

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

NIZAR TRABELSI,

Petitioner–Plaintiff,

v.

JEFFREY CRAWFORD, in his official capacity
as Warden of the Farmville Detention Center;

LIANA CASTANO, in her official capacity as
Field Office Director of the Immigration and
Customs Enforcement, Enforcement and Removal
Operations Washington Field Office;

ALEJANDRO MAYORKAS, in his official
capacity as Secretary of the Department of
Homeland Security; and

MERRICK B. GARLAND, in his official
capacity as Attorney General,

Respondents–Defendants.

PETITION
FOR WRIT OF HABEAS CORPUS
&
COMPLAINT
FOR INJUNCTIVE RELIEF

Case No. _____

INTRODUCTION

1. The Petitioner–Plaintiff is Nizar Trabelsi, a 54-year-old Tunisian man who has spent the last twenty-three years fighting for his freedom.

2. More than ten years ago, after spending the previous ten years in solitary confinement in Belgium, the United States extradited Mr. Trabelsi from Belgium to the United States to face criminal prosecution. Last summer, a jury acquitted him of all charges in a federal trial.

3. Meanwhile, the European Court of Human Rights determined that Mr. Trabelsi’s extradition violated European human rights law, and Belgium has twice formally requested his return.

4. Mr. Trabelsi has never sought admission to the United States. He was forcibly brought here by the U.S. government, paroled into the country for criminal prosecution, kept in extreme conditions during an extraordinarily lengthy pre-trial confinement, and found not guilty of the charges the United States brought him here to face.

5. After his acquittal, the United States should have returned Mr. Trabelsi to Belgium. That is what the relevant extradition treaty and Belgium's diplomatic notes, issued in connection with the treaty, require.

6. Short of that, both the treaty and federal immigration law require the United States to allow Mr. Trabelsi a reasonable opportunity to voluntarily depart the United States. But the United States provided no such opportunity. It never informed him that he was free to depart, or that failure to do so would subject him to immigration removal proceedings, as an applicant for admission to the United States.

7. Instead, the United States immediately transferred Mr. Trabelsi to immigration custody and put him into removal proceedings, charging him as an inadmissible applicant for admission who lacks requisite entry documents. But removal proceedings are not appropriate for people, like Mr. Trabelsi, who have never sought admission to the United States.

8. Even worse, through its removal proceedings, the United States intends to send Mr. Trabelsi to Tunisia—where he has been convicted *in absentia* and sentenced to twenty years' imprisonment for offenses relating to those of which he was convicted in Belgium and acquitted in the United States, and where he is likely to be tortured, as he has argued in a pending application to the immigration court for protection under the U.N. Convention Against Torture. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 ("CAT"); *see also* 8 C.F.R. § 1208.16(c)(2).

9. As he fights off removal to Tunisia, Mr. Trabelsi is languishing in a private detention facility in solitary confinement, under conditions that are even more punitive and restrictive than the conditions he had to endure during his lengthy detention in pre-trial custody as the United States attempted and failed to convict him of federal crimes.

10. In the thirteen months since his acquittal, Respondents have subjected Mr. Trabelsi to near-total isolation from not only the outside world, but also the world within the Farmville facility. He spends twenty-three hours per day in a cell with no window, and Respondents never turn off the lights. He is shackled on the rare occasions Respondents permit him to leave his cell. Respondents prohibit him from speaking with anyone but his attorneys and Farmville medical staff—even his wife and children. He cannot read or send non-legal mail, read books or magazines, watch television, or participate in recreation with other detainees. And though he is a practicing Muslim, he is denied contact with his imam, an Islamic religious leader and advisor who comes to Farmville once a week, as well as access to religious materials required for the daily practice of his faith or any form of collective religious worship.

11. As a result of the conditions of confinement imposed by Respondents, Mr. Trabelsi's mental and physical health have severely deteriorated.

12. Mr. Trabelsi's ordeal has gone on long enough.

13. Because the extradition treaty between the United States and Belgium requires Mr. Trabelsi's return to Belgium, requires that he be given a reasonable opportunity to depart, and prohibits his detention for any reason other than the criminal charges on which he was extradited, Mr. Trabelsi's continued detention by Respondents is illegal. For similar reasons, his detention also violates the immigration laws.

14. Because Mr. Trabelsi is not properly subject to removal proceedings, and because the United States could immediately effectuate his return to Belgium, Mr. Trabelsi's ongoing confinement serves no legitimate immigration purpose. As a result, it violates the Fifth Amendment.

15. Because Mr. Trabelsi's conditions of confinement in civil detention are so severe, they are punitive and violate the Fifth Amendment, the First Amendment, and the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb ("RFRA").

