

Melissa A. Brennan, Maine Bar No. 006279  
Attorney for Petitioner

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

GEDEON MBOKO,

Petitioner,

V.

KEVIN JOYCE, Sheriff, Cumberland County Jail; PATRICIA HYDE, Boston Field Office Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and, PAMELA BONDI, Attorney General of the United States, in their official capacities,

### Respondents.

Case No. \_\_\_\_\_

# PETITION FOR WRIT OF HABEAS CORPUS

**ORAL ARGUMENT  
REQUESTED**

## INTRODUCTION

1. Petitioner Gedeon Mboko is a twenty-three-year-old young man in the custody of U.S. Immigration and Customs Enforcement (ICE) at the Cumberland County Jail (CCJ) in Portland, Maine. At present, Mr. Mboko is facing removal proceedings under 8 U.S.C. § 1229a.
2. ICE is engaged in a pattern of transferring immigrant detainees with ties to Maine to detention centers in other states, including states outside of New England. These transfers have interfered with the ability of legal service providers in Maine, including undersigned counsel, to establish and maintain attorney-client relationships with individuals initially detained by ICE in our state.

3. Upon information and belief, ICE seeks to transfer Mr. Mboko and detain him outside of the District of Maine.
4. Mr. Mboko has been represented on immigration matters by legal counsel at the Immigrant Legal Advocacy Project (ILAP), a nonprofit legal services organization based in Maine, since September of 2021. This representation has been provided on a *pro bono* basis and has encompassed legal work on various immigration matters. ILAP estimates that the organization has invested hundreds of hours in its work for Mr. Mboko to date.
5. Transferring Mr. Mboko hundreds or thousands of miles away from his attorneys would severely hinder—if not entirely prevent—Mr. Mboko and his attorneys at ILAP to effectively present his legal case in removal proceedings. As a nonprofit legal services provider, ILAP does not have the financial resources to undertake significant travel to meet with Mr. Mboko in a distant jurisdiction. Moreover, Mr. Mboko is a survivor of severe trauma and has a complex immigration case involving multiple forms of relief. Effective assistance of counsel necessitates ongoing, in-depth, in-person meetings with counsel. Mr. Mboko does not have the resources to hire private counsel in another jurisdiction should he be transferred.
6. Transferring Mr. Mboko out of Maine is also unnecessary. ICE has legal authority to release Mr. Mboko and the logistical ability to continue detaining him within the state. ICE has agreements with both the Cumberland County Jail and the Two Bridges Regional Jail in Wiscasset, Maine. Both facilities house individuals in removal proceedings. These alternatives make an out-of-district transfer unwarranted.
7. Transferring Mr. Mboko outside the District of Maine violates federal statutory, regulatory, and constitutional law. The Constitution does not permit the government to

effectively sever the attorney-client relationship by transferring an individual hundreds or thousands of miles away from their attorneys while their cases remain pending.

8. Even existing federal policy permits transfers of such individuals only where “necessary.” See ICE, *Policy No. 11022.1: Detainee Transfers* (Jan. 4, 2012), available at <https://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf>.
9. Here, there is no necessity, as Mr. Mboko could be released or detained a facility within the District of Maine.
10. Mr. Mboko asks this Court for an order preventing ICE from effectuating a decision to transfer him outside the District of Maine.
11. Accordingly, to protect and preserve Mr. Mboko’s statutory, regulatory, and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus. Absent an order from this Court, Mr. Mboko will be transferred out of the District of Maine, denying him meaningful access to his attorneys and violating his statutory, regulatory, and constitutional rights. Mr. Mboko asks this Court to declare that his transfer by ICE outside of this jurisdiction would violate his statutory, regulatory, and constitutional rights to counsel, and order that ICE may not remove him from the District of Maine.

### **JURISDICTION**

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

#### **VENUE**

15. Venue is proper because Mr. Mboko is detained at the Cumberland County Jail in Portland, Maine which is within the jurisdiction of this District.
16. Venue is proper in this District because a substantial part of the events or omissions giving rise to these claims occurred in this District and Mr. Mboko resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

#### **REQUIREMENTS OF 28 U.S.C. § 2243**

17. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

#### **PARTIES**

19. Petitioner Gedeon Mboko is a citizen of the Democratic Republic of Congo. He is the beneficiary of an approved Petition for Special Immigrant Juvenile classification (Form I-

360), and was granted Deferred Action, a form of protection against removal, by USCIS. He has two applications pending with U.S. Citizenship and Immigration Services (USCIS): one application to adjust his status to that of a lawful permanent resident (Form I-485) and one for asylum (Form I-589). Mr. Mboko is currently detained at the Cumberland County Jail in Portland, Maine, and under the direct control of Respondents and their agents.

