

Andrew W. Clopman, Esq.
Florida Bar No. 0087753
aclopman@clopmanlaw.com
Andrew W. Clopman, P.A.
P.O. Box 86
Fort Covington, NY 12937
Telephone: (772) 210-4337
Attorney for Petitioner Lilian Roxana VALLEJO

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE No. 0:25-cv-62148-MD

LILIAN ROXANA VALLEJO,

Petitioner,

v.

DIRECTOR, U.S. DHS ICE ERO Miami
Field Office, *et al.*,

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RETURN
TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

Then Petitioner, Lilian Roxana Vallejo, by and through undersigned counsel, hereby files the instant Reply to the Respondent's Return to Verified Petition to Writ of Habeas Corpus (ECF No. [11]) ("Response") and respectfully states as follows:

I. INTRODUCTION

In their Response, Respondents argued that the Court should dismiss the Respondents that Ms. Vallejo named in her Petition and substitute her immediate custodian. *See* Response, ECF No. [11] at *5. Respondents further argued that the instant Petition involved claims of either a parole revocation or bond breach, but neither of these occurred and the detention is lawful and does not

violate due process. *See id.* at **6-13. Respondents also argued that this Court should dismiss Ms. Vallejo’s claim under the Administrative Procedure Act (“APA”). Each argument is unavailing and the Court should grant the instant Petition. *See infra.*

II. LEGAL ARGUMENT

A. Respondents failed to provide sufficient due process and their position in the instant matter supports a finding that they have detained Ms. Vallejo pursuant to 8 U.S.C. § 1226(a) and the IJ therefore has jurisdiction to grant her release on bond.

In their Response, Respondents argued that they did not revoke parole or find a bond breach in the instant matter, but instead Respondents cancelled Ms. Vallejo’s bond after initially granting release on bond pursuant to the Board of Immigration Appeals (“BIA”) precedent decision in *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005). *See* ECF No. [11] at **2-3, **6-7. Although Respondents claimed in their Response that they provided Ms. Vallejo with sufficient due process prior to her detention on June 26, 2025, “pursuant to a notice of bond cancellation that had been issued nearly 8 weeks prior,” the documents that Respondents provided do not support this claim; Respondents provided a copy of a Form I-391 bond cancellation notice dated June 27, 2025, from their records to establish that ICE cancelled the bond and it noted that ICE “has determined that the conditions of the immigration bond referenced above have been satisfied and the bond is cancelled.” ECF No. [11-10]. Respondents’ records indicate that ICE issued the Form I-391 one day after issuing a Form I-200 warrant for arrest and detaining Ms. Vallejo. *See* ECF No. [11-11].

Even with the clarifications and further provision of documents in Respondents’ response, Respondents still failed to provide Ms. Vallejo with sufficient process. The U.S. DHS ICE ERO Bond Management Handbook provides as follows regarding process for bond cancellation:

Demand notices are issued by using Form I-340, *Notice to Obligor to Deliver Alien*. Under the current version of the bond form, demand notice are issued only for delivery bonds.

[...]

Demand notices on delivery bonds may be issued when ICE has a reason to call the alien into an ICE office. Reasons for issuing demand notices include:

- To remove the alien pursuant to a final order of removal;
- To interview the alien about his or her immigration status; and
- To take the alien back into custody, for example, if the alien committed a crime while release on bond.

Send Form I-340 demand notices within 30 days of the date of the final order of removal.

A “final order” of removal has a specific and highly technical meaning in immigration law. [...]

- On all final order cases, the alien must be taken into custody and processed accordingly. If you determine that the alien is eligible for release, you may release the alien on an Order of Supervision with the additional compliance tool known as an “OSUP” bond.

Send demand notices to the bond obligor(s) by certified mail, return receipt requested. File copies of the demand notices in the alien’s A-file. Follow proper procedures for issuing an I-340 using [redacted] or if necessary, follow the manual backup procedures (see [redacted] participants manual). Staple the certified mail receipts (commonly known as “greenies”) to the demand notice in the A-file as soon as they are received from USPS.

When certified mail to an obligor comes back as “Returned to Sender,” take further action to make sure the obligor receives a copy of the demand notice. [...].

U.S. DHS ICE ERO Bond Management Handbook, ERO 11301.1, at **10-11 (dated August 19, 2014). In the instant matter, the record does not indicate that Respondents provided Ms. Vallejo with the temporal procedural protections that the Handbook establishes, as Respondents issued the I-340 requesting an interview on May 03, 2025, when the IJ issued Ms. Vallejos’ final removal order on October 10, 2019. *See* ECF No. [11-17] (I-340) and ECF No. [11-9] (final order); *see also United States v. ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (administrative agencies must follow their own regulations); *Fort Stewart Schs. v. Fed. Lab. Rels. Auth.*, 495 U.S.

