UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JULIANA MILENA OJEDA MONTOYA, Petitioner, v. KEVIN JOYCE, Sheriff, Cumberland County Sheriff's Office, Cumberland County, DAVID WESLING, Acting Field Office Director, Boston Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary, U.S. Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, U.S. Department of Justice, Respondents.	Case Number: 2:25-CV-00558-SDN

PETITIONER'S RESPONSE TO ORDER FOR BRIEFING (DKT. #14)

The Petitioner Juliana Milena Ojeda Montoya, by and through undersigned counsel, submits this brief responding to the Court's Order for Briefing, Dkt. 14, and to Respondents' concession that Ms. Ojeda Montoya does not fall under the Laken Riley Act, Dkt. 15.

Based on the following, the Court should:

(1) grant Ms. Ojeda Montoya's Petition for a Writ of Habeas Corpus;

(2) declare that Ms. Ojeda Montoya's custody status falls under 8 U.S.C. § 1226(a), that Ms. Ojeda Montoya is not subject to mandatory detention under 8 U.S.C. §§ 1225(b)(2) or § 1226(c), and that the Respondents' arrest of Ms. Ojeda Montoya's arrest without pre-detention notice, an opportunity to be heard, or a deliberative exercise of discretion violated 8 U.S.C. § 1226(a) and the Due Process Clause; and

(3) order Respondents not to re-detain Ms. Ojeda Montoya absent a future change in circumstances, pre-detention notice, and a pre-detention individualized hearing on dangerousness and flight risk, in conformity with 8 U.S.C. § 1226(a) and *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021).

Argument

On the morning of November 6, 2025, U.S. Immigration and Customs Enforcement ("ICE") agents arrested Ms. Ojeda Montoya suddenly, without providing her any notice or opportunity to be heard. Dkt. 1, Petition for Writ of Habeas Corpus, at ¶¶ 19–21 (the "Petition"). This resulted in a chaotic, traumatic scene, with ICE agents forcibly separating Ms. Ojeda Montoya from her one-and-a-half year-old daughter, and pushing, hitting, and pressing against the neck of her husband, ultimately causing him to go into convulsions and lose consciousness. *Id.*

In their Return and Response, Respondents argued that ICE's decision to re-detain Ms. Ojeda Montoya was premised on a finding that she was subject to mandatory, nondiscretionary detention, first under provisions of the Laken Riley Act that purport to extend mandatory detention under 8 U.S.C. § 1226(c), and, alternatively, under 8 U.S.C. § 1225(b)(2), which applies to noncitizens deemed "applicants for admission." Dkt. 8, Return and Response, at 11–16 (captioned "Petitioner **must** be detained pursuant to 8 U.S.C. § 1226(c)") (emphasis added); at 16 (captioned "Petitioner **must** alternatively be detained pursuant to 8 U.S.C. § 1225(b)(2)") (emphasis added).

The Respondents now concede that the Laken Riley Act does not apply here and that the first basis they relied on to impose nondiscretionary, mandatory detention on Ms. Ojeda Montoya was wrong. Dkt. 15, Respondents' Response to Order for Briefing, at 1–2 ("Nov. 13 Response to Order"). Even at the time of filing their earlier Return and Response, Respondents acknowledged that the second basis they relied on to impose nondiscretionary, mandatory determination on Ms.

Ojeda Montoya is untenable under "recent caselaw from this Court," but they decided to rely on it anyway. Return and Response at 16 (citing *Chogllo Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 22, 2025) and *Bermeo Sicha v. Bernal*, 25-cv-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025)).[1] Put another way, Respondents admit that they declined to exercise any discretion when deciding to re-detain Ms. Ojeda Montoya and instead acted based on an erroneous legal conclusion that they had no discretion and were required to do so. Return and Response at 11–16.

Re-detaining a noncitizen under the discretionary detention authority provided by 8 U.S.C. § 1226(a) requires that DHS engage in a deliberative process and make a particularized finding of dangerousness or flight risk **before** depriving the noncitizen of their liberty. *Contreras Maldonado v. Cabezas*; Civ. No. 25-13004, 2025 WL 2985256, at *5 (D.N.J. Oct. 23, 2025) (holding that ICE violated its own regulations and the Due Process Clause when it re-detained a noncitizen without first making a particularized determination of flight risk or dangerousness) (citing 8 C.F.R. § 1236.1(c)(8)); *Lopez Benitez v. Francis*, No. 25-CIV- 5937-DEH, 2025 WL 2371588, at *10-11 (S.D.N.Y. Aug. 13, 2025) ("Reading § 1226(a) as requiring an initial detention decision by DHS is the only way to make sense of the broader statutory and regulatory scheme, which provides for an opportunity to appeal a detention decision to an immigration judge who then conducts their own

