical custodian of the Petitioner. Mr. Baltazar is being sued in his official capacity as the Warden of the Aurora CDC.

IV. FACTUAL ALLEGATIONS

A. Petitioner's Background and U.S. Residence

15. Petitioner is Georgian by nationality and citizenship; he was born on [redacted] in Tbilisi, Georgia, and his race and religion are listed respectively as [redacted]

16. Since arriving in the United States, Petitioner has resided in Brooklyn, New York, including at [redacted]

17. Petitioner studied at Ilia State University in Tbilisi and previously attended the Public School of Dedoplistskaro; he has worked as a warehouse worker at "Planta" in Tbilisi and as a farmer, and in the United States he has been mostly self-employed as a driver.

18. On or about April 24, 2024, DHS alleges in the Notice to Appear that Petitioner "entered the United States at an unknown location."

B. Entry, Expedited Removal, and Credible Fear

19. In his sworn Border Patrol statement, Petitioner confirmed that he is a citizen of Georgia, that he traveled through Spain and Mexico, that he intended to go to New York, and that he had no immigration documents permitting him to enter or reside in the United States.

20. On April 26, 2024, DHS issued a Notice and Order of Expedited Removal (Form I-860) under 8 U.S.C. § 1225(b)(1), charging Petitioner with inadmissibility under INA § 212(a)(6) and § 212(a)(7) and ordering his removal on the basis of his unlawful entry near Otay Mesa without inspection or valid documents.

21. During his sworn interview (Forms I-867A/B), Petitioner stated that he left Georgia "because of government persecution," that he fears returning there, and that he believes he would be harmed if removed, including torture.

22. An asylum officer later found that Petitioner had demonstrated a credible fear of persecution or torture; pursuant to 8 C.F.R. §§ 208.30 and 235.3(b)(5)(iv), the § 235(b)(1) "expedited removal order" was vacated as a result, and DHS issued a Notice to Appear (Form I-862), placing Petitioner into full removal proceedings under 8 U.S.C. § 1229a, thereby terminating the initial expedited removal proceedings.

C. Notice to Appear and Asylum Application

23. On May 14, 2024, a supervisory asylum officer executed the Notice to Appear (Form I-862), charging Petitioner as an alien present without admission or parole and lacking valid entry documents, and ordering him to appear before the New York Immigration Court at 26 Federal Plaza, which forms part of the EOIR.

24. The NTA alleges that Petitioner is a native and citizen of Georgia who entered the United States at an unknown location on or about April 24, 2024, without valid entry documents and without being admitted or paroled.

25. Petitioner timely filed Form I-589, Application for Asylum and for Withholding of Removal, in the New York Immigration Court, listing his A-number (226000451), his Brooklyn address, and his native language as Georgian, and seeking asylum and related relief.

26. Petitioner filed his asylum application (Form I-589) on October 25, 2024, as reflected in Part D of the form.

27. In Part B of the I-589, Petitioner stated he was persecuted in Georgia "because of [his] political opinion," that he was "harmed, mistreated and threatened," and that he left Georgia "to survive," and he further stated that he fears harm, danger to his life and health, and torture if he returns.

D. Releases, Re-Arrest, Transfers, and Current Detention

28. Following his initial border-area processing and credible-fear proceedings, Petitioner was released from DHS custody and placed on the non-detained New York Immigration Court docket with a scheduled hearing set for July 24, 2026, in New York City, as reflected in an ERO memorandum.

29. On December 30, 2025, ICE Enforcement and Removal Operations ("ERO") took Petitioner back into custody, as documented in a memorandum from DO Alejandro Pena and in the notation "Subject was taken into ERO custody on 12/30/2025."

30. On December 30, 2025, ICE issued a Warrant for Arrest of Alien (Form I-200) for Petitioner, listing the warrant date as December 30, 2025.

31. That warrant was served on Petitioner in Cheyenne, Wyoming, on December 31, 2025, as shown in the Certificate of Service on the I-200.

