

**TED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

TANIA ROCIO CHOGLLO QUITO)
))
Petitioner,)
))
v.)
))
CRAIG SHEPLEY, Deputy Chief Patrol Agent of)
Fort Fairfield Sector, U.S. Customs and Border)
Protection,)
RODNEY S. SCOTT, Commissioner of Customs)
and Border Protection,)
PETER R. FLORES, Customs and Border)
Protection Field Operations Executive)
Assistant Commissioner,)
DIANE J. SABATINO, Acting Executive Assistant)
Commissioner Office of Field Operations,)
KRISTI NOEM, U.S. Secretary)
of Homeland Security,)
DONALD J. TRUMP, President of the United)
States,)
))
Respondents.)
_____)

Case No. _____

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO FED. R. CIV. P.
65(b)**

INTRODUCTION

1. Petitioner Tania Rocio Chogllo Quito is a citizen of Ecuador. She is ethnically indigenous. She was born on [REDACTED] in Chunchi, Ecuador. She resides at [REDACTED] [REDACTED] with her sister, Ana Olga Chogllo Quito. Petitioner entered the United States without inspection or detection by the Department of Homeland Security (“DHS”) in 2022. Petitioner fled Ecuador due rampant persecution she suffered on account of [REDACTED] [REDACTED].

2. On November 21, 2025, local law enforcement arrested Petitioner in Sebago, Maine. Petitioner was a passenger in her sister’s car and was returning from work when law enforcement

stopped the vehicle. Law enforcement officers arrested Petitioner on suspicion that she does not have lawful immigration status, and transferred her to Respondents' custody. On November 23, 2025, Respondents transferred Petitioner to the custody of Customs and Border Protection ("CBP") at the Fort Fairfield CBP Station in Fort Fairfield, Maine, where Petitioner is currently detained. CBP is a sub-agency of DHS.

3. Petitioner suffers from Gastritis, or inflammation of the lining of the stomach. She requires Omeprazole for medication. She has significant dietary restrictions and cannot eat most acidic foods. Her condition has worsened since her detention by Respondents and was not able to eat during the first two days of her detention.

4. Based on information and belief, Respondents have detained Petitioner pursuant to 8 U.S.C. § 1225. However, the statute upon which the Respondents have relied to justify the Petitioner's detention—8 U.S.C. § 1225—is effectively a border processing statute that applies to noncitizens "seeking to enter the country." *Jennings v. Rodriguez*, 583 U.S. 281 (2018) ("That process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible") (citing 8 U.S.C. § 1225). Whereas 8 U.S.C. § 1225 applies to noncitizens *seeking* to enter the United States, "§ 1226 applies to aliens *already present* in the United States." *Id.* at 289 (emphases added). "Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.* 8 U.S.C. § 1225 does not apply to Petitioner because she is already in the United States and has resided in the United States for over five years.

5. Because Petitioner has "effected an entry" into the United States, and has been present in the United States for longer than two years, it is therefore unlawful for the Respondents to detain

her without a bond hearing under 8 U.S.C. § 1225. Because Respondents have unlawfully detained Petitioner under 8 U.S.C. § 1225, she will be unlawfully denied a bond hearing in which the government has the burden of proof in the Immigration Court, as well as certain forms of relief from removal that would be potentially available in the Immigration Court. *See, e.g., Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (holding that “Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.”).

6. The BIA’s decision in *Yajure Hurtado* contradicts the plain meaning of § 1225 and § 1226, as well as factually similar decisions in other districts that rejected the extension of § 1225(b)(2) to noncitizens already in the United States. *See, e.g., Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same); *Chang Barrios v. Shepley*, No. 1:25-cv-00406, 2025 U.S. Dist. LEXIS 152874 (D. Me. Aug. 8, 2025); *Chogllo Chafila v. Scott*, No. 2:25-cv-00437, 2025 U.S. Dist. LEXIS 184909 (D. Me. Sept. 21, 2025); *Rodriguez v. Bostock*, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sept. 30, 2025) (collecting cases). “[C]ourts must exercise independent judgment in determining the meaning of statutory provisions,” and they “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024).

