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; and PAMELA BONDI, Attorney General of the United States, U.S. Department of Justice,

Respondents.

No. 2:25-cv-00558-SDN

RETURN AND RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents oppose the Verified Amended Petition for Writ of Habeas Corpus filed under 28 U.S.C. § 2241 by petitioner Juliana Milena Ojeda Montoya. Dkt. #6-1, Nov. 8, 2025 (the "Amended Petition" or "Am. Pet.").[1] U.S. Immigration and Customs Enforcement ("ICE") detained Petitioner on November 6, 2025, after

[1] The original pleading in this matter was filed on November 7, 2025. Dkt. #1. On November 8, 2025, Petitioner filed a "Notice of Errata" to correct the allegations comprising paragraph 16, relating to Petitioner's pending Massachusetts criminal charges. *See* Dkt. # 6 at 1. Petitioner concurrently filed as an attachment to the Notice of Errata a "corrected petition." *Id.* at 2. Respondents construe this corrected petition as an amended application, *see* 28 U.S.C. § 2242, and for ease of reference refer to that document as the "Amended Petition."

apprehending her in Fitchburg, Massachusetts. Am. Pet. ¶¶ 19-20.[2] She was transferred to the Cumberland County Jail in Portland, Maine, where she remains detained in ICE custody. *Id.* ¶ 22.

This case is distinct from recent immigration habeas cases filed in this District, which have primarily dealt with petitioners who did not meet the prerequisites for mandatory detention under the Laken Riley Act, 8 U.S.C. § 1226(c)(1)(E). Petitioner, however, is subject to Laken Riley Act mandatory detention. ICE therefore submits that the true cause of Petitioner's detention is pursuant to 8 U.S.C. § 1226(c), and alternatively, 8 U.S.C. § 1225(b)(2). 28 U.S.C. § 2243.

I. Introduction

To warrant a grant of the writ of habeas corpus, Petitioner bears the burden of proving by a preponderance of the evidence that her custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3); *see also Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009); *Farrell v. Lanagan*, 166 F.2d 845, 847 (1st Cir. 1948). Petitioner cannot meet this burden. She meets the inadmissibility and criminal conduct requirements for mandatory Laken Riley Act detention. ICE further maintains mandatory detention authority to hold Petitioner without bond pursuant to 8 U.S.C. § 1225(b)(1). Even were this Court to alternatively conclude that Petitioner is instead detained pursuant to the broad civil arrest and detention authority provided under 8 U.S.C. § 1226(a), she could nonetheless avail herself of the various due process protections provided under that provision. Petitioner's detention thus does not violate

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[2] The Federal Rules of Civil Procedure apply to § 2241 proceedings. *See* FED. R. CIV. P. 81(a)(4); FED. R. CIV. P. 12(b)(6). The Government takes as true all well-pleaded factual allegations, *see Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), but submits that Petitioner's "threadbare or speculative" allegations should be disregarded, *see Pruell v. Caritas Christi*, 678 F.3d 10, 13 (1st Cir. 2012). The provisions of 28 U.S.C §§ 2246-2247 further permit affidavits and documentary evidence to be submitted.

the Constitution or the Immigration and Nationality Act ("INA").

II. Background

A. Facts Alleged by Petitioner

Petitioner's 28 U.S.C. § 2241 application arises from her detention initiated by ICE on November 6, 2025. Am. Pet. ¶¶ 19-20. Petitioner, a citizen of Ecuador, most recently resided in Fitchburg, Massachusetts. *Id.* ¶¶ 1-3. She lives in Fitchburg with her husband, Carlos Sebastian Zapata, and their young daughter. *Id.* ¶ 11.

No legal immigration status is alleged in the Amended Petition. To the contrary, Petitioner is not legally present in the United States. "[O]n February 22, 2023," as detailed further below, she "entered the United States without inspection at or near Lukeville, Arizona. . ." Am. Pet. ¶ 4. Upon illegally entering the country, Petitioner was initially detained as "an alien present in the United States who has not been admitted or paroled." *Id.* ¶¶ 5-8; *see also id.* ¶ 9. On March 6, 2023, following a custody re-determination proceeding, however, Petitioner was released on a $1,500 bond. *Id.* ¶ 10; *see also* Dkt. #1-3 (Immigration Bond).

