UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID FERNANDO AYAVACA TENEMEA, [redacted]

Petitioner,

-against-

KEN GENALO, New York Field Office Director,
Enforcement and Removal Operations,
U.S. Immigration and Customs Enforcement;
DAVID J. VENTURELLA, Director, U.S. Immigration
and Customs Enforcement;
MARKWAYNE MULLIN, Secretary, U.S. Department
of Homeland Security;
TODD BLANCHE, Acting Attorney General of the United States;
RAUL MALDONADO, JR., Warden, Metropolitan
Detention Center, Brooklyn, or successor,

Respondents.

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EMERGENCY VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

PRELIMINARY STATEMENT

1. Petitioner David Fernando Ayavaca Tenemea, is a thirty-one-year-old native and citizen of Ecuador who is presently confined by immigration authorities at the Metropolitan Detention Center in Brooklyn, New York. This Court is now the proper habeas court because Petitioner is confined in the Eastern District of New York and his immediate custodian is located in this District. Petitioner, by counsel, petitions for a writ of habeas corpus under 28 U.S.C. § 2241. This application is filed on an emergency basis to prevent unlawful transfer or removal, preserve this Court's habeas jurisdiction, require Respondents to certify the true statutory and factual cause of detention, and secure Petitioner's release from unlawful custody. Counsel has not yet had a meaningful opportunity to confer fully with Petitioner, obtain the administrative record, review all arrest and custody paperwork or review the full Immigration Court record relating to the June 5, 2026 removal order. The facts alleged herein are made upon information and belief, and are based on the limited information presently available to counsel, including information

provided by Petitioner and Petitioner's family, available intake records, and counsel's preliminary investigation.

2. This is an emergency habeas petition challenging the legality of Petitioner's arrest and continued civil immigration detention[1]. It is not a petition for review of the removal order. It challenges the custody itself: the arrest without constitutionally sufficient process; the failure to serve or disclose the existence of the removal order before inducing Petitioner to appear at a scheduled check-in; the absence of a contemporaneous individualized custody determination; the failure to serve or produce a legally sufficient arrest warrant and detention authority; the failure to conduct any required post-order custody review; and the failure to identify and treat Petitioner as a trafficking victim before and during detention.

3. The prior Southern District habeas petition did not present these core detention claims. It was decided on a narrower prolonged-detention theory tied to Petitioner's then-pending T nonimmigrant status application and the regulatory stay of removal. The court denied that petition because the argument before it did not establish that removal was not reasonably foreseeable and because several constitutional and APA theories were only referenced in passing and were not developed. This petition arises in a new district of confinement, against the present custodian, on a materially different record, and on detention theories that were not adjudicated in the prior action.

4. Judge Bulsara's reasoning in *Omar Abreu v. Genalo*, No. 26-cv-1181-SJB (E.D.N.Y. Mar. 4, 2026), controls the framework for this emergency petition. In Abreu, the Court provisionally granted the writ because the Government invoked an inapplicable detention theory and failed to show a lawful basis for the custody. The core holding was not limited to one statutory label. It was that civil immigration detention must rest on a lawful statutory basis that actually applies to the person detained, and the Government must follow the process that attaches to that basis. If Respondents wish to detain a person, they must identify the correct authority and comply with the Constitution, the INA, and the implementing regulations. A post hoc label does not cure an unlawful arrest or detention.

5. Here, Respondents are expected to invoke 8 U.S.C. § 1231 because an Immigration Judge entered a removal order weeks before Petitioner's arrest. But § 1231 is not a talisman. It does not authorize ICE to lure a compliant ISAP/check-in participant into custody without notice that a removal order exists, without proof of service of that order, without service of a warrant, without a lawful arrest basis under 8 U.S.C. § 1357(a)(2), and without the custody determinations required by due process and 8 C.F.R. §§ 241.4 and 241.13 once the removal period has passed.

6. The Government's own prior submission, as summarized in the Southern District decision, stated that Petitioner was released after his initial border processing because of lack of bed space; 200 Warrant for Arrest were issued before he was arrested during a scheduled check-in. A bed-

space determination is not an individualized custody determination. An I-203 is not a judicial warrant. An unserved I-200, if one exists, does not answer whether the arrest satisfied the Fourth Amendment, § 1357(a)(2), due process, or the victim-protection protocols that applied to this trafficking victim.

7. Per the I-213 and release records, Petitioner had already been released from initial custody under intensive supervision, including ISAP/ATD reporting requirements and an ankle monitor, and he complied. **The re-arrest therefore was not a first custody decision; it was a government reversal of a prior release/supervision determination. Respondents have identified no violation of the order of release, no missed check-in, no new criminal arrest, no danger finding, no flight-risk finding, no written notice of revocation, and no opportunity to be heard before liberty was taken again.**

8. At the time of the arrest and throughout custody, Petitioner was a trafficking victim or, at minimum, a person presenting trafficking indicators. He had been forced by smugglers and cartel-linked coyotes in Mexico to perform labor, assist in controlling or transporting other migrants, and act under threats, beatings, and coercion. ICE's then-operative victim-centered directive required officers to look for indicia of victimization, consider victim status as a positive discretionary factor including release from detention, document the identification and actions taken in the A-file and EARM, provide information and access to law enforcement, and consider victim status even where unlawful conduct resulted directly from force, fraud, or coercion. The record does not show that any of that was done.