16. To effectuate his immediate return to Belgium, or in the alternative, be granted a reasonable opportunity to depart the country to which he has never sought to remain, and to materially and significantly improve his extreme conditions of solitary confinement, Mr. Trabelsi files this petition for a writ of habeas corpus and complaint.

JURISDICTION AND VENUE

17. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

18. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Plaintiff is detained within this district at Farmville Detention Center in Farmville, Virginia. Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continue to occur at ICE's Washington Field Office in Chantilly, Virginia, within this division.

19. Administrative exhaustion is unnecessary because Mr. Trabelsi has already exhausted any available remedies, and additional action would be futile. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542 (E.D. Va. 1999).

PARTIES

20. Petitioner–Plaintiff Nizar Trabelsi is a Tunisian national currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Farmville Detention Facility in Farmville, Virginia.

21. Respondent–Defendant Jeffrey Crawford is the Director of Farmville Detention Center, a privately operated jail that contracts with ICE to detain noncitizens. He is responsible for overseeing Farmville’s administration and management. Mr. Crawford is Mr. Trabelsi’s immediate custodian. He is sued in his official capacity.

22. Respondent–Defendant Liana Castano is the Field Office Director of the Enforcement and Removal Operations at ICE’s Washington Field Office and is the federal agent charged with overseeing all ICE detention centers in Virginia, including Farmville. Ms. Castano is the legal custodian of Plaintiff. She is sued in her official capacity.

23. Respondent–Defendant Alejandro Mayorkas is the Secretary of the U.S. Department of Homeland Security (“DHS”). DHS oversees ICE, which is responsible for administering and enforcing immigration laws. Secretary Mayorkas is the ultimate legal custodian of Plaintiff. He is sued in his official capacity.

24. Respondent–Defendant Merrick B. Garland is the Attorney General of the United States. As head of the Department of Justice, he is responsible for managing extradition of individuals to the United States for criminal prosecution. U.S. Dep’t of Just., Just. Manual § 9-15.000 (2018). He is sued in his official capacity.

STATEMENT OF FACTS

Background

25. Mr. Trabelsi is a national of Tunisia. He was born there in 1970.

26. In 1989, he moved to Germany, where he joined a professional soccer team in Dusseldorf.

27. In July 2001, Mr. Trabelsi moved to Belgium. Mr. Trabelsi's wife and stepchildren are Belgian citizens and continue to live in Belgium today.¹ He has two other children, from earlier marriages, who are French and German citizens, respectively.

28. Mr. Trabelsi's long-running ordeal began two days after the September 11, 2001 attacks on the United States, when he was detained by Belgian law enforcement. His detention was part and parcel of a widespread and unjustified round-up of Muslim men across the United States and Europe in the wake of al-Qaeda's attacks.

29. The Belgian government charged Mr. Trabelsi with an attempted attack on a military facility, unlawful weapons possession, and other charges. Mr. Trabelsi was ultimately convicted on the basis of confessions, which he has consistently maintained were false, that he made shortly after his arrest during interrogations by Belgian and U.S. officials. These officials threatened Mr. Trabelsi that if he did not confess, he would be sent to Guantánamo Bay, Cuba, and held there indefinitely as an enemy combatant, and that his then-spouse would be criminally prosecuted. He was sentenced to ten years' imprisonment in Belgium.

30. Meanwhile, in January 2005, a Tunisian military court issued an arrest warrant for Mr. Trabelsi after convicting and sentencing him *in absentia* to two consecutive ten-year terms of imprisonment for belonging to a terrorist organization abroad in peacetime.

31. In April 2006, a federal grand jury in the U.S. District Court for the District of Columbia indicted Mr. Trabelsi on four criminal counts, including conspiracy to kill U.S. nationals

¹ Prior to his extradition from Belgium, Mr. Trabelsi married his current wife, Asma Berrou, in a purely religious ceremony. Their marriage is not recognized by civil authorities. Belgium denied Mr. Trabelsi's requests to legally marry his wife while in custody there.

abroad and conspiracy, attempting to use weapons of mass destruction, and provision of material support to a foreign terrorist group. The grand jury issued a superseding indictment in November 2007. The U.S. charges concerned substantially the same events for which Mr. Trabelsi had already been convicted in Belgium.

Mr. Trabelsi's Extradition from Belgium to the United States

32. In 2008, the United States formally requested Mr. Trabelsi's extradition from Belgium.

33. While the Belgian courts initially approved the extradition, Mr. Trabelsi appealed, raising concerns about the terms of the extradition, as well as the United States' potential treatment of him, which would violate the European Convention on Human Rights.