DHS initiated removal proceedings against Petitioner. Am. Pet. ¶ 8. She remains in removal proceedings. *Id.* ¶ 12.

Most recently, "[f]ollowing an August 1, 2025, incident, a criminal complaint issued against [Petitioner] in state District Court in Leominster, Massachusetts, on August 4, 2025." Am. Pet. ¶ 16 ("[t]he complaint alleged violations of two Massachusetts statutes: Mass. Gen. Laws Ann. ch. 265, §§ 15A(b) and 15B(b)"). More details concerning the basis for Petitioner's criminal conduct are provided below.

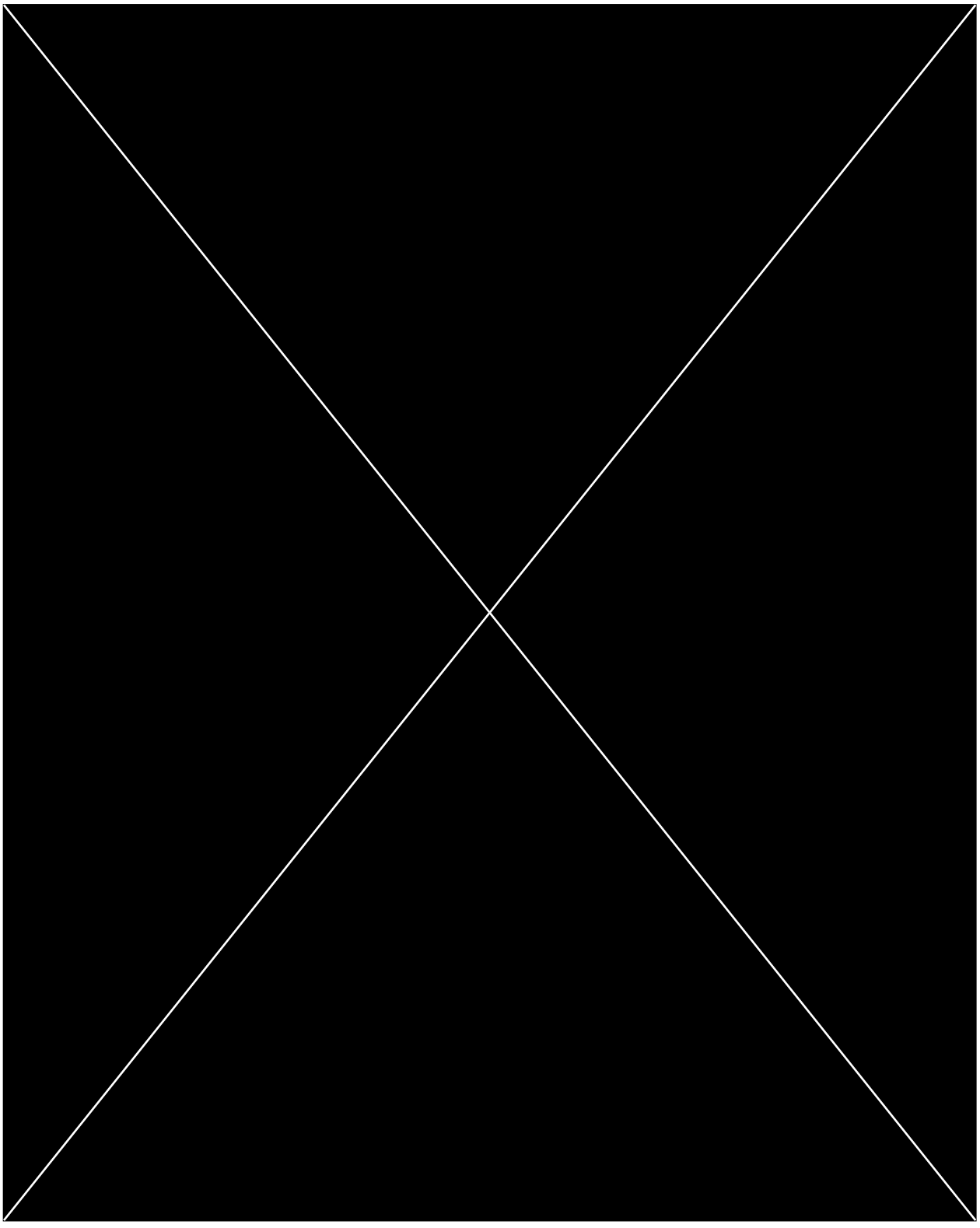
B. Additional Facts Submitted by the Government

