



U.S. Department of Justice

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November 19, 2025

By ECF

The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Villarreal Obregón, et al. v. Francis, et al.*, No. 25 Civ. 9465 (KPF)

Dear Judge Failla:

This Office represents the government in the above-referenced immigration habeas corpus action, brought by petitioners Rocio Gladys Villarreal Obregón and [REDACTED] (“Petitioners”), aliens in removal proceedings, challenging their detention by U.S. Immigration and Customs Enforcement (“ICE”). The legal issues presented concern the statutory authority for ICE’s detention of Petitioners, whether Petitioners’ detention violates their due process protections, whether Petitioners are entitled to a bond hearing, and if so, whether Petitioners must first exhaust their administrative remedies. Petitioners principally seek an order from this Court directing ICE to immediately release them from detention. While reserving all rights, including the right to appeal, the government submits this letter in lieu of a formal responsive memorandum of law to conserve judicial and party resources, and to expedite the Court’s consideration of this case, in light of this Court’s decision on the principal legal issues in *Ortiz-Lopez v. Francis*, No. 25 Civ. 7985 (KPF), ECF No. 13 (S.D.N.Y. October 22, 2025) (“*Ortiz-Lopez*”), as discussed below.

Relevant Underlying Facts

In October 2022, Petitioners, natives and citizens of Peru, unlawfully entered the United States from Mexico at or near the El Paso Texas Border Patrol Sector Area, and were not inspected by an immigration officer. *See* Decl. of Kim J. Haynes dated Nov. 13, 2025, ¶¶ 3-4. Border Patrol encountered, arrested and transported them to a nearby Border Patrol facility for processing. *Id.* ¶ 4. On October 14, 2022, due to space limitations at the facility and as a condition of their parole, Petitioners were released and assigned to the Alternatives to Detention Program. *Id.* Petitioners were and advised to report to the New York ICE office within 60 days of arriving at their destination. *Id.*

On October 22, 2022, Petitioners reported to ICE at 26 Federal Plaza in Manhattan, and their participation in the Alternatives to Detention Program was terminated, but they remained on parole. *Id.* ¶ 5. ICE officers scheduled the Petitioners to next report on November 12, 2025. *Id.* On

¹ The petition filed in this matter names the minor petitioner as “[REDACTED]”; however, this petitioner’s initials are [REDACTED].

July 14, 2023, Petitioners affirmatively filed an asylum application, Form I-589, with U.S. Citizenship and Immigration Services. *Id.* ¶ 6.

On November 12, 2025, Petitioners reported to 26 Federal Plaza, at which time ICE arrested Petitioners pursuant to Warrants for Arrest (Form I-200). *Id.* ¶ 7. Petitioners were taken into custody and escorted to the 5th floor at 26 Federal Plaza for processing. *Id.* ICE served Petitioners with Notices to Appear (“NTAs”), charging them with removability pursuant to Immigration and Nationality Act (“INA”) § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as aliens present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* ¶ 8. After processing, Petitioners were transported to the South Texas Family Residential Center in Dilley, Texas (“Dilley FRC”). *Id.* ¶ 9. They arrived at the Dilley FRC on November 13, 2025, and remain there today. *Id.*

Habeas Petition

Eduardo Fabian Arias (“Arias”) commenced this action on November 12, 2025, on behalf of Petitioners, as “next friend.” ECF No. 1 at 18-19.² He argues that the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioners because they had already entered and had been residing in the United States at the time they were arrested by ICE; he also asserts that Petitioners are not a flight risk or a danger to the community. Pet. ¶¶ 39, 43. In Count I, he argues that the application of § 1225(b)(2)(A) unlawfully mandates Petitioners’ continued detention and violates the INA. *See* Pet. ¶¶ 57-59. In Count II, he argues that the application of § 1225(b)(2) to Petitioners violates the bond regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. *See* Pet. ¶¶ 60-63. Finally, in Count III, he alleges that Petitioners’ detention without a bond hearing to determine whether they are a flight risk or danger violates their rights to due process. *See* Pet. ¶¶ 64-67.³

² In certain circumstances, habeas petitions may be filed by a “next friend,” who may pursue the action “on behalf of the detained person, who remains the real party in interest.” *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990). Petitioners are now represented by *pro bono* counsel. *See* ECF Nos. 8 & 9.