34. A Belgian appellate court denied Mr. Trabelsi's appeal but limited its approval of his extradition to require compliance with certain conditions. The court held that Belgium could not extradite him if he were to face the death penalty, which is illegal under Belgian law. It also required that any eventual life sentence issued by the United States be subject to commutation, and that any further request for extradition, including to Tunisia, would have to be agreed to by the Belgian government.

35. In response, the United States made various assurances to the Belgian government regarding Mr. Trabelsi's extradition. The United States ruled out trial by military commission, promised that his incarceration would be in a civilian (rather than military) facility, and guaranteed that he would not face the death penalty. It also guaranteed rights of appeal and habeas corpus and the possibility of commutation and clemency. Finally, the United States guaranteed that Mr. Trabelsi would not be re-extradited to a third country without Belgium's approval. *See* U.S. Diplomatic Note No. 21, Aug. 10, 2010, attached as Ex. A.

36. In November 2011, Belgium formally approved Mr. Trabelsi's extradition to the United States.

37. Mr. Trabelsi completed his Belgian criminal sentence in June 2012, but he remained in Belgian custody pending his extradition.

38. In 2011, Mr. Trabelsi sought and obtained a stay of extradition from the European Court of Human Rights ("ECtHR").

39. On October 3, 2013, while the Belgian government remained under an ECtHR order prohibiting his extradition, Belgian authorities informed Mr. Trabelsi that he would be transferred between Belgian prisons. But that transfer did not happen. Instead, his Belgian jailors surreptitiously transported him to a military airport, where he was met by U.S. federal agents from the Federal Bureau of Investigation and, upon information and belief, the Central Intelligence Agency.

40. At that point, Mr. Trabelsi was extradited from Belgium to the United States.

41. Almost one year later, in September 2014, the ECtHR determined that Mr. Trabelsi's extradition violated articles 3 (prohibiting inhuman or degrading treatment or punishment) and 34 (prohibiting hindrance of the right to petition) of the European Convention on Human Rights. It ordered Belgium to pay Mr. Trabelsi compensation in excess of €90,000. Later, in 2022, a Belgian court ordered the government to pay Mr. Trabelsi another €100,000 for its role in his ten years of unlawful imprisonment in the United States.

Mr. Trabelsi's Prolonged Pre-Trial Detention and Belgium's First Request For His Return

42. On October 3, 2013, pursuant to his extradition, Mr. Trabelsi was paroled into the United States under 8 U.S.C. §1182(d)(5)(A) in order to face criminal charges. His parole expired two days later.

43. Upon his arrival in the United States, Mr. Trabelsi was placed in pre-trial custody at Rappahannock Regional Jail and then Northern Neck Regional Jail in Virginia. He spent the entirety of his pre-trial detention in solitary confinement (also known as “administrative segregation”) under Special Administrative Measures (“SAMs”). *See* 28 C.F.R. § 501.3. He was handcuffed during attorney visits and while visiting the law library, and enjoyed limited access to recreation areas. He was permitted limited communications with pre-approved individuals, including family, but was barred from speaking with the media or having any statements disseminated to third parties. *See United States v. Trabelsi*, Crim. No. 06-89, 2014 WL 12682266, at *1–2 (D.D.C. June 18, 2014).

44. His extradition commenced approximately ten years of pre-trial proceedings in the United States, which included six interlocutory appeals to the U.S. Court of Appeals for the D.C. Circuit.

45. On September 12, 2022, the Brussels Court of Appeal issued a decision requiring the Belgian government to demand Mr. Trabelsi's return to Belgium.

46. On December 13, 2022, the Belgian government issued a diplomatic note to the United States requesting Mr. Trabelsi's return. Belgium Diplomatic Note, Dec. 13, 2022, attached as Ex. B. Upon information and belief, the United States has not responded to this request.

47. On July 14, 2023, after a five-week trial, a jury acquitted Mr. Trabelsi of all charges. *See* Judgment of Acquittal, *United States v. Trabelsi*, Crim. No. 06-89 (D.D.C. July 17, 2023), ECF No. 656.

Mr. Trabelsi’s Acquittal, Transfer to ICE Custody, and Placement in Removal Proceedings, and Belgium’s Second Request for His Return

48. On July 17, 2023, three days after his acquittal, the government transferred Mr. Trabelsi to ICE custody at Farmville.

49. On July 19, 2023—even though Mr. Trabelsi never sought admission to the United States, was in the United States against his will through extradition, and was never given a reasonable opportunity to depart—ICE filed a Notice to Appear (“NTA”) commencing removal proceedings against him pursuant to Section 212(a)(7)(A)(1)(I) of the Immigration and Nationality Act “as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa . . . or other valid entry document” 8 U.S.C. § 1182.