32. An ICE Form I-830 "Notice to EOIR: Alien Address" dated December 31, 2025 records that Petitioner was detained by ICE on December 30, 2025 and transferred on December 31, 2025 to the Denver Contract Detention Facility at 3130 Oakland St., Aurora, CO 80010.

33. On January 2, 2026, ICE uploaded to EOIR (NYC base) the ERO memorandum requesting a motion for change of venue or to recalendar, the I-830 notice of alien address, the I-200 warrant, and the Denver pro bono list, all reflecting Petitioner's detention at GEO/Denver Contract Detention Facility.

34. On January 15, 2026, Assistant Chief Counsel Elizaveta (Liza) Ivanova signed and dated a DHS Motion to Change Venue, which states that Petitioner "was previously on the non-detained New York Immigration Court docket" but "was recently placed into detention and is currently being held at the GEO Aurora Detention Facility," and requesting transfer of venue from New York to the Aurora Immigration Court.

35. That Motion to Change Venue, together with a proposed "Order of the Immigration Judge" and certificate of service, was uploaded to EOIR on January 15, 2026 at 11:43:48 AM Mountain Standard Time, confirming Petitioner's current detention at the GEO Aurora/Denver Contract Detention Facility in Aurora, Colorado.

36. Petitioner remains civilly detained at GEO Aurora in connection with his pending § 240 removal proceedings, without having received an individualized bond hearing at which DHS bears the burden of justifying his continued detention.

V. LEGAL FRAMEWORK

37. Under 28 U.S.C. § 2241(c)(3), a writ of habeas corpus must issue if a petitioner is in custody in violation of the Constitution or laws of the United States.

38. The INA provides different detention regimes and in pertinent part here as follows: (1) under 8 U.S.C. § 1225(b) for certain arriving aliens and applicants for admission, and (2) under 8 U.S.C. § 1226(a) for noncitizens already in the country who

are arrested and detained pending a removal decision. Jennings v. Rodriguez, 583 U.S. 281, 289 (2018).

39. Detention under § 1225(b)(1) is tied to expedited removal processing; once an expedited removal order is vacated and the noncitizen is placed into regular (INA § 240), 8 U.S.C. § 1229a removal proceedings following a credible fear determination, the statutory basis for continued, prolonged detention shifts away from § 1225(b) and into the § 1226 framework, as the Denver-division cases have recognized in analogous contexts.

A. Petitioner was re-arrested under the Trump administration's new policy directive towards persons whom had been previously found to be neither a "danger" to the community nor a "flight risk" in violation of the Immigration and Nationality Act, the federal regulations implementing as well as the Fourth and Fifth amendments to the federal Constitution.

40. Civil immigration detention is typically justified only when a noncitizen presents a risk of flight or danger to the community. *See* Zadvydas, supra, 533 U.S. at 690; Padilla v. ICE, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). The federal detention regulations that authorize immigration authorities to release a noncitizen on his own recognizance ("RoR") require that the noncitizen "demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons" and that the noncitizen is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); also see 8 C.F.R. § 212.5 (humanitarian parole available only when "the [noncitizens] present neither a security risk nor a risk of absconding").[1]

41. Every noncitizen that ICE releases *therefore*—whether on parole, bond, or supervision conditions, or RoR—confirms that the noncitizen poses no flight risk or danger to the community to warrant detention. The Federal Respondents have adhered to a policy of not re-arresting noncitizens previously released from federal custody unless and

[1] *See* also its counterpart at 8 C.F.R. § 1003.19(h)(3) and Matter of Guerra, 24 I. & N. Dec. 37, 40 (BIA 2006) requiring the same showing of "no danger" to the community or "flight risk" when release is being considered by an immigration judge.

until an individualized determination by the federal officials shows that a material change in such person's circumstances has rendered such person a danger or flight risk.