As discussed, Petitioner was in the United State for roughly one day before making her first contact with immigration authorities on the Arizona-Mexico border. *See also* Ex. 1 at 1-2, I-213 Record of Inadmissible Alien (Feb. 23, 2023). She "was apprehended within a group of 37 individuals." *Id.* at 3. When taken to the nearby Ajo Border Patrol Station, Petitioner admitted that she was a "citizen and national of Ecuador without the necessary legal documents to enter, pass through, or remain in the United States." *Id.*; *see also* Ex. 2 at 1, I-217 Information for Travel Document (Feb. 23, 2023) (indicating that Petitioner was not in possession of valid travel documentation at the time of entry). Although she is now "pursuing an asylum claim as a defense to removal," *see* Am. Pet. ¶ 12, back in February 2023, Petitioner informed the immigration authorities "that she [did] not fear persecution or torture if returned to Ecuador," *see* Ex. 1 at 3. On February 23, 2023, Petitioner was "served with a Warrant of Arrest/Notice to Appear and placed in removal proceedings." Ex. 1 at 3; *see also* Ex. 3 at 1, I-200 Arrest Warrant (Feb. 23, 2023).

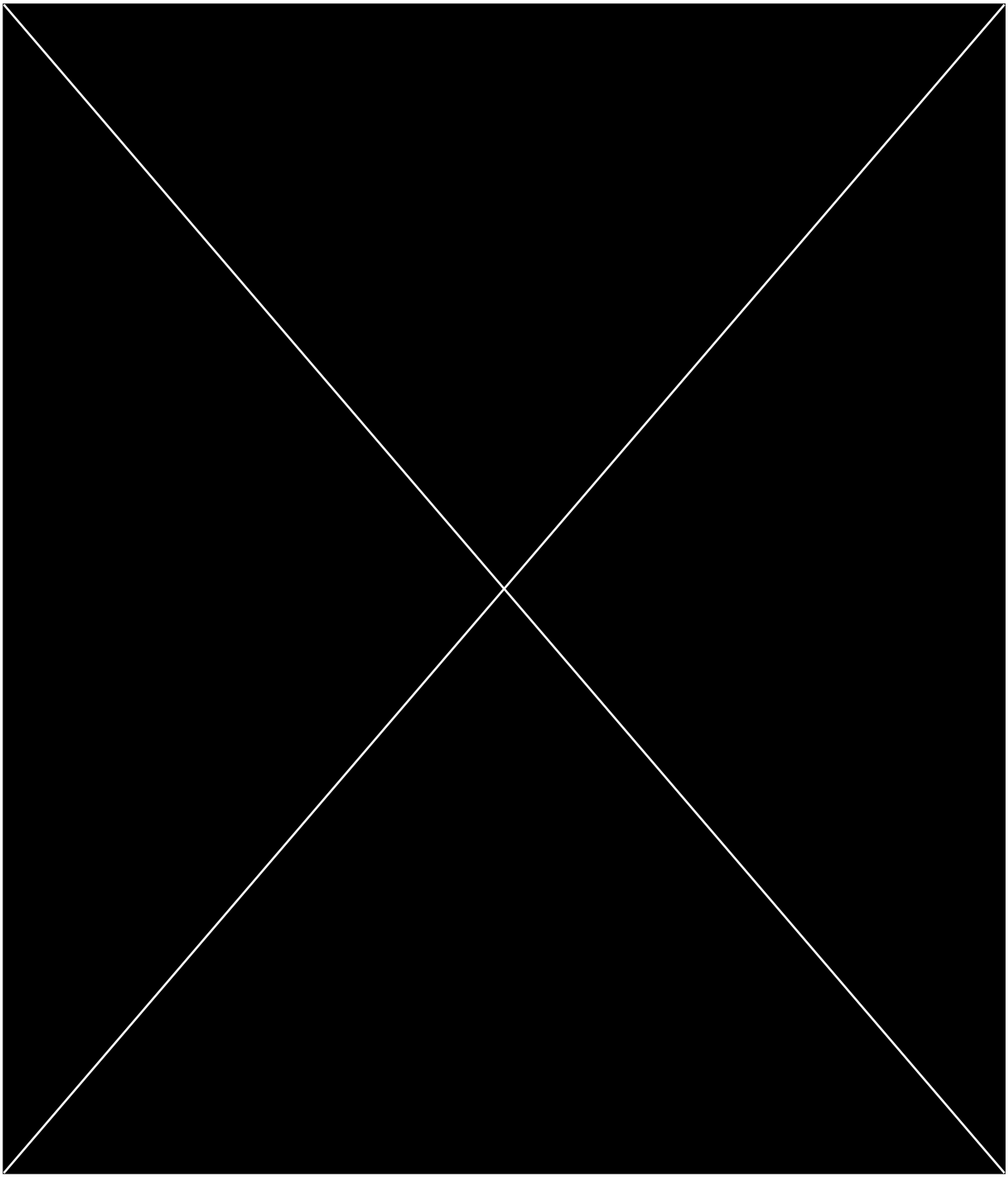
Petitioner's pending Assault and Battery with a Dangerous Weapon case arose from events transpiring about two and a half years later. As detailed by records provided by the Leominster Police Department ("Leominster PD"), on August 1, 2025, Petitioner violently attacked a co-worker at their place of employment in Leominster, Affordable Interior Systems.[3] *See* Ex. 4 at 2, Leominster PD Arrest Report (Aug. 1, 2025). The victim's reported injuries were "Severe Laceration," sustained after she was attacked by Petitioner with a pair of scissors. *Id.* at 3.

