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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

CV 526-124

ONTANO AVEIGA, Kesller Oswaldo

Petitioner,

v.

WARDEN, Folkston D Ray ICE Processing Center, **LADEON FRANCIS,** Director of Atlanta Field Office, U.S. Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; **TODD LYONS,** Acting Director , Immigration and Customs Enforcement; and **PAMELA BONDI**, Attorney General of the U.S., in their official capacities,

Respondents.

A [redacted]

PETITION FOR WRIT OF HABEAS CORPUS

8 U.S.C. § 2241

INTRODUCTION

1. Petitioner, Kesller Oswaldo Ontano Aveiga, is a citizen of Ecuador who entered the United States in December 29, 2023. Petitioner was detained at the border upon entry and then released. As such, Respondents determined that Petitioner was not subject to mandatory detention pending his removal proceedings.

2. Officials issued to Petitioner a Notice to Appear ("NTA"), which alleged that he was "an alien present in the United States who has not been admitted or paroled". The NTA detailed that he was charged and subject to removal under § 212(a)(6)(A)(i).

3. Petitioner was detained again in December 2025, absent any criminal record, and with no final removal order.

4. Petitioner is currently detained at the Folkston D Ray ICE Processing Center in Folkston, Georgia. He was detained on December, 2025, and has remained detained since then.

5. Absent an order from this Honorable Court, Petitioner will remain detained without Due Process of the law for the duration of his immigration removal proceedings—potentially months to years longer.

6. Petitioner asks this Court to order his release from detention under the prior terms of his release or, in the alternative, to order he receive a bond hearing.

7. Petitioner asserts that any requirement to exhaust administrative procedures to file a bond would be futile. Thus, Petitioner seeks relief directly through a petition for writ of habeas corpus.

JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1) and whether the BIA and Immigration Court have jurisdiction over custody redetermination cases for noncitizens who have allegedly unlawfully entered the United States without inspection.

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

11. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

12. Other decisions in this District have held that this Honorable Court has jurisdiction in similar cases. *See Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), report and recommendation adopted, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025). The Southern District Court of Georgia explained in that case,

> These Petitioners are not subject to a removal order. As the Magistrate Judge determines, Petitioner Villa and others like him seek to challenge the underlying legal bases of their detention. . . . These Petitioners do not challenge any decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.

Id. at *17.

VENUE

13. Venue is proper because Petitioner is detained at the Folkston D Ray ICE Processing Center in Folkston, Georgia, which is within the jurisdiction of this District.

14. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, and Petitioner is detained in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to 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) (emphasis added).

17. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was arrested and detained by Respondents.

PARTIES

18. Petitioner is a citizen of Ecuador who entered the United States on or about December 29, 2023. Years later and in the interior of the United States, Petitioner was detained again without any criminal record or final removal order to justify his warrantless arrest and detention. He is currently detained at the Folkston D Ray ICE Processing Center in Folkston, Georgia. He is in custody and under the direct control, of Respondents and their agents.

19. Petitioner is under the direct custody and control of Respondent Warden of Folkston D Ray ICE Processing Center who is sued in their official capacity.

20. Respondent Sean Ervin is sued in his official capacity as the Director of the Georgia Field Office of U.S. Immigration and Customs Enforcement.

21. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

22. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the

immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

PRUDENTIAL EXHAUSTION SHOULD BE WAIVED AND WOULD BE FUTILE

23. "Where Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1991). But when it is not mandated, the decision to require exhaustion is within the sound discretion of the court. *Id.; see also Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013). Exhaustion requirements not written into the text of the statute are prudential. *See Perkovic v. I.N.S.*, 33 F.3d 615, 619 (6th Cir. 1994). "Prudential exhaustion is a judge-made doctrine that enables courts to require administrative exhaustion even when the statute or regulations do not." *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 747 (6th Cir. 2019).

24. Bond appeals before the BIA, on average, take six months to complete. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025). Requiring Petitioner to wait for a bond hearing and then wait another six months simply to be back before this Court filing a petition for habeas corpus upon the Board's predetermined denial for lack of jurisdiction would be futile. As such, exhaustion would not effectively afford Petitioner the relief he seeks. And any delay results in the very harm Petitioner is trying to avoid by seeking relief directly through a petition for writ of habeas corpus.

25. Courts may waive exhaustion requirements when an administrative remedy is subject to "an unreasonable or indefinite timeline." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). As stated above, bond denial appeals "typically take six months or more to be resolved at the BIA." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239,

1245 (W.D. Wa. 2025). Lengthening this unlawful detention in such a way is significantly longer than the thirty days the Sixth Circuit rejected as "unreasonable" or "indefinite" in *United States v. Alam*, 960 F.3d 831, 836 (6th Cir. 2020). Plus, the "delays inherent" in the BIA's administrative process "would result in the very harm that the bond hearing was designed to prevent," that is, prolonged detention without due process. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation omitted); *see also Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (finding the "prolonged loss of liberty" from "several additional months" in possibly unlawful detention would "constitute irreparable harm"). The prevention of six months or more of unlawful detention thus outweighs the interests the BIA might have in resolving the case efficiently.

