

JUDGE DAVID GUADERRAMA

FILED

February 13, 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

UNITED STATES COURT

FOR THE WESTERN DISTRICT OF TEXAS BY: _____

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature] DEPUTY CLERK

Maksim Shapashnikau

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Petitioner,

v.

Pam Bondi, ATTORNEY GENERAL,
Kristi Noem, SECRETARY OF THE
DEPARTMENT OF HOMELAND
SECURITY, Maria Deandra Ybara,
U.S. ICE FIELD OFFICE DIRECTOR,

Respondents

EP 26CV0429

Civil Action No.
PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. §2241, BY A
PERSON SUBJECT TO
INDEFINITE IMMIGRATION
DETENTION.

BACKGROUND

1. Petitioner, Maksim Shapashnikau, hereby petition this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, and to enjoin Petitioner's continued unlawful detention by the Respondent. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

CUSTODY

2. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is detained at the El Paso Processing Center in El Paso, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

3. The constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004). (citing U.S. CONST. Art. 1, §9, cl.2) This includes immigration related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). The petitioner seeking habeas relief must demonstrate they are in custody in violation of the Constitution or federal law. 28 U.S.C. §2241 (c)(3); *Walker v. Johnston*, 312 U.S. 275, 286, 61 S. Ct. 574, 85 L. Ed. 830 (1941).

4. In recent cases the government has brought forward arguments based on 8 U.S.C. §1252(g) and §1252(b)(9). But the Court of Western District of Texas has already rejected these arguments. *Vieira v. De Andra-Ybarra*, No. EP-25-CV-00432-DB, 2025 U.S. Dist. LEXIS 203930, 2025 WL 2937880 at *3 (W.D. Tex. Oct. 16, 2025).

5. Petitioner appealed his Order of Removal therefore his Order of Removal is not final at this time. If an alien appeals, the Immigration Judge's Order of Removal does not become a Final Order of Removal until the appeal is dismissed by the Board of Immigration Appeals (BIA). 8 C.F.R. §1241.1 (a)

EXHAUSTION OF REMEDIES

5. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

PARTIES

6. Petitioner is a native of Lithuania who came to the United States in 2014 via Belarus. He has lived in the U.S. for over 10 years continuously. On May 20th, 2025 he was detained by ICE. He is now been detained in the El Paso Processing Center for over 8 months.

7. Respondent Pam Bondi is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration and Naturalization Act (INA). As such, Pam Bondi has ultimate custodial authority over Petitioner.

8. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the administration of ICE and the implementation and enforcement of the INA. As such, Kristi Noem is the legal custodian of Petitioner.

9. Respondent Maria Deanda Ybara is the ICE Field Office Director of the EOIR Field Office of ICE and is Petitioner's immediate custodian. *See Vasquez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), cert. Denied, 122 S. Ct. 43 (2001).

STATEMENT OF FACTS

10 I, Maksim Shapashnikau, Petitioner, was born , 1988 in Lithuania. When I was about two years old my parents left me to live with my paternal grandmother. When I was 5 years old my grandmother and I immigrated to live in Belarus.

11. Growing up I attended and finished high school and then attended and graduated a university at the age of 22. After the university I worked as a carpenter for three years.

12. In the year of 2013, in Belarus, I was persecuted for not being of Belarusian descent. The authorities attempted to fabricate criminal charges on me and forced me to plead guilty to something I did not do. I was told by the authorities that if I do not pay them a sum of fifteen thousand dollars (\$15,000) they would put me in jail.

13. Due to the dangerous circumstances I was facing in Belarus I decided to leave the country travel to the United States.

14. In the year of 2014, when I was 25 years old, I applied for and received a tourist visa and flew to Miami, Florida.

15. In September of 2014 while in Miami, Florida I applied for Asylum. I filed form I-589 and submitted fingerprints.

16. I received Authorization for Employment and began to work in Florida and pay taxes.

17. For the next 10 years I worked and lived in the State of Florida and never had any problems with the law.

18. In May of 2025 as I was sitting on a bus bench waiting for the bus on my way home from work a police squad car approached me and began to question me. They told me that this is not a good neighborhood and asked to see my identification.

19. I presented my Florida Identification card and my Work Authorization card. They wanted to know what immigration status I had in the U.S. and I explained to them that I was awaiting a court date for my Asylum.

20. I was taken into custody by the police and after spending a week in the local jail without any criminal charges against me I was then picked up by ICE.

21. On May 20th, 2025 I was officially detained by ICE and have been in ICE detention continuously since that date. (9 months as of February 1st, 2026)

22. When I began to attend immigration court hearings at first I was told that I am in the U.S. illegally and they do not have any record of my Asylum application. The court gave me a new I-589 form to fill out even though I insisted that I have already filed I-589 before.

23. At the next court hearing when I brought the new filled out form I-589 the judge notified me that the court did find my previous application. The immigration court informed me that I actually did not violate any time frames and did file everything required of me for Asylum in a timely manner.