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[3] Affordable Interior Systems, known as "AIS," is an office furniture company. *See* https://www.ais-inc.com/spaces/leominster-ma (last visited Nov. 8, 2025)



[4] As detailed above, Petitioner's husband is Carlos Sebastian Zapata (Am. Pet. ¶ 11); Petitioner appears to use Zapata as her surname.



Id. at 6. At the Leominster PD station, Petitioner was read "her *Miranda* Rights and []

5 Video footage of the incident has been submitted to chambers via email. *See* Ex. 7,

agreed to speak with [Leominster PD personnel]." By way of explanation, Petitioner stated that "she found inappropriate text messages between [the victim] and [Carlos Sebastian Zapata] on his phone." *Id.* Petitioner "stated she was upset and when she went to work she attacked [the victim]." *Id.* at 7. [redacted]

"Due to the circumstances of [Petitioner] admitting to the violent acts, video footage [] viewed at AIS, pictures of the injury and attack, and [the] witness statement," the Leominster PD charged Petitioner with Assault and Battery with a Dangerous Weapon (MASS. GEN. LAWS ANN. CH. 265, § 15A (2025)) and Assault with a Dangerous Weapon (MASS. GEN. LAWS ANN. CH. 265, § 15B (2025)). *Id.* at 7.

Later on August 1, 2025, a criminal complaint issued charging Petitioner with "265/15A/A" [Assault and Battery with a Dangerous Weapon] and "265/15B/A" [Assault with a Dangerous Weapon]. *See* Ex. 8 at 1, 25-38669-AR - Complaint (Aug. 1, 2025). Petitioner alleges that she "was charged under only sub-section (b) of both statutes." Dkt. #6 at 1; *see also* Am. Pet. ¶ 16.

III. Argument

A. Legal Framework for Detention

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

1. Mandatory detention under 8 U.S.C. § 1225

Section 1225 applies to "applicants for admission," who are defined as "alien[s]

present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, DHS has the sole discretionary authority to temporarily release on

parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

2. 8 U.S.C. § 1226(a) discretionary detention and 8 U.S.C. § 1226(c) mandatory detention

Section 1226 more "generally governs the process of arresting and detaining . . . [noncitizens] pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section 1226(a) provides the default rule that an alien "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). As the Supreme Court has explained, this provision "creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions . . . ." *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).