42. This longstanding policy reflects a fundamental due process principle: When the government conditionally releases an individual, it makes "an implicit promise" that their liberty will not be revoked unless they fail to satisfy their conditions of release. *See* Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

43. It also conforms with the Fourth Amendment's prohibition on repeated seizures based on the same probable cause without a material change in circumstances. The Fourth Amendment applies to seizures by immigration authorities and prohibits re-arrests, which courts have long held could result in "harassment by continual rearrests." United States v. Holmes, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); see also U.S. v. Brignoni-Ponce, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority); Gonzalez v. United States Immigr. & Customs Enf't, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context).

44. Release from ICE custody *therefore* establishes that ICE considered both, the "danger" to the community and "flight risk" factors and concluded thereafter that release of the noncitizen poses no danger to the community or a flight risk, otherwise ICE would not have released him from its custody. Saravia v. Sessions, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom.* Saravia for A.H. v. Sessions, 905 F.3d 1137 (9th Cir. 2018). Importantly, DHS authorizes only certain officials within its administration to revoke a previous grant of an immigration bond or previous grant of parole and re-arrest the noncitizen in instances for example when the purpose behind the release of the noncitizen has been accomplished. 8 U.S.C. § 1226(b); see 8 C.F.R. § 236.1(c)(9); 8 C.F.R. § 212.5(e)(2)(i).

45. DHS has placed explicit limits on re-arrest under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation,

such revocations of release from custody may only be carried out in the "discretion of the district director, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9). Additionally, despite "the breadth of [the] statutory language" in 8 U.S.C. § 1226(b), the federal government's authority is subject to "an important implicit limitation": It cannot lawfully re-arrest someone without "a material change in circumstances." Saravia, 280 F. Supp. 3d at 1197; see also, e.g., Matter of Sugay, 17 I. & N. Dec. 637, 640 (B.I.A. 1981); Velasco-Sanchez v. Immigration and Customs Enforcement, Field Office Director, No. 2:25-cv-13730 (E.D. Mich.) (unjustified re-arrest years after prior release to a guardian after initial determination that he could be at liberty, without any new change in circumstances); Panosyan v. Mayorkas, 854 F. App'x 787, 788 (9th Cir. 2021).

46. The Due Process Clause also requires under the balancing test of Mathews v. Eldridge, 424 U.S. 319 (1976) that the Federal Respondents be barred from re-detaining Petitioner in the first instance without providing him a hearing where the Federal Respondents must prove that since his original RoR, facts now exist evidencing that he is either a flight risk or danger to the community, or both.

47. Notwithstanding the findings and conclusion made by the Federal Respondents supporting his original order of RoR from ICE custody on December 27, 2023—and the fact that nothing in terms of factual changes can be said to have taken place in this case since the date he was first released from ICE custody, the Federal Respondents have re-arrested him. The re-arrest is unlawful for at least three (3) of the most obvious reasons.

48. First, the re-arrest arises from an arbitrary and capricious determination made contrary to law in violation of the APA involving a flawed mandatory detention statutory interpretative argument at the behest of the Trump administration which has been rejected consistently across all jurisdictions nationwide.

49. Second, the Federal Respondents did not conduct an individualized

investigation of any changed circumstances by a qualified authorized adjudicator or after an administrative review of the underlying facts of this case. Indeed, the only changed circumstances involved in the decision-making process in Petitioner's case is the flawed mandatory detention policy directive envisioned unlawfully by the Federal Respondents at the behest of the Trump administration.

50. Third, because the decision maker(s) in this instance failed to provide Petitioner with the required due process notice and a fair opportunity in which he may rebut the assertions supporting the Federal Respondents' re-arresting him and for him to present evidence in support of his continued unmitigated Constitutional right to liberty in violation of the Due Process Clause of the Fifth Amendment and the prohibition of unlawful seizure under the Fourth Amendment.

51. According to numerous factual reports nationwide, the Federal Respondents have been employing another tool in their tool-box—the unlawful transfers of detainees from the AOR of the Field Office where the detainee resides to a far distant detention facility. The purpose behind this scheme is of demoralizing these noncitizens into giving up their legal fight seeking protection from removal and thereby accomplishing the Trump administration's ultimate goal of coercing noncitizens in the same or similar circumstances to return to their home countries.

