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October 20, 2025

BY ECF
Honorable Michael E. Farbiarz
United States District Judge
Martin Luther King Building & U.S. Courthouse
50 Walnut Street Room 4015
Newark, NJ 07101

Re: Lopez Lopez v. Soto 2:25-cv-16303-MEF

Dear Judge Farbiarz:

This office represents Petitioner in the above referenced matter and respectfully submits this response to the Government's October 20, 2025 letter (ECF No. 8). The Government confirms that its main argument before the Board of Immigration Appeals ("BIA") is that Petitioner is not eligible for a bond hearing because he is detained under 8 U.S.C. § 1225(b)(2) instead of 8 U.S.C. § 1226(a). The Government also states that they are "unable to answer" whether the Department of Homeland Security ("DHS") will seek continued detention in the event that the BIA does not issue a decision before the automatic stay expires. In light of the Government's position, Petitioner respectfully requests that the Court order Petitioner's release.

First, the pending BIA appeal does not prevent this Court from releasing Petitioner. *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025) ruled that IJs do not have jurisdiction to entertain a bond hearing requested by noncitizens like Petitioner. Therefore, the BIA will undoubtedly grant DHS' appeal on this threshold issue. *See* https://www.justice.gov/eoir/board-of-immigration-appeals (last accessed October 20, 2025) ("BIA decisions are binding on all DHS officers and Immigration Judges unless modified or overruled by the Attorney General or a federal court."). However, as set forth in Petitioner's previous submissions, this interpretation of sections 1225(b)(2) and 1226(a) is meritless. It violates the Immigration and Nationality Act ("INA") and Petitioner's Fifth Amendment rights because it unconstitutionally permits Petitioner's detention when he should otherwise have been released. Although courts often order a bond hearing as habeas relief, other courts have found that release is warranted in similar situations. *See, e.g., Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *12 (D.N.J. Sep. 26, 2025); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX 452767, at *23 (E.D. Cal. Sep. 23, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 LX 349750, at *5 (W.D. Tex. Sep. 9, 2025). The Government does not raise any exhaustion issues and therefore waives any such arguments. But even if the Government did raise this issue, the arguments would fail because there is no statutory requirement for exhaustion, and waiting for a decision the BIA appeal would be futile in light of *Matter of Yajure Hurtado*'s holding.

Second, the Government confirmed in its response to the Petition that it filed the automatic stay pursuant to EOIR-43 as an "opportunity to vindicate Congress' mandatory detention scheme."

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ECF No. 5 at p. 26. In other words, DHS had no other basis to file the automatic stay other than the section 1225/1226 dispute. Now, the Government cannot answer whether it intends to seek a permanent stay of release following the expiration of the automatic stay. The fact that DHS is also appealing the IJ's danger and risk of flight analysis is irrelevant. DHS makes no contention that it invoked the automatic stay in connection with any danger or risk of flight findings. There is no reason why Petitioner cannot be released from detention while DHS continues its appeal of the IJ's danger and risk of flight finding, which would have been the case if DHS had allowed Petitioner to be released on bond and did not invoke and arbitrarily apply the automatic stay.

For the foregoing reasons, Petitioner respectfully requests immediate release from detention prior to his scheduled October 28, 2025 hearing. Thank you for the Court's consideration of this matter.

Date: October 20, 2025

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By: */s/ Enes Hajdarpasic*
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Cc: Margaret Ann Mahoney (via ECF)