24. During that same court hearing the immigration judge told me that since I filled out an application for Asylum from protection of Belarus he will not order me to be removed to Belarus. But, since I did overstay my visa he will still order for me to be removed to Lithuania.

25. I was given a Final Order of Removal to Lithuania on September 30th, 2025. I did not appeal this decision.

26. In about a week from that decision I was called by ICE and was required to provide finger prints and a photograph for Travel Documents to Lithuania.

27. On November 12th, 2025 ICE again called me for an interview and asked me to once again provide finger prints and a photograph and to sign paperwork requesting Travel Documents to Belarus. I noticed the change to the Final Order of Removal by chance as I looked through the documents before signing them.

28. I immediately stated my concern that my Order of Removal from the Immigration Judge

was for Lithuania and not for Belarus. I explained that Belarus is a country I ran from because of the persecution I experienced there, and that I originally filed for Asylum in the U.S. because of Belarus.

29. I further explained to the ICE officer that I am afraid for my life if I was to be removed to Belarus. I also explained that I do not have any relatives in that country since my only relative was my grandmother who has passed away by this time.

30. The ICE officer attempted to force me to sign the documents anyway, I was told by the ICE officer that if I do not sign the documents I will have problems. I refused to sign the documents.

31. About November 15th, 2025 I received another Order of Removal from an ICE officer stating that I am now to be removed to Belarus and not Lithuania.

32. On November 18th, 2025 I filled out a form for an Appeal with the Board of Immigration Appeals. I appealed this second Order of Removal to Belarus. I explained that I was not present before an Immigration Judge when this order was given and that the original Order of Removal that the Immigration Judge issued, during the hearing I was present for, was an Order of Removal for Lithuania and not Belarus.

33. I received a letter from the Board of Immigration Appeals that on December 22nd, 2025 they have accepted my appeal.

34. I asked my ICE Deportation Officer if they are still attempting to deport me to Lithuania and I was told multiple times that they can not deport me anywhere until my appeal process has ended.

35. In conclusion, I am hoping this Court can see the injustice done to me. I entered the U.S. legally and have done everything required of me in this country. I filed the proper forms in a

timely manner to request Asylum. I received Employment Authorization that I continuously renewed as I worked in the U.S. and paid the taxes required of me. I have never broken any laws.

36. In the duration of my detention of 9 months I have never been given an opportunity for a bond hearing and at time time my detention continues. I am threatened with deportation to a country I am in fear of being deported to. I pray for relief from my detention.

COUNT ONE SUBSTANTIVE DUE PROCESS VIOLATION LEGAL FRAMEWORK:

37. The Respondents are detaining Petitioner without a bond because they have deemed him detained under 8. U.S.C. §1225, but the Petitioner should be deemed detained under 8. U.S.C. §1226.

38. Petitioner's detention violates (1) the due process clause of the Fifth Amendment and (2) provisions of the INA. His detention violates the plain language of the INA because §1225 does not apply to individuals who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, §1226(a) that (1) expressly applies to individuals who are charged as inadmissible for having entered the United States without inspection and (2) allows for release on conditional parole or bond.

39. Respondents' new legal interpretation based on the BIA ruling, In *Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025), is plainly contrary to the statutory framework and contrary to decades of agency practice applying §1226(a) to people like the Petitioner.

40. Petitioner has never been detained by ICE before, and "has been present without a determination of inadmissibility within two years of Petitioner's entry." *Lopez v. Lyons*, No. 2:25-CV-03174-DJC-CKD, 2025 WL 3124116, at *2 (E.D. Cal. Nov. 7, 2025). Therefore, §1226 applies to the Petitioner.

41. Petitioner was not “arriving” at the time of his detention, and so § 1225(b)(1)(A)(i) does not apply. He has been present in the United States for eleven (11) years, and so §1225(b)(1)(A)(iii) does not apply.

42. For the reasons set forth in numerous district court decisions in the past few months, §1225(b)(2) does not apply to persons like the Petitioner. See *Afghan v. Noem*, No. 25-cv-4105-SAG, 2025 WL 3713732, at *1 (D. Md. Dec. 23, 2025) (“The primary issue in this case is one that has been considered in hundreds of federal courts over recent weeks—whether Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b)(2) or is entitled to a hearing before an administrative judge to seek bond under 8 U.S.C. §1226(a). The overwhelming majority of courts to have considered the issue have ruled that Petitioner (and similarly situated aliens who have been in this country for years) are in the latter category.”) (citing cases); see also, e.g., *Velasquez v. Noem*, No. 25-cv-3215-GLR, -- F. Supp. 3d ---, 2025 WL 3003684, at *4–7 (D. Md. Oct. 27, 2025); *Maldonado de Leon v. Baker*, No. 25-cv-3084-TDC, 2025 WL 2968042, at *8 (D. Md. Oct. 21, 2025); *Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS, -- F. Supp. 3d ---, 2025 WL 2809996, at *5–9 (D. Mass. Oct. 3, 2025).

