U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 1, 2025

By ECF
Hon. Ronnie Abrams
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Salazar Osuna v. Francis, et al.*, No. 25 Civ. 9823 (RA)

This Office represents the government in the above-referenced immigration habeas corpus action, in which petitioner Deglis Yohardis Salazar Osuna ("Petitioner"), an alien in removal proceedings, challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). The legal issues presented concern the statutory authority for ICE's detention of Petitioner, whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. Petitioner principally seeks an order from this Court to release him from detention or provide him with a bond hearing under 8 U.S.C. § 1226(a) within seven days. While reserving all rights, including the right to appeal, the government submits this letter in lieu of a formal responsive memorandum of law to conserve judicial and party resources, and to expedite the Court's consideration of this case, in light of this Court's decision on the record in *Rivera Esperanza v. Francis, et al.*, No. 25 Civ. 8727 (RA) ECF No. 23.

Relevant Underlying Facts

On October 7, 2022, Petitioner, a native and citizen of Venezuela, unlawfully entered the United States without inspection near El Paso, Texas. December 1, 2025 Declaration of Mincheol So ("So Decl.") ¶ 3. He was encountered by U.S. Customs and Border Protection ("CBP") on the same date, after which he was arrested and transported to the El Paso Sector Processing Center for further processing. So Decl. ¶ 4. Due to lack of available bedspace, Petitioner was released on Alternatives to Detention ("ATD"), and instructed to report to the relevant ICE office for further processing within 60 days. So Decl. ¶ 5. On December 5, 2022, Petitioner reported to ICE in New York as required. So Decl. ¶ 6. ICE issued and personally served Petitioner with a Notice to Appear ("NTA"), charging him as inadmissible under the Immigration and Nationality Act ("INA") section 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. *Id.* He was also served with a Warrant for Arrest of Alien (Form I-200), an Order of Release on Recognizance (Form I-220A), and Notice of Custody Determination (Form I-286). *Id.* Petitioner was then released on his own recognizance. *Id.* The NTA was served on the

Immigration Court, which thereby commenced proceedings against Petitioner. *Id.* Those proceedings remain pending. So Decl. ¶¶ 7-10, 12-15.

On March 10, 2025, Petitioner was arrested by the New York City Polic Department ("NYPD") and charged with New York Penal Law ("NYPL") 120.00(1) Assault 3rd Degree: With Intent to Cause Physical Injury, and NYPL 140.25(a)(b) Burglary 2nd Degree: causes physical injury to any person who is not a participant in the crime. So Decl. ¶ 11. Petitioner's Assault charge remains pending, while he was not arraigned on the Burglary charge. *Id.*

On November 25, 2025, ICE encountered Petitioner at 26 Federal Plaza. So Decl. ¶ 16. Petitioner was identified by ICE due to his criminal charges. *Id.* He was personally served with a warrant of arrest and taken into custody. *Id.* Petitioner is currently detained at Orange County Jail in Goshen, New York. *Id.* ¶ 17.

Habeas Petition

Petitioner commenced this action on November 25, 2025, through a next friend. ECF No. 1. Petitioner challenges his detention stemming from his arrest by ICE on November 25, 2025. He argues that the detention provision of 8 U.S.C. § 1225(b) does not apply to him because he previously entered and is residing in the United States. Pet. ¶ 4. Instead, Petitioner contends that his detention is governed by 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond. *Id.*

In Count One, Petitioner he asserts that application of § 1225(b)(2)(A) to him violates the INA. Pet. ¶¶ 59-60. In Count Two, Petitioner asserts a violation of the regulations governing bond. Pet. ¶ 64. In Count Three, Petitioner argues that his detention without a bond hearing violates due process. Pet. ¶¶ 66-68. In Count Four, Petitioner asserts a violation of the Administrative Procedure Act. Pet. ¶¶ 70-73. In Count Five, Petitioner asserts a claim in the event that he is subjected to expedited removal (which is not an issue here). Pet. ¶¶ 75-76.

