



United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

June 2, 2026

BY ECF

Honorable Hector Gonzalez
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Ramos Ramirez v. Genalo, et al.*, No. 26-cv-3229 (Gonzalez, J.)

Dear Judge Gonzalez:

This Office represents the Respondents in this habeas action, in which Alvaro Leon Ramos Ramirez ("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 29, 2026 ("OTSC"). The OTSC directed Respondents, *inter alia*, to show cause why a writ of habeas corpus should not be issued and why Petitioner should not be released immediately, pursuant to *Cunha v. Freden*, --- F.4th ---, 2026 WL 1146044, (2d Cir. Apr. 28, 2026). The OTSC directed Respondents to additionally address, *inter alia*, whether Petitioner is being detained pursuant to 8 U.S.C. § 1225 or § 1226 and show cause as to why the petition should not be granted given the decision in *Quille v. Blanche*, No. 26-cv-2818 (HG), 2026 WL 1453889 (E.D.N.Y. May 22, 2026). As explained below, the Petition should be denied.

A. Relevant Background

Petitioner is a native and citizen of Guatemala. See Declaration of Dmitry Rousseau dated June 2, 2026 ("Decl."), ¶ 4. Petitioner entered the United States unlawfully at an undetermined date, time, and location. *Id.* ¶ 4; see also Exh. B (Form I-213).

On November 19, 2023, Petitioner was arrested by the Westchester County Department of Public Safety. Petitioner was charged with Driving While Intoxicated, 1st Offense under VTL 1192 Sub 03, Unsafe Movement of Stopped Motor Vehicle under VTL 1162, Drive Motor Vehicle On/Across A Sidewalk under VTL 1225-A, and Drinking Alcohol or Using Cannabis In a Motor Vehicle on Highway under CTL 1227 Sub 01. On September 5, 2024 Petitioner plead guilty to Aggravated DWI: Per Se-BAC .18 Of 1% Or More Alcohol In Blood-No Priors under 1192 SUB 2-AA. He was sentenced the same day to conditional discharge, a fine of \$1,400 and his license was revoked. See Decl. ¶ 5; see also Exh. D (Criminal History Records as of March 3, 2026).

On January 1, 2026, the Carmel Town Police Department arrested Petitioner and he was charged with Assault 3rd Degree: With Intent To Cause Physical Injury under NYPL 120.00 AM3 (2018), Endangering The Welfare Of A Child under NYPL 260.10 AM0 (2724) and Harassment-

2nd Degree: Physical Contact under NYPL 240.26 V2 (5526). *See* Decl. ¶ 6. These charges no longer appear on the Petitioner's Criminal History Record. *Id.* On March 1, 2026, the Carmel Police Department's referred Petitioner to ICE. *Id.* ¶ 7; *see also* Exh. G. ICE conducted a records check and determined Petitioner is present in the United States without admission or parole. *See* Decl. ¶ 7.

On March 3, 2026, ICE issued Petitioner a Form I-200, Warrant for Arrest of Alien ("I-200"), which stated that Petitioner would be taken into custody as authorized by INA § 236 and § 287. *See* Decl. ¶ 9; *see also* Exh. A (I-200).

On May 7, 2026, ICE officers went to Petitioner's home address and positively identified the Petitioner based on his booking photograph and he was in possession of a Guatemalan National Identification Card bearing his name. *See* Decl. ¶ 10. ICE officers served the I-200 upon petitioner on this day and arrested Petitioner in Carmel, New York. *Id.* ¶ 11. That same day, Petitioner was served with a Form I-862, Notice to Appear ("NTA"), which directed Petitioner to appear before an immigration judge ("IJ"), thus placing Petitioner into removal proceedings under INA § 240 (also known as 8 U.S.C. § 1229a). *See* 8 C.F.R. § 235.6; *see also* Exh. C (NTA). The NTA charged Petitioner with being "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," pursuant to INA § 212(a)(6)(A)(i) (also known as 8 U.S.C. § 1182(a)(6)(A)(i)) and as an alien who at the time of his application for admission was not in possession of a valid entry document, under INA section 212(a)(7)(A)(i)(I), (also known as 8 U.S.C. § 1182(a)(7)(A)(i)(I)). *See* Exh C. The NTA directed Petitioner to appear before an IJ in New York, New York on May 21, 2026. *Id.*

On May 7, 2026, ICE completed a custody determination and determined that Petitioner had not established that he did not pose a danger to persons or property based on his prior conviction. *See* Exh. E and F (Form I-286 and Initial Custody Determination worksheet).

