UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

DEISY TENESACA JATIVA

Petitioner,

v.

Jason STREEVAL, Warden of Stewart Detention Center; George STERLING Field Office Director of Enforcement and Removal Operations, Atlanta Field Office, Immigration and Customs Enforcement;

Respondents.

Case No. 4:26-cv-530
A No. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Deisy Tenesaca Jativa (A[redacted] brings this petition for a writ of habeas corpus as an individual unlawfully detained and stripped of bond jurisdiction by an improvident and unlawful change in analysis as to who is "seeking admission" to the United States. *See*, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

2. Petitioner is in the physical custody of Respondents at the Stewart Detention Center in Lumpkin, Georgia. She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by longstanding precedent regarding bond jurisdiction. Contrary to the assertions of DHS and EOIR, entrants to the United States without inspection are not properly "applicants for admission," such that all such individuals be detained without jurisdiction for the courts to grant bond. Petitioner alleges that the continued classification of detention authority as pursuant to 8 U.S.C. § 1225 for all individuals present without inspection or admission, is erroneous and a violation of law, in particular as it pertains to her present detention status.

3. The Executive Office for Immigration Review and its subagency, the Immigration Court, and the Department of Homeland Security (DHS) have unlawfully ordered that individuals similarly situated to Petitioner be denied the opportunity to be released on bond.

4. After apprehending Petitioner consequent to a traffic stop by local police, the DHS immediately took her into custody. DHS placed Petitioner in removal proceedings consequent to the vacatur of an expedited removal order against her. DHS charged Petitioner in the Notice to Appear dated December 17, 2022, as being inadmissible under 8 U.S.C. §

1182(a)(6)(A)(i), as an individual who is present in the United States without inspection, admission, or parole. Exhibit A.

5. The Court should expeditiously grant this petition.

6. Respondent was encountered shortly after entering the United States. She was in the United States for *some* period of time, when thereafter, she was encountered by officials. Though initially placed in 1225 proceedings, that decision was vacated, and she was subsequently issued a Notice to Appear as an individual present without inspection, admission or parole, who entered "at any time or place other than as designated by the Attorney General." Exhibit A.

7. Respondents are bound by the statutory authority of the Immigration and Nationality Act. The holdings in *Yajure Hurtado* and *Q. Li* are plainly erroneous, as not all individuals who entered without inspection are also "seeking admission." Nevertheless, Respondents continue to disregard a growing number of District Court decisions, and to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond. Petitioner is not properly an arriving alien, as confirmed by the charging document issued by DHS; nor is she seeking admission at present, as she has been residing in the United States since her release from detention in or about December 2022.

8. Immigration Judges have continued to remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), despite their flawed legal reasoning.

9. Because Respondents are detaining Petitioner in violation of the statutory framework under the Immigration and Nationality Act, the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

10. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at Stewart Detention Center.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the judicial district in which Petitioner currently is detained.

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Georgia.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista*. This Court has also specifically ordered Respondents to accord bond hearings to similarly situated

individuals, who have entered the United States without inspection in the past, but were not encountered at precisely the time of entry. *J.A.M. v. Streeval,* No. 4:25-cv-342-CDL-AGH, Order 15 (M.D. Ga. Oct. 31, 2025), ECF No. 12.

17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

18. Petitioner Deisy Tenesaca Jativa [redacted] is a citizen of Ecuador and Spain who has been in immigration detention since March 17, 2026. Petitioner was detained by Immigration and Customs Enforcement officers following a traffic stop. She has had an application for relief pending before the Immigration Court, Executive Office for Immigration Review. Filing a motion for custody redetermination (bond) would be futile in this situation as the immigration judges with jurisdiction over the detention center where Petitioner is being held have continued to hold that *Matter of Yajure Hurtado* and *Matter of Q. Li* strip jurisdiction for bond redetermination from all entrants to the United States without inspection, and that the *Maldonado Bautista* class action order does not impact similarly situated Petitioners. Petitioner will undoubtedly be deemed an "applicant for admission" pursuant to DHS arguments. Petitioner has resided in the United States continuously since approximately December 18, 2022, and was not classified as an

arriving alien at the time of the issuance of the Notice to Appear in her case, a choice made by the DHS. Exhibit A.

