

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

LARYSA KOSTAK,

Petitioner,

v.

Civil Action No. 3:25-cv-1093

DONALD J. TRUMP, in his official capacity
as President of the United States;

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security;

PAMELA BONDI, in her official capacity as
Attorney General of the United States;

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW;

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;

BRIAN S. ACUNA, 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;

KEITH DEVILLE, in his official capacity as
LaSalle Corrections Facility Administrator of
Richwood Correctional Center;

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

1. This case is about Petitioner Larysa Kostak (“Petitioner” or “Larysa”), a 50-year-old Ukrainian woman who has been residing freely and absent any criminal record in the United States for nearly two decades. She fled Ukraine for political reasons and entered the United States without inspection (“EWI”) in 2005. No longer living in Brooklyn, New York, her home for the past 20 years, she now sits incarcerated more than 1,000 miles away (from her husband, her community, and her church) at Richwood Correctional Center in Monroe, Louisiana.

2. On June 26, 2025, without notice or warning, after attending—as she was directed—a Master Calendar Hearing¹ for her asylum case at 26 Federal Plaza in New York, New York, Larysa was seized by federal authorities, arrested, and detained. She was held in an overcrowded detention facility at 26 Federal Plaza, where she slept on a concrete floor for nine days, with inadequate food and allowances for personal hygiene.

3. She was transported to Richwood on July 4, 2025, and denied an immigration bond on July 23, 2025 (one week ago today). Her next immigration court hearing is set for October 27, 2025, approximately three months from today’s date. Absent this court’s intervention, Larysa will, at a minimum, remain incarcerated until then (and likely thereafter, during the pendency of any appeals she or Respondents may take)—despite the fact that she is neither a flight risk, nor a danger to the community.

4. Larysa’s life dramatically changed on June 26, 2025, when she was incarcerated pursuant to the mandatory detention provision of this country’s expedited removal law: Section 1225(b)(2)(A) of Chapter 8 of the United States Code (“Section 1225(b)”).

5. But Larysa was not (and is still not) in expedited removal proceedings—rendering, on the

¹ A Master Calendar Hearing is a hearing held, in general, to advise immigration court respondents of their rights, explain charges and factual allegations contained within their Notices to Appear, and to set the stage for later hearings on the merits. See 4.15 – Master Calendar Hearing, *Immigration Court Practice Manual*, <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/15>.

plain meaning of the statute, her mandatory detention pursuant to Section 1225(b) unlawful. *See Ex. 1* (bond denial determination by immigration judge on jurisdictional grounds, specifically referencing Section 1225(b), which requires mandatory detention and bars a bond determination). Because Larysa is not in expedited removal proceedings (indeed, no credible fear interview has been scheduled for her as outlined in Section 1225(b)(B)), she is not subject to mandatory detention. Instead, as her October 27 full merits asylum hearing date demonstrates, she is a noncitizen eligible for bond under Section 1226(a) of Chapter 8 of the United States Code (“Section 1226(a)”).

6. A number of recent lower federal district court decisions have reached the conclusion that the mandatory detention provision of the expedited removal law, Section 1225(b), cannot be applied to noncitizens in 1226(a) proceedings, like Larysa. *See Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on conclusion that Section 1225 cannot be applied on similar facts); *Benitez v. Francis*, 29-CV-5937, Oral Tr. at 39:2-15 (S.D.N.Y July 28, 2025) (same); *Chipantiza-Sisalema*, 2025 WL 1927931, at *1 (S.D.N.Y. July 13, 2025), (granting release pursuant to courthouse arrest resembling petitioners).

7. Because Larysa was summarily denied bond under an inapplicable provision of the law to her case, she seeks habeas corpus release from this court.

8. By way of further background, on the morning of June 26, 2025, at the direction of the Executive Office of Immigration Review (“EOIR”), Larysa left her home in Brooklyn, where she had lived for 20 years—a residence that she shared with her husband—and traveled to her immigration court hearing in Manhattan, New York to appear for her Master Calendar Hearing.

Although her immigration attorney at the time had asked for this routine hearing to take place via Webex (as opposed to in person), that motion was denied.