B. ICE Properly Detained Petitioner Pursuant to 8 U.S.C. § 1226(a)

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) 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* attached 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 for biometrics, and also, *inter alia*, interviewed for family equities, medical issues, or other special vulnerabilities that may impact detention-related decisions. Decl. ¶ 13.

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.” *Id.* (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 immigration judge (“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 immigration judge 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 and initial detention decision, any person who is detained has the right to request a bond hearing before an Immigration Judge.”).

Here, the same day of Petitioner’s arrest, ICE conducted an initial custody determination, which included an interview and the other assessments. *See* Exh. E and F. ICE elected to detain Petitioner after determining that he had not established that he does not pose a danger to persons

or property based on his conviction of aggravated driving while intoxicated. *Id.* The process afforded under ¶ 1226(a) also entitles him to seek custodial redetermination before an IJ. As of the date of this filing, Petitioner has not sought a bond hearing before an IJ. *See* Decl. ¶ 18. 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.

C. *Cunha v. Freden*

The Court's May 20 Order directed Respondents to show cause why a writ of habeas corpus should not be issued and Petitioner should not be released immediately, pursuant to *Cunha v. Freden*, --- F.4th ---, 2026 WL 1146044, (2d Cir. Apr. 28, 2026). On April 28, 2026, the United States Court of Appeals for the Second Circuit issued its decision in *Cunha*, which held that that § 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), the asserted detention authority in that case, did not apply. Here, however, Petitioner's arrest post-dates *Cunha* and he was detained pursuant to INA § 236(a), 8 U.S.C. § 1226(a), unlike *Cunha*, whom ICE detained under § 1225(b)(2)(A).

D. Petitioner's Procedural Due Process Claim Fails

Petitioner's claim in Claim One asserting a procedural due process violation fails. (Pet. ¶¶ 81-93). To demonstrate such a violation, a plaintiff must establish: (i) a cognizable liberty or property interest, and (ii) a deprivation of that interest without being afforded the process that is due, which process is variable depending on the circumstances. *See Weinstein v. Albright*, 261 F.3d 127, 134 (2d Cir. 2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). Petitioner cannot satisfy the second factor.

Petitioner asserts that ICE detained him under § 1225(b), the mandatory detention provision, and that he was "arrested first, detained first, and only later did DHS try to explain the detention through paperwork and litigation." Pet. ¶ 85.

Petitioner is incorrect. Petitioner was detained at the outset pursuant to § 1226(a)—not § 1225(b).¹ An ICE officer conducted a custody determination and determined that Petitioner had not established that he does not pose a danger to persons or property based on his conviction of aggravated driving while intoxicated. *See* Exh. E and F

Even if Petitioner had challenged the timing of or basis for the custody determination—which he has not—8 C.F.R. § 236.1(c)(8) provides that 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." Logistically, these determinations are completed after arrest, such that officers may obtain information as to a myriad of categories including family equities, medical issues, and other special vulnerabilities that may impact detention-related decisions. The post-arrest nature of initial custodial determinations is highlighted in the class action Stipulation and Order of Settlement and Dismissal (the "Stipulation and Order") in *Velesaca v. Decker, et al.*, No. 20-cv-1080 (S.D.N.Y.) (Appendix 1 hereto). The Stipulation and Order, approved by the Honorable Alvin K. Hellerstein,

¹ Petitioner's Claims Four and Five also are based on the incorrect assumption that Petitioner was detained under § 1225(b) and thus fail. Respondents note that the Petition does not include a Claim Three.

provided a framework to effectuate individualized custody determinations. That framework, included a requirement that the determination generally be made within 48 hours after arrest, *id.*— not prior to an arrest, and not even immediately after an arrest. And that 48-hour deadline is subject to an exception – if “there is an exigent circumstance that impedes the determination, [the] determination will be made as soon as practicable”. *Id.* This reflected 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 7, 2026, the same day that they apprehended Petitioner. *See* Exh. E and F. Accordingly, Petitioner was already afforded the requisite process he was due, and, therefore, his procedural due process claim fails.

E. Petitioner’s Fourth Amendment Claim Fails

Petitioner’s Fourth Amendment claim (*see* Pet., Claim Two, ¶¶ 94-126) 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. The INA grants the executive branch the authority to arrest and detain noncitizens during the course of removal proceedings. Petitioner’s arrest was a straightforward exercise of this statutory power.

In any event, here, his contention that the Fourth Amendment was violated by a warrantless arrest is belied by the facts. His arrest followed issuance of a warrant, which was issued more than two months before the arrest as the admissible evidence of record establishes. *See* Exh. A. For all these reasons, this claim warrants dismissal.