50. On that same day, ICE issued a Notice of Custody Determination, which determined that Mr. Trabelsi would be held pursuant to 8 U.S.C. § 1226 for the duration of his removal proceedings.

51. On September 22, 2023, Mr. Trabelsi filed written pleadings designating Belgium as the country to which he wanted to be removed.

52. On October 19, 2023, Mr. Trabelsi applied for deferral of removal to Tunisia under the U.N. Convention Against Torture (“CAT”) by filing a petition before an Immigration Judge (“IJ”).²

² From December 2023 to January 2024, the IJ conducted a five-day trial on Mr. Trabelsi’s claim that he will be subjected to torture if he is removed to Tunisia. That petition remains pending before the IJ. To be granted CAT relief, a noncitizen must show that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2).

53. On October 20, 2023, ICE asked the IJ to designate additional countries of removal, including Tunisia.

54. On November 28, 2023, ICE added additional charges of inadmissibility under 8 U.S.C. § 1182(a)(3)(B)(i)(I) (engaged in terrorist activities), 8 U.S.C. § 1182(a)(3)(B)(i)(VIII) (having military-type training from or on behalf of a terrorist organization), and 8 U.S.C. § 1182(a)(2)(B) (having two or more convictions with an aggregate sentence of five or more years).

55. On February 14, 2024, a Belgian court again—as it had done in 2022—ordered the Belgian government to request that the United States transfer Mr. Trabelsi to Belgium and issue travel documents.

56. On July 15, 2024, the Belgian government sent a second diplomatic note to the U.S. Department of Homeland Security (“DHS”) and ICE requesting “the return of Nizar Trabelsi [to] the Belgian territory.” *See* Belgium Diplomatic Note, July 15, 2024, attached as Ex. C. Upon information and belief, the U.S. has not responded to Belgium’s request.

Mr. Trabelsi’s Solitary Confinement in ICE Custody

57. After ICE transferred Mr. Trabelsi to Farmville on July 17, 2023, Respondents initially placed him in a general population unit. However, three days later, Respondents placed him in administrative segregation, where he has remained ever since.

58. In a letter dated July 26, 2023, Respondent Jeffrey Crawford, Director of Farmville, informed Mr. Trabelsi that “you will be reclassified to high custody, your privileges will be limited,

Depending on applicable bars to relief, the IJ may grant withholding of removal under the CAT or deferral of removal under the CAT. 8 C.F.R. §§ 1208.16, 1208.17. When an IJ grants a noncitizen CAT relief, the judge issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the noncitizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021).

and you will be housed in Administrative Segregation for the remainder of your confinement at this facility.”

59. In reaching this determination, Mr. Crawford noted “the multiple attempts you made to undermine various policies meant to ensure the safety and security of the facilities you were incarcerated at.”

60. Attached to Mr. Crawford’s letter was an Administrative Segregation Housing Review form. The form justified Mr. Trabelsi’s placement in administrative segregation by stating, “Detainee was placed in RHU due to a further check/verification of his classification status for housing. On July 26, 2023, he was placed on Administrative Segregation.”

61. Since July 26, 2023, Respondents have reviewed Mr. Trabelsi’s administrative segregation classification every ten days and have issued an Administrative Segregation Housing Review form documenting their decision.

62. Each form Respondents issued between July 26 and November 13, 2023, provided the same justification as the first: “Detainee was placed in RHU due to a further check/verification of his classification status for housing. On July 26, 2023, he was placed on Administrative Segregation.”

63. On October 26, 2024, Mr. Trabelsi’s counsel filed administrative complaints with ICE regarding his placement in solitary confinement. After those complaints, Respondents slightly changed the language used in the Administrative Segregation Housing Review forms. The November 20, 2023 form, and every subsequent review since then, has stated: “Detainee Trabelsi was initially placed on AS Pending Classification until a review of his detention file could be completed. Upon review of his file and due to security concerns, it was determined he be placed in AS for the safety and security of the facility on July 26, 2023.”

The Highly Restrictive Conditions of Mr. Trabelsi's Solitary Confinement

64. Collectively, Respondents are responsible for the conditions of Mr. Trabelsi's detention at Farmville, including where their subordinates act on their behalf and under their authority.

Physical Confinement

65. Mr. Trabelsi spends twenty-three hours per day in a seven-foot-by-ten-foot cell with no windows. Respondents and their subordinates never turn off the fluorescent lights inside his cell, making sleep extremely difficult.

66. Respondents and their subordinates shackle him every time he is outside his cell, even in the shower.

67. The air conditioning in his cell only works intermittently, and it is often hotter than ninety degrees for unreasonable periods of time. The extreme heat exacerbates his asthma and other medical conditions.

