United States District Court
Southern District of Texas
Laredo Division

- X		
Mr. TORNIKE MARIKHASHVILI	:	
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;	: :	Case No. 5:25-cv-00180
MIGUEL VERGARA, IN HIS OFFICIAL CAPACITY ICE FIELD OFFICE DIRECTOR DETENTION AND REMOVAL;	:	
MARIO N. GARCIA, WARDEN, IN HIS OFFICIAL CAPACITY, WEBB COUNTY DETENTION CENTER.	: :	
Respondents.		
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MEMORANDUM OF LAW IN SUPPORT OF PETITIONER TORNIKE MARIKHASVILI 'S PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

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INTRODUCTION

Petitioner, Tornike Marikhashvili ("Mr. Marikhashvili"), is a citizen and national of Georgia. He is a forty-three-year-old male who resides in New York and was unlawfully detained pursuant to 8 U.S.C. § 1225(b)(2) by immigration officials in Texas on September 26, 2025. Mr. Marikhashvili initially entered the United States on March 13, 2024, after fleeing Georgia because he suffered political persecution by the government. *See* Ex. A, Notice to Appear. Removal proceedings were initiated under 8 U.S.C. §1229(a) on March 16, 2024, when the Petitioner was issued a Notice to Appear in Removal Proceedings ("NTA"). Ex. A. The Petitioner was also processed for detention under 8 U.S.C. § 1226, and immigration officials determined that he would be released on his own recognizance. *See* Ex B. His case was ultimately transferred to the New York Immigration Court for adjudication of his asylum application.

On September 26, 2025, Mr. Marikhashvili was arrested by Customs and Border Protection ("CBP") in Encinal, Texas. *See* Exh. D, Dec'l of Petitioner's Fiancé. CBP transferred him into ICE custody, where he is being unlawfully detained under § 1225(b)(2), without the possibility for bond.

On October 10, 2025, Mr. Marikhashvili requested and was denied a custody redetermination by an Immigration Judge, finding that it had no jurisdiction to review his case due to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), a newly-minted interpretation of 8 U.S.C. § 1225(b)(2)(A) and a departure from decades of how §§ 1225(a)(1), (b)(2), was interpreted. The Respondent's July 8, 2025, policy memorandum, and *Matter of Yajure Hurtado*, as applied to Mr. Marikhashvili, go against the plain text, overall structure, and uniform case law interpretation, compelling a finding that Mr. Marikhashvili is being unlawfully detained.

FACTS OF THE CASE

Petitioner, Tornike Marikhashvili ("Mr. Marikhashvili"), is a forty-three-year old citizen and national of Georgia. He resides in New York with his fiancé and was unlawfully detained by immigration officials in Encinal, Texas at a checkpoint.

Removal proceedings were initiated on March 16, 2024, when the Petitioner was issued a Notice to Appear pursuant to section 8 U.S.C. 1226(a) and placed into Removal Proceedings ("NTA"). Ex. A. The NTA charges Mr. Marikhashvili with removability as an alien present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General under §212(a)(6)(A)(i) of the Immigration and Nationality Act . *Id.*

Upon his initial entry in March 2024, the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") processed Mr. Marikhashvili in accordance with detention under § 1226(a) and issued a Form I-220A, Order of Release on Recognizance. *See* Ex. B.

The Petitioner was initially ordered to appear at the Newark Immigration Court, and upon moving to New York, venue was changed to the New York Immigration Court. On July 8, 2024, the Immigration Court received his form I-589, Application for Asylum and Related Relief. *See* Ex. E. The case was set for a master hearing in New York, but upon his arrest, the case has been transferred to Laredo Immigration Court.

On September 26, 2025, Mr. Marikhashvili, was arrested by Customs and Border Protection ("CBP") in Encinal, Texas. *See* Ex. D, Dec'l of Petitioner's wife. On October 10, 2025, Mr. Marikhashvili was summarily denied a custody redetermination by an Immigration Judge. *See* Ex C. The Immigration Court determined that it had no jurisdiction to review his

case due to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and found that Mr. Marikhashvili was subject to mandatory detention. *See* Ex. C. The Petitioner was denied a full, fair, and individualized bond hearing. Mr. Marikhashvili reserved his right to appeal the decision to the Board of Immigration Appeals ("BIA").

The Petitioner has no criminal record. The Petitioner does not have a final order of removal. The Petitioner's case is pending. Mr. Marikhashvili does not have any active warrants or negative criminal history that would change the circumstances from his initial custody determination made in March 2024, which was release on his recognizance, to warrant a new arrest and detention outside of New York's jurisdiction, where he resides.

LEGAL ARGUMENT

Mr. Marikhashvili does not have a removal order, nor does he challenge the process of his removability. Mr. Marikhashvili is challenging the constitutionality of the statutory framework by which the Respondents are detaining him without bond.

A. Motion for Temporary Restraining Order and Preliminary Injunctive Relief.

To obtain a temporary restraining order, a petitioner-plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981)). Under disturbingly similar circumstances, courts within this Circuit have granted petitions for a writ of habeas corpus pursuant 28 U.S.C. § 2241 where, as here, the petitioner, has been present in the United States for more than two years, was unlawfully detained in the interior by the Department of Homeland Security under §§ 1225(a)(1), (b)(2) and sought immediate release.