9. The Court should issue an immediate Order to Show Cause, require a return within forty-eight hours under 28 U.S.C. § 2243, prohibit transfer outside this District while the writ is adjudicated, order production of the I-200, I-203, I-213, removal-order service records, custody review records, victim-screening records, EARM and A-file entries, Directive 11005.3/11005.4 compliance records, § 1367 records, and all conditions-of-confinement assessments, and provisionally grant the writ by ordering Petitioner's immediate release without an ankle monitor or similar surveillance unless and until this Court orders otherwise after due process.

EMERGENCY RELIEF REQUESTED

10. Petitioner requests emergency relief because each day of unlawful civil detention constitutes irreparable injury, and because Respondents can transfer him out of the Eastern District of New York without notice. Transfer would frustrate habeas review, impair counsel access, and risk relitigation in a different detention framework before this Court can determine the legality of the custody.

11. Petitioner seeks an order requiring Respondents to show cause why the writ should not issue, directing an expedited return under § 2243, enjoining transfer outside this District during the pendency of this case, requiring meaningful and confidential counsel access, and ordering immediate release or, at minimum, production before the Court and a prompt evidentiary hearing.

PARTIES

12. Petitioner David Fernando Ayavaca Tenemea is a native and citizen of Ecuador. His Alien Registration Number is [redacted]. He was born in 1995. He is currently detained at the Metropolitan Detention Center, 80 29th Street, Brooklyn, New York 11232.

13. Petitioner previously resided at [redacted]. He has family and community ties in New York. He has two children in Ecuador and a common-law partner in Ecuador.

14. Respondent Ken Genalo is sued in his official capacity as the New York Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is responsible for the challenged custody decision and for ICE custody operations in this region.

15. Respondent David J. Venturella is sued in his official capacity as Director of U.S. Immigration and Customs Enforcement, or his successor, and is responsible for ICE policies, detention operations, and civil immigration enforcement actions.

16. Respondent Markwayne Mullin is sued in his official capacity as Secretary of the United States Department of Homeland Security, or her successor. DHS is the federal department responsible for ICE and the challenged immigration detention.

17. Respondent Todd Blanche sued in his official capacity as Attorney General of the United States, or her successor, to the extent necessary for complete relief regarding the immigration-court-related custody and removal record.

18. Respondent Raul Maldonado, Jr., Warden of the Metropolitan Detention Center, Brooklyn, or the current Warden and successor in office, is Petitioner's immediate custodian for purposes of habeas jurisdiction.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 2241, 2243, and 1651, and under Article I, § 9, cl. 2 of the Constitution. Petitioner is in custody in this District and challenges that custody as contrary to the Constitution, laws, and regulations of the United States.

20. Section 2241 authorizes habeas review of the legality of immigration detention. Section 2243 requires the Court, once a habeas petition is presented, to award the writ or issue an order directing the custodian to show cause why the writ should not be granted, and to dispose of the matter as law and justice require.

21. Venue is proper in this District because Petitioner is confined at MDC Brooklyn, his immediate custodian is in this District, and Respondents continue to exercise custody over him here. This Court has authority under the All Writs Act to preserve its jurisdiction by prohibiting transfer or removal that would frustrate meaningful habeas review.

22. Petitioner does not ask this Court to review or vacate the removal order itself. The petition challenges only the arrest, detention, transfer risk, custody process, and conditions-related detention determinations. To the extent temporary restraint on transfer or removal is requested, it is requested solely to preserve habeas jurisdiction and counsel access while the legality of custody is adjudicated.

FACTUAL ALLEGATIONS

A. Entry, release, compliance, and trafficking victimization

23. Petitioner fled Ecuador after threats from violent criminal groups. He had operated a business, and criminal groups attempted to force him into money laundering and other criminal activity. He fled because he feared death or severe harm.

24. Petitioner entered the United States only once, in or about April or May 2024, after traveling through Mexico. Government records in the prior habeas proceeding stated that Border Patrol encountered him near Santa Teresa, New Mexico on or about May 22, 2024, outside a port of entry. Petitioner was served with an NTA and released shortly thereafter due to lack of bed space.

25. After release, Petitioner complied with immigration supervision. He wore an ankle monitor and reported to ISAP/ICE check-ins in New York for approximately six months. He lived at a fixed address in White Plains, New York, and Respondents had his address and contact information.

26. Per the I-213 and related release records, that release was under intensive supervision rather than unrestricted liberty. Petitioner was not absconding; he was in the Government's own supervision program. The A-file record should contain his order of release, ISAP/ATD records, monitor records, check-in records, and any alleged violation record. Petitioner alleges there is no record of any violation of the order of release or intensive supervision conditions.

27. During his journey, Petitioner was subjected to human trafficking, forced labor, and coercion by smugglers and cartel-linked actors in Mexico. The coyotes beat him, threatened him with death, forced him to work for them, and forced him to assist in activities connected to moving or controlling migrants. He did not voluntarily participate in criminal activity; he acted under force, fraud, and coercion.

