

UNITED STATES DISTRICT COURT  
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, 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. \_\_\_\_\_

**PETITIONERS' MOTION FOR TEMPORARY RESTRAINING ORDER**

Pursuant to Fed. R. Civ. P. 65(b), Petitioner Nikoloz Burashvili ("Petitioner"), hereby requests a temporary restraining order ("TRO") pending adjudication of their Petition for a Writ of Habeas Corpus and an order to show cause why a preliminary injunction should not issue pending the final disposition of their habeas petition. As set in the memorandum of law, Petitioner are likely to succeed on the merits of their claim. Relief is necessary and appropriate to stop grave continuing injury and further irreparable harm to Petitioner.

Date: 12/3/2025

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**PETITIONER' MEMORANDUM OF LAW IN SUPPORT OF A MOTION FOR  
TEMPORARY RESTRAINING ORDER**

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## I. INTRODUCTION

Since early November 2025, Respondents have detained Petitioner Nikoloz Burashvili (“Petitioner”), in the Jackson Parish Correctional Center, a facility over 1,000 miles away from his wife, community and counsel.

Petitioner is being detained under DHS’s recent re-interpretation of its statutory authority, which has been rejected by the overwhelming majority of courts to have considered the issue. Petitioner demonstrates that he is likely to succeed on the merits of his claims and that his detention violates his statutory and due process rights, that he will suffer irreparable harm absent action by this court, and that the balance of equities weighs in his favor.

Pursuant to Fed. R. Civ. P. 65(b) and Local Rule of Civil Procedure 65.1, Petitioner respectfully moves this Court for a temporary restraining order pending the Court’s adjudication of his Petition for Writ of Habeas Corpus. Specifically, Petitioner requests that the Court order Respondents to immediately release Petitioner pending the adjudication of his habeas petition, especially because DHS previously released him on his own recognizance under 8 U.S.C. §1226(a) and re-arrested him for no reason. Alternatively, Petitioner requests that this Court order a bond hearing by an immigration judge on the merits with procedural safeguards within 5 days of an order.

## II. STATEMENT OF FACTS AND PROCEDURE

Petitioner Nikoloz Burashvili is a thirty-four-year-old man currently detained by ICE at the Jackson Parish Correction Center. He has been in immigration detention since November 5, 2025. Petitioner fled Georgia to request asylum in the United States. His wife’s asylum case is pending before the New York Immigration Court.

Respondents are engaged in a practice of arbitrary civil detention without due process for Petitioner. On July 8, 2025, DHS stated a new, significant departure with regards to custody determination that would subject anyone who entered the United States without a visa to mandatory detention. *See* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (emphasis original). Since then, DHS began arresting and re-arresting non-citizens like Petitioner and detaining them without bond.

On September 5, 2025, Respondent Bondi, through the Board of Immigration Appeals (“BIA”), issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025), which subjects any noncitizen who has not been formally admitted to the United States to mandatory detention. 29 I&N Dec. at 228. Since then, the Department of Justice (DOJ) has refused to provide bond hearings to these detained noncitizens despite a century of settled law and practice. As of present, Petitioner has not received an opportunity to receive release on bail.

### III. ARGUMENT

This Court should issue a TRO ordering Petitioner release pending adjudication of his habeas petition. The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure are identical. Such preliminary relief returns to the status quo before the challenged behavior. *Louisiana v. Ctrs. for Disease Control & Prevention*, 603 F. Supp. 3d 406, 423 (W.D. La. 2022); *Granny Goose Foods v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974) (purpose of TRO is to preserve the status quo to prevent irreparable harm until further relief can be determined). In this case, that would mean releasing Petitioner to where he was living before his detention. *United States v. Federal Deposit Ins.*

*Corp.*, 881 F.2d 207, 210 (granting TRO and noting that “district court has the equitable power to return the parties to his last uncontested status”).

To obtain temporary and preliminary injunctive relief, each Petitioner must demonstrate (1) substantial likelihood of success on the merits of her habeas petition, (2) that she will suffer significant risk of harm unremedied by monetary damages or other legal remedies absent the granting of injunctive relief, (3) that the threatened injury outweighs any harm the injunction may cause Respondents, and (4) finally, that an injunction is in the public interest. *City of El Cenizo v.*

*Texas*, 890 F.3d 164, 176 (5th Cir. 2018) (citing *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012)); *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000) (reaffirming the standard to obtain temporary injunctive relief set out in *Sugar Busters L.L.C. v. Brennan*, 177 F.3d 258, 265 (5th Cir.1999)); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is a party, the balance of equities and public interest merge, and the Fifth Circuit considers the last two factors together. *United States v. Abbott*, 110 F.4th 700, 719 (5th Cir. 2024); *Nken v. Holder*, 556 U.S. 418, 435 (2009). The decision of whether to grant or deny a TRO or preliminary injunction lies in the district court’s discretion. *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017); *see also Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). Under the circumstances presented here, no security bond is required under Fed. R. Civ. P. 65(c).

