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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARINA LESHKASHELLI,

Petitioner,

Civil Action No.

v.

WILLIAM JOYCE, the Acting ICE Field
Office Director, KRISTI NOEM, the Secretary
of the Department of Homeland Security,
TODD M. LYONS, the Acting Director of U.S.
Immigration and Customs Enforcement (ICE),
PAMELA BONDI, the Attorney General of the
United States

A# 

Defendants

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Marina Leshkasheli is a citizen of Georgia who has lived in the United States since April 2024. She seeks immediate release from the custody of the U.S. Department of Homeland Security (“DHS”) and its component, U.S. Immigration and Customs Enforcement (“ICE”), because her arrest and continued detention are unlawful, unconstitutional, and unsupported by any individualized determination of necessity.
2. On January 28, 2026, Petitioner was arrested after appearing voluntarily and in full compliance for a scheduled check-in at the ICE Field Office located at 26 Federal Plaza, New York, NY, where she had dutifully reported. She was taken into custody without a warrant, without prior notice, without explanation, and without any individualized assessment of risk.
3. Petitioner’s arrest was not based on any individualized analysis, but instead flowed from a blanket “policy” to detain “everyone who crossed the border,” without regard to compliance history, criminal record, or actual risk. Petitioner’s liberty has thus been stripped away not through reasoned adjudication, but through an indiscriminate enforcement scheme that is arbitrary, categorical, and fundamentally untethered to any legitimate statutory purpose.
4. Petitioner has no criminal history, has complied with all conditions of release, and has a pending application for asylum and for withholding of removal before the Immigration Court based on fear of persecution on account of her political opinion. Petitioner’s continued detention violates the Immigration and Nationality Act (“INA”), the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, and the Fourth Amendment’s prohibition on unreasonable seizures.
5. Petitioner seeks a writ of habeas corpus ordering her immediate release or, at a minimum, a prompt and constitutionally adequate bond hearing before a neutral and impartial adjudicator, at which the Government bears the burden of proving, by clear and convincing evidence, that Petitioner poses a flight risk or presents other legally sufficient and individualized reasons justifying continued detention.

JURISDICTION

This action arises under the Constitution, laws, and treaties of the United States, including 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the Constitution (the Suspension Clause). Relief is also authorized by the All Writs Act, 28 U.S.C. § 1651, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

Federal courts retain habeas jurisdiction to review the legality of immigration detention. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Hensley v. Municipal Court*, 411 U.S. 345 (1973); *Martinez v. Clark*, 144 S. Ct. 1339 (2024). Petitioner is “in custody” within the meaning of § 2241 while confined at “Processing space” at 26 Federal Plaza, New York, NY. *Doe v. Barr*, 479 F. Supp. 3d 20 (S.D.N.Y. 2020).

VENUE

Venue lies in this District because Petitioner’s arrest occurred at 26 Federal Plaza, New York, NY, and Respondent William Joyce, the Acting ICE Field Office Director, New York, exercises custody and control over Petitioner.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

There is no statutory exhaustion requirement applicable to petitions brought under 28 U.S.C. § 2241. *McCarthy v. Madigan*, 503 U.S. 140 (1992); *Laing v. Ashcroft*, 370 F.3d 994 (9th Cir. 2004).

10. Even if exhaustion were required, it should be excused because:

- (a) ICE’s revocation of supervision is not meaningfully reviewable;
- (b) continued detention causes ongoing and irreparable constitutional harm; and
- (c) Petitioner challenges the constitutionality of the detention framework itself. *Hardy v. Fischer*, 701 F. Supp. 2d 614, 619 (S.D.N.Y. 2010).

Following Petitioner’s arrest, ICE did not set bond, and Petitioner is categorically barred from obtaining custody review by an Immigration Judge under the Board of Immigration

Appeals's decision in the *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Accordingly, no administrative avenue exists through which Petitioner may seek review of his detention, rendering exhaustion futile. *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" (internal citation omitted)).

PARTIES

Petitioner Marina Leshkasheli is a citizen of Georgia, born [REDACTED] in Georgia. She is now detained at "processing space" at 26 Federal Plaza, New York, NY.

Respondent William Joyce is the Acting ICE Field Office Director, New York, and was the Petitioner's immediate custodian at the time this habeas was filed.

Respondent Kristi Noem is Secretary of the Department of Homeland Security and oversees ICE.

Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE).

16. Respondent Pamela Bondi is the Attorney General of the United States.

STATEMENT OF FACTS

Petitioner departed Georgia on March 17, 2024, traveled through several countries, and arrived in the United States on April 3, 2024, near Otay Mesa, CA, without inspection. She was released from ICE custody and has resided in Brooklyn, New York. Petitioner filed for asylum with Immigration Court based on persecution on account of political opinion. Her I-589 application remains pending.

Since her release from ICE custody in April 2024, Petitioner has complied with every ICE appointment, maintained a stable residence, and committed no criminal offense.

On January 27, 2026, Petitioner appeared for a regularly scheduled ICE check-in at 26 Federal Plaza, New York, NY. ICE officers arrested her without prior notice or written explanation and she is detained at “processing space” at 26 Federal Plaza, New York, NY.

ICE has provided no notice of revocation, no custody review, no hearing, and no opportunity to contest detention. The Petitioner’s arrest was the result of a generalized enforcement directive tied to detention bed availability, not Petitioner’s conduct or risk profile.

