UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

FLAVIO BLADAMIR CHOGLLO CHAFLA, Petitioner v. RODNEY S. SCOTT, et al., Respondents	No. 2:25-cv-00437-SDN
LUIS GERMAN LEMA TEMAY, Petitioner v. RODNEY S. SCOTT, et al., Respondents	No. 2:25-cv-00438-SDN
VICTOR MANUEL TENESACA LEMA, Petitioner v. RODNEY S. SCOTT, et al., Respondents	No. 2:25-cv-00439-SDN

SUPPLEMENTAL BRIEF IN RESPONSE TO ORDERS

The Government, by and through undersigned counsel, submits the instant supplemental briefing in response to the Court's September 18, 2025, Orders, addressing the issue of "Petitioners' entitlement to release from detention pending a future bond hearing." Habeas corpus proceedings provide "the federal courts power to fashion appropriate relief other than immediate release." *Preiser v. Rodriguez*, 411 U.S.

475, 487 (1973) (quoting *Peyton v. Rowe*, 391 U.S. 54, 66-67 (1968)); *see also Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) ("broad discretion" is accorded federal courts "in fashioning the judgment granting relief to a habeas petitioner"). Petitioners, under the particular circumstances of their respective cases, would not be entitled to release prior to a bond hearing.[1]

First, in recent habeas proceedings where the § 1225 mandatory detention statute has been found inapplicable, courts have permitted ICE to continue detention on a temporary basis pending a petitioner receiving a bond hearing before an Immigration Judge. *See Lopez-Campos v. Raycraft*, 25-cv-12486, 2025 WL 2496379, at *10 (E.D. Mich. Aug. 29, 2025) (ordering immediate release "or in the alternative, provid[ing] [a petitioner] with a bond hearing under 8 U.S.C. § 1226(a)"); *Kostak v. Trump*, 25-cv-1093, 2025 WL 2472136, at *4 (W.D. La. Aug. 27, 2025) (denying motion for immediate release but ruling, if an individualized bond hearing is not held, that the petitioner would be ordered released). "If a bond review is not provided promptly," under such an approach, a "[p]etitioner's continued detention cannot stand." *Velasquez Salazar v. Dedos*, 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025) (ordering that a petitioner "receive an individualized bond hearing pursuant to § 1226(a)," and if not provided such a hearing in a timely manner, requiring immediate release). The Government accordingly submits that "the Immigration Court is in the best position to evaluate [the] risk of non-appearance and dangerousness," such that "this Court leave[] to [the Immigration Court in] its sound discretion a determination on that issue."

[1] As discussed during the hearings held on September 18, 2025, U.S. Immigration and Customs Enforcement ("ICE") submits that it maintains mandatory detention authority to hold Petitioners without bond pursuant to 8 U.S.C. § 1225(b)(2). The instant supplemental briefing is addressed to the alternative basis for detention provided under 8 U.S.C. § 1226(a), which is discretionary and requires bond hearings as a matter of course.

Lopez-Campos v. Raycraft, at *10.

Second, pre-hearing detention under the circumstances of Petitioners' cases is appropriate, as well, even when assessed against other recent case law—including from this District—ordering release pending the holding of a bond hearing. *See, e.g., Sampiao v. Hyde*, 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Bermeo Sicha v. Bernal*, 25-cv-418, 2025 WL 2494530, at *6-7 (D. Me. Aug. 29, 2025); *Lopez Benitez v. Francis*, 25-cv-5937, 2025 WL 2371588, at *14 (S.D.N.Y. Aug. 13, 2025). Petitioners Chogllo Chafla and Lema Temay were just recently issued NTAs. Neither was subject to any prior determination by immigration authorities that they did not represent a danger or a risk of flight. Petitioner Tenesaca Lema was already in removal proceedings but failed to appear for his master calendar hearing in February 2024. Petitioners' factual background therefore differs materially from the cases ordering pre-hearing release. In *Sampiao*, for example, unnecessary detention concerns arose because the petitioner had already "complied with the conditions of his 2021 Order of Recognizance." 2025 WL 2607924, at *12. This Court's *Bermeo Sicha* decision similarly relied, in part, on the petitioner's prior release under an order of recognizance. Judge Ho highlighted this salient consideration in *Lopez Benitez*: when "DHS first release[s]" a petitioner, "it could not have done so validly unless it did not consider him to be a flight risk or danger to the community at that time." 2025 WL 2371588, at *12.[2] In contrast to such cases, no prior determinations have been made for Petitioners Chogllo Chafla and Lema Temay. Petitioner Tenesaca Lema, for his part, has positively displayed a risk of flight.

[2] *See also Diaz Diaz v. Mattevelo*, 25-cv-12226, 2025 WL 2457610, at *3-4 (D. Mass. Aug. 27, 2025) (release ordered subject to prior bond order); *Romero v. Hyde*, 25-cv-11631, 2025 WL 2403827, at *2 (D. Mass Aug. 29, 2025) (release ordered subject to prior bond order); *dos Santos v. Noem*, 25-cv-12052, 2025 WL 2370988, at *9 (D. Mass. Aug. 14, 2025) (prior release on recognizance).

Third, Petitioners' continued detention pending a bond hearing comports with § 1226 itself. As the Supreme Court explained in *Jennings v. Rodriguez*, "federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention," not prior to detention. 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021) ("[a]liens who are arrested and detained may generally apply for release on bond or conditional parole"). Here, "because the Immigration Court originally concluded that [Petitioners were] categorically ineligible for bond, it has not yet had the opportunity to consider the merits of [their] request[s] for release on bond under Section 1226(a)." *See Gomez v. Hyde*, 25-cv-11571, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025). Petitioners should be detained unless and until such a determination is made by the Immigration Court in the first instance, as § 1226 contemplates.

For the foregoing reasons, the Government respectfully submits that, to the extent the Court finds § 1226 applicable to these matters, Petitioners remain detained pending the holding of a bond hearing.

Dated: September 19, 2025
Bangor, Maine

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

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