Isolation

68. Mr. Trabelsi is almost completely isolated from the outside world. Respondents and their subordinates have repeatedly denied his requests to speak on the telephone with members of his family. They do not allow him to place or receive calls from anyone other than his attorneys, and they prohibit him from sending or receiving any mail other than legal mail.

69. In his July 26, 2023 letter, Respondent Crawford stated that "[y]our phone, mail, and visitation privileges will be restricted and subject to approval."

70. Respondent Crawford's letter further stated "I have requested from ICE and the FBI the approved contacts that you were allowed to have communication with while you were

subjected to special protocols in RRJ and NNRJ. I will approve the same contacts if they are provided by either party.”

71. On August 30, 2023, FBI agent Austin Price stated in an email to Farmville that Mr. Trabelsi was permitted to contact his wife as recently as the spring of 2023. Agent Price also forwarded a complete list of FBI-approved contacts to Farmville staff. Despite complying with Respondent Crawford’s requirements, Mr. Trabelsi has never been permitted to contact his wife and children while at Farmville.

72. Mr. Trabelsi has made dozens of requests to contact his wife and children, all of which Respondents have denied. For example, Respondents and their subordinates denied Mr. Trabelsi’s April 22, 2024 request that he be permitted to contact his family after learning that his aunt passed away.

73. Respondents have denied Mr. Trabelsi access to facility-issued tablet computers made available to other detainees, including others in administrative segregation. Upon information and belief, Respondents and their staffs could control and monitor what is on the tablet to mitigate any security risk.

74. Mr. Trabelsi is allotted one hour of outdoor recreation time each day, at a different time than all other detainees. His cell is physically separated from the others, and he is not permitted to be in the common area of the restricted housing unit. When the weather conditions do not permit him to take his recreation time outside, he is not provided with the alternate indoor space that is provided to the other detainees in the RHU.

75. Respondents and their subordinates have denied multiple requests that he be able to speak with other detainees.

76. These restrictions are more severe than those to which Mr. Trabelsi was subjected during his pre-trial detention, during which he was permitted to communicate via mail and phone with certain authorized individuals, such as his family members and other pre-approved persons. *See United States v. Trabelsi*, Crim. No. 06-89, 2014 WL 12682266 (D.D.C. June 18, 2014).

Access to Reading Materials and Other Media

77. Respondents and their subordinates have denied Mr. Trabelsi’s requests for reading materials other than the Quran; he has no access to books, newspapers, or magazines. By contrast, other detainees are allowed to read *USA Today*, which is available at Farmville, and can check out books from a book cart. Mr. Trabelsi was permitted to read books, newspapers, and magazines during his pre-trial detention.

78. Mr. Trabelsi is not permitted to visit the law library. Nor is he permitted to have a French–English dictionary that would help him understand the filings in his legal case.

79. All of Mr. Trabelsi’s outgoing legal mail is read before it is sent, and incoming legal mail is read before it is provided to Mr. Trabelsi.

80. Respondents initially permitted Mr. Trabelsi to watch television, but no longer. Shortly after his counsel filed administrative complaints regarding his detention conditions, facility staff moved him to a cell where he could no longer watch television. In response to Mr. Trabelsi’s request to be allowed to watch television, the staff noted that “television is a privilege, not a right.” Other detainees, including those in administrative segregation, have regular access to a television.

Religious Observance

81. Mr. Trabelsi is a practicing Muslim and strictly adheres to Islamic law.

82. Respondents and their subordinates prohibit Mr. Trabelsi from attending the Friday prayers run by an imam at Farmville. Attending Friday prayers (jum'ah) is a religious obligation upon Muslim men and must be performed in congregation.

83. Respondents and their subordinates prohibit Mr. Trabelsi from speaking with the visiting imam. This prohibition includes speaking with the imam while he remains in his cell or restrained.

84. Respondents and their subordinates do not permit Mr. Trabelsi to have religious texts other than the Quran. Mr. Trabelsi would like to be able to read interpretations of the Quran and hadith, a source for religious and moral guidance for Muslims.

Medical Conditions

85. Mr. Trabelsi has been diagnosed with Generalized Anxiety Disorder, Major Depressive Disorder, Recurrent, Severe, with psychotic features, and Complex Posttraumatic Stress Disorder ("C-PTSD"), most recently in November 2023 by Leslie C. Hunter, LCSW-C, LICSW.

86. These conditions have arisen during his incarceration and have been exacerbated by the extreme solitary confinement to which Respondents have subjected him at Farmville.