21. Petitioner remains confined solely as a result of administrative convenience.

LEGAL CLAIMS

COUNT I

Violation of the INA: Detention Under the Wrong Statutory Provision

Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

The mandatory detention provision at 8 U.S.C. § 1225(b)(2) 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 individuals who previously entered the United States, were apprehended and released from custody by Respondents, and were residing in the country before being re-apprehended. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

COUNT II

Violation of Due Process: Revocation of Release without Notice or Hearing

The Fifth Amendment’s Due Process Clause prevents the Government from depriving any person of “life, liberty, or property without due process of law,” U.S. Const. amend. V., regardless of “whether their presence here is lawful, unlawful, temporary, or permanent.”

Zadvydas v. Davis, 533 U.S. 678, 693 (2001); see also *Reno v. Flores*, 507 U.S. 292, 306 (1993). Due process demands that unless a person is “given[] notice of the case against [her] and opportunity to meet it,” she may not be detained. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). Indeed, “[f]reedom 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.” *Zadvydas*, 533 U.S. at 690.

In the Second Circuit, the adequacy of the process provided in civil immigration confinement is determined through application of the *Mathews v. Eldridge* balancing test. *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)). This test evaluates “(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.” *Id.* (citing *Mathews*, 424 U.S. at 335); see also *Lopez Benitez*, 2025 WL 2371588, at *9.

As to *factor one*, in Petitioner’s case, “the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment.” *Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024). While the Government undoubtedly has authority to detain Petitioner under Section 1226, Petitioner is entitled to “adequate procedural protections” before being deprived of her liberty. *Zadvydas*, 533 U.S. at 690. Before the Government may exercise its discretion to detain a noncitizen pursuant to Section 1226(a), the statute and its implementing regulations “require ICE officials to make an individualized custody determination.” *Lopez Benitez*, 2025 WL 2371588, at *10; see also *Tumba Huamani*, 2025 WL 3079014, at *7 (“But Due Process still requires that such discretion actually be exercised—i.e., that some determination actually be made.”). In making that determination, the relevant DHS official must consider two factors, whether the non-citizen poses a “danger to property or persons” and whether he or she is “likely to appear for any future proceeding.” *Lopez Benitez*, 2025 WL 2371588, at *10 (quoting 8 C.F.R. § 1236.1(c)(8)).

Instead, Petitioner’s arrest stemmed from a blanket “policy” to detain “everyone who crossed the border,” without regard to compliance history, criminal record, or individualized risk

factors. ICE officials ignored the fact that Petitioner diligently complied with all conditions of his release and timely appeared at the ICE office for his scheduled check-in.

As to ~~the~~ *second Mathews factor*, “[t]he purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty.” *Lopez Benitez*, 2025 WL 2371588, at 12. The risk of erroneous deprivation is high where, as here, Petitioner was arrested during a routine check-in appointment—at which he dutifully appeared—without consideration of any relevant factors.

As to ~~the~~ *third factor*, “to require that the Government justify continued detention promotes the Government’s interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Black*, 103 F.4th at 154; see also *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (observing that “any amount of actual jail time . . . has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration” (internal quotation marks and alterations omitted)).

Detention that serves no bona fide removal or safety purpose violates substantive due process. See *Zadvydas*, 533 U.S. at 690–91; *Gordon v. Shanahan*, 2015 WL 1176706 (S.D.N.Y. Mar. 13, 2015). ICE’s “bed-availability” rationale is administrative convenience, not a lawful justification for depriving liberty.

Accordingly, ICE’s summary revocation of Petitioner’s release from custody violated the Due Process Clause of the Fifth Amendment. Rather than exercising the individualized discretion required by law, ICE effectuated Petitioner’s detention pursuant to a blanket policy—without notice, without an individualized assessment, and without affording Petitioner any opportunity to be heard. Because Petitioner possessed a protected liberty interest in his continued release from custody, the Government’s failure to provide even the most basic procedural safeguards resulted in an unconstitutional deprivation of liberty. See *Mathews v. Eldridge*, 424 U.S. 319 (1976).

COUNT III

Violation of the Fourth Amendment

Petitioner's arrest constituted an unreasonable seizure in violation of the Fourth Amendment because it was executed without a warrant, without probable cause, and pursuant to a blanket enforcement policy rather than individualized suspicion. Civil immigration enforcement remains subject to Fourth Amendment constraints. *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015); *Manuel v. City of Joliet*, 580 U.S. 357 (2017).

STATUTORY PROCEDURE UNDER 28 U.S.C. § 2243

Under 28 U.S.C. § 2243, the Court must “forthwith” grant the writ or issue an order to show cause. Respondents must file a return within three days unless the Court allows additional time not exceeding twenty days for good cause. Prompt review is essential to prevent continued unlawful restraint.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be removed from the United States without an order by this Court allowing such removal and transferred, except to a facility within the Southern District of New York, the Eastern District of New York, or the District of New Jersey absent further order of this Court;
- c. Issue an Order to Show Cause directing Respondents to explain why the writ should not be granted within three days, as required by 28 U.S.C. § 2243;
- d. Declare Petitioner's detention unlawful;
- e. Order Petitioner's immediate release or, in the alternative, a bond hearing before an Immigration Judge within seven days, at which the Government bears the burden of proving, by clear and convincing evidence, that Petitioner's continued detention is justified by dangerousness or flight risk;

- f. Order enjoining Respondents from re-detaining Petitioner absent a valid exercise of discretion under 8 U.S.C. § 1226(a);
- g. Order limiting Respondents to the restraints on Petitioner's liberty that existed prior to her re-detention on January 28, 2026;
- h. Order enjoining Respondents, absent an additional Court order, from denying bond to Petitioner in any subsequent proceeding on the ground that she must be detained pursuant to 8 U.S.C. § 1225(b), and, if Petitioner is granted bond, from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(2). *See Rueda Torres v. Francis*, No. 25 Civ. 8408 (DEH), 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025);
- i. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- j. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

Date: January 28, 2026



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