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

LARYSA KOSTAK,

Petitioner,

v.

DONALD J. TRUMP, et al.

Respondents.

Civil Action No. 3:25-cv-1093

Judge Jerry Edwards Jr.

PETITIONER'S REPLY

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INTRODUCTION

Respondents characterize Larysa's detention as nothing more than business as usual. But there is nothing usual about this case, as evinced by the Notice of Hearing Larysa received for her June 26, 2025 court appearance. *See* Ex. 1, Notice of In-Person Hearing ("Notice"). Tellingly, that Notice does not state that Larysa will be arrested by Respondents following her court appearance; that she will be flown more than a thousand miles away from her husband, home, and community; or that she will be detained without any evidence that she is a flight risk or a danger to the community, in the absence of any process whatsoever or the ability to apply for bond. The Notice thus runs roughshod of United States Supreme Court precedent, which requires Respondents to provide meaningful process before depriving individuals of constitutionally protected liberty interests. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

At bottom, Larysa's detention flies in the face of the statutory text—Section 1225(b)(2)[1]—that Respondents claim permits her deprivation of liberty. Moreover, that detention is the fruit of a poisonous tree, as it was executed contrary to the dictates of the Fourth Amendment. Nonetheless, Respondents argue that seeking Larysa's immediate release is "superfluous" (ECF No. 15 at 2) to her motion for a temporary restraining order and preliminary injunction ("TRO/PI"). ECF No. 3. But this is not the case for one key reason: no alleged jurisdictional bars apply to Larysa's motion for release (as Respondents concede in failing to present such arguments), whereas Respondents nearly and always, largely without fail, argue that such bars apply in the face of habeas petitions filed in the immigration detention context. *See e.g., Ozturk v. Hyde*, 136 F.4th 382, 396 (2d Cir. 2025); *Mahdawi v. Trump*, 136 F.4th 443, 449-50 (2d Cir. 2025); *Khalil v. Trump*, No. 25-cv-

[1] All short cites in this brief follow the conventions identified in Petitioner's habeas petition. *See* ECF No. 1.

01963, slip op. at 2 (D.N.J. July 25, 2025).[2]

Releasing Larysa as she continues to litigate her TRO/PI motion and her habeas petition thus falls within this Court's inherent authority—and, most importantly, does not prevent this Court in any way from reaching a different determination on the TRO/PI or habeas petition. *See Ozturk*, 136 F.4th at 399-400; *Mahdawi*, 136 F.4th at 450-51 (similar). All the release remedy does is preserve the effectiveness of the habeas remedy in the event the Court ultimately finds, after weighing the complex legal arguments at play, that it has jurisdiction to grant Larysa habeas relief on the merits. *See* Op. Br. at 8-9.

As detailed further below, Respondents make four arguments against release, all of which fail. As such, Larysa should be immediately released pending adjudication of her TRO/PI and habeas petition.

ARGUMENT

I. No Legal Developments Support Respondents' Application of Section 1225(b) to Larysa, Whose Proceedings Fall Within Section 1226(a), As Multiple Courts Have Held in Factually Analogous Circumstances.

Respondents claim that their about face on Section 1225(b) is correct because subsection (b)(2) serves as a catchall that applies to immigrants like Larysa—in short, all persons who enter the United States without inspection are classified as "applicants for admission" to the United States, in perpetuity. ECF No. 15 at 5-6. Respondents make this argument even though Larysa plainly falls within the parameters of Section 1226(a)—which Respondents simply fail to meaningfully address despite the fact that the Section itself is titled "the apprehension and

[2] *See also, e.g.*, Brief for the Respondents in Opposition at 8, *Camarena v. Johnson*, 142 S. Ct. 424 (2021) (No. 20-1791), 2021 WL 4655533; Brief for the Respondent in Opposition at 3-4, *Mapoy v. Carroll*, 529 U.S. 1018 (2000) (No. 99-961), 2000 WL 34013500; Brief of Respondent-Appellees at 11, *Li v. Agagan*, No. 04-40705, 2006 WL 637903, at *11 (5th Cir. March 14, 2006); Brief for Defendants-Appellees at 20-21, *Ragbir v. Homan*, 923 F.3d 53 (2d Cir. 2019) (No. 18-1597), 2018 WL 4740052; Defendant-Appellees' Response Brief at 20, *Pelletier v. United States*, 653 F. App'x 618 (10th Cir. 2016) (No. 15-1358), 2016 WL 389742.

detention" of immigrants. *See* ECF No. 1, Pet. at ¶ 45-60, 66-67, 70, 89; *see also* ECF No. 9 (Opening Br.) at 10-12.[3] Instead of addressing Section 1226(a), Respondents instead choose to claim that "[n]o custody determination had been made prior to June 2025" for Larysa because "ICE was unaware of [Larysa's] presence in the United States" until then. ECF No. 15 at 1-2. That contention is patently false, as evidenced by both the Declaration and Notice to Appear attached to Respondents' briefing—rendering their attempt to simply avoid the application of Section 1226(a) to Larysa's case wholly unconvincing. *See* ECF No. 15-1, at ¶ 6 (Declaration explaining ICE's awareness of Larysa's presence dating back to 2019); ECF No. 15-2 (Notice to Appear showing same).

