UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

K.E.O., *Plaintiff-Petitioner,* v. Jason **WOOSLEY**, Grayson County Jailer; Samuel **OLSON**, Field Office Director for U.S. Immigration and Customs Enforcement; **Kristi NOEM**, in her official capacity as Secretary, U.S. Department of Homeland Security, *Defendants-Respondents.*	)	Case No. 4:25-cv-00074-RGJ **REPLY BRIEF IN SUPPORT OF VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

The Show Cause Why The Writ of Habeas Corpus Should Not Be Granted (Doc. 8, PageID 74-88) ("Response") the federal Respondents[1] submitted confirms that K.E.O. should be released from custody. K.E.O.'s Petition alleges that ICE arrested and then detained her on April 28, 2025 in violation of federal statutes, regulations, and the U.S. Constitution because the agency revoked her Order of Supervision ("OSUP") without prior notice or opportunity to be heard as the operative law, regulations, and Due Process Clause requires. The Response first confirms that ICE did not adhere to the proper regulatory authority when arresting K.E.O. (*Id.*, PageID 75, 84). It then relies on a warrant for arrest and a notice of custody determination that explicitly and exclusively rest on

[1] Respondents so far are just the federal Respondents. Respondent Jason Woosley, Grayson County Jailer, K.E.O.'s "immediate custodian," (Doc. 1, PageID 4, ¶12), has not appeared in this matter or responded to K.E.O.'s Petition. Because "the default rule is that the proper respondent is the warden of the facility where the prisoner is being held," *Rumsfeld v. Padilla*, 542 U.S. 426, 436 (2004), Woosley's failure to respond to the Court's order or oppose the Petition, should be seen as a waiver of opposition to the Petition and an independent basis for granting the Petition.

inapplicable statutory authority for arresting and detaining noncitizens. (*Id.*, PageID 75, 82, 83-84). And it tries to focus the Court on inapposite jurisdictional arguments (*id.*, PageID 75-77) and besmirch K.E.O. by focusing on (and even misconstruing) immaterial facts. (*Id.*, PageID 85-87).

The plain language of the statutory and regulatory provisions Respondents claim vested them with authority to arrest and detain K.E.O., as construed by the Supreme Court and other courts, demonstrate the agents arrested and detained K.E.O. using improper authority; thus they lacked authority to arrest and detain her and failed to provide K.E.O. prior notice or opportunity to be heard as required by the operative law. This Court—nor any other federal court--should have to superintend these rudimentary agency actions that carry such important consequences; the agency should get it right the first time. Unfortunately, the Court's intervention is required due to the agency's failure to lawfully execute the Immigration and Nationality Act (INA) and its own regulations. Because K.E.O. is not challenging her removal order or its execution, this Court has jurisdiction to review K.E.O.'s arrest and detention and should hold her arrest and subsequent detention for over three months now violated federal law and the U.S. Constitution. K.E.O.'s Petition for writ of habeas corpus should be granted, and she should be released from custody.

RELEVANT FACTS AND BACKGROUND

The Response relies largely on irrelevant or even inaccurate facts while glossing over the most pertinent facts. The Response focuses largely on facts that occurred almost half of K.E.O.'s life ago and even mischaracterizes some of them. (*See, e.g.*, Doc. 8, PageID 85-87). It spends almost no time on the facts that are relevant to decide the Petition.