9. Nonetheless, Larysa thought little of the denial, understandably expecting to attend the hearing and return home to Brooklyn that day. But, as set forth more fully *infra*, that did not happen. Instead, after court adjourned (during which time numerous other individuals appearing for their Master Calendar Hearing appeared via Webex), Larysa was immediately detained. She was seized directly outside of the courtroom by federal agents employed, upon information and belief, by Immigration and Customs Enforcement (“ICE”).

10. Larysa’s seizure at the immigration courthouse, upon information and belief, was part of a policy newly instituted by Respondents aimed at increasing the number of daily noncitizen arrests. Public reports explain that the arrests of noncitizens following their immigration court proceedings occurred in order to meet the Executive Branch’s target quota of 3,000 daily immigration arrests (up from the previous quota of 1,000 daily arrests).²

11. Larysa’s arrest followed a May 22, 2025 unpublished decision from the Board of Immigration Appeals (“BIA” or the “Board”), a court that by statute follows the directives of the Attorney General of the United States and is prevented from addressing constitutional challenges to arguments raised to the Board’s attention. *See Varela-Chavarria v. Garland*, 86 F. 4th 443, 449 (1st Cir. 2023) (standing for the proposition that the BIA cannot hear constitutional issues). The Board held in its May 22 decision that the noncitizen—there, a citizen of Guatemala who entered

² Maanvi Singh & Andrew Witherspoon, *How Trump has supercharged the immigration crackdown – in data*, The Guardian (July 23, 2025), <https://www.theguardian.com/us-news/ng-interactive/2025/jul/23/trump-ice-data-deportations-detention>; *see also* Haidee Chu & Gwynne Hogan, *NYC Immigration Arrests Just Shot Through The Roof, New Data Shows*, The City (July 14, 2025), <https://www.thecity.nyc/2025/07/14/ice-migrant-arrests-trump-administration-deportations-data/>; Paul Moses & Tim Healy, *Inside the Manhattan Court Where ICE Fights to Keep Immigrants Locked Up*, The City (Jul. 28, 2025), <https://www.thecity.nyc/2025/07/28/ice-detention-court-varick-street/>.

without inspection roughly a decade prior—was considered an applicant for admission under Section 1225(b) and, accordingly, deemed ineligible for an immigration bond. *See Ex. 1 to Declaration in Support of Plaintiffs, Rodriguez Vazquez v. Bostock*, 3:25-cv-05240-TMC (July 8, 2025).

12. Larysa’s arrest pre-dated but, upon information and belief, was one of the first unofficial iterations of a formal executive branch policy issued on July 8, 2025—wherein ICE “in coordination with” the Department of Justice (“DOJ”) officially announced that they were rejecting decades of precedent and practice concerning the expedited removal mandatory detention statute. ICE and DOJ explained in their guidance that they would now apply the mandatory detention provision to all those who EWI, not simply those subject to expedited removal—in the absence of any due process regarding this newfound application, and regardless of when an EWI entered the United States or whether they had a pending asylum application.

13. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”³ claims that all EWIs shall now be deemed “applicants for admission” under Section 1225—the expedited removal statute—and therefore subject to mandatory detention under Section 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, or whether they have a pending asylum application, and affects those who have resided in the United States for months, years, and—like Larysa—even decades.

14. This new policy was issued against the dictates of binding judicial precedent, including *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), wherein the United States Supreme Court explained that Section 1225’s mandatory detention scheme applies not in cases like Larysa’s (in

³ Immigration Customs and Enforcement, *Interim Guidance Regarding Detention Authority for Applicants for Admission* (Jul. 8, 2025), <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

short to those who EWI), but instead “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

15. Against this backdrop, Larysa—who entered the United States without inspection decades ago and has a pending asylum application and no criminal record—was detained on June 26, 2025 without any consideration of her flight risk or dangerousness.⁴ She was never afforded any notice or opportunity to be heard as to whether she should be detained by Respondents in light of (1) her absence of any criminal record (in sum, her lack of any perceived dangerousness); (2) that fact that she was obviously not a flight risk (she was, after all, arrested after dutifully attending an immigration hearing); and (3) immigration relief available to her, which would render her removal anything but imminent. In light of these facts, the strict purposes for immigration detention do not apply to Larysa, calling into question Respondents’ ability to detain her. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (describing the limited purposes of immigration detention, which include preventing flight and danger to the community).

