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**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

v.

GOOD CLIENT,

Defendant.

**DEFENDANT’S EMERGENCY MOTION
TO ENFORCE BAIL ORDER; TO
COMPEL SHERIFF’S COMPLIANCE
WITH IMMEDIATE RELEASE UPON
POSTING BAIL; AND TO PROHIBIT
POST-BAIL DETENTION BASED
SOLELY ON ANY ICE DETAINER OR
REQUEST**

**(Alternative Request for Order to Show
Cause or Writ of Habeas Corpus under
Utah Code Ann. §§ 78B-6-601 to -610)**

Case Number: 123456789

Judge: Honorable Good Judge

The above-captioned defendant, Good Client (hereinafter, “**Defendant**”), proceeding in this matter *pro se*, hereby files this *Defendant’s Emergency Motion to Enforce Bail Order; to Compel, in Conjunction with Defendant’s Petition for Habeas Corpus Filed Concurrently Herewith as a Separate Civil Action in This Court, Sheriff’s Compliance with Immediate Release Upon Posting Bail; and to Prohibit Post-Bail Detention Based Solely on Any ICE Detainer or Request* (hereinafter, this “**Motion**”), to respectfully move this Honorable Court to enforce its bail order entered on September 17, 2023, to compel the Utah County Sheriff (hereinafter, “**Sheriff**”), to comply immediately with any issued prayed-for order upon this Motion, by releasing Defendant immediately upon posting the Court-approved and Court-ordered bail, and to prohibit any present-

or post-bail detention based solely on any detainer or request by the U.S. Immigration and Customs Enforcement (hereinafter, “ICE”), as follows:

I. INTRODUCTION

In this matter, probable cause has already been found and, subsequently, an *Order to Hold with Bail* was entered, setting \$2,500 bail and directing that upon posting bail, Defendant “is hereby ordered to be released” subject to standard conditions.¹

The Public Safety Assessment in this matter recommends “Release with PRL2 Conditions” and notes that there is “No Elevated Risk of Committing Violent Crime.”²

The Information filed by the Utah County Attorney on September 22, 2023, formally charges six counts and again reflects that a bail order was issued in the amount of \$2,500.³

At a hearing on September 24, 2023, the Court appointed an unnamed-on-the-record public defender (hereinafter, “**Public Defender**”) to represent Defendant, continued the waiver hearing to October 15, 2023, and the minutes confirm that Defendant remained in the custody of the Jail; the Clerk of Court emailed the minutes to the Utah County Jail (hereinafter, the “**Jail**”) on the same day.⁴

Public Defender was informed that ICE had lodged a detainer and that the Jail intends to refuse release even if bail is posted, absent a judicial warrant or contemporaneous ICE assumption

¹ See Order to Hold with Bail, *State v. Good Client*, No. 123456789 MD (4th Jud. Dist. Ct. Utah September 17, 2023) (Probable Cause ID 123456; Submission ID 1234567).

² See Public Safety Assessment for Good Client, PC ID 123456 (September 17, 2023).

³ See Information, *State v. Good Client*, No. 123456789 MD (4th Jud. Dist. Ct. Utah September 22, 2023) (OTN 70091962).

⁴ See Minutes, *State v. Good Client*, No. 123456789 MD (4th Jud. Dist. Ct. Utah September 24, 2023) (email to jailrecords@utahcounty.gov noted on Certificate of Notification).

of custody—no judicial warrant has been presented. Defendant is unaware of any 8 U.S.C. § 1357(g) agreement authorizing civil immigration holds by county officers.

Under Utah law, Sheriff has a ministerial duty to execute the Court’s release order once bail is tendered; an ICE detainer is a non-binding request under federal regulation and cannot supply independent state authority to continue custody after state bail is satisfied; and any such continued detention would be a new seizure that must comply with the Fourth Amendment and Utah Constitution.⁵

II. RELIEF REQUESTED

Defendant respectfully moves for and requests an emergency order directing Sheriff and the Jail to accept and process bail forthwith and to release Defendant upon tender of bail and routine processing immediately, and prohibiting any present- or post-bail detention based solely on any ICE detainer, administrative request, communication, or nonjudicial hold, absent a facially valid judicial warrant or contemporaneous physical assumption of custody by federal officers.