The relevant facts relate to ICE's decision to forego detaining K.E.O. and instead placing her on an OSUP and its subsequent, unexplained reversal leading to her arrest and detention on April 28, 2025. Respondents never dispute that K.E.O. has always fully complied with her OSUP which ordered that she "be placed under supervision and permitted to be at large." (Doc. 1-2, PageID 23). Nor do they dispute that ICE never issued a Notice of Revocation of Supervised Release when arresting and detaining her on April 28, 2025, or a reasonable time thereafter to contest the basis for her arrest and detention. (Doc. 1, PageID 1, 3, 8, 9, 10, 12, ¶¶ 1, 7, 28, 29, 31, 33, 35, 41; Doc. 1-2, PageID 23). Neither she nor her counsel who accompanied her to her ICE check-in on April 28, 2025, were given any documents providing a lawful basis for revoking her supervision and arresting and detaining her. *See* **Exhibit 1, ¶¶** 6-8 (Declaration of Ruth Pebror); **Exhibit 2,** ¶3 (Declaration of K.E.O.). In particular, K.E.O. did not receive a Notice of Revocation of Supervised Release when she was arrested or a reasonable time thereafter. **Exhibit 2,** ¶4. Nor did any ICE representative explain to K.E.O.'s counsel the basis for her arrest and detention. **Exhibit 1** at ¶7. Respondents now assert that it is a "false assumption" that she was detained because her supervised release was revoked. (Doc. 8, PageID 75).

Respondents also spend much time discussing, and even inaccurately characterizing, facts associated with her conviction in 2010. [2] The Response ignores that, in connection with K.E.O.'s sentencing in 2024, the "now esteemed state judge" who prosecuted K.E.O. in 2010 wrote a letter to United States District Judge Leichty *on her behalf* "speak[ing] to [K.E.O.]'s character and

[2] It is not necessary to resolve this Petition for K.E.O. to dispute Respondents' characterization of the factual findings in the Indiana appellate court opinion affirming her conviction and sentence. *See* Doc. 8, PageID 85 (citing opinion). However, the Response's factual recitation in that court's opinion simply does not square with the opinion itself. For example, Respondents dispute that the charged activity was "nonviolent." (Doc. 8, PageID 85). However, the opinion, and Judge Leichty's 2024 sentencing memorandum, clearly states that "[s]he was the driver. The 'weapon' wasn't a gun but a hand or a bottle. She didn't wield either. No one was hurt." (Doc. 1-4, PageID 35). Respondents also argue "Petitioner's claim that '[y]oung men suggested robbing a gas station' (Doc. 1, PageID.7, ¶ 20) is contrary to facts established in her prosecution." (Doc. 8, PageID 85). Yet the opinion confirms, rather than contradicts, K.E.O.'s statement: "[K.E.O.] asked Luis Torres, Diego Gonzalez, and Jorge Ochoa for help. She told them that she needed money to send to her cousins in Texas. Torres suggested that they rob a gas station, and everyone agreed." *[K.E.O.] v. State*, 969 N.E.2d 1032, 1036 (Ind. Ct. App. 2012).

suggesting that "perhaps he would not make the same decision today" to charge her as an adult or with felonies as he did when he was a "young, aggressive prosecutor." (Doc. 1-4, PageID 36). The Response also ignores that Judge Leichty recognized that she "is not the same foolish or impulsive teenager" as in 2008. (Doc. 1-4, PageID 36). She has "matured," has "become educated and earned a college degree," "has no drug issues," and "been a trailblazer for other family members to learn English, to go to college, and even to enter the United States through proper channels." (*Id.*) Perhaps most importantly, she had her first child with her fiancée in January 2024. (*Id.*).

The Response also seems to suggest it is somehow inappropriate for K.E.O. to exercise her rights under the INA to seek relief from deportation (in other fora). (Doc. 8, PageID 80, 86-87). However, despite the Response's innuendo, K.E.O. did not compromise or abandon her rights to seek relief under the INA as a condition of sentencing. And, despite the suggestion that "[t]he leniency that Petitioner received from her sentencing court was predicated on her representations that she would quickly be removed from the country," (Doc. 8, PageID 80), her sentencing judge himself recognized that she would not be removed immediately, explaining in his sentencing memorandum that she "will not likely be deported until after her nursing of her newborn concludes." (Doc. 1-4, PageID 37). The Response ignores that ICE's detention of K.E.O. basically flouts Judge Leichty's decision by arresting her while she was still breastfeeding. *See* **Exhibit 2**, ¶5. Moreover, the Petition makes clear that K.E.O.'s application for a T-visa (based on her status as a human trafficking victim) and request for withholding of removal proceedings were not even contemplated until after her 2024 sentencing, when she consulted with immigration counsel. (Doc. 1, PageID 9, 11, ¶¶30, 38).