Pursuant to 8 U.S.C. § 1226(a), immigration authorities can arrest an alien with an administrative warrant and then either continue detention for removal proceedings or release the alien on "bond . . . or conditional parole." *Id.* § 1226(a)(1)-(2). Once arrested under § 1226(a), release can occur "provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If the immigration officer opts for continued detention, the alien can seek review of that decision at a bond hearing before an IJ. 8 C.F.R. § 236.1(d)(1). An IJ's decision to continue detaining an alien may be appealed to the Board of Immigration Appeals ("BIA").[6] 8 C.F.R. § 236.1(d)(3).

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[6] The BIA is an appellate body within the EOIR. *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The

Pursuant to 8 U.S.C. § 1226(c), however, immigration authorities "shall take into custody any alien" who is convicted of enumerated criminal offenses and, in certain circumstances, aliens who are arrested for, charged with, or admit to certain crimes, regardless of being convicted. Section 1226(c) detention must occur "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.*

3. The administrative removal process

Removal proceedings are initiated with the issuance of an NTA with the Immigration Court that has jurisdiction over the location of the individual. *See* 8 U.S.C. § 1229; 8 C.F.R. §§ 239.1, 1003.14. Once an NTA is filed with the Immigration Court, the IJ "shall conduct proceedings for deciding the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1). Such proceeding "shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States." *Id.* § 1229a(a)(3).

An alien can apply for any form of relief from removal for which he is eligible. *Id.* § 1229a(c)(4). If the IJ grants relief from removal and the Government does not appeal to the BIA or is unsuccessful in such appeal, then the individual obtains lawful status and is not subject to removal from the United States. If, however, the IJ orders an alien removed, such alien can appeal to the BIA and is not subject to removal until the BIA issues a decision on the appeal. *Id.* § 1229a(c)(5); 8 C.F.R. § 1241.1(a). If the BIA affirms

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BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

the IJ's denial of an application for relief from removal, an alien can file a petition for review ("PFR") with the circuit court and seek a stay of removal. 8 U.S.C. § 1252(a)(5) ("[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter . . . .").

B. Petitioner's Detention Comports with the INA and the Due Process Clause of the Fifth Amendment

1. Petitioner must be detained pursuant to 8 U.S.C. § 1226(c)

Petitioner is mistaken that she "is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c). . . because [s]he has not been convicted of any crime that triggers such detention." Am. Pet. ¶ 27. A conviction, as discussed below, is not required.

a. Background of the Laken Riley Act

Section 1226(c)'s mandatory detention provision "'carves out a statutory category of aliens who may not be released' during removal proceedings, outside of certain limited circumstances." *Reid v. Donelan*, 17 F.4th 1, 4 (1st Cir. 2021) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see generally Demore v. Kim*, 538 U.S. 510, 518 (2003) ("1226(c) mandates detention during removal proceedings for a limited class of deportable aliens"). Here, the relatively recent Laken Riley Act amendments to § 1226(c) provide ICE the authority to detain Petitioner on a mandatory basis owing to her recent criminal conduct. Congress passed the Laken Riley Act in January 2025, amending § 1226(c) to provide for a "sole exception to § 1226(a)'s discretionary detention framework." *Chang Barrios v. Shepley*, 1:25-cv-00406-JAW, 2025 WL 2772579, at *8 (D. Me. Sept. 29, 2025). As this Court recently explained:

> The Laken Riley Act, codified in 8 U.S.C. § 1226(c)(1)(E), mandates detention for a noncitizen who (i) is inadmissible because he is present in

> the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), . . . or lacks valid documentation, *id.* § 1182(a)(7) (the "inadmissibility criterion")); "and" (ii) "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person," (the "criminal conduct criterion"). 8 U.S.C. § 1226(c)(1)(E)(i)-(ii).

Id. at *8. Accordingly, "where both the inadmissibility criterion[7] and the criminal conduct criterion are satisfied," aliens—like Petitioner—are "subject to mandatory detention under § 1226(c)(1)(E)[.]" *Id.*[8]

b. Petitioner meets the dual inadmissibility and criminal conduct criteria

Petitioner meets the Laken Riley Act's threshold criteria for inadmissibility. As established by her February 2023 NTA, Petitioner was found to be "present in the United States without being admitted or paroled" (*see* Dkt. #1-1 at 1; *see also* Am. Pet. ¶ 9), and therefore is inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). In addition, Petitioner failed the documentation requirements of 8 U.S.C. § § 1182(a)(7). *See* Ex. 1 at 1-2, I-213 Record of Inadmissible Alien (Feb. 23, 2023); Ex. 2 at 1, I-217 Information for Travel Document (Feb. 23, 2023).

