Keren Ohana
Law Office of Keren Ohana
Keren Ohana, Esq
26 Court Street, Suite 1917
Brooklyn, NY 11242
Phone: (917) 482-2808
Email: Kerenohanaesq@gmail.com
Counsel for Petitioner

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

MERAB KAVTARADZE, [redacted]

Petitioner,

v.

WARDEN, Buffalo Service Processing Center,

JAMES BAUSCH, Acting Buffalo Field Office Director, U.S. Immigration and Customs Enforcement,

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, in their official capacities,

MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security

Respondents.

Case No. :

PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241)

PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241)

PRELIMINARY STATEMENT

Petitioner ("Petitioner" or "Mr. Kavtaradze") petitions for a writ of habeas corpus under 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE"). On or about June 28, 2026, ICE detained him without an individualized assessment that he posed a flight risk or a danger to the community and, therefore, without due process. Since then, he has remained detained without the ability to present himself at a bond hearing.

On April 28, 2026, the Second Circuit Court of Appeals in *Barbosa Da Cunha v. Freden* struck down *Matter of Yajure Hurtado* and the mandatory detention policy for those who entered the country without inspection. *See Barbosa Da Cunha v. Freden*, No. 25-3141 (2d Cir. 2026). Petitioner therefore seeks immediate release from custody, or in the alternative, the opportunity for a bond hearing.

INTRODUCTION

1. Petitioner, Merab Kavtaradze, is in the physical custody of Respondents at the Buffalo Service Processing Center in Batavia, NY. *See* Exhibit A, ICE Locator Results. He is a native and citizen of Georgia who last entered the United States on or about June 3, 2022. *See* Exhibit B, NTA.

2. Petitioner was detained by ICE on or about June 28, 2026. He now faces

unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have concluded that Petitioner is subject to mandatory detention without providing a pre-deprivation hearing. Upon information and belief, his next immigration court date was previously scheduled for August 4, 2026, before Immigration Judge Fox, Melissa. *See* Exhibit C, EOIR Case Status.

3. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released from unlawful detention.

JURISDICTION

4. This action arises under the U.S. Constitution and the INA, 8 U.S.C. § 1101 *et seq.*

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

6. 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.

7. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the U.S. District Court for the Western District of New York, the judicial district in which Petitioner currently is detained.

9. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, or agents of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of New York.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. Exhaustion is not necessary because Congress did not codify a requirement that petitioners seeking a writ of habeas corpus exhaust administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required… But where Congress has not clearly required exhaustion, sound judicial discretion governs.") (citation omitted).

11. Further, exhaustion of remedies is unnecessary if futile. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.) (as amended) (judicial exhaustion may be excused when "available remedies provide no genuine opportunity for adequate relief" or exhaustion "would be futile").

12. Here, exhaustion would be futile because the Board of Immigration Appeals, in the precedential decision of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) ("Hurtado"), held that individuals deemed inadmissible for being

present in the United States without having been admitted or paroled (e.g., those who crossed the border without inspection) are subject to mandatory detention without the opportunity for a bond hearing.

13. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge because the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights. It would therefore be futile for him to pursue administrative remedies. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims)

14. Finally, even if meaningful administrative remedies were promptly available, Petitioner as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust those remedies under 28 U.S.C. § 2241. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010).

REQUIREMENTS OF 28 U.S.C. § 2243

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

16. 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).

17. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and remains detained by Respondents.

PARTIES

18. Petitioner Mr. Kavtaradze is a native and citizen of Georgia. He entered the United States in or around June 3, 2022, at or near San Luis, AZ. Petitioner was detained by Immigration and Customs Enforcement ("ICE") on or around June 28, 2026. He has remained in immigration detention since his arrest. Petitioner is in custody and under the direct control of Respondents.

19. Respondent Warden of the Buffalo Service Processing Center, 4250 Federal Drive, Batavia, NY 14020, where Petitioner is detained, has immediate physical custody of Petitioner. He is sued in his official capacity.

20. Respondent James Bausch is the Acting Director of the Buffalo Field Office of ICE's Enforcement and Removal Operations division. As such, he is a

legal custodian of Petitioner, is responsible for Petitioner's detention and removal, and has authority to release him. He is named in his official capacity.