Likewise, Respondents do not dispute that K.E.O. has claimed a reasonable fear of return to Mexico, which an immigration judge has found to be sufficiently credible to refer her for full withholding of removal proceedings to challenge her removal; and "[t]hat matter is currently pending." (Doc. 8-4, PageID 108, ¶10). However, here, K.E.O. is not challenging her removal order or litigating her claim for protection in the United States.[3]

Finally, for the first time on August 1, 2025, after the Response was filed, K.E.O. was served with a Notice of Revocation of Release while detained at the Grayson County Detention Center. *See* **Exhibit 2,** ¶¶7-8. The Response does not mention this. Undersigned counsel received a copy of this purported revocation notice from Respondents' counsel on August 5, 2025.

ARGUMENT

A. This Court Has Subject Matter Jurisdiction To Hear This Habeas Petition

Respondents first contend that this Court lacks subject matter jurisdiction based on the "jurisdiction stripping" authority of 8 U.S.C. §1252(g) and §1252(b)(9). (Doc. 8, PageID 75-77). They argue that the Petition challenges the execution of her removal order. (Doc. 8, PageID 76) (citing *Rranxburgaj v. Wolf*, 825 F.App'x 278, 282-83 (6th Cir. 2020)). However, the Petition is not challenging the execution of her removal order; it challenges her unlawful arrest and detention.

As her petition—and her claims for relief therein—demonstrate, K.E.O.'s petition before this court challenges her arrest, the detention that flowed from that arrest, and the deficient process and procedures ICE employed when detaining K.E.O. on April 28, 2025, and thereafter. (Doc. 1, PageID 12-19, ¶¶ 43-51, 52-56, 57-61, 62-65, 66-72, Prayer for Relief). The Deportation Officer's declaration in support of the Response does not state that K.E.O.'s arrest or detention was undertaken to effectuate her removal. In fact, while noting she has an executable final removal order, the officer states she was detained "pending a final administrative determination in her

[3] Contrary to Respondents' speculation, (Doc. 8, PageID 87), K.E.O. has a well-founded fear that, if she is removed to Mexico, she will be persecuted or tortured. *See* **Exhibit 2,** ¶¶6. K.E.O. looks forward to litigating that claim in immigration court, rather than in this unrelated matter.

case." (Doc. 8-4, PageID 107-108, ¶8). As early as May 17, 2024, ICE was aware that K.E.O. had expressed a fear of return to Mexico and the agency could not remove her until she completed the reasonable fear process. *See* **Exhibit 2**, ¶8. Therefore, her arrest and detention were not undertaken to effectuate her immediate removal and her Petition challenging her arrest and detention cannot be construed as narrowly challenging the execution of her removal order. Accordingly, neither statutory provision deprives this Court of subject matter jurisdiction.

The Supreme Court has made clear that neither statute is a bar to the Court hearing this case that challenges K.E.O.'s arrest and detention and ICE's statutory, regulatory and constitutional deficiencies associated therewith. In *DHS v. Regents of the Univ. of California*, 591 U.S. 1 (2020), the Court stated that § 1252(b)(9), which provides that judicial review of removal orders shall take place in the court of appeals, "'does not present a jurisdictional bar' where those bringing suit 'are not asking for review of an order of removal,' 'the decision ... to seek removal,' or 'the process by which ... removability will be determined.'" *Id.* at 19 (quoting *Jennings* v. *Rodriguez*, 583 U.S. 281, 294-95 (2018)). "Section 1252(g) is similarly narrow. That provision limits review of cases "arising from" decisions "to commence proceedings, adjudicate cases, or execute removal orders." §1252(g). [The Supreme Court] have previously rejected as 'implausible' the Government's suggestion that § 1252(g) covers "all claims arising from deportation proceedings" or imposes "a general jurisdictional limitation." *Id.* (quoting *Reno v. American-Arab Anti–Discrimination Comm.*, 525 U.S. 471, 482 (1999)).[4] Indeed, a broader interpretation of §1252, particularly §1252(b)(9), that interprets "arising from" to encompass all claims that merely result from the fact of or potential for removal, like Respondents seek, would have "staggering

