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EMMA MARCELA CRESPIN DE PAZ

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EMMA MARCELA CRESPIN DE PAZ,

Petitioner,

v.

Kristi NOEM, Secretary, Department of Homeland Security; Pam BONDI, Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Todd LYONS, Executive Associate Director of ICE Enforcement and Removal Operations (ERO); and David A. MARIN, Adelanto Immigration and Customs Enforcement Field Office Director,

Respondents.

CASE NO.: 2:25-cv-06629-SVW-JPR

PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

REPLY TO GOVERNMENT ANSWER TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner EMMA MARCELA CRESPIN DE PAZ respectfully submits this Reply to Respondents' Opposition to Petitioner's Petition for Writ of Habeas Corpus ("Petition"). Doc. 7. Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules Governing Section 2254 cases.

When Petitioner entered the United States, many years passed when she lived in the United States until the Department of Homeland Security ("DHS") put Petitioner in full removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a, which is mutually exclusive

with expedited removal proceedings under 8 U.S.C. § 1225. DHS is now detaining Petitioner solely on the purported ground that Petitioner is not eligible for bond under 8 U.S.C. § 1225. However, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) and § 1225(b)(2)(A) do not apply to Petitioner. Therefore, Petitioner's detention violates both the Immigration and Nationality Act ("INA") and Petitioner's Fifth Amendment right to due process of law.

PROCEDURAL HISTORY

Petitioner entered the United States many years ago, in the 1990s, through the southern border. See Doc. 1. DHS filed a "Notice to Appear" ("NTA") against Petitioner, with the Adelanto Immigration Court, pursuant to 8 U.S.C. § 1229, many years after Petitioner entered the United States, upon her one and only apprehension by ICE in 2025. See Notice to Appear against Petitioner. The NTA charged Petitioner with being "inadmissible" as "present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, 8 U.S.C. § 1182(a)(6)(A)(i)." See Notice to Appear against Petitioner.

An NTA is the "charging document" that initiates removal proceedings in Immigration Court, before an Immigration Judge, against a noncitizen, and constitutes written notice to the noncitizen of their placement in removal proceedings before the Immigration Court. See 8 U.S.C. § 1229(a) (describing the requirements of a Notice to Appear as the "initiation of removal proceedings."); 8 C.F.R. § 1003.14(a) (2025) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service."). Therefore, DHS's filing of the NTA against Petitioner in this case initiated "full" removal proceedings in Immigration Court pursuant to 8 U.S.C. § 1229a—which vested jurisdiction with the Immigration Judge—and constituted "the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3) (emphasis added). As the Board of Immigration Appeals ("BIA") recently stated, "DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), or full removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a." Matter of Q. LI, 29 I&N Dec. 66, 68 (BIA 2025) (emphasis added).

Full removal proceedings and expedited removal proceedings are mutually exclusive. Moreover, the Government must concede that Petitioner is not in expedited removal proceedings.

Petitioner has appeared at hearings with the Adelanto Immigration Court before an Immigration Judge. Petitioner subsequently filed with the Adelanto Immigration Court a request for custody redetermination—also known as a "bond request"—pursuant to 8 C.F.R. § 1003.19(a) (2025) ("Custody and bond determinations made by [DHS]…may be reviewed by an Immigration Judge."). In response to Petitioner's bond request, DHS filed a notice of the Petitioner's ineligibility for bond with the Immigration Court. DHS argues that Petitioner is "detained without a warrant while arriving in the United States…subsequently placed in removal proceedings is detained under 8 U.S.C. § 1225(b)…and is ineligible for any subsequent release on bond under [8 U.S.C. § 1226(a)]."

ARGUMENT

1. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER THE EXPEDITED REMOVAL STATUTE

The Government now argues that Petitioner is subject to mandatory detention under the expedited removal statute, 8 U.S.C. § 1225(b). See Doc. 7. This argument is inapposite because this statutory provision applies only to noncitizens in the process of Credible Fear Interviews: a process to which Petitioner was not and is not subject.

