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Attorney for Petitioner

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN, DIVISION

Carol Nicoll Oliva Celi,  
  
Petitioner,  
v.

James Janecka, Warden Adelanto ICE  
Process Ctr;  
Tim Robbins, Dir LA Field Ofc ERO;  
Kristi Noem, Sec DHS;  
Pamela Bondi, US AG,  
  
Respondents.

) Case No.: 5:25-cv-1904

) Agency No.: A# 

) PETITION FOR WRIT OF  
) HABEAS CORPUS

INTRODUCTION

1. Petitioner, Caroline Nicoll Oliva Celi, was detained on or about July 15, 2025, without statutory authority. On February 04, 2025, Immigration Judge Andrew Fishkin ordered her removed from the United States to Peru, no alternate country of removal was designated. However, he granted her Withholding of Removal pursuant to the Convention Against Torture (“CAT”) meaning that she cannot be removed from the United States. The Department of Homeland Security (“DHS”) has not moved to reopen her immigration court proceedings to either A) cancel her grant of Withholding of Removal under CAT nor B) designate an alternate country of removal.

Accordingly, in order to vindicate Ms Oliva Celi's constitutional and statutory rights, this Court should grant the instant petition for a writ of habeas corpus. Absent an order from this Court, Petitioner faces imminent removal to a third country and separation from her family.

#### JURISDICTION

2. This action is brought pursuant to the Constitution of the United States and the Immigration & Nationality Act ("INA"), 8 USC §1101 *et seq.*
3. This Court has subject matter jurisdiction under 28 USC §2241 (habeas corpus), 28 USC §1331 (federal question), and Article I, §9, cl.2 of the U.S. Constitution (Suspension Clause).
4. This Court may grant relief under 28 USC §2241 *et seq.* (Habeas Corpus), 28 USC §2201 *et seq.* (Declaratory Judgment Act), and 28 USC §1651 (All Writs Act).

#### VENUE

5. Venue is proper because Petitioner Caroline Nicoll Oliva Celi is detained at the ICE Processing Center located in Adelanto, California, which is in the jurisdiction of this District. In addition, venue is proper because a substantial part of the events giving rise to Ms. Oliva Celi's claims occurred in this District. She resides within the District. In addition, at least one of the Respondents is located within the District. 28 USC §1391(e).

#### 28 USC §2243

6. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the Respondents forthwith, unless the Petitioner is not entitled to relief. 28 USC §2243. If an OSC is issued, Respondents are to be required to file a return "**within three days** unless for good cause additional time, not exceeding twenty days, is allowed." Ibid. (Emphasis added).

7. Courts have long recognized the significance of the habeas corpus in protecting individuals from unlawful detention. The Supreme Court has referred to the Great Writ as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” Fay v. Noia, 372 U.S. 391, 400 (1963).

#### PARTIES

8. Petitioner Caroline Nicoll Oliva Celi is a native and citizen of Peru . She is the recipient of an order granting her Withholding of Removal under the Convention Against Torture by Santa Ana, California Immigration Judge Andrew Fishkin . She is being detained at the ICE Processing Center in Adelanto, California (run by GEO Group). She is in the custody and under the direct control of Respondents and their designees and/or agents.

9. Respondent James Janecka is the warden of GEO Group’s ICE Processing Center in Adelanto, California. He has immediate physical custody and control of Petitioner pursuant to the facility’s contract with ICE to detain non-citizens like her. Respondent James Janecka is a legal custodian of Petitioner.

10. Respondent Tim Robbins is the Director of the Los Angeles Field Office of the Enforcement and Removal Office of the Immigration & Customs Enforcement. Respondent Tim Robbins is a legal custodian of Petitioner and has the lawful authority to order Petitioner’s release.

11. Respondent Kristi Noem is the Secretary of Homeland Security. In this capacity she is responsible for the implementation and enforcement of the INA and oversees, ICE; the agency responsible for Petitioner’s detention. Respondent Noem is a legal custodian of Petitioner and has the lawful authority to order her release.

12. Respondent Pamela Bondi is the Attorney General of the United States. In this capacity she has the authority to adjudicate immigration removal cases and to oversee the Executive Office for Immigration Review ("EOIR"); which administers the immigration courts and Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner and has the lawful authority to order Petitioner's release.

#### STATEMENT OF FACTS

13. Ms. Oliva Celi is a 26 year old citizen of Peru. She entered the United States without inspection on or about April 08, 2023 at or near San Luis, AZ. A copy for the Notice to Appear ("NTA") is attached hereto as Exhibit A.

14. Petitioner was placed in removal proceedings before Immigration Judge Andrew Fishkin in Santa Ana, California.

15. In these proceedings Petitioner applied for asylum, withholding of removal and protection under the Conventional Against Torture (CAT).

16. On February 04, 2025, the Immigration Judge Fishkin denied her applications for asylum and withholding of removal and ordered her removed to Peru. No alternate country of removal was named or ordered.

17. On this same date, Immigration Judge Fishkin granted Petitioner relief under CAT, meaning that while the order is in effect Petitioner cannot be removed from the United States. A copy of Immigration Judge Fishkin's Order granting protection under CAT is attached hereto as Exhibit B.