Further attempting to sidestep the application of Section 1226(a) to Larysa's case, Respondents argue that "legal developments have made clear that [Section 1225] is the applicable immigration detention authority for *all* applicants for admission." ECF No. 15 at 7. But they fail to offer any substantive explanation about the contours of those "legal developments" other than misleading citations to *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). ECF No. 15 at 6. The problem is: the Supreme Court in *Jennings* directly contradicted Respondents' position here; there, the Court held that "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). *It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).*" *Jennings*, 583 U.S. at 289 (emphasis added). The Court

[3] Multiple federal district courts have rejected Respondents' about face. *See*, e.g., *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850, *12 (W.D. Wash. Apr. 24, 2025) (explaining the plain textual meaning of Section 1226 and that Section 1225(b)(2) has been historically limited by its text and in practice); *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); *Benitez v. Francis*, 1:25-cv-05937-DEH, Oral Tr. at 39:2-15 (S.D.N.Y July 28, 2025) (finding Section 1225(b)(2) inapplicable to petitioner who clearly falls within the scope of Section 1226(a) and ordering immediate release as a result); *Benitez v. Francis*, 2025 WL 2267803, at *5 (S.D.N.Y. Aug. 8, 2025) (same) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018)).

went on to explain that it is Section 1226 that "applies to aliens already present in the United States"—in short, petitioners like Larysa. *Jennings*, 583 U.S at 303; *see also Benitez v. Francis et al.*, 25 Civ. 5937, 2025 WL 2267803, slip op. at *8 (S.D.N.Y. Aug. 8, 2025) (noting that the court could not "identify any authority" supporting Respondents' interpretation of Section 1225(b)); *see also Martinez v. Hyde*, --- F.Supp.3d ---, 2025 WL 2084238 at *8 (D. Mass. July 24, 2025) (reaching a similar conclusion and citing *Jennings*, 583 U.S. at 288-89).

Crucially, Respondents' interpretation also ignores the recent amendment to Section 1226, which "mandates detention for non-citizens who meet certain criminal *and* inadmissibility criteria"—an amendment that makes no logical sense if Respondents' interpretation is correct that all individuals who EWI are subject to mandatory detention no matter when they entered the United States. Laken Riley Act, Pub. L. No. 199-1, 139 Stat. 3; *Benitez,* 2025 WL 2267803, slip op. at 7 (citing to *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation," such as this one, "would render superfluous another part of the same statutory scheme."). Respondents thus impermissibly ignore the context surrounding the statutory text, thereby gravely mischaracterizing the statute's meaning and its ability to apply to Section 1226(a) petitioners, like Larysa. *See id.* (*citing to Gundy v. United States*, 588 U.S. 128, 141 (2019) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme")); *see also, e.g. Benitez,* 2025 WL 2267803, slip op. at 14 (rejecting the identical argument advanced by Respondents here and finding that "with the plain, ordinary meaning of words 'seeking' and 'admission' [. . .] someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily be described as 'seeking admission' to the theater"); Order Granting Petitioners' Ex Parte Application

For Temporary Restraining Order And Order To Show Cause at 8, *Bautista et al v. Ernesto Santacruz Jr et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal Jul. 28, 2025), ECF No. 14 (finding Congress' intent for Sections 1225 and 1226 dictates that individuals like Larysa are not subject to mandatory detention; among other issues, Respondents' interpretation "would render the phrase 'seeking admission' in § 1225(b)(2)(A) mere surplusage"); *Rodriguez Vazquez v. Bostock*, No. 25 Civ. 524, 2025 WL 1193850, at *12-16 (W.D. Wash. Apr. 24, 2025) (finding that a noncitizen apprehended within the United States and charged with inadmissibility was necessarily detained under Section 1226, not Section 1225).

In the end, this Court need not credit Respondents' unsubstantiated interpretation of Section 1225(b). *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (holding that the judiciary's role is to interpret statutory language). And—because Respondents have not meaningfully responded to Larysa's due process argument that she was not provided with any notice or process to challenge an unnoticed application of Section 1225(b) to her arrest and detention, thereby violating her liberty interest—the Court can find that Respondents waived their right to do so. Larysa's immediate release can accordingly be ordered based on waiver and/or her substantial and meritorious argument that the plain meaning of the statutory text contained in Sections 1225(b) and 1226(a) require her release.