7. Respondents' detention of Petitioner under 8 U.S.C. § 1225 will deprive Petitioner of the right to a bond hearing in which the government bears the burden of proof. Noncitizens detained under § 1225 are not eligible for bond. The First Circuit held in *Hernandez-Lara* that the Fifth Amendment's Due Process clause requires the government to provide detained noncitizens awaiting removal proceedings a bond hearing. *Hernandez-Lara v. Lyons*, 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.* 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. *See id.*

8. Petitioner's wrongful detention under 8 U.S.C. § 1225 also violates her right to procedural due process. To determine whether a form of civil detention violates a detainee's due process rights under the Fifth Amendment, courts apply the three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, a court must weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. *See also Hernandez-Lara*, 10 F.4th at 27-28 (analyzing procedural due process challenge to the detention of noncitizen held pursuant to Section 1226(a) using the *Mathews* test). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678 (2001) (quoting

Foucha v. Louisiana, 504 U.S. 71, 80 (1992)). In this case, these factors militate in favor of ordering the immediate release of the Petitioner. Courts in this and other districts have applied the *Mathews* factors in assessing the constitutionality of a noncitizen's detention. *See, e.g., Chogillo Chafila v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *9 (D. Me. Sept. 22, 2025) ("Because the question of the Petitioners' current detention turns on the 'adequacy of the process in the context of a civil immigration confinement,' *Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528, 2025 WL 1927931, at *2 (S.D.N.Y. July 13, 2025), I turn to the three-part balancing test established in *Mathews v. Eldridge*"; *Inlago Tocagon v. Moniz*, No. 25-CV-12453-MJJ, 2025 WL 2778023, at *4 (D. Mass. Sept. 29, 2025) ("*Mathews v. Eldridge*...sets out a three-part test that courts have used to assess due process challenges by individuals detained under Section 1226 seeking a bond hearing.").

9. In this case, the Respondents' deprivation of the Petitioner's liberty, their denial of the Petitioner's opportunity to seek bond with the Immigration Court, and their allocation of taxpayer money to subsidize the Petitioner's wrongful detention all support ordering Respondents to immediately release Petitioner. *See, e.g., Kordia v. Noem*, 3:25-cv-01072-L-BT (N.D. Tex. Jun 27, 2025) (recommending the petitioner's release because the petitioner "has a significant liberty interest in being free from detention" and prolonged detention "creates a serious risk of erroneous deprivation of Petitioner's liberty interest"); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) ("even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.").

VENUE AND JURISDICTION

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question). This Court has jurisdiction to review habeas petitions filed by immigration detainees who assert that they are “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Although a federal district court does not generally have subject-matter jurisdiction to review orders of removal issued by an immigration court, *see* 8 U.S.C. § 1252(a)(1), (g), it does have jurisdiction over habeas petitions. 28 U.S.C. § 2241(a); *see* U.S. CONST. art. I, § 9, cl. 2 (providing that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it”).

11. Venue is proper because Petitioner resides in Maine, was arrested in Maine, and is detained by Respondents in the District of Maine.

12. Respondent Craig Shepley is the Deputy Chief Patrol Agent (DCPA) of the Fort Fairfield Sector, U.S. Customs and Border Protection (CBP), in the state of Maine, and is Petitioner’s immediate custodian.

13. Respondent Rodney S. Scott is the Commissioner of U.S. Customs and Border Protection.

14. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

15. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.