87. While at Farmville, Mr. Trabelsi has suffered periodic panic attacks. He has, at times, suffered from suicidal ideations. He reports feeling hopeless, despondent, and withdrawn. He often only sleeps a few hours a day after breakfast. In recent months, he has lost twenty-nine pounds due to stress and anxiety. His condition continues to worsen by the day.

88. As Mr. Trabelsi's mental health has deteriorated, his physical health has declined as well.

89. Mr. Trabelsi suffers from asthma, diabetes, hypertension, gastritis, insomnia, high cholesterol, severe vitamin D deficiency, and migraines.

90. Mr. Trabelsi suffers from blindness in one eye and swelling and pain in his legs. He has been diagnosed with lipoma, a benign tumor in his neck, and Hepatitis B.

91. Mr. Trabelsi's mental health conditions impede his ability to get appropriate care for his physical conditions.

Administrative Complaints

92. On September 18, 2023, Mr. Trabelsi's counsel sent a letter to Seth A. Blumenthal, Supervisory Detention and Deportation Officer in ICE's Washington Field Office. In this letter, counsel requested changes to his conditions, including allowing him to contact his family and measures to ease his extreme isolation in solitary confinement. Counsel received no response.

93. On October 26, 2023, Mr. Trabelsi's counsel submitted complaints to the Office of the Immigration Detention Ombudsman ("OIDO"), the Office for Civil Rights and Civil Liberties ("CRCL"), and the DHS Inspector General ("IG"). CRCL and the IG have not responded to the complaints other than to acknowledge receipt. OIDO interviewed Mr. Trabelsi and then closed his file. Mr. Trabelsi's detention conditions did not change as a result of OIDO's investigation.

94. During the interview, a member of OIDO staff told Mr. Trabelsi that he had never seen conditions as strict as those Mr. Trabelsi is being subjected to.

CLAIMS

COUNT ONE

Violation of the United States–Belgium Extradition Treaty and Diplomatic Notes

95. Mr. Trabelsi's detention violates the United States–Belgium Extradition Treaty and the 2022 and 2024 Belgian diplomatic notes requesting that the United States return him to Belgium. Instrument Amending the Treaty on Extradition, Belgium–United States, Dec. 16, 2004,

T.I.A.S. No. 10-201.3 (“Treaty” or “Extradition Treaty”), attached as Ex. D; *see also* Exs. B & C (diplomatic notes).

96. “Extradition treaties exist so as to impose mutual obligations to surrender individuals in certain defined sets of circumstances, following established procedures.” *United States v. Alvarez-Machain*, 504 U.S. 655, 664 (1992).

97. Diplomatic notes have the same legal status and force of law as the Treaty itself. *See United States v. Suarez*, 791 F.3d 363, 367 (2d Cir. 2015) (“[E]xtradition documents such as Diplomatic Notes implicate the same international legal rights as treaties. . . .”).

98. Mr. Trabelsi was extradited pursuant to the Extradition Treaty, and Belgium issued diplomatic notes in 2022 and 2024 objecting to his continued detention and requesting his return under the Treaty.

99. To date, the United States government has not only failed to return Mr. Trabelsi to Belgium, but, on information and belief, it has failed even to respond to the Belgian government regarding its formal requests for Mr. Trabelsi’s return.

100. Under the terms of the Treaty and the diplomatic notes, the United States must return Mr. Trabelsi to Belgium.

COUNT TWO
Violation of the Principle of Specialty Under
Article 15 of the United States–Belgium Extradition Treaty

101. Mr. Trabelsi’s detention violates the principle of specialty under extradition law, and, pursuant to the Treaty, he must be given fifteen days to depart the United States voluntarily.

102. Under the doctrine of specialty “a person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in that treaty, and for the offense with which he is charged in the

proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose asylum he had been forcibly taken under those proceedings.” *Alvarez-Machain*, 504 U.S. at 661 (cleaned up) (quoting *United States v. Rauscher*, 119 U.S. 407, 430 (1886)).

103. Article 15 of the Extradition Treaty, implements the doctrine of specialty. It states that, subject to certain limited exceptions, “[a] person extradited under this Treaty may not be *detained*, tried, or punished in the Requesting State except for: (a) the offense for which extradition has been granted[,] . . . (b) an offense committed after the extradition[,] . . . or (c) an offense for which the executive authority of the Requested State consents to the person’s detention, trial, or punishment.” Among the limited exceptions are if “that person does not leave the territory of the Requesting State within 15 days of the day on which that person is free to leave. . . .” Extradition Treaty 10–11 (emphasis added).

104. Mr. Trabelsi’s extradition was only granted for the criminal charges for which he was acquitted in his federal criminal prosecution, and the Treaty’s limited exceptions do not authorize his current detention.