18. On or about July 15, 2025, Petitioner was detained by ICE and housed at the GEO Group's ICE Processing Center in Adelanto, California.

19. Based on information and belief, from communication with her father, Petitioner has been told by Respondents that they are looking for a third country where to remove (deport) her.

20. Respondents have not petitioned the Immigration Judge to reopen Petitioner's immigration court proceedings to request that the order granting protection under the Convention Against Torture be rescinded, nor to request that removal be ordered to an alternate country.

21. Petitioner remains detained by Respondents in the GEO Group's ICE Processing Center in Adelanto, California in violation of the Immigration Judge's order granting her protection under the Convention Against Torture and her rights to Due Process.

#### ARGUMENT

22. An applicant for protection under the Convention Against Torture must establish that it is more likely than not that she would be tortured if removed to the proposed country of removal. If this standard is met the Immigration Judge must grant protection. 8 CFR §1208.16(c)(2).

23. Immigration Judge Fishkin granted Petitioner protection under the Convention Against Torture. Thus, Petitioner established that it is more likely than not that she would be tortured if returned to Peru.

24. INA §241(a)(1)(A), 8 USC §1231 (a)(1)(A) states that after a non-citizen is ordered removed "the Attorney General shall remove the alien from the United States within a period of 90 days (...the 'removal period')". INA §241(a)(2)(A), 8 USC §1231(a)(2)(A) states the "[d]uring the removal period, the Attorney General shall detain the alien. Under no circumstances during the removal period shall the Attorney General release an alien who has been found inadmissible...or deportable..."

25. INA §241(a)(3), 8 USC §1231(a)(3) states that "[i]f the alien does not leave or is not removed with the removal period, the alien pending removal, shall be subject to supervision

under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien- (A) to appear before an immigration officer periodically for identification; (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government; (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien."

26. On February 04, 2025, Immigration Judge Fishkin found Petitioner removable (as inadmissible) from the United States. Thus, triggering the 90 day "removal period."

27. Again, Immigration Judge Fishkin granted Petitioner protection from removal to Peru (with no alternate country of removal named), thus, not requiring Petitioner to leave. The 90<sup>th</sup> day for the Attorney General to effectuate Petitioner's removal was May 05, 2025.

28. As noted above INA §241(a)(3), 8 USC §1231(a)(3) pending removal the non-citizen shall be subject to supervision and the Attorney General shall require such non-citizen found removable but not removed within the removal period to "(A) appear before an immigration officer periodically..."

29. This statutory language plainly indicates that a non-citizen detained during the removal period does not leave or is not removed, that non-citizen is released from detention and is then subject to supervision, which includes appearing periodically before an immigration officer outside of detention.

30. Again, Petitioner's removal period ran from February 4<sup>th</sup> to May 5<sup>th</sup>, 2025. During this time, Petitioner was not detained. Only in July of 2025, nearly 60 days after the removal period ended, did Respondents detain Petitioner.

31. Thus, under INA §241(a)(3), 8 USC §1231(a)(3), there is no further direct statutory authority to detain her. It is curious to note that INA §241, 8 USC §1231, grants that authority to detain and remove non-citizens only to the Attorney General and not to the Secretary of Homeland Security or her designees or agents. Read in this way, all Respondents, except for the Attorney General, do not have any direct statutory authority to detain Petitioner for any period of time.

32. INA §241(a)(6), 8 USC §1231(a)(6) would appear to grant the Attorney General authority to detain an inadmissible non-citizen beyond the “removal period”. However, this section says: “...**may** be detained beyond the removal period...” The operative word here being “may.”

33. However, INA §236(a)(3), 8 USC §1231(a)(3) states that if the non-citizen “does not leave or is not removed within the removal period, the alien pending removal **shall** be subject to supervision” which “**shall** include...appear[ing] before an immigration officer periodically...”

34. The words “may” and “shall” are in direct contradiction in this context.

35. The implementing regulation for detention during the removal period states: “Once the removal period defined in section 241(a)(1) of the Act begins, an alien in the United States will be taken into custody pursuant to the warrant of removal.” However, this regulation does not indicate what will or should happen once the removal period ends ignoring the statute. 8 CFR §241.3.

36. In addition, the regulations continue indicating that there is authority to detain non-citizens beyond the removal period, if that person has been found to be inadmissible. 8 CFR §241.4(a)(1). Again, this regulation ignores the statute.

37. “a regulation does not trump an otherwise applicable statute unless the regulation’s enabling statute so provides.” United States v. Maes, 546 F.3d 1066, 1068 (9th Cir. 2008).

Nothing in the INA provides that the regulations trump the statute. Moreover, after Loper Bright Enterprises v. Raimondo, 603 U.S. 369; 144 S.Ct 2244, deference to an agency’s interpretation of an ambiguous regulation is no longer to be given deference.

38. If Respondents wish to request the Immigration Judge remove the protection granted under the Convention Against Torture, due process would require that they petition that Immigration Court to do so, *see* 8 CFR §1208.24(f), and allow her the opportunity to respond to such a request. INA §241(b)(3)(A) & (C), 8 USC §1231(b)(3)(A) & (C).

