UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

DANIELLI DE SOUZA RIBEIRO, *Petitioner*, *v.* JONATHAN TUREK, in his official capacity as Interim-Superintendent, Chittenden Regional Correctional Facility; GADYACES SERRALTA, in his official capacity as the Director of the United States Marshals Service; PATRICIA HYDE, in her official capacity as the Acting Boston Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; DAVID W. JOHNSTON, in his official capacity as the Vermont Sub-Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations; TODD M. LYONS, in his official capacity as the Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and PAMELA BONDI, in her official capacity as U.S. Attorney General, *Respondents*.	No. 2:26-cv-00015

FEDERAL RESPONDENTS' OPPOSITION TO
AMENDED PETITION FOR WRIT OF HABEAS CORPUS

PRELIMINARY STATEMENT

As she alleges in her Amended Petition for Writ of Habeas Corpus, ECF No. 14, Petitioner Danielli De Souza Ribeiro was apprehended by United States Border Patrol agents on November 7, 2025, after she hiked through the Canadian woods and crossed into Vermont, *see id.* ¶¶ 2, 33-34. The same day, CBP determined that Petitioner was inadmissible under 8 U.S.C.

§ 1182(a)(7)(A)(i)(I) and issued her a Notice and Order of Expedited Removal, which she signed. ECF No. 14-3 (final Order of Expedited Removal under 8 U.S.C. § 1225(b)(1)).

Because Petitioner was subject to expedited removal procedures under 8 U.S.C. § 1225(b)(1), this Court's review of the Petition is sharply limited. Under 8 U.S.C. § 1252(e), the Court has jurisdiction to review only: (1) whether Petitioner is a noncitizen; (2) whether Petitioner was ordered removed under § 1225(b)(1); and (3) whether Petitioner can prove that she is a Lawful Permanent Resident, a refugee, or an asylee and that such status has not been terminated. Petitioner admits that she lacks lawful status, and she was served a valid Order of Expedited Removal under § 1225(b)(1), so the Petition should be denied, and the Temporary Restraining Order (ECF No. 10) should be dissolved.

Even if this Court had jurisdiction to consider the claims relating to the short time that Petitioner spent in United States Marshal's custody following the dismissal of the criminal charge against her or the T-visa application that she allegedly filed on February 5, 2026, neither would change the result. The Department of Homeland Security had 48 hours to execute the immigration detainer it had lodged, and no statute or regulation entitles Petitioner to a bond hearing or release pending adjudication of her visa application. The same goes for Petitioner's pending credible fear interview: detention remains mandatory until that process concludes.

RELEVANT BACKGROUND

A. Factual Background

Petitioner Danielli De Souza Ribeiro is a Brazilian national who applied for a visa to enter the United States in July 2025. Amended Pet. ¶¶ 19[1], 27. That visa application was denied. Amended Pet. ¶ 27. Petitioner alleges that she then paid money to a website "that purported to

[1] The Amended Petition contains two paragraphs labeled 19. This citation refers to the second.

provide travel packages to [redacted] that included guaranteed housing, employment, and a work permit." Amended Pet. ¶ 28. When she arrived at customs in Canada, Petitioner claimed asylum, and Canadian authorities seized her Brazilian passport. Amended Pet. ¶ 31. Despite making an asylum claim, Petitioner corresponded with other individuals she did not know and agreed to be picked up by a car at 3:00 a.m. and transported to the United States-Canada border. Amended Pet. ¶ 33. On November 7, 2025, after being driven to a wooded area near the border and hiking for several hours in the dark, Petitioner crossed the international border separating the Canadian Province of [redacted] from Vermont. Amended Pet. ¶¶ 33-34. Shortly thereafter, Petitioner was apprehended by United States Border Patrol agents. Amended Pet. ¶ 34.