105. One of the Treaty’s exceptions does permit detention outside the terms of extradition where a person subject to the Treaty does not depart the country “within 15 days of the day on which that person is free to leave.” Extradition Treaty 11.

106. After Mr. Trabelsi’s acquittal in his criminal trial, the government was prohibited from detaining him for any subsequent offense, including a civil immigration offense, without first providing him an opportunity to depart voluntarily.

107. By detaining Mr. Trabelsi without first allowing him to depart voluntarily after his criminal acquittal, Respondents have violated the rule of specialty as expressed in Article 15 of the Treaty.

COUNT THREE
Violation of 5 U.S.C. §§ 706(2)(A)–(D)
Ultra Vires

108. Respondents are currently detaining Mr. Trabelsi without authority under the Immigration and Nationality Act. Mr. Trabelsi is not properly subject to removal proceedings, or detention pending such proceedings, because he was not given a reasonable opportunity to depart the United States. Thus, both his removal proceedings and detention are *ultra vires*. As a result, he must be given a reasonable opportunity to depart the United States voluntarily. Until he has been given a reasonable opportunity to depart, there is no authority for his current detention.

109. Mr. Trabelsi is a noncitizen who was forcibly paroled, under 8 U.S.C. § 1182(d)(5)(A), into the United States for criminal prosecution only, and he does not seek admission to the United States.

110. Unlike noncitizens who are voluntarily paroled under § 1182, a noncitizen forcibly extradited into the United States for the purposes of prosecution does not automatically become an applicant for admission upon termination of his parole. *See United States v. Brown*, 148 F. Supp. 2d 191, 198 (E.D.N.Y. 2001) (explaining that a noncitizen not seeking admission cannot be excluded or removed under 8 U.S.C. § 1227)); *see also Matter of Badalamenti*, 19 I. & N. Dec. 623, 626 (B.I.A. 1988).

111. Under 8 U.S.C. § 1182(d)(5)(A), “when the purposes” of a paroled noncitizen’s parole “have been served,” the noncitizen “shall forthwith return or be returned to the custody from which he was paroled. . . .” As a result, foreign nationals forcibly paroled into the country must be

afforded “a fair and reasonable opportunity to depart” voluntarily before they become subject to removal proceedings. *Brown*, 148 F. Supp. 2d at 198 (citing *Badalamenti*, 19 I. & N. Dec. at 626); *see also United States ex rel. Schirrmeister v. Watkins*, 171 F.2d 858, 859–60 (2d Cir. 1947) (“In a series of recent cases we have held that an alien forcibly brought into the United States, as was the relator here, has not made an ‘entry’ into the country and is not an ‘immigration’ subject to deportation under the immigration laws. . . . ‘Hence he has the right of voluntary departure, and only after his refusal or neglect to leave may the Government deport him.’” (quoting *United States ex rel. Ludwig v. Watkins*, 164 F.2d 456, 457 (2d Cir. 1947))).

112. Because the U.S. failed to give Mr. Trabelsi a reasonable opportunity to depart, he cannot be treated as an applicant for admission and is not properly subject to removal proceedings. He is, therefore, not subject to detention pending removal proceedings and must be given a reasonable opportunity to depart forthwith.

COUNT FOUR
Violation of the Fifth Amendment: Substantive Due Process
Unlawful Detention

113. Mr. Trabelsi’s immigration detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

114. The Due Process Clause of the Fifth Amendment guarantees that all persons physically within the United States must be free from detention that is arbitrary or capricious. *See Mathews v. Diaz*, 426 U.S. 67, 77, 87 (1976) (confirming that even those “whose presence in this country is unlawful, involuntary, or transitory” have due process rights).

115. As the Supreme Court has explained, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

116. Due Process requires that immigration detention be reasonably related to the government's purpose, which is to ensure a noncitizen's appearance for removal and, for those subject to a final removal order, to ensure that removal can be effectuated. *See Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring); *Zadvydas*, 533 U.S. at 690. Here, the extradition treaty requires Mr. Trabelsi's return to Belgium, negating any government interest in continuing removal proceedings.

117. The Immigration and Nationality Act only authorizes the arrest and detention of noncitizens "pending a decision on whether the [noncitizen] is to be removed from the United States," 8 U.S.C. § 1226(a); *see also* 8 U.S.C. § 1225 (governing the detention of noncitizens seeking admission into the United States); or following a final order of removal in order to effectuate such removal, 8 U.S.C. §1231 (governing the detention of noncitizens "during" and "beyond" the "removal period").