Defendant also requests an order requiring Sheriff and the Jail to produce any detainer-related documents within 24 hours, and setting an expedited hearing, and if necessary issuing an Order to Show Cause to Sheriff or granting habeas corpus relief under Utah Code Ann. §§ 78B-6-601 to -610.⁶

⁵ See Utah Code Ann. §§ 77-20-201, -204, -205 (LexisNexis 2024); Utah Code Ann. § 17-22-2 (LexisNexis 2024); 8 C.F.R. § 287.7(a), (d) (2024); U.S. Const. amend. IV; Utah Const. Art. I, §§ 5, 7, 8; *Galarza v. Szalczyk*, 745 F.3d 634, 636, 643 (3d Cir. 2014); *Morales v. Chadbourne*, 793 F.3d 208, 215–18 (1st Cir. 2015); *Miranda-Olivares v. Clackamas County*, No. 12-cv-02317-ST, 2014 WL 1414305, at 6–9 (D. Or. April 11, 2014).

⁶ See Utah Code Ann. §§ 78B-6-601 to -610 (LexisNexis 2024).

III. LEGAL STANDARDS

A. Utah Pretrial Release and Bail.

Utah statutes provide that persons charged with offenses are entitled to pretrial release subject to conditions set by the court and, when bail is set, must be released upon satisfying those conditions.⁷

B. Sheriff's Ministerial Duty.

The county sheriff "shall receive and safely keep all persons" committed and must discharge them when they are entitled to release by law; compliance with court orders of release is a ministerial, not discretionary, duty.⁸

C. Habeas Corpus.

"Every person unlawfully imprisoned or restrained of personal liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint."⁹

D. Utah Constitution.

The Utah Constitution protects due process and pretrial liberty and guarantees the right to petition or access the courts.¹⁰

⁷ See Utah Code Ann. §§ 77-20-201, -204, -205 (LexisNexis 2024).

⁸ See Utah Code Ann. § 17-22-2 (LexisNexis 2024).

⁹ See Utah Code Ann. § 78B-6-601(1) (LexisNexis 2024).

¹⁰ See Utah Const. Art. I, §§ 5, 7, 8.

E. Federal Immigration Detainer Regulation.

A detainer “serves to advise” that DHS seeks custody and is “a request” that the agency advise DHS prior to release and maintain custody for up to 48 hours (excluding weekends or holidays) to allow DHS to assume custody.¹¹

F. Federal Immigration Arrest Authority.

“On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed.”¹²

G. Detainers Are Non-Mandatory; Post-Bail Holds Are New Seizures.

Courts recognize detainers are requests that do not and cannot compel local detention, and that detaining someone beyond their state release is an arrest requiring probable cause and lawful authority.¹³

H. Federal Preemption & Structural Limits.

Immigration enforcement is a federal function; states may not substitute their own approaches or detain individuals for civil immigration purposes outside of federal authorization, and federal law cannot compel state officers to enforce federal regulatory programs.¹⁴

¹¹ See 8 C.F.R. § 287.7(a), (d) (2024).

¹² See 8 U.S.C. § 1226(a) (2018).

¹³ See *Galarza v. Szalczyk*, 745 F.3d 634, 636, 643 (3d Cir. 2014); *Morales v. Chadbourne*, 793 F.3d 208, 215–18 (1st Cir. 2015); *Miranda-Olivares v. Clackamas County*, No. 12-cv-02317-ST, 2014 WL 1414305, at 6–9 (D. Or. April 11, 2014); *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011); *Santos v. Frederick County Bd. of Comm’rs*, 725 F.3d 451, 465–67 (4th Cir. 2013).

¹⁴ See *Arizona v. United States*, 567 U.S. 387, 407–10 (2012); *Galarza v. Szalczyk*, 745 F.3d 634, 643–45 (3d Cir. 2014); cf. *City of El Cenizo v. Texas*, 890 F.3d 164, 186–88 (5th Cir. 2018) (noting constitutional limits on detainer compliance).

IV. STATEMENT OF FACTS

1. On September 17, 2023, Defendant was arrested in Orem, Utah, following a traffic stop; the probable cause affidavit details the stop, observed signs of impairment, seizure of folded currency containing suspected narcotics, and testing results.¹⁵

2. That same day, an Order to Hold with Bail was issued, setting bail at \$2,500 and ordering that upon posting bail, Defendant “is hereby ordered to be released” with standard conditions (promise to appear, no new offenses, PRL2 reminders or contacts).¹⁶

3. The Public Safety Assessment (created September 17, 2023) recommended “Release with PRL2 Conditions” and reported “No Elevated Risk of Committing Violent Crime.”¹⁷

4. On September 22, 2023, the State filed an Information charging six counts (two Class A controlled substance counts, Class A DUI with a passenger under 16, Class B paraphernalia, and two infractions), reflecting “Bail: \$2,500.”¹⁸

5. On September 24, 2023, the Court held a hearing via Webex, appointed the Public Defender, and continued the waiver hearing to October 15, 2023.¹⁹

6. The minutes confirm that Defendant remained in the custody of the Utah County Jail; the Clerk’s Certificate shows that the minutes were emailed to the Jail that same day.²⁰

¹⁵ See Aff. of Probable Cause, *State v. Good Client*, PC ID 123456 (Utah Cnty. Sheriff’s Off. September 17, 2023).

