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Attorney for Mr. Elezovic

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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EDIN ELEZOVIC,

Petitioner,

v.

MARKWAYNE MULLIN,  
SECRETARY, UNITED STATES  
DEPARTMENT OF HOMELAND  
SECUEITY; TODD BLANCHE,  
ACTING ATTORNEY GENERAL OF  
THE UNITED STATES, EXECUTIVE  
OFFICE FOR IMMIGRATION  
REVIEW; TODD LYONS, ACTING  
DIRECTOR, UNITED STATES  
ENFORCEMENT AND REMOVAL  
OPERATIONS; MICHAEL  
BERNACKE, SALT LAKE CITY FIELD  
OFFICE DIRECTOR, ENFORCEMENT  
AND REMOVAL OPERATIONS, United  
States Immigration and Customs  
Enforcement (ICE); BARRY GOLDING,  
ACTING WASHINGTON COUNTY  
SHERIFF'S OFFICE

Respondents.

**PETITION FOR WRIT OF HABEAS  
CORPUS**

Case No.

**I.  
INTRODUCTION**

1. Counsel is an attorney that is licensed to practice in Nevada and Utah.

2. The Mr. Elezovic resides in Utah and is currently detained by the Department of Homeland Security, Immigration & Customs Enforcement (ICE) in the Washington County Detention Center.

3. Mr. Elezovic Edin Elezovic (“Mr. Elezovic”), by and through above- named counsel of record, submit this Petition for Writ of Habeas Corpus against the above- named Respondents for unlawful detention. Mr. Elezovic’s immigration case number is A 072-344-879, and Respondents have informed him that they will transport him to a detention center in Tacoma, Washington.

4. The Mr. Elezovic is a noncitizen lawful permanent resident detained by Immigration & Customs Enforcement (“ICE”) at the Washington County Detention Center. He now faces unlawful detention because the Department of Homeland Security has determined he is removable from the United States based on a criminal conviction that is on appeal with the Utah Court of Appeals.

5. Mr. Elezovic is a national and citizen of Bosnia and Herzegovina. He is a lawful permanent resident. On March 4, 2016, Mr. Elezovic pled guilty in the Fifth Judicial District Court, State of Utah to two counts of Violation of a Protective Order, Class A Misdemeanors in violation of Utah Code Ann. § 76-5-108. The offenses occurred in Washington County, Utah.

6. On March 18, 2026, Mr. Elezovic pled no contest to Child Abuse, Class A Misdemeanor, in violation of Utah Code Ann. 46-5-109 (2) and (3A) and Assault, a Class B

Misdemeanor, in violation of Utah Code Ann. 76-5-102 (2) and (3A).

7. On the Violation of Protective Order cases, Mr. Elezovic was sentenced to 365 days on each county with 365 days suspended. Mr. Elezovic was placed on probation for a period of 24 months with terms and conditions. The terms and conditions of probation included 120 days in county jail, with credit for time served in lieu of a fine.

8. On the Child abuse and Assault cases, Mr. Elezovic was sentenced to 365 days suspended on the Child Abuse conviction and 365 days suspended. On the Assault conviction, Mr. Elezovic was sentenced to 180 days jail, with 180 days suspended. Mr. Elezovic was placed on probation for a period of 24 months with terms and conditions imposed by the Court.

9. All these cases are on appeal to the Utah Court of Appeals. Mr. Elezovic completed his 120 days of incarceration as ordered by the Court but is being detained by Respondents in violation of the plain language of the Immigration and Nationality Act (“INA”) and the Utah and United States Constitution.

10. Accordingly, Mr. Elezovic seeks a writ of habeas corpus requiring that he be released immediately.

## II.

### JURISDICTION

11. Mr. Elezovic is the custody of Respondents but is currently detained in the Washington County Detention Center in Hurricane, Utah.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651.

14. The Court has the authority to grant a writ of habeas corpus to a Mr. Elezovic who demonstrates that he is being held in custody in violation of federal law. 28 U.S.C. § 2241(a), (c)(3); *see INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“[T]he writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (noting that § 2241 habeas corpus proceedings are available to challenge the lawfulness of immigration-related detention).