641, 654 (1990) (“It is a familiar rule of administrative law that an agency must abide by its own regulations”).

Moreover, despite the Respondents’ broad discretion to cancel a bond pursuant to 8 U.S.C. § 1226(b), the BIA has held that “where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change in circumstances.” *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). One district court cited to *Matter of Sugay* and noted that the government’s counsel represented that “DHS has incorporated [*Sugay*’s] holding into its practice, requiring a showing of changed circumstances both where the prior bond determination was made by an immigration judge and where the previous release decision was made by a DHS officer.” *Sarvaia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal 2017), *aff’d sub nom. Sarvaia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

Regardless, the Respondents have provided further clarifications and documents to establish that they never granted Ms. Vallejo parole, but rather Respondents released Ms. Vallejo on bond without parole pursuant to *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005). Although the Attorney General overruled *Matter of X-K-* in 2019, Respondents noted that this decision provided “the governing law” when they released Ms. Vallejo on a bond in 2008. ECF No. [11] at *2 n.3; *see also Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (overruling *Matter of X-K-*). In *Matter of X-K-*, the BIA held that aliens that DHS initially places into expedited removal proceedings under 8 U.S.C. § 1225(b)(1) but placed in removal proceedings under § 1229a following a positive credible fear determination are eligible for bond redetermination hearings before IJs under the general custody authority of § 1226. *See id.*, 27 I&N Dec. at 731, 734-35. Respondents, however, argue that despite Ms. Vallejo’s prior release on bond under general custody authority of 8 U.S.C.

§ 1226, the Respondents are lawfully detaining Ms. Vallejo pursuant to expedited removal provisions under § 1225(b)(1). *See* ECF No. [11] at **7-11.

Since October, other district courts have issued decisions granting habeas petitions that presented claims of unlawful re-detention of aliens who initially had been placed in expedited removal proceedings prior to release on bond or parole. *See De Andrade v. Moniz*, Case No. 25-cv-12455-FDS, 2025 WL 2841844, at *6 (D. Mass. Oct. 7, 2025) (finding petitioner entitled to discretionary bond hearing under 8 U.S.C. § 1226(a) and not subject to detention under § 1225(b) after conditional parole); *Loja v. FCI Berlin*, Case No. 1:25-cv-386-JL-TSM, 2025 WL 3079160, at **2-3 (D.N.H. Nov. 4, 2025) (finding petitioner entitled to bond hearing under 8 U.S.C. § 1226(a) and not subject to detention under § 1225 after release on bond); *Luna Sanchez v. Bondi*, Case No. 1:25-cv-01888-MSN-IDD, 2025 WL 3191922, at *4-5 (E.D. Va. Nov. 14, 2025) (ordering immediate release on original bond after finding petitioner not subject to detention under 8 U.S.C. § 1225(a)); *Quinteros Moran v. Joyce*, Case No. 25 Civ 9645 (GBD), 2025 WL 3632895 (S.D.N.Y. Dec. 15, 2025) (ordering bond hearing under 8 U.S.C. § 1226(a) after initial release on bond); *but see Paredes Padilla v. Galovich*, Case No. 25-cv-865-jdp, 2025 WL 3640960, at *4 (W.D. Wis. Dec. 16, 2025) (finding *De Andrade*, *Loja*, and *Luna Sanchez* unpersuasive and finding *Matter of M-S*- controlling when original removal proceedings are still pending).

In *Loja*, the court noted that like Ms. Vallejo, the petitioner “was also given apparent notice, based on his warrant and Notice to Appear, that his current detention fell under [8 U.S.C.] § 1226, not § 1225” and that other “[c]ourts considering factually similar cases have found that aliens without criminal convictions, who are already in the country, have been taken into custody under 8 U.S.C. § 1226, are specifically described in charging documents as ‘alien[s] present in the United States who ha[ve] not been admitted or paroled,’ and are in removal proceedings, are detained

under 8 U.S.C. § 1226.” *Loja*, 2025 WL 3079160, at *3 (footnotes and citations omitted); *see also* ECF No. [11-6] (Notice to Appear); ECF No. [11-11] (Warrant dated June 26, 2025, citing 8 U.S.C. § 1226); ECF No. [1-3] (Notice of Custody Redetermination citing 8 U.S.C. § 1226). In *Luna Sanchez*, the court explained that “prior release on bond carries legal significance” and “DHS’s decision to release an individual on bond, as opposed to humanitarian parole under 8 U.S.C. § 1182(d)(5)(A), constitutes strong evidence that DHS intended to detain the individual under § 1226(a) and not under § 1225(b).” *Luna Sanchez*, 2025 WL 3191922, at *4 (citations omitted). Additionally, in *Quinteros-Moran*, the Court considered the government’s reliance on *Matter of M-S-* to support its argument that the petitioner’s detention under 8 U.S.C. § 1225(b)(1)(B)(ii) was lawful and found that the “decision carries minimal persuasive value.” *Quinteros-Moran*, 2025 WL 3632895, at *3 n.1. The Court noted that “[i]n *Matter of M-S-*, the Attorney General determined that ‘all aliens transferred from expedited to full proceedings after establishing a credible fear are ineligible for bond’” and that “[e]ven assuming *arguendo* that this is the correct interpretation of the statute, the decision is silent on whether this holding applies retroactively or, as Respondent argues here, empowers DHS to re-detain previously released noncitizens without first revoking their bond.” *Id.* Accordingly, Respondents’ argument that Ms. Vallejo is subject to mandatory detention under 8 U.S.C. § 1225(b) is erroneous because the record indicates that Respondents detained her under § 1226.