F. This Court’s Decision in *Quille* is Distinguishable

The Court’s OTSC directed Respondents to additionally address, *inter alia*, whether Petitioner is being detained pursuant to 8 U.S.C. § 1225 or § 1226 and show cause as to why the petition should not be granted given the decision in *Quille v. Blanche*, No. 26-cv-2818, 2026 WL 1453889 (E.D.N.Y. May 22, 2026) (Gonzalez, J.). As discussed above, Petitioner was detained on May 7, and pursuant to 8 U.S.C. § 1226(a).

The Court’s reasoning in *Quille* would not result in granting this Petition. Its holding as to ICE’s authority to conduct warrantless arrests pursuant to 8 U.S.C. § 1357(a)(2) is inapposite,

because Petitioner was arrested pursuant to a warrant, the Form I-200, which issued more than two months days prior. *See* Exh. A.

As to *Quille*'s holding regarding sufficiency of an initial custody determination of an individual detained pursuant to 8 U.S.C. § 1226(a), Respondents note that Petitioner, who is represented by counsel in this action, has not challenged the sufficiency of his initial custodial determination because he alleges, incorrectly, that he never received one. Respondents respectfully submit that this issue is not properly before the Court. As the Supreme Court reaffirmed several days ago, federal courts adhere to the principle of party presentation, *i.e.*, "the rule that points not argued will not be considered." *Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. ---, 2026 WL 1463466, at *2 (U.S. May 26, 2026); *see also United States v. Sineneng-Smith*, 590 U.S. 371, 375-76 (2020) ("[i]n our adversarial system of adjudication . . . we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present" and, "as a general rule, our system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief") (cleaned up, citations omitted); *id.* at 376 ("[C]ourts normally decide only questions presented by the parties.")

Assuming *arguendo* that the sufficiency of the initial custody determination is properly before the Court in this action, the Court in *Quille* took issue with the fact that the "initial custody determination did not happen before or contemporaneously with his arrest." *Quille*, 2026 WL 1453889, at *4. Respondents respectfully submit that this same-day determination did occur contemporaneously with this arrest. For frame of reference, Respondents respectfully refer the Court to the aforementioned provisions of the *Velesaca* Stipulation and Order, and the procedures requiring not least interviewing the detainee and conducting fingerprinting and other database checks.

Respondents respectfully submit that *Pastrana-Beltran v. Mullin*, No. 26-cv-2657, 2026 WL 1398609 (E.D.N.Y. May 19, 2026), the case this Court relied upon in *Quille*, did not hold that a person arrested by ICE is entitled to a custody determination prior to or simultaneous with the arrest. *See Quille*, 2026 WL 1453889, at *4 (citing *Pastrana-Beltran*, 2026 WL 1398609, at *2). In *Pastrana-Beltran*, the petitioner was arrested and detained pursuant to 8 U.S.C. § 1225(b)(2)(A) on December 29, 2025, before the Second Circuit decided *Da Cunha*. *See Pastrana-Beltran*, 2026 WL 1398609, at *1. ICE did not conduct an individualized custody determination until May 5, 2026, more than four months after it arrested and detained the petitioner. Therefore, because § 1225(b)(2)(A) requires mandatory detention and does not require (or allow for) a custody determination, the petitioner in *Pastrana-Beltran* did not receive a custody determination "contemporaneous" with his arrest. The Honorable Ramon E. Reyes held that, pursuant to *Da Cunha*, the lack of a custody determination contemporaneous with the arrest was a violation of the petitioner's due process rights. *Id.* at *2 (citing *Cunha*, --- F.4th ---, 2026 WL 1146044, at *22). Here, however, the custody determination that occurred following the arrest was the type of "contemporaneous" custody determination contemplated by the Second Circuit in *Da Cunha*. There is no requirement that a custody determination take place prior to the arrest or at the very moment of the arrest.

To the extent that, in *Quille*, the Court took issue not only with the timing of the initial custody determination but likewise the reasons justifying the determination that that petitioner was

a flight risk, Respondents respectfully submit that not only has ICE explained its reasons for finding that Petitioner failed to establish that he does not pose a danger to persons or property. Respondents further respectfully submit that 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. 25-cv-7715, 2025 WL 2773234, at *4 (S.D.N.Y. Sept. 29, 2025). Petitioner had illegally entered the U.S, had failed to update his address, failed to report to his scheduled check-ins, and attempted to flee when approached by ICE.²

Finally, Respondents respectfully note that Petitioner does not allege that ICE’s custodial determination was incorrect. Instead, Petitioner assumed ICE detained Petitioner pursuant to § 1225(b), which does not require a custody determination because detention under § 1225(b) is mandatory. To the extent that the May 29 Order requires Respondents to distinguish *Quille* Respondents respectfully submit that this is not properly before the Court under *Margolin* and other decisions that apply to the principle of party presentation, *i.e.*, “the rule that points not argued will not be considered.”