[4] The Sixth Circuit relied on *Reno*'s "purpose" analysis and its admonition to read §1252(g) "narrowly" so that it did not bar non-habeas claims related to invalid removal orders. *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 864 (6th Cir. 2022).

results," including rendering claims like K.E.O.'s "effectively unreviewable" because they could not be challenged in an appeal of a removal order. *Jennings*, 583 U.S. at 293.

Indeed, the legislative history for the 2005 REAL ID Act confirms this. It states twice that "it should also be noted that section 106 [8 U.S.C. §1252] will not preclude habeas review over challenges to detention that are independent of challenges to removal orders. Instead, the bill would eliminate habeas review only over challenges to removal orders." H.R. Cong. Rep. No. 109-72, at 175 (May 3, 2005); *id.* at 176 (same); *see* 8 U.S.C. §1252 (credits).[5]

The Sixth Circuit has also recognized the distinction between detention-related claims and removal-related claims when considering habeas petitions. *Hamama v. Adducci*, 912 F.3d 869 (6th Cir. 2018). In *Hamama*, even the government agreed (as did the Sixth Circuit) that "the district court had jurisdiction over the detention-based claims and that this jurisdiction is an independent consideration that is not tied to whether the district court has jurisdiction over the removal-based claims." *Id.* at 877.[6] The Southern District of Ohio recently recognized this also, concluding that detention-related challenges, like K.E.O.'s, are not precluded by Section 1252(g). *Karki v. Jones*, 2025 WL 1638070, *8 (S.D. Ohio June 9, 2025).[7] The Seventh Circuit has long rejected arguments

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[5] Principles of constitutional avoidance, specifically avoiding tension with the Suspension Clause, also counsel against reading Section 1252(b)(9) and 1252(g) broadly. *See, e.g., Ayala v. Bondi*, 2025 WL 2084400, *5 (W.D. Wash. July 24, 2025) (using constitutional avoidance to interpret §1252 narrowly to avoid Suspension Clause conflict). The strong "presumption favoring judicial review of administrative action also supports jurisdiction." *Enriquez-Perdomo*, 54 F.4th at 865, n.6 (cleaned up). That presumption has been "consistently applied" with respect to immigration statutes. *Id.*; *see also Regents*, 591 U.S. at 16-17.

[6] In *Hamama*, the Sixth Circuit ultimately concluded that the detention-related claims were also barred from review; but that was because Section 1252(f)(1) bars claims seeking class-wide, non-habeas, injunctive relief, something K.E.O. does not seek. *Hamama*, 912 F.3d at 877.

[7] Respondents' exclusive reliance on *Rranxhaugai* is unavailing because that case is both non-precedential (so not binding) and not to the contrary. It is a non-habeas case that does not address detention because the plaintiff was not detained. Plaintiff appealed the denial of a stay of removal which is simply a challenge to "execut[ing a] removal order," which §1252(g) prohibits and what K.E.O. is not doing here.

that 1252(g) bars review of post-removal order custody: "nothing in § 1252(g) precludes review of the decision to confine." *Carrera-Valdez v. Perryman*, 211 F.3d 1046, 1047 (7th Cir. 2000).

