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UNITED STATES DISTRICT

COURT MIDDLE DISTRICT OF GEORGIA COLUMBUS DIVISION

JULISSA DEL CARMEN DIAZ OCHOA
Proceeding Pro Se,
Petitioner,
v.
WARDEN STEWART DETENTION CENTER, FIELD OFFICE DIRECTOR *ICE ATLANTA FIELD OFFICE, TODD M LYONS, U S ATTORNEY GENERAL, UNITED STATES OF AMERICA*
Respondents.

Civil Action No.: **4:26-cv-00853-CDL-AGH**

PETITIONER'S BRIEF IN SUPPORT OF RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Petitioner Julissa del Carmen Díaz Ochoa, proceeding *pro se*, respectfully submits this Brief in Support of her Response in Opposition to Respondents' Motion to Dismiss her Petition for a Writ of Habeas Corpus.

INTRODUCTION

This case challenges the unlawful detention of a young woman who has lived in the United States since she was an unaccompanied minor. When Respondents arrested Petitioner on May 12, 2026, her appeal of a removal order was pending before the Board of Immigration Appeals ("BIA"), meaning her order of removal was not administratively final. She was therefore statutorily and constitutionally entitled to an individualized bond hearing to determine if her detention was necessary. Respondents provided no such hearing. Instead, after Petitioner filed this habeas action to vindicate her right to due process, Respondents filed a Motion to Dismiss based on a post-petition Immigration Judge ("IJ") Order.

Respondents' motion fails for several reasons. First, this Court properly has and retains jurisdiction over Petitioner's claims, as jurisdiction attached when the petition was filed while she was detained

in this District, and her subsequent involuntary transfer does not divest this Court of its authority. Second, Petitioner's claims are not moot. The post-petition IJ Order cannot retroactively cure the five-week period of unlawful detention she endured without a bond hearing, and it does not provide the constitutionally adequate hearing to which she is entitled. Third, at the time of filing, Petitioner's detention was governed by 8 U.S.C. § 1226(a), which required an individualized custody determination. The failure to provide one was a clear violation of the statute and the Due Process Clause of the Fifth Amendment. For these reasons, the Motion to Dismiss must be denied.

ARGUMENT

I. THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 2241

1. This Court has subject-matter jurisdiction over Petitioner's claims pursuant to 28 U.S.C. § 2241, which grants federal courts the power to issue writs of habeas corpus, and 28 U.S.C. § 1331, which grants jurisdiction over federal questions.
2. When Petitioner filed her habeas petition on May 19, 2026, she was physically detained at the Stewart Detention Center in Lumpkin, Stewart County, Georgia. Stewart County is located within the Columbus Division of the Middle District of Georgia. 28 U.S.C. § 90(b)(3). Therefore, this Court had personal jurisdiction over her immediate custodian and was the proper venue for this action.
3. The Supreme Court has held that for habeas challenges to present physical confinement, "the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The proper respondent at the time of filing was the Warden of the Stewart Detention Center, who was located within this District.

4. Courts in the Middle District of Georgia have consistently held that habeas petitions filed by detainees at the Stewart Detention Center are properly filed in this District and Division. *See, e.g.*, *Giron-Villatoro v. Washburn*, No. 1:20-CV-222-TWT, ECF No. 3 (N.D. Ga. Dec. 1, 2020) (transferring habeas case to the Middle District of Georgia, Columbus Division because the petitioner was detained in Stewart County); *Patel v. Warden*, No. 20-CV-9635 (JPO), 2020 U.S. Dist. LEXIS 229150, at *1 (S.D.N.Y. Dec. 7, 2020) (same); *see also Simonovich v. Warden Stewart Det. Ctr.*, No. 4:24-CV-135 (CDL), 2024 U.S. Dist. LEXIS 107386, at *2 (M.D. Ga. June 18, 2024) (adjudicating habeas petition from Stewart detainee and noting proper respondent is the Warden); *Mondesir v. Dickerson*, No. 4:24-CV-184 (CDL), 2024 U.S. Dist. LEXIS 158864 (M.D. Ga. Sep. 11, 2024) (same).