* * *

Accordingly, 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/ Alexandra Megaris
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cc: All Counsel of Record (by ECF)

² To the extent that Your Honor believes that these justifications go outside the scope of what the Court may consider, Respondents respectfully direct the Court to the *Velesaca* Stipulation and Order, which states, in pertinent part, “Officers are not required to list on the worksheet all considerations or factors that were considered or affected the initial custody determination.” *Id.* ¶ 24.

APPENDIX 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE L. VELESACA and ABRAHAM CARLO
UZATEGUI NAVARRO, on their own behalf and on
behalf of others similarly situated,

Petitioners-Plaintiffs,

v.

THOMAS R. DECKER, in his official capacity as New
York Field Office Director for U.S. Immigration and
Customs Enforcement; TAE D. JOHNSON, in his
official capacity as the Acting Director for U.S.
Immigration and Customs Enforcement; UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT; ALEJANDRO MAYORKAS, in his
official capacity as Secretary of the U.S. Department of
Homeland Security; UNITED STATES
DEPARTMENT OF HOMELAND SECURITY; CARL
E. DUBOIS, in his official capacity as the Sheriff of
Orange County,¹

Respondents-Defendants.

Case No. 20 Civ. 1803 (AKH)

**STIPULATION AND ORDER OF
DISMISSAL AND SETTLEMENT**

This Stipulation and Order of Dismissal and Settlement (“Stipulation and Order”) is entered into by and between the Petitioners-Plaintiffs and the Respondents-Defendants to the above-captioned action by and through their attorneys (collectively, the “parties”).

WHEREAS, in February 2020, the petitioners commenced this action, and subsequently filed an amended complaint in March 2020, seeking declaratory and injunctive relief based on claims pertaining to a “No Release Policy” allegedly implemented by U.S. Immigration and Customs Enforcement’s (“ICE”) New York City Field Office in 2017;

WHEREAS, ICE’s New York City Field Office disputes the allegations in the amended complaint and does not concede that it ever had a “No Release Policy”;

¹ Tae D. Johnson and Alejandro Mayorkas are automatically substituted for Mathew Albence and Chad Wolf, respectively, pursuant to Fed. R. Civ. P. 25(d).

WHEREAS, on March 31, 2020, the District Court for the Southern District of New York granted the petitioners' motion for a class-wide preliminary injunction;

WHEREAS, while there are open legal issues and factual disputes, including, in the government's view, with respect to subject matter jurisdiction and the merits of the case, the parties wish to resolve this action without further litigation and pursuant to the terms and conditions contained herein;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, that the action shall be resolved between them as follows:

1. This Action is hereby dismissed with prejudice.
2. This Stipulation and Order, including the terms and conditions set forth below, is the result of the parties compromising and settling disputed claims. Neither this Stipulation and Order nor any representations made by either party in the course of negotiating this Stipulation and Order shall constitute or be construed as any admission of liability or wrongdoing by either party, or by their present or former officers, employees, agents, successors, assigns, or representatives, related to any claims or defenses that were raised (or could have been raised) with regard to this Action.
3. The terms and conditions discussed below are not applicable to Respondent Sheriff Carl Dubois or Orange County, New York.²
4. The terms and conditions discussed below are not applicable to any field office other than the New York City Field Office of ICE's Enforcement and Removal Operations ("ERO-NY"), unless otherwise specified in this Stipulation and Order. Such terms and conditions shall remain in effect for three years following the date that the Court approves and enters the Stipulation and Order on the docket, subject to any tolling of the three-year duration due to a finding of non-compliance as set forth herein.

² Sheriff Dubois was named as a respondent in his official capacity as the immediate physical custodian of the two named petitioners who were detained at the Orange County Jail at the time this action was filed.