Section 1252(g) also does not sweep as broadly as Respondents assert here as other courts recognize. *United States v. Hovespian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc); *Bowrin v. U.S. INS*, 194 F.3d 483, 488 (4th Cir. 1999) (section 1252 "does not apply" to Government's interpretations of law); *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (§1252(g) does not bar review of the "lawfulness" of a removal-related action because such claims are "collateral" to the discretionary decisions immunized by section 1252(g)).

Multiple courts also have held that §1252(b)(9) does not bar review if the petitioner is not challenging the execution of the removal order (which K.E.O. is not). *See, e.g.*, *Mahdawi v. Trump*, 136 F.4th 443, 452 (2d Cir. 2025) (rejecting claim that § 1252(b)(9) barred detention challenge because "[c]onstruing an independent constitutional challenge to detention as necessarily implying a challenge to removal would lead to what *Jennings* called an 'absurd' result."); *Ozturk v. Trump*, 2025 WL 1145250, *13 (D. Vt. Apr. 18, 2025) (§ 1252(b)(9) did not bar review because, "[f]or present purposes, it is enough to note that respondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined"); *Torres-Jurado v. Biden*, 2023 WL 7130898, at *3 (S.D.N.Y. Oct. 29, 2023) (§ 1252(b)(9) did not bar review because noncitizen "challenges ICE's legal authority to revoke the ICE Stay without process" not "the wisdom of ICE's decision to remove him") (cleaned up); *Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007) ("[R]emoval proceedings are confined to determining whether a particular alien should be deported."). Thus, "claims which cannot be raised in removal proceedings … are independent of, or wholly collateral to, the removal process, not arising from it." *Gicharu v. Carr*, 983 F.3d 13, 16 (1st Cir. 2020) (cleaned up).

Respondents address none of the nuance in Sections 1252(b)(9) and 1252(g), ignore cases like *Torres-Jurado* which found jurisdiction in factually similar circumstances, and instead simply broadly assert that this Court lacks subject matter jurisdiction to hear K.E.O.'s detention-related claims. This Court, however, does have subject matter jurisdiction to hear the Petition.

B. Neither the Purported Warrant of Arrest nor a Notice of Custody Determination Document Provided Lawful Authority to Arrest or Detain K.E.O.

With their Response, Respondents provided a Warrant of Arrest (Form I-200), (Doc. 8-1, PageID 89) and a Notice of Custody Determination (Form I-286), (Doc. 8-2, PageID 90), and argue those documents provided ICE officers with lawful authority to arrest and detain K.E.O. Even assuming these documents were properly issued[8], they do not provide legal authority for immigration officials to arrest and detain K.E.O. because, according to the Respondents and the authority cited in the documents, the documents were issued pursuant to the authority vested in ICE by 8 U.S.C. § 1226[9] and 8 C.F.R. § 236.1(g). However, neither 8 U.S.C. § 1226 nor 8 C.F.R. § 236.1 provide lawful authority for the arrest or detention of an individual with a reinstated removal order. Because only 8 U.S.C. § 1231 and 8 C.F.R. Part 241 provide authority for ICE to arrest and detain a noncitizen like K.E.O. with reinstated removal order and the Respondents do not claim to have arrested and detained K.E.O. based on those authorities, her arrest and detention

[8] Respondents do not provide any information about when these documents were created or issued. K.E.O. notes that the Notice of Custody Determination is timestamped at 10:39am, which is more than an hour after she was arrested and taken into custody by immigration officers. *Compare* Doc. 8-2, PageID 90 *with* **Exhibit 1** at ¶5 (K.E.O. taken into custody no later than 9:20am).