II. THE TRANSFER TO LOUISIANA DOES NOT DIVEST THIS COURT OF JURISDICTION

5. It is a well-established principle of habeas corpus law that jurisdiction attaches at the time the petition is filed. A petitioner's subsequent involuntary transfer to a different detention facility, even one outside the judicial district, does not destroy the court's properly established jurisdiction.

6. In *Alvarez v. Wolf*, a district court held that a detainee's transfer out of the district would not defeat jurisdiction: "Jurisdiction attaches upon filing a habeas petition, and it is not destroyed upon the subsequent transfer or custodial change of the petitioner." No. 20-cv-01254, 2020 U.S. Dist. LEXIS 200424, at *3 (W.D. La. Oct. 27, 2020).

7. The Third Circuit, citing the Supreme Court's decision in *Ex parte Endo*, 323 U.S. 283 (1944), affirmed this principle, stating that the objective of habeas relief "may be in no way

impaired or defeated by the removal of the prisoner from the territorial jurisdiction of the District Court." *Angel Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, No. 21-2336, 2021 U.S. App. LEXIS 32770, at *4 (3d Cir. Nov. 3, 2021).

8. Similarly, in *Vidal-Martinez v. Prim*, the court found that it "retains jurisdiction if a petitioner files a petition naming his immediate custodian and the government subsequently moves him." No. 20 C 5966, 2020 U.S. Dist. LEXIS 204907, at *5 (N.D. Ill. Nov. 3, 2020).

9. Petitioner filed her petition while she was detained at Stewart and named her immediate custodian, the Warden, as a respondent. Respondents cannot unilaterally divest this Court of jurisdiction by transferring Petitioner to Louisiana after she sought judicial relief. This Court retains jurisdiction to adjudicate her claims.

III. THE REAL ID ACT DOES NOT STRIP THIS COURT OF JURISDICTION

10. Respondents may argue that the REAL ID Act of 2005 strips this Court of jurisdiction. That argument is incorrect. While the REAL ID Act, 8 U.S.C. § 1252(a)(5), gives Courts of Appeals exclusive jurisdiction to review "final orders of removal," it does not eliminate the traditional habeas jurisdiction of district courts under 28 U.S.C. § 2241 to review challenges to the legality of a noncitizen's physical detention.

11. Petitioner does not challenge the merits of the IJ's removal order. Rather, she challenges the constitutional and statutory lawfulness of her physical confinement without a bond hearing.

12. The Supreme Court recently reaffirmed that habeas jurisdiction under § 2241 remains available for such challenges. In *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574 (2022), the Court addressed a detention challenge brought under § 2241 without questioning the district court's jurisdiction. As another court noted when discussing *Arteaga-Martinez*,

"Noncitizens detained under § 1226(a) have long received bond hearings at the outset of detention." *L v. Decker*, No. 23-cv-1601, 2024 U.S. Dist. LEXIS 11099, at *9 (S.D.N.Y. Jan. 22, 2024). This Court has jurisdiction to determine whether Petitioner's detention comports with the statute and the Constitution.

IV. PETITIONER'S DETENTION WAS GOVERNED BY § 1226(a) WHEN THE PETITION WAS FILED

13. The Immigration and Nationality Act ("INA") creates two distinct detention regimes. Detention of noncitizens *prior* to a final order of removal is governed by 8 U.S.C. § 1226. Detention *after* a final order of removal is governed by 8 U.S.C. § 1231.

14. The post-order detention clock under § 1231 begins only when a removal order becomes "administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). An order of removal does not become administratively final while an appeal is pending before the BIA.

15. When Petitioner filed her habeas petition on May 19, 2026, her BIA appeal, filed on October 25, 2022, was still pending. (ECF No. 1, Ex. at 23). Therefore, her detention was governed by the pre-order statute, § 1226. *See, e.g.*, *Trottman v. Green*, No. 19-cv-16347, 2019 U.S. Dist. LEXIS 166700, at *10 (D.N.J. Sep. 27, 2019) (explaining that the statutory basis for detention shifts from § 1226 to § 1231 only "when the BIA dismisse[s] Petitioner's appeal"); *Arevalo-Guasco v. Horton*, No. 2:20-cv-01582-LSC, 2021 U.S. Dist. LEXIS 38813, at *9 (N.D. Ala. Mar. 2, 2021) (holding that a detainee with a pending appeal remains under § 1226 jurisdiction).