B. The Court may consider an APA violation claim in the instant habeas corpus proceedings.

“The text of the APA allows challenges to agency action to be brought in habeas petitions.” *Thieme v. Warden Fort Dix FCI*, 154 F.4th 115, 123 (3d Cir. 2025) (citing 5 U.S.C. § 703). The APA provides that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or

mandatory injunction or habeas corpus.” 5 U.S.C. § 703. “But the writ of habeas corpus is a means of challenging ‘unlawful executive detention’ for which the ‘typical remedy ... is ... release.’” *Thieme*, 154 F.4th at 123 (citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). “Thus, for an APA claim to be brought in habeas, it must have some relationship to the prisoner’s release.” *Thieme*, 154 F.4th at 123.

Ms. Vallejo has satisfied this nexus in the instant matter because she claims Respondents violated the APA by detaining her after violating procedural regulations and policies. *See, e.g.*, Petition, ECF No. [1] at ¶¶ 95-98 (claiming violations on 8 C.F.R. §§ 103.6(e) and 212.5(e)(2)(i)). Judge Bloom’s decision that Respondents cite to support their argument provides facts that are different from the ones Ms. Vallejo presented in the instant Petition, as Judge Bloom’s decision involved a case where a *pro se* petitioner improperly used a habeas petition to present claims under 28 U.S.C. § 1983 that challenge the conditions of confinement rather than the detention itself. *See King v. Carlton*, Case No. 21-cv-21634-BLOOM, 2021 WL 1738766, at **1-2 (S.D. Fla. May 03, 2021). Accordingly, Ms. Vallejo has presented the type of APA violation claim that Courts can review pursuant to a habeas petition.

C. The DHS ICE ERO Miami Field Office Assistant Director is Legal Custodian

In their Response, Respondents disclosed that a DHS ICE ERO Miami Field Office Assistant Director, in his official capacity, is the Petitioner’s immediate custodian. *See* Response, ECF No. [11] at *5 (disclosing that Assistant Director Juan Gonzalez is immediate custodian). A writ of habeas corpus must “be directed to the person having custody of the person detained,” 28 U.S.C. § 2243, which, in cases involving present physical confinement, means the “immediate custodian, not a supervisory official who exercises legal control.” *See Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). For that reason, Respondents assert, and Petitioner agrees, that the proper

Respondent in this case is the Assistant Field Office Director in his official capacity. *See, e.g., Masingene v. Martin*, 424 F. Supp. 3d 1298, 1302–03 (S.D. Fla. 2020) (“[T]he Court finds that the proper respondent to the Petition is Jim Martin, the Director of the Miami Field Office for ICE.”). Accordingly, Petitioner respectfully requests that the Court substitute the Assistant Director as Respondent. *See, e.g., Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815, at *3 (S.D. Fla. Sept. 26, 2024) (substituting as Respondent the Assistant Field Director of facility where petitioner was detained because denial of a habeas petition for failure to name proper respondent would give an unreasonably narrow reading to habeas corpus statute).

D. CONCLUSION

Ms. Vallejo respectfully requests that this Honorable Court grant her petition for a writ of habeas corpus and order Respondents to release her from detention or, alternatively, conduct a bond hearing pursuant to 8 U.S.C. § 1226(a).

Respectfully submitted this 07th day of January, 2026,

By: /s/ Andrew W. Clopman
Andrew W. Clopman, Esq.
Florida Bar No. 0087753
aclopman@clopmanlaw.com
Andrew W. Clopman, P.A.
P.O. Box 86
Fort Covington, NY 12937
Telephone: (772) 210-4337
Attorney for Petitioner Lilian Roxana VALLEJO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Court Clerk and to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served through the Court's ECF system to all counsel of record this 07th day of January, 2026.

Respectfully submitted,

By: /s/ Andrew W. Clopman

Andrew W. Clopman, Esq.

Florida Bar No. 0087753

aclopman@clopmanlaw.com

Andrew W. Clopman, P.A.

P.O. Box 86

Fort Covington, NY 12937

Telephone: (772) 210-4337

Attorney for Petitioner Lilian Roxana VALLEJO