IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAMIR VALIKHODJAEV,
Petitioner,

Case No. 26-970

v.

OFFICER IN CHARGE, et al.,
Respondents.

MOTION FOR TEMPORARY RESTRAINING ORDER

PLEASE TAKE NOTICE that as soon as counsel may be heard, the undersigned will move the Court, seeking a Temporary Restraining Order ("TRO") in the form attached hereto and asking that this matter be set down for a hearing to convert those temporary restraints into a Preliminary Injunction pursuant to Fed. R. Civ. P. 65.

This Motion is supported by the accompanying Memorandum of Law in Support of Petitioner's Motion for Temporary Restraining Order and the concurrently filed Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

WHEREFORE, Petitioner respectfully requests that this Court enter a Temporary Restraining Order:

(i) Enjoining Respondents from moving, transferring, or removing Petitioner from the Eastern District of Pennsylvania pending further order of this Court;

(ii) Enjoining Respondents from detaining Petitioner under 8 U.S.C. § 1225(b)(2);

(iii) Ordering Petitioner's immediate release from Respondents' custody, subject to any appropriate conditions of supervision; and

(iv) Scheduling a hearing on conversion to a preliminary injunction.

Respectfully submitted,

/s/ROBERT BOND, ESQUIRE
Attorney I.D. No. 308371
Law Offices of Robert Bond, LLC
11880 Bustleton Avenue, Suite 206
Philadelphia, PA 19116
Tel: (215) 240-7565
Email: rbond@phillylawcenter.com

/s/JONATHAN J. SOBEL, ESQUIRE
Attorney I.D. No. 76428
Law Offices of Jonathan J. Sobel
1500 Walnut Street, Suite 900
Philadelphia, PA 19102
Tel: (215) 735-7535
Email: mate89@aol.com

Attorneys for Petitioner

Dated: February 13, 2026

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAMIR VALIKHODJAEV,
Petitioner,

Case No. 26-960

v.

OFFICER IN CHARGE, et al.,
Respondents.

ORDER

AND NOW, this _____ day of _____, 2026, upon consideration of Petitioner's Petition for Writ of Habeas Corpus, Motion for a Temporary Restraining Order, and the accompanying Memorandum of Law, and good cause appearing, it is hereby ORDERED as follows:

1. Respondents are **ENJOINED** from removing or transferring Petitioner from the Eastern District of Pennsylvania pending further order of this Court.

2. Respondents are **ENJOINED** from detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2).

3. Respondents shall **IMMEDIATELY RELEASE** Petitioner from custody, subject to appropriate conditions of supervision that may include compliance with Petitioner's existing state probation terms, regular reporting to ICE, and/or a reasonable bond amount as determined by the Immigration Court.

4. Respondents are permanently **ENJOINED** from re-detaining Petitioner under 8 U.S.C. § 1225(b)(2)(A).

5. Respondents are temporarily **ENJOINED** from re-arresting Petitioner under 8 U.S.C. § 1226(a) for seven (7) days following his release to ensure the habeas remedy is effective.

6. Respondents shall file any opposition to the request for preliminary injunctive relief on or before _____, 2026.

7. This Order shall remain in effect until further Order of the Court.

BY THE COURT:

_____
J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAMIR VALIKHODJAEV,
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CERTIFICATE OF SERVICE

I, Robert Bond, Esquire, attorney for the Petitioner, Damir Valikhodjaev, hereby certify that on this 13th day of February 2026, I served a true copy of the following documents by electronic filing via ECF and by USPS first-class mail upon the parties named below:

1. **MOTION FOR TEMPORARY RESTRAINING ORDER**
2. **MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER**

Officer in Charge
Petitioner's Place of Detention
c/o ICE ERO Philadelphia Docket Control Office
(215) 656-7164

ICE ERO Field Office Director
Philadelphia Field Office
1600 Callowhill Street
Philadelphia, PA 19130

Todd Lyons, Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

Kristi Noem, Secretary
U.S. Department of Homeland Security
245 Murray Lane
Washington, DC 20528

U.S. Department of Homeland Security
245 Murray Lane
Washington, DC 20528

Pamela Bondi, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

U.S. Attorney's Office, Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
Civil Division — Immigration Habeas

/s/ROBERT BOND, ESQUIRE
Attorney I.D. No. 308371
Law Offices of Robert Bond, LLC
11880 Bustleton Avenue, Suite 206
Philadelphia, PA 19116
Tel: (215) 240-7565
Email: rbond@phillylawcenter.com

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MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S

MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

At least 350 federal district court judges in over 2,400 decisions—including more than 25 from this District—have found that the Government's application of 8 U.S.C. § 1225(b)(2)(A) to noncitizens residing in the United States is unlawful. *See RAKHIMOV v. JAMISON*, No. 2:26-cv-00190, at *1 (E.D. Pa. Jan. 27, 2026). Despite this overwhelming judicial consensus, the Government continues to detain individuals under this provision in defiance of federal court rulings, including those from this Court.

