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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PHANTSULAIA, Eka

Petitioner

v.

Gregory J. ARCHAMBEAULT, Director of the San Diego Field Office of ICE Enforcement and Removal Operations ("ICE/ERO"); Kristi NOEM, Secretary of the United States Department of Homeland Security ("USDHS"); and Pamela BONDI, Attorney General ("AG") and Chief Law Enforcement for the U.S. Department of Justice ("USDOJ"); David RIVAS, Warden of the San Luis Regional Detention Center; and Anne Kristina PERRY, Assistant Chief Immigration Judge for the San Diego Immigration Court,

Respondents

Civ. No.: '25CV2269 AJB DDL

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 8 U.S.C. § 1252(e)(2) AND 28 U.S.C. § 2241

Agency No. A[redacted]

INTRODUCTION

1. Petitioner Eka Phantsulaia is a national and citizen of [redacted] in the custody of the Immigration and Customs Enforcement (ICE), initially at the Otay Mesa Detention Center (OMDC) and currently at the San Luis Regional Processing Center (SLRPC), also known as the San Luis Regional Detention Center (SLRDC) both under the joint supervision of Enforcement and Removal Operations (ERO) of the San Diego Field Office and/or the Calexico Sub Field Office.

2. Petitioner is being held in ICE custody unlawfully because she has been denied a reasonable opportunity to demonstrate before an immigration judge that according to existing administrative law (e.g., *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006)) she does not present a threat to the security of the United States or a danger to the community and is not a flight risk.

3. Petitioner demonstrated to an asylum officer six (6) months ago that she provided "credible testimony" and was determined by the asylum officer at the conclusion of a credible fear interview (CFI) to possess a "significant possibility" of establishing past persecution if given the opportunity to be placed in regular removal proceedings under 8 U.S.C. § 1229a before an immigration judge (hereinafter all statutory references are to 8 U.S.C., and all regulatory references are to 8 C.F.R., unless expressly noted otherwise).

4. Since then, Petitioner has twice formally applied for an opportunity for a bond redetermination hearing as authorized by established procedures before an immigration judge in San Diego; but twice the two (2) immigration judges have found they lack authority to hear her request for a bond hearing on the false pretense that Petitioner is being held in custody under expedited removal proceedings under Section 1225(b) (mandatory detention) when in fact she is statutorily entitled to be heard on release under Section 1236(a) because the initial expedited removal proceedings were to be vacated after she received a positive CFI with the asylum officer. Section 208.9(a)(1).

5. Petitioner challenges her continuing unlawful custody as a violation of the Immigration and Nationality Act, Section 1100 et seq., and its implementing federal regulations depriving her of statutory rights and procedural fairness resulting from Respondents' inactions of not referring her asylum claim to an immigration judge in regular removal proceedings under Section 1229a as instructed inter alia by the regulations at Sections 208.9(a)(1) and 208.30(f).

5.1. As additional consequences from the Respondents' challenged inactions, Petitioner is being deprived of a reasonable opportunity to be heard on a bond hearing under Section 1236(a) after having demonstrated to an asylum officer that she possesses a "credible" claim for asylum and that there is a "significant possibility" she can establish past persecution.

6. Remarkably, Respondents inactions are not abstained in good faith at the expense of Petitioner's statutory rights and fundamental fairness simply because they have lost and/or misplaced, negligently or otherwise, the positive asylum referral from the asylum officer at the conclusion of the CFI. In addition, the two separate immigration judges, have failed to compel the Respondents to produce or reproduce the referral documents despite being informed of the loss or misplacing of the referral documents.

JURISDICTION AND VENUE

7. Jurisdiction is proper and relief is available to Petitioner pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), Section 1252(e)(2) (habeas corpus jurisdiction to review determinations made under Section 1225(b)(1)), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. Venue is proper in the Southern District of California under 28 U.S.C. §1391, because at least one federal Respondent resides in this District and because the Petitioners are detained in this District.