52. This assertion is clearly evidenced by the Federal Respondents' own public dissemination of television ads and pamphlets.[2] *See,* improper dissemination of

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[2] See, (1) "WARNING – International" (DHS ad, YouTube) – 60-second spot in which she tells "illegal aliens" abroad and in the U.S. to leave now or be deported and permanently barred. https://www.youtube.com/watch?v=hhRt3FKXgGU; (2) "WARNING – Domestic" (DHS ad, YouTube) – Parallel domestic ad: "If you are here illegally, leave now. If you don't, we will find you and we will deport you. You will never return. If you leave now, you may have an opportunity to return…." https://www.youtube.com/watch?v=hezXQvjzCkQ; (3) TikTok news segment on DHS campaign – Local TV TikTok summarizing DHS's multimillion-dollar ad campaign warning immigrants in the U.S. illegally. https://www.tiktok.com/@nbcsouthflorida/video/7473980432812412191; (4) Interview: "Illegal Immigrants Should Leave U.S. Before 'We Have The Opportunity To Sweep You Up'" (YouTube) – She says people here illegally "should go back to your home country" and not wait until the government "sweep[s] you up." https://www.youtube.com/watch?v=RJV8yLC8pI0; (5)

misleading pamphlets via the EOIR's own agency. Exhibit D

B. Unlawful detainee transfers out of their corresponding AOR to distant locations places such violations within the reach of the *Accardi* doctrine as "arbitrary, capricious, an abuse of discretion or otherwise contrary to law."

53. An agency's failure to comply with its own procedures is "arbitrary, capricious, an abuse of discretion or otherwise contrary to law" conduct, which violates the APA. 5 U.S.C. § 706(a)(2); United States ex. rel. Accardi v. Shaughnessy, 347 U.S. 260, 267 (1954); see also Morton v. Ruiz, 415 U.S. 199, 235 (1974) (applying Accardi to internal IRS manual); Alcaraz v. INS, 348 F.3d 1150, 1162 (9th Cir. 2004) (recognizing Accardi extends beyond formal regulations). Hence, if ICE transferred Petitioner outside the AOR of the NY ICE field office without first complying with ICE Policy 11022.1, such a transfer would be arbitrary and capricious, abuse of discretion and contrary to law.

54. 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 (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

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[*Continued from prior foot note*] "Kristi Noem tells illegal migrants to download the Home App and self-…" (New York Post, YouTube) – 60-second spot: she touts catching "heinous migrant criminals," warns others "if you are here illegally, you're next," and says if they register using the CBP "Home" app and leave now, they might be allowed to return legally. https://www.youtube.com/watch?v=La8FvfLzkNU; (6) X (Twitter) – DHS Sec. Kristi Noem feed – Includes video posts and clips announcing a "nationwide and international multimillion-dollar ad campaign warning illegal aliens to leave our country NOW." https://x.com/Sec_Noemx; (7) DHS ad campaign archive (AILA summary with links) – AILA summary of DHS's self-deportation ad campaign; the underlying DHS page it references hosts the official video ads. https://www.aila.org/dhs-announces-ad-campaign-encouraging-self-deportation-and-discouraging-undocumented-migration.

Enforcement Policies and Procedures to Detainee Transfer" essentially concurring with Mr. Morton's recommendations. Exhibit B.

55. On January 4, 2012, following a series of further investigations and efforts to create a workable NDS for ICE, 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 C. The Directive remains in full force and effect as of today.[3]

56. Specifically, ICE Transfers Policy No. 11022.1 states: "Unless a transfer is deemed necessary by a [Field Office Director] or his or her designee …, 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, *Notice of Entry of Appearance as Attorney or Accredited Representative* on file) within the AOR; c) Pending or on-going removal proceedings, where notification of such proceedings has been given, within the AOR; or d) Been granted bond or has been scheduled for a bond hearing." (ICE Transfers Policy No. 11022.1 (Jan. 4, 2012).

