



U.S. Department of Justice

United States Attorney
Eastern District of New York

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Brooklyn, New York 11201

May 30, 2026

BY ECF

Honorable Nina R. Morrison
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Isidro Cabanas Reyes v. Luis Soto, et al.*, No. 26-cv-3169 (Morrison, J.)

Dear Judge Morrison:

This Office represents the Respondents in this habeas action, in which Petitioner Isidro Cabanas Reyes ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). See ECF No. 1 ("Petition" or "Pet."). Respondents respectfully write in accordance with the Court's Order to Show Cause dated May 27, 2026 ("OTSC"). The OTSC directed Respondents, *inter alia*, to file a letter to the Court addressing specified items (1)-(8) on pages 2 through 4 of the OTSC.¹

A. Relevant Background

In 1998, Petitioner illegally entered the United States through the city of Tijuana, Mexico into the state of California. Declaration of Supervisory Detention and Deportation Officer Brenden Cuni ("Decl.") ¶ 5. On August 21, 2010, Petitioner departed and voluntarily returned to Mexico. *Id.*

On November 6, 2011, Petitioner illegally entered the United States at or near Mission, Texas and was encountered by U.S. Border Patrol Agents. Decl. ¶6; *see also* Ex. A (Form I-213). Petitioner did not possess any valid documents to enter the United States and voluntarily returned to Mexico that same day. *Id.*

On an undetermined date thereafter, the Petitioner unlawfully entered the United States at an undetermined location and claims to have remained in the U.S. ever since. Decl. ¶7; *see also* Ex. A.

¹ The OTSC directed Respondents file a response addressing these items by May 29, 2026 at 9:00am; the Court extended that deadline to May 30, 2026 at 9:00am by Order dated May 28, 2026.

On March 6, 2015, Petitioner was arrested by the New York City Police Department for violation of New York Penal Law (N.Y.P.L.) § 215.50(3) (Criminal Contempt in the Second Degree). Decl. ¶8; Ex. A. The disposition of this case is unknown. *Id.*; *see also* Ex. B (Rapsheet).

On May 15, 2026, ICE Enforcement and Removal Operations' ("ERO") Fugitive Operations team were conducting surveillance in the vicinity of 850 Bay Street, Staten Island, New York. Decl. ¶9; Ex. A. ICE ERO was tasked with locating and arresting another individual as the target of the enforcement operation at the target's last known address. *Id.* During surveillance, officers ran database checks on the target address and identified Petitioner as an individual connected to the target address. *Id.* Database checks further confirmed that Petitioner was illegally in the United States, without lawful status. *Id.* A Form I-200 (Warrant for Arrest of Alien) was issued.² Ex. C (Form I-200). Officers observed Petitioner exit the target address and return minutes later. Decl. ¶9; Ex. A. Officers approached Petitioner, identified themselves as DHS/ICE officers, and positively identified him as the Petitioner. *Id.* Petitioner attempted to flee but was apprehended a few feet away without incident. *Id.* Petitioner was arrested pursuant to a Form I-200 and detained pursuant to INA §236(a), 8 U.S.C §1226(a). *Id.* Petitioner was transported to the ICE Hold Room located at 26 Federal Plaza, New York, New York for post arrest processing. *Id.*

During post arrest processing that same day, Petitioner was served with a Form I-862 Notice to Appear ("NTA"), charging him as removable pursuant to Immigration and Nationality Act ("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 General. Decl. ¶ 10, Ex. D (NTA). The NTA directed Petitioner to appear on May 29, 2026, at 8:30 a.m. at the Varick Immigration Court located at 201 Varick Street, New York, New York. *Id.* The NTA was filed with the Executive Office for Immigration Review ("EOIR") on May 19, 2026. Decl. ¶10.

