



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 5, 2025

By ECF

The Honorable Jessica G. L. Clarke
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Perez Sandoval v. Arteta, et al.*, No. 25 Civ. 9922 (JGLC)

Dear Judge Clarke:

This Office represents the government in the above-referenced immigration habeas corpus action, brought by petitioner Kennedy Perez Sandoval (“Petitioner”), an alien in removal proceedings, challenging his detention by U.S. Immigration and Customs Enforcement (“ICE”). The primary legal issue presented in this case concerns the statutory authority for Petitioner’s detention—whether it is 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)(2)(A)—and the attendant due process issues stemming from such authority. Petitioner seeks an order from this Court directing ICE to release Petitioner from detention, or in the alternative, provide him with a bond hearing in seven days. Dkt. No. 1 (“Petition”) at 14.

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, based on this Court’s recent Opinion and Order on the principal legal issues in *Claudio Marcelo Rocano Buestan v. McShane, et al.*, 25 Civ. 8544 (JGLC), ECF No. 14 (“*Rocano Buestan*”), which referenced, among several decisions, such cases as *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) (“*Lopez Benitez*”) and *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025), as discussed below.

Relevant Underlying Facts

In March 2021, Petitioner, a native and citizen of Guatemala, unlawfully entered the United States at or near the international border near Hidalgo, Texas, where he was encountered by an agent of U.S. Customs and Border Protection (“CBP”). See Declaration of Mayra Pardo Figueroa (“Figueroa Decl.”) dated December 5, 2025, ¶ 3. CBP determined that Petitioner had illegally entered the United States without inspection, and lacked the necessary legal documentation to enter, pass through, or remain in the United States. Petitioner was arrested and transported to the Rio Grande Valley Sector Centralized Processing Center for further processing. *Id.* ¶ 4.

Petitioner was served with a Notice to Appear (“NTA”), charging him with removability pursuant 8 U.S.C. § 1182(a)(6)(A)(i), as an alien 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.* ¶ 5. The NTA informed Petitioner that he was scheduled to appear before an immigration judge (“IJ”) in Harlingen Texas at an unspecified date and time. *Id.* . ¶¶ 5-6. Because Petitioner was a minor at the time, CBP transferred him to the custody of the U.S. Department of Health and Human Services Office of Refugee Resettlement (“ORR”), where he stayed until April 12, 2021, at which time he was released to his biological mother’s custody. Figueroa Decl. ¶ 6.

On November 24, 2025, Petitioner was apprehended by ICE in Brewster, New York and personally served with a new NTA, charging him as inadmissible under the same grounds as stated in the March 2021 NTA. Figueroa Decl. ¶ 8. The NTA advised Petitioner to appear before an Immigration Judge in the New York – Varick Immigration Court at 201 Varick Street, New York, New York. *Id.* On the same day, Petitioner was transferred to Orange County Jail in Goshen, New York, and is detained pursuant to 8 U.S.C. § 1225(b)(2). *Id.* ¶ 9.

On December 1, 2025, Petitioner appeared for his scheduled Master Calendar hearing at the New York Varick Immigration Court. Figueroa Decl. ¶ 10. Petitioner appeared without legal representation. *Id.* At his request, the Master Calendar hearing was rescheduled to allow him time to retain counsel, and his case was adjourned to December 10, 2025. *Id.*

Habeas Petition

Petitioner commenced this action on November 26, 2025. ECF No. 1 (“Pet.”). He argues that the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) does not apply to him because he had already entered and had been residing in the United States at the time he was arrested by ICE; he also asserts that he had not been determined by ICE to be a flight risk or a danger to the community. *See* Pet. ¶¶ 39, 43, 52. Petitioner argues that the application of § 1225(b)(2)(A) unlawfully mandates his continued detention and violates the INA. *See* Pet. ¶¶ 31, 34, 41, 56. In his claim for relief, he argues that the application of § 1225(b)(2) violates the bond regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. *See* Pet. ¶¶ 39, 43, 46. Petitioner also alleges that his detention without a bond hearing to determine whether he is a flight risk or danger violates his right to due process. *See* Pet. ¶¶ 47–52. Finally, Petitioner alleges that his current detention violates the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and disregards his status as unaccompanied alien child (“UAC”). *See* Pet. ¶¶ 53-57.