57. The policy adds that "[t]he Immigration Officer will conduct a review to determine whether any of these factors exist. Before a transfer is made in a case where one or more of these factors exist, the transfer must be approved at the Assistant Field Office Director level or higher, and the reasons for the transfer must be documented in the detainee's A-File . . . ICE Supervisory Immigration Officers will conduct a thorough review of the most current information available to make all detainee transfer determinations." (U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations Field Offices, https://www.ice.gov/contact/ero.)

58. In sum, ICE Detainee Transfers Policy No. 11022.1, dictates that ICE will not make a transfer determination before: (1) any ICE Field Office Director or their

[3] See, ICE website at https://www.ice.gov/node/65009?utm_source=chatgpt.com.

designee has deemed any transfer from the Orange County Jails "necessary;" (2) any Immigration Officer has conducted a review to determine whether any of the factors generally prohibiting transfer exist; (3) obtaining the approval at the Assistant Field Office Director level or higher; (4) documenting the reasons for the transfer in the immigrant's A-File; and (5) any ICE Supervisory Immigration Officers conducted a thorough review of the most current information available about each immigrant.

59. ICE Detainee Transfers Policy No. 11022.1 also requires ICE to notify the immigrants' attorneys when they are transferred. The policy states: "If a detainee has an attorney of record (Form G-28 on file), the sending field office will … [n]otify the attorney that the detainee is being transferred and include the reason for the transfer and the name, location, and telephone number of the new facility as soon as practicable on the day of the transfer, but in no circumstances later than twenty[-]four (24) hours after the transfer occurs." Id.

C. A Transfer outside the AOR in violation of clause 5.2 (b) of the Detainee Transfers Policy No. 11022.1 has a direct adverse consequence of irreparable harm by interfering with the noncitizen's right to counsel of choice as well as counsel's right and duty to provide effective representation.

60. Such transfers out of the AOR infringe and impede the vital attorney-client exchanges by limiting the means by which Petitioner is able to communicate with his counsel of record and adversely affects the ability of counsel to continue to represent Petitioner where doing so would require among many things to incur unplanned sometimes extraordinary travel expenses and other accommodations never considered in their original contractual agreement for legal services.

61. Clause 5.2, of the Detainees Transfer directive, 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." *See* Exhibit C "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).

62. Absent an order of this Court against relocating Petitioner, ICE will be free to transfer him out again out of the current AOR to far distant locations despite the 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. 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).

63. Notwithstanding its own published adopted nationwide rules against unlawful detainee transfers where there is evidence in the record of immediate family members as well as counsel of record in the original AOR, the transfer of Petitioner from NY to the current detention facility over one (1) thousand miles away from the NY AOR amounts to a clear violation of both Petitioner's constitutional and legal rights. These rights are guaranteed by the Fifth and First Amendments of the U.S. Constitution. Restrictions that unreasonably limit the ability of Petitioner to effectively communicate with his private counsel violate their Fifth Amendment due process rights (1) to be free from conditions of confinement that amount to punishment, and (2) to a full and fair hearing.

64. By adopting the aforementioned Detention Standards, the legacy Federal Respondents recognized that it is their responsibility to ensure basic access to counsel at ICE detention facilities nationwide. However, the current Federal Respondents have failed to monitor or enforce consistent compliance with their own standards and the Constitution. Here, the rights to maintain Petitioner's established attorney-client relationships and to a full and fair hearing in his removal case will be deprived when ICE

unlawfully transfers Petitioner from the current ICE field office to another far distant detention facility.

65. Unless this Court enjoins the Federal Respondents from conducting such transfer here, their failure to abide by their own rules not only would violate the Due Process Clause of the Fifth Amendment to the federal Constitution but also the Administrative Procedures Act, 5 U.S.C. § 706. These are independent claims from the removal proceedings and this Court has therefore authority to hear them.

