U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

February 25, 2026

Honorable Nusrat J. Choudhury
United States District Court Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *Osorio v. Francis, et. al.*
No. 26-cv-1074 (Choudhury, J.)

Dear Judge Choudhury:

This Office represents Respondents in the above-captioned case in which Petitioner Hugo Leonel Ardon Osorio ("Petitioner") filed a Petition for a writ of habeas corpus on February 25, 2026 challenging his detention by Immigration and Customs Enforcement ("ICE"). *See* Docket Entry ("DE") # 1. Respondents respectfully submit this letter pursuant to the Stay of Removal and Order to Show Cause entered on February 25, 2026 (DE #4) requiring Respondents to provide certain information identified by the Court by February 25, 2026 by 11:59 p.m.

Petitioner has been assigned A number [redacted]. He was arrested on February 4, 2026. He was transferred to the Central Islip Holding Room ("CIHR"), 535 Federal Plaza, Central Islip, New York, and held there from approximately 8:55 a.m. to approximately 6:15 p.m. that day. He was then transferred to Nassau County Correctional Center and held there until February 6, 2026. On February 6, 2026, Petitioner was transferred to Metropolitan Detention Center in Brooklyn, New York ("MDC"), where he remains detained. ICE has therefore complied with the provision of Your Honor's Order dated February 25, 2026 that prohibits transferring Petitioner outside this District, the Southern District of New York, and the District of New Jersey. ICE has no current intention to transfer Petitioner prior to the hearing in this action. ICE does not intend to move him to CIHR absent extraordinary circumstances or unless there is some unforeseen operational need to place him there in connection with the Order to produce him for the hearing. While Petitioner is detained at MDC, Petitioner's counsel may contact Kerryn Irving at kerryn.a.irving@ice.dhs.gov to facilitate counsel's access to Petitioner.

Attached to this letter are the Form I-200, Warrant of Arrest, dated February 4, 2026 and the Form I-862, Notice to Appear, dated February 4, 2026. Both forms were served on Petitioner on February 4, 2026. The statutory basis for detaining Petitioner is 8 U.S.C. § 1225(b)(2)(A).

The legal issues presented in the Petition concern whether Petitioner's detention violates his due process protections, and the statutory authority for ICE's detention of Petitioner. Petitioner principally seeks an order from this Court directing ICE to release him from detention. While reserving all rights, including the right to appeal, Respondents submit 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 *Rodriguez-Acurio v. Almodovar*, No. 25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025), *notice of appeal filed* ("*Rodriguez-Acurio*"), and other matters such as *Castellon v. Doe, et al.*, No. 26-cv-0647, Memorandum and Order entered February 7, 2026 (DE # 13) ("*Castellon*"); *Covelli-Chaparro v. Bondi, et al.*, No. 26-cv-0118, Opinion and Order entered January 15, 2026 (DE # 13) ("*Covelli-Chaparro*") *Acevedo v. Nassau Correctional Center, et al.*, No. 26-cv-0250, Minute Entry and Order entered January 28, 2026 ("*Acevedo*") and *Caraguay v. Larocco*, No. 26-cv-0569, Memorandum and Order entered on February 4, 2026 (DE # 15) ("*Caraguay*").

While Respondents respectfully disagree with the Court's decisions in *Rodriguez-Acurio*, *Castellon*, *Covelli-Chaparro*, *Acevedo* and *Caraguay*, Respondents acknowledge that the decisions would control the result in this case if the Court adheres to those decisions, as the facts of this case are similar to those in *Rodriguez-Acurio*, insofar as Petitioner is a citizen of another country who entered the United States without inspection, who has not been admitted, who has been detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Accordingly, the Respondents adopt the arguments in the Government's Memorandum of Law in *Rodriguez-Acurio* (DE # 14).

Respondents note that a number of decisions in this Circuit have endorsed the Government's interpretation of the relevant statutory provisions, including the decision recently issued in *Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.), *notice* of *appeal filed.. See also, e.g., Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855, at *7 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *notice of appeal filed; Liang v. Almodovar*, No. 25-cv-9322, 2025 WL 3641512, at *4-11 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); *Chen v. Almodovar*, 25-cv-9670, 2026 WL 100761, at *8-9 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Weng v. Genalo et al.*, No. 25-cv-09595, 2026 WL 1194248, at *1 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.) ("Having considered the statutory text and other relevant authorities, the undisputed facts of this case, and the parties' submissions and oral arguments, the Court concludes that Petitioner's detention is governed by Section 1225."); *Arana v. Arteta*, 26-CV-240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.). On February 6, 2026, the Court of Appeals for the Fifth Circuit, while not binding on this Court, held that the Government's interpretation of 8 U.S.C. § 1225 is correct. *Buenrostro-Mendez v. Bondi*, No. 25-20496, --- F. 4th --, 2026 WL 323330 (5th Cir. Feb. 6, 2026).[1]

[1] In addition to pending appeals by petitioners regarding the denials of habeas petitions, the Government has affirmatively 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.) The *Cunha* appeal is proceeding on an expedited track and is scheduled to be fully briefed by March 3, 2026.

As to Petitioner's INA, APA, due process, and Fourth Amendment (to the extent construed as arising under the APA) claims, these claims are not properly asserted in habeas. In *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025), in which claims including due process claims were brought under the APA, the INA and various habeas provisions, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement," regardless of whether he requests release from confinement, those claims "fall within the 'core' of the writ of habeas corpus and must be brought in habeas." The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). All the claims in this suit constitute a core habeas claim — though they fail for the reasons discussed above—and are not cognizable under the INA or the APA. Further, by the APA's terms, it is available only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Thus, Petitioner's APA claims are independently barred by this limitation. As noted by Justice Kavanaugh's concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *J.G.G.*, 604 U.S.at 674 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention.

To the extent that Petitioner's Fourth Amendment claim is construed as arising directly under the Fourth Amendment, and not under the APA, the claim fails because his civil detention was a reasonable and lawful exercise of federal immigration authority. As the Supreme Court recognized in *Abel v. United States*, 362 U.S. 217 (1960), administrative arrests for deportation have a long-standing statutory history and are distinct from arrests for criminal offenses. The Supreme Court held that that "[s]tatutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time. It would emphasize the disregard for the presumptive respect the Court owes to the validity of Acts of Congress, especially when confirmed by uncontested historical legitimacy, to bring into question for the first time such a long-sanctioned practice of government at the behest of a party who not only did not challenge the exercise of authority below, but expressly acknowledged its validity." *Abel*, 362 U.S. at 230. Petitioner's arrest was not a criminal arrest requiring a judicial warrant or probable cause of a new crime; rather, it was a civil, administrative arrest carried out pursuant to the broad authority granted by Congress to enforce the nation's immigration laws.

Respondents have no objection to the Court deciding the petition on the submissions in lieu of a hearing. Respondents are aware of the Court's order prohibiting the transfer of Petitioner outside of the Eastern District of New York, the Southern District of New York, or the District of New Jersey, and to produce Petitioner at the hearing scheduled for March 2, 2026 at 1:00 p.m. should it go forward.

Respectfully submitted,

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