16. Without this Court’s intervention, Larysa, will have no avenue to challenge her physical detention by Respondent. For the avoidance of any doubt concerning this Court’s jurisdiction, through this petition, Larysa seeks only to challenge Respondents’ ability to detain her pursuant to the Fourth Amendment and the due process protections of the Fifth Amendment of the United States Constitution. *See Order Granting Mot. Temp. Restraining Ord.*, *Pourhosseinhendabad v. Trump et al.*, No. 1:25-cv-00987 (Jul. 17, 2025) (granting temporary restraining order in habeas

⁴ Sudden arrests of individuals have also drawn public notice and outcry, including Congressional leaders questioning the purpose and validity of Respondents’ arrests. *See Jack Brook, Iranian mother released from ICE detention after Republican House Majority Leader intervenes*, Associated Press (Jul. 9, 2025), <https://apnews.com/article/ice-iranian-woman-release-detain-louisiana-mandonna-kashanian-3d5c868bbc43f152b7e8ec54db7fe49a>.

challenge, later recalled and dissolved upon petitioners' release). Respondents may, of course, continue her removal proceedings as they see fit without any interference from this Court pursuant to this petition. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118 (2020) (noting that the writ of habeas corpus invalidates government custody and ensures release, but does not disturb immigration court processes themselves).

17. By and through undersigned counsel, Larysa submits this petition for a writ of habeas corpus ("Petition") pursuant to 28 U.S.C. § 2241, the All-Writs Act, 28 U.S.C. § 1651, Article I, Section 9 of the United States Constitution and the Fourth and Fifth Amendments of the United States Constitution, to remedy her unlawful detention.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus authority); 28 U.S.C. § 1331 (federal question jurisdiction); U.S. CONST. art. I, § 9, cl. 2 (Suspension Clause).

19. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687.

20. Larysa's current detention, as imposed by Respondents, constitutes a "severe restraint[] on [her] individual liberty," such that she is "in custody in violation" of the law. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3). Habeas corpus 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) (emphasis added).

21. Venue properly lies with this Court under 28 U.S.C. §1391(e) because Petitioner is

physically present and in the custody of Respondents at Richwood Correctional Center located in Monroe, Louisiana, within the jurisdiction of the Western District of Louisiana. *See* 28 U.S.C. § 2241(d)

22. Venue is proper within the Monroe Division because a substantial part of the events giving rise to the claims in this action took place in this District. Petitioner is detained by Respondents at Richwood Correctional Center, located in Monroe, Louisiana, which is within the Monroe Division. *See* W.D. La. Local Civ. R. 77.3.

PARTIES

23. Petitioner Larysa Kostak is a 50-year-old Ukrainian woman who was unlawfully detained by Respondents on June 26, 2025. She has been residing within the United States since her arrival in 2005. Larysa is currently detained at Richwood Correctional Center in Monroe, Louisiana.

24. Respondent Donald J. Trump is named in his official capacity as President of the United States. In this role, he is ultimately responsible for the policies and actions of the executive branch, including those of the U.S. Department of Homeland Security (“DHS”).

25. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). As the Secretary of DHS, Respondent Noem is responsible for the administration of immigration laws and policies pursuant to 8 U.S.C. § 1103. She supervises DHS’s components including ICE and, as such, she is a legal custodian of Petitioner. She is sued in her official capacity.

26. Respondent Pamela Bondi is the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering

Petitioner's removal and bond proceedings, including the standards used in those proceedings, and as such, she is Larysa's legal custodian. She is sued in her official capacity.

27. Respondent EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

28. Respondent Todd Lyons is the acting ICE Director and Senior Official Performing the Duties of the Director. In that capacity, he is a legal custodian of Larysa. He is sued in his official capacity.

29. Respondent Brian S. Acuna, upon information and belief, is ICE's Acting Field Office Director for the New Orleans Field Office of ICE Enforcement and Removal Operations. As Field Office Director, Respondent Acuna oversees ICE's enforcement and removal operations in the New Orleans District, which includes Louisiana. Petitioner is currently detained within this area of responsibility and, as such, Respondent Acuna is a legal custodian of Larysa. He is sued in his official capacity.