Petitioner also meets the Laken Riley Act's criminal conduct criteria. As discussed above, Petitioner was "arrested for" and "charged with" (*see* § 1226(c)(1)(E)(ii)) the crime of Assault and Battery with a Dangerous Weapon, in

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7 As one court has recently described, "the plain text of Section 1226(c) includes noncitizens who are 'inadmissible' (meaning they have not been admitted to the United States) as well as those who are 'deportable' (meaning they were previously admitted to the United States)." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256 (W.D. Wash. 2025).

8 "The Laken Riley amendments otherwise continue[,]" however, "to authorize discretionary detention of noncitizens charged with being inadmissible who do not fall into those enumerated exceptions." *See Vazquez v.* Feeley, 25-cv-1542, 2025 WL 2676082, at *5 (D. Nev. Sept. 17, 2025).

violation of Massachusetts General Law Chapter 265, Section 15A.[9] Assault and Battery with a Dangerous Weapon, where "such assault and battery causes serious bodily injury," is punishable "by imprisonment in the state prison for not more than 15 years or in the house of correction for not more than 21/2 years." MASS. GEN. LAWS ANN. CH. 265, § 15A (2025). Whether the "crime [] resulted in . . . serious bodily injury to another person" is determinative. 8 U.S.C. § 1226(c)(1)(E)(ii). If so, immigration authorities "shall take into custody" Petitioner upon her release on the state charges, as they did here. 8 U.S.C. § 1226(c); *see also id.* § 1226(c)(3) (requiring an immigration detainer to issue and that the alien "effectively and expeditiously" be taken into custody if not otherwise detained).

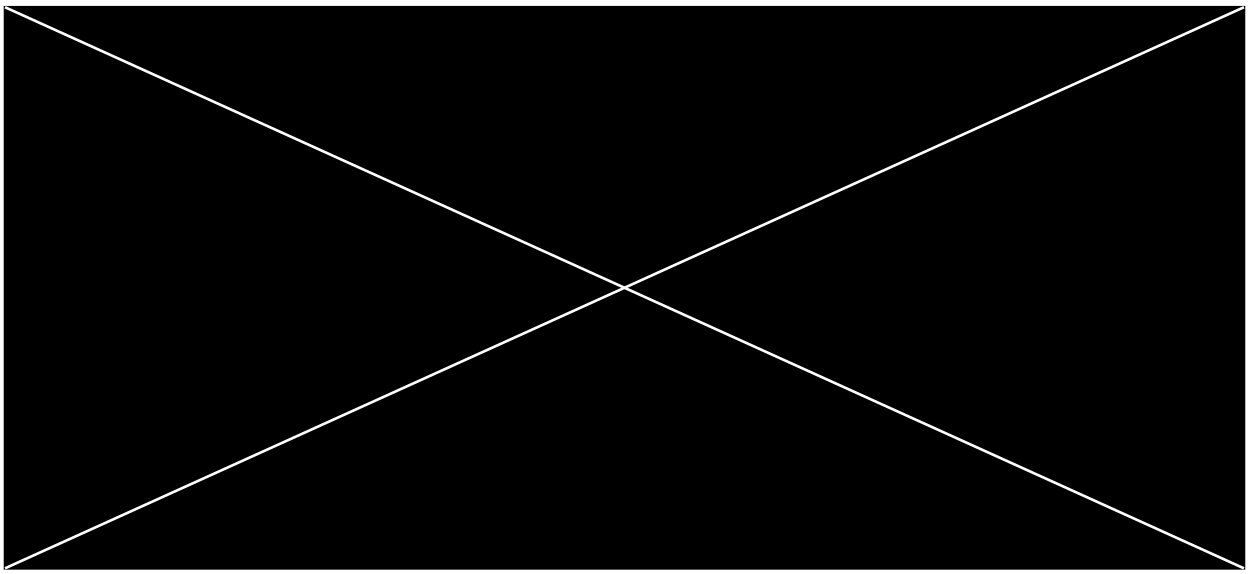
A crime resulting in "serious bodily injury" to a victim, as § 1226(c)(1)(E)(ii) requires, is defined by the Laken Riley Act as having "the meanings given such terms in the jurisdiction in which the acts occurred." *Id.* § 1226(c)(2). Here, the applicable Assault and Battery with a Dangerous Weapon law defines "serious bodily injury" to "mean bodily injury which results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death." MASS. GEN. LAWS ANN. CH. 265, § 15A(d) (2025). On the present record, it is uncertain whether "permanent disfigurement" resulted from Petitioner stabbing her co-worker with a pair of scissors.[10] Nor does any "substantial risk of death" seem likely.