**1. Petitioner is Likely to Succeed on the Merits of His Petition for Writ of Habeas Corpus.**

**a. Petitioner Is Likely to Prevail on His Claims That His Detention Is Unlawful and Unauthorized by Statute.**

Both in the Western District of Louisiana and nationwide, the vast majority of courts have

held that detained immigrants, such as the Petitioner, are subject to 8 U.S.C. § 1226(a) and have granted TROs that argue that the underlying habeas will succeed on such a claim. He has based his reasoning on the Supreme Court's holding in *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018), which distinguished between a noncitizen "already present in the United States," who shall be subject to Section § 1226, not Section 1225, and is thus not subject to mandatory detention, and those who are otherwise arriving. See *Kostak v. Trump*, 2025 WL 2472136, at \*2-3 (W.D. La. Aug. 27, 2025) (holding that mandatory detention of aliens like Petitioner "under Section 1225 was erroneous..." and that he are instead subject to Section 1226); see also *Lopez Santos v. Noem*,

2025 WL 2642278, at \*3-5 (W.D. La. Sept. 11, 2025) (Doughty, C.J.) (holding same); see also *Carlos Ventura Martinez v. Donald J. Trump*, No. CV 25-1445 SEC P, 2025 WL 3124847, at \*1 (W.D. La. Oct. 22, 2025) (finding that *Matter of Yajure Hurtado* "is incorrect" and that the "[federal district] Court is empowered to ignore it" in the case of noncitizens already present in the U.S. who are likely subject to 1226).

An overwhelming majority of federal courts have disagreed with how the BIA's departure and reinterpretation of §§ 1226(a) and 1225(b)(2)(A) in connection with one another. See *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at \*3 n.3 (S.D. Tex. Oct. 7, 2025) (collecting six cases granting habeas or injunctive relief for wrongly detained individuals under the faulty statutory interpretation in *Matter of Yajure Hurtado*); *Padron Covarrubias v. Vergara*, 5:25-cv-00112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Cruz Gutierrez v. Thompson*, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025); *Zafra v. Noem*, EP-25-CV-00541-DB, 2025 U.S. Dist. LEXIS 228645 (W.D. Tex., Nov. 20, 2025).

Here, the circumstances of Petitioner squarely fall into the pattern of wrongly detained individuals under 1225(b)(2) by Respondents. This is even more apparent in Petitioner's case where he was originally detained and released pursuant to 8 U.S.C. §1226(a), and now more than a year-and-a-half after release, Respondent's re-arrest him for no reason at all to argue that he should be detained under §1225(b)(2) instead.

**b. Petitioner is Likely to Prevail on His Fifth Amendment Due Process Claim.**

The Fifth Amendment of the Constitution guarantees that noncitizens receive adequate procedural protections during any executions of the government's detention and removal authorities. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Such protections are flexible and courts adjudicating a due process claim for a civil detainee have been guided by considerations

for the "private interest that will be affected[.]" "the risk of an erroneous deprivation of such interest through the procedures used[.]" and "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Courts in this circuit have overwhelmingly granted habeas corpus petitions for detained immigrants without access to a bond hearing or determination on Fifth Amendment Procedural grounds.

Under the *Mathews v. Eldridge* factor of private interests, courts have established that "the most elemental of liberty interests [is] the interest in being free from physical detention..."

*Hamdi*

*v. Rumsfeld*, 542 U.S. 507, 529 (2004). Courts have weighed the private interest factor in favor of similarly detained immigrants in civil proceedings. *See Gutierrez v. Thompson*, No. 4:25-4695,

2025 WL 3187521, at \*7 (S.D. Tex. Nov. 14, 2025) (finding that petitioner's detention weighed in favor of a due process claim violation under a *Mathews* test as he had substantial ties to the community and had previous employment).

Under the second factor, courts have found a significant risk of erroneous deprivation under the current procedures for holding detained people in detention without an individualized determination. See *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at \*4 (W.D. Tex. Oct. 21, 2025) (granting habeas relief for a Mexican petitioner who was detained without an individualized bond hearing under the *Mathews* test). Lastly, courts have weighed the existing alternative procedures in favor of granting habeas for detained Petitioners and determined that alternatives are viable. See e.g., *id.*; *Arcos v. Noem*, No. 4:25-CV-04599, 2025 WL 2856558, at \*3 (S.D. Tex. Oct. 8, 2025).

In this case, Respondents have deprived Petitioner of his liberty—an important factor weighing in Petitioner's favor. Courts nationwide have also recognized the significant risk of erroneous deprivation that individuals in Petitioner's position face under current practices. Yet Respondents deny Petitioner any bond-determination hearing to assess flight risk or danger to the community, in clear violation of due process, thereby compounding the risk of erroneous deprivation. These factors all weigh heavily in the Petitioner's favor under the *Mathews* test, as release or a bond hearing would protect his liberty interests without harm to Respondents.