At the Newport Vermont Border Patrol Station, Petitioner gave a sworn statement under 8 U.S.C. § 1225(b)(1). Ex. A. Petitioner swore that she is not a United States citizen, that she did not have any immigration documents that would allow her to enter the United States legally, and that she had no United States immigration petitions pending. Ex. A, at 3. She further admitted to entering the United States "by foot" through "the woods from Canada" on November 7, 2025. Ex. A, at 4. Petitioner "kn[e]w it is prohibited to enter that way." Ex. A, at 4. In her sworn statement, Petitioner did not indicate an intention to apply for asylum or that she has a fear of persecution if she is returned to Brazil. *See* Ex. A. The record of the sworn statement nevertheless reflects that the CBP immigration officer was "ordering [Petitioner] removed from the United States pursuant to 8 U.S.C. 1225(b)(1)(A)(i) and will be referring [Petitioner's] claim to asylum to an asylum officer for adjudication." Ex. A, at 6. Petitioner was then transported to Chittenden Regional Correctional Facility, where she remains. Amended Pet. ¶ 35.

Petitioner was also served a Notice and Order of Expedited Removal on the day she was apprehended at the border. ECF No. 14-3. Petitioner signed that document to acknowledge receipt. ECF No. 14-3, at 2.

On November 10, 2025, Petitioner was charged by criminal complaint with a single count of illegal entry under 18 U.S.C. §1325(a). *See United States v. De Souza-Ribeiro*, No. 25-mj-160 (D. Vt. filed Nov. 10, 2025); *see also* Amended Pet. ¶ 35. The United States Marshal's Service assumed custody of Petitioner at Chittenden Regional Correctional Facility, and DHS lodged an immigration detainer. Ex. B. The immigration detainer requested that the U.S. Marshal's Service "[m]aintain custody of [Petitioner] for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody." Ex. B, at 1.

On January 21, 2026, the United States dismissed the criminal charge against Petitioner. ECF No. 14-1. On January 23, 2026 (*i.e.*, within 48 hours of the criminal charge being dismissed), DHS resumed custody of Petitioner. Amended Pet. ¶ 38.

On January 27, 2026, Petitioner filed a Petition for Writ of Habeas Corpus and an Emergency Motion for a Temporary Restraining Order. ECF Nos. 1, 2. The original petition was predicated on her allegedly unlawful detention by the U.S. Marshal's Service from January 21, when the criminal case was dismissed, until January 23, when DHS resumed custody. ECF No. 1 ¶¶ 4-5. The original petition also alleged that Petitioner '[redacted]' at Chittenden Regional Correctional Facility, and that she "is preparing applications for U-Visa and T-Visa status." ECF No. 1 ¶¶ 39-42.

On February 6, 2026, Petitioner filed an Amended Petition. ECF No. 14. The Amended Petition alleges that she had—that day—filed an application for a T visa based on being an alleged

trafficking victim. ECF No. 14 ¶ 40; ECF No. 14-5. The Amended Petition also indicates that Petitioner has not yet filed a U-Visa application based on [redacted], ECF No. 14, ¶ 42.

The Amended Petition asserts violations of the Fourth and Fifth Amendments (again based on remaining in U.S. Marshal's custody from January 21-23, 2026). ECF No. 14 ¶¶ 44-55. It also alleges that Petitioner is entitled to a bond hearing by virtue of having filed a T-visa application. ECF No. 14, ¶ 53. Petitioner requests declaratory relief and immediate release. ECF No. 14, at 16.

B. Legal Background

An applicant for admission to the United States is a person "present in the United States who has not been admitted or who arrives in the United States [] whether or not at a designated port of arrival . . . ." 8 U.S.C. § 1225(a)(1). The Supreme Court has explained that "an alien who tries to enter the country illegally is treated as an 'applicant for admission' and an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry' into the United States." *Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Put differently, an "alien who arrives at a 'port of entry,' *i.e.* a place where the alien may lawfully enter, must apply for admission. An alien [] who is caught trying to enter at some other spot is treated the same way." *Id.* at 108. Such applicants for admission—"even those paroled elsewhere in the country for years pending removal—are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)).

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104208, Tit. III, § 302(a), 110 Stat. 3009-579, Congress created "expedited removal" procedures to "streamline[] rules and procedures . . . to make it easier to deny admission to inadmissible aliens," while ensuring that there is "no danger that an alien with a genuine asylum

claim will be returned to persecution." H.R. Rep. No. 469, 104th Cong., 2d Sess. Pt. 1, at 157–58 (1996) (House Report); *see also Thuraissigiam*, 591 U.S. at 109-11 (describing the expedited removal process).