26. When the liberty of a person is at stake, every day that passes is a critical one, and the Court should fault Petitioner for taking appropriate measures to pursue his claims through the habeas process, with the expectation that his claims would be met with a sense of urgency, and he would receive a decision in a more expedient manner.

27. Because exhaustion would be futile and unable to provide Petitioner with the relief she requests in a timely manner, the Court should waive administrative exhaustion and address the merits of the habeas petition.

STATEMENT OF FACTS

28. Petitioner, Kesller Oswaldo Ontano Aveiga, is a citizen of Ecuador who entered the United States in December 29, 2023 and was detained at the border upon entry.

29. Following that detention, Petitioner was released pursuant to INA § 212(d)(5), and was issued a Notice to Appear dated December 29, 2023, charging him under INA § 212(a)(6)(A)(i).

30. Petitioner complied with the terms of his release and pursued his immigration court proceedings which remain pending with no final order of removal.

31. Petitioner was scheduled for an initial master (pre-trial) hearing on April 13, 2028 at the Newark Immigration Court.

32. In December 2025, Petitioner was re-detained by ICE and has remained in custody since that time. Upon information and belief, he was detained pursuant to an ICE stop of a vehicle in which he was a passenger and was detained without a warrant.

33. Petitioner is currently detained at the Folkston D Ray ICE Processing Center in Folkston, Georgia, and has remained detained since December, 2025.

34. He has no criminal record and no final order of removal.

35. Petitioner is now subject to prolonged immigration detention without a bond hearing.

36. Petitioner's minor child is medically diagnosed with autism. The petitioner is an essential caregiver and has full custody of the child. The mother of the child remains in Ecuador.

37. The child's autism creates exceptional dependency on the father, the Petitioner. Thus, prolonged detention, without adequate consideration of family impact is not

in the best interest of the autistic child and creates risk of the child becoming a ward of the state rather than being supported by Petitioner. The Behavior Analyst of Petitioner's son has expressed clinical concerns regarding the significant impact that disruptions in routine and environmental stability, such as the absence of Petitioner in his son's life, have in the child's emotional and behavioral functioning.

38. Petitioner now comes before this Honorable Court seeking review of his prolonged detention without due process and asserting that any requirement to file a bond prior to this action would be futile. Accordingly, Petitioner seeks relief directly through a petition for writ of habeas corpus directing the immigration court to hold a bond hearing for him.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

39. The allegations in the above paragraphs are realleged and incorporated herein.

40. Petitioner has been detained without any option to argue against the unlawful "mandatory" detention, other than this habeas petition.

41. Petitioner was subjected to mandatory detention flowing from an arbitrary and capricious overreach by the Immigration Court. The BIA has decided it lacks jurisdiction to review a custody redetermination by the Immigration Court in legally identical cases.

42. The Board's decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado* violate Petitioner's Fifth Amendment Due Process rights. The BIA's expansion of

warrantless arrest and mandatory detention without the possibility of bond to any noncitizen within the United States who initially entered the country without inspection, no matter how long ago and no matter where they are geographically violates Due Process rights of noncitizens triggered by their presence in the United States. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (holding all persons within the territory of the United States are entitled to the protection of the Constitution). "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001) (holding even non-citizens who are subject to deportation proceedings or are unlawfully present still possess constitutional due process rights).

43. The Supreme Court has suggested that the Constitution may well preclude granting "an administrative body the unreviewable authority to make determinations implicating fundamental rights." *Id.* at 692 (quoting *Superintendent, Mass. Correctional Institution at Walpole* v. *Hill*, 472 U. S. 445, 450 (1985) (O'CONNOR, J.)) (citing *Crowell v. Benson*, 285 U. S. 62, 87 (1932) (Brandeis, J., dissenting) ("[U]nder certain circumstances, the constitutional requirement of due process is a requirement of judicial process")).

44. The serious constitutional problem arising out of the stretching of a statute that, in these circumstances, would allow an indefinite (perhaps lasting many years as immigration removal proceedings often do) deprivation of human liberty without any such protection is obvious and not anticipated by the statute itself.

45. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of 8 U.S.C. §§ 1225(b), 1226(a), and Implementing Regulations

46. The allegations in the above paragraphs are realleged and incorporated herein.

47. Petitioner has not been detained under 8 U.S.C. § 1225(b) where he has not been placed into expedited removal proceedings and was detained in December 2025, in Georgia, after living in the United States for years since his date of entry and release.

48. This District has already held that 8 U.S.C. § 1226(a) is plainly not intended to address only the limited circumstances of a visa overstay, which would be the practical effect of Respondents' unlawful broadening of the statute. *Antonio Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 U.S. Dist. LEXIS 224656, at *15 (S.D. Ga. Nov. 14, 2025).