15. Mr. Elezovic does not seek review of a discretionary decision by the Attorney General or the Secretary of Homeland Security (8 U.S.C. § 1252(a)(2)(B)(ii)); does not challenge a final order of removal (8 U.S.C. § 1252(a)(2)(C)); nor is he seeking judicial review of a legal or factual question arising from removal proceedings, the decision to commence removal proceedings, the adjudication of their removal case, or the execution of a removal order (8 U.S.C. §§ 1252(b)(9) and 1252(g)). *See Jennings v. Rodriguez*, 583 U.S. 281, 292 (2018) (Alito, J., joined by Roberts, C.J. and Kennedy, J.); *id.* at 355 (Breyer, J., joined by Ginsburg and Sotomayor, J.J., dissenting) (finding that § 1252(b)(9) did not bar judicial review of a detention order); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (concluding that § 1252(g) applies to “three discrete actions”: commencing removal proceedings, adjudicating removal cases and executing removal orders).

### III.

#### VENUE

1. Pursuant to *Braden v. 30<sup>th</sup> Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-

500 (1973), venue lies in the United States District Court for Utah, the judicial district in which Mr. Elezovic is currently detained.

2. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because the events or omissions giving rise to the claims occurred in Utah.

#### IV.

#### REQUIREMENTS OF 28 U.S.C. § 2243

3. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the Mr. Elezovic is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

4. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

#### V.

#### PARTIES

5. Mr. Elezovic Edin Elezovic is a citizen of Bosnia and Herzegovina who is in immigration detention in Washington County, Utah. Mr. Elezovic is a lawful permanent resident of the United States.

6. Michael Bernacke is the Director of the Salt Lake Field Office of ICE's Enforcement and Removal Operations Division. As such, Mr. Bernacke is Mr. Elezovic's immediate custodian and is responsible for Mr. Elezovic's detention and removal. He is named in his official capacity.

7. Respondent TODD M. LYONS is the Acting Director for U.S. Immigration and Customs Enforcement. As such, Mr. Lyons is responsible for Mr. Elezovic's detention and removal. He is named in his official capacity.

8. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Mr. Elezovic's detention. Mr. Mullin has ultimate custodial authority over Mr. Elezovic and is sued in his official capacity.

9. Respondent Todd Blanche is the acting Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

10. Respondent Barry Golding is the Acting Sheriff of Washington County, where Mr. Elezovic is detained. He has immediate physical custody of Mr. Elezovic. He is sued in his official capacity.

## VI.

### FACTS

11. Mr. Elezovic is a citizen and national of Bosnia and Herzegovina and is a

lawful permanent resident of the United States.

12. Mr. Elezovic was convicted in the Fifth Judicial District Court, State of Utah of two counts of Violation of a Protective Order and sentenced as part of his probation to 120 days in custody, with credit for time served in lieu of a fine. Mr. Elezovic was also convicted in the Fifth Judicial District Court, State of Utah, of Child Abuse and Assault. The jail sentences in that case were suspended.

13. Mr. Elezovic has now fully served that 120-day sentence, and his lawful term of incarceration expired on April 21, 2026. Mr. Elezovic has exercised his right to direct appeal, and that appeal remains pending.

14. Despite the expiration of his 120-day criminal jail sentence, Mr. Elezovic continues to be detained at the jail in Washington, Utah. The sole basis for this continued detention is an ICE detainer.

15. Mr. Elezovic is not being held pursuant to any judicial warrant, new criminal charges, or final order of removal. Nor has he been provided any meaningful opportunity to challenge his continued detention. As a result, Mr. Elezovic remains in custody without lawful authority.

## VII.

### CLAIMS FOR RELIEF

#### COUNT I

##### Violation of the Fourth Amendment

###### A. Continued Detention Based Solely on an ICE Detainer Is Unlawful

Once a criminal sentence has expired, any continued detention must be supported by independent lawful authority. The Fourth Amendment prohibits unreasonable seizures, and

continued confinement without a warrant or lawful basis constitutes a violation of that protection. An ICE detainer does not provide such authority. Federal courts have consistently recognized that an immigration detainer is merely a request that a local agency maintain custody for a limited period; it is not a judicial warrant and does not compel continued detention. *See Galarza v. Szalczyk*, 745 F.3d 634, 640–45 (3<sup>rd</sup> Cir. 2014)

Consistent with that principle, courts have held that detention beyond a lawful release date based solely on an ICE detainer violates the Constitution. In *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305, the United States District Court, District of Oregon concluded that holding an individual past the time he was entitled to release, solely because of an ICE detainer, constituted an unlawful seizure. *See Garcia v. Taylor*, 40 F3d 299, 303 (9th Cir 1994), superseded on other grounds by 8 USC § 1252(i). Federal regulations further confirm the limited nature of detainers, providing that they authorize only a brief, temporary hold of up to 48 hours. *See* 8 C.F.R. § 287.7. However, these ICE detainers are not mandatory.