28. Petitioner retained counsel in or about September 2024. He was advised that he might seek T nonimmigrant status because of the trafficking he suffered. A T visa application was filed on or about November 15, 2024 and is being refiled after USCIS later issued a denial.

B. Removal order was issued without meaningful notice to Petitioner before the check-in arrest

29. The Immigration Judge issued an order of removal on or about October 3, 2024 after an asylum filing deadline was missed. Petitioner was not meaningfully informed before his next ICE/ISAP check-in that a removal order had been issued against him.

30. **Petitioner had never been served personally with the removal order before appearing for the scheduled check-in that led to his arrest. He did not know that ICE would claim he was subject to a final order of removal and § 1231 custody. He appeared because he believed he was complying with ordinary supervision requirements.**

31. The lack of service and notice is central to this petition. A person cannot receive meaningful process when the Government obtains his appearance through a routine check-in while withholding the material fact that a removal order was recently issued and that the check-in would be used as the occasion for arrest and detention.

C. Interior/check-in arrest and lack of lawful custody determination

32. On November 14th or 17th, 2024, Petitioner appeared for a scheduled ICE/ISAP check-in in New York. He was arrested at or immediately after that check-in. For purposes of the Fourth Amendment and INA § 287, this was an interior arrest, not a border apprehension.

33. Respondents' prior record, as summarized in the Southern District decision, stated that ICE decided there was no longer a lack of bed space and then issued Form I-203, Order to Detain Alien, and Form I-200, Warrant for Arrest. Petitioner has not been provided a complete record showing when those documents were created, by whom, what facts supported them, whether they were served, and whether they were accompanied by any custody determination.

34. A bed-space determination is not a custody determination. It says nothing about danger, flight risk, family ties, compliance, trauma, trafficking victimization, release conditions, or whether detention is necessary. Petitioner had complied with supervision, appeared for check-ins, lived at a known address, and had no U.S. criminal history.

35. The re-arrest also functioned as a revocation of Petitioner's prior intensive-supervision release. Yet the record does not show a Notice of Revocation of Release, a written statement of reasons, a prompt informal interview, an opportunity to respond, an interpreter-assisted explanation, or any evidence that Petitioner violated a release condition.

36. Respondents cannot lawfully convert a compliant supervisee into a detainee by relying on a generic bed-space rationale, a boilerplate enforcement objective, or a later-created custody paper. If Respondents contend the release was revoked under 8 C.F.R. § 241.4(l), § 241.13(i), § 241.5, an order of release, an ISAP contract, or any ATD authority, they must produce the operative release order, every condition, the alleged violation or changed circumstance, the revocation notice, the interview record, and the decisionmaker's authority.

37. No neutral decisionmaker reviewed the arrest before it occurred. No custody officer made an individualized determination before or at the time of arrest. No notice was provided stating the statutory basis for custody, the reasons for detention, the evidence relied upon, or any process available to seek release.

38. If Respondents claim that an I-200 authorized the arrest, they must produce it. They must also show service, factual basis, authorization, date and time, and whether the warrant preceded the arrest or was generated after the decision to detain. An administrative I-200 is not a judicial warrant and does not eliminate the separate requirements of the Fourth Amendment, 8 U.S.C. § 1357(a)(2), due process, or the applicable custody regulations.

D. Current confinement, prior habeas decision, and new facts

39. Petitioner was transported to New Jersey and then detained at Orange County Jail. On or about November 5, 2025, he was transferred to MDC Brooklyn, where he remains confined.

40. The prior Southern District habeas petition was filed while Petitioner was confined in the Southern District. That petition principally sought release based on prolonged post-order detention while his T visa application was pending and removal was stayed by the T-visa bona fide determination.

41. On April 8, 2026, the Southern District denied the prior petition. The court held that the petition before it did not satisfy Zadvydas because detention was caused in large part by the regulatory stay associated with the T-visa application, and the court noted that passing references to the APA and Fourth Amendment were not developed and were abandoned.

42. That decision did not adjudicate the claims presented here: no notice or service of the removal order before the check-in arrest; no lawful warrant service; no § 1357(a)(2) escape-risk showing; no custody determination at or before arrest; no § 241.4 or § 241.13 custody review; no trafficking-victim screening; no 8 U.S.C. § 1367 safeguards; no I-213 reliability challenge; and no conditions-of-confinement assessment for a civil detainee who is a trafficking victim with trauma.

43. On or about April 3, 2026, USCIS issued a denial relating to the T visa and related waiver application. Petitioner is refiling. In June 2026, the Board of Immigration Appeals issued an order recognizing that appeals, motions, and proceedings before the Board had been withdrawn, leaving no matter pending before the Board. These events are new or materially changed facts not adjudicated in the old habeas case.

44. **Petitioner has now been detained since November 2024, more than nineteen months.** He has no U.S. criminal conviction, no identified U.S. criminal history, substantial family ties, a known address, a history of compliance with check-ins, and severe trauma related to trafficking.