The elements are easily satisfied here. Mr. Marikhashvili's detention is completely unnecessary and a textbook violation of his Due Process rights.

. ***Mr. Marikhashvili will likely succeed on the merits.***

Mr. Marikhashvili seeks his immediate release because he is unlawfully and unconstitutionally deemed ineligible for bond based on an erroneous finding that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). A plain reading of the statute makes clear that Mr. Marikhashvili, who had been initially detained under § 1226(a) and ordered released in March 2024, and subsequently apprehended in the interior, cannot be detained under 8 U.S.C. § 1225(b)(2)(A), but rather, must be detained under § 1226(a).

In examining the relevant provisions of §§ 1225 and 1226, the Court considers "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997). The Court's "job is to interpret the words consistent with their 'ordinary meaning . . . at the time Congress enacted the statute.'" *Wis. Cent. Ltd v. U.S.*, 585 U.S. 274, 277 (2018) (quoting *Perrin v. U.S.*, 444 U.S. 37, 42 (1979)); *see also New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (If courts could "freely invest old statutory terms with new meanings, we would risk amending legislation" and "upsetting reliance interests in the settled meaning of a statute") (internal quotations and citations omitted). Of course, the words of a statute "cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012) (*quoting Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)).

In *Jennings v. Rodriguez*, the Supreme Court analyzed the interplay between Section 1225 and Section 1226. 583 U.S. 281 (2018). The Supreme Court noted that Section 1225(b) applies primarily to "aliens seeking entry into the United States." *See* quoting *Jennings*, 583 U.S. at 297. The statute itself contemplates "arriving," "seeking," the present tense of someone at the port of entry, where the Government must determine whether an alien seeking to enter the country is admissible. *Kostak v. Trump*, No. 3:25-cv-01093, slip op. at 6 (W.D. La. Aug. 27, 2025) (Edwards, J.) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018)).

For non-citizens already present inside the United States, "Section 1226(a) creates a default rule for those aliens by permitting the Attorney General to release them on bond, 'except as provided in subsection (c) of this section." *See Jennings*, 583 U.S. at 303.

A line must be drawn between how §§ 1225 and 1226 function when it comes to detention of noncitizens, and it is straightforward: detention authority under §1225 is exercised at or near the port of entry for those seeking admission, and detention authority under §1226 must be used when a non-citizen is arrested in the interior of the United States. *See Martinez v. Hyde*, – F.Supp.3d –, 2025 WL 2084238 at *4 (D. Mass. July 24, 2025)(The line historically drawn between these two sections, making sense of their text and overall statutory scheme, is that section 1225 governs detention of non-citizens "seeking admission into the country," whereas action 1226 governs detention of non-citizens "already in the country."); *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025)("There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border."); *Rodriguez v.*

Bostock, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years).

At Mr. Marikhashvili's arrest on September 26, 2025, he was not apprehended while seeking admission at the port of entry; instead, he was apprehended in the interior at a CBP checkpoint. He presented his work authorization, which was issued in support of his pending asylum claim. Therefore, Mr. Marikhashvili should not have been detained under §1225(b)(2).

II. Mr. Marikhashvili will Suffer Irreparable Harm

The harms that flow from the violation of Mr. Mr. Marikhashvili's constitutional rights are unquestionably irreparable. *See Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013). The deprivation of an alien's liberty is, in and of itself, irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm is virtually presumed in cases like this one where an individual is detained without due process. *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023). ("[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process.").

Moreover, Mr. Marikhashvili's fiancé relies on him and his support. *See* Ex. D.

III. Balance of the Equities and Public Interest

The "public interest is best served by ensuring the constitutional rights of persons within the United States are upheld." *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above, the abrupt detention without bond of Mr. Marikhashvili likely violated federal law and his due

process. "There is generally no public interest in the perpetuation of unlawful agency action," and "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up).

Here, Mr. Marikhashvili's continued detention without a bond hearing and being held thousands of miles away from his family in New York is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer.

IV. The Court Has Authority to Grant Mr. Gudashvili's Immediate Release Pending the Adjudication of His Habeas Petition.

As a general matter, writs of habeas corpus are used to request release from custody. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). A habeas court has "the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (noting that at "common-law habeas corpus was, above all, an adaptable remedy").

Release in this case is appropriate. Here, DHS initially arrested and processed Mr. Marikhashvili pursuant to §1226(a) on March 13, 2024. ICE further ordered his release on recognizance. Mr. Marikhashvili did not violate the terms of his release. The only thing that changed between his release on March 21, 2024, and his re-arrest on September 26, 2025, while passing through Texas was a policy departure on how to interpret §1225.

Furthermore, Mr. Marikhashvili has already requested a bond from an immigration judge, who denied his request on October 10, 2025. The Petitioner has been detained since September

26, 2025, thousands of miles away from his family and attorneys. Therefore, Petitioner argues that release from detention is the appropriate relief in this case so that he may return home to New York.

B. CONCLUSION

For the foregoing reasons, the Court should grant Mr. Marikhashvili's Motion for a Temporary Restraining Order, and order his immediate release from ICE custody to allow him to return to New York.

Dated: October 16, 2025

Respectfully Submitted,

/s/ Alfonso Otero
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 24, 2025, I served a copy of this Memorandum in Support of Application for TRO and OSC by email to the following individual:

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