**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**LAREDO DIVISION**

TORNIKE MARIKHASVILI

*Petitioner*,

-against-

KRISTI NOEM, IN HER OFFICIAL CAPACITY, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY;

PAMELA BONDI, IN HER OFFICIAL CAPACITY, U.S. ATTORNEY GENERAL;

TODD LYONS, IN HIS OFFICIAL CAPACITY, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT;

NORBAL VASQUEZ, WARDEN, IN HIS OFFICIAL CAPACITY, WEBB COUNTY DETENTION CENTER.

*Respondents*.

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**PETITION FOR WRIT OF HABEAS CORPUS**

Case No. 5:25-cv-00180

## INTRODUCTION

1. Petitioner, Tornike Marikhasvili ("Mr. Marikhasvili"), is a citizen and national of Georgia.
2. Mr. Marikhasvili entered the United States on March 13, 2024, after fleeing Georgia because he suffered political persecution by the Georgian government.

3. On March 16, 2024, pursuant to 8 U.S.C. §1229(a), he was issued a Notice to Appear, ordering him to appear at the Newark Immigration Court located at 970 Broad Street, Room 1200, in Newark, New Jersey.
4. On March 21, 2024, Mr. Marikhasvili was processed under 8 U.S.C. §1226(a) and issued an Order of Release on Recognizance. Upon release he traveled to New Jersey.
5. Mr. Marikhasvili filed Form I-589, Application for Asylum and for Withholding of Removal, which was received by the Immigration Court on July 8, 2024.
4. Mr. Marikhasvili also moved to New York and filed a change of venue from the Newark Immigration Court to New York. This motion was granted and his removal case was proceeding in New York
5. Mr. Marikhasvili has no criminal history.
6. On September 26, 2025, Mr. Mr. Marikhasvili was encountered at a Customs and Border Protection (Hereinafter "CBP") checkpoint near Encinal, Texas. He provided his Employment Authorization Document. Nonetheless, CBP unlawfully detained him and transferred him into immigration custody, Webb County, Texas, where he remains unlawfully detained.
7. On July 8, 2025, DHS issued a new policy memorandum to all , On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to

ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

6. Through his pending asylum application, Mr.Marikhasvili will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.
7. Mr. Marikhasvili is detained at the Webb County Detention Center away from his family and counsel located in New York.
8. On October 10, 2025, Mr. Marikhasvilii requested a custody re-determination from an immigration judge. However, it was denied as the immigration judge found it did not have jurisdiction to review his custody redetermination due to a new policy memo and Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) holding that everyone present in the United States who did not enter with a valid visa is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
9. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should continue to be detained pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination for Mr. Marikhasvili and allows for release on conditional parole or bond.

10. Through this petition, Mr. Marikhasvili asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention is appropriate under § 1226(a), which DHS initially processed him under, and immediately release Mr. Marikhasvili from custody in accordance with the initial custody determination made in March 2024. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

## JURISDICTION

11. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. 1131 (federal question), 28 USC 1346 (original jurisdiction), 5 USC 702 (waiver of sovereign immunity), 28 USC 2241 (habeas corpus jurisdiction), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

## VENUE

12. Venue is proper because Petitioner was detained in Encinal, TX, and now remains detained at the Webb County Detention Center in 9998 S Highway 83, Laredo, TX 78041, United States. *See* ICE Detainee Locator; *See also generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent), *see also Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of Texas, the judicial district in which petitioner is currently detained.

## PARTIES

### Petitioner

13. Petitioner Mr. Tornike Marikhasvili is a citizen and national of Georgia. Previous to his detention, resided with his girlfriend at [redacted] Brooklyn, NY

11228. He is currently in ICE custody and detained at the Webb County Detention Center 9998 S Highway 83 Laredo, TX 78041.

**Respondents**

14. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. She is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

15. Respondent Pamela BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. She routinely transacts business in the District of Texas in this capacity; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. She is sued in her official capacity. At all times relevant hereto, Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

16. Respondent Todd M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely

conducts business in the District of Texas, Laredo Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian of persons held at ICE facilities nationally. He is the Petitioners's immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

17. Respondent NORBAL VASQUEZ, is the Warden at the WEBB COUNTY DETENTION CENTER, where the petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

## LEGAL BACKGROUND

10. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).
11. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).
12. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law."

*Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, *St. Cyr*, 533 U.S. at 302.

13. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

14. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

15. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

16. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

17. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

18. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and

Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

19. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

20. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

21. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be**

> **released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (emphasis original).

22. As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id.*

23. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this case was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS's own forms.

24. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id.* § 1003.19(e).

**STATEMENT OF THE FACTS**

25. Mr. Marikhasvili is a forty-three-year-old male with no criminal history.
26. On March 13, 2024, Mr. Gudashvili entered the United States without inspection and thereafter requested asylum. He was placed into removal proceedings under 8 U.S.C. § 1229(a), through the issuance of a NTA dated March 16, 2024.
27. Mr. Marikhasvili was authorized, in accordance with 8 U.S.C. § 1226, §236 of the Immigration and Nationality Act, for Release on Recognizance.
28. On July 8, 2024, the New York Immigration Court received Mr. Marikhasvili's Form I-589, Application for Asylum and for Withholding of Removal.
29. His asylum petition is pending.
30. On September 26, 2025, CBP apprehended Mr. Marikhasvili at a checkpoint at Encinal, Texas.Mr. Marikhasvili presented a lawful work authorization and CDL license. He was nonetheless arrested, detained, and transferred into ICE custody without a warrant and without reasonable suspicion of a crime or civil immigration violation.

31. The officers did not disclose the basis for arresting or detaining Mr. Marikhasvili.

32. Mr. Marikhasvili requested a bond redetermination and the Laredo Immigration Court heard his case on October 10, 2025.

33. The Immigration Judge denied Mr. Marikhasvili's request for bond, holding that it did not have jurisdiction to grant bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

34. Mr. Marikhasvili's finance, which is dependent on him, and his attorney are in the New York area.

35. Without relief from this Court, Mr. Marikhasvili faces continued detention without the possibility of an individualized bond hearing.

## CLAIM FOR RELIEF

### I. VIOLATION OF 8 U.S.C. § 1226(a) , UNLAWFUL DENIAL OF RELEASE ON BOND

36. Petitioner restates and realleges all paragraphs as if fully set forth here.

37. Mr. Marikhasvili was initially detained in March 2024. At that time, ICE processed him for detention under § 1226(a) and ordered his release on recognizance.

38. On September 26, 2025, Mr. Marikhasvili was apprehended again even though he did not violate the terms of his release on recognizance. At this time, DHS subjected him to detention under § 1225, stating that he is subject to mandatory detention.

39. Petitioner may only be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

40. DHS has already made a custody determination under 8 U.S.C. § 1226(a), and ordered his release from detention.

41. Petitioner's continuing detention is therefore unlawful.

## II. CONTINUED DETENTION CONSTITUTES A VIOLATION OF DUE PROCESS

42. Petitioner incorporates all factual allegations as though restated here.

43. ICE detained Mr. Marikhasvili without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.

44. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

45. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

46. Mr. Marikhasvili's detention violates his Fifth Amendment rights for at least three related reasons.

47. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (*citing Zadvydas*, 533 U.S. at 690).

48. Whereas here, the government has ordered release on recognizance, detention is not reasonably related to its purpose.

49. Second, the Due Process Clause requires that any deprivation of Mr. Marikhasvili's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens").

50. Petitioner's on-going imprisonment does not satisfy that rigorous standard as he did not commit any crime, was released from custody, and has a pending asylum case joined by his wife.

51. Third, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).

52. Detaining Mr. Marikhasvili was arbitrary because he had been initially processed for detention under § 1226, released on recognizance, has authorization to work in the United States, and has no criminal arrests or convictions.

53. Mr. Marikhasvili was initially detained under §1226(a), but for a new policy memorandum now subjecting everyone present in the United States who entered without a valid visa to mandatory detention, deprives the Petitioner of an individualized bond determination.

54. This is true for Mr. Marikhasvili.

## PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

A. Assume jurisdiction over this matter;

B. Order Respondents to Show Cause why this Petition should not be granted within seventy-two hours;

C. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;

D. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

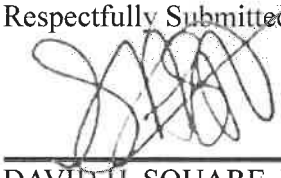
E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

F. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

G. Grant any further relief this Court deems just and proper.

Dated: October 16, 2025

Respectfully Submitted,



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