Initial Custody Determinations

5. For purposes of this Stipulation and Order, the parties' agreement applies only to noncitizens initially arrested and detained under 8 U.S.C. § 1226(a) by ERO-NY who have not yet received a bond hearing before an immigration judge, with the exception of noncitizens covered under the *Flores* Settlement Agreement and former unaccompanied noncitizen children who are transferred from the custody of the Department of Health and Human Services to ICE when they turn eighteen years of age (defined as "covered noncitizens").
6. ERO-NY agrees that it is required to provide individualized initial custody determinations to covered noncitizens.
7. The parties agree that initial custody determinations are discretionary, and covered noncitizens are not guaranteed any particular outcome.
8. ERO-NY agrees that, consistent with applicable law and regulations, a covered noncitizen should be released (whether on recognizance, bond, or other conditions) if he or she establishes, on a case-by-case basis, to the officer's satisfaction that he or she does not present a danger to the community or a flight risk, including whether if one or more special vulnerabilities warrant release as a matter of discretion in light of the individual circumstances.
9. ERO-NY agrees that it will conduct individualized initial custody determinations for each covered noncitizen in accordance with applicable statutory and regulatory requirements, as well as any applicable policy guidance in effect at the time of the initial custody determination.
10. ERO-NY agrees that it will not adopt a blanket "no-release" policy, *i.e.*, a policy of denying release to covered noncitizens without considering the individual circumstances in each case.
11. ERO-NY agrees that it will conduct initial custody determinations within 48 hours of the covered noncitizen's arrest by ERO-NY unless there is an exigent circumstance that

impedes the determination, in which case a determination will be made as soon as practicable.

12. ERO-NY agrees that, consistent with existing rules and regulations, communications with covered noncitizens during the initial custody determination process will be conducted in a language that the person understands.
13. ERO-NY agrees that, at the time that an initial custody determination is made, ERO-NY will provide oral and written notification of the decision to the covered noncitizen.
14. Receipt of an initial custody determination will not prejudice a covered noncitizen's ability to make any future request to ERO-NY for release, nor to seek release at a custody redetermination hearing (*i.e.*, a bond hearing) before an immigration judge.

Ability to Pay

15. ERO-NY agrees that, during the initial custody determination, its officers will consider, among other things, a covered noncitizen's financial ability to pay when assessing a bond amount. This consideration may include, but is not limited to, asking the covered noncitizen how much they believe they would be able to post, whether they are presently employed and the length of that employment, and whether they have family or friends that would be able to assist them with posting bond. ERO-NY officers should consider the totality of the circumstances presented when determining the amount of bond or other conditions of release.
16. ERO-NY is not required to set a bond that a covered noncitizen can afford in every case.
17. If ERO-NY sets a bond, with or without alternative conditions of release, the minimum amount of bond remains the amount set by statute at 8 U.S.C. § 1226(a)(2), which is currently \$1,500.
18. ERO-NY is not required to release any covered noncitizen for whom it has determined that no bond or alternative conditions of release would be sufficient to ensure the person's appearance if such detention is otherwise permissible by law.

Disability

19. ERO-NY agrees that its officers will consider whether a covered noncitizen has a disability as part of the initial custody determination.
20. In conducting this assessment, ERO-NY agrees to instruct its officers to employ the Americans with Disabilities Act's definition of disability: "a physical or mental impairment that substantially limits one or more major life activities."
21. For covered noncitizens, ERO-NY officers will consider an identified disability under the totality of the circumstances when making initial custody determinations. When determining whether to release or detain a covered noncitizen, ERO-NY officers will consider whether a detention facility that can reasonably accommodate the disability is available.
22. ERO-NY is not required to release a covered noncitizen with a disability in any case if such detention is otherwise permissible by law, for example, if the individual's disability can otherwise be accommodated within a facility.

Initial Custody Determination Worksheet

23. ERO-NY agrees to use the Initial Custody Determination Worksheet (attached as Exhibit A) when conducting initial custody determinations for all covered noncitizens.
24. ERO-NY agrees that its officers will complete the entire worksheet, except that officers will not be required to complete the flight risk section if the covered noncitizen has been determined to be a danger to property or persons. Completing this worksheet includes marking applicable check boxes, signing and dating the worksheet with the completion time noted, and noting the primary considerations affecting the officer's analysis in the "discussion" space on the worksheet. Officers are not required to list on the worksheet all considerations or factors that were considered or affected the initial custody determination.

Advisal Notice

25. ERO-NY agrees to provide an Advisal Notice (attached as Exhibit B) to each covered noncitizen at the beginning of processing and before commencing an initial custody determination.
26. ERO-NY agrees to communicate with the covered noncitizen in a language they understand, including providing them with a translated version of the Advisal Notice in that language or arranging for an interpreter to read the form to them.
27. ERO-NY agrees to keep translated copies of the Advisal Notice on file at the New York City Field Office in the following languages: English, Spanish, Mandarin, Russian, Punjabi, Portuguese, Haitian Creole, Arabic, French, Hindi, and Bengali.
28. ERO-NY agrees to provide the covered noncitizen with reasonable time to review the Advisal Notice and complete the certification at the bottom of the notice prior to the initial custody determination.
29. ERO-NY will not require the covered noncitizen to sign the Advisal Notice if they decline to do so. In that circumstance, ERO-NY will note on the form that the covered noncitizen "Refused to Sign."
30. ERO-NY agrees to continue to provide each covered noncitizen with a list of free or low-cost legal service providers (*i.e.*, the approved list of legal service providers prepared by the Executive Office for Immigration Review).