That same day, during post-arrest processing, ICE conducted an initial custody determination pursuant to INA § 236(a), 8 U.S.C. § 1226(a) and the settlement agreement in *Velesaca v. Decker*, et al., No. 20-cv-1803 (S.D.N.Y.). Decl. ¶11. This entailed, among other things, interviewing Petitioner, obtaining pedigree information, fingerprinting Petitioner, obtaining any criminal history, family equities, medical issues, and manner of entry into the U.S. Decl. ¶ 11, Ex. E. Based on Petitioner's inability to show ties to the community, failure to establish that he had a permanent address, failure to alert DHS of his presence, and failure to register as required in the Alien Registration Act, ICE determined that Petitioner posed a flight risk. *Id.* ICE concluded that Petitioner failed to demonstrate that he did not pose a flight risk. *Id.* On the Form I-286, provided to Petitioner, he requested a custody redetermination by an immigration judge ("IJ"), which was scheduled for May 27, 2026. Decl. ¶¶11, 15, 17. Ex. G.

On May 16, 2026, ICE transferred Petitioner from the ICE Hold Room located at 26 Federal Plaza to the Delaney Hall Detention Facility in Newark, New Jersey. Decl. ¶12. On May 21, 2026, Petitioner was transferred from the Delaney Hall Detention Facility to the Metropolitan

² The date on the top of the Form I-200 reads "4/15/26" but should read "5/15/26." Decl. ¶9, footnote 1.

Detention Center in Brooklyn, New York, where he remains detained INA § 236(a), 8 U.S.C. § 1226(a). Decl. ¶13, 18.

On May 27, 2026, Petitioner appeared with his attorney at the Varick Immigration Court for a scheduled bond hearing. Petitioner, through his attorney, withdrew the request for a bond hearing. Decl. ¶17, Ex. H (IJ Bond Order). Petitioner has not submitted a further request for a custody redetermination hearing with the Immigration Court as of this filing. *See* Decl. ¶18.

Petitioner's removal proceedings remain pending. *See* Decl. ¶ 18.

B. Responses to OTSC items (1)-(8)

- (1) Petitioner's A-number, current place of detention, and contact person who can facilitate counsel's access to Petitioner.**

A-number: 

Current place of detention: Brooklyn MDC

Contact person who can facilitate counsel's access to Petitioner: Deportation Officer Kareem Biggs at kareem.h.biggs@ice.dhs.gov

- (2) [T]he statutory provision(s) under which Respondents assert the authority to detain Petitioner.**

8 U.S.C. §1226(a).

- (3) [I]f Respondents assert the authority to detain Petitioner under 8 U.S.C. §1225(b)(2)...**

Not applicable.

- (4) [I]f Respondents assert the detention authority to detain Petitioner under a different provision than §1225(b)(2), the letter shall attach any record(s) documenting the invocation of that authority (or any other authority to detain the Petitioner) at the time that Petitioner was detained.**

Enclosed:

Declaration of Brenden Cuni, Supervisory Detention and Deportation Officer

Exhibit A: Form I-213

Exhibit B: Rapsheet

Exhibit C: Form I-200

Exhibit D: Notice to Appear

Exhibit E: Initial Custody Determination

Exhibit F: EOIR Case Notices

Exhibit G: Form I-286

Exhibit H: IJ Bond Order

Appendix 1 hereto: Stipulation and Order of Dismissal and Settlement in *Velesaca v. Decker, et al.*, No. 20-cv-1080 (S.D.N.Y.)

- (5) [I]f the detention authority is asserted under 8 U.S.C. § 1226(a), whether there is any basis to distinguish the asserted grounds for detention in this case from this Court's decision in *H.A.C.F. v. Francis*, No. 26-CV-00872 (NRM), 2026 WL 482607 (E.D.N.Y. Feb 20, 2026)...

Petitioner is properly being detained pursuant to § 1226(a), and his remedy, if any, administrative. Under § 1226(a), the Government may arrest and detain an alien during his removal proceedings or release him on bond or conditional parole. Section 1226(a) provides, in relevant part, that:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole;

8 U.S.C. § 1226(a). By regulation, immigration officers conduct custodial determinations and may release aliens if the alien meets his burden of showing that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8), (d)(1); *see Hamilton v. Shanahan*, No. 09-cv-6869, 2009 WL 5173927, at *2 (recognizing that the alien bears the burden of proof). The statute's text makes clear that the custody determination need not take place prior to or at the moment of the arrest. *See* 8 U.S.C. § 1226(a) (setting forth that, the decision is whether to “continue to detain” the arrested alien” or to release the alien on bond or parole) (emphasis added). The statute's use of the phrase “continue to detain” necessarily implies that, at the time the government makes the custody determination, the alien has already been apprehended and detained. *See Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (referring to “post-arrest custody determination” under § 1226(a); *see also* Ex. H (Stipulation and Order of Dismissal and Settlement in *Velesaca v. Decker, et al.*, No. 20-cv-1080 (S.D.N.Y.), ECF 177) (requiring that the worksheet laying out the non-exhaustive bases for the custodial determination be completed not prior to arrest but instead within 48 hours after the arrest). As part of this process, the alien who has been arrested is fingerprinted, and also, *inter alia*, interviewed for family equities, community ties, stable residence, or other factors that may impact detention-related decisions. Decl. ¶ 11, Ex. E.