The statute upon which the Government relies to justify Petitioner's detention applies exclusively to noncitizens formerly in expedited removal proceedings and the "Credible Fear Interview" procedure. 8 U.S.C. § 1225 contains a provision governing "Asylum interviews," or "Credible Fear Interviews." See § 1225(b)(1)(B). When a noncitizen that seeks admission to the United States and is in the custody of DHS "indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution," 8 U.S.C. § 1225(b)(1)(A)(ii), "the [immigration] officer shall refer the alien for an interview by an asylum officer." Id. This statute further provides that "[i]f the officer determines at the time of the interview that an alien has a credible fear of persecution…the alien shall be detained for further consideration of the application for asylum." Id. § 1225(b)(1)(B)(ii). The statute clarifies that a noncitizen subject to the Credible Fear Interview process is subject to mandatory detention: "Any alien subject to the

procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." § 1225(b)(1)(B)(iii)(IV) (emphasis added). Therefore, this provision explicitly limits the application of the mandatory detention provision to noncitizens "subject to the procedures" under the "Asylum interviews" clause.

The mandatory detention provision of 8 U.S.C. § 1225(b) does not apply to Petitioner. Petitioner was never placed in expedited removal proceedings and never underwent a Credible Fear Interview. When DHS apprehended Petitioner in the interior of the United States, many years after Petitioner first set foot on American soil, DHS chose to initiate full removal proceedings under 8 U.S.C. § 1229a. See Notice to Appear against Petitioner. DHS did not subject Petitioner to a Credible Fear Interview under 8 U.S.C. § 1225(b)(1)(B)(ii), which is indicated by the fact that the box on Petitioner's NTA stating "This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture," remains unchecked. See id; Notice to Appear against Petitioner. Full removal proceedings are mutually exclusive with expedited removal proceedings. See 8 U.S.C. § 1229a(a)(3)("a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States."). Therefore, Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), which is limited to "alien[s] subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Administrative interpretations of 8 U.S.C. § 1225 confirm that the mandatory detention provision applies only to noncitizens in the expedited removal and Credible Fear Interview procedure. The Attorney General explained that Section 235 of the Act expressly provides for the detention of aliens originally placed in expedited removal. Such aliens "shall be detained pending a final determination of credible fear." INA § 235(b)(1)(B)(iii)(IV) [8 USC § 1225(b)(1)(B)(iii)(IV)]. Aliens found not to have a credible fear "shall be detained…until removed." Id. Aliens found to have such a fear, however, "shall be detained for further consideration of the application for asylum." Id. §

235(b)(1)(B)(ii). Matter of M-S-, 27 I&N Dec. 509, 512 (A.G. 2019) (emphasis added). This agency interpretation of 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) confirms that the application of this mandatory detention provision applies only to noncitizens in expedited removal proceedings "pending a final determination of credible fear." Id. In this case, there is no pending Credible Fear Interview for Petitioner. See Notice to Appear against Petitioner. The BIA recently affirmed Matter of M-S-, stating that "[f]or those placed in expedited removal proceedings who are referred to an Immigration Judge for consideration of their asylum application, section 235(b)(l)(B)(ii) of the INA, 8 U.S.C. § 1225(b)(1)(B)(ii), requires detention until the final adjudication of the asylum application." Matter of Q. LI, 29 I&N Dec. 66, 68 (BIA 2025).

The DHS arrest history relating to Petitioner demonstrates that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225. As the Attorney General stated in Matter of M-S-, Section 236 of the Act addresses, more generally, the detention of aliens in removal proceedings. Once an alien has been arrested pursuant to an immigration warrant, DHS "may continue to detain the arrested alien" or "may release the alien on" "bond of at least $1,500" or "conditional parole." INA § 236(a)(1)–(2), 8 U.S.C. § 1226(a)(1)–(2). Matter of M-S-, 27 I&N Dec. 509, 512 (A.G. 2019).

Therefore, DHS's own arrest history for Petitioner contradict the Government's contention that "[t]o the extent that the Petitioner challenges her detention by claiming that her detention is not under 8 U.S.C. § 1225(b) (which mandates detention) but rather under 8 U.S.C. § 1226(a) (discretionary detention), such an argument fails." Doc. 7. The arrest history also contradict DHS's Opposition to Petitioner's request for bond with the Adelanto Immigration Court that states that Petitioner "is not eligible for bond pursuant to Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025)." Taking DHS's arrest hisotory against Petitioner into consideration, it is clear that DHS arrested Petitioner pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), and Petitioner is not subject to mandatory detention.