Training

31. ERO-NY agrees that it will provide training on the terms of this Stipulation and Order to all of its officers (*i.e.*, to ERO officers within the ERO New York City Field Office) who conduct or directly supervise initial custody determinations for covered noncitizens at any point during the pendency of this Stipulation and Order. The first

of such trainings will be conducted within 40 days following the date the Court approves and enters the Stipulation and Order on the docket.

32. Consistent with the terms of this agreement, the substance of the training shall be in the sole discretion of ICE and ERO-NY.
33. ERO-NY agrees to provide petitioners' counsel with a copy of the PowerPoint training slides that will be used at the trainings related to this Stipulation and Order, and such slides will be provided within 5 calendar days of the first training session. If the training slides are modified any time during this agreement, ERO-NY agrees to provide petitioners' counsel with a copy of the modified PowerPoint training slides within 5 calendar days of the first training session where such modified training slides were used.
34. ERO-NY agrees to provide petitioners' counsel with quarterly reports of the dates of any trainings related to this Stipulation and Order and the number of officers that attended each training, and will also specify how many Deportation Officers (DOs), Supervisory Detention and Deportation Officers (SDDOs), Assistant Field Office Directors (AFODs), and Deputy Field Office Directors (DFODs) attended each training.
35. The above-referenced training slides and quarterly reports will be produced to petitioners' counsel subject to the stipulated protective order (ECF No. 90).

Reporting

36. ERO-NY agrees to provide petitioners' counsel with ongoing, timely, and accurate reporting, as described in the paragraphs immediately below, for the three-year duration of the terms and conditions of this Stipulation and Order, subject to any tolling of that period.
37. ERO-NY agrees to provide petitioners' counsel with the Initial Custody Determination Worksheets for all covered noncitizens on a monthly basis. The worksheets will be

provided to petitioners' counsel within the first ten calendar days of each month, and such production will be subject to the stipulated protective order (ECF No. 90).

38. ERO-NY agrees to provide petitioners' counsel with quarterly reports (every three months), tracking the fiscal year, containing certain data from the Risk Classification Assessment ("RCA") module (set forth in the next paragraph), in excel format, as it pertains to each covered noncitizen. Each quarterly report will be provided to petitioners' counsel within 30 days of each covered three-month reporting period, and such production will be subject to the stipulated protective order (ECF No. 90). For example, the report for the second quarter of Fiscal Year 2022 is due July 30, 2022.

39. ERO-NY agrees that the quarterly reports referenced immediately above will contain the following information for each covered noncitizen, subject to the limitations contained in the next paragraph:

- a. name;
- b. A-number;
- c. RCA public safety risk score;
- d. RCA flight risk score;
- e. RCA special vulnerabilities³;
- f. RCA mandatory detention per statutes and allegations;
- g. RCA decision type;
- h. RCA recommendation;
- i. RCA recommended bond amount;
- j. RCA officer agree/disagree;
- k. RCA supervisor agree/disagree;
- l. RCA final decision;
- m. RCA final bond amount;
- n. RCA decision date;
- o. ICE book-in date;
- p. RCA encounter date;
- q. gender;
- r. country of citizenship;
- s. age at time of RCA decision;
- t. pending charges & convictions at time of RCA decision;⁴ and
- u. INA charges at time of RCA decision.

³ This data field includes, where appropriate, a specific reference to the type of special vulnerability.

⁴ This data field includes, where appropriate, a specific reference to the pending charge or conviction.

40. As noted immediately above, ERO-NY agrees to provide quarterly reports containing the above data for covered noncitizens, but only to the extent that such fields are in use at the time that the initial custody determination is made by ERO-NY. Nothing herein shall restrict ICE from making changes to the RCA platform. If ICE modifies the RCA in a way that removes or renders a data field void, ERO-NY will notify petitioners' counsel if a data field listed above is no longer available or active in the RCA platform during the quarterly production in which the data field is removed from the report.
41. ERO-NY agrees to provide the following instruction concerning the RCA to its officers conducting initial custody determinations: "As currently programmed, the Risk Classification Assessment (RCA) tool issues the following recommendations: 'Detain by the Department of Homeland Security' or 'Supervisor to Determine-Detain or Release on Community Supervision.' Because the RCA may not recommend solely 'Release' or 'Release With Bond,' it is important that you remember that these options are always available on a case-by-case basis for those detained under 8 U.S.C. § 1226(a). The RCA is not the final decisionmaker. Instead, you should conduct an individualized custody determination in accordance with agency guidance, policies, and relevant trainings."

