



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, New York 11201*

March 26, 2026

BY ECF

Honorable Orelia E. Merchant
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: ***Silva v. Maldonado, et al.***
Civil Action No. 26-cv-1709 (Merchant, J.)

Dear Judge Merchant:

This Office represents the Respondents in this habeas action, in which Petitioner Jorgel Alexander Agudelo Silva ("Silva") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). See ECF No. 1 (Petition for Writ of Habeas Corpus, hereinafter "Petition"). Respondents write respectfully in response to the Court's Order to Show Cause ("OTSC") directing Respondents to show cause why the Petition should not be granted by March 16, 2026. See ECF No. 4.

The central legal issue in this case concerns ICE's statutory detention authority, which this Court has addressed in other cases. See, e.g., *Caceres v. Shanahan*, No. 26-cv-16, 2026 WL 233215 (E.D.N.Y. Jan. 28, 2026); *Singh v. Maldonado*, 26-cv-19, 2026 WL 233216 (E.D.N.Y. Jan. 29, 2026); *Sanchez Atz v. Noem*, 26-cv-214, 2026 WL 320238 (E.D.N.Y. Feb. 6, 2026); *Acuapan v. Bondi, et al.*, No. 26-cv-384, 2026 WL 507889 (E.D.N.Y. Feb. 24, 2026); and *Monge-Campos v. Bondi, et al.*, No. 26-cv-1056, 2026 WL 603516 (E.D.N.Y. Mar. 4, 2026). While reserving all rights, including the right to appeal, Respondents respectfully submit this letter in lieu of a formal brief to conserve judicial and party resources, and to expedite the Court's consideration of this case.

A. Relevant Facts

Background

Petitioner is a native and citizen of Venezuela. Petition, at 6, ¶ 22; Declaration of Deportation Officer David Rodriguez ("Decl."), at ¶ 3. He entered the United States on October 2, 2022, and on October 3, 2022, he was paroled due to lack of detention capacity. Decl. at ¶ 4; see also Petition, at 6, ¶ 22.

The Honorable Orelia E. Merchant

March 26, 2026

Page 2 of 4

On February 28, 2026, ICE Enforcement and Removal Operations' Long Island Fugitive Operations team were conducting a surveillance, observed Petitioner's vehicle, and after confirming that Petitioner was a citizen and national of Venezuela with no lawful status in the United States, arrested and detained Petitioner. Decl. at ¶ 5. The officers arrested Petitioner pursuant to a Form I-200, Warrant for Arrest of Alien. *Id.* ICE detained Petitioner pursuant to Immigration and Nationality Act ("INA") § 235(b)(1), 8 U.S.C. § 1225(b)(2)(A), and transported him to ICE's intake processing facility at the Nassau County Correction Center ("NCCC"), located at 100 Carman Avenue, East Meadow, New York. *Id.*

That same day, ICE issued Petitioner a Form I-862 Notice to Appear ("NTA"), initially scheduling the hearing date and directing him to appear before an immigration judge on March 17, 2026. *Id.* The NTA charged Petitioner as an alien present in the United States who has not been admitted and who is subject to removal from the United States under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

From February 28, 2026 to March 2, 2026, Petitioner remained at the NCCC. Decl. at ¶ 7. On March 2, 2026, Petitioner was transferred to Delaney Hall Detention Facility in Newark, New Jersey, while awaiting long term space at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. Ultimately, on March 16, 2026, Petitioner was transferred to the MDC, where he remains detained pursuant to INA 235(b)(1), 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 7. Petitioner has a pending asylum application and his last scheduled hearing date was on March 24, 2026. *See* Petition at 7, ¶¶ 23, 26; Decl. at ¶ 13.

Habeas Petition

Petitioner commenced this action on March 23, 2026. *See* ECF No. 1. He argues that Respondents violated the Fourth and Fifth Amendments of the United States Constitution and the Immigration and Nationality Act ("INA") by detaining him pursuant to 8 U.S.C. § 1225(b), which does not afford him a bond hearing. Petition at 14-20. He argues that 8 U.S.C. § 1225(b) does not apply to him and that he instead should be considered detained under 8 U.S.C. § 1226(a) and must be afforded a bond hearing in accordance with that statute. Petition at 19-20, ¶¶ 67-69. In his prayer for relief, Petitioner seeks, *inter alia*, release from custody. Petition at 20 (Conclusion, subp. a.).

B. Legal Standards

This Court's Prior Decisions on the Principal Legal Question in This Case

This Court has issued a number of rulings on the principal legal question presented in this action in similar habeas cases. *See* *Caceres*, 2026 WL 233215; *Singh*, 2026 WL 233216; *Sanchez Atz*, 2026 WL 320238; *Acuapan*, 2026 WL 507889; and *Monge-Campos*, 2026 WL 603516. In *Monge-Campos*, the most recent of these cases, the Court stated that its "position on whether § 1226 or § 1225 applies in scenarios where a petitioner is detained after entering the country has not changed since deciding other 28 U.S.C. § 2241 immigration cases recently." *Monge-Campos*, 2026 WL 603516, at *1.