³ Arias also alleges that to the extent the revocation of Petitioners’ parole did not comport with 8 C.F.R. § 212.5(e)—incorrectly cited as 8 C.F.R. § 1182(e) in the Petition, Pet. ¶ 71—and to the extent respondents attempt to subject Petitioners to expedited removal under 8 U.S.C. § 1225(b)(1), such actions would constitute violations of the INA, the Administrative Procedure Act, and the *Accardi* doctrine. Pet. ¶¶ 68-75 (Counts IV and V). However, to the extent Petitioners’ parole was pursuant to 8 U.S.C. § 1182(d)(5)(A)—a fact the government is unable to confirm as of the time of filing—they were properly served with charging documents—*i.e.*, NTAs—on November 12, 2025, which constitute written notice of termination of parole pursuant to 8 C.F.R. § 212.5(e)(2)(i). Furthermore, Petitioners are not being subjected to expedited removal pursuant to 8 U.S.C. § 1225(b)(1), as they have been placed into § 1229a removal proceedings. Accordingly, the Court should dismiss these claims.

In the prayer for relief, Arias asks that the Court enjoin ICE from transferring Petitioners outside of the Southern District of New York pending these proceedings,⁴ declare their detention unlawful, and issue a writ of habeas corpus ordering their immediate release, or in the alternative, provide Petitioners with a bond hearing pursuant to § 1226(a) within seven days. Pet. at 18 (Prayer for Relief).

Ortiz-Lopez v. Francis

On October 22, 2025, this Court issued a decision on the principal legal question presented in this action in a similar habeas case challenging an alien's re-detention after prior release on his own recognizance. See *Ortiz-Lopez v. Francis*, No. 25 Civ. 7985 (KPF), ECF No. 13 (S.D.N.Y. October 22, 2025); *Ortiz-Lopez* Tr. 28:18-31:25. The Court concluded that the petitioner—who was initially detained at the border in March 2024, charged with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), then released on his own recognizance, and who was arrested again in September 2025 following an immigration court hearing—was not appropriately detained pursuant to § 1225(b). *Ortiz-Lopez* Tr. 30:1-11.⁵ Having concluded that the petitioner's detention was not authorized by § 1225(b), and assuming instead detention would be authorized under § 1226(a), the Court determined that petitioner's detention under § 1226 presented “clear procedural due process violations.” *Ortiz-Lopez* Tr. 31:2-5. In reaching its decision, the Court adopted and incorporated by reference two decisions from the Southern and Eastern District of New York, *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025), and *Hyppolite v. Noem*, No. 25 Civ. 4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025). *Ortiz-Lopez* Tr. 30:2-6; 31:4-5.

Finally, the Court considered whether the petitioner should be required, as the government contends would be appropriate in a § 1226(a) case,⁶ to exhaust administrative remedies as a

⁴ The Court's prior order dated November 17, 2025 (ECF No. 5) directed that Petitioners “shall not be transferred, except to a facility within this District, the Eastern District of New York, or the District of New Jersey, in light of Petitioner[s'] interests in participating in further proceedings before this Court.” However, as outlined above, Petitioners had already been transferred to the Dilley Facility prior to issuance of the November 17 order. See Haynes Decl. ¶ 9. The government also notes that there are no local facilities that house family units like Petitioners.

⁵ ICE contends that the petitioner's detention in *Ortiz-Lopez* was governed by 8 U.S.C. § 1225 because, as an alien who entered without inspection or parole, and was initially detained soon after crossing the border, he was an applicant for admission who is treated, for constitutional purposes, as if stopped at the border. As such, he would not be entitled to release or a bond hearing. See *Ortiz-Lopez v. Francis*, No. 25 Civ. 7985 (KPF), ECF No. 11, at 5-10 (“Gov't Br.”).

⁶ Because aliens who are detained pursuant to 8 U.S.C. § 1226(a) may request a custody redetermination hearing (i.e., bond hearing) before an immigration judge, a petitioner should be required to exhaust their administrative remedies—which may lead to release from detention—before bringing a challenge in federal court. See *Ortiz-Lopez* Gov't Br., at 12-18; see also Hr'g Tr. 7:9-9:4; Cf. *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299, at *5-9 (D. Mass. July 7, 2025) (finding that petitioner was detained under section 1226(a) and ordering respondents to provide him with a bond hearing within ten days of the order).

prudential matter by requesting a bond hearing before an immigration judge. The Court determined that in light of the importance of constitutional questions at issue, petitioner's denial of bond before an immigration judge, the number of similar habeas cases in this district and in this circuit, and concerns that such relief would be futile, it would not order petitioner "to remain detained to then be subjected to a detention hearing." *Ortiz-Lopez* Tr. 31:5-13.