For example, IIRIRA amended the Immigration and Nationality Act ("INA") to provide that, if an immigration officer determines that an alien "who is arriving in the United States" lacks valid documents or is inadmissible due to fraud, the officer "shall order the alien removed from the United States without further hearing." 8 U.S.C. § 1225(b)(1)(A)(i). Under § 1225(b)(1)(A)(i), immigration officers can also issue an order of expedited removal to a person "who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that [the individual] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* § 1225(b)(1)(A)(iii)(II).

If, however, the noncitizen expresses a fear of persecution or torture, the expedited removal order is held in abeyance, and an asylum officer must determine whether he or she has a credible fear of persecution. *See* 8 U.S.C. §§ 1225(b)(1)(A)(ii) & (B); 8 C.F.R. §§ 208.30, 235.3(b)(4). If an asylum officer makes a positive finding of credible fear, the individual "shall be detained for further consideration of the application of asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). That detention is mandated "throughout the completion of applicable proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).

If the asylum officer makes a negative fear determination, the applicant has an opportunity to have such determination reviewed by an Immigration Judge ("IJ"). 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 1003.42. If the IJ reverses and makes a positive credible fear

determination, the IJ will vacate the order of expedited removal, and DHS will then commence removal proceedings before the IJ under 8 U.S.C. § 1229a. *See* 8 C.F.R. § 1208.30(g)(2)(iv)(B).

If the IJ affirms the asylum officer's negative fear determination, the case is returned to DHS for execution of the expedited removal order, and there is no right to appeal the IJ's decision to the Board of Immigration Appeals ("BIA"). 8 C.F.R. § 1208.30(g)(2)(iv)(A). Courts of appeals also lack jurisdiction to directly review expedited removal orders and credible fear determinations. 8 U.S.C. § 1252(a)(2)(A). A person subject to expedited removal thus "has an opportunity at three levels to obtain an asylum hearing, and the applicant will obtain one unless the asylum officer, a supervisor, and an immigration judge all find that the applicant has not asserted a credible fear." *Thuraissigiam*, 591 U.S. at 110-11.

STANDARD OF REVIEW

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress has separately stripped the court of jurisdiction to hear the claim. To warrant a grant of habeas relief, the burden is on the petitioner to prove that her custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941); *Skaftourous v. United States*, 667 F.3d 144, 158 (2d Cir. 2011).

ARGUMENT

I. The Petition should be dismissed for lack of subject-matter jurisdiction.

Congress stripped district courts of jurisdiction to review most agency action in connection with expedited removal proceedings. 8 U.S.C. § 1252(a)(2). Section 1252(a)(2)(A) provides that

"no court shall have jurisdiction to review . . . except as provided in [§ 1252(e)]": (1) "any individual determination or [any] cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1);" (2) "a decision . . . to invoke the provisions of such section;" or (3) "procedures and policies adopted . . . to implement the provisions of section 1225(b)(1)." Section 1252(a)(2)(A)(iii) precludes courts from reviewing "the application of [§ 1225(b)(1)] to individual aliens, including the determination made under section 1225(b)(1)(B)," with no carve-outs permitting judicial review as provided under § 1252(e).[2]

Section 1252(a)(2)(A) thus squarely removes from federal courts any jurisdiction to review issues "relating to section 1225(b)(1)," except as "provided in subsection (e)." *Make the Road New York v. Wolf*, 962 F.3d 612, 626 (D.C. Cir. 2020); *see also Avendano-Ramirez v. Ashcroft*, 365 F.3d 813, 818 (9th Cir. 2004) (section 1252(a)(2)(A) bars jurisdiction unless § 1252(e) restores it "to a rather narrow group of questions"). And under § 1252(e), a district court may review only whether the petitioner: is an alien; was ordered removed under 8 U.S.C. § 1225(b)(1); and can prove, by a preponderance of the evidence, that she is a Lawful Permanent Resident, a refugee, or an asylee and that such status has not been terminated. *See* 8 U.S.C. § 1252(e)(2)(A)-(C); *Thuraissigiam*, 591 U.S. at 111.