COUNT TWO PROCEDURAL DUE PROCESS VIOLATION LEGAL FRAMEWORK:

43. The Petitioner’s detention violates the Fifth Amendment’s Due Process Clause. The Fifth Amendment’s Due Process Clause forbids the government to “deprive any person... of... liberty... without due process of law.”

44. The Petitioner is not challenging his removal proceedings, but rather his detention during the removal proceedings. The Petitioner was not detained at the border on the threshold of initial entry, but rather after living in the United States since 2014 (11 years). “Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. at 693.

45. To determine whether there is a Procedural Due Process violation the Supreme Court has applied the “Matthew” test, “to determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test set forth in *Matthew v. Eldridge*, 4243 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).” *Maritinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 U.S. Dist. LEXIS 174 415, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025).

46. The three-part test consists of (3) factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.”

THE 1ST MATTHEW FACTOR:

47. The Petitioner has been living in the United States since 2014. Therefore he has acquired a liberty interest. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty [Due Process] Clause protects. *Zadvydas*, 533 U.S. at 690. In the case of *Dominguez v. Noem*, 2026 U.S. Dist. LEXIS 3031, the Court has stated, “Like many courts across the country dealing with similar circumstances, the Court finds Petitioner possess a strong liberty interest in his freedom from detention because he has established a life here – albeit without authorization.”

48. The Petitioner came to the U.S. in 2014 and has lived in the U.S. continuously for 11 years before being detained by ICE. He has received Employment Authorization and has worked and paid taxes.

THE 2ND MATTHEW FACTOR:

49. The Petitioner is faced with a substantial risk of erroneous deprivation of his interest in being free from arbitrary confinement pending resolution of his removal proceedings. The risk

lies in the continued deprivation of liberty based on a decision made by ICE but without any oversight and/or review of said decision. The Petitioner was denied a bond and is being deprived of liberty even though he has Fifth Amendment protection because he has resided in the U.S. for 11 years.

50. The value of additional safeguards is high given that it would allow an immigration judge to conduct a hearing to determine whether continued detention is necessary and/or allow the federal court to rule in favor of immediate release.

THE 3RD MATTHEW FACTOR:

51. The Petitioner does not have any criminal convictions and there is no record to show he is a danger to the community. He has lived in the United States for over 10 years. He held employment and paid taxes. Therefore in the interest of ICE, and his own, the Petitioner would not be a flight risk nor a danger to the community. The governments interest is generally protected by affording a bond hearing and/or supervision requirements.

52. Any fiscal or administrative burdens on the government's part would not be significant in contrast to the fiscal and administrative necessities entailed in detaining an individual. In the history of ICE and their procedures they have always conducted bond hearings and have allowed cases similar to the Petitioner's to be released on bonds and/or supervision requirements.

CONCLUSION:

53. The Petitioner has been detained unlawfully because he has been denied a bond hearing. He has not had an opportunity to show that he is not a danger to the community nor a flight risk. The immigration court has not given him an unbiased hearing to determine whether he is suitable to be released on a bond and/or placed on supervision while his immigration case progresses. His current case with the Board of Immigration Appeals has placed a hold on any removal proceedings.

54. When the Petitioner was present in the court before an Immigration Judge he was given an Order of Removal to Lithuania, but then he received a different Order of Removal to Belarus (a country he fled from and a country he is not a citizen of, and filed for Asylum for). He was not present before a judge for the second Order of Removal. Petitioner was left with no choice but to file an appeal with the Board of Immigration Appeals, appealing the second Order of Removal to Belarus. Because of his appeal with the Board of Immigration Appeals he is now not in removal proceedings and detention continues. He has never been given an opportunity for a bond hearing and has now been detained, without a criminal record, for over 8 months.

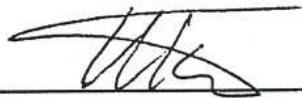
RELIEF SOUGHT:

Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody under reasonable conditions of supervision or to provide a bond hearing.

I affirm, under penalty of perjury, that the foregoing is true and correct. Respectfully submitted

this Feb. 9th, 2026 .



Maksim Shapashnikau, *Pro Se*

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El Paso SPC

8915 Montana Ave

El Paso, Texas 79925

CERTIFICATE OF SERVICE

I, Maksim Shapashnikau, certify that a true copy of the above document (Petition for Writ of Habeas Corpus) was served on Feb. 9th, 2026, upon the following:

Western District Court of Texas
Albert Armendariz, Sr. United States Courthouse
525 Magoffin Avenue
Room 105
El Paso, Texas 79901

by placing a copy of the above in the mail system at the facility where I am detained.



Maksim Shapashnikau, *Pro Se*

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EXHIBIT INDEX

EXHIBIT A IMMIGRATION JUDGE'S ORDERS

EXHIBIT B BOARD OF APPEALS' ORDERS

EXHIBIT C AFFIDAVIT OF PERSECUTION IN BELARUS