Petitioner Damir Valikhodjaev is a 28-year-old citizen of Uzbekistan who has resided in the United States for over four and a half years. He was paroled into the United States on October 1, 2021 after an asylum officer found he had demonstrated a credible fear of persecution. He has a pending asylum case before the Immigration Court. On February 11, 2026, Petitioner was convicted in Bucks County of summary criminal offenses—the lowest level of offenses in Pennsylvania law. All misdemeanor and felony charges were either nolle prossed, withdrawn, or dismissed. The state court sentenced Petitioner only to probation with no sentence of incarceration and released him to community supervision, determining that he posed no danger requiring

detention. The very next day, on February 12, 2026, ICE agents arrested Petitioner near his residence in Philadelphia and took him into custody—creating a stark disconnect between the state court's determination that Petitioner is safe for community supervision and ICE's decision to detain him without any hearing whatsoever.

Respondents are detaining Petitioner without a bond hearing under § 1225(b)(2), a mandatory detention provision that applies to "applicants for admission" at ports of entry. Petitioner is not seeking admission—he has been living in Philadelphia for over four years. This Court should grant Petitioner's motion for a temporary restraining order and order his immediate release from unlawful detention.

I. PETITIONER'S DETENTION VIOLATES DUE PROCESS

The Due Process Clause of the Fifth Amendment requires an analysis under the three-factor balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). All three factors weigh overwhelmingly in Petitioner's favor.

a. Petitioner's Private Interest

Freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States*, 463 U.S. 354, 361 (1983). The Due Process Clause applies to "all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Petitioner has resided in the United States for over four and a half years, working and living in the Philadelphia community. He has a pending asylum case—his very purpose for being in the

United States is to seek the protection of this country from persecution. Detaining him without any individualized custody determination deprives him of the most fundamental liberty interest recognized under the Constitution.

b. The Risk of an Erroneous Deprivation

The risk of erroneous deprivation is exceptionally high because Petitioner has not received any individualized custody determination whatsoever. The Government has categorically classified him under § 1225(b)(2)—a mandatory detention provision—without any assessment of whether he poses a flight risk or danger to the community.

The BIA's unilateral extension of § 1225(b)(2)(A) through *Matter of Yajure Hurtado* places Petitioner's liberty entirely at the mercy of an interpretation that hundreds of federal judges have found unlawful. "When a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024).

Moreover, Petitioner was originally paroled under § 212(d)(5)(A) by ICE itself in 2021. ICE determined that Petitioner warranted release into the community. A subsequent reclassification under § 1225(b)(2) without individualized assessment is precisely the type of erroneous deprivation that due process exists to prevent. *See Carey v. Piphus*, 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.").

c. The Government's Interest

The Government's interests in immigration detention are limited to two objectives: preventing absconding and protecting the community from danger. *Zadvydas*, 533 U.S. at 690. Neither interest justifies Petitioner's detention here.

Petitioner's criminal record consists exclusively of summary offenses—the lowest level of offenses in Pennsylvania. The M2 Simple Assault charge was nolle prossed. All felony and misdemeanor charges were withdrawn or dismissed. Petitioner received only probation with no sentence of incarceration. Summary offenses under Pennsylvania law are not "crimes" for immigration purposes, are not crimes involving moral turpitude, and do not trigger mandatory detention under 8 U.S.C. § 1226(c).

Petitioner has a pending asylum application, giving him a powerful incentive to appear for his immigration proceedings. He has resided in the Philadelphia area for over four years and has community ties. The Government has no legitimate interest in enforcing an unconstitutional and unlawful detention policy.

All three *Mathews* factors weigh heavily in support of Petitioner.

II. THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER

Under *Winter v. NRDC*, 555 U.S. 7, 20 (2008), a plaintiff seeking a temporary restraining order must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. In the Third Circuit, the first two factors are "gateway factors" that must be met before considering the remaining two. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017).

a. Likelihood of Success on the Merits

Petitioner is overwhelmingly likely to succeed on the merits. Federal district courts across the country have rejected the Government's position in at least 2,400 decisions. In this District alone, at least 25 decisions have held that § 1225(b)(2) does not apply to noncitizens who have entered and are residing in the United States.