Attorneys' Fees, Costs, and Expenses

42. ICE agrees to pay petitioners' counsel the amount of \$75,000 in full satisfaction of any claim against any Defendant for attorneys' fees, costs, and expenses in this Action. Such payment will be made within 90 days following the date the Court approves and enters the Stipulation and Order on the docket.
43. The parties mutually agree to waive any additional claims either party may have against the other party for any additional fees, costs, or expenses related to this Action.
44. This Stipulation and Order shall not be construed as a determination, admission, or concession that either party is a prevailing party or substantially prevailed in any respect of events or matters that are at issue in this Action.

Implementation

45. ERO-NY will implement the terms laid out in this Stipulation and Order within thirty calendar days following the date that the Court approves and enters this Stipulation and Order on the docket (the "Implementation Date"), unless otherwise specified within this Stipulation and Order.
46. Within 10 calendar days of the Implementation Date, ERO-NY will provide petitioners' counsel with a copy of any written broadcasts instructing ERO-NY officers to begin utilizing the Initial Custody Determination Worksheet and Advisal Notice, subject to the stipulated protective order (ECF No. 90), and will confirm that all ERO-NY officers who are currently conducting initial custody determinations have received the relevant training.

Enforcement and Compliance

47. The Court will retain jurisdiction to enforce the terms of this Stipulation and Order for its duration. Consistent with the terms of this agreement, such retention does not extend to or provide for challenges to ERO-NY's individual discretionary determinations as memorialized on the Initial Custody Determination Worksheets, although such worksheets may be evidence of noncompliance with the terms and conditions of this Stipulation and Order.
48. As third-party beneficiaries, covered noncitizens will have standing to enforce the terms of this agreement. The petitioners will also have standing to enforce the terms of the agreement. Defendants agree not to contest their standing to enforce the terms and conditions of the Stipulation and Order.
49. The parties commit to work in good faith to resolve any disputes concerning compliance with the Stipulation and Order prior to bringing such disputes to the Court.
50. If either party has a good faith belief that the other party is not in compliance with the terms of this Stipulation and Order, counsel for the complaining party shall promptly notify counsel for the other party, in writing, of the specific grounds upon which such

noncompliance is alleged (the "Notice of Dispute"). Notice shall be provided to counsel of record as noted on the district court docket sheet.

51. The parties shall promptly meet and confer in a good faith effort to informally resolve the dispute no more than 14 calendar days after the service of the Notice of Dispute, unless the parties agree otherwise.
52. If the dispute cannot be resolved within 21 calendar days of the meet and confer, then either party may move to enforce the Stipulation and Order with the Court.
53. If the Court finds that Defendants are out of compliance with the Stipulation and Order, other than with respect to the Reporting terms, and that such noncompliance was material, the period of such noncompliance will not accrue towards the three-year duration. Absent an explicit finding to the contrary, the presumed period to be tolled runs from the date the Notice of Dispute was received by the opposing party until the defect has been cured.
54. A finding of noncompliance with respect to the Reporting terms shall not provide a basis to toll or extend the three-year duration.

Entirety of Agreement

55. The parties understand and agree that this Stipulation and Order, including the attached exhibits, contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.
56. No amendment, change, or modification to this Stipulation and Order shall be valid unless in writing and signed by counsel for all parties.
57. For purposes of construing this Stipulation and Order, this Stipulation and Order shall be deemed to have been drafted by all parties to this Stipulation and Order and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

New York, New York
March 10, 2022

/s/ Amy Belsher
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/s/ Jenn Rolnick Borchetta
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Counsel for Petitioners-Plaintiffs

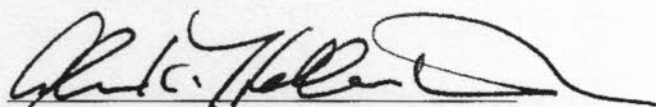
New York, New York
March 10, 2022

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Counsel for Respondents-Defendants

SO ORDERED:



HON. ALVIN K. HELLERSTEIN
United States District Judge

March 10, 2022

EXHIBIT A

Initial Custody Determination Worksheet

ERO NEW YORK CITY FIELD OFFICE

INA § 236(a) Initial Custody Determination

Name _____ A-Number _____ Arrest Date & Time _____

- ☐ Individual is subject to § 236(a)—(Fill Out Below)
- ☐ Individual is NOT subject to § 236(a)—(Skip to Bottom and Sign)

Instructions: Pursuant to a settlement reached in *Velesaca v. Decker*, No. 20-cv-1803 (SDNY), ERO Officers at the New York City Field Office must utilize this form as part of the initial individualized custody determination under INA § 236(a). Detention under INA § 236(a) is discretionary, and ERO officers must make individualized determinations in each case.