[9] Both the Warrant for Arrest, (Doc. 8-1, PageID 89), and the Notice of Custody Determination, (Doc. 8-2, PageID 90), cite section 236 of the INA, which is 8 U.S.C. § 1226. *See, e.g., Roman v. Ashcroft*, 340 F.3d 314, 324 (6th Cir. 2003). While the Warrant for Arrest and the Notice of Custody Determination also cite INA § 287, 8 U.S.C. § 1357, and Respondents cite 8 C.F.R. § 287.5, those authorities describe which officials are authorized to act; they do not grant substantive legal authority for arrest or detention of noncitizens.

are unlawful and this Court should order her immediate release.[10]

Both the Warrant for Arrest and the Notice of Custody Determination indicate they derive their authority from 8 U.S.C. § 1226. Section 1226 provides authority for ICE to arrest and detain a noncitizen "pending a decision on whether the [noncitizen] is to be removed from the United States." § 1226(a). *See also Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (explaining "[t]he INA further provides that ICE may arrest and detain the [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States') (quoting 8 U.S.C. § 1226(a)).

In *Guzman Chavez*, the Supreme Court considered whether ICE's authority to arrest and detain a noncitizen, like K.E.O., with a reinstated removal order in withholding-only proceedings flows from § 1226 or § 1231 and held that only § 1231 provides ICE arrest and detention authority in such circumstances. The Supreme Court summarized the case this way:

> Federal immigration law contains various provisions authorizing the Government to detain [noncitizens] during the removal process. This case concerns two of them: 8 U. S. C. § 1226 and 8 U. S. C. § 1231. We are asked to decide which of those provisions applies to [noncitizens] who were removed from the United States but later reentered without authorization, were subject to reinstated orders of removal, and then sought withholding of removal based on fear of persecution in the particular countries designated by their removal orders. . . We conclude that § 1231, not § 1226, governs the detention of [noncitizens] subject to reinstated orders of removal. . .

Id. at 526.

It is undisputed that K.E.O. already received a removal order, that her removal order was reinstated in 2023 following her return to the United States, and that she is pursuing protection in withholding-only proceedings. (Doc. 1-2, PageID 23; Doc. 8-4, PageID 108, ¶10; **Exhibit 3**

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[10] Respondents' failure to argue they complied with 8 C.F.R. 241 means that argument is waived. *Karsner v. Hardin County*, 2021 WL 886233, *3 & n.2 (W.D. Ky, March 9, 2021) (Jennings, J.) ("[non-movant] does not respond to their arguments and therefore waives opposition to them.") (citing cases).

(removal order); **Exhibit 4** (reinstatement order)). Thus, she is not in "removal proceedings." 8 U.S.C. §§1229(a)(1), 1229a; 8 C.F.R. §1240.1-12 (describing "removal proceedings"). The Supreme Court conclusively decided that only "§1231, not § 1226," provides ICE authority to arrest and detain K.E.O. *Guzman Chavez*, 594 U.S. at 526.

In their Response, Respondents provide the regulatory authority federal officials relied on when arresting and detaining K.E.O. According to Respondents, ICE did not arrest or detain K.E.O. pursuant to 8 C.F.R. § 241.4, but rather she was "actually detained by operation of a Warrant of Arrest and a Notice of Custody Determination, pursuant to separate authority and procedure under 8 C.F.R. § 236.1(b) and (g)." (Doc. 8, PageID 75, 2). However, for the same reasons as discussed above, 8 C.F.R. § 236.1 provides Respondents no lawful authority to arrest or detain K.E.O. because it likewise only applies to noncitizens when a decision on removability is pending, not after a final removal order has been issued or reinstated.

Just like § 1226, § 236.1 only grants ICE arrest and detention authority over noncitizens in proceedings to determine their removability, not noncitizens with final reinstated removal orders pursuing protection in withholding-only proceedings. First, 8 C.F.R. Part 236, Subpart A is titled "Detention of [Noncitizens] Prior to Order of Removal." Further, 8 C.F.R. § 236.1(b) provides that "[a]t the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest."[11] 8 C.F.R. § 236.1 clearly states that it only applies to noncitizens in proceedings before an immigration judge in which ICE is alleging removability and any authority vested in ICE to issue an arrest warrant or arrest or detain a