30. Respondent Keith Deville is employed by LaSalle Corrections as the facility administrator for Richwood Correctional Center, where Larysa is detained. Mr. Deville has immediate physical custody of Larysa. He is sued in his official capacity.

EXHAUSTION OF REMEDIES

31. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. *See, e.g., Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) (“Unlike 28 U.S.C. § 2254, Section 2241’s text does not require exhaustion.”); *Robinson v. Wade*, 686 F.2d 298, 303 n.8 (5th Cir. 1982) (“[S]ection 2241 contains no statutory requirement of exhaustion like that found in section 2254(b)”).

32. Larysa’s claims—that her detention is unconstitutional because it contravenes the

protections of the Fourth and Fifth Amendments—are unrelated to any legitimate governmental purpose and therefore are not subject to any statutory requirement of administrative exhaustion, and thus, exhaustion is not a jurisdictional prerequisite. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

33. To the extent that any prudential considerations might lead the Court to consider requiring exhaustion as a matter of discretion, the Supreme Court has recognized that courts should not require exhaustion where there is an “unreasonable or indefinite timeframe for administrative action.” *Id.* at 147. Exhaustion is thus not appropriate where the petitioner “may suffer irreparable harm if unable to secure immediate judicial consideration of [her] claim.” *Id.* Because Larysa is in detention, wherein each moment of her unconstitutional incarceration implicates irreparable harm, only this Court can consider her claim.

34. Finally, the denial of Larysa’s application for bond at the July 23 hearing on grounds of “mandatory detention” demonstrates that there are no meaningful and genuine administrative remedies or opportunities for Larysa to challenge her detention. See *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.) (as amended) (judicial exhaustion may be excused when “available remedies provide no genuine opportunity for adequate relief” or exhaustion “would be futile”).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Larysa Enters the United States Without Inspection in 2005

35. Larysa is a 50-year-old resident of Brooklyn, New York and a citizen and native of Ukraine.

36. In 2005, Larysa fled Ukraine for the United States, where she joined her husband. She entered without inspection and has resided in the United States with her husband since 2005.

37. On May 15, 2019, Larysa was served with a Notice to Appear and began her immigration court proceedings. Larysa's immigration court proceedings began because she affirmatively applied for asylum.

38. Since that date, including on June 26, 2025, she has diligently attended her immigration court proceedings.

On June 26, 2025, Larysa attended her scheduled Master Calendar and was subsequently detained by ICE.

39. On June 26, 2025, Larysa arrived at the immigration court in Manhattan for her scheduled Master Calendar Hearing. The hearing itself was routine, despite the fact that she was asked to appear in-person, when others similarly situated were granted the opportunity to appear via Webex. At the conclusion of the hearing, she was instructed to return on December 12, 2026 for the continuation of her asylum case.

40. After the hearing, as she was leaving the courtroom, 3 ICE agents, wearing black and green uniforms were waiting in the hall and arrested her. Her follow-on court hearing date was changed after her arrest and detention from December 12, 2026, to October 27, 2025.

41. Larysa was not alone in being arrested by ICE agents after appearing in immigration court at 26 Federal Plaza in Manhattan, New York. ICE agents have been engaged in a pattern and practice of arresting individuals leaving immigration court, detaining them and in some cases, like Larysa, transporting them thousands of miles away from their homes. These arrests were the subject of a petition for habeas corpus in the Southern District of New York. *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *1 (S.D.N.Y. July 13, 2025) (granting release); *see also, Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (same); *Pinchi v. Noem, et al.*, No. 25-CV-05632, 2025 WL 1853763 (N.D. Cal. July 4, 2025) (same). Larysa was arrested in the exact same location and only two days after the arrest of the petitioner in *Chipantiza-*

Sisalema; Larysa and that petitioner were detained together at 26 Federal Plaza. He is now free.

She is not.

42. Larysa was not given any notice or opportunity to be heard as to why she was being arrested. Indeed, her required attendance at her Master Calendar Hearing appears to have been nothing more than a ruse laid by Respondents to unlawfully seize Larysa in order to meet their daily arrest quota. *See supra* at ¶¶8-10.