19. Respondent Jason Streeval is employed by CCA as Warden of Stewart Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

20. Respondent George Sterling is the Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division. As such, George Sterling is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

CLAIM FOR RELIEF
Violation of the INA:
Request for Relief Pursuant to the Unlawful Legal Characterization of Petitioner's Detention

21. Petitioner is entitled to relief because Respondents are subjecting her to unlawful detention pursuant to 8 U.S.C. § 1225(b), when she is properly an individual detained pursuant to 8 U.S.C. § 1226(a).

22. At the outset, there is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus. *See* 8 U.S.C. § 1252(d)(1); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal."). The Supreme Court has recognized that exhaustion is not required where a plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of her claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). This is the case here, where Plaintiff raises constitutional and statutory claims that the agency cannot redress, and where each day that passes is one in which she is being unconstitutionally deprived of her liberty.

23. The Court has the authority to grant a writ of habeas corpus to a petitioner who demonstrates that she is being held in custody in violation of federal law. 28 U.S.C. § 2241(a), (c)(3); *see INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[T]he writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (noting that § 2241 habeas corpus proceedings are available to challenge the lawfulness of immigration-related detention).

24. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

25. By denying Petitioner a bond hearing under § 1226(a) and asserting that she is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA.

26. U.S.C. § 1225 covers "inadmissible arriving aliens" who are "applicants for admission" "present in the United States who [have] not been admitted." *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) (alteration in original; citation and footnote call number omitted). Section 1225(a)(3) requires all applicants for admission, including those "seeking admission," to be inspected by an immigration officer, see 8 U.S.C. § 1225(a)(3); and certain applicants for admission may be subject to removal proceedings under section 1225(b). 8 U.S.C. § 1225(a) – (b); see also *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (citations omitted). Relevant here, § 1225(b)(2) applies where an arriving alien is "seeking admission" into the United States, and that provision mandates detention for aliens who are "applicants for admission." 8 U.S.C. § 1225(b)(2)(A). "Because Section 1225 is mandatory, a 'noncitizen detained under Section 1225(b)(2) may be released only if he is paroled for urgent humanitarian reasons or significant public benefit.'" *Barrera v. Tindall*, No. 25-

cv-541, 2025 WL 2690565, at *2 (W.D. Ky. Sept. 19, 2025) (quoting Gomes, 2025 WL 1869299, at *1).

27. On the other hand, § 1226 has historically "authorize[d] the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added).

28. In addition, courts around the country have given no weight to *how* long noncitizen residents entered the United States when rejecting Respondent's interpretation of § 1225(b)(2). *Garcia v. Noem, et. al.*, No. 1:25-CV-1271, 2025 WL 3017200, at *4 (W.D. Mich. Oct. 29, 2025); *Diaz v. Olson, et. al.*, No. 25 CV 12141, 2025 WL 3022170, at *5 (N.D. Ill. Oct. 29, 2025); *Rodriguez v. Noem, et. al.*, No. 1:25-CV-1196, 2025 WL 3022212, at *6 (W.D. Mich. Oct. 29, 2025); *Puga*, 2025 WL 2938369; *Lopez-Campos*, 2025 WL 2496379, at *8; *see also Rodriguez*, 779 F. Supp. 3d at 1256–61; *Singh v. Lewis*, No. 4:25-cv-96, 2025 WL 2699219, at *3–5 (W.D. Ky. Sept. 22, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *7–12 (W.D. Tex. Sept. 22, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-1774, 2025 WL 2694763, at *2–5 (S.D. Ind. Sept. 22, 2025); *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255, at *5–9 (E.D. Va. Sept. 19, 2025); *Garcia Cortes v. Noem*, No. 1:25-cv-2677-CNS, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093, 2025 WL 2472136, at *2–4 (W.D. La. Aug. 27, 2025); *Romero*, 2025 WL 2403827, at *8–13 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142, 2025 WL 2374411, at *9–16 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052, 2025 WL 2370988, at *6–9 (D. Mass. Aug. 14, 2025); *Lopez Benitez*, 2025 WL 2371588, at *3–9; *Rosado*, 2025 WL 2337099, at *6–11, report and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

29. Because Petitioner in this matter was not encountered *at entry*, she should not be detained pursuant to 1225(b). This is consistent with the charging document in the record before

the Executive Office for Immigration Review. Rather, she should be entitled to release or, in the alternative, a bond hearing, pursuant to 1226.

30. Thus, Petitioner should expeditiously be ordered released or, in the alternative, at least accorded a bond hearing within seven days.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that within one day, requiring that Respondents release Petitioner;

c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

DATED this 1st of April, 2026.

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