¹⁶ See Order to Hold with Bail, *State v. Good Client*, No. 123456789 MD (4th Jud. Dist.. Ct. Utah September 17, 2023) (Probable Cause ID 123456; Submission ID 1234567).

¹⁷ See Public Safety Assessment for Samuel Good Client, PC ID 123456 (September 17, 2023).

¹⁸ See Information, *State v. Good Client*, No. 123456789 MD (4th Jud. Dist. Ct. Utah September 22, 2023) (OTN 70091962).

¹⁹ See Minutes, *State v. Good Client*, No. 123456789 MD (4th Jud. Dist. Ct. Utah September 24, 2023).

²⁰ See *id.*

7. ICE lodged an immigration detainer and Defendant (via his wife's attempt to bail him out) was advised the Jail will refuse release if bail is posted, due to ICE's intervening request to maintain Defendant in jail; however, no judicial warrant has been produced, and Defendant is unaware of any § 1357(g) delegation to the County; accordingly, Defendant has not posted bail yet because the Jail indicated it would refuse release based solely on the detainer.

8. Defendant stands ready to post bail immediately upon assurance that the Court's release order will be honored.

V. ARGUMENT

A. The Court's operative bail order controls; Sheriff's duty to release upon tender of bail is ministerial and non-discretionary.

The September 17, 2023, Order to Hold with Bail unambiguously sets \$2,500 bail and commands that upon posting bail, Defendant "is hereby ordered to be released"; nothing in the record modifies that directive.²¹ At present, ICE has yet to establish custody over Defendant via any immigration legal proceeding. Furthermore, ICE, as agents acting under the executive branch of the U.S., cannot directly intervene with matters within the judicial branch of the U.S. without a court-issued order of their own. Such comingling contaminates this case and undermines the U.S.'s principles of checks and balances established in the Constitution. If ICE wishes, they could assume custody over Defendant and have him jailed within their (ICE's) immigration-court-initiated criminal prosecution procedures, but they have no power or authority in a criminal matter—such as the present one—where they have no involvement in either its procedures or the events leading up to the charges. Indeed, considering the issues of this matter only, Defendant has committed no

²¹ See Order to Hold with Bail, *State v. Good Client*, No. 123456789 MD (4th Jud. Dist.. Ct. Utah September 17, 2023) (Probable Cause ID 123456; Submission ID 1234567).

crime for which ICE may enforce immigration laws or assume custody. Indeed, a state criminal offense does not constitute a federal immigration violation, so this matter is far outside ICE's jurisdiction to make any enforcement whatsoever. ICE can assume custody over Defendant in a separate proceeding, but not as part of these proceedings. Therefore, ICE cannot interfere with Defendant's right—consummated by court order—to be released on bail.

Utah's pretrial release statutes require that a defendant be released upon satisfying the court-ordered conditions of release.²²

Sheriff's duties are ministerial with respect to court orders: he must execute release orders and discharge persons who are entitled to release; he has no discretion to impose extra-judicial holds contrary to a court's release command.²³

Therefore, because the Court set bail and ordered release upon posting (and no Utah court has revoked or altered that order), Sheriff must accept bail and release Defendant; honoring a nonjudicial detainer instead would be ultra vires and in derogation of this Court's authority.²⁴

Resultingly, reason compels the strong conclusion that this Court should compel compliance with its order by directing Sheriff to accept bail forthwith and to release Defendant immediately upon tender, consistent with the Public Safety Assessment and the Court's condition.²⁵

²² See Utah Code Ann. §§ 77-20-201, -204, -205 (LexisNexis 2024).

²³ See Utah Code Ann. § 17-22-2 (LexisNexis 2024).

²⁴ See Order to Hold with Bail, *supra*; Utah Code Ann. § 17-22-2 (LexisNexis 2024).

²⁵ See Public Safety Assessment, PC ID 123456 (September 17, 2023).

B. An ICE detainer is a non-binding request under 8 C.F.R. § 287.7; continued custody after state bail is satisfied would constitute a new, warrantless seizure that violates the Fourth Amendment.

