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By ECF

Honorable Jamel K. Semper, U.S.D.J.
U.S. District Court for the District of New Jersey
50 Walnut Street
Newark, NJ 07102

November 17, 2025

Re: *Villacorta Perlera v. Doe*, No. 25-17122-JKS

Dear Judge Semper:

I am the attorney for Petitioner pro hac vice, and I submit this letter in reply to Respondent's November 12 letter responding to the Petition (ECF 7), and in advance of tomorrow's conference.

In their response to the petition, Respondents acknowledge that Petitioner entered the US in 2007, and was detained by ICE in October 2025, and that "This matter raises many of the same issues the Court recently decided in *Maldonado v. Cabezas*, No. 25-13004 (JKS), 2025 WL 2985256, at *4 (D.N.J. Oct. 23, 2025)", namely, whether detention of a non-citizen "present in the United States when [] detained [], not at the threshold of entry" (*id.*) is pursuant to 8 U.S.C. § 1125(b) or 1226(a). In that case, the Court joined the majority of other courts to have decided the issue and held that "Because Petitioner resided in the United States when detained.... § 1226, not § 1225, is applicable to Petitioner." *Id.*

Respondents do not attempt to distinguish *Maldonado* in any way, nor do they argue that its reasoning is incorrect or should be reconsidered. Instead, they state only that ICE and Immigration Judges must follow the BIA's decision (in *Matter of Yajure Hurtado*, 29 I&N Dec. 215 (BIA 2025)) that § 1225(b)(2) does apply to noncitizens like the Petitioner "in the absence of precedential authority to the contrary from the Third Circuit." (ECF 7, p. 2). Both because the Court's interpretation and application of the law is the correct one, and because Respondents have not argued otherwise, the Court should find that Petitioner's detention is now pursuant to 8 U.S.C. § 1226(a). Because Respondents take the position that Immigration Judges must follow the contrary holding of the Board of Immigration Appeals, the Court should order Petitioner's immediate release.

On November 13, 2025, Respondents placed Petitioner in removal proceedings by filing a Notice to Appear with the Immigration Court in Newark, NJ (attached hereto as Exhibit A), as well as a Form I-213, "Record of Deportable/Excludable Alien", (attached hereto as Exhibit B).

This I-213 states that after his apprehension, Petitioner was served with the Notice to Appear as well as an I-200 Warrant of Arrest (p. 2), but not with any notice of an individual custody determination or right to seek review thereof. (See *Maldonado v. Cabezas*, *supra*, 2025 WL 2985256, at *5, citing 8 C.F.R. § 1236.1(c)(8)). The fact that Petitioner was detained on foot of a warrant of arrest further reinforces that his detention is pursuant to 8 U.S.C. § 1226(a) (which authorizes detention “On a warrant issued by the Attorney General...”) rather than 1225(b)(2), which makes no reference to either an arrest or a warrant. And the fact that he was not provided with the requisite notice of custody determination or right to seek review thereof provides an additional basis on which the Court can – and should – find that his detention was unlawful.

However, at the time this Habeas petition was filed, and indeed up until November 13, Petitioner had not been placed in removal proceedings, and so there was no statutory authority whatsoever for his detention. Both § 1226(b)(2) and § 1226(a) only authorize detention pending removal proceedings, and while there is no statutory limit on how long a person can be detained by ICE prior to the commencement of removal proceedings, they are typically commenced within a day or two of the person being detained. There is no statutory or other authorization whereby Respondents can keep someone detained for a full two weeks prior to commencing removal proceedings, particularly where, as here, the charging document used to commence the proceedings (the Notice to Appear) was completed on October 31, the day of Petitioner’s arrest.¹

Accordingly, Petitioner’s detention was unconstitutional for this reason at the time the habeas petition was filed (see Petition for a Writ of Habeas Corpus, ECF 1, Count Three), and it continues to be unconstitutional now.

The remedy for this unconstitutional detention is Petitioner’s immediate release, *Maldonado*, *supra*, 2025 WL 2985256, at *7, citing *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025) (“the Court may fashion a remedy that returns petitioner to her position prior to her unlawful detention.”). See also *Martinez v. McAleenan*, 385 F. Supp. 3d 349 (S.D.N.Y. 2019) (finding immediate release on a writ of habeas corpus appropriate for two reasons; first, because it “can be used to equitably redress that unlawful detention, for which there is no other remedy. The second is that Plaintiff’s present detention remains unconstitutional, and the writ’s most classic function is to release someone who is presently unlawfully detained.” *Id.*, 365)

I thank the Court for its consideration of this submission.

¹ Notwithstanding the Notice to Appear, Petitioner was repeatedly informed by ICE officials that he was being detained, not for removal proceedings, but instead for removal to El Salvador, and on one occasion he was actually removed from the current detention facility (Delaney Hall) for transportation to a detention facility in Louisiana, apparently pending his removal, before being returned to Delaney Hall. Once it was brought to their attention, Respondents’ counsel were prompt in ensuring that Respondent remained within the jurisdiction.

Sincerely yours,

/s/ Paul O'Dwyer

Paul O'Dwyer

Attorney for Petitioner *pro hac vice*.

/s/ Alex R. Rossebo

Alex Rossebo

Petitioner's attorney of record.