PARTIES

9. Petitioner Eka Phantsulaia is being held in the custody of the Respondents and is has been and is being housed between the OMDC and the SLRPC under the joint supervision of the ERO for the San Diego Field Office and the Calexico Sub Field Office.

10. Respondent Gregory J. Archambeault is the Director of the San Diego Field Office of ICE Enforcement and Removal Operations (ERO). Respondent Archambeault is the highest regional authority responsible for the operation of all immigration detention and custody of foreign nationals being held in his broad Area of Responsibility (AoR). As such, Respondent Archambeault is the custodian and exercises full control over all persons being held in the referenced regional detention centers here, OMDC and SLRPC. Respondent Archambeault is being sued in his official capacity.

11. Respondent Kristy Noem is the Secretary of the United States Department of Homeland Security (DHS) and as such she is a legal custodian of Petitioner and is named in her official capacity. Respondent Noem is being sued in her official capacity.

12. Respondent Pamela Bondi is the Attorney General of the United States and the Chief Law Enforcement official for the Department of Justice. As such, she is a legal custodian of Petitioner and is named as a Respondent in this Petition in her official capacity. Defendant Bondi is being sued in her official capacity.

13. Respondent David. Rivas is the warden of the SLRPC and is being sued in his official capacity.

14. Respondent Anne Kristina Perry, Assistant Chief Immigration Judge for the San Diego Immigration Court, presently a subpart of the Executive Office for Immigration Review, created in 1983 to ensure a more fair and impartial adjudication of immigration cases, as a separate entity from the legacy Immigration and Naturalization Service (INS) in response to critics who foresaw a potential conflict of interest having the same agency (the INS) acting as both, the prosecutor and judge of immigration cases.

14.1. Respondents, Archambeault, Noem, Bondi, Rivas, and Perry were each,

and at all times relevant in this complaint acting within the scope and course of their federal official named positions.

FACTS

15. On January 28, 2025, Eka Phantsulaia (E.P.) "applied for admission" into the United States via a vehicle primary lane booth at the San Ysidro Port of Entry (SYSPOE),[1] *see* I-213, marked Exhibit A p.2.

16. *There,* she informed the DHS officials that she feared for her life in her home country [redacted] and asked guidance from the SYSPOE's authorities on how to apply for asylum and nonrefoulement.[2]

17. SYSPOE officials then found Petitioner to be inadmissible to the United States for not having in her possession a valid, unexpired immigrant visa, reentry permit or other valid entry document as required by law. The SYSPOE officials then placed her in "expedited removal" proceedings under Section 1225(b)(1)(A)(i) and served her with a "*Notice and Order of Expedited Removal*" and "*Determination of Inadmissibility*", Form I-860, *see* Exhibit B attached to this Petition.

18. If the alien makes a claim for asylum or an intention to apply for asylum, then the legal processes that must be followed by DHS officials when encountering a similar inadmissible person, require that the alien be referred for an interview by an asylum officer under subparagraph (B) of section 1225(b)(1) referred to as "Asylum interviews." Id.

19. DHS officials at the SYSPOE *then* placed Petitioner under arrest and

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[1] There are various federal agencies housed at the SYSPOE, including among them the U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Department (ICE). Both are subagencies of the U.S. Department of Homeland Security (DHS). Hereinafter, for purposes of simplicity this writing will refer to all such SYSPOE officials as DHS officials or delegates without regard to their corresponding subagency.

[2] An asylum application is governed by Section 1158(a) and includes consideration of an application for withholding of removal under § 1231(b)(3) and for withholding of removal under Article III of the Convention Against Torture, 8 C.F.R. Parts 1208.16-18.

housed her in the custody of DHS's Otay Mesa Detention Center (OMDC), located in San Diego. According to the statute, because she expressed a fear of being returned to [redacted] and her desire to apply for asylum, DHS officials were required to refer her "fear claim" to an asylum expert, from a dedicated asylum office within the United States for that official to conduct what is referred to as a "credible fear interview" (CFI). Section 1225(b)(1)(B); see also Section 1225(b)(1)(A)(i)-(ii).

