UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

NIKOLOZ BURASHVILI, Petitioner, v. SCOTT LADWIG, in his official capacity as Acting Field Office Director of the New Orleans Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; Warden, Jackson Parish Correctional Center, in their official capacity; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General of the United States, Respondents.	Case No. **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **EXPEDITED REQUESTED**

INTRODUCTION

1. This case concerns the illegal re-arrest and the illegal subsequent re-detention of Petitioner, Nikoloz Burashvili ("Mr. Burashvili"), a thirty-four-year-old citizen and national of Georgia who entered the United States to seek asylum. Mr. Burashvili entered the country over a year and a half ago, and has done everything the government asked him to do: he followed the process in the United States for people seeking asylum in immigration court, timely filed his asylum application, received his work authorization, and honored his reporting requirements

with Immigration and Customs Enforcement at 26 Federal Plaza, New York, NY.

2. Mr. Burashvili brings this petition for a writ of habeas corpus to seek enforcement of their rights as members of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical custody of Respondents at the Elizabeth Contract Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

3. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

4. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

5. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the

declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

6. Petitioner, Mr. Mr. Burashvili, is a member of the Bond Eligible Class, as he:

    a. does not have lawful status in the United States and is currently detained at the Elizabeth Detention Center, Elizabeth New Jersey. He was apprehended by immigration authorities on November 12, 2025.
    b. entered the United States without inspection over 15 years ago and was not apprehended upon arrival, *cf. id.*; and
    c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

7. The Court should expeditiously grant this petition.

8. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

9. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

10. Mr. Burashvili's re-arrest and re-detention are wholly unjustified and unrelated to any individualized consideration of Petitioner's circumstances. When he initially presented himself at the border on March 26, 2024, the Department of Homeland Security ("DHS") allowed him to enter through the issuance of an Order of Release on Recognizance. He had already been living in the country for a year and a half, with the knowledge and approval of DHS. DHS had placed him on an alternative to detention enrollment, and Petitioner was diligently reporting. He checked in on November 4, 2025 without issue. Yet, the very next day, on November 5, 2025, the government reversed course and

decided to re-detain him pursuant to 8 U.S.C §1225(b)(2), for no reason.

11. Petitioner respectfully asks this Court to hold that his re-arrest was unlawful, to hold that his continued re-detention is unlawful, and to order his immediate release from custody. Petitioner also respectfully asks that this Court order Respondents not to transfer her outside of the District for the duration of this proceeding.

JURISDICTION & VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. Seq*.
13. Venue is proper because the Petitioner is detained at the Jackson Parish Correctional Center and remains detained. *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).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Under the INA, exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal." *Garza-Garcia v. Moore,* 539 F. Supp.2d 899, 904 (S.D. Tex. 2007); *see* 8 U.S.C. § 1252(d)(1)("A court may review a final order of removal only if…the [noncitizen] has exhausted all administrative remedies."). In cases like this, where the exhaustion requirement is not mandated by statute, exhaustion can be forgiven by the Court.

15. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

16. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge ("IJ") because of the Board of Immigration Appeals ("BIA") recent decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile).

17. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

18. Petitioner Mr. Burashvili is a thirty-four-year-old native and citizen of Georgia. He resides at [redacted] He has been in ICE custody since November 5, 2025, and is currently detained at the Jackson Parish Correctional Center, 327 Industrial Drive, Jonesboro, LA 71251.

19. Respondent Warden is sued in his official capacity as Warden of the Jackson Parish Correctional Center, 327 Industrial Drive, Jonesboro, LA 71251. In his official capacity, the Warden is the Petitioner's immediate custodian.

20. Respondent Scott Ladwig is ICE's Acting Field Office Director for the New Orleans

Field Office of ICE Enforcement and Removal Operations ("NOLA ICE"). As Field Office Director, Respondent Ladwig oversees ICE's enforcement and removal operations in the New Orleans Area of Responsibility ("AOR"), which includes Louisiana.

21. 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 New Jersey, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. 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.

22. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. 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 New Jersey; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, 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.

LEGAL BACKGROUND

23. 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).

24. 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).

25. 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.

26. 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.

27. "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)).

28. "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.

29. 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.

30. 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).

31. 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").

32. Thus, the INA distinguishes between non-citizens seeking entry into the United States and those "already in the country." *See Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018).

33. 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)).

34. Section 1225(b)(1) provides for mandatory detention of non-citizens subject to its provisions—that is, a non-citizen "arriving in the United States" who seeks to apply for admission. Applicants who indicate a fear of persecution if returned to their country of origin "shall be detained pending a final determination of credible fear of persecution

and, if found not to have such a fear, until removed." § 1225(b)(1)(B)(iii)(IV). Applicants who do demonstrate a credible fear "shall be detained for further consideration of the application for asylum." § 1225(b)(1)(B)(ii). Detention is "mandate[d] . . . throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings*, 583 U.S. at 302. Under the statute, applicants are not entitled to a bond hearing. *See id.* at 301.

