United States Department of Justice

United States Attorney
Northern District of New York

445 Broadway, Room 218
James T. Foley U.S. Courthouse
Albany, New York 12207-2924

Tel.: (518) 431-0247
Fax: (518) 431-0386

June 24, 2026

VIA CM/ECF
Hon. Elizabeth C. Coombe
Federal Building and U.S. Courthouse
P.O. Box 7255
Syracuse, NY 13261-7255

RE: *Ordonez Luna, et. al. v. Ball, et al.*
Civil Action No. 9:26-cv-01227 (ECC-PJE)

Dear Judge Coombe:

This Office represents the Respondents (or the "government") in this habeas corpus action, in which Petitioners Juan Fernando Pineda-Jimenez and Leonel Antonio Ordonez-Luna ("Petitioners") challenge their detention by U.S. Immigration and Customs Enforcement ("ICE"). On June 13, 2026, Petitioners filed a joint Emergency Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ("Petition"). Dkt. No. 1. Following a conference held on June 15, 2026, the Court directed the government to file a response to the Petition by June 24, 2026. Dkt. No. 6.

The Petition presents two issues: (1) whether ICE has statutory authority to detain the Petitioners under 8 U.S.C. § 1225(b)(2)(A) or § 1226(a); and (2) whether the Petitioners, if properly treated as detained under § 1226(a), were afforded the procedural safeguards available under that provision. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated letter response in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law, the government will be happy to submit one upon request.

Petitioner Ordonez-Luna is a native and citizen of Nicaragua. Ex. A[1] at 1. He entered the United States without inspection near Del Rio, Texas, on or about March 1, 2020. *Id.* Upon apprehension by U.S. Border Patrol, he was placed in expedited removal proceedings and referred for prosecution for improper entry under 8 U.S.C. § 1325. *Id.* at 3. He pleaded guilty to that offense on March 4, 2020, and was sentenced to five days imprisonment. Ex. B. After receiving a positive credible fear determination on March 19, 2020, the expedited removal order was vacated pursuant to 8 C.F.R. § 208.30, and on March 23, 2020, he was served with a Notice to Appear and placed into removal proceedings under Immigration and Nationality Act (INA) § 240, 8 U.S.C. § 1229a.

[1] Exhibits "A" – "O" have been provided to me by counsel for ICE.

Ex. C., Ex. D. He was subsequently granted interim parole on April 17, 2020, upon posting a $3,000 bond. Ex. C at 7-8. In January 2025, he was arrested in New York in connection with allegations involving a fraudulent check and was charged with Criminal Possession of a Forged Instrument in the Second Degree. Ex. I at 3. He ultimately pleaded guilty on June 5, 2025, to the lesser offense of Misapplication of Property under New York Penal Law § 165.00. Ex. E.

Petitioner Juan Fernando Pineda-Jimenez is also a native and citizen of Nicaragua. Ex. F at 1. On or about July 19, 2022, U.S. Customs and Border Protection ("CBP") Border Patrol agents encountered him near San Luis, Arizona, after he entered the United States without inspection from Mexico. *Id.* Shortly thereafter, CBP released him without issuance of charging documents. *Id.* On August 1, 2022, ICE ERO served him with a Notice to Appear ("NTA") initiating removal proceedings. Ex. G. CBP records further indicate that he was released on an Order of Recognizance ("OREC") in August 25, 2022 following his appearance before ICE Enforcement and Removal Operations ("ERO"). Ex. F, Ex. N. Petitioner Pineda-Jimenez failed to report for an ICE appointment on April 2, 2026, which is identified as the underlying violation of his OREC conditions referenced in the I-213. Ex. O at 2.

On June 13, 2026, ICE Enforcement and Removal Operations ("ERO") officers encountered Petitioners during a targeted enforcement operation in Fulton, New York. Ex. H, Ex. I. Officers observed them exiting a residence and entering a vehicle and initiated a vehicle stop. *Id.* During the encounter, Petitioner Ordonez-Luna confirmed his Nicaraguan citizenship and acknowledged he did not have immigration documents. *Id.* Officers simultaneously identified the passenger as Petitioner Pineda-Jimenez, who confirmed Nicaraguan citizenship. *Id.* Pineda-Jimenez was advised of his violation of OREC conditions requiring reporting to ICE in Syracuse, New York. Ex. H, Ex. N. Both individuals were taken into ICE custody without incident pursuant to immigration arrest warrants. Ex. J, Ex. K.

On June 13, 2026, a deportation officer executed a Form I-286 Notices of Custody Determination pursuant to INA § 236, 8 U.S.C. § 1226, indicating that each Petitioner was to be detained pending a final administrative determination in his immigration proceedings. Ex. L, Ex. M. The I-286 forms advised Petitioners of their right to request a custody redetermination (bond hearing) before an Immigration Judge. *Id.* Both Petitioners were afforded that opportunity but declined to make an election and refused to sign the acknowledgments. *Id.*

The Government acknowledges that the United States Court of Appeals for the Second Circuit recently held in *Da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), that 8 U.S.C. § 1225(b)(2)(A) does not authorize mandatory detention in certain circumstances and that such noncitizens are instead detained under 8 U.S.C. § 1226(a). *Da Cunha*, however, does not address the distinct custody posture presented here, where Petitioners were initially encountered at or near the border shortly after entry, processed under § 1225(b), released from custody, and later re-apprehended and detained. See *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025). Petitioner Ordonez-Luna was processed for expedited removal and then paroled, so his detention authority is § 1225(b)(1)(B)(ii).