GOVERNING LAW

A. Habeas and due process

45. Habeas review under 28 U.S.C. § 2241 is available to challenge immigration detention that violates the Constitution, statutes, or regulations of the United States. See Zadvydas v. Davis, 533 U.S. 678, 687-90 (2001); Demore v. Kim, 538 U.S. 510, 516-17 (2003).

46. Under 28 U.S.C. § 2243, the Court must promptly require the custodian to certify the true cause of detention and must resolve the petition as law and justice require. Habeas review must be meaningful, not theoretical.

47. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. Zadvydas, 533 U.S. at 690. The Due Process Clause applies to all persons in the United States, regardless of immigration status. Id. at 693; Yick Wo v. Hopkins, 118 U.S. 356 (1886).

48. A civil detention scheme is constitutional only if it is accompanied by constitutionally adequate process and if detention is reasonably related to a legitimate regulatory purpose rather than arbitrary or punitive. See United States v. Salerno, 481 U.S. 739, 746 (1987); Foucha v. Louisiana, 504 U.S. 71, 80 (1992).

B. The *Abreu* holding and the requirement that Respondents use the correct detention authority

49. In *Omar Abreu v. Genalo*, No. 26-cv-1181-SJB (E.D.N.Y. Mar. 4, 2026), this Court provisionally granted the writ where the Government relied on an improper detention theory. Judge Bulsara held that, at its core, detention under a statute that is inapplicable and inappropriate violates due process, and that if Respondents wish to detain someone, they must follow some other provision that lawfully applies.

50. The *Abreu* reasoning applies here even though Respondents are expected to invoke § 1231 rather than § 1225. The Government must do more than name a detention statute. It must show that the statute applies, that the procedures attached to the statute were followed, that the arrest itself was lawful, and that continued detention is supported by individualized decision-making.

51. *Abreu* also supports release without electronic monitoring where the writ is granted. Judge Bulsara ordered release and prohibited ICE ankle monitors or similar technology because the Court granted the writ rather than imposing bail conditions as an intermediate measure. The same relief is warranted here if the writ is granted.

C. Section 1231 and post-order custody procedures

52. Under 8 U.S.C. § 1231(a)(1), the Government generally has a 90-day removal period after a removal order becomes administratively final. During that removal period, § 1231(a)(2) provides for detention. After the removal period, § 1231(a)(6) authorizes only discretionary detention of certain categories of people, including those determined to be a risk to the community or unlikely to comply with removal.

53. Section 1231(a)(6) must be read in light of Zadvydas, which held that post-order detention is authorized only for a period reasonably necessary to accomplish removal and that six months is presumptively reasonable. 533 U.S. at 699-701.

54. The regulations require custody review and service of custody decisions. Under 8 C.F.R. § 241.4, the Field Office Director or District Director must conduct required post-order custody reviews, maintain appropriate files, provide a copy of any release or detention decision to the detained person, and briefly state the reasons for continued custody. Notices and custody decisions must be served on the detained person.

55. Under 8 C.F.R. § 241.13, where detention continues after the removal period and the person asserts that removal is not significantly likely in the reasonably foreseeable future, the Headquarters Post-Order Detention Unit must provide written procedures, permit response to evidence, and issue a written decision. These provisions require reasoned custody adjudication, not silent detention by inertia.

D. Warrantless interior arrest, administrative warrants, and § 1357(a)(2)

56. The Fourth Amendment applies to immigration enforcement in the interior of the United States. INS v. Delgado, 466 U.S. 210, 215 (1984). A warrantless arrest requires probable cause. Beck v. Ohio, 379 U.S. 89, 91 (1964).

57. For immigration officers, 8 U.S.C. § 1357(a)(2) permits a warrantless interior arrest only if the officer has reason to believe the person is in the United States in violation of law and is likely to escape before a warrant can be obtained. A compliant check-in participant with a fixed address, no criminal history, and a history of reporting to ICE is not likely to escape before a warrant can be obtained.

58. If the Government relies on an administrative I-200, the Court must require production and proof of service. The existence of a paper generated by ICE does not itself establish that the seizure complied with the Fourth Amendment, due process, § 1357, or the victim-protection policies that governed the encounter.

E. Re-arrest after release under supervision requires notice, reasons, and an opportunity to be heard

59. When ICE has released a person under supervision, ATD, ISAP, an order of release, or an order of supervision, re-arrest is not ordinary arrest in a vacuum. It is a deprivation of liberty following an agency decision that release was sufficient. Due process therefore requires notice of the reason for the reversal and an opportunity to be heard at a meaningful time and in a meaningful manner. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

60. If Respondents characterize Petitioner's re-arrest as a revocation of release under 8 C.F.R. § 241.4(l), then the regulation requires that, upon revocation, the noncitizen be notified of the reasons for revocation and afforded an initial informal interview promptly after return to custody

to respond to those reasons. Section 241.13(i) similarly requires notice and a prompt interview where post-order release is revoked.

