

CHERI ATTIX, ESQ.  
Cal. State Bar No.: 185731

Law Office of Cheri Attix  
2221 Camino del Rio S, Suite 201  
San Diego, CA 92108  
(619) 847-8694 (tel.)  
cheriattix@icloud.com

Counsel for Petitioner

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANA LESIC & NIKICA LESIC	)	Case No. <u>'25CV2746 LL BJW</u>
Petitioners	)	Agency No. A 
v.	)	
CHRISTOPHER J. LAROSE, Senior	)	
Warden, Otay Mesa Detention Center;	)	<b>PETITION FOR WRIT</b>
JOSEPH FREDEN, Acting Field Office	)	<b>OF HABEAS CORPUS</b>
Director, U.S. Immigration & Customs	)	
Enforcement (ICE); TODD LYONS,	)	ORAL ARGUMENT
Acting Director, U.S. ICE; KRISTI	)	REQUESTED
NOEM, U.S. Secretary of Homeland	)	
Security; PAMELA BONDI, Attorney	)	Expedited Hearing Requested
General of the United States	)	
Respondents.	)	
	)	

## **I. INTRODUCTION**

1. Petitioners, Ana and Nikica Lesic, a married couple, by and through their undersigned counsel, hereby file this Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief to compel their immediate release from the immigration detention facility where they have been held by the U.S. Department of Homeland Security (DHS) since being detained on October 6, 2025, at Ana Lesic's routine ICE check-in. Nikica Lesic did not have an appointment and was only present to accompany his wife.

2. Petitioner Ana Lesic filed an affirmative asylum claim with USCIS on July 6, 2009. Mr. Lesic is a rider on his wife's asylum case. USCIS referred their claim to the EOIR on August 26, 2009 and their case remained pending with EOIR from then until December 8, 2022, when the asylum claim was denied by an Immigration Judge. Ms. Lesic was ordered removed, but Mr. Lesic was granted voluntary departure and not ordered removed. Mr. Lesic timely paid the required \$500 voluntary departure bond on December 8, 2022. The Lesics then timely filed an appeal of the immigration judge's decision with the Board of Immigration Appeals on December 19, 2022. As a result of this appeal, the order of removal against Ana Lesic has been stayed and will not become final unless and until the

BIA affirms the IJ's decision. Nikica Lesic's voluntary departure period has likewise been stayed pending the result of the appeal.

3. Petitioner Ana Lesic was previously detained on May 24, 2018, during the course of her removal proceedings. On June 5, 2018, she was granted release by an Immigration Judge on \$10,000 bond, with Alternatives to Detention (ATD) monitoring at the discretion of DHS. From that time until now, she has worn a GPS device and attended regular check-ins with ICE and ISAP in San Diego. No material change in facts or circumstances has occurred since her bond was granted.

4. Petitioner Nikica has never before been detained or subject to monitoring by ICE or ISAP. He has complied fully with the requirements of his voluntary departure grant.

5. Petitioners must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, changed circumstances that would justify cancelling the \$10,000 bond that an immigration judge set for Ms. Lesic in 2018 and the \$500 voluntary departure bond that was timely paid by Mr. Lesic on December 15, 2022; and that Petitioners are a flight risk or a danger to the community. DHS will not be able to do so. Due process requires the government to provide noncitizens with notice and a hearing prior to re-detention, and that re-detention, without prior notice, a showing of changed

circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.

## **II. JURISDICTION**

6. This court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the U.S. Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq.

7. The aid of this Court is further invoked under 28 U.S.C. §§ 2201-2, authorizing a declaratory judgment and any further necessary and proper relief.

## **III. VENUE**

8. Venue is properly with this court because Respondent Warden LAROSE is Petitioners' immediate custodian at the Otay Mesa Detention Facility in Otay Mesa, California. Venue is also proper pursuant to 28 U.S.C. § 1391(e) because the Defendants are all officers and agencies of the United States; the Plaintiff resides in this judicial district; and there is no real property involved in this action.

## **IV. PARTIES**

9. Petitioner ANA LESIC is a native and citizen of Croatia who resides in the Southern District of California and is currently detained at the Otay Mesa Detention Center.

10. Petitioner NIKICA LESIC is a native and citizen of Croatia who resides in the Southern District of California and is currently detained at the Otay Mesa Detention Center.

11. Respondent CHRISTOPHER J. LAROSE is the warden of Otay Mesa Detention Center. Respondent LaRose oversees the day-to-day operations of Otay Mesa Detention Center and acts at the direction of Respondents FREDEN, LYONS, NOEM, AND BONDI. He is a custodian of the Petitioner and is named in this official capacity.