[11] A notice to appear is the charging document ICE issues to begin immigration court proceedings where an immigration judge determines whether to enter a removal order. 8 U.S.C. § 1229(a)(1).

noncitizen under the regulation terminates once the "removal proceedings are completed." *Id.*

In contrast, 8 C.F.R. Part 241 is titled "Apprehension and Detention of [Noncitizens] Ordered Removed." Pursuant to 8 U.S.C. § 1231, Part 241 provides ICE limited authority to arrest and detain a noncitizen with a "final administrative removal order" under proscribed circumstances using a "Form I–205, Warrant of Removal." 8 C.F.R. §§ 241.2(a)(1), 241.3(a).

Because K.E.O. is not in proceedings before an immigration judge to determine whether a removal order should be entered against her, but rather her administrative removal order is final, 8 C.F.R. § 236.1 could not provide ICE authority to arrest and detain her.

Finally, the Warrant for Arrest, on its face, demonstrates ICE lacked proper authority to arrest and detain K.E.O. (Doc. 8-1, PageID 89). The warrant says the officer's determination that probable cause existed to arrest K.E.O. was based on "the pendency of ongoing removal proceedings against the subject," biometric confirmation that she was "removable," and statements by the subject that she was "removable." (*Id.*). It therefore commands "to arrest and take into custody for removal proceedings [K.E.O.]." (*Id.*). It is undisputed that no "removal proceedings" are ongoing in K.E.O.'s case and she is not "removable," meaning amenable to a removal order; rather she has a final administrative removal order that has been reinstated. *See* **Exhibit 3; Exhibit 4**. The grounds cited provide support for an arrest pursuant to 8 U.S.C. § 1226 and 8 C.F.R. § 236.1, but they provide no authority here. In fact, a Form I-200 does not provide a checkbox that would justify the arrest and detention of a noncitizen with a final removal order.

Because Respondents' ***only*** claimed authority for arresting and detaining K.E.O. in actuality provides ***no*** authority to arrest and detain a noncitizen who is not in proceedings before an immigration judge to determine whether a removal order should be entered against her, K.E.O.'s arrest and detention was not lawful; her arrest and detention violated the Administrative

Procedures Act (APA), the operative regulations under the *Accardi* doctrine, and her constitutional rights under the Fourth and Fifth Amendment. This Court should order her immediate release.

C. K.E.O. is not Subject to Mandatory Detention

Because Respondents lacked legal authority to arrest and detain K.E.O., that should end the matter here and she should be released. Elsewhere in their Response though, Respondents appear to contradict their previous arguments, asserting that § 1231 governs K.E.O.'s detention and arguing that her criminal convictions render her subject to mandatory detention pursuant to 8 U.S.C. § 1231(a)(2)(A). (Doc. 8, PageID 78). However, because the statute only mandates detention for noncitizens found inadmissible under section 1182(a)(2) during the 90-day removal period and that period has run in K.E.O.'s case, K.E.O. is not subject to mandatory detention.

Section 1231(a)(2)(A) provides that "[u]nder no circumstance during the removal period shall the Attorney General release a[noncitizen] who has been found inadmissible under section 1182(a)(2)" (emphasis added). The statute defines the "removal period" as a 90-day period in which ICE should remove a noncitizen subject to a final removal order. 8 U.S.C. § 1231(a)(1)(A). The statute provides that the "removal period" begins "on the latest of the following: "(i)The date the order of removal becomes administratively final. (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order. (iii) If the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement." *Id.*, § 1231(a)(1)(B).

If there were any doubt that the removal period had expired in K.E.O's case or whether K.E.O. remained subject to mandatory detention, ICE's own actions unequivocally demonstrate that ICE understood the removal period expired and she was no longer subject to mandatory detention when the agency placed her on an OSUP on March 20, 2024. (Doc. 1-2, PageID 23).