In his prayer for relief, Petitioner principally asks that the Court ordering his immediate release, or in the alternative, provide Petitioner with a bond hearing pursuant to § 1226(a) within seven days. Pet. at 14-15 (Prayer for Relief).

Rocano Buestan v. McShane

On December 5, 2025, this Court issued an Opinion and Order in *Rocano Buestan*. Reviewing the controlling statutes and the weight of authority in this judicial district,¹ this Court found that

¹ As this Court observed, the opinion in *Lopez-Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025), and similar cases currently represents the majority view among courts in this judicial district. *Rocano Buestan* at 5-6; *but see Chen v. Almodovar*, No. 25 Civ. 8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (concluding that Section 1225 controls and denying habeas petition).

the petitioner there was detained pursuant 8 U.S.C. § 1226(a), rather than under § 1225(b)(2)(A), as the government argued. *Rocano Buestan* at 5.

Based on a finding that the petitioner's detention was under § 1226(a), this Court applied the three-part due process analysis under *Mathews v. Eldridge*, to determine whether the petitioner's due process had been violated. *Rocano Buestan* at 7-11. Applying the *Mathews* analysis, this Court concluded that the petitioner's detention violated the Due Process Clause of the Fifth Amendment "[g]iven the significant liberty interest at stake, the high risk of erroneous deprivation, and Respondents' failure to show a significant interest in his detention." *Rocano Buestan* at 11 (quoting *Lopez Benitez*, at 496).

This Court concluded that in light of the constitutional violation present due to petitioner's continued detention, the appropriate remedy was the immediate release of the petitioner rather than conducting a bond hearing before a DHS officer or an immigration judge as the government argued.² *Rocano Buestan* at 11-12.

Discussion

In Counts One and Two, Petitioner alleges that his detention violates the INA and 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. Pet. ¶¶ 40-46. As noted above, this Court resolved nearly identical claims in its Opinion and Order in *Rocano Buestan*, adopting the rationale behind the weight of authority in this judicial district and found that the petitioner's detention was governed by § 1226(a) and not § 1225(b)(2)(A). *Rocano Buestan* at 5-6. This Court reasoned that a person in petitioner's position—who is physically present in the country—is not subject to mandatory detention as a noncitizen "seeking admission" under 8 U.S.C. § 1225 but rather may be subject to detention only on a discretionary basis under § 1226(a). *Rocano Buestan* at 5.

In Count Three, Petitioner alleges that his detention violates his due process rights. Pet. ¶¶ 47-52. Having found that *Rocano Buestan's* detention was under § 1226(a), this Court concluded that detention under § 1225 violated that petitioner's due process rights. *Rocano Buestan* at 8-11.

While the government respectfully disagrees with the Court's decision in *Rocano Buestan*, the government acknowledges that the Court's decision would control the result in this case if the Court adheres to that decision, as the facts of this case are materially indistinguishable from those in *Rocano Buestan*. 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 *Rocano Buestan*,³ 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

² Bond hearings in immigration court are conducted by immigration judges, which are part of the Department of Justice's Executive Office for Immigration Review, not DHS.

³ Specifically, the government incorporates by reference all arguments raised in its opposition brief in *Rocano Buestan*. See *Rucano Buestan v. McShane et al.*, No. 25 Civ. 8544 (JGLC), ECF No. 9.

such a brief upon the Court's request.⁴

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 in *Rocano Buestan*, the government respectfully requests that the Court deny this habeas petition.

* * *

I thank the Court for its consideration of this submission.⁵

Respectfully submitted,

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⁴ Because this case can be resolved on the same claims that this Court previously resolved in *Rocano Buestan*, the Court need to reach Count IV of the Petition, which presents a new claim not previously briefed or considered. In the interest of efficiency, the government has not addressed that claim here, and if the Court wishes to address it, the government respectfully requests an opportunity to brief the issue.

⁵ 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; *see also Samb*, No. 25 Civ. 6373 (DEH), ECF No. 8.