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Via ECF

Honorable Claire C. Cecchi
United States District Judge
Martin Luther King Jr. United States Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: *Lopez-Capir v. Bondi, et al.*, Civil No. 25-17385 (CCC)
Answer to § 2241 Petition**

Dear Judge Cecchi:

This Office represents Respondents in the above habeas matter filed by two Petitioners challenging the legality of their detention by U.S. Immigration and Customs Enforcement (“ICE”) pursuant to 8 U.S.C. § 1225(b)(2). We respectfully submit this letter response in light of the recent decision from a court in this District in *Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (finding detention under § 1225(b)(2) unlawful as applied to specific noncitizen).¹ Moreover, this Office has submitted briefing on the § 1225(b)(2) issue to Your Honor in *Vasquez Salazar v. Bondi*, No. 25-17195 (CCC), ECF No. 4 (D.N.J. Nov. 14, 2025), which is currently pending. Respondents’ legal position in the instant matter on the § 1225(b)(2) issue is similar to their position in the earlier-filed *Vasquez Salazar* matter. Respondents accordingly incorporate it by reference.

Here, Petitioners Ever Lopez-Capir and Cristofer Omar Hernandez-Huz are citizens of Guatemala. Pet. ¶¶ 10–11. In January 2019, a Border Patrol agent

¹ See also, e.g., *Ayala Amaya v. Bondi*, No. 25-16427 (ESK), 2025 WL 3033880 (D.N.J. Oct. 30, 2025); *Smit Patel v. Almodovar*, No. 25-15345 (SDW), 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Lomeu v. Lyons*, No. 25-16589 (EP), 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-13004 (JKS), 2025 WL 2985256, at *2 (D.N.J. Oct. 23, 2025); *Soto v. Soto*, No. 25-16200 (CPO), 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Castillo v. Lyons*, No. 25-16219 (MEF), 2025 WL 2940990 (D.N.J. Oct. 10, 2025).

encountered Mr. Lopez-Capir in the Rio Grande Valley, determined that he had unlawfully entered the United States, and issued him a Notice to Appear. Ex. A (2019 Form I-213), at 3; Ex. B (Lopez-Capir Notice to Appear) at 1. A Border Patrol agent encountered Mr. Hernandez-Huz, along with his father, in May 2019 when he was a minor, and issued a Notice to Appear. Pet. ¶ 27; Ex. C (Hernandez-Huz Notice to Appear), at 1. Petitioners acknowledge that they both entered the United States without admission or parole. Pet. ¶ 43; *see also* Exs. B–C (Notices to Appear)

ICE arrested both Petitioners on November 2, 2025, in Fairview, New Jersey. *See* Exs. D–E (2025 Forms I-213). Since then, ICE has detained Petitioners without bond under 8 U.S.C. § 1225(b)(2) and the Board of Immigration Appeals’ (“BIA”) recent decisions *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of Q. Li.*, 29 I&N Dec. 66 (BIA 2025). Both Mr. Lopez-Capir and Mr. Hernandez-Huz are detained at the Delaney Hall Detention Facility in Newark, New Jersey. Petitioners principally argue that their detention without bond under § 1225(b)(2) is unlawful, and they seek either immediate release or a bond hearing under § 1226(a). Pet. ¶¶ 37–63, 74–76; Pet. at 20 (Prayer for Relief).

ICE contends, as it did in *Vasquez Salazar* and similar cases involving § 1225(b)(2) detention in this District, that both Petitioners’ detention are governed by § 1225(b)(2) because each is an applicant for admission and is not entitled to a bond hearing. *See* 8 U.S.C. § 1225(a)(1); *Vasquez Salazar v. Bondi*, No. 25-17195 (CCC), ECF No. 4, at 8–14 (citing *Matter of Yajure Hurtado*); *Matter of Q. Li.*, 29 I&N Dec. at 68 (holding that an alien who tries to enter the country illegally is treated as an applicant for admission). Respondents further contend that the only remedy, if the Court finds § 1225 does not apply, is a bond hearing under § 1226(a) not immediate release.

In *Rivera Zumba*, the Court ruled that the detention was improper under § 1225(b)(2) and ordered immediate release of petitioner. The Court held that § 1225(b)(2) applied exclusively to encounters at the border, while § 1226(a) applies to aliens, like Petitioners, who were already present in the country, albeit unlawfully, at the time of their encounter with immigration authorities. After *Rivera Zumba*, most courts in this District have ordered a bond hearing under § 1226(a) rather than immediate release. *See, e.g., Vicens-Marquez v. Soto*, No. 25-16906 (KSH), ECF 15 (D.N.J.).