43. Larysa was transferred to Richwood on July 4, 2025, where she remains detained today.

44. She applied for bond on July 9, 2025. That application was summarily denied on July 23, 2025, on jurisdictional grounds, specifically pursuant to Respondents' newfound interpretation of the mandatory detention statute. *See supra* at ¶¶5, 12-13.

LEGAL BACKGROUND

Larysa Is Subject to 1226(a) Proceedings Not Expedited Removal Proceedings That Fall Under the Auspices of Section 1225(b).

The Statutory Framework at Issue

45. The Immigration Nationality Act (“INA”) prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

46. First, 8 U.S.C. § 1226 (“Section 1226”) authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229(a). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

47. Throughout Larysa’s two decades in the United States, she has not been charged with or convicted of *any* crimes. She, therefore, should have been afforded a genuine bond hearing with a meaningful opportunity for release on bond.

48. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under Section 1225(b)(1) and for other recent arrivals seeking admission referred to under Section 1225(b)(2).

49. This expedited removal provision is the provision that Respondents erroneously assert applies to Larysa, albeit placing her in regular removal proceedings under Section 1226(a).

50. Last, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

51. This provision too does not apply to Larysa, as she has not been ordered removed or is not in withholding proceedings.

The Interplay between §§ 1226(a) and 1225(b)(2) and DOJ's New Policy

52. This case concerns the detention provisions in Section 1226 and Section 1225.

53. The detention provisions at Sections 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, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

54. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section 1225 and that they were instead detained under Section 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).

55. Thus, in the decades that followed, most people who EWI were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible.

That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

56. In the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under Section 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

57. But this is wrong because Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under Section 1229(a), to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

58. The text of Section 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

59. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who EWI.

60. By contrast, Section 1225 applies to people arriving at U.S. ports of entry or who recently

entered the United States – people subject to expedited removal. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

ARGUMENT

Larysa’s Procedural Due Process Rights Are Being Violated Because Her Detention Contradicts the Plain Meaning of the Statute and She was Afforded No Notice or Opportunity to Contest Respondents’ Application of Section 1225(b) to Her Section 1226(a) Proceedings.

61. Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment.

62. Because Larysa’s detention has been unaccompanied by any of the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause, for example any notice or opportunity to challenge this detention or meaningful process to contest her detention, her detention violates her procedural due process rights. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

63. The Supreme Court has long made clear that, where the government seeks to deprive an individual of a “particularly important individual interest[],” it must bear the burden of justifying this deprivation by clear and convincing evidence. *See, e.g., Addington v. Texas*, 441 U.S. 418, 424 (1979). In cases like Larysa’s, who was suddenly detained without explanation, there is a significant interest at stake and a “clear and convincing” evidence standard provides the appropriate level of procedural protection. *See id.* at 423.

64. As set forth *supra*, on July 8, 2025, ICE in concert with DOJ announced a new policy prescribing mandatory detention with no bond eligibility for individuals who EWI. *See supra*, ¶13.

As a result of this new policy, the immigration judge who heard Larysa's application for bond found that that she was subject to mandatory detention under Section 1225(b) (also known as INA § 235(b)(2)(A)). *See supra*, ¶11.

65. But that determination—which upends decades of precedent and for which no notice, let alone process, was given to Larysa—is arbitrary and capricious for all of the reasons concerning the procedural history of the INA and its subsequent reforms discussed above, *see supra*, ¶42. *See United States ex rel. Acardi v. Shaughnessy*, 347 U.S. 260, 265-266 (1954) (holding that the actions of the Attorney General denied Petitioner the rights guaranteed to him by statute or regulation); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (standing for the proposition that is the judiciary's role to interpret statutory language at issue to ascertain the rights of the parties).

66. Courts to consider the issue have determined that the new policy issued by ICE and DOJ concerning the application of Section 1225(b)(2)(A) to those who EWI defies the INA. By way of example, after immigration judges in the Tacoma, Washington, immigration court stopped providing bond hearings for EWIs, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850, *12 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

67. Accordingly, pursuant to its plain meaning, the mandatory detention provision of Section 1225 does not apply to people like Larysa, who have already entered and were residing in the United States at the time they were apprehended. *See Jennings*, 583 U.S. at 287.

