

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

**EMERGENCY  
MOTION FOR  
TEMPORARY  
RESTRAINING  
ORDER**

## INTRODUCTION

1. Petitioner David Burke (“Mr. Burke”) is 43 years old and a resident of Boston, Massachusetts.
2. Mr. Burke is currently being held in the custody of Immigration and Customs Enforcement (“ICE”) in the District of Vermont at Northwest State Correctional Facility (“NWSCF”).
3. Mr. Burke suffers from advanced cancer of the stomach. His cancer and surrounding medical conditions are the result of a rare genetic condition that his maternal side of the family is afflicted with, along with three of his six children. He has already undertaken four rounds of chemotherapy in addition to invasive surgery to treat his condition and urgently requires an additional four rounds of chemotherapy as a matter of ongoing treatment.
4. Because the Government has demonstrated a pattern and practice of removing detainees from Vermont, particularly to states as far away as Louisiana, Florida, and Texas, Mr. Burke moves for an immediate Temporary Restraining Order (“TRO”) enjoining the Government from transferring him out of this District pending further order of the Court.
5. Even if the Court does not believe such an order is necessary on the grounds of preserving jurisdiction, Mr. Burke still moves for an immediate TRO ordering that the Government not move him out of this District based on the inherent equitable powers of this Court, and the breadth of the All-Writs Act. 28 U.S.C. § 1651.
6. Keeping Mr. Burke in this District will assist him in consulting with his Vermont based attorneys and allow him to appear in Court on his petition for writ of habeas corpus being filed concurrently with this motion in the United States District Court for the District of

Vermont. The requested TRO is consistent with both principles of judicial efficiency and the principles of any court entertaining a petition for writ of habeas corpus. 28 U.S.C. § 2243 (“Unless the application for the writ and the return present only issues of law the person to whom the writ is directed *shall be required to produce at the hearing the body of the person detained...*” (emphasis added)).

7. If Mr. Burke is transferred out of the District, it is likely to cause delays in the proceedings due to lack of access to counsel as well as increase costs and time constraints at any necessary hearings. Mr. Burke cannot be ensured a meaningful opportunity to have his claims heard, have meaningful access to counsel, or be provided meaningful relief if he is transferred out of this District. Accordingly, a TRO is necessary to preserve the Court’s jurisdictional authority to hear his claim and consider the relief sought before this Court. Without a TRO, Habeas will be rendered ineffective as it leaves open the door for the Government to enact the very harm the petition seeks to avoid.
8. Accordingly, Mr. Burke respectfully moves this Court to preserve its jurisdiction over the attached Petition pursuant to the equitable powers of the Court and the All-Writs Act 28 U.S.C. § 1651 (*see F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603 (1966)) and immediately order that Mr. Burke not be removed from the United States or moved outside the territory of the District of Vermont, pending further order of this Court.
9. As set forth in the Petition, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, Article I, § 9, cl. 2 (the Suspension Clause), 28 U.S.C. § 2201 (Declaratory Judgement), the All-Writs Act, 28 U.S.C. § 1651. It is appropriate for the Court to preserve its jurisdiction in this matter by ordering that Mr. Burke remain in this district pending further action by the Court.

Respectfully submitted on this 17<sup>th</sup> day of December, 2025.

/s/ Nathan Virag

**Nathan Virag, Esq.**

Association of Africans Living in Vermont

20 Allen St., FL 3

Burlington, VT 05401

(802) 373-8055

Virag.Nathan@gmail.com

*Pro Bono* Counsel for Petitioner

/s/ Andrew Pelcher

**Andrew Pelcher, Esq.\***

P.O. Box 344

St. Albans Bay, VT 05481

(802) 713-8739

apelcher@gmail.com

*Pro Bono* Counsel for Petitioner

*\* Motion for admission currently pending*