35. There is a "limited" exception to mandatory detention under § 1225. *Jennings*, 583 U.S. at 301. Applicants detained under § 1225 may be paroled into the country "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." *See* 8 U.S.C.§ 1182(d)(5)(A). That "authority is not unbounded," and "under the APA, DHS's exercise of discretion within that statutory framework must be reasonable and reasonably explained." *Biden v. Texas*, 597 U.S. 785, 806-07 (2022).

36. Parole under § 1182(d)(5)(A) does not affect an alien's statutory or constitutional rights, as it "shall not be regarded as an admission of the alien." § 1182(d)(5)(A). Such parole "employs a legal fiction whereby non-citizens are physically permitted to enter the country but are nonetheless 'treated,' for legal purposes, 'as if stopped at the border.'" *Martinez v. Hyde*, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025) (quoting *Thuraissigiam*, 591 U.S. at 139).

37. In contrast, § 1226(a) governs the detention of non-citizens "already present in the United States." *Jennings*, 583 U.S. at 303. It includes non-citizens who have never been legally admitted. *See id.* at 287 (explaining that § 1226(a) governs "aliens who were inadmissible at the time of entry." (citing 8 U.S.C. § 1227(a)). Under that provision, the Attorney General has the discretion to arrest and detain a non-citizen "[o]n a warrant . . . pending a decision on whether the alien is to be removed." § 1226(a). The detainee may

be released on bond or conditional parole, § 1226(a)(2), except if certain enumerated categories (not applicable here) apply, § 1226(c). Federal regulation further requires that § 1226(a) detainees "receive bond hearings at the outset of detention." Jennings, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

38. 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-forapplications-for-admission (emphasis original).

39. As a result, according to DHS, all noncitizens who have entered the United States, including those who were issued humanitarian and conditional parole, are subject to the grounds of inadmissibility, including long-time U.S. residents, and are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS, "[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.*

40. 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).

41. 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).

42. As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

43. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b); see 8 C.F.R. §

236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

44. This Circuit has stated that conditional parole "provides a mechanism whereby an [noncitizen] may be released pending the determination of removal, as long as she is not a 'danger to persons or property' and 'is likely to appear for any further proceeding.'" *Delgado-Sobalvarro v. Attorney Gen. of U.S.*, 625 F.3d 782, 787 (3d Cir. 2010); *See also Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010).

45. DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the "discretion of the district, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9).

46. Additionally, despite "the breadth of [the] statutory language" in 8 U.S.C. § 1226(b), the federal government's authority is subject to "an important implicit limitation": It cannot lawfully re-arrest or re-detain someone without "a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981).

47. In the immigration context, this limitation means that a person who immigration authorities released from initial custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings," without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.)

(prohibiting rearrest without change in circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority); *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context). The same applies here.

48. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. "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 v. Davis*, 533 U.S. 678, 690 (2001). And those due process protections extend to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).

49. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Georgiana*, 406 U.S. 715, 738 (1972).

50. The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings (or, in the case of a removal order, at removal); and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore v. Kim*, 538 U.S. 510, 519-20, 527–28, 531 (2003). It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis.

Instead, immigration custody decisions generally must be based on an "individualized determination" of flight risk and danger to the community. *See INS v. Nat'l Ctr. for Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690; *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015).

51. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482.

52. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

53. These principles apply with at least equal force to people released from civil immigration detention. After all, noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

54. Thus, if 8 U.S.C. § 1226(b) were construed as allowing ICE to re-arrest and re-detain noncitizens for no reason at all, it would raise serious constitutional questions under both the Fourth Amendment and the Due Process Clause.

STATEMENT OF THE FACTS

55. Petitioner, Mr. Burashvili, is a thirty-four-year-old male with no criminal history. He is a

native and citizen of Georgia.

56. On March 26, 2024, Mr. Burashvili entered the United States and requested asylum. He was arrested and detained at or near San Ysidro, California.

57. On March 27, 2024, DHS, USCIS issued a Notice to Appear ("NTA") to Petitioner while he remained detained, stating that he was placed into removal proceedings under section 240 of the Immigration and Nationality Act ("the Act).

58. The NTA alleges that the Petitioner is an "alien present in the United States who has not been admitted or paroled," and charges Petitioner inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as a non-citizen present without admission or parole.

59. On March 30, 2024, while still detained in California and awaiting a court date, ICE enrolled Mr. Burashvili in an Alternative to Detention program ("ATD"). As part of this program, Mr. Burashvili was subject to electronic monitoring.