68. Larysa should have never been detained, necessitating her immediate release from detention.

69. Her detention is unconstitutional because she was never provided with notice that she would be detained on June 26, 2025, based on Respondents newfound interpretation of the INA, nor allowed to be heard on why such a determination was erroneous as applied to her.

70. Moreover, her bond application, which was denied on “mandatory detention” grounds based upon Respondents’ reinterpretation of the INA, was perfunctory and deprived her of any actual or genuine process and thus opportunity for relief – to wit, release, despite the fact that she falls within the auspices of Section 1226(a), not Section 1225(b). Due process requires that she be allowed to make her case as to this very point.

Larysa’s Substantive Due Process Rights Are Being Violated Because Her Detention Bears No Reasonable Relationship to Any Legitimate Government Purpose

71. Larysa’s detention violates her substantive right to due process because she is not subject to expedited removal and cannot be deemed a danger to the community or a flight risk.

72. To comport with substantive due process, civil immigration detention must bear a reasonable relationship to its two regulatory purposes—(1) to ensure the appearance of noncitizens at future hearings and (2) to prevent danger to the community pending the completion of removal.

Zadvydas, 533 U.S. at 690-91.

73. In her nearly two decades of residence in the United States, Larysa has attended all of her immigration court proceedings and has had no criminal history. And, as demonstrated to the immigration court by Larysa’s submissions with her since-denied bond application, she is an active member of her church; has strong and abiding personal ties to, and support of, many U.S. citizen members of the community; and recently completed coursework and was certified as a diagnostic ultrasonography technician. There is therefore no reason to believe she would fail to appear at

future hearings, or that she is somehow a danger to her community.

74. The government thus has no legitimate interest in detaining her. *See Demore v. Hyung Joon Kim*, 538 U.S. at 533 (2003) (O'Connor, J., concurring).

75. Indeed, no public interest is served by detaining a 50-year-old woman who has lived here uneventfully for nearly two decades and committed no crimes in the meantime.

76. Larysa's detention is accordingly unlawful, warranting immediate release.

77. A District Court recently granted a petition for habeas corpus for another person arrested and detained at 26 Federal Plaza, and thereafter transferred to Louisiana. Indeed, both were incarcerated together in cramped quarters at the Federal Plaza building for days. *See Chipantiza-Sisalema*, 2025 WL 1927931, at *4 (rejecting the government's argument that it had discretion to arrest petitioner without any prior notice or warning after petitioner dutifully attended immigration court proceedings); *id.* (explaining that "the question is whether, in exercising that authority, ICE is required to adhere to the basic principles of due process" and finding that "[t]here is no dispute that it is"); *id.* ("Nor is there any dispute that [ICE] failed to do so here. Because 'Respondents' ongoing detention of petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates [her] due process right,' her petition must be granted.") (internal citations omitted).

Larysa's Unlawful Arrest Further Underlines the Unconstitutionality of Respondents' Actions

78. Respondent's haphazard invocation of Section 1225(b) in order to detain Larysa emphasizes the lawlessness of her arrest, which included an unnecessary ruse as there were no exigent circumstances present necessitating a pretext for arrest.

79. Nevertheless, ICE officials, on information and belief, worked with EOIR personnel to get Larysa to 26 Federal Plaza on June 26, 2025, for the primary purpose of arresting her, as her court hearing could have easily taken place over Webex.

80. ICE personnel waited for Larysa to emerge from her immigration court proceedings to suddenly arrest her.

81. While the use of a “ruse” is not strictly prohibited by the Fourth Amendment, the Supreme Court has held that there are restraints against the government. *See Lewis v. United States*, 385 U.S. 206, 209 (1966). (“The various protections of the Bill of Rights, of course, provide checks upon such official deception for the protection of the individual.”). The facts of a particular case will be considered to determine whether the government’s use of a ruse violated a person’s rights under the Fourth Amendment.

82. Here, there were no exigent circumstances justifying Larysa’s sudden arrest without notice or opportunity to contest the new policy that subjected her to detention in the first place.