[1] Aside from Respondents' now-withdrawn contention that the Laken Riley Act applies here, this case is not materially distinguishable from earlier cases where the Court has held that Respondents misclassified individuals as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See, e.g., Petion v. Hyde*, No. 2:25-CV-00535-SDN, 2025 WL 3072567 (D. Me. Nov. 3, 2025); *Aguilar Guerra v. Joyce*, No. 2:25-CV-00534-SDN, 2025 WL 2999042, (D. Me. Oct. 24, 2025); *Perez Pina v. Stamper*, No. 2:25-CV-00509-SDN, 2025 WL 2939298, (D. Me. Oct. 16, 2025); *Chogllo Chaffla*, 2025 WL 2531027. Ms. Ojeda Montoya entered the U.S. without inspection over two years ago and was detained inside the country, not at a port-of-entry. Dkt 6-1, ¶ 4 ("Am. Petition"). Respondents served Ms. Ojeda Montoya with a Notice to Appear alleging that she was "an alien present in the United States," not that she was an "arriving alien." *Id.* at ¶ 9; Dkt. 1-1, Notice to Appear. Respondents performed a discretionary custody determination of Ms. Ojeda Montoya under paperwork specifically citing 8 U.S.C. § 1226. Am. Petition, ¶ 5, Dkt. 1-2, Notice of Custody Determination. Respondents released Ms. Ojeda Montoya from detention on an immigration bond under 8 U.S.C. § 1226(a). Am. Petition ¶ 10, Dkt. 1-3, Immigration Bond. Ms. Ojeda Montoya's most recent detention by Respondents occurred inside the U.S., long after she entered the country. Am. Petition, ¶¶ 19–22.

assessment of the noncitizens' flight risk and dangerousness, among other factors."); *see also* *Castaneda v. Souza,* 810 F.3d 15, 19 (1st Cir. 2015) (explaining that DHS's discretionary power to detain under § 1226(a) is limited by its own regulations to detention of those who present a danger to the community or flight risk); *Matter of Sugay,* 17 I&N Dec. 637, 640 (BIA 1981) (providing that a noncitizen released on bond may not be re-detained "absent a change of circumstance").

This Court has repeatedly acknowledged this principle in its earlier decisions, holding that when, as here, a noncitizen was initially released on bond, they may be re-detained (if at all) only after a pre-detention hearing. *Bermeo Sicha*, 2025 WL 2494530, at *7 (collecting cases holding that "noncitizens . . . initially released on bond or conditional parole under § 1226(a) are entitled to a hearing before their bond or parole is revoked"); *Chogllo Chafla v. Scott*, 2025 WL 2688541, at *9 (holding that "the government interest in avoiding any pre-detention process . . . is minimal").

It also flows from controlling precedent. As the First Circuit has held, DHS's "exercise of its power to detain immigrants pending removal is 'subject to important constitutional limitations'" imposed by the Due Process Clause. *Hernandez-Lara,* 10 F.4th at 28 (quoting *Zadvydas v. Davis,* 533 U.S. 678, 695 (2001). And as the Supreme Court has explained, "[i]n our society liberty is the norm," and pre-hearing detention "the carefully limited exception." *U.S. v. Salerno*, 481 U.S. 739, 755 (1987).

Applying the three-part balancing test under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) to the facts here confirms that Respondents' actions in arresting Ms. Ojeda Montoya without any pre-detention notice, opportunity to be heard, or individualized assessment of her dangerousness and flight risk violated her Due Process rights. *See Bermeo Sicha*, 2025 WL

2494530, at *6–7 (conducting *Mathews* balancing and concluding that factors weigh in favor of requiring a pre-detention bond hearing); *Chogllo Chafla*, 2025 WL 2688541, at *10 (same).

First, the private interest affected by detention is the most significant liberty interest that exists: freedom from imprisonment. *See Zadvydas*, 533 U.S. at 690; *Hernandez-Lara*, 10 F.4th at 28; *Bermeo Sicha*, 2025 WL 2494530, at *6. Ms. Ojeda Montoya has lived in the United States since 2023; she lives in Massachusetts with her husband and one-and-a-half-year old daughter, where she works at Burger King to help support her young family. Dkt. 6, Am. Petition, ¶¶ 4, 11, 15. She is still breast-feeding her young daughter. Dkt. 13, Notice of Supplemental Information, at 1.