60. On March 30, 2024, Petitioner was also issued an Order of Recognizance, ICE Form I-220A, ordering him to report in person to the New York Field Office on April 4, 2024. In connection to his release pursuant to 8 U.S.C. § 1226(a), ICE made a determination that he was not a flight risk or a danger to the community.

61. On April 4, 2024, Petitioner reported to ICE's New York Field Office. He was ordered to report again on April 4, 2025.

62. On or about July 23, 2024, Petitioner filed his Form I-589 application, requesting asylum, withholding, and protection under the Convention Against Torture ("CAT").

63. Mr. Burashvili was issued an Employment Authorization Document ("EAD"), which allowed him to obtain employment in the U.S. The filing of an asylum application also, by regulation, stops any accrual of unlawful presence pursuant to section 212(a)(9)(B)(iii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(II) (*Asylees and asylum applicants while a bona fide asylum*

application is pending is not counted as unlawful presence."

64. On April 4, 2025, Petitioner reported to New York's ICE office as required.

65. On November 4, 2025, Petitioner reported to New York's ICE office again as required. He was required to return the next day. Despite his appearance to check ins, and pending asylum. On November 5, 2025, Petitioner was re-arrested during a routine check-in with ICE in New York.

66. At the time of Petitioner's re-arrest he had been released into the United States, had continuously lived in the country for about two years, and was not at a port of entry.

67. The Petitioner continues to be detained at the Jackson Parish Correctional Center in Jonesboro, Louisiana.

A. On July 8, 2025, DHS issued a new policy memorandum 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.

B. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act ("INA"). *See Matter of Yajure*

Hurtado, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who were apprehended inside the United States by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b) and has no opportunity for release on bond while his removal proceedings are pending.

68. Petitioner's re-detainment, after his initial custody release, is unlawful because there have been no material changes in the Petitioner's circumstances as it relates to flight risk or danger to the community.

69. The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482.

C. Petitioner's re-detention pursuant to § 1225(b) 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." Instead, he must be detained, if at all, under 8 U.S.C. § 1226(a).

D. Through this petitioner, Petitioner asks this Court to find that Respondents have deprived his due process rights by re-detaining and have violated the INA by re-detaining him without the possibility of a bond hearing under 8 U.S.C. 1226(a). Petitioner seeks immediate release from custody, and an Order to Show Cause within three days as to why the government is re-detaining him.

CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF
VIOLATION OF 8 U.S.C. §§ 1226(a), 1225(b),

Mandatory Detention For Those Seeking Admission

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

71. On March 26, 2024, Mr. Burashvili initially presented himself for inspection upon entry. CBP arrested and detained him. On March 27, 2024, DHS issued him a Notice to Appear under section 1229a of the Act, which alleged that he was not admitted or paroled after inspection into the United States. On March 20, 2024, he was issued a conditional parole and released from custody.

72. Because DHS previously exercised its parole from detention under 8 U.S.C. § 1226(a)(2)(B), and in its discretion released the Petitioner from detention, the government lacks authority to re-detain him under § 1225(b)'s mandatory provisions. At the time of Petitioner's re-arrest in November 2025, Petitioner had been living in the United States for almost two years, had a pending asylum application with the immigration court, and a work permit. Therefore, Petitioner was not subject to detention pursuant to § 1225(b), and any custody must proceed, if at all, under § 1226(a).

73. Petitioner's continuing re-detention is therefore unlawful.

SECOND CLAIM FOR RELIEF
Continued Detention Constitutes A Violation Of Due Process

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

75. ICE re-detained Mr. Burashvili without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.

76. 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.

77. "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.

78. 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).

79. Whereas here, the government has released the Petitioner on parole to apply for asylum, Respondent's cannot simply re-arrest and re-detain Petitioner for no reason at all.

80. The Government's authority to re-arrest a noncitizen and revoke their release is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. To protect that interest, due process requires notice and a hearing prior to any re-arrest, at which the individual is afforded the opportunity to advance their arguments for why their release should not be revoked.

81. Second, the Due Process Clause requires that any deprivation of Petitioner'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").

82. Petitioner's ongoing imprisonment does not satisfy that rigorous standard, as there was no material change since the Petitioner was released from custody, and had a pending asylum case pending with the immigration court.

83. 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).

84. Detaining Mr. Burashvili was arbitrary because he had initially been released pending his removal proceedings, has authorization to work in the United States, and has no criminal arrests or convictions.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's re-detention is unlawful;
3. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.
5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
6. 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
7. Grant any further relief this Court deems just and proper.

Dated: December 2, 2025

Respectfully Submitted,

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* *Application for admission pro hac vice pending*