39. As stated previously Respondents have said to Petitioner that they are actively looking for an alternate country to where they can deport (remove) her. To repeat, no alternate country of removal was sought by Respondents, nor did Immigration Judge Fishkin order one. Nor have Respondents sought to reopen Petitioner’s immigration court proceedings to seek such an order.

40. Moreover, under INA §241(b)(3)(A), 8 USC §1231(b)(3)(A) the Attorney General may not remove a non-citizen to a country where the Attorney General decides that the non-citizen’s life or freedom would be threatened due to race, religion, nationality, membership in a particular social group or political opinion.

41. Before the Attorney General can make that decision, INA 241(b)(3)(C), 8 USC §1231(b)(3)(C) states “[i]n determining whether an alien has demonstrated that the alien’s life or freedom would be threatened...the trier of fact shall determine whether the alien has sustained the alien’s burden of proof, and shall make credibility determinations...” A non-citizen cannot carry a burden of proof or be found credible or not credible without a hearing before a trier of fact. Thus, before Petitioner can be removed (deported) to an alternate country other than Peru,



she has the right to a hearing to present evidence and testimony that her life and/or freedom would be threatened due to her race, religion, nationality, membership in a particular social group or political opinion.

42. In direct contradiction to the statute 8 CFR §1208.16(f) states that “[n]othing in this section or §1208.17 shall prevent the Service from removing an alien to a third country other than the country to which removal has been withheld or deferred.” Thus, Respondents’ reliance on the authority provided in 8 CFR §1208.16(f) violates Petitioner’s rights under the INA and her rights to due process under the 5<sup>th</sup> Amend. to the U.S. Constitution.

43. Moreover, the regulations further ignore a non-citizen’s statutory rights to a hearing where that person can present evidence to establish a threat to his or her life or freedom. 8 CFR §241.15 states that “the Secretary retains discretion to removal an alien to any country described in section 241(b) of the Act (8 U.S.C. 1231(b))...” with no mention to a non-citizen’s right to object. 8 CFR§241.15(a). The regulation goes on to state that the interest of the United States is controlling, no mention of the interests or due process rights of the non-citizen. 8 CFR §241.15(f).

44. And again, ignoring the statute 8 CFR §241.15(g) states: “Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.” *Compare* INA §241(b)(2)(C), 8 USC §1231(b)(2)(C).

#### CLAIM FOR RELIEF

#### VIOLATION OF THE FIFTH AMENDMENT AND STATUTORY RIGHTS TO DUE PROCES

45. Petitioner incorporates by this reference and re-alleges as though fully set forth herein the allegations of paragraphs 1 through 44 inclusive.

46. Respondents have violated Petitioner's rights to due process under the U.S. Constitution by detaining her without statutory authority.

47. INA §236, 8 USC §1226 authorizes the detention of non-citizens during the pending of removal proceedings. However, Petitioner's removal proceedings have concluded and are not pending. Thus, this authority is not applicable and to rely on it deprives Petitioner of her right to due process.

48. INA §241, 8 USC §1231 authorizes detention of non-citizens following the issuance of an administratively final order of removal and only during the removal period, 8 CFR §241.4 notwithstanding. Immigration Judge Fishkin issue a final order of removal to Peru, but he granted Petitioner protection under the Convention Against Torture and did not issue a removal order to any alternate country of removal.

49. The removal period for Petitioner was between February 04, 2025 and May 05, 2025. Respondents did not detain Petitioner during this time, but detained her in July of 2025, nearly 60 days after the removal period ended. Thus, there is no further statutory authority to detain her. Authority purportedly granted under the regulations, notwithstanding.

50. Absent detention authority under INA §236, 8 USC §1226 or §241, 8 USC §1231, Respondents' decision to detain Petitioner violates the Due Process clause of the Fifth Amendment.

51. Removing Petitioner to an alternate country other than Peru, without affording her the right to present evidence and testimony to establish whether or not her life or freedom would be threatened due to her race, religion, nationality, membership in a particular social group or political opinion, violates her rights under INA §241(b)(3)(C) and her rights to due process under the 5<sup>th</sup> Amendment to the Constitution, regulations notwithstanding.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court grant the following:

- (1) Assume jurisdiction over this matter.
- (2) Issue an Order to Show Cause ordering Respondents to show cause as to why this Petition should not be granted.
- (3) Declare that Petitioner's detention violates the Due Process clause of the 5<sup>th</sup> Amendment to the U.S. Constitution and statutory provisions cited herein.
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner forthwith.
- (5) Award Petitioner attorney's fees and costs under the Equal Act, and any other basis allowed by law.
- (6) Grant any further relief that this Court deems just and proper.

Dated: July 25, 2025

Respectfully submitted,

s/Andrew J. Vazquez  
Andrew J. Vazquez, Esq.  
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 USC §2242

I represent Petitioner, Caroline Nicoll Oliva Celi, and I submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 25<sup>th</sup> day of July, 2025.

s/ Andrew J. Vazquez  
Attorney for Petitioner