Once ICE makes the individualized custody determination, 8 U.S.C. § 1226(e) jurisdictionally bars courts from reviewing that determination. Section 1226(e) provides that “[ICE]’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by [ICE] under this section regarding the detention of any [noncitizen] or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e). Thus, “[a] district court has no authority to review ICE’s discretionary determinations made under

[Section 1226] or otherwise question their propriety.” *Fontanelli, as Next Friend of Bernal Garcia v. Francis*, No. 26-cv-07715 (JLR), 2025 WL 2773234, at *4 (S.D.N.Y. Sept. 29, 2025) (citing 8 U.S.C. § 1226(e)).

After ICE makes the initial custody determination, the alien detained under Section 1226(a) has yet more process available. He can request a custody redetermination (*i.e.*, a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 C.F.R. § 236.1(d)(1). Under 8 C.F.R. § 1003.19(h)(3), an alien may seek a redetermination of custody conditions set by ICE before an IJ must “first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview.” *See Hylton v. Shanahan*, 2015 WL 3604328 (S.D.N.Y. June 9, 2015) (declining to shift burden of proof onto government in a bond hearing in immigration court where respondent was detained under § 1226(a)). If dissatisfied with the IJ decision, the alien can seek review by the Board of Immigration Appeals (“BIA”). *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(F), 1003.38, 1236.1(d)(3); *see also Monterosa v. Decker*, No. 20-cv-02653, 2020 WL 1847771, at *3 (S.D.N.Y. Apr. 11, 2020) (“After ICE makes an initial detention decision, any person who is detained has the right to request a bond hearing before an [IJ]”).

Here, the same day of Petitioner’s arrest, ICE conducted an initial custody determination, which included an interview and the other assessments. Decl. ¶ 11, Ex. A, Ex. E. ICE elected to detain Petitioner after determining that he was a flight risk based on, *inter alia*, his inability to show community ties, failure to establish that he had a permanent address, his unlawful entries into the United States, failure to alert DHS of his presence, and failure to register as required in the Alien Registration Act. Decl. ¶ 11, Ex. E. The process afforded under Section 1226(a) also entitles him to seek custodial redetermination before an IJ. Thus, ICE provided to Petitioner a Form I-286, on which Petitioner could request a custody redetermination before an IJ. Decl. ¶ 15, Ex. G.

Accordingly, Respondents complied with the requirements of a detention pursuant to 8 U.S.C. § 1226(a). To the extent that Petitioner has recourse, it is not judicial, but administrative, before an IJ. Notably, Petitioner requested a custody determination, and a custody redetermination hearing was scheduled for May 27, 2026. Decl. ¶¶ 15, 17, Exs. G & H. But during that hearing, Petitioner (through his attorney) withdrew his request for a bond hearing. Decl. ¶ 17, Ex. H. There is no indication that Petitioner has submitted a second request for a bond hearing with EOIR. Decl. ¶ 18.

To the extent that Petitioner contends that ICE was required to provide him with a pre-detention opportunity to contest his detention, he is incorrect. Indeed, there is no requirement that a custody determination take place prior to the arrest or at the very moment of the arrest. *See* 8 U.S.C. § 1226(a) (setting forth that, the decision is whether to “continue to detain” the arrested alien” or to release the alien on bond or parole) (emphasis added). The statute’s use of the phrase “continue to detain” necessarily implies that, at the time the government makes the custody determination, the alien has already been apprehended and detained. *See Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (referring to “post-arrest custody determination” under § 1226(a)).