Here, Mr. Elezovic has completed his sentence and is being held without a warrant, without probable cause determination by a neutral magistrate, and without any lawful extension of custody. His continued detention therefore constitutes an unreasonable seizure in violation of the Fourth Amendment.

## **COUNT II**

### **Violation of Fifth Amendment**

#### **B. Mr. Elezovic's Detention Violates the Fifth Amendment's Due Process Clause**

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Immigration detention, while civil in nature, is still subject to constitutional

limitations. *See Demore v. Kim*, 538 U.S. 510, 523 (2003). The Supreme Court has emphasized that freedom from physical restraint lies at the core of the liberty protected by due process. *See Zadvydas v. Davis*, 533 U.S. at 690.

In determining what process is due, courts apply the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which considers the private interest affected, the risk of erroneous deprivation, and the government's interest. Mr. Elezovic's liberty interest is substantial, as he has already completed his criminal sentence and remains detained without any formal adjudication of his custody status. The risk of erroneous deprivation is acute because no hearing, bond determination, or judicial review has been provided. Meanwhile, the government's interest is diminished where no final conviction or removal order exists.

Under these circumstances, Mr. Elezovic's continued detention without process constitutes a violation of both substantive and procedural due process.

### **COUNT III.**

#### **VIOLATION OF IMMIGRATION AND NATIONALITY ACT (INA)**

##### **C. Mr. Elezovic Is Not Lawfully Detained Under Federal Immigration Statutes**

Federal immigration detention must be grounded in statutory authority. *See Demore v. Kim*. The primary statutory provisions governing detention pending removal are 8 U.S.C. § 1226(a) and § 1226(c). Section 1226(a) permits discretionary detention, typically accompanied by the availability of a bond hearing. Section 1226(c) mandates detention only for certain categories of noncitizens with qualifying criminal convictions.

However, Mr. Elezovic does not fall within the scope of lawful detention under these provisions. He has not been afforded a bond hearing under § 1226(a), and mandatory detention

under § 1226(c) does not apply because the underlying conviction is not final. Absent a lawful statutory basis, his detention is unauthorized and unlawful.

**D. The Underlying Conviction Is Not Final and Cannot Support Immigration Detention**

A fundamental principle of immigration law is that a criminal conviction must be final before it can serve as the basis for removal or mandatory detention. The Board of Immigration Appeals has reaffirmed that a conviction lacks finality while direct appellate review remains pending. *See Matter of J.M. Acosta*, 27 I&N Dec. 420, 432. This rule reflects longstanding precedent requiring exhaustion or waiver of direct appeals before a conviction becomes final. *See Matter of Ozkok*, 19 I&N Dec. 546.

Thus, federal courts have likewise recognized that convictions under direct appeal cannot form the basis for immigration consequences. Because Mr. Elezovic's appeal is pending, his conviction is not final. As a result, it cannot support mandatory detention under 8 U.S.C. § 1226(c) or otherwise justify his continued confinement.

**VIII.**

**CONCLUSION AND REQUEST FOR RELIEF**

For the foregoing reasons, Mr. Elezovic's continued detention is unlawful. He has completed his 120-day criminal jail sentence, is being held solely on the basis of a non-binding ICE detainer, has not been afforded due process, and is not subject to lawful immigration detention based on a final conviction. Accordingly, Mr. Elezovic respectfully requests that this Court issue a writ of habeas corpus ordering his immediate release.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Elezovic prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that Respondents release Mr. Elezovic immediately;
- c. That Respondents do not transfer Mr. Elezovic from this jurisdiction;
- d. That Respondents do not remove Mr. Elezovic from the United States;
- e. Award Mr. Elezovic attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- f. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of April, 2026.

FILLMORE SPENCER LLC

/s/ T Laura Lui  
Attorney for Mr. Elezovic