49. Petitioner's detention is governed by 8 U.S.C. § 1226(a), and this District has held as much in legally and procedurally comparable cases. *See, e.g.*, *Antonio Aguirre Villa v. Normand*, 2025 U.S. Dist. LEXIS 224656, at *22 ("Respondents contend that . . . any alien physically present in the United States who has not been admitted is an 'applicant for admission,' regardless of how long the individual has been in the country or whether they intended to apply or enter properly. . . . § 1225, . . . intentionally refers to 'arriving' aliens."). The Southern District specifically pointed to the "significance of the phrase 'seeking admission' in the relevant statute. . . . '[S]eeking admission' 'implies action-something that is currently

occurring, and . would most logically occur at the border upon inspection.'" *Id.* at *22–23.

50. Petitioner's detention instead arose after years of living in the United States and took place in the interior of the country. In a factually and procedurally comparable case, *Parwinder Kaur v. Adducci*, the Magistrate's Report and Recommendation in that case held as follows:

> Tellingly, immigration authorities in Kaur's NTA alleged, by checking a box, that she is: "an alien *present* in the United States who has not been admitted or paroled." Doc. 1-6, at 1 (emphasis added). Authorities did not check the box immediately above that box, which provides "You are an arriving alien." Respondents' choice amounts to a judicial admission that Kaur is *not* an arriving alien. *See Hakopian v. Mukasey*, 551 F.3d 843, 846 (9th Cir. 2008) (explaining that allegations in a Notice to Appear, like those in a complaint, are judicial admissions); *see also Official Comm. of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 167 (2d Cir. 2003) ("the allegations in the Second Amended Complaint are judicial admissions by which [Plaintiff] was bound throughout the course of the proceeding") (internal quotation marks and alterations omitted)); *El Paso Nat. Gas Co. v. United States*, 750 F.3d 863, 876, 409 U.S. App. D.C. 367 (D.C. Cir. 2014); *Keller v. United States*, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995).
>
> Under the plain text of Kaur's NTA, Kaur was simply passively present in the United States without being admitted or paroled--and nothing more. . . . Kaur was not "seeking admission," as is required for Section 1225(b)(2) to apply. . . Indeed, "seeking" implies action, meaning it "requires something more than just passively being present in the United States." *Chavez*, 2025 WL3187080, at *5 (citations omitted). Despite the fact that Kaur was apprehended near the United States-Mexico border, it is clear to all involved that Kaur has lived in the United States for years before being detained. "[A]s an immigrant arrested and detained while 'already in the country[,]' [Kaur] falls more aptly within § 1226a's default rule." *Chavez*, 2025 U.S. Dist. LEXIS 224173, 2025 WL 3187080, at *4; *see also id.* at *7, n.6 (collecting cases).

Report and Recommendation, *Kaur v. Adducci, et al.*, No. 4:25-cv-2679, 2026 U.S. Dist. LEXIS 6973, at *21–22 (N.D. Ohio Jan. 14, 2026). Similarly, Petitioner herein falls more aptly within the § 1226(a) rule.

51. Moreover, "there is no need to consider Yajure Hurtado or to defer to the BIA under Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024)." *Id.* at * 25. The BIA's decision in *Yajure Hurtado* conflicts with the implementing regulation for § 1225(b) by adopting a more expansive interpretation of § 1225(b) than the regulation. *Id.*

52. Similarly, "the Court here is not bound by the BIA's interpretation of § 1225(b)(2)(A)" in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). *See Reyes v. Raycraft*, No. 25-cv-12546, 2025 U.S. Dist. LEXIS 175767, at *17 (E.D. Mich. Sep. 9, 2025). The BIA's decision in *Q. Li* also provides an overly expansive application of the relevant statutes. *Sanchez v. Johnson*, No. 6:25-CV-00503-ADA-DTG, 2025 U.S. Dist. LEXIS 264513, at *6 (W.D. Tex. Dec. 10, 2025) ("Aliens already in the country, however, have historically been detained under the procedures outlined in § 1226, which allows them to seek release on bond during their removal proceedings."). "In the wake of the BIA's decisions in *Q. Li* and *Yajure Hurtado*, the government shifted from its historic approach and asserted that all applicants for admission—whether seeking admission into or already in the United States—are subject to mandatory detention under § 1225(b)(2)." *Id.* A building majority of District Courts have rejected the BIA's shifting of the historic approach, finding noncitizens like respondent to fall under § 1226(a) rather than 1225(b). *See id.*

53. Petitioner herein falls within the § 1226(a) rule, and this District has found in similar cases to this one that immediate release under prior conditions of release is an appropriate remedy rather than providing a new bond hearing, *see Antonio Aguirre Villa v. Normand*, 2025 U.S. Dist. LEXIS 224656, at *26–27.

54. For these reasons, Petitioner's detention violates 8 U.S.C. § 1225(b) and 28 C.F.R. § 68.36.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1225(b), and/or 28 C.F.R. § 68.36;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or in the alternative to hold a bond hearing;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Dated: January 29, 2026

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

I represent Petitioner, Kesller Oswaldo Ontano Aveiga, 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 29th day of January, 2026.

/s/Matthew Boles
Matthew Boles, Esq.