Simply put, Respondents' actions cannot be deemed permissible against the backdrop of the Constitution and well-settled law, both of which militate in favor of granting Larysa's immediate release. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("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."); *id.* at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence

here is lawful, unlawful, temporary, or permanent."); *Reno v. Flores*, 507 U.S. 292, 306 (1993) (similar).

II. Respondents Wrongly Claim That Larysa's Ruse-Based Arrest Was Permissible.

Next, defying logic, Respondents argue that coordinating the surprise arrests of immigrants absent exigent circumstances at immigration court does not qualify as an unconstitutional ruse because ICE (which falls under the auspices of DHS) and EOIR (which falls under the auspices of DOJ) are distinct entities. ECF No. 15 at 7. But ICE and DOJ together decided on a newfound interpretation of Section 1225(b) articulated in published guidance (which contemplated legal challenges such as the one before this Court), *see* Pet. ¶ 12; ECF No. 9-2 (guidance)—strongly suggesting that ICE and EOIR are working together in executing the illegal courthouse arrests of immigrants. *See* Pet. ¶ 41; Op. Br. at 13-14.

Separately, Respondents' sole reliance on *United States v. Allibhai*, 939 F.2d 244, 247 (5th Cir. 1991), to justify the ruse here falls flat. ECF No. 15 at 7. That case concerned an unsuccessful, post-conviction challenge to a "sting operation" involving a money-laundering investigation. *Allibhai*, 939 F.2d at 247. No such facts exist at bar by any stretch of the imagination. Indeed, there is not even the slightest suggestion by Respondents that Larysa was under some kind of investigation prior to her arrest and detention that somehow warranted bringing her into custody via a ruse. *See* Pet. at ¶¶ 39, 79-80. Respondents have therefore conceded that a legal ruse warrants more on its face than the facts at issue here, emphasizing the substantial and meritorious nature of Larysa's Fourth Amendment claim, which standing alone can substantiate ordering her release. *See* Opening Br. at 14.

III. Respondents Erroneously Argue There Is An Exhaustion Requirement to Challenging Larysa's Unlawful Detention.

Respondents also erroneously suggest that Larysa's habeas petition should be dismissed because she has not appealed her immigration bond denial to the BIA. ECF No. 15 at 8. But that argument has no merit because Larysa's bond application was not denied on the merits, for which an appeal would be appropriate. Thus, Respondents reliance on *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011), is inapt. *Id.* Larysa's bond was denied based on a recent unpublished BIA decision, which DOJ and, in turn, EOIR (a component agency of DOJ), have been relying on to deny bond to individuals like Larysa, who fall squarely within Section 1226(a) proceedings. Pet. at ¶¶ 5, 11-15. Prudential exhaustion is accordingly not warranted because appeal is futile.

But even if prudential exhaustion was warranted, on average, the BIA takes over six months to issue custody appeal decisions. *See Rodriguez Vazquez*, 2025 WL 1193850, at *9. This contrasts sharply with the federal pre-trial detention system, where the statute "provide[s] for immediate appellate review of the detention decision." *United States v. Salerno*, 481 U.S. 739, 752 (1987). The BIA's delays underscore the irreparable injury that would result from requiring exhaustion. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019).

And, because Larysa's constitutional arguments cannot be adjudicated by EOIR—be it at the immigration judge level or at the BIA—Respondents cannot legitimately decry a lack of exhaustion in this case. *See, e.g.*, *Mandarino v. Ashcroft*, 318 F. Supp. 2d 13, 16 (D. Conn. 2003) ("The BIA does not have jurisdiction to address constitutional claims"); Pet. at ¶¶ 31-34. Because this Court is the only forum in which Larysa can bring her constitutional claims, Respondents' exhaustion argument is of no moment.

IV. Respondents Incorrectly Posit That Laryssa Fails to Meet the Requirements of the *Calley* Test and Its Progeny.

Finally, Respondents posit that Larysa fails to meet the *Calley* standard for release that, in any event, should not apply to incarcerated immigrants. ECF No. 15 at 8. That argument fails because district courts within this Circuit have applied the *Calley* standard and its analogue, *Mapp v. Reno*, 241 F.3d 221 (2d Cir.2001), to those detained by ICE. *See Singh v. Gillis*, 2020 WL 4745745, at *2 (S.D. Miss. June 4, 2020) (applying *Calley*); *Sanchez v. Winfrey*, 2004 WL 1118718 (W.D. Tex. Apr. 28, 2004) (same); *Sacal-Micha v. Longoria*, 2020 WL 1518861 (S.D. Tex. Mar. 27, 2020) (applying *Mapp*, 241 F.3d 221); *Brown v. Miller*, 2014 WL 4929294 (W.D. La. Oct. 1, 2014) (same). Laryssa easily meets both prongs of the *Calley/Mapp* test.

i. Respondents Incorrectly Argue Larysa's Claims Are Not Substantial or Meritorious.

