U.S. Department of Justice

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BY ECF

January 7, 2025

Honorable Ann M. Donnelly
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Arizmendi v. Noem, et al.*, No. 25-cv-7056 (AMD)

Dear Judge Donnelly:

This Office represents Respondents ("Government") in the above-captioned case in which Petitioner Jonathan Bravo Arizmendi, an alien in removal proceedings, filed a petition for a writ of habeas corpus on December 23, 2025 challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* Dkt. No. 1. The legal issues presented concern whether Petitioner's detention violates his due process protections, the statutory authority for ICE's detention of Petitioner, and whether Petitioner is entitled to a bond hearing. The Petition principally sought an order from this Court directing ICE to immediately release him from detention; the Court granted that relief in its December 24, 2025 Order. *See* Dkt. No. 6. Petitioner was released on the same day. *See* Dkt. No. 8. Pursuant to the Court's December 24, 2025 Order, Respondents now respond to the Petition. 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 *Ye v. Maldonado*, No. 25-cv-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) ("*Ye*") as discussed below.

Relevant Facts

Some time between March 16, 2010 and October 6, 2025, Petitioner, a native and citizen of Mexico, unlawfully at an unknown place and date without being admitted or paroled by a U.S. Immigration Officer. *See* Decl. of Deportation Officer Anthony Delano, dated January 7, 2026, ¶ 8[1]. On October 6, 2025, while conducting a joint immigration enforcement operation, ICE officers, along with officers from several other federal agencies, encountered Petitioner. ¶¶ 9, 10. During that encounter, Petitioner admitted that he had no status in the United States. *Id.* During the encounter, officers checked Petitioner's records, which demonstrated that he had no lawful entry or status in the United States, and that he had a history of two prior voluntary returns to Mexico. *Id.* Based on Petitioner's history of unlawful entry and the risk of flight, he was arrested without a warrant pursuant to INA § 287(a)(2), 8 U.S.C. § 1357(a)(2) and thereafter transported to the ICE Hudson Valley- Newburgh Office for processing. *Id.* At all times of his detention,

[1] Plaintiff had previously unlawfully entered the United States on March 13, 2010, and on March 16, 2010; on both instances, after encountering United States Customs and Border Patrol ("CBP"), Petitioner voluntarily returned to Mexico. (Decl. at ¶¶ 3, 4).

Petitioner was detained pursuant to Immigration and Nationality Act ("INA") § 235(b)(2)(A), 8 U.S.C 1225(b)(2)(A). *Id.*, 7. On October 6, 2025, ICE served Petitioner with a Notice to Appear ("NTA"), charging him with removability pursuant to INA § 212(a)(6)(A)(i), 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, and INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the INA, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General. *Id.*, ¶ 11-13. On the same day, the NTA was filed with the Executive Office for Immigration Review ("EOIR"), thus commencing 8 U.S.C. § 1229a removal proceedings against Petitioner. *Id.* ¶ 13. The NTA informed Petitioner that he was scheduled to appear before an immigration judge on October 15, 2025 in New York, New York. *Id.* ¶ 18.

On October 9, 2025, Petitioner appeared without counsel before an Immigration Judge for a Master Calendar hearing; at Petitioner's request, and for the purpose of seeking representation, Petitioner was granted a continuance in his case until October 23, 2025. *Id.*, ¶ 19. On October 20, 2025, Petitioner was transferred to Brooklyn Metropolitan Detention Center ("MDC"), and as a result, on October 23, 2025, his Immigration Court hearing was rescheduled to October 28, 2025. *Id.*, ¶¶ 16, 20. On October 28, 2025, Petitioner's Immigration Attorney appeared on his behalf for the scheduled hearing; Petitioner was not produced because he was receiving dental treatment at MDC, and the hearing was rescheduled for November 4, 2025. *Id.*, ¶ 21. On November 4, 2025, Petitioner and his attorney appeared for a hearing where Petitioner contested the allegations and charges contained in the NTA and filed a Motion to Suppress Evidence; the Immigration Judge ordered briefing on the issue and scheduled the next hearing for December 10, 2025. *Id.*, ¶ 22. On December 10, 2025, Petitioner and his attorney appeared for a hearing, wherein the Immigration Judge denied Petitioner's Motion to Suppress and sustained the charges contained in the NTA; a new hearing was scheduled for December 29, 2025. *Id.*, ¶ 23. On December 29, 2025, Petitioner and his attorney appeared before an Immigration Judge for a hearing, after Petitioner had been released pursuant to Court Order in this matter, where Petitioner's matter was transferred to the non-detained docket, with a notice of hearing to be issued at a later date. *Id.*, ¶ 24. On December 30, 2025, EOIR posted a Notice of Hearing scheduling Petitioner's next hearing for August 14, 2026, regarding the merits of his relief application. *Id.*, ¶ 25.