61. Recent habeas decisions in this Circuit and nearby districts have rejected ICE's attempt to avoid these protections. In *Funes Gamez v. Francis*, No. 25-CV-7429, 2025 WL 3263896, at *14-17, *21-25 (S.D.N.Y. Nov. 24, 2025), the court held that § 241.4(l) sets out a unified revocation procedure requiring notice and an opportunity to respond, and ordered release for unlawful revocation/detention. In *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 150-70 (W.D.N.Y. 2025), the court held that a noncitizen released under supervision is entitled to due process when the Government revokes that release and returns him to custody. In *Zhu v. Genalo*, 798 F. Supp. 3d 400, 408-15 (S.D.N.Y. 2025), the court held that a challenge to ICE's revocation of supervised release without required notice and opportunity to be heard implicates due process and warranted habeas relief. In *Zhang v. Genalo*, No. 25-CV-06781 (NRM), 2025 WL 3733542, at *10-16 (E.D.N.Y. Dec. 28, 2025), the court held that inaccurate or boilerplate revocation reasons and an unproven interview do not satisfy § 241.4(l), and granted the petition.

62. *Zhang* further rejected reliance on stale or inaccurate travel-document assertions and distinguished *Zheng v. Decker*, 618 F. App'x 26 (2d Cir. 2015), because the prior travel document in *Zheng* was active at the time the case was filed. Zhang, 2025 WL 3733542, at *12-13. Thus, Zheng does not permit ICE to re-arrest a compliant supervisee based on unserved, inaccurate, stale, or unexplained reasons. In *Zheng v. Noem*, No. 1:25-cv-01933, slip op. at 2, 4-5 (W.D. Mich. Jan. 16, 2026), the Form I-213 showed initial release on recognizance and later arrest at a scheduled ICE appointment; the court held that § 1226(a), not § 1225(b)(2)(A), governed and that detention under the wrong mandatory framework violated due process.

63. In *Zhu v. Genalo*, 798 F. Supp. 3d 400, 408-15 (S.D.N.Y. 2025), the court held that a challenge to ICE's revocation of supervised release without required notice and opportunity to be heard implicates due process and warranted habeas relief. In *Zhang v. Genalo*, No. 25-CV-06781 (NRM), 2025 WL 3733542, at *10-16 (E.D.N.Y. Dec. 28, 2025), the court held that inaccurate or boilerplate revocation reasons and an unproven interview do not satisfy § 241.4(l), and granted the petition.

64. These cases are especially important here because the record contains no alleged violation of Petitioner's release conditions. A person who has complied with ISAP/ATD and check-in requirements cannot be re-arrested based on unexplained bed availability, silence, or a boilerplate custody form without constitutionally adequate notice, reasons, decisionmaker authority, and an opportunity to contest detention.

F. Victim-centered directives, T-visa protections, and § 1367

65. At the time of the November 2024 arrest, ICE Directive 11005.3, Using a Victim-Centered Approach with Noncitizen Crime Victims, was in effect. It addressed civil immigration enforcement involving noncitizen crime victims, including applicants for and beneficiaries of victim-based immigration benefits and Continued Presence.

66. Directive 11005.3 required ICE, absent exceptional circumstances, to refrain from civil immigration enforcement action against known applicants for or beneficiaries of victim-based benefits; required officers and agents to look for indicia or evidence suggesting that a noncitizen was a crime victim; and required that victim status be considered as a positive discretionary factor, including release from detention.

67. Directive 11005.3 defined civil immigration enforcement action broadly to include arrest, detention, release, issuance or service of an NTA, and execution of a final order. It required victim status to be considered in custody determinations, required documentation in the A-file and EARM, required reporting to supervisors and trafficking points of contact, and required access to law enforcement and information about victim-based benefits.

68. Directive 11005.3 further recognized that a human trafficking victim's engagement in unlawful activity as a direct result of trafficking does not eliminate victim status, and that ICE personnel must consider victim status in relation to criminal actions when deciding whether to take civil immigration enforcement action.

69. On January 30, 2025, ICE issued Directive 11005.4, which rescinded 11005.3 but continued to require adherence to 8 U.S.C. § 1367 and DHS's § 1367 implementing instruction. It requires consultation with OPLA through the Field Office Director or Special Agent in Charge before civil enforcement against known beneficiaries, applicants, or petitioners for victim-based benefits to ensure compliance with legal limitations.

70. Section 1367 prohibits DHS and DOJ officials from making adverse admissibility or deportability determinations using information furnished solely by the trafficker or perpetrator in a T-visa case, and generally prohibits disclosure or use of information relating to a T-visa applicant except for legitimate agency purposes. These protections are not optional, and they exist to protect victims of trafficking from harm.

71. These directives and statutes are relevant not because Petitioner asserts a freestanding private cause of action under an internal directive, but because they define the lawful, non-arbitrary process ICE was required to consider in its own custody decisions. Failure to follow them is evidence that detention was arbitrary, capricious, an abuse of discretion, and contrary to due process.

G. <u>I-213 reliability and trafficking-screening omissions</u>

72. Respondents may attempt to rely on a Form I-213 or other enforcement narrative to justify detention. The Court should require production of every I-213, enforcement report, sworn statement, EARM entry, custody worksheet, and A-file note relating to the arrest and detention.