Under federal regulation, an immigration detainer “serves to advise” that DHS seeks custody and is “a request” that the local agency inform DHS prior to release and hold up to 48 hours to allow DHS to assume custody.²⁶

Federal courts uniformly hold that detainers do not and cannot compel local agencies to detain an individual.²⁷

Detaining a person beyond their state release time solely pursuant to a detainer constitutes a new arrest under the Fourth Amendment, which requires probable cause and lawful authority.²⁸

Indeed, precedent shows that local jails have been held liable for holding detainees on detainers after they cleared state custody or bail; courts emphasize that jails are “at liberty to refuse” detainer requests and that honoring them without a warrant is unlawful.²⁹

Furthermore, no judicial warrant has been produced; ICE has not appeared to assume custody; and any “hold” beyond the point of state release would violate the 48-hour cap and the Fourth Amendment, absent probable cause and lawful authority.³⁰

²⁶ See 8 C.F.R. § 287.7(a), (d) (2024).

²⁷ See *Galarza v. Szalczyk*, 745 F.3d 634, 636, 643 (3d Cir. 2014).

²⁸ See *Morales v. Chadbourne*, 793 F.3d 208, 215–18 (1st Cir. 2015).

²⁹ See *Miranda-Olivares v. Clackamas County*, No. 12-cv-02317-ST, 2014 WL 1414305, at 6–9 (D. Or. April 11, 2014).

³⁰ See 8 C.F.R. § 287.7(d) (2024); *Morales*, 793 F.3d at 215–18.

As a result of the foregoing elements explained, the Court should prohibit Sheriff from conditioning release on an ICE detainer or extending custody beyond routine release processing, unless there is a facially valid judicial warrant or a contemporaneous federal pickup.³¹

Therefore, here, the Jail's stated intent not to release Defendant even if he posts bail—solely because of an ICE detainer—would create a new, warrantless seizure unsupported by any judicial determination or independent state authority. Furthermore, it is conspicuously contradictory and a tremendous discrepancy to issue a valid and enforceable bail order but simultaneously honor a mere request, undermining the execution of that order and barring the benefitting party from claiming the court-awarded benefits of said order. Indeed, the Court-issued order in this matter is rendered moot by the Court's own election; there was no point in issuing the bail order under the present circumstances, given the Court's decision not to enforce its own order. However, because the bail order was, indeed, already issued and presently valid, Defendant has a right to benefit from the execution of said existing and enforceable order.

Undeniably, Defendant has a bona fide right to claim an award he already “won,” and depriving him of such an already “won” award is a *cruel, undue, and taunting* laugh in Defendant's face. For instance, if the issued bail order were, instead, a formal and entered order issuing Defendant the right to eat while having been previously starved—implicating upon Defendant the joyful anticipation of the *desperately needed* and *exceedingly desired* satiation of his hunger, indeed, salivating with glee from the imminence of once again tasting food—only to be cruelly denied the food he was promised and *had a right* to eat, this would be a *tremendous* and *egregious*

³¹ See *Galarza*, 745 F.3d at 643; 8 C.F.R. § 287.7(a), (d) (2024).

injustice that constitutes an abjectly *cruel* and *unconscionable* pain and injury to inflict upon any person.

This cruelty and abject mocking is made ever more harmful and painful by Defendant's particular circumstances: Defendant and his wife have a newborn baby. Defendant's wife is desperate for Defendant's release so that he can provide the imperative support she needs; Defendant's wife has been forced to act as a single parent to a newborn baby. Defendant's newborn baby and his wife are in jeopardy due to the simple fact that Defendant can neither provide for them nor take on a supportive role for his wife, who just gave birth, and his newborn. This unjust detainment of Defendant has caused and will continue to cause immense and unjust collateral damage to his young family, solely based on ICE's informal request and total disregard for Defendant's well-being as a person of worth who should be treated with dignity, respect, and compassion. Under these dire circumstances, as explained, it is incumbent upon the Court to act fairly and with haste, immediately releasing Defendant on the Court's own promised bail.

C. Federal law requires a warrant or federal custody for civil immigration detention; local prolongation of custody for immigration purposes is preempted and unlawful.

Federal law provides that civil immigration arrests are to be made "on a warrant issued by the Attorney General."³²

The Supreme Court has emphasized that immigration enforcement is a federal realm, and states may not detain individuals for civil immigration purposes absent federal authorization; state efforts that conflict with the federal scheme are preempted.³³

³² See 8 U.S.C. § 1226(a) (2018).