Second, without a pre-detention hearing, the risk of erroneous deprivation is high. *Bermeo Sicha*, 2025 WL 2494530, at *6. Indeed, the government has already asserted two different erroneous bases for its November 6, 2025 arrest of Ms. Ojeda Montoya and has not asserted any valid bases for the arrest. *See* Return and Response at 11–16. And a state criminal court has already determined that Ms. Ojeda Montoya is entitled to release on her own recognizance. Dkt. 6-1, Am. Petition, at ¶ 17. As the specific facts of Ms. Ojeda Montoya's arrest by ICE show, failing to provide her pre-deprivation process and instead suddenly detaining her without notice dramatically increased the harm caused by detention. *See* Dkt. 14, Order Granting Release, at 7 (finding "exceptional circumstances" where Ms. Ojeda Montoya "has a young daughter at home whom she needs to breastfeed and a husband who recently suffered an acute medical episode, seemingly as a result of ICE agents' actions"); *see also* Am. Petition at ¶ 20 (detailing how ICE agents pulled Ms. Ojeda Montoya and her husband over at 7 a.m. as he was driving her to work and "forcibly separated [her] from her daughter").

Third, "the government interest in avoiding any pre-detention process in this instance is low," because "the government has little legitimate interest in suddenly detaining without a hearing noncitizens whom DHS already determined to be neither a flight risk nor a danger to the community." *Bermeo Sicha*, 2025 WL 2494530, at *6-7 (citing *Hernandez-Lara*, 10 F.4th at 32-33). That is especially so when there is affirmative, recent evidence presented by Respondents that Ms. Ojeda Montoya is not a flight risk and would not abscond if requested to attend a bond hearing. Dkt. 8-4, at 6 (police report narrative stating that when a police officer left Ms. Ojeda Montoya a message informing her that she was a suspect in a crime, she called him back and reported to the police station at his request).

Considered together, the *Mathews* factors weigh strongly in favor of finding that the Respondents violated Ms. Ojeda Montoya's due process rights when they detained her without notice, an opportunity to be heard, or any deliberative exercise of discretion.

Conclusion

Based on the foregoing, the Court should:

(1) grant Ms. Ojeda Montoya's Petition and issue a Writ of Habeas Corpus;

(2) declare (a) that Ms. Ojeda Montoya's custody falls under 8 U.S.C. § 1226(a); (b) that Ms. Ojeda Montoya is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2); (c) that Ms. Ojeda Montoya is not subject to mandatory detention under 8 U.S.C. § 1226(c), as Respondents have conceded; and (d) that the Respondents' arrest of Ms. Ojeda Montoya without any pre-detention notice, opportunity to be heard, or deliberative exercise of discretion violated 8 U.S.C. § 1226(a) and the Due Process Clause; and

(3) order Respondents not to re-detain Ms. Ojeda Montoya absent a future change in circumstances, pre-detention notice, and a pre-detention individualized hearing on dangerousness and flight risk under 8 U.S.C. § 1226(a) and *Hernandez-Lara.*[2]

Respectfully submitted this 14th day of November, 2025.

Juliana Milena Ojeda Montoya,

By and through her Counsel,

/s/ Max I. Brooks
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[2] In the alternative, this Court should either (1) hold an individualized bond hearing assessing dangerousness and flight risk under 8 U.S.C. § 1226(a) and *Hernandez-Lara* in 45 days or soon after; or (2) order the Respondents to provide Ms. Ojeda Montoya such a hearing before an Immigration Judge in 45 days or soon after. *See Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455, 478 (D. Mass 2010) (holding that proper remedy in habeas challenge of noncitizen's detention under 8 U.S.C. § 1226(c) was for the federal district court to conduct a bond hearing); *Aguilar Guerra*, 2025 WL 2999042, at *3 (ordering government to immediately release noncitizen misclassified as subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and to provide noncitizen an individualized bond hearing before and Immigration Judge "within 30 to 45 days"). If the Court grants this alternative relief, the Court should further order Respondents not to re-detain Ms. Ojeda Montoya until and unless such a hearing is held and the adjudicator finds that Ms. Ojeda-Montoya is a danger to the community or a flight risk.

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I electronically filed the foregoing document, Petitioner's Response to Order for Briefing, via the Court's CM/ECF system.

Dated: November 14, 2025

/s/ Max Isak Brooks
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