73. A Form I-213 is not self-proving where reliability is specifically contested. If it omits trafficking indicators, fails to document victim screening, relies on coerced statements, relies on trafficker/perpetrator information, or fails to document § 1367 and Directive 11005.3/11005.4 compliance, the Court should not allow Respondents to rely on it without an evidentiary hearing

and production of the underlying records. See *Felzcerek v. INS*, 75 F.3d 112 (2d Cir. 1996); *Zhen Nan Lin* v. U.S. Dep't of Justice, 459 F.3d 255 (2d Cir. 2006); *Matter of Barcenas*, 19 I. & N. Dec. 609 (BIA 1988).

CLAIMS FOR RELIEF

COUNT I - Unlawful detention under 28 U.S.C. § 2241 and the Due Process Clause because Respondents have not certified a lawful statutory and factual basis for custody

74. Petitioner incorporates the preceding paragraphs.

75. Respondents have not certified the true cause of detention. The record presently shows only that ICE shifted from release to detention because bed space became available and because ICE allegedly generated an I-203 and I-200. That is not a lawful individualized custody determination.

76. Under Abreu, Respondents must identify the provision that actually authorizes detention and must follow the process required by that provision. If Respondents rely on § 1231, they must show the removal order was final, served, and used lawfully; that the arrest was lawful; that custody was reviewed under the applicable regulations; and that continued confinement is justified by individualized reasons.

77. Respondents' failure to provide the statutory and factual basis for detention violates 28 U.S.C. § 2243 and the Due Process Clause.

COUNT II - Unlawful interior arrest in violation of the Fourth Amendment, 8 U.S.C. § 1357(a)(2), and due process

78. Petitioner incorporates the preceding paragraphs.

79. Petitioner was arrested in the interior of the United States at or after a scheduled check-in. He had complied with supervision, appeared as directed, lived at a known address, and had no U.S. criminal history. Respondents lacked any reasonable basis to conclude he was likely to escape before a warrant could be obtained.

80. If the arrest was warrantless, it violated § 1357(a)(2) and the Fourth Amendment. If Respondents rely on an administrative I-200, they must prove that it existed before the arrest, that it was lawfully issued, that it was served, and that it was supported by a lawful custody basis. An unserved administrative warrant does not cure the absence of notice, the lack of a neutral warrant, or the absence of an individualized custody determination.

81. The arrest was unlawful and the detention that followed is the fruit of that unlawful seizure.

COUNT III - Deprivation of due process through failure to serve or disclose the removal order before the check-in arrest

82. Petitioner incorporates the preceding paragraphs.

83. A removal order was entered only weeks before the arrest. Petitioner was not personally served with the order and was not informed that ICE would treat him as subject to a final order before he appeared at the scheduled check-in.

84. The Government cannot use routine reporting obligations to obtain a person's presence while withholding material information that transforms the check-in into an arrest. That conduct deprived Petitioner of notice, an opportunity to seek counsel and emergency review, and a meaningful opportunity to contest detention before physical liberty was taken.

85. The failure to serve the order or provide notice before arrest rendered the arrest and resulting detention arbitrary and unconstitutional.

COUNT IV - Re-arrest after intensive supervision/release without notice, reasons, proof of violation, or an opportunity to be heard

86. Petitioner incorporates the preceding paragraphs.

87. Per the I-213 and release records, Petitioner had been initially released under intensive supervision, including ISAP/ATD reporting and monitoring. He complied with that supervision, appeared as directed, and the current record identifies no violation of his order of release, no missed check-in, no absconding, no new U.S. criminal arrest, and no changed circumstance making him a danger or flight risk.

88. ICE re-arrested Petitioner at a scheduled check-in without advance notice that release would be revoked, without a written statement of reasons, without an opportunity to contest the reason for revocation, without a prompt informal interview, without showing that any authorized official made the required findings, and without any record of violations of the order of release.

89. Under *Mathews, Funes, Zhu, Zhang, Ceesay*, and the *Abreu* line of cases, Respondents may not re-detain a compliant supervisee by silently reversing release or supervision status. If Respondents seek to revoke release under § 241.4(l), § 241.13(i), an ISAP/ATD order, or any other release authority, they must provide notice, reasons, a meaningful opportunity to respond, and lawful decisionmaker authority.

90. Because Respondents did none of that, the re-arrest and detention are unlawful and the remedy is restoration of the status quo ante: release under the prior lawful supervision terms, without additional restrictions unless imposed after lawful process.

COUNT V - Failure to provide custody determinations and post-order custody review required by § 1231, 8 C.F.R. §§ 241.4 and 241.13, and due process

91. Petitioner incorporates the preceding paragraphs.

92. Petitioner has been detained since November 2024. The 90-day removal period, to the extent it began in October or November 2024, long ago expired. Continued detention therefore cannot rest on silence or bed space. It requires individualized review under § 1231(a)(6), *Zadvydas,* and 8 C.F.R. §§ 241.4 and 241.13.

93. Respondents have not provided Petitioner with a written custody decision briefly stating the reasons for continued detention. They have not shown service of any custody review, transfer of custody-review authority, HQPDU decision, evidence relied upon, or opportunity to respond.

94. Respondents have not shown that Petitioner is a danger or flight risk. The facts show the opposite: compliance, known address, family ties, no U.S. arrests, and no violence or convictions in the United States.