20. A CFI is conducted by the asylum officer as this term is defined in Section 1225(b)(1)(E), whom has been professionally trained in asylum law in order to determine whether at the conclusion of the examination the applicant could be found to have provided (a) "credible testimony" and (b), a "significant possibility" of establishing past persecution if given the opportunity to be placed in regular removal proceedings under Section 1229a before an immigration judge.

21. The quoted terms represent the legal standard required under Title 8 C.F.R. § 208.30(e)(2) for authorizing the asylum officer at the conclusion of the CFI, to vacate the final order of "expedited removal" under Section 1225(b)(1)(A)(i) referenced in the previous paragraph and to place the asylum applicant in regular removal proceedings under Section 1229a.

22. Aliens placed in expedited removal proceedings under Section 1225(b)(1) are not given access to an immigration judge for purposes of determining their asylum claim in a full evidentiary hearing—as are those placed in regular removal proceedings under Section 1229a.

23. DHS officials *reluctantly* referred Petitioner to an asylum officer *eventually*—but only after a series of exchanges between her administrative counsel, Nona Tilley and one of the DHS officials involved in her case, deportation officer T. B. Hunter. *See, recorded series of email exchanges,* a copy of which is attached hereto as Exhibit C, and incorporated by reference to this Petition.

24. On information and belief, in or about the first week of March 2025, at the conclusion of an almost three (3) hour CFI conducted with the asylum officer using a

government contracted [redacted] interpreter, Petitioner was informed that (i) she had been found to have testified credibly; (ii) to possess a credible fear of persecution, and (iii) that there is a "significant possibility" that she had established persecution on account of her political opinion in [redacted][3] Section 1225(b)(1)(B)(v) defining the term credible fear of persecution.

25. Where a designated asylum officer conducting a CFI makes a positive finding for the asylum applicant, the asylum officer has to vacate the prior order of "expedited removal" under section 1225(b)(1) and issue a new charging document referred to as a Notice to Appear (NTA) under section 1229a, thereby allowing the asylum applicant the opportunity to be heard on her asylum claims at a full evidentiary hearing before an immigration judge. *See* Section 235.6(a)(1) requiring an immigration officer to issue a referral to an immigration judge and by delivering a Form I-862 to the applicant.

26. As of today, nearly six (6) months after the asylum officer conducted the CFI and seven (7) months after she was taken into custody by DHS, Petitioner remains in ICE custody—still unable to secure a master calendar hearing with an immigration judge and still unable to secure a bond redetermination hearing from unlawful custody—as she is lawfully entitled to and should have taken place promptly after the conclusion of the CFI this past March.

27. The reason for this severely prolonged unresolved hiatus is because the DHS officials at the San Diego Field Office have either lost, misplaced, and neglected to

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[3] The three-part findings are specific legal terms that the asylum officer conducting a CFI will make in the record at the conclusion when the subject interviewed has shown to possess a credible fear. They arise from the language used for that purpose by the federal regulations. *See*, 8 CFR § 208.30(e)(2) – *Determination*: Explains how an asylum officer decides whether the alien has established a credible fear of persecution. A "credible fear" is defined as a "significant possibility" that the alien could establish eligibility for asylum under the regular removal proceedings before an immigration judge; see also Section 1225(b)(1)(B)(v).

follow up with the filing of the NTA as required by 8 C.F.R. § 1235.6(a)(1)(i) to initiate regular removal proceedings against E.P.

28. Evidence of the immediate resulting prejudice directly attributable to Respondents actions and omissions has resulted in two (2) immigration judges that have presided over two (2) separate bond redetermination hearings, have determined that so long as Petitioner remains in expedited removal proceedings they lacked the required authority to adjudicate a bond hearing under Section 1225(b)(1)(B)(iii)(IV). Exhibit D.