Here, Respondents acknowledge that their answer to this Petition relies on the same statutory arguments made in *Rivera Zumba* and reiterated in *Vasquez Salazar*, and this Petition asserts similar relevant facts as in that petition. Given the similar issues, the importance of efficient resolution of this habeas petition, and the preservation of the Court’s and the parties’ resources, Respondents incorporate by

reference their position in *Vasquez Salazar v. Bondi*, No. 25-17195 (CCC), ECF No. 4 (D.N.J. Nov. 14, 2025).²

Petitioners' remaining claims are not cognizable in habeas or lack merit. First, Mr. Lopez-Capir alleges that his detention is unlawful because he is the sole legal custodian of a minor. Pet. ¶¶ 64–68. But he cites only two inapposite cases to support this claim. Pet. ¶¶ 67–68. *Ms. L. v. ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018) involved the separation of children in immigration detention from their parents. *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153 (3d Cir. 2018) held that federal courts had jurisdiction to consider a habeas corpus challenge brought by special immigrant juveniles (“SIJ”) designees. Both therefore involved the rights of minors who were themselves in immigration proceedings, which is not the situation alleged here. Mr. Lopez-Capir cites no authority suggesting that his guardianship over a minor immunizes him from immigration detention.

Second, Mr. Hernandez-Huz alleges that he has a medical condition that precludes detention. Pet. ¶¶ 69–73. Yet he alleges no facts to suggest that he has received inadequate treatment while detained beyond a conclusory, unsupported statement that “[i]mmigration detention facilities are categorically inadequate to manage” his condition. Regardless, his conditions-of-confinement claim is not cognizable in habeas. *See, e.g., Folk v. Warden Schuylkill FCI*, No. 23-1935, 2023 WL 5426740, at *2 (3d Cir. 2023); *Johnson v. Warden Canaan USP*, 699 Fed. Appx. 125, 126 (3d Cir. 2017); *Leslie v. Att'y Gen. of U.S.*, 363 Fed. Appx. 955, 958 (3d Cir. 2010).³

² In recent matters, courts in this District have summarily adjudicated § 1225(b)(2) habeas matters without requiring a formal answer because Respondents stipulated to material facts and legal issues. *See Ortega Alvarez v. Bondi*, No. 25-17401 (MEF), ECF 4 (D.N.J. Nov. 14, 2025) (ordering relief without answer); *Moreira Da Silva v. LaForge*, No. 25-17095 (EP), ECF 6 (D.N.J. Nov. 13, 2025) (ordering bond hearing without answer); *Vicens-Marquez v. Soto*, No. 25-16906 (KSH), ECF 15 (same).

³ In *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 324 (3d Cir. 2020), the Third Circuit recognized a narrow exception to this rule under the extraordinary circumstances of the COVID-19 pandemic, while emphasizing that it was “not creating a garden variety cause of action.” Since *Hope*, courts routinely dismiss “garden variety” conditions-of-confinement claims like that asserted here. *See, e.g., Folk*, 2023 WL 5426740, at *2; *Khan v. Aviles*, No. 23-698 (MCA), 2024 WL 3276773, at *2 (D.N.J. June 10, 2024); *Kayian v. Thompson*, No. 23-21623 (KMW), 2024 WL 64777, at *1 (D.N.J. Jan. 5, 2024); *Jones v. Merendino*, No. 23-89 (KMW), 2023 WL 8295274, at *3 n.1 (D.N.J. Dec. 1, 2023); *Vendetti v. Ortiz*, No. 21-5193 (NLH), 2022 WL 102250, at *2 (D.N.J. Jan. 11, 2022)

Finally, Mr. Lopez-Capir seeks a change of venue in his immigration proceeding from Harlingen, Texas to New Jersey under 8 C.F.R. § 1003.20(b). Pet. ¶¶ 78–81. This request appears to be moot, as ICE has advised this office that Mr. Lopez-Capir’s immigration proceedings are pending in Elizabeth, New Jersey. Even so, federal habeas relief is generally limited to an alleged deprivation of rights that “necessarily impacts the fact or length of detention.” *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002); accord *Bonadonna v. United States*, 446 Fed. Appx. 407, 409 (3d Cir. 2011). Moreover § 1003.20(b) grants transfer authority only to the presiding immigration authority, not federal courts.

We thank the Court for its attention to this matter.

Respectfully submitted,

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cc: Counsel of record (ECF)