16. Circuit courts have uniformly held that when a court grants a stay of removal, the detention reverts to being governed by § 1226, because the removal order is not final for purposes of detention. *See Mirambeaux v. McAleenan*, No. 19-21019, 2020 U.S. Dist. LEXIS 45437,

at *11 (D.N.J. Mar. 16, 2020) ("every circuit to consider the issue has held that § 1226, not § 1231, governs detention during a stay of removal."); *Alvarez-Prieto v. Doll*, No. 1:19-CV-01642, 2020 U.S. Dist. LEXIS 72685, at *8 (M.D. Pa. Apr. 27, 2020) (same); *Bakor v. Barr*, No. 19-cv-2394, 2019 U.S. Dist. LEXIS 191024, at *11 (D. Minn. Nov. 5, 2019) (holding that a stay defers the start of the § 1231 removal period, and thus § 1226 governs). The pendency of Petitioner's BIA appeal had the same effect: it stayed her removal and kept her detention under the purview of § 1226.

17. Petitioner has no criminal history. Accordingly, she was not subject to mandatory detention under § 1226(c). Her detention fell under § 1226(a), which grants the Attorney General discretionary authority to release a noncitizen on bond pending a decision on removal. 8 U.S.C. § 1226(a). This discretion is not unfettered; it must be exercised in a manner consistent with the Constitution, which requires an individualized bond hearing. Respondents' failure to provide such a hearing violated the statute.

V. EVEN IF THE REMOVAL ORDER IS NOW ADMINISTRATIVELY FINAL, PETITIONER IS ENTITLED TO RELIEF

18. Respondents' motion relies on an IJ Order dated June 17, 2026. Even if this order reflects a BIA dismissal of Petitioner's appeal, her habeas petition is not moot.

19. First, this petition challenges the lawfulness of her detention *from the outset*. Petitioner was detained for approximately five weeks (May 12, 2026, to June 17, 2026) under the authority of § 1226 without the bond hearing she was due. A subsequent change in her detention status does not erase that constitutional violation or this Court's ability to remedy it.

20. Second, even if her detention is now governed by § 1231, prolonged detention without a bond hearing remains constitutionally suspect. In *Zadvydas v. Davis*, 533 U.S. 678, 689

(2001), the Supreme Court held that the indefinite detention of a noncitizen subject to a final removal order raises "serious constitutional problem[s]" and interpreted § 1231 to authorize detention only for a period reasonably necessary to secure removal. While *Zadvydas* dealt with situations where removal was not reasonably foreseeable, its due process principles apply to any prolonged post-order detention. *See Stedman v. Garland*, No. 2:23-cv-268, 2023 U.S. Dist. LEXIS 122240, at *9 (W.D. Pa. July 17, 2023).

21. Third, the BIA's dismissal of her appeal, if that is what happened, may have been procedurally improper. On her Notice of Appeal (Form EOIR-26), Petitioner's former attorney checked the box indicating she did *not* intend to file a separate brief. (ECF No. 1, Ex. at 38). The BIA's regulations state that summary dismissal for failure to file a brief is appropriate where an appellant *indicates they will file a brief* but fails to do so. 8 C.F.R. § 1003.1(d)(2)(i)(E). Furthermore, the BIA's Notice of Briefing Schedule, also attached to the petition, states that Petitioner was "not represented," indicating that her attorney had not properly entered his appearance before the BIA. (ECF No. 1, Ex. at 32). It is therefore questionable whether Petitioner, proceeding *pro se* in the BIA's eyes, received proper notice or an opportunity to be heard.

VI. PETITIONER'S PROLONGED DETENTION WITHOUT AN INDIVIDUALIZED BOND HEARING VIOLATES DUE PROCESS

22. The Fifth Amendment to the Constitution provides that no "person" shall be "deprived of life, liberty, or property, without due process of law." This protection is not limited to citizens; it "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. Freedom from physical restraint is a fundamental liberty interest.