Habeas Petition

Petitioner commenced this action on December 24, 2025. ECF No. 1. Petitioner argues: (1) that his detention violates the declaratory relief issued by the United States District Court for the Central District of California in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025) ("*Maldonado Bautista I*") and *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873-SSSBFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) ("*Maldonado Bautista II*"), Pet. ¶¶ 49-52; (2) 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, Pet. ¶¶ 53-72; and (3) that his detention violates the Due Process Clause of the Fifth Amendment of the United States Constitution, Pet. ¶¶

73-78.

In his prayer for relief, Petitioner, in relevant part, asks that the Court enjoin ICE from transferring him outside of the Eastern District of New York while this habeas petition is pending and issue a writ of habeas corpus ordering his unconditional release from custody of Respondents, restoring him to the same status of liberty that he enjoyed prior to his arrest, pending the disposition of his removal proceedings, and any potential appeal in those proceedings. Pet., *Prayer for Relief*, 5.

Ye v. Maldonado

On December 8, 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 an order of recognizance. The Court concluded that the petitioner, who was initially detained after crossing the border in 2023, served with an arrest warrant referencing 8 U.S.C. § 1226, and released on an order of recognizance that also referenced § 1226, and who was arrested again in October 2025, was detained pursuant to § 1226 and not, as ICE contends, § 1225 as an applicant for admission.[2] *Ye v. Maldonado*, 2025 WL 3521298, at *1, *5-6. The Court relied on its interpretation of the language of the two provisions and of the broader statutory scheme, as well as the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Id.* at *4-5. The Court also considered relevant the fact that the government's records relating to the petitioner's arrest cited 8 U.S.C. § 1226.[3] *Id.* at *5. The Court also stated that it was persuaded by the reasoning of the large number of courts considering similar petitions that have rejected the government's position. *Id.* at *3-4.[4]

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[2] ICE contended that the petitioner's detention was governed by 8 U.S.C. § 1225(b)(2)(A) because, as an alien who entered without inspection or parole, and who was initially detained 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 that is a feature of detentions under 8 U.S.C. § 1226(a), which applies only to already admitted aliens, such as those who entered on visas but overstayed. *See Ye v. Maldonado*, No. 25-cv-6417 (AMD), ECF No. 8, at 7–13 (Resp's Mem. Law Opp.).

[3] The Government respectfully disagrees that its prior release of petitioner under Section 1226 is controlling. Another court in this Circuit recently rejected the proposition that "if one presidential administration fails to enforce a statute, the next administration cannot enforce it, even though the statute clearly applies, according to its plain terms, and no promises not to enforce it have been made." *Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855, at *7 (S.D.N.Y. Dec. 4, 2025), *notice of appeal filed Dec. 16, 2025*; *see also Liang v. Almodovar*, No. 25-cv-9322, at *8 (S.D.N.Y. Dec. 15, 2025) (rejecting proposition that "prior Administration's decision to catch and then release Petitioner into the interior under Section 1226 means that the current Administration has 'relinquished the authority[]' . . . to apply Section 1225 according to its plain terms.").