Petitioner's detention also violates his substantive due process rights. This is because his detention does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal. In fact, ICE already made a custody determination when the Petitioner was initially released in March 2024. For about a year-and-a-half, Petitioner complied with every order ICE gave and followed the process

required of asylum seekers. Respondent's decision to release him from custody in March 2024, created a "implicit promise," that his liberty would only be revoked if he failed to live up to the conditions of release. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). These principles apply with equal force to people released from civil detention. The Fifth Amendment of the Constitution guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Respondents lack a legitimate, non-punitive reason to re-detain Petitioner who has no criminal history, and until his last check-in, was living peacefully with his wife and supporting his community. Therefore, if Respondents were allowed to re-arrest and re-detain every noncitizen for no reason at all, it would raise serious constitutional questions about the Fourth Amendment and the Due Process Clause.

**2. Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent Injunctive Relief.**

Parties seeking preliminary injunctive relief must also show they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

Courts have agreed that "the unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm," including in similar situations to the present case. *Parada v. Rice*, 25-cv-1660 SEC P, 2025 U.S. Dist. LEXIS 223539 at \*7 (W.D. Louisiana, November 4, 2025) (granting TRO and finding Petitioner who entered the U.S. in 2023 likely to succeed on the merits that he should be entitled to a bond hearing under § 1226(a) and that detention under §

1225(b) is a due process violation), *citing Kostak v. Trump*, 3:25-CV-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (granting TRO on same § 1226(a) vs. § 1225(b) issue); *Ventura Martinez v. Trump*, 3:25-cv-01445, 2025 U.S. Dist. LEXIS 221655 (W.D. La. Oct. 22, 2025) (granting TRO and preliminary injunction on same § 1226(a) vs. § 1225(b) issue); *Book People, Inc. v. Wong*, 91 F.4th 318, 340–41 (5th Cir. 2024) (involving First Amendment violation). *See also Conn. Dep’t of Env’tl. Prot. v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) (“[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury.”); *Rosales-Mireles v. U.S.*, 138 S. Ct. 1897, 1907 (2018) (“Any amount of actual jail time is significant[] and has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration.”) (cleaned up).

Here, Respondents are violating Petitioner’s procedural and substantive due process rights under the Fifth Amendment by subjecting him to punitive confinement without a deprivation hearing for his re-arrest, or a bond-hearing as required under § 1226(a). Petitioner is suffering an ongoing deprivation of his constitutional rights—and that violation alone constitutes irreparable harm. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (noting that unconstitutional detention is irreparable harm and emphasizing harm related to economic burdens due to missed work and the harm that results from separating people from his community, including family).

The Fifth Amendment of the Constitution guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that “amount to punishment.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Each passing day that Petitioner remains in detention,

he is enduring suffering and injury related to his due process rights. Petitioner's injuries are not speculative or imminent; rather, they have commenced and are ongoing.

### **3. Balance of Hardship and Public Interest Weighs Heavily in Petitioner's Favor.**

By creating a statutory framework for asylum, Congress recognized the strong public interest in encouraging individuals fleeing persecution to present themselves to U.S. authorities and pursue protection through orderly, lawful channels rather than remain in the shadows. See 8 U.S.C. § 1158; 8 C.F.R. §§ 208.1 et seq., 208.7 (governing asylum procedures and employment authorization for asylum applicants). Petitioner did exactly what Congress envisioned: Petitioner entered the United States to seek asylum, complied with every requirement of the process, submitted the required applications, appeared for all scheduled appointments and check-ins, and was granted employment authorization only after satisfying the regulatory criteria. In this statutory and factual context, Petitioner's release—so that Petitioner can continue to lawfully pursue asylum and support themselves in the community—is squarely in the public interest.

There is also a public interest in ensuring people's constitutional rights are upheld. As noted in other cases in this Court, the continued re-detention for no reason at all except a policy change, and without a bond hearing in violation of his Fifth Amendment rights far outweighs the burden of Respondents in conducting an individualized bond hearing before an immigration judge pursuant to § 1226(a). See *Pineda Parada v. Rice*, 2025 WL 3146250, at \*3 (W.D. La. Nov. 4, 2025). Furthermore, it is in the public interest that the government follow its own statutes and regulation. *Kostak v. Trump*, 2025 WL 2472136, at \*4 (“The Court also finds that granting Petitioner injunctive relief serves the public interest, as it will require the Government to ensure compliance with its own laws.”).

So too in the instant case. The Court must weigh the unconstitutional detention of

Petitioner against the minimal governmental burden of providing release while the habeas petition is pending. Furthermore, Respondents already determined in March 2024, that Petitioner was neither a danger to the community or a flight risk. Petitioner did not violate the terms of his release, and in fact, was wearing an ankle monitor and regularly reporting to ICE. Given the lack of risk posed by Petitioner and the strong public interests in assuring that the government follows the law and does not detain people illegally, the overwhelming public interest lies in releasing him immediately.

#### IV. CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant temporary injunctive relief, ordering Respondents to immediately release Petitioner. In the alternative, we request that Respondents be ordered to conduct a bond hearing at which the government must bear the burden of justifying Petitioner's continued detention by clear and convincing evidence. Absent this Court's intervention, Petitioner will remain unlawfully detained, separated from his wife, and forced to endure preventable suffering.

Dated: 12/3/2025

Respectfully submitted,

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