Section 1252(e)(5) further commands that, in "determining whether an alien has been ordered removed under [8 U.S.C. § 1225(b)(1)], the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal." 8 U.S.C.

[2] Congress did, however, permit limited review of challenges to the "validity of the system," defined as whether the expedited removal statute or any implementing regulation is constitutional or whether such statute and regulation is inconsistent with the INA or other statute. 8 U.S.C. § 1252(e)(3)(A). Such challenges must be brought in the U.S. District Court for the District of Columbia. *Id.*

§ 1252(e)(5).

Here, Petitioner acknowledges that she is a noncitizen who does not have status as a permanent resident, refugee, or an asylee. Amended Pet. ¶¶ 27, 33-34; Ex. A, at 4. Petitioner further acknowledges that she was served with an order of expedited removal under § 1225(b)(1). ECF No. 14-3. To the extent that the Petition raises any other issue relating to her expedited removal, this Court lacks jurisdiction to consider it, 8 U.S.C. § 1252(a)(2)(A), and the Petition should accordingly be denied.

II. Petitioner's detention from January 21-23, 2026 was lawful.

Even if the Court had jurisdiction, Petitioner cannot meet her burden to show a violation of any Fourth or Fifth Amendment rights based on her detention in the custody of the U.S. Marshal's Service from January 21-23, 2026. DHS lodged an immigration detainer on the day Petitioner was apprehended. Ex. B. That detainer kicked in on January 21, 2026, when the criminal charge against Petitioner was dismissed. ECF No. 14-1. From that point, under the terms of the detainer itself and relevant regulations, the U.S. Marshal's Service was obligated to maintain custody of Petitioner for up to 48 hours. Ex. B; 8 C.F.R. § 287.7(d). Indeed, the operative regulation provides:

> Upon a determination by the Department [of Homeland Security] to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

8 C.F.R. § 287.7(d).

That is exactly what happened here. From the time that she was criminally charged until the dismissal of that charge on January 21, 2026, Petitioner was in the U.S. Marshal's Service's custody. Amended Pet. ¶¶ 3-4. Less than 48 hours later, on January 23, 2026, Petitioner returned

to the custody of the DHS. Amended Pet. ¶ 5. Contrary to Petitioner's suggestion, she was not "arrested" by the U.S. Marshal's Service. *See* Amended Pet. ¶¶ 45-47. Instead, the immigration detainer that DHS had lodged when she arrived was executed within the permissible 48-hour window. Amended Pet. ¶¶ 3-5. Her detention during that period—when she had a final order of expedited removal—was therefore lawful.

III. Petitioner's visa applications do not entitle her to a bond hearing or release.

Again putting aside the jurisdictional bars discussed above, Petitioner's T-visa application—which she allegedly filed three months after being apprehended and ordered removed, and more than a week after filing her original habeas petition—does not entitle her to a bond hearing or to release. Petitioner points only to 8 C.F.R. § 1214.2(a), which provides in pertinent part: "[i]ndividuals who believe they are victims of severe forms of trafficking in persons *and who are in pending immigration proceedings* must inform DHS if they intend to apply for T nonimmigrant status under this section," and, "with the concurrence of DHS counsel," may request that proceedings before an IJ or the Board of Immigration Appeals ("BIA") be administratively closed to allow the individual to apply for a T visa. (Emphasis added). If proceedings are closed on that basis and DHS ultimately finds the petitioner ineligible for a T visa, DHS may move to recommence proceedings before an IJ or the BIA and, "DHS may continue to detain the alien until a decision has been rendered on [that] application." *Id.* Under those particular circumstances, an individual "who is in custody and requests bond or a bond redetermination will be governed by the provisions of part 236 of this chapter." *Id.*[3]

To start, 8 C.F.R. § 1214.2(a) does not apply to Petitioner because she has a final order of expedited removal. ECF No. 14-3. Petitioner is not entitled to any additional process because an

[3] Federal Respondents assume for purposes of this argument that the reference to "part 236 of this chapter" is to Section 236 of the INA, codified at 8 U.S.C. § 1226, which permits bond hearings for certain immigration detainees.

immigration officer determined her to be inadmissible at the border under 8 U.S.C. § 1182(a)(7), and Congress mandates that "the officer shall order [Petitioner] removed from the United States *without further hearing or review* . . . ," 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added). Accordingly, she is not "in pending immigration proceedings" before an IJ or the BIA. 8 C.F.R. § 1214.2(a).