[4] As the Court acknowledged in *Ye*, at the time of its December 8, 2025 decision, two courts in this Circuit had endorsed the Government's interpretation of the relevant statutory provisions. In *Chen*, 2025 WL 3484855, at *1, as here, the petitioner had entered the United States without having been admitted, was detained, and was released on his own recognizance due to lack of bed space;

Having concluded that the petitioner's detention was governed by § 1226, the Court conducted the three-part due process analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), concluding that detention of the petitioner without process violated his due process rights. *Id.* at *7-8. The Court further held that, even if Section 1225 applied, petitioner's detention violated his due process rights because the government did not follow the regulatory procedures required to revoke parole pursuant to 8 U.S.C. § 1182. *Id.* The Court granted the petition and directed the government to release petitioner from custody within 24 hours and to return to petitioner any property seized at the time of his arrest. *Id.* at *9.

Discussion

Petitioner alleges that his detention violates the INA because he is subject to 8 U.S.C. § 1226, not 8 U.S.C. § 1225. Pet., ¶¶ 88-99. As noted, this Court has already resolved nearly identical claims in a prior case.

While the government respectfully disagrees with the Court's decision in *Ye*, the Government acknowledges that the decision would control the result in this case if the Court

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he was recently re-detained pursuant to 8 U.S.C. § 1225(b)(2)(A). The Honorable Mary Kay Vyskocil dismissed the habeas petition, holding that "under the plain language" of § 1225(b)(2)(A), which by its terms requires mandatory detention for "applicant[s] for admission," the petitioner—an applicant for admission—was subject to mandatory detention. *Chen*, 2025 WL 3484855 at *4. In particular, the court cited the statutory definition of "applicant for admission" in Section 1225(a), which "is specifically defined to include an 'alien *present in* the United States who has not been admitted.'" *Id.* (emphasis in *Chen*) (citing Section 1255(a)). Moreover, the court noted that the terms "'admitted' and 'admission' are specifically defined in terms of '*lawful*' entry," not mere physical entry. *Id.* (emphasis in *Chen*) (citing 8 U.S.C. § 1101(a)(13)(A)); *accord Candido v. Bondi, et al.*, No. 25-cv-867, 2025 WL 3484932, at *1-2 (W.D.N.Y. Dec. 4, 2025) (finding detention under 8 U.S.C. § 1225(b)(2)(A) was proper for alien present in United States unlawfully without having been admitted based on a "a straightforward and fair reading of the governing statute," noting that "[t]he fact that more district courts . . . have decided this issue differently from this [c]ourt is neither binding nor persuasive"), *notice of appeal filed Dec. 16, 2025*. *Chen* also rejected the proposition that Congress would not have needed to pass the Laken Riley Act ("LRA") – which provides for mandatory detention for "inadmissible" aliens charged with, arrested for, convicted of, or who admit to, certain crimes – if Section 1225 already provided for mandatory detention. *Chen*, 2025 WL 3484855, at *6-7. The court explained, *inter alia*, that the LRA mandates detention in additional circumstances – for example, for aliens who fraudulently procure visas – not covered by Section 1225. *Id.* In *Ye*, Your Honor noted, but disagreed with, *Chen* and *Candido*. *See Ye*, 2025 WL 3521298, n. 10. On December 15, 2025, after Your Honor's decision in *Ye*, Judge Vyskocil issued another decision concluding that the Government's interpretation is correct. *See Liang*, No. 25-cv-9322, at *4-11 (holding that petitioner who entered the United States without being admitted was properly subject to detention under the plain language of Section 1225, notwithstanding prior release on his own recognizance under Section 1226, and further concluding that petitioner was not entitled to any process beyond that set forth in the statute).

adheres to that decision. There are, however, important distinctions between the Petitioner in *Ye* and the Petitioner here. While in *Ye* the Petitioner was released on his own recognizance under §1226, the Petitioner here unlawfully entered the country on at least three occasions. He entered the country unlawfully some time after March 16, 2010, and was never detained by the Government until October 6, 2025. Moreover, unlike the Petitioner in *Ye*, the Petitioner here has been consistently treated under the rubric of §1225 since ICE only became aware of him on October 6, 2025 for the first time since his voluntary departures in March 2010. Furthermore, Petitioner here admits that he has been working in the United States since he entered, work that would necessarily have been done without legal authorization.