Just days ago, Judge Brody in this District ordered the immediate release of a petitioner held under § 1225(b)(2), holding that "detention under 8 U.S.C. § 1225(b)(2) violates the INA and a bond hearing is unnecessary because nothing in the record suggests that [petitioner] is a harm to the community nor a flight risk." *RODRIGUEZ-BAUTISTA v. Warden, Philadelphia Federal Detention Center*, No. 2:25-cv-07411 (E.D. Pa. Feb. 5, 2026).

Similarly, Judge Brody held in *RAKHIMOV v. JAMISON*, No. 2:26-cv-00190 (E.D. Pa. Jan. 27, 2026), that "[a]t least 350 decisions from district courts . . . find that the application of Section 1225(b)(2)(A) to noncitizens residing in the United States is unlawful," and ordered the petitioner's release. *See also CUJI VIMOS v. FDC Philadelphia*, No. 2:26-cv-00780 (E.D. Pa. Feb. 11, 2026); *Gramajo De Leon v. Jamison*, No. 2:25-cv-07199 (E.D. Pa. Dec. 23, 2025); *DEMIREL v. FDC Philadelphia*, No. 2:25-cv-05488 (E.D. Pa. Nov. 18, 2025).

Petitioner's case is even more compelling than many of these precedents because: (1) he was paroled by ICE itself in 2021, demonstrating that ICE previously determined he warranted release; (2) he has been in the U.S. for over four years; (3) his only criminal convictions are for summary offenses with no sentence of incarceration; and (4) he has a pending asylum case. Petitioner has a near-certainty of success on the merits.

b. Irreparable Harm if TRO is Not Issued

Unlawful detention is itself an irreparable injury. *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (loss of liberty is "perhaps the best example of irreparable harm"). *See also Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 46–47 (M.D. Pa. 2025) ("Unlawful detention is sufficient irreparable injury in immigration context.").

Petitioner is currently separated from his community and support network in Philadelphia. He is unable to work, maintain his residence, or prepare for his pending asylum hearing. The harm of continued unlawful detention is ongoing and cannot be remedied by damages or any post-hoc relief. "Unconstitutional detention for an indeterminate period" constitutes irreparable harm. *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017).

Administrative remedies are futile because the same agencies responsible for Petitioner's unlawful detention are the ones who would adjudicate any administrative request for release. Exhaustion is not required where, as here, "the issue presented involves only statutory construction, and exhaustion would be futile in light of the Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado*." *RAKHIMOV*, No. 2:26-cv-00190, at *2.

c. Public Interest and Balance of Harms

When the Government is the opposing party, the balance-of-harms and public-interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). "The public interest is best served by ensuring governmental compliance with the law." *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 332 (3d Cir. 2020).

The Government has no legitimate interest in enforcing an unconstitutional policy that has been rejected by over 350 federal judges. "The government cannot suffer harm from an injunction that merely ends an unlawful practice." *Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 47–48 (M.D.

Pa. 2025). *See also Nken*, 556 U.S. at 436 (the public has an interest in seeing that government institutions follow the law).

Moreover, there is a profound disconnect between the state court's determination and ICE's actions. On February 11, 2026, the Bucks County Court of Common Pleas—having full knowledge of the charges—sentenced Petitioner only to probation and released him to community supervision, finding no basis for incarceration. Yet just one day later, ICE arrested Petitioner near his home and imprisoned him without providing any hearing before a neutral adjudicator to assess flight risk or danger to the community. The state court's assessment that Petitioner is suitable for community supervision strongly weighs in favor of release, and this Court can fashion bond conditions that account for Petitioner's probation—including compliance with state probation terms, regular reporting to ICE, and a reasonable bond amount—to address any concerns.

CONCLUSION

For the foregoing reasons, the Motion for a Temporary Restraining Order should be granted. Petitioner respectfully requests that the Court order his immediate release from unlawful detention and enjoin Respondents from detaining him under 8 U.S.C. § 1225(b)(2). In the alternative, Petitioner requests that the Court order a constitutionally adequate bond hearing at which the Immigration Judge may fashion conditions of release that account for Petitioner's state probation, including compliance with probation terms, regular reporting requirements, and a reasonable bond amount.

Respectfully submitted,

/s/ROBERT BOND, ESQUIRE
Attorney I.D. No. 308371
Law Offices of Robert Bond, LLC
11880 Bustleton Avenue, Suite 206
Philadelphia, PA 19116
Tel: (215) 240-7565
Email: rbond@phillylawcenter.com

/s/**JONATHAN J. SOBEL, ESQUIRE**
Attorney I.D. No. 76428
Law Offices of Jonathan J. Sobel
1500 Walnut Street, Suite 900
Philadelphia, PA 19102
Tel: (215) 735-7535
Email: mate89@aol.com

Attorneys for Petitioner

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