Petitioner Pineda-Jimenez was encountered and then released on OREC, so his detention authority is § 1225(b)(2)(A). Because *da Cunha* is factually distinct, it does not expressly control the statutory question presented in this case.

However, the government acknowledges that this Court's prior decisions § 1226(a), not § 1225(b)(2), govern subsequent re-detention of a noncitizen previously released on conditions, even where the noncitizen was initially encountered at or near the border and was subject to expedited removal procedures. *See Mendez v. Field Office Director*, 9:26-cv-00337 (ECC), Dkt. No. 11 at 5 (Mar. 16, 2026) (finding that "[p]etitioner, who was released into the United States on her own recognizance approximately 18 months before her February 2026 arrest, was not seeking admission when she was arrested and that, for the persuasive reasons articulated by other district courts, Section 1226(a), not Section 1225(b)(2)(A) applies"); *Bravo Perez v. Bondi*, 9:26-cv-00205 (ECC), Dkt. No. 10 at 2 (Feb. 20, 2026) ("[T]he Court finds that § 1226(a) governs Petitioner's detention, not—as Respondents argue—§ 1225(b)(2)(A), and that Petitioner therefore 'may only be subject to detention as a matter of discretion.").

Thus, the government recognizes that under this Court's prior precedence, it would likely conclude that *Da Cunha* controls the resolution of the statutory question presented here. To the extent *Da Cunha* is deemed applicable, it would support application of § 1226(a) to Petitioners' detention. The Government respectfully maintains its position that §§ 1225(b)(1)(B)(ii) and 1225(b)(2)(A) remain the correct statutory authority, and reserves all rights to seek further review or reconsideration of that issue in the event of en banc or Supreme Court review or any change in controlling authority.

Turning to Petitioners' procedural due process claims, the governing framework likewise confirms that no additional pre-deprivation custody hearing is required. In *Sterling v. Bondi*, No. 3:25-cv-2122 (KAD), 2026 WL 1746537 (D. Conn. June 17, 2026), the court rejected the argument that due process requires a pre-arrest individualized custody hearing in the § 1226(a) context, reasoning that Congress has structured custody determinations through prompt post-arrest review mechanisms within the statutory scheme. That reasoning is consistent with Supreme Court precedent recognizing that post-deprivation procedures may satisfy due process in the immigration detention context. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 847–48 (2018); *Reno v. Flores*, 507 U.S. 292, 309 (1993).

Petitioners' suggestion that they were entitled to a pre-deprivation custody hearing prior to arrest is therefore inconsistent with the statutory framework and controlling precedent. Section 1226(a) vests broad discretionary authority in DHS to arrest and detain noncitizens pending removal proceedings, subject to post-arrest review procedures. As *Sterling* confirms, the Constitution does not require additional pre-deprivation procedural safeguards beyond those already embedded in the statutory bond-hearing process.

Nonetheless, the administrative record demonstrates that Petitioners were lawfully arrested and are properly detained under 8 U.S.C. § 1226(a). On June 13, 2026, Petitioners were encountered during a targeted enforcement operation by ICE ERO, identified as removable noncitizens, and taken into custody pursuant to statutory and regulatory authority governing immigration arrests. See 8 U.S.C. § 1226(a). Ex. H, Ex. I. Following their arrest, each Petitioner received an individualized custody determination via Form I-286 and was advised of the right to seek a bond hearing before an Immigration Judge but declined to do so. Ex. L, Ex. M.

Petitioners' procedural due process claims are therefore unsupported by the record. Each Petitioner was provided notice of custody status and access to a neutral decisionmaker through the immigration court bond process but declined to avail himself of that remedy. Courts have consistently recognized that the availability of prompt post-deprivation review before an Immigration Judge satisfies due process in the § 1226(a) context. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 847–48 (2018); *Reno v. Flores*, 507 U.S. 292, 309 (1993).

Moreover, even assuming *arguendo* that the Court were to grant the Petition, the appropriate remedy would be an individualized custody determination under § 1226(a), rather than immediate release.

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, it respectfully submits that the Court can resolve this matter on the present record without further briefing or hearing. To the extent the Court determines that additional briefing or argument would be helpful, the government is prepared to present its position.

Respectfully Submitted:

TODD BLANCHE
Acting Attorney General

JOHN A. SARCONE III
First Assistant United States Attorney

By: *s/ Alexis M. Osborne*
Alexis M. Osborne
Assistant United States Attorney
Bar Roll No. 707475

CC: Counsel of Record (via CM/ECF)