21. Respondent Todd M. Lyons is the Acting Director of ICE, which is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. Respondent Lyons has control over the actions of Respondent Acting Director of the Buffalo Field Office for ICE and ICE in general. Respondent Lyons is a legal custodian of Petitioner and is sued in his official capacity.

22. Respondent Markwayne Mullin is named in his official capacity as the Secretary of Homeland Security. In this capacity, he is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Western District of New York; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner.

LEGAL FRAMEWORK

Statutory Authority for Immigration Detention

23. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). *See* 8 U.S.C. §

1229(a). Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

25. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

26. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

27. Detention, if at all authorized, would be under the detention provisions at § 1226(a), not 1225(b)(2).

28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most recently amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

29. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under §

1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

30. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

31. On July 8, 2025, ICE, "in coordination with" the Department of Justice (DOJ), announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

32. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended or how they were released from initial detention and affects those who have resided in the United States for months, years, and even decades.

33. On September 5, 2025, the Board of Immigration Appeals (BIA) adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

34. Since the government adopted its new policies, this Court and many others have rejected the government's new interpretation of the INA's detention authorities and the BIA's reasoning in *Matter of Yajure Hurtado*, which adopts the same reasoning in DHS's policy. *See, e.g., Perez v. Lyons, No.* 25-17186, 2025 WL 3238540, at *2 (D.N.J. Nov. 19, 2025)(footnote omitted)(collecting cases); *see also Patel v. McShane*, No. 25-5975, 2025 U.S. Dist. LEXIS 228258, at *1 (E.D. Pa. Nov. 20, 2025) (noting "at least 282" recent district court decisions rejecting the government's interpretation of § 1225); *Mendes v. Hyde*, No. 25-cv-627-JJM-AEM, 2025 U.S. Dist. LEXIS 251341, at *1–2 (D.R.I. Dec. 5, 2025) (emphasizing that "[a]t least 225 judges have ruled in more than 700 cases" rejecting DHS's interpretation of § 1225(b)(2)) (citation omitted).

35. Most recently, on April 28, 2026, the Second Circuit Court of Appeals in *Barbosa Da Cunha v. Freden* struck down *Matter of Yajure Hurtado* and rejected the policy of mandatory detention for those who entered without inspection. *See Barbosa Da Cunha v. Freden*, No. 25-3141 (2d Cir. 2026).

36. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As this Court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. *See Diaz Rudecindo v. Florentino, et al.*, No. 25-16942 (ES), 2025 WL 3480299 (D.N.J. Dec. 3, 2025). Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229(a), to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

37. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v. Bostock, No. 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611*, at *52 (W.D. Wash. Sep. 30, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

38. Section 1226, therefore, leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

39. Critically, DHS's treatment of Petitioner confirms that only § 1226(a) governs his interior arrest and subsequent detention.

40. By contrast, § 1225(b) applies to people *arriving* at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" coupled with the present tense of "arriving" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Simply put, "petitioner's [December] 2025 arrest and re-detention were not upon his arrival to the United States." *Shoimov*, 2026 U.S. Dist. LEXIS 1824, at *11.

41. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner apprehended in the interior.

Due Process Principles

42. Liberty from immigration custody is protected by the Due Process Clause: "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 v. Davis*, 533 U.S. 678, 690 (2001). "[T]he Due Process Clause applies to all 'persons' within the United States, including

aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

43. The Supreme Court recently reiterated the well-established rule that noncitizens, even those without legal status, are entitled to due process of law requiring "notice and an opportunity to be heard." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (holding that individuals subject to detention and removal under the Alien Enemies Act must be afforded sufficient notice to allow them "to actually seek habeas relief").

44. Petitioner retains a significant liberty interest under the Due Process Clause of the Fifth Amendment in avoiding detention. Courts evaluate the procedural protections required using the *Mathews v. Eldridge* factors which consider: (1) the private interest affected; (2) the risk of erroneous deprivation and probable value of additional safeguards; and (3) the government's interest, including fiscal and administrative burdens. 424 U.S. 319, 335 (1976).