23. When detention under § 1226 becomes prolonged, due process requires an individualized bond hearing where the government bears the burden of proof. Courts have repeatedly held that the government must prove by clear and convincing evidence that a detainee's continued detention is justified. *See, e.g., Martinez Jimenez v. Acting Field Off. Dir.*, No. 23-cv-06109-JST, 2024 U.S. Dist. LEXIS 29606, at *12 (N.D. Cal. Feb. 21, 2024) (ordering a hearing where "the government must prove by clear and convincing evidence that Petitioner's continued detention is justified"); *Espinoza Hulke v. Schmidt*, No. 21-CV-753, 2021 U.S. Dist. LEXIS 224403, at *18 (E.D. Wis. Nov. 19, 2021) ("due process requires the [G]overnment to either (1) prove by clear and convincing evidence that [Hulke] poses a danger to the community or (2) prove by a preponderance of the evidence that [he] poses a flight risk.").

24. The due process analysis is guided by the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See M.T.B. v. Byers*, No. 5:24-cv-128-DCR, 2024 U.S. Dist. LEXIS 148184, at *7 (E.D. Ky. Aug. 20, 2024) (applying *Mathews* factors to find a due process violation). All three factors weigh heavily in Petitioner's favor: a. **The Private Interest:** Petitioner's interest is in her "freedom from bodily restraint," a "core" and "fundamental" liberty interest. *Zadvydas*, 533 U.S. at 690. Her interest is heightened by her serious medical conditions, which are exacerbated by detention. b. **The Risk of Erroneous Deprivation:** The risk is exceptionally high. Without a hearing, there is no mechanism to assess the specific facts of Petitioner's case. Respondents have arbitrarily detained a non-criminal, long-term resident with serious health issues, strong family ties, and a pending appeal, without any individualized finding that she is a flight risk or danger. c. **The Government's Interest:** The government's interest in providing a bond hearing is

minimal. The administrative burden is slight compared to the profound harm of erroneous and unnecessary confinement. The public interest is served by ensuring the government acts constitutionally and does not arbitrarily deprive individuals of liberty.

25. Petitioner's individual circumstances—her entry as a minor, seven years of U.S. residence, lack of any criminal record, documented employment, strong family ties (including a lawful permanent resident grandmother and U.S. citizen uncle), serious medical needs, and the fact that she was arrested while voluntarily complying with an ICE check-in—all demonstrate that her detention without a hearing is arbitrary and a violation of due process.

VII. THE IJ ORDER DATED JUNE 17, 2026 DOES NOT RENDER THIS ACTION MOOT

26. The sole basis for Respondents' Motion to Dismiss is an "Order of the IJ, dated 6-17-2026." (ECF No. 7, Ex. A). This order, issued nearly a month *after* Petitioner filed this habeas action, does not moot her claims.

27. A case becomes moot only when it is impossible for the court to grant any effectual relief whatever to the prevailing party. Petitioner seeks release from unlawful confinement or, at a minimum, a constitutionally adequate bond hearing. The IJ Order provides neither.

28. The Supreme Court has made clear that the "voluntary cessation" of a challenged practice does not moot a case unless the defendant can show the wrongful behavior could not reasonably be expected to recur. Here, the constitutional injury is prolonged detention *without a proper hearing*. An IJ Order denying bond (if that is what it is) does not cure the initial due process violation and does not provide the constitutionally-mandated hearing where the government bears the burden of proof.

29. A habeas petition is typically mooted by a detainee's release from custody. *See Escobar Barrera v. McDonald*, No. 19-cv-10255, 2019 U.S. Dist. LEXIS 168430, at *12 (D. Mass.

Sep. 30, 2019) (finding mootness where the petitioner received "the principal relief he sought, release from custody"). Petitioner has not been released. The IJ Order does not grant her the principal relief sought, and thus her case remains a live controversy.

CONCLUSION

For the foregoing reasons, Respondents' Motion to Dismiss should be denied. This Court has jurisdiction to hear this case, and Respondents cannot defeat that jurisdiction through a post-filing transfer. Petitioner has stated valid claims that her detention without an individualized bond hearing violates the INA and the Due Process Clause of the Fifth Amendment. The post-petition IJ Order does not cure these violations or render this case moot. Petitioner respectfully requests that this Court deny the Motion to Dismiss, set a hearing on her Petition for a Writ of Habeas Corpus, and order her immediate release or, in the alternative, an immediate and constitutionally adequate bond hearing.

DATED: July 23, 2026

Respectfully submitted,

/s/ Julissa Díaz

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