66. Undue restrictions on attorney-client communications likewise violate Petitioner's First Amendment rights to communication and association, as well as his First Amendment rights. The Federal Respondents' unlawful conduct involving transferring Petitioner out of the AOR of the NY ICE field office continues unresolved. By adopting the aforementioned Detention Standards, the Federal Respondents have recognized that it is their responsibility to ensure basic access to counsel at ICE detention facilities nationwide. However, the Federal Respondents have failed to monitor or enforce consistent compliance with their own standards and the Constitution. Here, the rights to maintain Petitioner's established attorney-client relationships and to a full and fair hearing in his removal case was deprived when ICE unlawfully transferred petition from the NY ICE field office to the current detention facility in Tennessee.

67. This failure to abide by its own rules not only violates the Due Process Clause of the Fifth Amendment to the federal Constitution but also the Administrative Procedures Act, 5 U.S.C. § 706. These are independent claims from the removal proceedings and this Court has therefore authority to hear them.

D. Prudential administrative exhaustion when the interest of the individual weighs heavily against requiring it, or exhaustion would be futile if unable to afford the petitioner the relief he seeks, or when delay means hardship.

68. The habeas corpus statute at 28 U.S.C. § 2241 does not require exhaustion but it may be prudentially required in some cases. Courts may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious,

pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting S.E.C. v. G.C. George Sec., Inc., 637 F.2d 685, 688 (9th Cir. 1981); McCarthy v. Madigan, 503 U.S. 140, 144 (1992); *see also* Fazzani v. NE Ohio Corr. Ctr., 473 F.3d 229, 236 (6th Cir. 2006) (citing Aron v. LaManna, 4 F. App'x 232, 233 (6th Cir. 2001) and Goar v. Civiletti, 688 F.2d 27, 28-29 (6th Cir. 1982)); Shawnee Coal Co. v. Andrus, 661 F.2d 1083, 1093 (6th Cir. 1981).

69. In exercising that discretion, the Supreme Court has stated that "federal courts must balance the interest of the individual in retaining prompt access to a federal judicial forum against countervailing institutional interests favoring exhaustion." McCarthy v. Madigan, 503 U.S. at 146; Booth v. Churner, 532 U.S. 731 (2001) (noting that traditional exceptions include where exhaustion would cause "undue prejudice to subsequent assertion of a court action" or "irreparable harm" to the Petitioner, where there is "some doubt as to whether the agency was empowered to grant effective relief," or where it would be futile because "the administrative body is shown to be biased or has otherwise predetermined the issue before it") (internal quotation marks omitted).

70. Prudential exhaustion is not appropriate in this case where the BIA's which is binding on immigration judges, renders exhausting administrative remedies futile here. Matter of Yajure Hurtado, 29 I. & N. Dec. 216, 228 (BIA 2025). To exhaust his remedies here would be futile because Petitioner would be required to appeal to the same agency that issued the wrongful decision. But a stronger reason exists for rendering prudential exhaustion a wrongful path. Requiring Petitioner to continue suffering the loss of a fundamental right to liberty in exchange for advancing an administrative agenda at such high cost of a personal right would inflict additional irreparable injury that the writ should be forced to tolerate.

71. The Sixth Circuit has held that where a due process challenge is raised exhaustion would generally not be required because the Board of Immigration Appeals ("BIA") as an administrative agency lacks the authority to review constitutional

challenges. Sterkaj v. Gonzales, 439 F.3d 273, 279 (6th Cir. 2006); *accord* Bangura v. Hansen, 434 F.3d 487, 494 (6th Cir. 2006) ("exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency's procedures.") (citation omitted). Petitioner here is raising a non-frivolous constitutional challenge, therefore requiring exhaustion in this case would be pointless. Lopez-Campos v. Raycraft,---F. Supp. 3d----, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); Pizarro Reyes v. Raycraft, et al., No. 2:25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).

CLAIMS FOR RELIEF

COUNT ONE

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

Application of the Re-Arrest Policy Here is Arbitrary and Capricious

72. Petitioner repeats and re-alleges each of the allegations contained in all preceding paragraphs of this Petition as if they were fully set forth herein.

73. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary [and] capricious, . . . or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A).