Pursuant to federal regulation 8 C.F.R. § 236.1(c)(8), in making an initial custody determination under INA § 236(a), ERO may release a noncitizen who establishes to the satisfaction of the immigration officer that (1) the noncitizen does not pose a danger to persons or property, and (2) the noncitizen is likely to appear at all future proceedings.

When conducting an individualized initial custody determination, the officer must first consider whether the noncitizen has demonstrated that he or she is not a danger to property or persons. Only if the noncitizen has satisfied the immigration officer that he or she is not a danger to property or persons should the officer proceed to a flight risk analysis.

Danger to the Persons or Property:

In assessing whether an individual currently presents a "danger to persons or property," officers may consider any relevant factors, including, but not limited to: the extensiveness and seriousness of any criminal arrest or conviction; the length of time that has passed since any such arrest or conviction; the sentences imposed; criminal history not known to the immigration officer but disclosed by the noncitizen; statements from the noncitizen regarding dangerous or illegal conduct; evidence of rehabilitation; compliance with sentences; employment history and ties to the community. This list is non-exhaustive and does not preclude officers from considering other aggravating or mitigating factors relevant to determining whether the individual currently presents a "danger to persons or property."

Has the individual established that he/she does not pose a danger to persons or property?

☐ Yes ☐ No

Discussion (if more space is needed, please attach additional page(s)):

Please see back of form

ERO NEW YORK CITY FIELD OFFICE

Flight Risk:

Factors to consider for flight risk may include, but are not limited to: whether the individual has a fixed address in the U.S.; the length of residence in the U.S.; family ties in the U.S.; employment history; record of appearance in court; criminal history (including how recent and serious); identified disabilities or medical conditions; history of immigration violations; manner of entry into the U.S.; attempts to flee prosecution; and whether an individual has upcoming court dates in state or local courts.

Has the individual established that he/she does not pose a flight risk? ☐ Yes ☐ No

If the noncitizen does pose a flight risk, have you determined that no forms of release on conditions can mitigate the risk of flight? ☐ Yes ☐ No

Discussion (if more space is needed, please attach additional page(s)):

Special Vulnerabilities:

The officer should consider whether the noncitizen has any identified special vulnerabilities, such as physical illness; mental illness; disability; elderly; pregnant; nursing; primary caretaking responsibility; sexual orientation/gender identity; or other special circumstance that warrants consideration. No one factor is determinative.

Have you asked and considered whether the individual has any special vulnerabilities?

☐ Yes ☐ No

Have you identified a special vulnerability? ☐ Yes ☐ No

Please ensure your determination is consistent with current statutory and regulatory authority and applicable agency guidance.

INITIAL CUSTODY DETERMINATION

☐ Bond is set at _____
☐ Release to ATD or other conditions

☐ Release on Recognizance
☐ Detain

Supervisory Detention and Deportation Officer: _____

Date: _____

Time Completed*: _____
 (* if not e-signed)

EXHIBIT B

Advisal Notice

ERO NEW YORK CITY FIELD OFFICE

IMPORTANT INFORMATION ABOUT
SECTION 236(a) INITIAL DETENTION DECISIONS

NOTE: This form must be provided to an arrested person at the beginning of processing.

1. ICE will make an individualized determination as to whether you will be detained or released, and if released, the conditions of release.
2. Under the current regulation, you bear the burden to demonstrate to the officer that you do not pose a danger to property or persons, and that you are likely to appear at all future proceedings. 8 C.F.R. § 236.1(c)(8).
3. You may choose to answer or not answer any questions at any time. Any statement you make may be used against you in a subsequent proceeding, including without limitation by ICE or an Immigration Judge, and including in deciding whether you will be detained or whether you will be removed from the United States.
4. You have a right to be represented by an attorney or accredited representative of your choosing at no expense to the federal government. ICE will provide you with a list of free or low-cost legal service providers in case you cannot afford an attorney.
5. An immigration officer will communicate with you in a language you understand.
6. You may refuse to sign any document.
7. If you are detained, you may request a custody redetermination from ICE or seek review before an Immigration Judge.

CERTIFICATION

I have read this Notice or had the Notice read to me in the _____ language.

☐ Yes

☐ No

Signature of Arrested Person

Printed Name of Arrested Person

Date

Method of Interpretation/Interpreter: _____

Interviewing Officer Name: _____