

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KELVIN GERARDO SILVA LUCENA)
Petitioner,)

) PETITIONER’S REPLY IN SUPPORT
) OF PETITION FOR WRIT OF
) HABEAS CORPUS

LUIS SOTO, Warden, Delaney Hall Detention)
Facility; JOHN TSOUKARIS, Director of Newark)
Field Office, U.S. Immigration and Customs)
Enforcement; KRISTI NOEM, Secretary of the)
U.S. Department of Homeland Security;)

) Case No.: No. 26-cv-143 (ESK)

PAMELA BONDI, Attorney General of the United)
States; and TODD LYONS, Director, Immigration)
and Customs Enforcement, in their official)
capacities,)
Respondents.)

Dear Judge Kiel:

Petitioner respectfully submits this reply to Respondents’ January 12, 2026 letter. While Respondents frame this case as indistinguishable from prior § 1225(b)(2) matters, their position confirms the precise due process defect at issue here: Petitioner remains detained based solely on ICE’s unilateral determination that he is an “applicant for admission,” without any contemporaneous or subsequent individualized custody assessment by a neutral decisionmaker.

I. Even Under Respondents’ Framing, Petitioner Is At Minimum Entitled to an Individualized Custody Assessment

Respondents repeatedly assert that Petitioner is not “entitled to bond” because he is an applicant for admission. That framing misses the constitutional problem. Regardless of statutory classification, due process requires at minimum an individualized assessment of whether continued detention is justified.

Notably, Respondents themselves cite *Marca Lemu v. Soto*, No. 25-cv-17098 (RMB), 2025 WL 3470298 (D.N.J. Dec. 3, 2025), where this Court ordered that the petitioner was entitled to a bond hearing. That decision confirms that categorical reliance on § 1225(b)(2) does not eliminate due process protections or foreclose judicial intervention.

Similarly, Respondents cite *Perez v. Lyons*, No. 25-cv-17186 (ESK), 2025 WL 3238540 (D.N.J. Nov. 19, 2025), where Your Honor ordered a bond hearing notwithstanding the Government's argument that the petitioner was "seeking admission." These cases demonstrate that district courts in this Circuit have rejected the notion that "applicant for admission" status alone extinguishes the right to custody review.

Indeed, the majority of courts across the country have declined to adopt the categorical interpretation advanced in *Matter of Yajure Hurtado*. As *Bethancourt Soto v. Soto* explained, that interpretation would permit detention "without meaningful process and without any neutral assessment of whether detention is justified." 2025 WL 2976572, at *5.

Recently, another court in this District reached the same conclusion in *Rivas Rodriguez v. Rokoksky*, No. 25-cv-17419 (D.N.J. Dec. 3, 2025), granting habeas relief where the petitioner had been arrested in the interior after years of residence and the Government sought to justify detention under § 1225 based on *Matter of Yajure Hurtado*. The court rejected that position, holding that § 1226—not § 1225—governed the petitioner's custody, that continued detention under § 1225 violated due process, and that the petitioner was therefore entitled to release absent a lawful individualized custody process. The court further explained that the Government may not "transform an unlawful detention into a lawful one through alternative, retrospective, post hoc justification presented mid-litigation," warning that such an approach would improperly give the

Government “a free pass to violate a person’s statutory and constitutional rights first and search for authority later.” *Id.* at 4.

II. The Absence of Third Circuit Precedent Does Not Sanction Arbitrary Detention

Respondents assert their position by emphasizing the absence of precedential authority from the Third Circuit. However, the lack of controlling precedent does not authorize constitutionally deficient detention practices. To the contrary, district courts retain both the authority and obligation to remedy unlawful detention under 28 U.S.C. § 2241. Additionally, Courts within this District have not hesitated to grant habeas relief in the absence of Third Circuit precedent where detention is unlawful, including ordering immediate release where the Government’s detention authority was unsupported. *See, e.g., Rivas Rodriguez v. Rokoksky*, No. 25-cv-17419 (D.N.J. Dec. 3, 2025).

Civil detention must bear a reasonable relation to its purpose and include adequate procedural safeguards. Where, as here, detention results from ICE officers’ unreviewed discretion and is insulated from judicial oversight, habeas relief is appropriate.

III. The Government’s “Only Remedy is a Bond Hearing” Argument Highlights the Due Process Gap

Respondents argue that, if this Court rejects § 1225(b)(2), the “only remedy” is a bond hearing under § 1226(a). But that argument underscores Petitioner’s constitutional claim rather than defeating it.

In practice, Immigration Judges are routinely refusing to exercise jurisdiction over bond requests for individuals like Petitioner—noncitizens who entered through the southern border, were paroled or released, and later detained at ICE reports. Thus, even where the Government

insists that a bond hearing is the exclusive remedy, Petitioners are left with no forum at all to obtain individualized review.

Moreover, even where Immigration Judges in the Newark area accept jurisdiction, bond determinations are not consistently applying the constitutionally required clear and convincing evidence standard. Instead, judges rely on extraneous factors untethered to flight risk or danger, resulting in arbitrary outcomes.

Due process does not permit a system in which ICE unilaterally detains, Immigration Judges disclaim jurisdiction, and the Government then argues that courts are powerless to intervene.

IV. Conclusion

For the foregoing reasons, Respondents' continued detention of Mr. Silva Lucena is unlawful. The Government's position, that Petitioner may be detained indefinitely as an "applicant for admission" without access to any neutral decisionmaker, finds no support in statutory text, constitutional principles, or persuasive authority. Petitioner was arrested at an ICE reporting appointment, without notice and without any contemporaneous determination that he posed a flight risk or danger, and has remained detained solely on the basis of ICE's unilateral decision.

This Court should reject Respondents' categorical reliance on 8 U.S.C. § 1225(b)(2) and *Matter of Yajure Hurtado*, and hold that Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Because Petitioner's detention under § 1225 was unlawful from the outset, the appropriate remedy is immediate release, consistent with decisions of courts in this District granting habeas relief where the Government lacked lawful detention authority. *See, e.g., Rivas Rodriguez v. Rokoksky*, No. 25-cv-17419 (D.N.J. Dec. 3, 2025).

At a minimum, if the Court does not order release, due process requires that Respondents provide Petitioner with a prompt, constitutionally adequate, individualized custody determination before a neutral adjudicator, at which the Government bears the burden of justifying continued detention.

/s/ Stephanie M. Duque Isern

January 15, 2026

Stephanie M. Duque Isern, Esq.
Duque Isern Law LLC
4539 Bergenline Avenue
Union City, NJ 07087
stephanie@duqueisern.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on January 15, 2026, Mr. Silva Lucena filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send a courtesy copy via email to the office of the United States Attorney for the District of New Jersey.

s/Stephanie M. Duque Isern
Stephanie M. Duque Isern

Date: January 15, 2026