I. Respondents' arbitrary and capricious unwillingness to follow the procedural steps that the statute and regulations require them to follow has deprived and continues to deprive Petitioner of an opportunity to apply for her statutory right to be free from unlawful detention.

29. The position of the Respondents regarding Petitioner's present custody is untenable. In 1997 Congress enacted Section1225(b) entitled "*Inspection of Applicants for Admission*" And subsection 1225(b)(1) subtitled "*Inspection of Aliens Arriving in the United States and Other Aliens Who Have Not Been Admitted or Paroled*" authorizing the federal government to summarily remove from the United States certain foreign nationals who meet a specific criteria. Summarily removing them means without affording them a series of procedural due process protections that have been traditionally extended to foreign nationals seeking asylum protections in regular removal proceedings under a different statute— Section 1229a, INA § 240(a).

30. The purpose behind its enactment was in part intended to weed-out bad actors whose claims for asylum protection were frivolous (as the term is defined in Section 1158(d)(6) including a deliberate misrepresentation), which nonetheless benefited the bad actor in various ways entitling the person to be free from custody and engage in authorized work while the asylum process was pending. But under the new Section 1225(b)(1) provisions, the foreign national's detention is mandatory and immigration judges have no authority to consider a bond motion. Section 225(b)(1)(B)(iii)(IV) (Mandatory detention)

31. But Congress also created a procedural path for allowing a foreign national who received a positive CFI to be afforded the opportunity to present her credible valid claim for asylum before an immigration judge to take place in a full evidentiary hearing in regular removal proceedings under Section 1229a, or in the alternative, for the same opportunity to be afforded to her in a full evidentiary hearing but before an asylum officer rather than in removal proceedings under Section 1229a. *See* 8 C.F.R. Section 208.30(f) ("USCIS has complete discretion to either issue a Form I-862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act, or retain jurisdiction over the application for asylum . . ."); see also, 8 C.F.R. Section 208.2(a)(1)(ii) (referencing interviews to further consider an application for asylum of an alien . . . found to have a credible fear of persecution or torture in accordance with § 208.30(f) and retained by USCIS. . .").

32. Six months ago, after Petitioner was given an affirmative notice on her CFI, had the USCIS (through the asylum officer) determined it would retain jurisdiction over the application, the asylum office would have already extended her that opportunity. 8 C.F.R. Section 208.9(a)(1) ("*Timing of interview.* The asylum officer shall conduct the interview within 45 days of the applicant being served with a positive [CFI] made by an asylum officer pursuant to § 208.30(f). . ." Instead, the asylum officer referred her case for full consideration of the asylum and withholding of removal claim in regular proceedings under Section 1229a but on information and belief, Respondent ICE has misplaced or lost the referral documents and has done nothing at all to find them or retrieve them from the asylum officer anew.

33. As a result, one of the consequences of placing a person in regular removal proceedings is that the asylum applicant will no longer be considered to be in "mandatory detention" as are—those counterparts in expedited removal proceedings under Section 1225(b)(1)(B)(iii)(IV).

34. Petitioner received a positive CFI in March of 2025. This means that had the Respondents followed the procedural steps they are required to follow, Petitioner

would have been afforded the statutory opportunity to be released from custody by ICE, or to apply for a bond redetermination hearing before an immigration judge for the very first time if ICE failed to provide her that opportunity shortly after filing a bond redetermination motion under Section 1236(a), 8 C.F.R. § 1236.1.