CLAIMS FOR RELIEF

COUNT ONE

Larysa’s Arrest and Detention Violates Her Rights Under the Fifth Amendment’s Guarantee of Procedural Due Process Because She Has Been Placed in 1226(a) Proceedings to Which Mandatory Detention Under Section 1225(b) Does Not Apply

83. Larysa realleges and incorporates by reference all of the aforementioned allegations included in the above-numbered paragraphs as if set forth fully herein.

84. The government’s infringement upon Larysa’s liberty interest triggers a right to meaningful process to contest that infringement, for example, to a hearing before that right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

85. “The determination of what procedures are required under the Fifth Amendment requires consideration of: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government’s interest, including the fiscal and administrative burdens that the additional or substitute procedures

would entail.” *Mathews*, 424 U.S. at 335.

86. Because Larysa’s detention on June 26, 2025, has been unaccompanied by any hearing, or by any of the procedural protections that such a significant deprivation of her liberty interest would require, her continued detention violates her procedural due process rights. *See Id.* at 332.

87. The lack of individual consideration creates the highest risk of erroneous deprivation of liberty.

88. The governmental interest in providing these procedures is not burdensome as it merely comports with the Constitutional protections guaranteed by the Fifth Amendment.

89. Furthermore, the mandatory detention provision of the INA does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under Section 1226(a), unless they are subject to Sections 1225(b)(1), 1226(c), or 1231. Therefore, applying Section 1225(b)(2) to Larysa violates the plain text of the INA.

90. Separately, but equally relevant, on information and belief, Respondents adopted a policy of indiscriminately targeting noncitizens for arrest at immigration court buildings. This policy is arbitrary and capricious, and amounts to an abuse of discretion. *See Accardi*, 347 U.S. 260 (1954).

91. For these reasons, Larya’s ongoing detention is unconstitutional. She should accordingly be released.

COUNT TWO

Larysa’s Detention Violates the Fifth Amendment’s Substantive Due Process Guarantees Because It Bears No Reasonable Relationship to Any Legitimate Purpose.

92. Larysa realleges and incorporates by reference all of the aforementioned allegations

included in above numbered paragraphs as if set forth fully herein.

93. Larysa's detention violates her substantive due process rights because her liberty is being restricted without justification. *See Hensley*, 411 U.S. at 351.; 28 U.S.C. § 2241(c)(3).

94. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

95. The only permissible detention purposes for detention—preventing danger and flight risk—are not present here, unlawfully infringing upon Larysa's liberty interest. *See Zadvydas*, 533 U.S. at 690-91.

96. For this reason, Larysa's detention is unconstitutional. She should accordingly be released.

COUNT THREE

Larysa's Arrest Violates her Fourth Amendment Protections Against Unreasonable Seizures

97. Larysa realleges and incorporates by reference all of the aforementioned allegations included in the above-numbered paragraphs as if set forth fully herein.

98. The Fourth Amendment protection against "unreasonable searches and seizures" is a protection against "arrest without probable cause." *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 206 (5th Cir. 2009).

99. Larysa was arrested by federal immigration agents without justification following her appearance in immigration court.

100. The government lacked any information of changed or exigent circumstances that would justify Larysa's sudden detention while leaving immigration court.

101. Indeed, the very grounds under which she was arrested – Section 1225's mandatory

detention provisions for individuals in expedited removal proceedings – do not apply to her.

102. Her arrest was therefore an unreasonable seizure that violated her right to be secure in her person.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Issue an order prohibiting Respondents from transferring Larysa outside of this judicial district during the pendency of these habeas proceedings;
- 3) Declare that Respondents' determination that Larysa is subject to mandatory detention is unconstitutional because she is subject to Section 1226(a) proceedings, not the expedited removal proceedings applicable to Section 1225(b).
- 4) Issue a Writ of Habeas Corpus and order Larysa's immediate release because she is neither a flight risk, nor a danger to the community and therefore cannot be incarcerated in immigration detention;
- 5) Award Petitioner her costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and,
- 6) Grant such further relief as the Court deems just and proper.

Dated: July 30, 2025

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** Pro hac vice applications forthcoming*

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner, and/or someone acting in her behalf, the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

Dated: July 30, 2025

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