16. Respondent Donald J. Trump is the President of the United States.

17. All respondents are named in their official capacities. One or more of the respondents is Petitioner’s immediate custodian.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

18. On information and belief, Petitioner is currently being detained and subjected to 8 U.S.C. § 1225 in violation of her constitutional right to due process of law.
19. Petitioner cannot be detained for, or subjected to, 8 U.S.C. § 1225 because she has effected an entry into the United States and has been continuously present in the United States for greater than two years.
20. The Expedited Removal statute, 8 U.S.C. § 1225, largely “precludes judicial review,” and therefore challenges to “confinement and removal” under that statute fall within the “core” of the writ of habeas corpus. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006-07 (2025); *cf. Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, (2020) (holding attempt “to obtain additional administrative review of his asylum claim” after Expedited Removal order was outside the “core” of habeas relief). However, *Thuraissigiam* is distinguishable from this case because in that case, the petitioner “was apprehended just 25 yards from the border” and was never released from Border Protection custody. *See Thuraissigiam*, 591 U.S. at 107. Moreover, in *Thuraissigiam*, DHS “detained [the petitioner for expedited removal,” whereas in this case, expedited removal does not apply to Petitioner because she does not have a removal order, was not apprehended at the border, and resided in the United States for more than two years before her detention. *Thuraissigiam* is further inapposite because in that case, the petitioner did not seek release from DHS custody, but rather a “vacatur of his ‘removal order’ and ‘an order directing [the Department] to provide him with a new ... opportunity to apply for asylum and other relief from removal.’” *Id.* at 117-18.
21. Accordingly, to the extent 8 U.S.C. § 1252(e)(2) purports to preclude habeas review of

whether Petitioner is ineligible for detention and removal via Expedited Removal due to the length of her presence in the United States, that limitation violates the Suspension Clause and is void and without effect.

22. Indeed, if there were no judicial review whatsoever of the immigration agencies' determinations that people have been present for less than two years, then the immigration agencies would be free to find that essentially any arrested noncitizen without status is subject to Expedited Removal, in direct violation of the procedures and safeguards required for removal proceedings by the laws and Constitution of the United States.

23. Even assuming Petitioner is eligible for detention for removal proceedings, she has not been provided any opportunity to receive a bond hearing to which she is entitled during any such proceedings pursuant to *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). The only current basis for Petitioner's detention and potential deportation—8 U.S.C. § 1225—is one that categorically does not apply to her. Therefore, Respondents' detention of Petitioner violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

24. “[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits.” *Gomes v. U.S. Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972)). See also *Martinez v. Hyde et al.*, No. 1:25-cv-11613-BEM, slip op. at 4 (D. Mass. June 17, 2025) (ordering that the Respondents release the Petitioner because 8 U.S.C. § 1225 did not apply and “Respondents identify no other basis for Petitioner’s detention”); *Gomes v. Hyde*, 2025

WL 1869299 (D. Mass. July 7, 2025) (holding that “If Section 1225(b)(2) applied to noncitizens who are arrested on a warrant while residing in the United States, it would render Section 1126(c)(1)(E)’s criminal conduct criterion superfluous whenever the noncitizen is inadmissible under Sections 1182(a)(6)(A) or (a)(7)”); *Sampaio v. Hyde et al.*, 1:25-cv-11981-JEK, slip op. at *26 (D. Mass. Sept. 9, 2025) (concluding that “[t]he balance of the *Mathews* factors favors [the petitioner]” and that his detention “violates his procedural due process rights under the Fifth Amendment, and he is entitled to immediate release.”); *Valdez v. Joyce*, 25-Civ. 4627, slip op. at *8 (S.D. N.Y. Jun 18, 2025) (ordering the petitioner’s immediate release because “Respondents’ ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights”); *Lopez Benitez v. Francis et al.*, 25-cv-5937, 2025 WL 2371588, at *29 (S.D.N.Y. Aug. 13, 2025) (ordering the petitioner’s immediate release because the respondents “offer no explanation whatsoever of their purported ‘exercise of discretion’ to detain [the petitioner] other than their initial assertion that his detention was non-discretionary.”). Applying the reasoning in these recent cases, Respondents’ detention of Petitioner under § 1225 is unlawful and supports ordering Petitioner’s immediate release.

