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December 2, 2025

BY ECF

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

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

Dear Judge Abrams:

We represent Deglis Yohardis Salazar Osuna, who was previously *pro se*, in the above-referenced action, in which he challenges his unlawful detention by U.S. Immigration and Customs Enforcement ("ICE") and respectfully submit this letter in response to Respondents' December 1, 2025 letter brief (the "Opposition" or "Opp.") in reply to our client's Petition for Writ of Habeas Corpus filed on November 25, 2025 (the "Petition" or "Pet."). As Respondents concede in their Opposition,[1] Your Honor's ruling in *Rivera Esperanza v. Francis, et al.*, No. 25 Civ. 8727, governs this case and it follows, as a result, that Respondents violated Deglis's due process rights when it detained him on November 25, without any notice or opportunity to be heard. Therefore, just as in *Rivera Esperanza*, we respectfully request that Your Honor grant the Petition and order Deglis's immediate release. We respectfully also request that Your Honor enjoin Respondents from denying bond to Deglis in any subsequent proceeding on the basis that he must be detained pursuant to 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226(c) absent a change in relevant circumstances; if Deglis is granted bond, enjoin Respondents from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(2); and grant attorney's fees and costs pursuant to 5 U.S.C. § 504 and 28 U.S.C. § 2412 as may be appropriate.

Factual Background

Deglis fled Venezuela and entered the United States on or around October 7, 2022. Pet. ¶ 2. He was subsequently placed into removal proceedings after receiving a Notice to Appear where he was charged under the Immigration and Nationality Act ("INA") Section

[1] In their Opposition, Respondents do not make any individualized legal arguments as to Deglis and instead refer to and incorporate by reference arguments that they made in the *Rivera Esperanza* case. Respondents should therefore be deemed to have waived the right to make any individualized arguments.

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. Decl. of Deportation Officer Mincheol So dated Dec. 1, 2025 ¶ 6 ("So Decl."). He was then released on his own recognizance. *Id.*

Deglis lives in New York with his family and is a 10th grade student at [redacted] Pet. ¶ 52. He was arrested by the New York Police Department in March 2025, but all charges were almost immediately dismissed or adjourned in contemplation of dismissal. *See* Certificate of Disposition dated Nov. 28, 2025 ("COD"), annexed hereto as Exhibit A. He has pursued humanitarian relief before the immigration court which remains pending. Pet. ¶ 52. To date, Deglis has presented himself at every scheduled hearing before the immigration court. So Decl. ¶¶ 7, 8, 13, 15. On November 25, 2025, Deglis was arrested by ICE agents as he left an immigration hearing, and he was detained at 26 Federal Plaza and then transferred to Orange County Correctional Facility. So Decl. ¶¶ 16–17. He was not provided with any prior notice of his detention, nor was he provided with a showing of changed circumstances and an opportunity to respond. *Id.* ¶ 16; Pet. ¶ 55.

Deglis has been detained under Section 1226(a)

First, as Your Honor has previously concluded, 8 U.S.C. § 1226(a), not Section 1225(b)(2)(A), applies to noncitizens like Deglis who resided in the United States at the time of their detention. Respondents concede that under the Court's decision in *Rivera Esperanza*, Deglis falls within the scope of Section 1226(a). Moreover, that conclusion follows from the plain text of the statutes, as Your Honor and scores of courts have also found.

During the *Rivera Esperanza* hearing, Respondents argued that Section 1225(b)(2)(A) applies to any noncitizen who is an "applicant for admission." *See* Hr'g Tr. 6:19–7:8. But that is just one requirement. Section 1225(b)(2)(A) applies only to a noncitizen who is (1) an "applicant for admission" *and* (2) "seeking admission" *and* (3) "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see also Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025). And Respondents cannot show that Deglis is 'seeking admission.' The term 'seeking' implies present action, *see Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025) (Ho, J.), and the term 'admission' is statutorily defined to mean "lawful entry . . . into the United States," 8 U.S.C. § 1101(a)(13)(A). Thus, the phrase 'seeking admission' refers to actively attempting to go into the United States. *See J.G.O. v. Francis*, No. 25-cv-7233, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (Subramanian, J.) ("Putting that all together, 'seeking admission' requires an alien to *continue* to want to *go into* the country.").

The Supreme Court has explained that Section 1226 "generally governs the process of arresting and detaining that group of aliens pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *see also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) ("It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality."). And in addition to Your Honor, other courts in this District have consistently reaffirmed that Section 1226 applies

to noncitizens already residing in the United States.[2] Thus, since Deglis was residing within the United States when he was detained, he falls within the scope of Section 1226(a).