95. Continued detention without the required reviews and written reasons violates the regulations, § 1231 as construed by *Zadvydas*, and due process.

COUNT VI - Failure to follow trafficking-victim protocols, § 1367 safeguards, and victim-centered custody requirements

96. Petitioner incorporates the preceding paragraphs.

97. At the time of arrest, ICE had reason to know, or should have known, that Petitioner had trafficking indicators. He was coerced by coyotes and cartel-linked actors, beaten, threatened, forced to work, and forced to assist with movement or control of other migrants. He was exactly the type of victim for whom Congress created T nonimmigrant status and for whom ICE adopted victim-centered enforcement policies.

98. ICE did not conduct appropriate screening before arrest. ICE did not document victim identification in the A-file or EARM. ICE did not provide a private opportunity to report the trafficking to law enforcement. ICE did not refer him to appropriate human-trafficking authorities or a trafficking point of contact. ICE did not consider victim status as a positive factor for release. ICE did not document exceptional circumstances or approval through the required chain of command.

99. After Petitioner filed a T application and after USCIS issued a bona fide determination, ICE still did not show compliance with the victim-centered directive, § 1367, or custody-review obligations. After Directive 11005.4 superseded 11005.3, ICE still remained bound by § 1367 and was required to consult OPLA before enforcement against known beneficiaries, applicants, or petitioners for victim-based benefits.

100. To the extent Respondents rely on alleged unlawful conduct abroad or during the smuggling journey, ICE was required to evaluate whether that conduct was a direct result of force, fraud, or coercion associated with being trafficked. ICE's failure to do so renders detention arbitrary and contrary to the agency's own required process.

101. The failure to screen and protect a trafficking victim violates due process, the INA, 8 U.S.C. § 1367, and the governing DHS/ICE protocols.

COUNT VII - Failure to address conditions of confinement, trauma, medical vulnerability, and civil detention conditions

102. Petitioner incorporates the preceding paragraphs.

103. Petitioner is a civil immigration detainee and a trafficking victim with trauma. The Government was required to consider whether detention conditions were appropriate and whether alternatives to detention would satisfy any legitimate governmental purpose.

104. **No custody decision addressed Petitioner's trafficking trauma, PTSD symptoms, physical injuries, mental health needs, access to confidential counsel communication, access to law enforcement for trafficking reporting, or whether detention in a criminal jail setting at MDC Brooklyn is reasonably related to any civil detention purpose.**

105. No record shows that ICE considered less restrictive alternatives, release on recognizance, reporting, parole, order of supervision, or trauma-informed conditions. The failure to conduct any conditions-related custody assessment is arbitrary, punitive as applied, and inconsistent with civil detention due process.

COUNT VIII - The prior Southern District habeas case does not bar this petition

106. Petitioner incorporates the preceding paragraphs.

107. This petition challenges current confinement in the Eastern District of New York by the current custodian. It is based on facts and claims not adjudicated in the prior Southern District case.

108. The prior petition was denied on a narrow theory tied to prolonged detention during the pendency of a T-visa application and an automatic regulatory stay. The court did not decide the legality of the check-in arrest, lack of service of the removal order, absence of custody determination, absence or non-service of a warrant, § 1357(a)(2), trafficking-victim screening, § 1367, I-213 reliability, or the lack of conditions-of-confinement assessment.

109. The prior decision itself confirms that Fourth Amendment and APA theories were not developed. Because these claims were not adjudicated and because Petitioner is now held in a new district with materially changed circumstances, this petition is not barred by claim preclusion, issue preclusion, law of the case, or abuse-of-the-writ principles.

110. At minimum, any preclusion argument raises factual questions that cannot be resolved without Respondents' § 2243 return and production of the detention record.

MOTION FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

111. Petitioner separately moves for an Order to Show Cause and temporary relief under 28 U.S.C. §§ 2241, 2243, and 1651, and Federal Rule of Civil Procedure 65, prohibiting transfer outside the Eastern District of New York and requiring prompt production of the detention record.

112. Petitioner is likely to succeed on the merits, or at minimum presents serious questions going to the merits, because Respondents have not certified a lawful detention basis, have not shown service of the removal order before arrest, have not shown a lawful arrest warrant or § 1357(a)(2)

escape risk, have not produced custody determinations, have not identified any violation of the prior order of release or intensive supervision, have not shown any notice or opportunity to be heard before re-arrest, and have not shown compliance with trafficking-victim protocols.

113. Petitioner suffers irreparable harm each day he remains confined without lawful process. Loss of physical liberty is irreparable injury. Transfer outside this District would further impair counsel access, disrupt family and legal support, and risk frustrating meaningful habeas review.

114. The balance of equities and public interest favor relief. The public has no interest in unconstitutional civil detention or in executive custody that avoids habeas review. By contrast, Respondents face no cognizable prejudice from maintaining Petitioner in this District and producing the records that should already exist if custody is lawful.

115. The requested emergency relief is tailored. Petitioner seeks to preserve jurisdiction, require Respondents to certify the true cause of confinement, protect access to counsel, and obtain release from unlawful detention.