118. Mr. Trabelsi's detention is not reasonably related to this purpose. As a noncitizen who was forcibly brought to the United States to face prosecution, who has never sought admission to the U.S. and whose only desire is to return to Belgium, a designated country of removal that is willing to accept him and has formally requested his return, Mr. Trabelsi's continued detention pending removal bears no reasonable relation to the purpose for which he is ostensibly being held.

119. Indeed, Mr. Trabelsi has expressed his desire to return to Belgium, and Belgium has asked the U.S. to return him there. His detention is not necessary to effectuate his removal from the United States.

120. By continuing to detain Mr. Trabelsi when he should be returned to Belgium and by continuing to detain him without giving him a reasonable opportunity to depart, the United

States is subjecting him to ongoing detention that serves no legitimate purpose in violation of the Due Process Clause.

COUNT FOUR
Violation of the Fifth Amendment: Substantive Due Process
Unlawful Conditions of Confinement

121. Respondents are holding Mr. Trabelsi under conditions that violate the Fifth Amendment of the U.S. Constitution.

122. Civil detainees are protected under the Fifth Amendment from being held without due process of law under conditions that amount to punishment. *See, e.g., Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 186 (1963).

123. Respondents are subjecting Mr. Trabelsi to an extreme form of solitary confinement under punitive conditions in violation of the Fifth Amendment.

124. Respondents placed Mr. Trabelsi in solitary confinement at the direction of ICE.

COUNT FIVE
Violation of the First Amendment: Free Exercise

125. Respondents' imposition of restrictions on Mr. Trabelsi's religious observance at Farmville violate the Free Exercise Clause of the First Amendment of the U.S. Constitution.

126. Respondent Crawford is acting under the color of federal law in detaining Mr. Trabelsi in ICE custody.

127. Respondents prohibit Mr. Trabelsi from speaking to the facility's imam, a Muslim religious leader and advisor, who comes to Farmville once a week.

128. Respondents prohibit Mr. Trabelsi from accessing religious materials required for the daily practice of his faith.

129. Respondents prohibit Mr. Trabelsi from participating in group worship on Muslim holy days, including Friday prayers.

130. These restrictions impose a substantial burden on Mr. Trabelsi's sincerely held religious beliefs, because they entirely prevent Mr. Trabelsi from engaging in practices important to his faith.

131. These restrictions are not reasonably related to legitimate governmental interests and thus violate the First Amendment.

COUNT SIX
Violation of the Religious Freedom Restoration Act
42 U.S.C.A. § 2000bb

132. Respondents' restrictions on Mr. Trabelsi's religious observance at Farmville also violate RFRA, 42 U.S.C.A. § 2000bb.

133. These restrictions have substantially burdened Mr. Trabelsi's religious practice by forcing him to abandon the central practices of his faith and violate his sincerely held religious beliefs.

134. The restrictions do not further a compelling government interest, nor are they the least restrictive means to achieve a purported governmental interest, thus violating RFRA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests the Court to:

1. Issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241;
2. Declare that Mr. Trabelsi's continued detention violates the Extradition Treaty and 5 U.S.C. §§ 706(2)(A)–(D);
3. Declare that Mr. Trabelsi's continued detention violates the Fifth Amendment to the U.S. Constitution;
4. Order the Federal Respondents to return Mr. Trabelsi in accordance with the Treaty and diplomatic notes, requesting his return to Belgium without delay;

5. In the alternative, order the government to release Mr. Trabelsi from his current detention until he has been provided a reasonable opportunity to depart from the United States voluntarily;
6. Declare that the conditions of Mr. Trabelsi's detention violate the First and Fifth Amendments to the U.S. Constitution and RFRA;
7. Order the government to allow Mr. Trabelsi to contact his wife and children; allow him to have reading materials, including religious texts; allow him access to facility-issued tablet computers to access such reading material and to facilitate communication with his family; allow him to meet with his imam; and allow him to participate in collective worship activities;
8. Award attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
9. Grant such further relief as the Court deems equitable and proper.

Respectfully Submitted,

/s/ Sophia Gregg

Sophia Leticia Gregg

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VERIFICATION BY SOMEONE ACTING ON THE PLAINTIFF’S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am the Petitioner–Plaintiff’s attorney, and I am submitting this verification on behalf of the Petitioner–Plaintiff. I or my co-counsel have discussed the events described in this filing with the Petitioner–Plaintiff. Based on those discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Injunctive Relief are true and correct to the best of my knowledge.

Respectfully submitted,

Dated: August 28, 2024

/s/ Sophia Gregg

Sophia Gregg

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. My co-counsel will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

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Respectfully submitted,

Dated: August 28, 2024

/s/ Sophia Gregg

Sophia Gregg