³³ See *Arizona v. United States*, 567 U.S. 387, 407–10 (2012).

Therefore, Utah County has no known § 1357(g) agreement authorizing deputies to hold persons for civil immigration; no federal warrant has been presented. Thus, any post-bail hold by Sheriff would amount to an unauthorized federal detention by local officers and conflict with the federal scheme. In addition, this detention completely undermines Defendant's Due Process rights, as it interferes with, for example, the due process of Defendant's right to be released on bail. Here, the crucial step of due process has been skipped and invalidated without any compelling motives.

Thusly, in conclusion, the Court should declare that Sheriff lacks the authority to detain Defendant for civil immigration purposes and should order release on bail, unless ICE simultaneously assumes custody under its own lawful authority (which, to Plaintiff's knowledge, they have not done).³⁴

D. Holding Defendant after he meets bail would violate Utah's constitutional due process and render the bail process meaningless; it also burdens access to the courts.

The Utah and U.S. Constitutions guarantee due process, protect pretrial liberty and the right to bail, and ensure the right to petition or access the courts.³⁵

When a court grants release on bail and a defendant satisfies those terms, continued incarceration by executive officials without new lawful process violates due process and nullifies the right to bail,³⁶ as it fundamentally negates the benefit of bail altogether. Indeed, there is no point in being released on bail if one is immediately apprehended and returned to pre-bail

³⁴ See *Arizona*, 567 U.S. at 407–10; 8 U.S.C. § 1226(a) (2018); 8 U.S.C. § 1357(g) (2018).

³⁵ See Utah Const. Art. I, §§ 5, 7, 8.

³⁶ See *id.*

conditions. Indeed, the Court's authority and intent to, specifically, allow any said person to temporarily walk freely would be mocked due to the invalidation of the purpose of its order.

Indeed, such executive disregard of a court's release order burdens a defendant's ability to access the courts and to participate effectively in his defense—especially where, as here, Defendant remains in custody despite a judicial determination supporting release.³⁷

Therefore, the Court should enforce its release order to protect Defendant's Utah constitutional rights and prevent extra-judicial detention that undermines judicial authority and due process.³⁸

E. Alternative remedy: If Sheriff refuses to comply, the Court should issue an Order to Show Cause or a writ of habeas corpus to secure immediate release.

Utah's habeas statute authorizes relief whenever a person is “unlawfully imprisoned or restrained,” and it therefore empowers this Court to inquire and order release if no lawful cause supports the custody.³⁹

Therefore, if bail is tendered and Sheriff continues to hold Defendant solely on a detainer, the custody is unlawful, and habeas relief or an Order to Show Cause is appropriate to compel immediate release.⁴⁰

Resultingly, reason compels the conclusion that, as an alternate remedy to the requested relief herein, the Court should set an expedited hearing and be prepared to issue an Order to Show

³⁷ See *id.*; Minutes, *State v. Good Client* (September 24, 2023) (appointment of Public Defender; remote setting).

³⁸ See Utah Const. Art. I, §§ 7–8.

³⁹ See Utah Code Ann. § 78B-6-601(1) (LexisNexis 2024).

⁴⁰ See *id.*

Cause or writ to ensure compliance with the Court's release order and to prevent ongoing unlawful detention.⁴¹

VI. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, upon the foregoing facts established, legal standards described, legal arguments made, and compelling legal conclusions reached, Defendant hereby respectfully prays that this Court grant this Motion, *on an emergency basis*, and enter the following orders:

- A. Direct Sheriff and the Jail to accept and process bail forthwith and to release Defendant upon tender of bail and routine processing immediately.
- B. Prohibit any present- or post-bail detention based solely on any ICE detainer request, absent a facially valid judicial warrant or contemporaneous federal pickup.
- C. Require the production of any detainer documents within 24 hours.
- D. Set an expedited hearing and, if necessary, issue an Order to Show Cause or grant habeas corpus relief under Utah Code Ann. §§ 78B-6-601 to -610.
- E. Grant any such other, different, and further relief as the Court deems proper, just, and equitable under the circumstances of this matter.

DATED September 29, 2023.

/s/ Saul Goodman
Saul Goodman
Attorney for Defendant

⁴¹ See Utah Code Ann. §§ 78B-6-601 to -610 (LexisNexis 2024).

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2023, I caused to be served, via this Court's electronic filing system, a true and correct copy of the foregoing upon the **Utah County Prosecutor**.

/s/ Saul Goodman

SAMPLE
Altioem Legal Services