

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

David Burke

Petitioner,

-against-

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; **PATRICIA HYDE**, IN HER OFFICIAL CAPACITY AS ACTING BOSTON FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; **DAVID W. JOHNSTON**, VERMONT SUB-OFFICE DIRECTOR OF IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; **TODD M. LYONS**, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; **PETE R. FLORES**, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER FOR U.S. CUSTOMS AND BORDER PROTECTIONS; **KRISTI NOEM**, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; **MARCO RUBIO**, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; **PAMELA BONDI**, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL; AND **GREG HALE**, SUPERINTENDENT, NORTHWEST STATE CORRECTIONAL FACILITY.

Respondents.

Case No.:

2:25-cv-00922

**PETITION FOR
WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. This case presents a request for immediate relief on behalf of David Burke (“Mr. Burke”) – a civil immigration detainee held by Respondents at the Northwest State Correctional Facility (“NWSCF”) in Swanton, Vermont. Mr. Burke is at imminent risk of grievous bodily harm or death due to Respondents’ failure to provide him with necessary medical care required to treat his advanced stomach cancer.
2. Mr. Burke’s diagnosis and condition necessitates special dietary restrictions. Specifically, he is only able to eat small portions of food at a time, must eat these portions slowly, and has been advised by his doctors to eat every two hours on account of these portion sizes. Mr. Burke has lost over 80 pounds as a result of his illness and continues losing weight rapidly due to the conditions of his detention.
3. Mr. Burke has already undertaken four rounds of chemotherapy and is supposed to schedule an additional four rounds with his doctors in Boston, MA. His detention prevents him from attending his scheduled chemotherapy sessions, and the Department of Homeland Security (“the Department” or “DHS”) has not and will not facilitate this urgent medical care.
4. U.S. Immigration and Customs Enforcement (“ICE”) agents arrested Mr. Burke on or about December 2025 near the Canadian border.
5. ICE is aware of his advanced cancer and urgent need of continued treatment, appropriate feeding schedule, and provision of appropriate food. They have failed to meet these needs, and it is unreasonable to expect that these needs would consistently be met at any point during ICE detention, given the agency’s track record with grievously ill persons.

6. ICE has failed to provide Mr. Burke with the opportunity to obtain medications necessary to treat and control his cancer. They have further failed to accommodate Mr. Burke's appropriate feeding schedule and provision of appropriate food as necessitated by his advanced stomach cancer.
7. By subjecting Mr. Burke to conditions of confinement that amount to punishment and failing to ensure his safety and health, Respondents have violated his Fifth Amendment substantive due process rights.
8. Mr. Burke now files a petition for a writ of habeas corpus under 28 U.S.C. § 2241 and seeks *immediate* release to receive necessary and life-saving medical treatment. Mr. Burke also seeks a court order that he not be transferred outside of Vermont throughout the pendency of these proceedings.

JURISDICTION

9. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
10. Mr. Burke is in the physical custody of Respondents. He is detained at the Northwest State Correctional Facility in Swanton, Vermont.
11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) as a petition for a writ of habeas corpus. Jurisdiction also exists under 28 U.S.C. § 1331 as Mr. Burke's custody amounts to a federal question. Finally, jurisdiction can be found under the Suspension Clause found at Article I, Section 9, Clause 2 of the United States Constitution.
12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
14. Mr. Burke is currently detained in Vermont. Venue is proper in the District of Vermont under 28 U.S.C. §§ 2241(a), 1391(b)(2), and 1391(e)(1). *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973). Mr. Burke is presently detained under the immediate supervision and authority of Mr. Greg Hale.
15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Vermont.

REQUIREMENTS OF 28 U.S.C. § 2243

16. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
17. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
18. Habeas corpus has been referred to as the Great Writ, and dates back to 1215 when the Magna Carta was signed in England. It is “perhaps the most important writ known to the constitutional law ... affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

19. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
20. Petitioner David Burke is an immigration detainee at NWSCF. Due to his lack of access to his medications and due to ICE's refusal to facilitate his appearance at appointments for his ongoing chemotherapy, he is at risk of death. Due to ICE's inability to accommodate the special dietary restrictions imposed by his condition, he is rapidly losing weight, further complicating his health.
21. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of Homeland Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington D.C. 20500.
22. Respondent Kristi Noem is named in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement ("ICE") the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.
23. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