RECORDS THAT RESPONDENTS MUST PRODUCE WITH THE § 2243 RETURN

116. To make habeas review meaningful, the Court should order Respondents to produce, within forty-eight hours, all records supporting arrest and detention, including:

a. Form I-200, Warrant for Arrest, including issuance time, authorizing officer, factual basis, service record, and any related worksheet or supervisor approval;

b. Form I-203, Order to Detain Alien, including issuance time, factual basis, and any custody worksheet or approval record;

c. all Forms I-213, Records of Deportable/Inadmissible Alien, enforcement narratives, arrest reports, sworn statements, field notes, body-worn-camera records if any, and EARM/ENFORCE entries;

d. the October 3, 2024 removal order and all proof of service, mailing, electronic service, oral notice, translation, and acknowledgement of receipt;

e. all records reflecting Petitioner's initial order of release, intensive supervision/ISAP/ATD enrollment, ankle monitor assignment/removal, check-ins, compliance history, any alleged violation of release conditions, and any record showing no violations;

f. all records of any revocation or attempted revocation of release, supervision, ISAP/ATD, or order-of-release status, including notice, reasons, service, interpreter, informal interview, forms, officer notes, decisionmaker authority, and findings;

g. all custody determinations under § 1231, 8 C.F.R. § 241.4, and 8 C.F.R. § 241.13, including 90-day review, post-order custody review, HQPDU records, written reasons, service records, and any danger or flight-risk evidence;

h. the alleged bed-space determination and all communications linking bed availability to the decision to arrest and detain Petitioner;

i. all records concerning trafficking indicators, T-visa filing, bona fide determination, USCIS denial, refiling, CIS/CLAIMS checks, CIS code 384 or other victim-based benefit markers, and communications with USCIS;

j. all records showing compliance with ICE Directive 11005.3, ICE Directive 11005.4, 8 U.S.C. § 1367, DHS Instruction No. 002-02-001, OPLA consultation, chain-of-command approval, HSI referral, Continued Presence screening, and victim-services referrals;

k. all records reflecting whether Petitioner's alleged conduct during the smuggling journey was evaluated as conduct caused by, incident to, or resulting from force, fraud, or coercion associated with trafficking;

l. all MDC, ICE, and detention contractor medical, mental-health, suicide-risk, disability, trauma, vulnerability, and housing assessments relating to Petitioner's detention; and

m. all documents, emails, memoranda, or database entries supporting any claim that Petitioner is a danger, flight risk, or unlikely to comply with an order of removal.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction under 28 U.S.C. §§ 2241 and 2243;
2. Issue an Order to Show Cause requiring Respondents to file a full return within forty-eight hours certifying the true statutory and factual basis for detention;
3. Order production within forty-eight hours of all records listed above and all other documents supporting arrest, detention, transfer, or continued custody;
4. Temporarily restrain Respondents from transferring Petitioner outside the Eastern District of New York, absent further order of this Court, during the pendency of this habeas proceeding;
5. Require Respondents to provide meaningful, timely, and confidential access to counsel, including confidential legal calls and in-person visits;
6. Provisionally grant the writ, following Abreu, and order Petitioner's immediate release from immigration detention;
7. Order that release shall restore the status quo ante under Petitioner's prior lawful release/supervision terms and shall not include an ICE ankle monitor, GPS monitor, SmartLINK surveillance, or similar additional surveillance unless this Court orders otherwise after notice and an opportunity to be heard;
8. Enjoin Respondents from re-detaining Petitioner absent further order of this Court, or absent notice and a pre-deprivation hearing before a neutral decisionmaker at which Respondents bear the burden of proving lawful authority and necessity of detention;
9. Declare that Petitioner's arrest and continued detention violate the Fourth Amendment, the Fifth Amendment, 8 U.S.C. §§ 1231, 1357, and 1367, 8 C.F.R. §§ 241.4 and 241.13, and the applicable DHS/ICE victim-protection protocols;
10. Order Respondents to produce Petitioner before the Court if necessary to effectuate habeas review;
11. Award reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, if Petitioner prevails and the statute applies; and
12. Grant such other and further relief as the Court deems just and proper.

New York, New York

Respectfully submitted,

MUSA-OBREGON LAW P.C.
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Counsel for Petitioner

VERIFICATION BY COUNSEL PURSUANT TO 28 U.S.C. § 2242

I submit this verification on behalf of Petitioner because I am one of Petitioner's attorneys. The facts in this Petition are based on information provided by Petitioner, Petitioner's family, available records, counsel's investigation, and counsel's review of the case file. On that basis, I verify that the statements in this Petition are true and correct to the best of my knowledge and belief.

Dated: July 2, 2026

s/ S. Michael Musa-Obregon
S. Michael Musa-Obregon,

CERTIFICATE OF SERVICE

I certify that on July 2, 2026, I served the foregoing Emergency Verified Petition for Writ of Habeas Corpus and Motion for Order to Show Cause, Temporary Restraining Order, and Immediate Release on Respondents and/or the United States Attorney's Office for the Eastern District of New York by the Court's electronic filing system and/or other authorized means.

S. Michael Musa-Obregon
S. Michael Musa-Obregon