The Court directed the government "to immediately release [petitioner] from custody and to impose only the restraints on his liberty that existed prior to his re-detention." *Ortiz-Lopez*, ECF No. 13 at 2. The Court further ordered that petitioner "not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where the Government will have the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a)." *Id.*

Discussion

In Counts One and Two, Arias alleges that Petitioners' detention violates the INA and 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. Pet. ¶¶ 51, 55. As noted, this Court has already resolved nearly identical claims in a prior case, holding that an alien in Petitioners' position is not subject to mandatory detention under 8 U.S.C. § 1225(b), and that their detention would be authorized instead by 8 U.S.C. § 1226(a). In Count Three, Arias alleges that Petitioners' detention pursuant to 8 U.S.C. § 1226 violates their due process rights. In *Ortiz-Lopez*, this Court held that, assuming an alien in Petitioners' position is detained pursuant to § 1226, such detention presents due process violations and that such a Petitioner need not exhaust administrative remedies.

While the government respectfully disagrees with the Court's decision in *Ortiz-Lopez*, including the Court's determinations that exhaustion should be excused, the government acknowledges that that decision would control the result in this case if the Court adheres to the legal holdings in that decision, as the pertinent facts of this case appear to be materially indistinguishable from those of *Ortiz-Lopez*. Thus, to conserve judicial resources and to expedite the Court's consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Ortiz-Lopez*,⁷ and the Court can decide this matter without further briefing. However, should the Court prefer to receive a formal opposition brief in this matter, we will file such a brief upon the Court's request.⁸

⁷ Specifically, the government incorporates by reference all arguments raised in its opposition brief and at oral argument in *Ortiz-Lopez*. See *Ortiz-Lopez v. Francis*, No. 25 Civ. 7985 (KPF), ECF No. 11.

⁸ The government has proceeded in this manner in other cases where the presiding judge had already decided the principal legal issue in an immigration habeas corpus matter and where the facts are materially indistinguishable. See, e.g., *Martinez Roman v. Decker*, No. 20 Civ. 6752 (AJN), ECF No. 7; *Hernandez-Aviles v. Decker*, No. 20 Civ. 7636 (ER), ECF No. 5; *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), ECF No. 8; *Huang v. Almodovar*, No. 25 Civ. 9346 (DEH), ECF No. 10 (granting petition for release from custody and cancelling previously scheduled conference based on respondents' submission that prior holding would control the result in the case if the court adheres to it).

Further, notwithstanding its submission of this letter in lieu of a formal brief, the government reserves all rights, including the right to appeal. Accordingly, for the reasons set forth in the government's brief and at oral argument in *Ortiz-Lopez*, the government respectfully requests that the Court deny this habeas petition.

If the Court grants the petition for the reasons set forth in *Ortiz-Lopez*, it should not order the same relief as in *Ortiz-Lopez*—*i.e.*, a pre-deprivation hearing before a neutral decisionmaker in the event ICE seeks to re-detain the petitioner(s) in the future. First, Petitioners have not sought such relief in the petition. Second, there is no such procedural mechanism or authority in immigration court for a pre-deprivation hearing before an immigration judge, and thus such an order imposes on ICE a requirement to follow a legal process that does not exist. If the Court grants the petition, the government submits that the proper remedy would be an order directing release on the same conditions Petitioners were previously released under before they were arrested by ICE.

Finally, the government notes that the Court has ordered respondents to produce Petitioners at a conference scheduled for December 2, 2025. ECF No. 5. The government believes the Court can resolve this matter without a hearing. To the extent the Court is inclined to order the immediate release of Petitioners, the government respectfully submits that an order requiring ICE to first bring Petitioners back to the New York City area, and then immediately release them, would be more appropriate. *See, e.g., Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (ordering transfer “back to the Southern District of New York,” and “immediately upon effectuating his transfer, to release [petitioner] from custody”).⁹ The government has discussed this recommendation with Petitioners' counsel, who concur.

* * *

I thank the Court for its consideration of this submission.

⁹ ICE does not maintain family detention facilities in the New York City area. As a result, if required to produce Petitioners at the scheduled conference, ICE would be required to house them in the hold room at 26 Federal Plaza for one or more nights in advance of the scheduled hearing. Further, ordering transfer to the New York area—rather than the Southern District of New York—would allow Petitioners to be released immediately at Newark, LaGuardia, or JFK Airports, rather than remain in custody for the additional time needed for transport to an ICE facility in Manhattan.

Respectfully submitted,

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