That result fits with the scheme that Congress created. Certain individuals who are removable but already physically "present in the United States" may be entitled to a bond hearing under 8 U.S.C. § 1226. *Jennings*, 583 U.S. at 303. However, while Petitioner is in custody in the United States and thus physically present here, she is, as a legal matter, "treated for due process purposes as if stopped at the border." *Thurassigiam*, 591 U.S. at 140 (cleaned up). Congress decided that people in Petitioner's position are governed by 8 U.S.C. § 1225, which provides for either expedited removal or mandatory detention pending removal proceedings. It would turn Congress's system on its head if a person could evade the expedited removal process or mandatory detention to which they would otherwise be subject merely by filing a T-visa application. Even more so where, as here, that T-visa application is filed after the person was served an order of expedited removal under 8 U.S.C. § 1225, because at that point, the person is entitled to no additional process save execution of the final order of removal. Indeed, "[t]he filing of an Application for T Nonimmigrant Status has no effect on DHS authority or discretion to execute a final order of removal . . . ." 8 C.F.R. § 214.204(b)(2)(i). As a result, Petitioner is not entitled to a bond hearing, release, or any other relief by virtue of having filed a T-visa application.

Nor does Petitioner's contemplated U-visa application entitle her to a bond hearing or to release. For one thing, no such application has been filed. Amended Pet. ¶ 42. Moreover, the factual predicate for such an application is suspect. According to the Vermont Department of

Corrections, Petitioner was "provided an orientation to the Department's Prison Rape Elimination Act (PREA) policies and procedures during her facility intake in Portuguese with the assistance of an interpreter." Ex. C (Fisher Affidavit) ¶ 3. That orientation "includes explanation of methods to report allegations of sexual abuse and harassment to Department staff for investigation." Ex. C ¶ 4. And, despite having been "seen by facility medical staff with the assistance of an interpreter on multiple occasions," no one at the Department had, as of January 29, 2026, received any reports of sexual abuse or harassment from Petitioner or any third party on her behalf. Ex. C. ¶¶ 5-7. In any event, as with Petitioner's T-visa application, even if Petitioner files a U-visa application and can establish that she is eligible for a U visa, "[t]he filing of a petition for U-1 nonimmigrant status has no effect on ICE's authority to execute a final order" of removal. 8 C.F.R. § 214.14(c)(ii). Accordingly, Petitioner's hypothetical U-visa application cannot serve as the basis of habeas relief.

IV. Petitioner's pending credible fear interview does not entitle her to a bond hearing or release.

Once more putting aside the jurisdictional bars discussed above, Petitioner's pending credible fear interview does not entitle her to a bond hearing or release. Although no expression of fear of returning to Brazil was recorded in her sworn statement, DHS is nonetheless in the process of affording Petitioner a credible fear interview. *See* Amended Pet. ¶ 41. Petitioner remains, however, subject to 8 U.S.C. § 1225(b)(1)(B), and Congress directed that, if an immigration officer determines that she has a credible fear of persecution, Petitioner "shall be detained for further consideration of the application for asylum." The order of expedited removal will not be executed before the credible fear interview occurs. 8 C.F.R. 235.3(b)(4). In all events, the Supreme Cour has been clear: detention is mandatory "throughout the completion of applicable proceedings." *Jennings*, 583 U.S. at 302; *see also Rashid v. Trump*, --- F. Supp. 3d ----, 2025 WL 3210955, at *5-6 (D. Vt. Oct. 27, 2025) (noting that under § 1225(b)(1)(B)(ii), "if an applicant

passes the credible fear interview, they should receive further review of their asylum application—and remain in detention in the meantime").

CONCLUSION

For the reasons discussed above, the Court should deny the Amended Petition for a Writ of Habeas Corpus and dissolve the TRO.

Dated at Burlington, in the District of Vermont, this 11th day of February, 2026.

Respectfully submitted,

UNITED STATES OF AMERICA

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