12. Respondent JOSEPH FREDEN is the Acting Field Office Director of U.S. Immigration and Customs Enforcement (ICE), in San Diego California. ICE is the component of the Department of Homeland Security (DHS) which is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. Mr. Freden is named in his official capacity. In his official capacity, he is a legal custodian of the petitioner.

13. Respondent TODD LYONS is the Acting Director of ICE and is named in his official capacity. In his official capacity, he is a legal custodian of the petitioner.

14. Respondent KRISTI NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency of which ICE is a component part. DHS is responsible for the administration and enforcement of the Immigration and Nationality Act (INA) and all other laws pertaining to the immigration of noncitizens. In her capacity as Secretary of the DHS, Respondent NOEM has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8 U.S.C. § 1103(a). Respondent NOEM is the ultimate legal custodian of Petitioner.

15. Respondent PAM BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA).

## **V. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents “forthwith,” unless the petitioner is

not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” Id.

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” Fay v. Niola, 372 U.S. 391, 400 (1963).

18. Petitioners are “in custody” for the purpose of § 2241 because they were arrested and remain detained by the Respondents.

## **VI. STATEMENT OF FACTS**

19. Petitioner Ana Lesic is an asylum applicant whose case is currently on appeal before the Board of Immigration Appeals. Ms. Lesic first arrived in the United States on a B-2 visa in 2004 and later changed status to O-2. She filed for asylum affirmatively in July 2009, while she still had a timely filed request to extend her lawful non-immigrant visa status pending. The asylum office referred her case to the immigration court in August 2009. The court heard her asylum claim, but administratively closed the proceedings over the Respondent’s objection on October 28, 2011 without issuing a decision.

20. On May 24, 2018, during the first Trump administration, Ms. Lesic was arrested at her home and her removal proceedings were re-calendared. At the time, the government cited a 2013 in absentia conviction that Ms. Lesic had suffered in Croatia. This in absentia conviction part of the persecution that forms the basis for her asylum case. On June 5, 2018, with full information regarding the conviction and its relation to Ms. Lesic's pending asylum claim, an Immigration Judge granted Ms. Lesic's release on a bond of \$10,000 with ATD monitoring at the discretion of DHS. Since that time, Ms. Lesic has worn a GPS monitor and has never once violated the terms of her release.

21. Petitioner Nikica Lesic is Ana Lesic's husband. He arrived in the United States a few months before her, on an O-1 visa to teach piano. Mr. Lesic is a concert pianist. When his wife filed for asylum, Mr. Lesic was included in her application as a derivative spouse.

22. When Ms. Lesic's asylum claim was denied by an Immigration Judge on December 8, 2022, she filed a timely appeal with the Board of Immigration Appeals. For the next three years, Ms. Lesic continued to abide by the conditions of her release set by Respondents in 2018.

23. When his wife's asylum claim was denied by the immigration judge, Mr. Lesic was granted the privilege of voluntary departure. He was not ordered removed. He timely paid the required bond of \$500. When the asylum case was

appealed to the BIA, Mr. Lesic's period of voluntary departure was stayed until the BIA completed its review.

24. On January 20, 2025, President Donald J. Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping changes to immigration enforcement, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion," EO instructs the DHS Secretary to "take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures, including through mass detention.

25. On January 30, 2025, three ICE agents appeared at Ms. Lesic's home and attempted to pull her out and detain her, bruising her arm in the process. They were only dissuaded after her husband showed them the large number of anti-psychotic medications she was taking and explained that she was at risk of seizure. This incident was reported in the Voice of San Diego on February 11, 2025

26. Following this incident, Ms. Lesic continued to make her required check-ins with ISAP and to wear her GPS monitor as ordered.

27. On Monday, October 6, 2025, Ms. Lesic was asked to report to the ICE ERO office in San Diego to "discuss her appeal." When Ms. Lesic appeared

as requested, she was detained and informed that her bond was being cancelled.

Mr. Lesic, who was only present to accompany his wife, was also detained and informed that his voluntary departure bond was being cancelled.

28. That same day, undersigned Counsel spoke to ICE Officer Jobe, who, when asked why the Lesics were being detained, acknowledged both bonds and the fact that the case was pending with the BIA, but responded that there was “a new administration” that had ordered everyone to be detained.

29. The Lesic’s appeal continues to be pending at the BIA; there has been no final order of removal against Ana Lesic. Nikica Lesic’s voluntary departure period is likewise stayed. He has no order of removal.

### **XIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

30. With regard to habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. Hernandez v. Sessions, 872 F.3d 976, 988 (9<sup>th</sup> Cir. 2017). A court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” Id. (quoting Liang v. Ashcroft, 370 F.3d 994, 1000 (9<sup>th</sup> Cir. 2004)). Petitioners assert that exhaustion should be waived because administrative remedies are (1) futile and (2) their continued detention results in irreparable harm.