The Government also relies on 8 U.S.C. § 1225(b)(2)(A) for the conclusion that Petitioner is not eligible for release. This argument also fails because this statutory provision applies to applicants for admission before DHS initiates full removal proceedings by filing an NTA with the Immigration Court. 8 U.S.C. § 1225(b)(2)(A) falls under the subheading

"Inspection of other aliens," and states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [full removal] proceeding under section 1229a of this title." Id. (emphasis added). The INA defines the "terms 'admission' and 'admitted' [to] mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Both the plain meaning and the context of this provision—the expedited removal statute—indicate that it applies only at the time DHS initiates full removal proceedings under 8 U.S.C. § 1229a. See FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132 (2000) ("[T]he court should not confine itself to examining a particular statutory provision in isolation. Rather, it must place the provision in context."). Thus, 8 U.S.C. § 1225(b)(2)(A) does not apply to this case because Petitioner was placed in full removal proceedings many years after Petitioner entered the United States.

To the extent that Matter of Q. Li permits mandatory detention of Petitioner under 8 U.S.C. § 1225(b), the Court should not follow Matter of Q. Li. The Government contends that Petitioner is not eligible for release under the BIA's decision in Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025). The Government asserts that "In Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025), the BIA held that mandatory detention under 8 U.S.C. § 1225(b) applies to all 'applicant[s] for admission,' whether they are placed in expedited removal proceedings or in full removal proceedings under 8 U.S.C. § 1229a." Doc. 7. The statute at issue in Q. Li is 8 U.S.C. § 1225(b)(2)(A), which governs "Inspection of other aliens." Id. § 1225(b)(2) (emphasis added). The statute provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). This statute applies at the time the noncitizen seeks admission, before DHS commences full removal proceedings. See Matter of M-S-, 27 I&N Dec. 509, 512 (A.G. 2019). If Q. Li stands for the proposition that 8 U.S.C. § 1225(b)(2)(A) renders Petitioner ineligible for bond, then the Court should eschew Q. Li's arbitrary and capricious interpretation of the statute. See Loper Bright Enterprises v. Raimondo,

603 U.S. 369, 392 (2024) (stating that 5 U.S.C. §706(2)(A) requires "agency action to be set aside if 'arbitrary, capricious, [or] an abuse of discretion.'"). Courts may "hold unlawful and set aside agency action, findings, and conclusions found to be…not in accordance with law." Id. at 391 (quoting §706(2)(A)). "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires." Id. at 412. Therefore, if the Court determines that Q. Li extends 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention requirement to Petitioner, the Court should not follow Q. Li, but rather independently rule that 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner because the statute contemplates procedures—expedited removal and admission before full removal proceedings commenced—that do not apply to Petitioner.

2. PETITIONER IS NOT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES

The Government contends that "the proper forum is the Immigration Court, where [Petitioner] should seek a bond hearing and then, if needed, she should appeal to the Board of Immigration Appeals; given that the Petitioner is still in ongoing formal removal hearings before the Immigration Court." Doc. 7. This argument fails for three reasons.

First, Petitioner did file a bond request with the Adelanto Immigration Court, Immigration Judge denied Petitioner's request, finding Petitioner ineligible for bond under 8 U.S.C. § 1225. See Immigration Judge Order Denying Bond. Based on information and belief, the BIA will likely affirm the Immigration Judge's decision pursuant to Matter of Q. LI, 29 I&N Dec. 66 (BIA 2025). The unlikelihood that Petitioner's claim of eligibility for release will succeed at the administrative level supports Petitioner's instant habeas claim. See, e.g., McCarthy v. Madigan, 503 U.S. 140, 147 (1992) ("[A]n administrative remedy may be inadequate 'because of some doubt as to whether the agency was empowered to grant effective relief'") (quoting Gibson v. Berryhill, 411 U.S. 564, 575, n. 14 (1973))).

Second, Brito is distinguishable from the facts and arguments here. Petitioner is not challenging an Immigration Judge's decisions regarding the setting of bond. Rather, Petitioner challenges DHS's custody determination that Petitioner is ineligible for bond and DHS's detention of Petitioner pursuant to 8 U.S.C. § 1225(b).

Third, Petitioner is challenging her statutory eligibility to be released from detention, which is reviewable on habeas. See, e.g., Goncalves v. Reno, 144 F.3d 110, 125 (1st Cir. 1998) ("Analytically, the decision whether an alien is eligible to be considered for a particular discretionary form of relief is a statutory question separate from the discretionary component of the administrative decision whether to grant relief."). Furthermore, Petitioner did request bond with the Immigration Court, and DHS has contended that Petitioner is not eligible for bond. See DHS Notice of Petitioner's Ineligibility for Bond.

3. PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION PROCEEDINGS

Petitioner has a constitutionally protected interest in procedural due process in their removal proceedings and applications for relief. See Yamataya v. Fisher, 189 U.S. 86 (1903) (holding that immigrants have procedural due process rights); Bridges v. Wixon, 326 U.S. 135 (1945) (holding that deportation proceedings against non-citizens lawfully residing in the United States must adhere to norms of due process). "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission…and those who are within the United States after an entry." Leng May Ma v. Barber, 357 U.S. 185, 187 (1958). "Noncitizens in this country…undeniably have due process rights." Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 191 (2020). See also Landon v. Plasencia, 459 U.S. 21, 32 (1982) ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding her application…."). The government is arguing that the Petitioner is seeking admission, but this belies the undisputed facts of this case. In this case, Petitioner is not an arriving alien, was neither paroled nor had her parole revoked. In contrast, Petitioner was processed pursuant to INA 236(a), or 8 U.S.C. § 1226, and was placed in full removal proceedings, which are governed by 8 C.F.R. §§ 1003.12-1003.41, 1240.1-1240.26.

"[A]n alien in civil removal proceedings is not entitled to the same bundle of constitutional rights afforded defendants in criminal proceedings…various protections that apply in the context of a criminal trial do not apply in a deportation hearing." Hussain v. Rosen, 985 F.3d 634, 642 (9th Cir. 2021) (quoting Valencia v. Mukasey, 548 F.3d 1261, 1263 (9th Cir.

2008)), cert. denied sub nom. Hussain v. Garland, 142 S. Ct. 1121 (2022). A full and fair hearing is one of the due process rights afforded to aliens in deportation proceedings.

The First Circuit held in Hernandez-Lara v. Lyons that the Fifth Amendment's Due Process clause requires the government to provide detained noncitizens awaiting removal proceedings a bond hearing. 10 F.4th 19 (1st Cir. 2021). The government must prove the noncitizen is a danger by clear and convincing evidence, or flight risk by preponderance of evidence. See id. at 41. If the government cannot meet its burden, it must offer bond or conditional parole. See id. The decision expanded the due process rights of noncitizens. The court also asserted that the decision ameliorates the "substantial societal costs" of unnecessary detention.

In this case, the Government claims that the Petitioner has no right to due process because she is an applicant for admission. This argument ignores the facts of the case: that upon entry into the United States, many years passed during which Petitioner lived in the United States before DHS arrested her and put her in full removal proceedings. Now, DHS is trying to recreate the facts to change the posture of her case by claiming that Petitioner is subject to expedited removal, mandatory detention under the expedited removal statute, and has no right to due process. The Government's arguments attempt to stretch Matter of Q Li, 20 I&N Dec. 66 (BIA 2025), which involved a Respondent who was conditionally paroled at the border, to justify Petitioner's detention. However, the facts of the Petitioner's case are distinguishable from Q. Li, and the record shows that Petitioner remains in full removal proceedings with her next Master Calendar at the Adelanto Immigration Court now scheduled for a future date. Petitioner remains in full removal proceedings. Thus, the protections afforded to Hernandez Lara should be extended to the Petitioner in this case as well.

CONCLUSION

For the reason described above, Petitioner's Petition should be granted, and Respondents should be ordered to release Petitioner immediately pursuant to her statutory eligibility for release.

Respectfully Submitted,

Dated: August 18, 2025

/s/ MARVIN E. VALLEJO
MARVIN E. VALLEJO
Counsel for Petitioner
EMMA MARCELA
CRESPIN DE PAZ

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is P. O. Box 86788, Los Angeles, California 90086.

On August 18, 2025, I served the following document(s), described as: **PETITIONER EMMA MARCELA CRESPIN DE PAZ'S REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS** on all interested parties in this action by placing a true copy of the document(s) in a sealed envelope, addressed as follows:

1. UNITED STATES ATTORNEY'S OFFICE, CENTRAL DISTRICT OF CALIFORNIA, CIVIL DIVISION, 300 NORTH LOS ANGELES ST., SUITE 7516, LOS ANGELES, CA 90012.

[ ] **BY PERSONAL SERVICE:** I caused to be delivered in person a copy of said document to the above addressee.

[ ] **BY MAIL**: I am readily familiar with the firm's practice of collecting and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was placed with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date at a United States Postal Service collection site, in Los Angeles, California.

[X] **BY ELECTRONIC SERVICE**: I caused to be delivered such document by email via PACER to the above addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 18, 2025, at Los Angeles, California.

MARVIN E. VALLEJO