45. Being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Individuals have a liberty interest in their continued freedom, and this principle has been reinforced by both the Supreme Court and district courts on many occasions. *See, e.g., Young v. Harper, 520 U.S. 143, 152 (1997)* (holding that individuals placed in a pre-parole program have a protected liberty interest in pre-deprivation due process); *Pinchi*,

792 F. Supp. 3d at 1033; *Ortega*, 415 F. Supp. 3d at 969 (emphasizing that, like "people on pre-parole, parole, and probation," immigration detainees have a liberty interest in remaining released).

46. A person's liberty interest is substantial when the deprivation thereof threatens their basic needs or survival. Petitioner's basic needs and survival are threatened on a daily basis by the conditions at Buffalo Service Processing Center ("Batavia"), where he is held by Respondents.

47. Batavia has faced allegations of unsafe, unsanitary, and abusive conditions. It has historically been the purview of the Office of Inspector General (OIG) to inspect ICE detention facilities. OIG's last report on Batavia, in June 2025, cites multiple instances of inappropriate use of force. In one instance, video showed "a detention officer strike the detainee's back with his foot" after the detainee entered a shower cell, presumably unclothed.1 The OIG also reported Batavia lacked medical staff. Prior audits found detainees shackled and subject to solitary confinement.2

48. In 2025, the Trump administration severely reduced the capacity and authority of the OIG as well as other independent oversight bodies for ICE facilities, like the Office of the Immigration Detention Ombudsman (OIDO) and the DHS

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1 *See Final Report: Results of an Unannounced Inspection of ICE's Buffalo Federal Detention Facility in Batavia, New York*, OFFICE OF INSPECTOR GENERAL (Jun. 3, 2025), at https://www.oig.dhs.gov/sites/default/files/assets/2025-06/OIG-25-24-Jun25.pdf.

2 *See* J. Dale Shoemaker, *ICE abuse of detainees in Batavia facility*, INVESTIGATIVE POST (Feb. 20, 2025), at https://investigativepost.org/2025/02/20/521935/.

Office for Civil Rights and Civil Liberties (CRCL). ICE facility inspections have been transferred from OIG to ICE's Office of Professional Responsibility (OPR). By definition, OPR is not an independent body; it is internal to ICE. As of May 2026, the OIDO will close entirely.3

49. Despite unprecedented expansion in facilities in 2025, inspections of detention centers plummeted by over one third.4 OPR inspections appear perfunctory and performative. For example, the 2023 OIG inspection report of Port Isabel is 40 pages and highly detailed.5 By contrast, the 2025 OPR report is nine pages and includes the highly suspect and perfunctory conclusion that "all" detainees reported "satisfaction" with the facility.6

50. In this environment of lack of governmental oversight or inspection of facilities, reporting is largely left to the public. Investigations reveal severe medical neglect: failure to deliver medication and on-time care resulted in one man losing his fingers, and another suffering "stroke-like symptoms."7 In 2026, reports have surfaced that Batavia is functioning over capacity; while the facility has 650 beds,

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3 *See* Kanishka Singh, *US to close watchdog office for federal immigration detention abuses*, REUTERS (May 5, 2026), at https://www.reuters.com/legal/government/us-close-watchdog-office-federal-immigration-detention-abuses-2026-05-05/; *see also* Ximena Bustillo, *DHS blames funding lapse for shutdown of internal detention oversight*, NPR (May 7, 2026), at https://www.npr.org/2026/05/07/g-s1-120834/trump-immigration-detention-ombudsman-shutdown.

4 *See* Isabel Del Mastro, Luisa Clausen, and Rene Kladzyk, *ICE Inspections Plummeted as Detentions Soared in 2025*, POGO INVESTIGATES (Jan. 12, 2026), at https://www.pogo.org/investigates/ice-inspections-plummeted-as-detentions-soared-in-202.5

5 *See Violations of Detention Standards at ICE's Port Isabel Service Processing Center*, OFFICE OF INSPECTOR GENERAL standards (Feb. 1, 2023), at https://www.oig.dhs.gov/sites/default/files/assets/2023-02/OIG-23-13-Feb23.pdf.

6 *See Port Isabel Service Processing Center Compliance Inspection 2025-001-118,* OFFICE OF PROFESSIONAL RESPONSIBILITY (Mar. 25-27, 2025), at https://www.ice.gov/doclib/foia/odo-compliance-inspections/PortIsabel_SPC_LosFresnosTX_Mar25-27_2025.pdf.