31. No statutory exhaustion requirements apply to Petitioners' claim of unlawful custody in violation of their due process rights, and there are no administrative remedies that they need to exhaust. See, American-Arab Anti-Discrimination Comm. v. Reno, 70 F.13d 1045, 1058 (9<sup>th</sup> Cir. 1995) (Finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review constitutional claims); In re Indefinite Det. Cases, 83 F.Supp. 2d 1098, 1099 (C.D.Cal 2000)(same).

32. Petitioner Ana Lesic suffers from Bipolar Disorder, Post-Traumatic Stress Disorder, and Generalized Anxiety Disorder. She takes five (5) different medications to control her symptoms. She is under the care of a psychiatrist and receives regular individual therapy. Being detained is one of her biggest fears and the longer she remains in custody, the worse her mental health will deteriorate.

33. The Petitioners are a married couple who both work to support themselves. They are currently at risk of losing their apartment, their cars, and their jobs.

34. The court must consider this in its irreparable harm analysis of the effects on Petitioners as their detention continues. See, De Paz Sales v. Barr, No. 19-CV-07221-KAW, 2020 W: 353465, at \*4 (N.D. Cal. Jan. 21, 2020)(noting that petitioner, "continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts,"

in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

## XII. LEGAL FRAMEWORK

35. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” Addington v. Texas, 441 U.S. 418, 423 (1979).

36. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

37. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. Reno v. Flores, 507 U.S. 292, 306 (1993).

38. The Immigration and Nationality Act establishes various procedures through which individuals may be detained pending a decision on whether or not the noncitizen is to be removed. 8 U.S.C. § 1226(a).

39. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. See, 8 U.S.C. § 1229a.

40. Post Conclusion Voluntary departure is governed by 8 U.S.C. § 1229c(b). It allows an immigration judge to “permit an alien voluntarily to depart the United States at the alien’s own expense” instead of being removed.

41. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk.

Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Matter of Guera, 24 I&N Dec. 37 (BIA 2006).

42. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.

43. Once a determination to release an individual from custody is made, the release order may be revisited when the facts and circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual’s release only when the facts and circumstances warrant it. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 CFR § 1236.1(c)(9). By regulation, revocation

decisions are limited in nature and may only be made by certain authorized individuals. Id.

### **XIII. CLAIMS FOR RELIEF**

#### **COUNT ONE**

**Violation of the Administrative Procedure Act—5 U.S.C. § 706(2)(A)**  
**Abuse of Discretion**  
**Violation of 8 U.S.C. § 1226(b), 8 CFR § 1236.1(c)(9)**

44. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

45. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

46. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”

Nat'l Ass'n of Home Builders v. Defs. of Wildlife, 551 U.S. 644, 658 (2007)(quoting Motor Vehicle Mfrs. Ass'n of U.S. Inc. v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983)).

47. To survive an APA challenge, the agency must articulate “a satisfactory explanation for its action, “including a rational connection between the

facts found and the choice made.” Dept. of Com. v. New York, 139 S.Ct. 2551, 2569 (2019)(citation omitted).

48. By categorically revoking Petitioner Ana Lesic’s bond and re-detaining her without consideration of her individualized facts and circumstances, Respondents have violated the APA.

49. By categorically revoking Petitioner Nikica Lesic’s voluntary departure bond and retaining him without consideration of his individualized facts and circumstances, Respondents have violated the APA.

50. By detaining the Petitioners categorically, Respondents have further abused their discretion because there have been no changes to their facts or circumstances that would warrant the revocation of Ana Lesic’s bond and release from custody since an Immigration Judge made the initial custody determination in 2018. Likewise, there have been no changes to their facts or circumstances that would warrant the revocation of Nikica Lesic’s voluntary departure bond since the Immigration Judge granted him that privilege on December 8, 2022.

51. Respondents considered Petitioner Ana Lesic’s facts and circumstances in June 2018 and determined that she was not a flight risk or danger to the community. There have been no changes to the facts that justify this revocation of bond and re-detention. The fact that the Petitioner has already been granted release on bond by Respondents under the same facts and circumstances

shows that the Respondents do not consider her to be a danger to the community or a flight risk.

52. Respondents considered Petitioner Nikica Lesic's facts and circumstances in December 2022 and determined that he merited a grant of voluntary departure in lieu of removal. Voluntary departure requires, *inter alia*, that a noncitizen establish that he is a person of good moral character for the previous 5 years. The fact that the Respondents granted voluntary departure to Nikica Lesic shows that they do not consider him to be a danger to the community or a flight risk. There have been no changes to the facts that justify this revocation of bond and detention.