Section 1231(a)(3) provides that "[i]f the [noncitizen] does not leave or is not removed within the removal period, the [noncitizen], pending removal, shall be subject to supervision." This section's implementing regulation, 8 C.F.R. §241.5(a), likewise describes the "conditions of release after removal period" pursuant to an OSUP. Applying that authority to K.E.O's case, on March 20, 2024, ICE placed her on an OSUP. (Doc. 1-2, PageID 23). Her OSUP stated, "[b]ecause *the agency has not effected your deportation or removal during the period prescribed by law*, it is ordered that you be placed under supervision and permitted to be at large." (*Id.*). (emphasis added).

The plain text of the statute, governing regulations, and ICE's actions in issuing the OSUP demonstrate that K.E.O. is not subject to mandatory detention under § 1231(a)(2)(A). To the contrary, 8 C.F.R. §241.4 describes "continued detention of inadmissible, criminal, and other [noncitizens] beyond the removal period" and explains the showing that noncitizens must make to be considered for release, *id.* §241(d)(1), which focus on not being a "danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States." *Id.* 8 C.F.R. §241.4(l) then describes the conditions that must be met and the procedure that must be followed for a revocation of that release which includes "notification of the reasons for revocation of his or her release or parole."[12]

The Response confirms that this analysis did not occur because it asserts it is a "false assumption" that ICE relied on 8 C.F.R. §241.4. (Doc. 8, PageID 75). As a result, ICE lacked legal authority to revoke her release or otherwise arrest and detain her. Therefore, she should be released.

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[12] These can include when "revocation is in the public interest." *Id.* That analysis, which unquestionably did not occur, might include assessing whether it is in the public interest to detain K.E.O. when, according to ICE itself, "[t]he daily cost per [ICE's Alternative To Detention-Intensive Supervision Appearance Program] participant is less than $4.20 per day — a stark contrast from the cost of detention, which is around $152 per day." *See* ICE, "Alternatives to Detention," https://www.ice.gov/features/atd (last visited Aug. 5, 2025).

D. <u>Respondents Do Not Otherwise Engage With K.E.O.'s Claims</u>

Other than relying on the wrong statutory and regulatory authority to argue that K.E.O.'s arrest and detention was proper, Respondents do not otherwise engage with the merits of K.E.O.'s actual claims in their Response. Instead, the entirety of the discussion about the substantive merits of K.E.O.'s claims is limited to demonstrating the propriety of ICE's arrest and detention of K.E.O. based on their purported authority under 8 U.S.C. §1226 and 8 C.F.R. § 236.1. Since neither of these provide the requisite legal authority, and any other justification for ICE's arrest and detention of K.E.O. are waived because they were not raised, K.E.O. should be immediately released.

There is no question that K.E.O.'s arrest and detention, over 90 days now so far, on defective legal authority and without notice or opportunity to be heard violates K.E.O.'s Fifth Amendment due process rights (and the APA). *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'") (quotation omitted). It also violates the Fourth Amendment which prohibits unreasonable seizures without legal authority. *Soldal v. Cook Cnty., Ill.*, 506 U.S. 56 (1992) (seizure of property without lawful eviction notice violated Fourth Amendment).

"The traditional remedy provided by habeas is removing the injury of unjust and illegal confinement." *Hamama*, 912 F.3d at 875 (quotation omitted); *Phan v. Beccerra*, 2025 WL 1993735, *7 (E.D. Cal. July 16, 2025) (ordering release). Similarly, the "remedy for a procedural due process violation is restoration of the status quo ante and an injunction barring deprivation of the plaintiff's rights without the requisite procedural protections." *J.G.G. v. Trump*, 2025 WL 1577811, *17 (D.D.C. June 4, 2025) (citation omitted). Immediate release is what K.E.O. seeks.

K.E.O. respectfully asks this Court to grant the Petition and order her immediate release.

DATED: August 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been filed using this court's ECF system on all counsel of record on August 5, 2025.

/s/ Brian E. Casey
Brian E. Casey