Larysa's constitutional claims, considered separately or together (as outlined here and in her opening brief), are substantial and meritorious. *See* Op. Br. at 9-11; Pet. ¶¶ 61-82 (discussing constitutional claims, including but not limited to a discussion of her due process rights under *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976)). In opposing her release, Respondents fail to articulate any individualized considerations to support their decision to unconstitutionally deprive Larysa of her liberty, despite going to extraordinary lengths to arrest her after a routine Master Calendar Hearing and transfer her to an immigration jail more than 1,000 miles away from her home, husband, and community. Pet. at ¶¶ 39, 77. Respondents further provide no justification as to the use of their illegal ruse. As such, Larysa has presented multiple substantial and meritorious claims that courts presented with similar arguments concerning ICE arrests under similar circumstances have ruled support granting release. *See O-J-M v. Bostock*, 2025 WL 1943008, at *1 (D. Or. Jul. 14, 2025) (granting habeas petition on grounds that courthouse arrest and re-

detention of petitioner, without individual consideration of safety or flight risk, violates due process); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. Jul. 13, 2025) (similar); Y-*Z-L-H v. Bostock*, 2025 WL 1898025, at *12-14 (D. Or. Jul. 9, 2025) (granting habeas petition on grounds that courthouse arrest and termination of parole, with no individualized consideration of safety or flight risk, violated due process and obligatory procedural steps); *Benitez,* 2025 WL 2267803 at *19 (applying *Mathews*, 424 U.S. at 349, to a courthouse arrest and finding due process violations). There is little question that Larysa's claims warrant serious consideration and that the weight of the case law currently favors her release request.

ii. Respondents Misstate the Standard for "Exceptional Circumstances."

Larysa also meets the second prong of the *Calley* test because it is exceptional and extraordinary to unconstitutionally seize and detain someone—regardless of their health status or which amendment of the Constitution the federal government is allegedly violating. *See* Op. Br. at 9, 15 (collecting cases); *see also Mohammed H. v. Trump,* 2025 WL 1334847, at *7 (D. Minn. May 5, 2025) (finding extraordinary circumstances included uncontested lack of dangerousness and "shifting post hoc explanations to justify the arrest").

Respondents attempt to distinguish the "exceptional circumstances" here by creating a hierarchy of constitutional rights that somehow make violations of the First Amendment paramount and distinguishable from other constitutional violations. ECF No. 15 at 9. Doing so, however, misses the mark because the upshot of the cases relied on by Respondents is that release is necessary when an alleged substantial and meritorious constitutional violation is coupled with the fact that an immigrant in civil detention is neither a flight risk, nor a danger to the community. *See* Op. Br. at 9, 15 (collecting cases). It is the combination of these three factors together that amount to an exceptional and extraordinary circumstance, as is the case here. *Id.* This is so because

the habeas remedy itself is ineffective when a petitioner is unconstitutionally detained—be that for a moment, a day, a month or longer. *Id.* Right now, Larysa is alleging that she has been unconstitutionally detained for 46 days (1.5 months), and there is no other basis to substantiate her detention that has been placed in the record—including any alleged flight risk or danger. Her detention is therefore exceptional and out of the ordinary (*i.e.*, extraordinary).

Mahdawi v. Trump illustrates this point. 2025 WL 1243135, at *12 (D. Vt. Apr. 30, 2025). There, the court did not find extraordinary circumstances solely based on the First Amendment; rather, the court's determination was premised on both an alleged constitutional violation and the lack of any legitimate purpose for petitioner's detention. *Id.* This is because immigration detention has only two legitimate purposes: (i) ensuring appearances at future immigration proceedings, and (ii) preventing danger to the community pending completion of removal. *See Zadvydas*, 533 U.S. at 691. There is "no interest in the continued incarceration of an individual who [Respondents] cannot show to be either a flight risk or a danger to [the] community," *Ozturk v. Trump*, 2025 WL 1420540, at *5 (D. Vt. May 16, 2025) (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 857 (2d Cir. 2020))—a proposition that stands regardless of the alleged constitutional violation at issue.

It cannot be the case that Respondents can detain any immigrant that does not suffer from a health risk even when their due process rights have allegedly been flagrantly violated—because that defeats the very effectiveness of the habeas remedy. What release does is ensure the habeas remedy remains effective *if* the Court ultimately determines via Larysa's TRO/PI or habeas petition that her constitutional rights have been violated.

CONCLUSION

Petitioner respectfully asks this Court to order her immediate release pending adjudication of her TRO/PI and habeas petition.

Dated: August 11, 2025

Respectfully submitted,

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