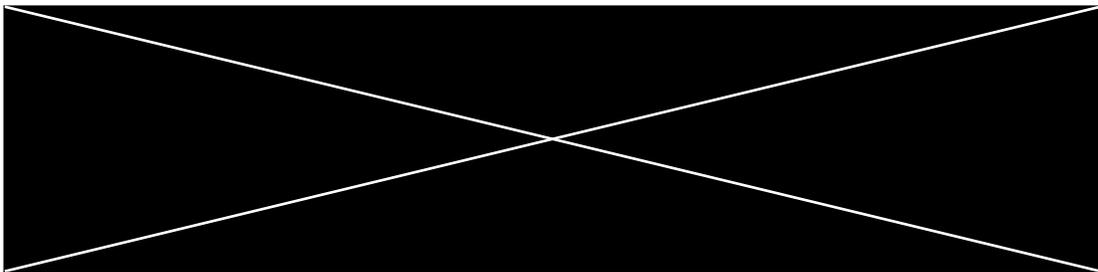
24. Respondent Todd M. Lyons is named in his official capacity as the acting director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Vermont, is legally responsible for pursuing efforts to remove Petitioner, and as such is the custodian of Petitioner. Respondent Lyon's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington D.C. 20536-5900.
25. Respondent Pete R. Flores is named in his official capacity as the acting commissioner of Customs and Border Protection ("CBP"). In this capacity, Respondent Flores leads CBP employees who are responsible for the administration of immigration laws and the execution of detention and removal determinations within its area of authority. Respondent Flores' address is 1300 Pennsylvania Ave. NW, Washington D.C. 20229.
26. Respondent Patria Hyde is sued in her official capacity as the acting director of the Boston Field Office of U.S. Immigration and Customs Enforcement. Respondent Hyde is a legal custodian of Petitioner and has the authority to release her.
27. Respondent David W. Johnston is named in his official capacity as the Director of the Vermont Sub-Office of the Boston Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In his capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations within the district of Vermont and is a custodian of Petitioner. Respondent Johnston's address is 64 Gricebrook Road, St. Albans, VT 05478.
28. Respondent Greg Hale is named in his official capacity as the acting Superintendent of Northwest State Correctional Facility in Swanton, Vermont, and is therefore the

immediate custodian of Petitioner. Respondent Hale's address is 3649 Lower Newton Rd., Swanton, VT 05481.

FACTUAL ALLEGATIONS

29. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

30. Mr. Burke suffers from advanced cancer of the stomach and multiple other conditions that have caused lesions and required surgery. His cancer and surrounding medical conditions are the result of a rare genetic condition that 



undergoing cancer treatments. He has already received four rounds of chemotherapy as well as invasive surgery to treat his condition and is supposed to schedule four additional rounds as a matter of ongoing treatment.

31. It is necessary that he continues seeing the doctors at 
 who are familiar with his and his family's complex medical history, something ICE cannot or will not facilitate. Even if ICE were to facilitate care through other medical professionals, which thus far they have not, this would not be appropriate given the complexity and rarity of his condition, and the need to see doctors familiar with his case.

32. Mr. Burke's condition severely restricts the amount of food that he can consume in any one sitting. He must eat very small portions at a time, thus necessitating his need to eat every two hours during his waking hours. Mr. Burke has already lost over 80 pounds as a

result of his condition and continues to lose weight rapidly as a result of ICE's inability to accommodate his dietary needs.

33. ICE's failure to provide the necessary medical treatment required by Mr. Burke has led him to suffer from debilitating symptoms, which are increasing with severity over time and will likely cause permanent injury or death if not seen to immediately.

CLAIMS FOR RELIEF

FIRST CLAIM OF RELIEF

Violation of Fifth Amendment Right to Due Process – Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement

34. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
35. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).
36. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[] any person ... of ... liberty ... without due process of law." U.S. Const. Amend. V.
37. "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). The Fifth Amendment to the U.S. Constitution establishes due process protections for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas*, 533 U.S. at 693 (internal quotations omitted)). The Fifth Amendment further guarantees that civil detainees, including all immigrant detainees, may not be

subjected to punishment. The Government violates this substantive due process right when it subjects civil detainees to treatment and conditions of confinement that amount to punishment or does not ensure the detainees' safety and health.

38. Respondents have violated Mr. Burke's Fifth Amendment substantive due process rights by subjecting him to conditions of confinement that amount to punishment. Mr. Burke is suffering from debilitating medical symptoms caused by ICE withholding necessary medical care and treatment, along with their inability to provide him with the dietary accommodations required by his specific urgent and life-threatening medical condition.

PRAYER FOR RELIEF

WHEREFORE, Mr. Burke respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order Mr. Burke's immediate release pending adjudication of this Petition;
3. Enjoin Respondents from transferring Mr. Burke from the District of Vermont pending adjudication of this Petition;
4. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Burke on conditions this Court deems just and proper while his removal or any other immigration related proceedings are underway, due to the urgent and exigent medical necessity inherent in his case;
5. Award Mr. Burke costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and
6. Grant such further relief as this Court deems just and proper.

Respectfully submitted on this 17th day of December, 2025.

/s/ Nathan Virag

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** Motion for admission currently pending*