7 *See* J. Dale Shoemaker, *New York's Largest ICE Prison Dogged by Allegations of Shoddy Medical Care*, THE INTERCEPT (Nov. 6, 2025), at https://theintercept.com/2025/11/06/batavia-ice-medical-care-buffalo/.

it is reportedly housing 745 detainees.8

51. Mr. Kavtaradze has committed no crime. He is being detained wholly on civil grounds, based on his entry to the United States four years ago and his ongoing civil immigration matter. He has a significant liberty interest in no longer being subjected to prison-like conditions.

52. The risk of erroneous deprivation to Petitioner is high. DHS and the BIA have employed an impermissibly broad reading of 8 U.S.C. § 1225, which forecloses any opportunity for Petitioner to receive a bond hearing to determine whether his detention is justified.

53. Civil immigration detention must be "nonpunitive in purpose and effect" and is only justified when a noncitizen presents a risk of flight or danger to the community. *Zadvydas*, 533 U.S. at 690. In the instant case, there is nothing to indicate Petitioner poses a danger to the community or risk of flight.

54. While the government has an interest in ensuring that noncitizens appear at their removal proceedings and are not a danger to the community, this interest is low when compared to Petitioner's significant liberty interest. *Ortega*, 415 F. Supp. 3d at 970 (holding that government interest in re-detention "without a

8 *See* Lowell Rose, *ICE detainee population in Batavia exceeds capacity as concerns over conditions surface*, WHAM (Feb. 25, 2026), at https://13wham.com/news/local/ice-detainee-population-in-batavia-exceeds-capacity-as-concerns-over-conditions-surface-immigration-and-customs-enforcement ("Gabriella Szpunt, New York state organizing coordinator for United Farm Workers, said… 'The workers that we remain in contact with following the raid shared that there were often not enough beds for everybody[.]' … [S]ome detainees reported medical emergencies were not adequately addressed and described food quality as poor. …[S]everal workers ultimately chose to self-deport after months in detention."_

hearing before an IJ is low.") Affording Petitioner notice and a pre-deprivation hearing would have allowed him to present evidence to support his release. *See* 8 C.F.R. § 1236.1(d)(1).

55. Because ICE stripped Petitioner of his freedom without any procedure, his current detention violates due process and is unlawful, and he is entitled to immediate release.

FACTS

56. The following facts show that Petitioner has complied with DHS while diligently pursuing available immigration relief and is being unlawfully detained while his immigration court proceedings remain pending.

57. Petitioner Merab Kavtaradze is a 47-year-old native and citizen of Georgia. He is married to a United States citizen, and his application for adjustment of status is currently pending.

58. On or about June 3, 2022, Mr. Kavtaradze entered the United States at or near San Luis, Arizona. The Notice to Appear alleges that he entered the United States without being admitted or paroled after inspection by an immigration officer and charges him as removable under INA § 212(a)(6)(A)(i).

59. Following his release from DHS custody, Petitioner complied with ICE's reporting requirements, including remote photographic check-ins, until he was taken back into immigration custody. He diligently applied for asylum and for

work authorization.

60. On or about June 28, 2026, Petitioner was driving a commercial truck when he stopped at a rest area along Interstate 90 near Buffalo, New York. While his vehicle was parked, ICE officers approached the truck, knocked on the window, asked whether he was Merab Kavtaradze, instructed him to exit the vehicle, and took him into custody.

61. Petitioner was not provided an individualized assessment that he posed a flight risk or a danger to the community. Therefore, he was detained without due process. Since then, he has remained detained without the ability to present himself at a bond hearing.

62. As of the date of this habeas corpus filing, upon information and belief, Mr. Kavtaradze is being detained at the Buffalo Service Processing Center, 4250 Federal Drive, Batavia, NY 14020. *See* Exhibit A, ICE Locator Results.

63. Without relief from this court, Petitioner faces the prospect of months or even years in immigration custody, separated from his community.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

64. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

65. Petitioner's current detention is unlawful because he is not subject to mandatory detention under either INA § 235(b), 8 U.S.C. §1225(b), or INA § 236(c), 8 U.S.C. § 1226(c).