**COUNT TWO**

**Violation of the Administrative Procedure Act—5 U.S.C. § 706(2)(A)  
Not in Accordance with Law and in Excess of Statutory Authority  
Violation of 8 U.S.C. § 1226(b), 8 CFR § 1236.1(c)(9)**

53. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

54. Under the APA, a court “shall [...] hold unlawful [...] agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A-D).

55. 8 U.S.C. § 1226(b) states that “[t]he Attorney General at any time may revoke a bond or parole authorized under 8 U.S.C. § 1226(a)” and rearrest a noncitizen under the initial warrant. In implementing this statutory provision, 8 CFR § 1236.1(c)(9) clarifies that such revocations may only be carried out in the “discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).”

56. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable if not void *ab initio*.” L.M.-M. v. Cuccinelli, 442 F.Supp. 3d 1, 35 (D.D.C. 2020), citing SW General, Inc. v NLRB, 796 F.3d 67, 79 (D.C. Cir. 2015); see also, Hooks v. Kitsap Tenant Support Servs., Inc., 816 f.3d 550, 555 (9<sup>th</sup> Cir. 2016)(invalidating agency action because it was taken by an unauthorized official).

57. On information and belief, Respondents have revoked Petitioner Ana Lesic’s prior custody determination as a result of a categorical policy prepared by and implemented by unidentified government officials in Washington D.C., not through the individualized exercise of discretion required by law or by the individuals designated by regulation to do so.

58. Because Petitioner’s revocation of bond and release from custody has been or will be categorically directed by government officials not authorized by

law to make this determination, Respondent's detention of Petitioner Ana Lesic is not in accordance with law and in excess of statutory authority.

59. On information and belief, Respondents have revoked Petitioner Nikica Lesic's grant of voluntary departure that was made by an Immigration Judge. This was the result of a categorical policy prepared by and implemented by unidentified government officials in Washington D.C., not through the individualized exercise of discretion required by law or by the individuals designated by regulation to do so.

60. Because Petitioner's revocation of Petitioner Nikica Lesic's voluntary departure bond and detention has been made or will be categorically directed by government officials not authorized by law to make this determination, Respondent's detention of Petitioner Nikica Lesic is not in accordance with law and in excess of statutory authority.

**COUNT THREE**  
**Violation of Fifth Amendment Right to Due Process**  
**Procedural Due Process**

61. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

62. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due

process protects “all ‘persons’ within the United States, including [noncitizens] whether their presence here is lawful, unlawful, temporary, or permanent.”

Zadvydas v. Davis, 533 U.S. 678, 693 (2001); accord Flores, 507 U.S. at 306.

63. Due process requires that government action be rational and non-arbitrary. See, U.S. v. Trimble, 487 F.3d 752, 757 (9<sup>th</sup> Cir. 2007).

64. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not “unlimited” and must comport with constitutional due process. See, Zadvydas, 533 U.S. at 698.

65. Here, Respondents have chosen to revoke Petitioner Ana Lesic’s release in an arbitrary manner, not based on a rational and individualized determination of whether she is a safety or flight risk. Respondents have likewise arbitrarily chosen to detain Nikica Lesic despite the fact that he is not currently removable, having been granted voluntary departure, the requirements for which he has complied with in full. Because no individualized custody revocation determinations have been made and no circumstances have changed to make either Petitioner a flight risk or a danger to the community, Respondents’ actions are violations of due process. .

#### **XIV. PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Issue an order prohibiting Respondents from transferring Petitioner outside the jurisdiction of the San Diego Field Office and/or the Southern District of California pending the resolution of this case;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
- (4) Declare that revocation of Petitioner Ana Lesic's bond and parole from custody was done in violation of statute and regulation;
- (5) Declare that revocation of Petitioner Nikica Lesic's voluntary departure bond and detention was done in violation of statute and regulation;
- (6) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- (7) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioners from their custody
- (8) Award costs and reasonable attorney's fees pursuant to the Equal Access to Justice Act, and on any other basis justified under law; and
- (9) Grant such other relief as the Court deems just and proper.

Respectfully submitted on this 15th day of October 2025

*Cheri Attix*

Law Office of Cheri Attix  
2221 Camino del Rio S, Suite 201  
San Diego, CA 92108  
Tel: (619) 847-8694  
cheriattix@icloud.com  
Counsel for Petitioner-Plaintiff

**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Dated: October 15, 2025

*Cheri Attix*

Law Office of Cheri Attix  
2221 Camino del Rio S, Suite 201  
San Diego, CA 92108  
Tel: (619) 847-8694  
cheriattix@icloud.com  
Counsel for Petitioner-Plaintiff