74. The Re-Arrest Policy is a reviewable final agency action because it is neither tentative nor interlocutory, and legal consequences flow from the policy for Petitioner because he has been re-detained under the Re-Arrest Policy.

75. The Re-Arrest Policy departs from longstanding agency precedent, policy, and practice.

76. In adopting the Re-Arrest Policy, Defendants provided no reasoned or adequate explanation for the policy, which is a dramatic shift from recent and longstanding agency policies, and which results in the costly and arbitrary re-arrest of individuals who had serious reliance interests in those past policies. See Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 222 (2016).

77. Moreover, in adopting and applying the Re-Arrest Policy in this case, the

Federal Respondents failed to adequately consider important consequences of their conduct and other relevant factors, including the constitutional limitations on the government's authority to re-arrest Petitioner as argued throughout the petition.

78. The Federal Respondents have considered the improper purpose of pressuring this Petitioner to abandon his claims for relief from removal and self-deport as evidenced by the overwhelming number of published ads and videos the Federal Respondents have been peddling and continue to peddle.

79. The Re-Arrest Policy is therefore arbitrary and capricious in violation of the Administrative Procedure Act.

COUNT TWO

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

Application of the Re-Arrest Policy Here Violates the INA

80. Petitioner repeats and re-alleges each of the allegations contained in all preceding paragraphs of this Petition as if they were fully set forth herein.

81. The Re-Arrest Police violates 8 U.S.C. § 1226(b) because the statute does not authorize re-arrest without first conducting the required assessment of the individual facts and circumstances in Petitioner's case finding that a material change in those circumstances have taken place warranting re-arrest on account that Petitioner's continued compliance with all of the conditions on RoR ever since in or about December 27, 2023, the date he was first given RoR.

82. The Re-Arrest Policy violates 8 U.S.C. § 1226(b) because the statute does not authorize re-arrest without a material change in circumstances with respect to a noncitizen's flight risk or danger to the community based on an individualized determination. Further, the Federal Respondents' re-interpretation of 8 U.S.C. § 1225(b)(2) and § 1226(a) is contrary to law and is not a valid legal basis for the Re-Arrest Policy.

83. The Re-Arrest Policy violates the Administrative Procedure Act because it is "not in accordance with law" and "in excess of statutory jurisdiction, authority, or

limitations." U.S.C. § 706(2)(A), (C), (D).

COUNT THREE

Administrative Procedure Act, 5 U.S.C. § 706(2) – *Accardi* Doctrine

Unlawful Failure to Follow/Effective Rescission of 8 C.F.R. § 236.1(c)(8)

84. Petitioner repeats and re-alleges each of the allegations contained in all preceding paragraphs of this Petition as if they were fully set forth herein.

85. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "without observance of procedure required by law." 5 U.S.C. §706(2)(D).

86. The *Accardi* doctrine holds that "government agencies are bound to follow their own rules, even self-imposed procedural rules that limit otherwise discretionary decisions." U.S. ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).

87. DHS regulations implementing 8 U.S.C. § 1229(b) authorize revocations of release from custody under the statute but only in the "discretion of the district director, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 1236.1(c)(9).

88. Accordingly, the Re-Arrest Policy allows the revocation of prior custody determinations by government officials whom are not so authorized by law to make this determination in violation of the *Accardi* doctrine's requirement that agencies comply with their own regulations.

COUNT FOUR

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

Application of the Re-Arrest Policy Here is Contrary to Constitutional Right

89. Petitioner repeats and re-alleges each of the allegations contained in all preceding paragraphs of this Petition as if they were fully set forth herein.

90. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "contrary to constitutional right." 5 U.S.C. § 706(2)(B).

91. The Fourth Amendment protects the right of all persons present in the United States to be free from unreasonable seizures by government officials. Petitioner therefore has the right to be free from unreasonable seizure.

92. As a corollary to that right, the Fourth Amendment prohibits re-arrest on the same charges/probable cause without a material change in circumstances.