As explained, *supra*, 8 C.F.R. § 236.1(c)(8) provides that immigration officers conduct custodial determinations and may release an alien if the alien meets his burden of showing that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” Logistically, these determinations are completed after arrest, such that officers may obtain information as to a myriad of categories including family equities, medical issues, criminal history, immigration history, manner of entry into the United States, etc. Decl. ¶ 11.

Even more significantly, the post-arrest nature of initial custodial determinations is highlighted in the class action Stipulation and Order of Dismissal and Settlement (“the Stipulation and Order”) in *Velesaca v. Decker, et al.*, No. 20-cv-1803 (S.D.N.Y.). Appendix 1 hereto. The Stipulation and Order, so ordered by the Honorable Alvin K. Hellerstein, provided a framework to effectuate custodial determinations. *Id.* By the terms of the Stipulation and Order, the determination is to be completed within 48 hours after arrest—not prior to an arrest, and not even immediately after an arrest. *Id.* ¶ 11. And the Stipulation and Order provided that the determination may be completed more than 48 hours after the arrest if “there is an exigent circumstance that impedes the determination, in which case a determination will be made as soon as practicable”. *Id.* These provisions reflect an understanding that initial custodial determinations require time to interview and evaluate the potential detainee. Were this Court to find that the custodial determination must be prior to arrest and detention, it would undermine the resolution of the *Velesaca* class action, which addressed the factors relevant to a custodial determination.

Here, ICE conducted an initial custodial determination on May 15, 2026, the same day that Petitioner was arrested. Decl. ¶¶ 11; Ex. E. Accordingly, Petitioner was already afforded the requisite process he was due under the class action Stipulation and Order in *Velesaca*.

Respondents note that one of the decisions mentioned in Item (5) of the May 27, 2026 Order is distinguishable. The petitioner in *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) was detained under 8 U.S.C. § 1226(a), but ICE failed to provide her with an opportunity to contest her detention set forth in a regulation. Here, by contrast, ICE has provided such an opportunity to Petitioner in accordance with the applicable statute, regulation, and the Stipulation and Order.

Respondents further note that most of the other decisions mentioned in Item (5) of the Court’s May 27, 2026 Order arose in cases in which the ICE treated the petitioner as subject to the mandatory detention under 8 U.S.C. § 1225(b), but the court concluded that the petitioner was subject to discretionary detention under 8 U.S.C. § 1226(a). *See Inestroza Carbajal v. Frazier*, No. 26-CV-2778 (SJB), 2026 WL 1309265, at *2 (E.D.N.Y. May 12, 2026); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 316–17 (E.D.N.Y. 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 492–93 (S.D.N.Y. 2025); *Tumba v. Francis*, 813 F. Supp. 3d 394, 404 (S.D.N.Y. 2025); *Sidiqui v. Almodovar*, No. 25-CV-9349 (VSB), 2026 WL 251929, at *17 (S.D.N.Y. Jan. 30, 2026) and *O.F.B. v. Maldonado*, 810 F. Supp. 3d 394, 405 (E.D.N.Y. 2025) (Gonzalez, J.). Here, by contrast, ICE has always treated Petitioner as subject to detention under § 1226(a). Decl. ¶ 9. However, Respondents concede that this distinction is not material under this Court’s decision cited in Item (5), *H.A.C.F. v. Francis*, No. 26-CV-00872 (NRM), 2026 WL 482607 (E.D.N.Y. Feb. 20, 2026), *amended* 2026 WL 861152 (E.D.N.Y. Mar. 30, 2026). Respondents also respectfully submit that *H.A.C.F.* was not correctly decided for reasons set forth above. While

preserving Respondents' rights for appeal, Respondents respectfully note that Your Honor's decision in *H.A.C.F.* would dictate the outcome here.

(6) [A] copy of any final order of removal for this Petitioner.

Not applicable.

(7) [A]ny Notice to Appear, a Form I-200 for Petitioner's arrest, and any documentation or exhibits...

See Declaration and Exhibits referenced in response to item (4) above, enclosed herein. Petitioner's removal proceedings remain pending before EOIR.

(8) [W]hether respondents consent to issuance of a temporary restraining order, pursuant to Petitioner's motion, ECF No. 2, providing for Petitioner's release from custody pending further proceedings on the Petition...

Respondents do not consent.

* * *

Respondents thank the Court for its time and consideration in this matter.

Respectfully submitted,

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