20. Respondent Kevin Joyce is the Cumberland County Sheriff with control of CCJ, and he has immediate physical custody of Mr. Mboko pursuant to the facility's contract with ICE to detain noncitizens. Respondent Joyce is a legal custodian of Mr. Mboko.

21. Respondent Patricia Hyde is sued in her official capacity as the Acting Director of the Boston Field Office of ICE. Respondent Hyde is a legal custodian of Mr. Mboko.

22. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

23. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

#### **STATEMENT OF FACTS**

24. Mr. Mboko is a twenty-three-year-old citizen of the Democratic Republic of the Congo

(DRC) and a survivor of profound trauma. In DRC, he suffered abuse, neglect, and abandonment by his parents, including severe physical abuse inflicted upon him by his mother that left him with lasting scars. He later experienced political persecution that caused him to flee his home country in fear of his life when he was just a teenager. He is extremely traumatized as a result of these experiences.

25. Mr. Mboko entered the United States alone in 2019 at age 17, seeking safety.

Immediately following his entry to the United States, the U.S. Office of Refugee Resettlement designated Mr. Mboko as an Unaccompanied Child (UC) based on his having entered the United States while under the age of eighteen, without a parent or legal guardian.

26. Following his entry to the United States, Mr. Mboko was placed in removal proceedings pursuant to 8 U.S.C. § 1229a.

27. Mr. Mboko filed an affirmative application for asylum as a UC with USCIS in February of 2020. This application remains pending.

28. In July of 2021, Mr. Mboko retained *pro bono* counsel at ILAP. An ILAP attorney entered her appearance as counsel to Mr. Mboko in his removal proceeding.

29. In April of 2022, Mr. Mboko, through ILAP counsel, petitioned USCIS for Special Immigrant Juvenile classification based on having been abused, abandoned, and neglected by his parents. In November of 2022, USCIS approved this petition and, in April of 2023, granted Mr. Mboko Deferred Action pursuant to agency policy, indicating that he was deemed a low-priority for removal from the United States.

30. On October 21, 2024, upon motion by Mr. Mboko, an immigration judge ordered termination of the removal proceedings against him based on USCIS' approval of the

Petition for Special Immigrant Juvenile classification, and his eligibility for lawful permanent residence.

31. In 2024, Mr. Mboko was arrested on a criminal matter and held at CCJ. On Friday, May 9, 2025, Mr. Mboko's criminal matter was resolved, and he was eligible for release from criminal custody. Jail personnel refused to release Mr. Mboko, citing the existence of an ICE detainer. A detainer is a request from ICE to hold an individual for up to 48 hours beyond their scheduled release date to allow ICE an opportunity to take custody. *See* Department of Homeland Security (DHS) Form I-247A (3/17 edition); 8 C.F.R. § 287.7. ICE failed to take Mr. Mboko into custody during the 48-hour period when the detainer was in effect.<sup>1</sup> Nevertheless, CCJ refused to release Mr. Mboko and held him without legal justification until ICE sent an agent to the jail on Monday May 12, 2025, more than 60 hours after Mr. Mboko was entitled to release from criminal custody.
32. On May 12, 2025, ICE issued a Form I-862 Notice to Appear instructing Mr. Mboko to appear before an immigration judge. This is the first step in commencing a removal proceeding against him. The day the Notice to Appear was issued, Mr. Mboko overheard an official reference plans to move him to another facility.
33. Upon information and belief, ICE now seeks to transfer Mr. Mboko to be detained outside of the District of Maine.

### **LEGAL BACKGROUND**

---

<sup>1</sup> Although 8 C.F.R. § 287.7(d) states that if a detainer is issued, the receiving agency "shall maintain custody" of the person for an extra 48 hours ("excluding Saturdays, Sundays, and holidays"), the 48-hour hold requested on a Form I-247A ICE detainer no longer excludes weekends and holidays as it once did. *See* ICE Form I-247A. This means that a person with an ICE hold is ordered released on a Friday, they should not be held beyond Sunday.