93. The Re-Arrest Policy violates the Fourth Amendment because it authorizes immigration agents to undertake unreasonable seizures by re-arresting Petitioner for the same civil immigration charge as his initial arrest in July 2023 without any material change in circumstances warranting such re-arrest.

COUNT FIVE

Violation of the Fifth Amendment to the United States Constitution

Petitioners' Detention Violates Substantive Due Process

94. Petitioner repeats and re-alleges each of the allegations contained in all preceding paragraphs of this Petition as if they were fully set forth herein.

95. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. "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 protects." Zadvydas, 533 U.S. at 690.

96. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring a noncitizen's appearance during removal proceedings and preventing danger to the community.

97. Petitioner was previously released on his own recognizance under conditional parole by the Federal Respondents. His previous release constituted a determination by Federal Respondents that he was neither dangerous to the community nor flight risks

98. Petitioner has not become a danger or flight risk since their release from custody by fiat. Their re-arrest thus does not serve a legitimate goal. Accordingly, their

re-arrest would violate the Due Process Clause.

COUNT SIX

Violation of the Fifth Amendment to the United States Constitution

Petitioners' Detention Violates Procedural Due Process

99. Petitioner repeats and re-alleges each of the allegations contained in all preceding paragraphs of this Petition as if they were fully set forth herein.

100. The Fifth Amendment guarantees all persons (including noncitizens) present in the United States with due process rights, which includes the right to not be deprived of another recognized constitutional right, the right to liberty or property interests without notice and a hearing before a neutral adjudicator.

101. Petitioner was already determined to be eligible for RoR on December 27, 2023 when he was first arrested and determined to not pose a risk of flight or danger to the community and thereafter released. In the law, Petitioner is said to have a protected liberty interest in his continued freedom from re-arrest and is entitled to due process before the Federal Respondents can deprive him of his liberty interest and re-arrest him.

102. The Due Process Clause precludes the Federal Respondents from re-arresting him without first conducting a pre-deprivation hearing before a neutral adjudicator in which the Federal Respondents have the burden of establishing that petitioner poses a flight risk or danger to the community.

COUNT SEVEN

Violation of the Fourth Amendment to the United States Constitution

Petitioners' Re-Arrest Constitutes an Unreasonable Seizure

103. Petitioner repeats and re-alleges each of the allegations contained in all preceding paragraphs of this Petition as if they were fully set forth herein.

104. The Fourth Amendment protects the right of all persons in the United States (Petitioner included) to be free from unreasonable seizures by government officials. Petitioner therefore has the constitutional right under the Fourth Amendment to be free from unreasonable seizures.

105. The Fourth Amendment prohibits as well re-arrest on the same charge without a material factual or legal change of circumstances.

106. The Federal Respondents re-arrested Petitioner on the same change without first determining the existence of material factual or legal change of circumstances. The re-arrest of Petitioner violates the Fourth Amendment.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over the Petition;
2. Issue an Order for the Federal 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;
3. Issue a writ of habeas corpus and order the Federal Respondents to release Petitioner forthwith and grant injunctive relief precluding the Federal Respondents from re-arresting Petitioner unless his re-arrest is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
4. Declare that having granted RoR to Petitioner on December 27, 2023, the Federal Respondents re-arrest of Petitioner was arbitrary, capricious and in excess of statutory/regulatory authority, was contrary to law and to constitutional rights;
5. Award reasonable attorney's fees and costs; and
6. Grant such further relief as this Court deems just and proper.

Dated: January 31, 2026

Respectfully submitted,

/s/ Bernal Peter Ojeda
Bernal Peter Ojeda
Counsel for Petitioner

Certificate of Verification

I, the undersigned, am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I, and others working under my supervision have discussed with Petitioner the events described in this Petition through competent interpreters. I hereby verify under 28 U.S.C. § 1746 that the statements made in the attached Petition for Writ of Habeas Corpus, are true and correct to the best of my knowledge.

/s/ Bernal Peter Ojeda
Bernal Peter Ojeda
Counsel for the Petitioner

Date: Jan 31, 2026