However, Petitioner's attack did result in the "impairment of a bodily function" or

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9 Petitioner also was charged with Assault with a Dangerous Weapon. MASS. GEN. LAWS ANN. CH. 265, § 15B (2025).

10 Respondents do not waive and reserve all arguments in this regard, to the extent additional evidence may be received. Undersigned counsel obtained the record evidence cited herein over the weekend, however, was unable to confer with any state prosecutor assigned to Petitioner's underlying criminal case.



Petitioner therefore was "charged with [and] arrested for. . . committing acts which constitute the essential elements of" a "crime that result[ed]. . . in serious bodily injury to another person." 8 U.S.C. § 1226(c)(1)(E)(ii). Even independent of the underlying crimes charged, Petitioner further *admitted* to Leominster PD personnel that she "commit[ed] acts which constitute the essential elements of . . . a[] crime that result[ed] in . . . serious bodily injury to another person." 8 U.S.C. § 1226(c)(1)(E)(ii) (custody required where alien "admits committing acts which constitute the essential elements" of a serious bodily injury offense). When questioned at the Leominster PD station, she stated that "when she went to work she attacked [the victim]," and "[s]he admitted to stabbing [the victim] with scissors and throwing a trash can at her." Ex. 4 at 7; *see also id.* (charging Petitioner based on "the circumstances of [her] admitting to the violent acts, video footage [Leominster PD personnel] viewed at AIS, pictures of the injury and attack, and [the] witness statement").

The facts underlying Petitioner's assaultive conduct are therefore materially distinguishable from other Laken Riley Act cases, where immigration detainees challenged the applicability of § 1226(c)(1)(E)(ii) to them based on conduct for which

they were initially arrested but a dismissal or acquittal followed. *See E.C. v. Noem*, 25-cv-01789, 2025 WL 2916264, at *11 (D. Nev. Oct. 14, 2025) ("a person who 'is charged with' or 'is arrested' for a [Laken Riley Act] offense, in the present tense, cannot be read to apply to a person has previously been arrested for and charged with a crime where they have also been acquitted of the crime"); *Doe v. Moniz*, 25-cv-12094, 2025 WL 2576819, at *2, at *2 n.4 (D. Mass. Sept. 5, 2025) ("[d]espite [an] arrest, there [was] no evidence in the record that Petitioner ha[d] been charged with a crime," rather, the underlying criminal case appeared to have been dismissed).

c. Reliable evidence provided by the Leominster PD should be considered

In this habeas corpus proceeding "documentary evidence," such as the referenced Leominster Police Department reports, "shall be admissible in evidence." 28 U.S.C. § 2247. Relatedly, such information is of the kind an Immigration Court would consider under 8 C.F.R. § 1003.19(d), which makes clear that "[t]he determination of the Immigration Judge as to custody status or bond may be based upon a*ny information that is available* to the immigration judge or that is presented to him or her by the alien or the service" (emphasis added). Indeed, courts in this circuit have rejected arguments that such police reports even "for dismissed and pending cases can never establish clear and convincing evidence of dangerousness in an immigration bond hearing." *Rubio-Suarez v. Hodgson*, 20-cv-10491, 2020 WL 1905326, at *3 (D. Mass. Apr. 17, 2020) (internal quotation marks omitted); *see also Henry v. INS*, 74 F.3d 1, 6 (1st Cir. 1996) ("while an arrest, without more, is simply an unproven charge, the fact of the arrest, and its attendant circumstances, often have high probative value in immigration proceedings").