34. Upon information and belief, ICE maintains a policy and practice of transferring noncitizen detainees to immigration detention centers located far from the geographical areas where they were initially apprehended. These transfers frequently occur without adequate notice to the detainee or legal counsel, and often result in significant barriers to legal representation, communication, and access to evidence.
35. Upon information and belief, ICE routinely transfers individuals who have strong ties to Maine—including those represented by legal counsel within the state—to detention facilities in distant jurisdictions. Upon information and belief, ICE routinely transfers individuals with no prior connection to Maine into CCJ.
36. Upon information and belief, such transfers are routinely carried out without individualized assessments of the detainee's circumstances or due process needs.
37. Recent media reports have highlighted instances where ICE's transfer practices have disrupted legal representation and access to counsel. *See, e.g.,* Andy Rose, *Why ICE is really moving detainees over a thousand miles from where they were arrested*, CNN, (Apr. 10, 2025), <https://www.cnn.com/2025/04/10/us/immigration-detainees-trump-ice-students-visa>; Stephen Dinan, *Immigrants Detained at Remote Facilities in Louisiana, Raising Objections from Legal Advocates*, The Washington Times, (Mar. 28, 2025), <https://www.washingtontimes.com/news/2025/mar/28/immigrants-detained-remote-facilities-louisiana-objections/>.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of the Immigration and Nationality Act and Implementing Regulations**

38. The allegations in the above paragraphs are realleged and incorporated herein.

39. The Immigration and Nationality Act (INA) and implementing regulations guarantee individuals in removal proceedings the right to counsel of their choosing. 8 U.S.C. § 1229a(b)(4)(A); 8 U.S.C. § 1362; 8 C.F.R. §292.5; 8 C.F.R. §1292.1; 8 C.F.R. §1003.61. Respondents' conduct violates Petitioner's statutory and regulatory right to counsel of his choosing, as transfer out of the District of Maine will prevent him from communicating effectively with his existing and longstanding legal counsel at ILAP.
40. The INA also provides that immigrants shall have a reasonable opportunity to present evidence on their own behalf. 8 U.S.C. § 1229a(b)(4)(B). Respondents' conduct violates Petitioner's statutory and regulatory right to present evidence by restricting his ability to work with his attorneys to collect evidence and communicate with potential witnesses and experts, as is necessary to meaningfully prepare and present his legal case.
41. Absent an order preventing transfer away from counsel, Mr. Mboko will suffer injury as a proximate result of Respondents' violation of 8 U.S.C. § 1229a(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(B), 8 U.S.C. § 1362, 8 C.F.R. §292.5; 8 C.F.R. §1292.1; and 8 C.F.R. §1003.61.

## **COUNT TWO**

### **Violation of Fifth Amendment Right to Due Process**

42. The allegations in the above paragraphs are realleged and incorporated herein.
43. The Due Process Clause of the Fifth Amendment guarantees immigrants fundamental fairness in their removal proceedings including the right to effective assistance of counsel. *Lozada v. INS*, 857 F.2d 10, 13 (1st Cir. 1988); *See also Ardestani v. INS*, 502 U.S. 129, 138 (1991) ("We are mindful that the complexity of immigration procedures,

and the enormity of the interests at stake, make legal representation in deportation proceedings especially important.”).

44. The First Circuit has said that a removal proceeding becomes fundamentally unfair when “the alien [is] prevented from reasonably presenting his case.” *Lozada v. INS*, 857 F.2d 10, 13 (1st Cir.1988). Respondents’ conduct violates Petitioner’s Fifth Amendment rights by interfering with an established and longstanding attorney-client relationship and restricting his ability to communicate effectively with counsel and present his case.

45. The Due Process Clause of the Fifth Amendment also protects “the right of access to courts.” *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002). Respondents’ conduct violates Petitioner’s Fifth Amendment rights by interfering with an established attorney-client relationship and restricting his ability to communicate effectively with counsel.

46. Respondents’ conduct also violates Petitioner’s Fifth Amendment rights by preventing him from having in-person meetings with his attorneys.

47. For these reasons, ICE’s plan to transfer Petitioner out of the District of Maine violates the Due Process Clause of the Fifth Amendment.

#### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that transfer of Petitioner outside of the District of Maine violates the Due Process Clause of the Fifth Amendment, and 8 U.S.C. § 1229a(b)(4)(A), 8 U.S.C. § 1362, 8 C.F.R. §292.5, 8 C.F.R. §1292.1, and, 8 C.F.R. §1003.61.

- (4) Issue a Writ of Habeas Corpus ordering Respondents to refrain from transferring Petitioner out of the District;
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Melissa Brennan

Melissa A. Brennan, Esq.

*Counsel for Petitioner*

Immigrant Legal Advocacy Project

P.O. Box 17917

Portland, ME 04112

207-699-4415

[mbrennan@ilapmaine.org](mailto:mbrennan@ilapmaine.org)

Dated: May 13, 2025

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Gedeon Mboko, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 14<sup>th</sup> day of May 2025