35. For the foregoing reasons, Petitioner is requesting this Court to grant her Writ of Habeas Corpus and order that Respondents extend her the opportunity that Congress intended in enacting the CFI procedures in their entirety. 28 U.S.C. § 2241(c)(3) (authorizing writ for people detained in violation of federal law). Should the Court nonetheless choose to address constitutional questions, it should also find that Petitioner's detention violates the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

36. Petitioner's unlawful detention violates the Fifth Amendment's protections for liberty, for at least three related reasons. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Where, as here, the government has no authority to deport Petitioner, detention is not reasonably related to its purpose.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT– Section 1225(b)(1)(B)(ii)

37. Petitioner realleges and incorporates by reference each and every allegation contained above.

38. Section 1225(b)(1)(B)(ii) requires that "If the [asylum] officer determines at the time of the interview that an alien has a credible fear of persecution"—as Petitioner was determined to have shown a credible fear of persecution in early March of 2025— *then* the asylum officer was required to refer her case before an immigration

judge and placed her in regular removal proceedings, or in the alternative to take exclusive jurisdiction over the claim. 8 C.F.R. Section 208.30(f).

39. Although the statute also provides that she be detained for further consideration of the application for asylum, she was required to be placed in regular removal proceedings under Section 1229a (where expedited removal proceedings were no longer statutorily permitted after having established a meritorious credible fear for asylum relief), in order to vest the immigration judge with the statutory authority to consider and adjudicate her asylum claim on the merits. 8 C.F.R. Section 208.30(f)

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE

OF THE FIFTH AMENDMENT

40. Petitioner realleges and incorporate by reference each and every allegation contained above. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See* generally *Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

41. Petitioner's detention violates the Due Process Clause where as here it is not rationally related to a valid genuine immigration purpose because it is not the least restrictive means for accomplishing any legitimate purpose the government could have in imprisoning Petitioner without access to a bond hearing; and because it lacks any statutory authorization.

42. A surreptitious transfer of Petitioner to another jurisdiction is also a due process violation of her constitutional rights under the Fifth Amendment and Respondents should be ordered to keep her in the proper jurisdiction of this federal court.

43. 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 those who previously entered the

country and have been residing in the United States prior to being apprehended and placed in removal proceedings by s.

44. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. Nonetheless, DHS and the Adelanto Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Plaintiffs, Bond Eligible Class members, and Adelanto Class members.

COUNT THREE

Violation of Federal Bond Regulations

8 C.F.R. §§ 236.1, 1236.1 and 1003.19

Unlawful Denial of Release on Bond

45. Petitioner incorporates by reference each and every allegation contained above.

46. In 1997, after Congress amended the INA through IIRAIRA, EOIR and the *then*-Immigration and Naturalization Service (INS) issued an interim rule to interpret and apply IIRAIRA.

47. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under Section 1226(a) and its implementing regulations.

COUNT FOUR

Violation of the Administrative Procedure Act

Contrary to Law and Arbitrary and Capricious Agency Policy

48. Petitioner incorporates by reference each and every allegation contained above.

49. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

50. 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 those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under Section 1226(a) and are eligible for release on bond, unless they are subject to Section 1225(b)(1), Section 1226(c), or Section 1231.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three (3) days, and set a hearing on this Petition within five (5) days of the return, as required by 28 U.S.C. 2243;
3. Declare that having received a positive credible fear determination in early March of 2025, her continuing lingering in the system without access to the immigration court to adjudicate her asylum application on the merits, or access to an immigration judge to adjudicate her motion for a bond redetermination hearing violates the statutes and regulatory applicable provisions;
4. Declare that Petitioner's detention arising from the unlawful reinterpretation of statutes and federal regulations to the contrary violates the Due Process Clause of the Fifth Amendment;
5. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;

6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
7. Grant such further relief as this Court deems just and proper.

Dated: Aug 21, 2025

Respectfully submitted,

//s// Bernal Peter Ojeda
Bernal Peter Ojeda
Counsel for Petitioner

Certificate of Verification

I, the undersigned, am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I, and others working under my supervision have discussed with Petitioner the events described in this Petition through competent interpreters. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, are true and correct to the best of my knowledge.

/s/ Bernal Peter Ojeda
Bernal Peter Ojeda
Counsel for the Petitioner

Date: Aug 21, 2025

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Agency No. [redacted]

INDEX OF EXHIBITS