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December 4, 2025

Via Electronic Filing

Hon. Renée Marie Bumb, C.U.S.D.J.
United States District Court, D.N.J.
Mitchell H. Cohen Building
& U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

**Re: *Cruz Lopez v. Borgen*, No. 25-cv-17850 (RMB)
Answer to § 2241 Petition**

Dear Chief Judge Bumb:

This Office represents Respondents in the above-referenced habeas matter filed by a noncitizen challenging the legality of his 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 Court’s recent decision in *Marca Lemu v. Soto*, No. 25-cv-17098 (RMB), 2025 WL 3470298 (D.N.J. Dec. 3, 2025).

I. Background.

On or about May 11, 2016, Petitioner, a 25-year-old citizen and native of Honduras, entered the United States at or near Hidalgo, Texas, without being inspected, admitted, or paroled. Ex. 1 at 1, 2 (Form I-213). On that same date, U.S. Customs and Border Protection (“CBP”) encountered and arrested Petitioner in the Rio Grande Valley, Texas Border Patrol Sector, and subsequently released him on an Order of Release on Recognizance. *Id.* at 2. On July 3, 2024, Petitioner was issued a Notice to Appear charging him with removability under Immigration and Nationality Act (“INA”) § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), for being present in the United States without admission or parole. Ex. 3 at 1 (Notice to Appear). On July 8, 2024, the Notice to Appear was filed with the immigration court, thereby initiating removal proceedings. *See id.* On November 21, 2025, ICE arrested and detained

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Petitioner following a scheduled immigration appointment. Ex. 1 at 3 (Form I-213); Ex. 3 (Form I-200).

II. Petitioner Is An “Applicant for Admission” Subject to Mandatory Detention under § 1225(b)(2).

ICE contends, as it did in *Marca Lemu*, that Petitioner’s detention is governed by § 1225(b)(2) because he is an alien who unlawfully entered the United States without inspection or admission who was later detained by immigration authorities in the interior of the country. Accordingly, Petitioner is an “applicant for admission” who is not entitled to a bond hearing. See *Marca Lemu*, No. 25-cv-17098 (RMB) (D.N.J. Nov. 14, 2025), Resp’t’s Answer at 7-13 (ECF No. 7). ICE further contends that the only remedy, if the Court finds that § 1225 does not apply, is a bond hearing under § 1226(a), not immediate release. See *id.* at 13 n.8.

In *Marca Lemu*, the Court ruled that the petitioner was “not lawfully detained under § 1225(b)(2)(A)[] but may be detained under § 1226(a)[,]” and ordered respondents to provide the petitioner a bond hearing. *Marca Lemu*, 2025 WL 3470298, at *3. In doing so, this Court agreed with the many courts around the country that have rejected DHS’s interpretation of § 1225(b)(2). *Id.*

Here, Respondents acknowledge that their answer to this Petition relies on the same statutory arguments made in *Marca Lemu*, and this Petition asserts the same relevant facts as in those in *Marca Lemu*. Given the similar issues, the importance of resolving the Petition expeditiously, and the preservation of the Court’s and the parties’ resources, Respondents incorporate by reference their position in *Marca Lemu*.¹ ICE continues to respectfully assert that position before this Court in the absence of precedential authority to the contrary from the Third Circuit Court of Appeals.

¹ In at least two other recent habeas actions before courts in this District that had previously decided the § 1225(b)(2) issue, the courts granted the petitions before respondents submitted a written answer because respondents confirmed that the relevant detention authority was § 1225(b)(2) and that ICE intended to assert the same arguments it had asserted in the prior habeas actions. See *Vicens-Marquez v. Soto*, No. 25-cv-16906 (KSH) (D.N.J. Nov. 6, 2025), ECF No. 15 (Mem. & Order); *Chiquito Barzola v. Warden*, No. 25-cv-17326 (MEF) (D.N.J. Nov. 12, 2025), ECF No. 10 (Order). Consistent with that procedure, Respondents remain available to discuss the merits of this or any future habeas petition raising similar issues at a conference at the Court’s convenience.

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III. ICE's Request to Transfer Petitioner Outside of New Jersey.

On November 24, 2025, the Court issued an Order to Answer that, *inter alia*, enjoined Respondents from transferring Petitioner from New Jersey during the pendency of this proceeding “without permission from the Court.” Order to Answer, ECF No. 2 at 3. On November 26, 2025, ICE requested leave to transfer Petitioner out of New Jersey because it contends that it is unable to house Petitioner at either of the detention facilities in New Jersey due to his criminal history, which includes an assault charge. Resp'ts' Letter, ECF No. 3 at 1. On that same day, Petitioner represented to the Court that he “has not been convicted and is presumed to be innocent of” the assault charge, and that “his partner, the alleged victim, maintains that she was not assaulted and that she has asked that the charges against [Petitioner] be dismissed.” Pet'r's TRO Br., ECF No. 5-1 at 8; *see also* V. Arango Affidavit, ECF No. 5-4. On November 27, 2025, the Court denied ICE's request to transfer Petitioner out of New Jersey and ordered Respondents to address in this answer Petitioner's position that the assault charges against him face dismissal. Text Order, ECF No. 7. On December 4, 2025, the Court ordered Respondents to advise the Court of Petitioner's present location by 5:00 p.m. Text Order, ECF No. 10.

On October 12, 2025, Petitioner was charged with Simple Assault in violation of N.J. Rev. Stat. § 2C:12-1A(1), a disorderly persons offense. Ex. 4 (Municipal Complaint).² The complaint alleges that Petitioner “commit[ed] assault by purposely, knowingly or recklessly causing bodily injury to” the alleged victim, “specifically by striking her with a closed fist on the left side of her face three times” *Id.* at 1. On November 3, 2025, the state court ordered Petitioner's pretrial release. Ex. 5 (Pretrial Release Order). Earlier today, Petitioner's counsel in that criminal action advised this Office that the prosecution has been remanded to the municipal court and remains pending, but no further proceedings have been scheduled as of the date of this submission. *Cf.* Ex. 6 at 1, 3 (Criminal Case Summary Report).

Finally, Petitioner remains detained at the Elizabeth Contract Detention Center in Elizabeth, New Jersey. Ex. 7 (Form I-830). This Office first advised ICE of the Court's order prohibiting it from transferring Petitioner from New Jersey during the pendency of this proceeding on November 24, 2025, the date it was issued.

² The state court records attached hereto are available through the New Jersey Courts Judicial eCourts System – Criminal, which can be accessed at the following address: <https://www.njcourts.gov/attorneys/ecourts>.

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On November 27, 2025, this Office advised ICE that the Court denied its request for leave to transfer Petitioner out of New Jersey and advised it to maintain the status quo and not transfer Petitioner. This Office again advised ICE of the prohibition on December 3, 2025, and ICE confirmed its understanding of the Court's order.

Should Your Honor have any questions or concerns, please do not hesitate to contact this Office. Thank you very much for your consideration of this matter.

Respectfully submitted,

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