IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

LEONEL ANTONIO ORDONEZ LUNA; **JUAN FERNANDO PINEDA JIMENEZ;** ***Petitioners,*** **v.** **MICHAEL BALL, et al.;** ***Respondents.***	**Civil Action No. 9:26-cv-01227-ECC-PJE** **PETITIONERS' REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioners, Leonel Antonio Ordonez Luna ("Ordonez") and Juan Fernando Pineda Jimenez ("Pineda"), hereby reply to the Government Respondents' response to the Petition in this matter.

The Respondents claim that "Ordonez-Luna was processed for expedited removal and then paroled, so his detention authority is § 1225(b)(1)(B)(ii)" and that "Pineda-Jimenez was encountered and then released on OREC, so his detention authority is § 1225(b)(2)(A)." Yet later, they claim that "the administrative record demonstrates that Petitioners were lawfully arrested and are properly detained under 8 U.S.C. § 1226(a)." So which one is it? Are they detained under section 1225 or 1226? Is the government picking and choosing which statute they are detaining people under based on whether the detainee chooses to bring a challenge in federal court? Many Courts have held that, although Respondents may have been able to lawfully detain a Petitioner under 8 U.S.C. § 1226(a), the unlawful detention under § 1225(b) and the failure to provide an individualized bond hearing should not be "corrected" by the Court by converting Petitioner's detention to a "potentially lawful alternate form under a different statute with

different procedural requirements and rules." *Fajardo-Nugra v. Soto*, No. 26-975, 2026 WL 579192, at *2 (D.N.J. Mar. 2, 2026) (granting Petitioner's habeas petition and ordering Petitioner's release based on the Government's flawed application of § 1225(b)(2).)

Here, the Respondents claim that the Second Circuit's decision in *Da Cunha* does not "expressly" control the statutory question presented in this case because the facts are distinct from the *Da Cunha* petitioner in that Ordonez-Luna and Pineda-Jimenez were encountered near the border and released, whereas the *Da Cunha* petitioner successfully entered without inspection and was not apprehended until later. Yet the Respondents acknowledge that this Court's decisions have found that similarly-situated noncitizens who are re-detained in the interior of the United States after an initial border apprehension and release, are detained under Section 1226(a), not 1225(b). *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.")

Petitioners have briefed the liberty interest authorities and points as well as the warrantless arrest authorities and points in the memorandum of law filed at ECF No. 7. Petitioners point out that Respondents have provided no support for why they believe Petitioner Pineda-Jimenez's purported failure to appear for his check in appointment in April gave rise to him being a flight risk, nor did they specifically demonstrate that he was questioned about that

purported failure to appear for an ICE check-in and given an opportunity to explain it. No declaration has been filed from an ICE officer in charge of Pineda-Jimenez's check-in appointments explaining the circumstances or any attempts to make contact with Pineda-Jimenez after that purported April check-in date. Undersigned counsel does not have any knowledge of the veracity of the statements surrounding this event, but would point out that no information has been provided by Respondents to substantiate whether any further communications were made after this purported missed appointment. Certainly, missing a single appointment, if a valid excuse existed such as illness, transportation issues, or otherwise, would not justify the arbitrary re-detention without a pre-deprivation hearing that took place here.

Furthermore, the ICE documentation provided with Respondents' response to the Petition seem to indicate that Ordonez-Luna was the target of the enforcement action, not Pineda-Jimenez. No information has been provided as to when the I-200 administrative arrest "warrants" were actually issued and signed. It appears that both of these I-200 warrants may have been post-hoc warrants issued after Petitioners were arrested without any warrant. Petitioners refer to the memorandum of law at ECF No. 7 with respect to the law on warrantless arrests. ICE would have had to determine that Petitioners were a flight risk before detaining them without a warrant in order to comply with the law. There is no indication that such an assessment was made prior to the re-detention of Petitioners.

Under these circumstances, both Ordonez-Luna and Pineda-Jimenez were re-detained arbitrarily without justification. In the case of Ordonez-Luna, who posted a $3,000 bond for his release, Respondents would have had access to and been aware of his conviction for "Misapplication of property" in June 2025, over a year ago, when it occurred. They did not take any action to pursue Ordonez-Luna and now, over a year later, claim this is the reason for their

arbitrary enforcement action. Respondents cannot sit by idly for over a year and then, based on a non-violent misdemeanor conviction that does not give rise to any independent removability grounds, use it as a basis to justify the arbitrary re-detention of a non-citizen without a pre-deprivation hearing.

CONCLUSION

For the reasons stated above, Petitioners should be ordered immediately released from immigration custody and Respondents should be enjoined from detaining or deporting them pending resolution of their immigration matters before the Executive Office for Immigration Review (including any Petition for Review to a Circuit Court of Appeals).

Dated: June 26, 2026

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