The Honorable Orelia E. Merchant
 March 26, 2026
 Page 3 of 4

As the Court is aware, the Honorable Brian M. Cogan recently endorsed the government's interpretation of §§ 1225 and 1226. *See Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574, at *3 (E.D.N.Y. Feb. 11, 2026).¹ In addition, while not controlling authority, it should be noted that the United States Courts of Appeals for both the Fifth Circuit and the Eighth Circuit have agreed with the government's interpretation of the relevant statutory provisions at issue here. *See Avila v. Bondi*, -- F.4th --, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. Feb. 6, 2026).

C. Argument

Petitioner alleges that he has resided in the United States since October 2022, and that, accordingly, § 1225(b)(2)(A) does not apply to him and therefore he should be released. Petition at 4, ¶ 9. Respondents, as the government did in the above-referenced cases before Your Honor, respectfully submit that Petitioner is in fact subject to mandatory detention under § 1225(b)(2)(A), that Petitioner has received all the process due him, and therefore, release is inappropriate. Under Respondents' interpretation of the statutory scheme, Petitioner's arguments to the contrary, including based on his physical presence in the interior of the United States, are unavailing.²

¹ In *Acuapan*, Your Honor acknowledged Judge Cogan's *Saamishvili* decision, but maintained Your Honor's position that the government's statutory interpretation "renders 'an alien seeking admission' needless surplusage, and makes several provisions of § 1226 surplusage as well." *Acuapan*, 2026 WL 507889, at *4. The government's brief in *Acuapan* discusses the surplusage question and the government respectfully incorporates by reference those arguments here. *See Acuapan v. Bondi*, 26-cv- 0384, Docket Entry 7 (Government's Response to Order to Show Cause).

² In addition to *Buenrostro-Mendez* and *Saamishvili*, discussed *supra*, multiple Southern District of New York courts have recognized that 1225(b)(2)(A) requires detention without access to a bond hearing for all applicants for admission, including those encountered in the interior of the country. *See, e.g., Changgeng Chen v. Almodovar, et al.*, No. 25-cv-9995, 2026 WL 507707 (S.D.N.Y. Feb. 24, 2026) (Cronan, J.); *Alvarado Quezada v. Francis*, No. 26-cv-387, 2026 WL 380711 (S.D.N.Y. Feb. 11, 2026) (Cronan, J.); *Arana v. Arteta*, No. 26-cv-240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Acosta v. Arteta*, No. 25-cv-9916, 2026 WL 263470 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Espinoza Lopez v. Noem*, No. 26-cv-345, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.); *Perez Quintero, v. Francis*, No. 25-cv-10107, 2026 WL 265921 (S.D.N.Y. Feb. 2, 2026) (Vyskocil, J.); *Weng v. Genalo*, No. 25-cv-09595, 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.); *Yinxiao Chen v. Almodovar*, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Liang v. Almodovar*, No. 25-cv-9322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.), *appeal filed*; *Xiaoquan Chen v. Almodovar*, No. 25-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *appeal filed*. Respondents acknowledge that a larger number of non-binding court decisions across the country have rejected Respondents' statutory construction. However, as recently explained by the Hon. John L. Sinatra, Jr., "[t]he fact that more district courts nevertheless have decided this issue differently from this Court is neither binding nor persuasive." *Candido v. Bondi, et al.*, 25-cv-867,

The Honorable Orelia E. Merchant
March 26, 2026
Page 4 of 4

While Respondents respectfully disagree with the Court's prior rulings on this issue, Respondents acknowledge that this case would be decided in Petitioner's favor if the Court adheres its prior statutory interpretation. Therefore, to conserve judicial resources and to expedite the Court's consideration of this case, Respondents hereby rely upon, and incorporate by reference, the legal arguments the government presented in those cases, specifically, but not limited to those presented in *Acuapan*. See *Acuapan v. Bondi*, 26-cv-0384, Docket Entry 7 (Government's Response to Order to Show Cause). Thus, as the arguments that Respondents would make in this case would be substantially similar, if not identical to, the arguments that the government presented in the above-cited (and other) cases, the government respectfully submits that this case can be adjudicated without further briefing.

D. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition. Respondents thank the Court for its time and consideration in this matter.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

By: /s/ Artemis Lekakis
Artemis Lekakis
Assistant U.S. Attorney
(718) 254-6096
artemis.lekakis@usdoj.gov

Enclosure

cc: Caridad Pastor, Esq.
Pastor and Associates, P.C.
Attorneys for Petitioner

2025 WL 3484932 at *2 (W.D.N.Y. Dec. 4, 2025). Respondents note that 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 § 1226(a), not § 1225(b)(2)(A), applied), *appeal filed*, No. 25-3141. Briefing was completed on March 3, 2026 and oral argument has been scheduled for April 6, 2026.