Accordingly, Petitioner is subject to Laken Riley Act mandatory detention.

2. Petitioner must alternatively be detained pursuant to 8 U.S.C. § 1225(b)(2)

ICE further maintains that the true cause of Petitioner's detention is pursuant to 8 U.S.C. § 1225(b)(2). The Government acknowledges, as it must, the recent caselaw from this Court uniformly sustaining challenges to DHS's interpretation of § 1225(b)(2). *See, e.g., Chogllo Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Bermeo Sicha v. Bernal*, 25-cv-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025). The position of ICE nonetheless remains that Petitioner must be detained pending the outcome of her removal proceedings, with the agency following the precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025), to which it must adhere. The Government adopts by reference its prior arguments made to this Court in that regard.[11]

3. To the extent 8 U.S.C. § 1226(a) is applied, Petitioner would be constitutionally subject to discretionary detention and receive adequate due process

Petitioner primarily argues that she is detained pursuant to 8 U.S.C. § 1226(a), which as detailed above, also allows for the discretionary detention of aliens for the purpose of removal proceedings. Am. Pet. ¶¶ 28-29, 48-61. ICE submits that the detention authority instead resides under 8 U.S.C. § 1226(c), and in the alternative, § 1225(b)(2), as discussed above. Even to the extent § 1226(a) were found to apply, however, such authority provides that an alien may be detained "pending a decision on

[11] By email correspondence exchanged on November 8, 2025, Government and ACLU counsel discussed the possible membership by Petitioner in the class recently certified by U.S. District Judge Patti B. Saris of the District of Massachusetts. *See Guerrero Orellana v. Moniz*, 25-cv-12664, 2025 WL 3033769 (D. Mass. Oct. 30, 2025); *see also* Am. Pet. at 5 n.2. Petitioner's counsel has confirmed that *Guerrero Orellana* class membership does not change how the Amended Petition should proceed, which is the understanding of Respondents, as well.

whether [she] is to be removed from the United States." *Id.* The provision "creates authority for anyone's arrest or release under § 1226—and it gives [immigration authorities] broad discretion as to both actions . . . ." *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).[12] Under § 1226(a), too, Petitioner's detention would therefore be authorized by statute and regulation, with no basis for the Court to order release.

The Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Wong Wing v. U.S.*, 163 U.S. 288, 235 (1896) (holding deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character."). Here, Petitioner is detained for the limited purpose of removal proceedings. If found to be detained under § 1226(a), she could seek a bond hearing to contest such detention.[13] Under such a § 1226(a) scenario, per Supreme Court precedent, detention would not violate the Constitution. *See Wong Wing*, 163 U.S. at 235 ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). There is no dispute that Petitioner's detention is not indefinite; it will end upon the conclusion of the removal proceedings. As another district court in this circuit has recognized, a brief period of detention for the purpose of removal proceedings or to effectuate removal does not violate the Constitution. *See*

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[12] Moreover, "[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

[13] Notable, too, is that even if an IJ disagrees with DHS's position that Petitioner is detained under § 1225 at a bond hearing and finds jurisdiction under § 1226, the agency could invoke the automatic stay provision at 8 C.F.R. § 1003.19(i)(2).

Dambrosio v. McDonald, Jr., No. 25-CV-10782-FDS, 2025 WL 1070058, at *2 (D. Mass. Apr. 9, 2025) (recognizing that detention "for a period of less than three months' time . . . does not amount to an unconstitutional duration").

IV. Conclusion

Petitioner is not entitled to a writ of habeas corpus based on her allegations that her due process rights under the Fifth Amendment have been violated. The Government respectfully submits that the court should dispose of and dismiss this matter "as law and justice require." 28 U.S.C. § 2243. The Government will be prepared for and attend the hearing set in this matter for November 10, 2025, at 9:00am. *Id.* At such hearing, the Government may submit additional evidence and arguments bearing on these proceedings. The Government respectfully submits that good cause for any later amendments of its return exists, based on the expedited scheduling of its briefing and response.

Dated: November 9, 2025
Bangor, Maine

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2025, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

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