Nevertheless, the statutory construction of the Government's interpretation of § 1225 and § 1226 here is similar. 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 *Ye*[5] and respectfully submits that the Court can decide this matter without further briefing. However, should the Court prefer to receive a memorandum of law in this matter, the government will file such a brief upon the Court's request. Notwithstanding its submission of this letter in lieu of a formal brief, the government reserves all rights, including the right to appeal.[6]

As a separate matter, Petitioner contends that he is a class member as defined in the *Maldonado Bautista* cases. The Government disagrees with Petitioner's assertions of the nationwide effects of the *Maldonado Bautista* cases[7].

The Court here need not reach the *Maldonado Bautista* issues. If the Court follows the interpretation of §§ 1225 and 1226 that it articulated in *Ye*, then that analysis is dispositive, and it need not reach the *Maldonado Bautista* issues; other district courts in this Circuit have dealt with this issue in this manner. *See Molina v. Deleon*, No. 25-cv-6526, 2025 WL 3718728 at *5, (E.D.N.Y. Dec. 23, 2025) (Azrack, J.) ("it is unnecessary for the Court to decide whether Bautista

[5] Specifically, the Government incorporates by reference all arguments raised in its opposition brief in *Ye*, 25-cv-6417, ECF No. 8.

[6] In addition to the pending appeals by petitioners regarding the denials of habeas petitions as noted above, the Government has appealed the grant of a habeas petition in *Cunha v. Moniz*, 25-cv-6532 (W.D.N.Y. Nov. 25, 2025) (concluding, *inter alia*, that Section 1226(a), not Section 1225(b)(2)(A), applied), *notice of appeal filed Dec. 11, 2025, No. 25-3141 (2d Cir.).*

[7] In other cases, the Government has argued that: (1) the *Maldonado Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California on jurisdictional grounds; and (2) the Court should not give preclusive effect to the declaratory judgment because it is on appeal; and (3) issue preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the Government and in habeas corpus proceedings. These arguments were adopted by at least two District Courts. *See Calderon Lopez v. Lyons*, 2025 WL 3683918, (N.D. Tex. Dec. 19, 2025); *Rodriguez v. Jeffreys, et al.*, 2025 WL 3754411 (D. Neb. Dec. 29, 2025)

controls in the instant case because, as explained above, the Court has already determined that the interpretation of Sections 1225 and 1226 advanced by Petitioner and adopted by hundreds of district court decisions is the correct one"); *Montoya v. Bondi*, No. 25-cv-6363, 2025 WL 3718694 at *3, (E.D.N.Y. Dec. 23, 2025) (Azrack, J.) (articulating the same reasoning set forth in *Molina*); *Yao v. Almodovar*, 2025 WL 3653433, FN10, (S.D.N.Y. Dec. 17, 2025) (Engelmayer, J.) (In light of its interpretation of Sections 1225 and 1226, "the Court does not have to reach [Petitioner's] alternative argument: that he is eligible for a bond review under an order affording such relief to a nationwide class" as issued in *Maldonado Bautista*).

Respondents respectfully submit that the Court's interpretation of Sections 1225 and 1226 are sufficient to reach a resolution in this matter, and that based on its interpretation, it is unnecessary for it to opine on the effects of *Maldonado Bautista* here.

Accordingly, for the reasons set forth in the government's brief in *Ye*, the government respectfully requests that the Court deny this habeas petition[8].

Thank you for the Court's time and attention to this matter.

Respectfully submitted,

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[8] Because Petitioner was released pursuant to this Court's Order of December 24, 2025, Respondents respectfully submit that his substantive due process claims stemming from his detention are now moot.