In his prayer for relief, Petitioner principally asks the Court to order his release, or in the alternative direct that he be provided a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days. Pet. Prayer for Relief.

Rivera Esperanza v. Francis

On November 12, 2025, this Court issued an order on the principal legal question presented in this action in a similar habeas case challenging an alien's re-detention after prior release on an order of recognizance at the border. There, petitioner attempted to enter the country in 2023 and was encountered by CBP officers soon after crossing at the border. No. 25 Civ. 8728, ECF No. 11-1 (NTA). The petitioner was placed in removal proceedings and then released on his own recognizance. Following an appointment with ICE, on October 21, 2025, the petitioner was detained by ICE, and filed a habeas petition challenging the lawfulness of his detention.

The Court granted the petition and ordered petitioner's immediate release ruling that the petitioner's detention was governed by Section 1226, not Section 1225. *Rivera Esperanza* Transcript ("Tr.") at 19.[1] In reaching that conclusion, the Court "agree[d] with the other courts in this district" and found that "the government violated [the petitioner's] due process rights when it detained him without any notice or explanation." *Id.* The Court ordered respondent to immediately release the petitioner from custody. *Id.* The Court indicated that an opinion would follow. *Id.*

Discussion

With respect to Counts I through III, while the government respectfully disagrees with the Court's decision in *Rivera Esperanza*, the government acknowledges that the decision would control the result in this case if the Court adheres to that decision, as the facts of this case are materially indistinguishable from those of *Rivera Esperanza*—in that Petitioner was initially detained near or at the time he crossed the border into the United States, released, served with a NTA, and then subsequently detained after he appeared for a master calendar hearing. Thus, to conserve judicial resources and to expedite the Court's consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Rivera Esperanza*,[2] and the Court can decide this matter without further briefing. However, should the Court prefer to receive a formal opposition brief in this matter, we will file such a brief upon the Court's request.[3]

Further, notwithstanding its submission of this letter in lieu of a formal brief, the government reserves all rights, including the right to appeal. Accordingly, for the reasons set forth in the government's brief in *Rivera Esperanza v. Francis*, respondents respectfully requests that the Court deny this habeas petition.

Petitioner's Demand for a Bond Hearing

If the Court determines that Petitioner's detention is governed by Section 1226(a), then Petitioner would be entitled to a bond hearing in immigration court for a determination whether he presents a danger to others or a flight risk. In that event, the government requests that the Court order a bond hearing be held, as opposed to ordering outright release. *See, e.g.*, *Romero Perez v. Francis*, No. 25 Civ. 8112 (JGK), 2025 WL 3110459, at *3 (S.D.N.Y. Nov. 6, 2025) (in similar case, holding that "the petitioner should first exhaust his remedies through the § 1226(a) bond hearing that the Court orders before proceeding with this habeas petition"); *see also Sun v. Almodovar*, No. 25 Civ. 9262 (PKC), 2025 WL 3241268, at *3 (S.D.N.Y. Nov. 20, 2025)

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[1] A copy of the transcript is attached to this letter.

[2] Specifically, the respondents incorporate by reference all arguments raised in its Memorandum of Law in Opposition to the Petition. ECF No. 12; *see* ECF No. 11 (Response), and ECF No. 13 (Declaration of Damian Giraldo in Opposition).

[3] Given the above, it is unnecessary for the Court to reach Counts IV and V. If the Court wishes to address those claims, the government respectfully requests an opportunity to provide a response to those claims, which are without merit.

("Because petitioner . . .is being detained pursuant to section 1226(a) and not section 1225(b)(2)(A), he is entitled to an individualized bond hearing under section 1226(a)").

* * *

I thank the Court for its consideration of this submission.

Respectfully,

JAY CLAYTON
United States Attorney

/s/ Leslie A. Ramirez-Fisher

BY: LESLIE A. RAMIREZ-FISHER
Assistant United States Attorney
Telephone: (212) 637-0378
Fax: (212) 637-2750
Email: leslie.ramirez-fisher@usdoj.gov

Encl.

cc: Counsel of Record (By ECF)