25. Petitioner is likely to experience irreparable harm in the form of indefinite detention if she is unable to seek habeas relief until the Immigration Court or Board of Immigration Appeals adjudicates her bond request. A noncitizen detained under 8 U.S.C. § 1225(b) is ineligible for bond. *See, e.g., Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *Matter of Q. LI*, 29 I&N Dec. 66, 68 (BIA 2025). Irreparable harm may be established where a petitioner will be incarcerated or detained pending the exhaustion of

administrative remedies. *See Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (“[E]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest.”).

26. Based on information and belief, the Respondents intend to transfer the Petitioner outside of the District of Maine and outside of the First Circuit, where the Petitioner would be entitled to a bond hearing in which the government bears the burden of proof under *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). Permitting the Respondents to transfer the Petitioner “would be promoting a peculiarly opportunistic type of forum shopping.” *Vasquez v. Reno*, 233 F.3d 688, 696–97 (1st Cir. 2000). **Therefore, the Petitioner respectfully requests a prohibitory Temporary Restraining Order enjoining the Respondents from transferring her outside of the District of Maine during the pendency of the instant request for Writ of Habeas Corpus, in order to maintain the status quo.**

27. “The standard for issuing a TRO is ‘the same as for a preliminary injunction.’” *Orkin v. Albert*, 557 F. Supp. 3d 252, 256 (D. Mass. 2021) (quoting *Bourgoin v. Sebelius*, 928 F.Supp.2d 258, 267 (D. Me. 2013)). “To obtain relief, the moving party must satisfy the following four factors: (i) the likelihood that the movant will succeed on the merits; (ii) the possibility that, without an injunction, the movant will suffer irreparable harm; (iii) the balance of relevant hardships between the parties favors relief; and (iv) the effect of the court’s ruling on the public interest.” *Id.* at 256–57 (citing *Coquico, Inc. v. Rodríguez-Miranda*, 562 F.3d 62, 66 (1st Cir. 2009)). Here, the Petitioner has shown a strong likelihood of success on the merits in light of the widespread decisions of courts in this district and across the United States, cited *supra*. Regarding the second prong, the

Petitioner will suffer irreparable harm if the Respondents transport her outside of Maine, away from counsel, as well as her sister. “‘In order to ‘actually seek habeas relief,’ a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief.” *A. A. R. P. v. Trump*, 605 U.S. 91, 95, 145 S. Ct. 1364, 1368, 221 L. Ed. 2d 765 (2025). Furthermore, the Petitioner’s transfer outside of the First Circuit will effectively deny her of a bond hearing in which the Government bears the burden of proof pursuant to *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (holding that noncitizens detained under 8 U.S.C. § 1226(a) have the Due Process right to a bond hearing in which the government must “either (1) prove by clear and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove by a preponderance of the evidence that [the noncitizen] poses a flight risk.”). Lastly, “‘the balance of equities tips in [Petitioner’s] favor.’” *Ambila v. Joyce*, No. 2:25-CV-00267-NT, 2025 WL 1534852, at *5 (D. Me. May 28, 2025) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Here, the prospective hardship to the Petitioner entails a worsening of her gastritis, as well as her transfer to an unknown location, which may obstruct access to counsel. Moreover, “‘there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.’” *Nken v. Holder*, 556 U.S. 418, 436, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009). Because the prospective location where Respondents intend to transfer the Petitioner has not been disclosed to her—or counsel—these final factors in the analysis lean in the Petitioner’s favor.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) **Issue a Temporary Restraining Order prohibiting Respondents from transferring the Petitioner outside the District of Maine;**
- (3) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243 ordering Respondents to show cause why this Petition should not be granted within three days;
- (4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
and
- (6) Grant any further relief this Court deems just and proper.

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Tania Rocio Chogllo Quito, and submit this verification on his 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 24th day of November, 2025.

Respectfully submitted,

/s/ Shantanu Chatterjee
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