66. To the extent DHS seeks to detain Petitioner under INA § 235(b), that authority is inapplicable because Petitioner was not placed in expedited removal proceedings, was issued a Notice to Appear under INA § 240 and was apprehended in the interior more than four years after his entry.

67. To the extent DHS seeks to detain Petitioner under INA § 236(a), DHS has failed to comply with the statutory and regulatory requirements governing discretionary detention, including providing notice of the detention authority relied upon and affording Petitioner an individualized custody determination.

68. Petitioner is currently detained without any determination by an IJ that he is a flight risk or poses a danger to the community.

69. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

70. Accordingly, Petitioner's detention is properly governed by § 1226(a), and he is entitled to immediate release or, in the alternative, a bond hearing.

COUNT II

Violation of Fifth Amendment Due Process – Denial of Opportunity to Challenge Continued Detention

71. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

72. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of liberty interests protected under the Due Process Clause of the Fifth Amendment.

73. The Supreme Court has long established that noncitizens are afforded due process rights. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Zadvydas*, 533 U.S. at 690. ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Mr. Kavtaradze has lived in the United States for more than four years.

74. Respondents have deprived Mr. Kavtaradze of his liberty interest protected by the Fifth Amendment by detaining him since about June 28, 2026, without any hearing to determine whether his ongoing detention is justified.

75. To determine whether civil detention violates an individual's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge,* 424 U.S. 319 (1976).

76. Petitioner has a fundamental interest in liberty and being free from

official restraint.

77. The government's assertion of the wrong detention authority and invocation of detention without any process presents a significant risk of erroneous deprivation of Petitioner's liberty interest. The government's position lacks support in the plain text of the INA and contravenes longstanding interpretation and prevailing case law.

78. Petitioner's continued detention without procedural due process amounts to a serious deprivation of his constitutional rights and violates the Due Process Clause of the Fifth Amendment.

COUNT III

Violation of Fifth Amendment Due Process – Substantive Due Process

79. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

80. Petitioners' continued detention of Mr. Kavtaradze violates his right to substantive due process protected by the Fifth Amendment.

81. "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. Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the

significant deprivation of liberty. *Id.*

82. Mr. Kavtaradze should not be detained. There is no evidence to suggest he is either a flight risk, or a risk to public safety or national security. Accordingly, Respondents cannot show any valid justification—let alone a "sufficiently strong special justification"—for depriving Mr. Kavtaradze of his fundamental rights.

83. For all of the foregoing reasons, Mr. Kavtaradze's continued detention is in violation of his substantive due process rights.

COUNT IV

Administrative Procedure Act

84. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

85. The Administrative Procedure Act ("APA") provides a right to sue when an individual has been "aggrieved" by a "final agency action for which there is no other adequate remedy in court." 5 U.S.C. § 704.

86. Respondents' actions in detaining Mr. Kavtaradze were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A)-(D).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the U.S. District Court for the Western District of New York while this habeas petition is pending;
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
4. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner immediately;
5. Order that Respondents are enjoined and restrained from re-detaining Petitioner unless the government demonstrates, by clear and convincing evidence at a pre-deprivation bond hearing before a neutral decisionmaker, that Petitioner is a flight risk or danger to the community, such that his physical detention is legally justified;
6. Order Respondents to file a Notice of Compliance within seven days of the Court's order;
7. Award Petitioner's 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

8. Grant any other and further relief that this Court deems just and proper.

Date: June 30, 2026

Respectfully submitted,

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Dated: June 30, 2026

Respectfully submitted,

/s/ Keren Ohana
Keren Ohana
Law Office of Keren Ohana
26 Court Street, Suite 1917
Brooklyn, NY 11242
Phone: (917) 482-2808
Email: Kerenohanaesq@gmail.com
Counsel for Petitioner

TABLE OF EXHIBITS

EXHIBIT A – DHS Detainee Locator printout

EXHIBIT B – Notice to Appear

EXHIBIT C – EOIR Automated Case Information printout

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June 2026, a copy of the foregoing was filed electronically with the Court. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ Keren Ohana

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Brooklyn, NY 11242
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