Second, Respondents have consistently treated Deglis as subject to Section 1226(a), which is fatal to their contention that he is now subject to Section 1225(b)(2)(A). Deglis was previously charged under Section 1226(a). *See* So Decl. ¶ 6 (explaining that Deglis was charged "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" – not as someone 'seeking admission'). He was released on his own recognizance under Section 1226(a). So Decl. ¶ 6; *see also Lopez Benitez*, 2025 WL 2371588, at *4 (explaining that "a release on recognizance" is "a form of 'conditional parole' from detention, authorized under § 1226"). This Court should not credit Respondents' "post hoc" position, "raised for the first time" in their Opposition, that Section 1225(b)(2)(A) applies. *Lopez Benitez*, 2025 WL 2371588, at *5. During the *Rivera Esperanza* hearing, Respondents also tried to argue that Sections 1225(b) and 1226(a) are not mutually exclusive – and so their prior treatment of Deglis as subject to Section 1226 does not bar their changing his classification now – but that runs contrary to established precedent. *See id.* at *4 (explaining that if a person "was detained pursuant to one provision, he cannot be subject to the other"); *Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018) (explaining that Sections 1225(b) and 1226 apply to different categories of noncitizens); *Guzman Andujar*, 2025 WL 3215597, at *2 (same). Moreover, it is contrary to Respondents' contentions in a different case before Judge Ho just a few months ago in which they conceded that Sections 1225 and 1226 are mutually exclusive. *See Lopez Benitez*, 2025 WL 2371588, at *4.

Given that Section 1226(a) applies, Deglis was "entitled to an opportunity to request conditional release and an individualized initial determination . . . as to that request." *Tumba Huamani*, 2025 WL 3079014, at *6. "Respondents' ongoing detention of [Deglis] with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates [his] due process rights" and he "is therefore entitled to release." *Id.* at *9 (citation omitted).

Respondents' mischaracterization of Deglis's criminal history

In their filings, Respondents vaguely assert that Deglis was "identified" "due to his . . . pending criminal charges," So Decl. ¶ 16, and gratuitously refer to his involvement with the criminal justice system in a transparent attempt to dissuade this Court from granting immediate release. The reference is gratuitous because Respondents are not relying on this history to justify Deglis's mandatory detention, nor do they argue that any of this suggests he is a flight risk or danger to the community. Nor could they, because, as detailed below, the criminal history Respondents decided to share with the Court is misleading and incomplete.

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[2] *See, e.g.*, *Guzman Cardenas v. Almodovar*, No. 25-cv-9169, 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025) (Furman, J.); *Lopez Benitez*, 2025 WL 2371588, at *3–9; *Villegas ex rel. Guzman Andujar v. Francis*, No. 1:25-cv-09199, 2025 WL 3215597, at *2–4 (S.D.N.Y. Nov. 18, 2025) (Rochon, J.); *Romero Perez v. Francis*, No. 25-cv-8112, 2025 WL 3110459, at *2–3 (S.D.N.Y. Nov. 6, 2025) (Koeltl, J.); *Tumba Huamani v. Francis*, No. 25-cv-8110, 2025 WL 3079014, at *2–6 (S.D.N.Y. Nov. 4, 2025) (Liman, J.); *J.G.O.*, 2025 WL 3040142, at *2–4.

First, Respondents inform the Court that Deglis had been charged with burglary, while noting that "he was not arraigned." Opp. at 2. While it is true that Deglis was "not arraigned" on the charges, Respondents fail to inform the Court that the reason why he was not arraigned on the burglary charges was because they were almost immediately *dismissed and sealed*. *See* COD, Ex. A. Those charges are, therefore, legal nullities and should not be used for any purpose. *See* N.Y. C.P.L. § 160.60 (stating that upon termination of a prosecution in favor of the accused, the arrest and prosecution "shall be deemed a nullity").

Second, Respondents informed the Court that Deglis has an assault "charge [that] remains pending." Opp. at 2. They again, however, fail to provide the Court with the full details about these *misdemeanor* charges: The Queens County District Attorney's Office offered Deglis and the state court granted an adjournment in contemplation of dismissal ("ACD") of those charges on March 14, 2025. *See* COD, Ex. A. Under New York law, a charge that has been adjourned in contemplation of dismissal "shall not be considered a pending action." *Id.* In any event, Deglis has not pleaded to any conduct, has not admitted any wrongdoing, nor has he been convicted of anything. As a result of the ACD, on March 13, 2026, those misdemeanor charges will be dismissed and sealed. Once dismissed and sealed, "the arrest and prosecution shall be deemed a nullity and [Deglis] shall be restored . . . to the status he occupied before his arrest and prosecution." N.Y. C.P.L. § 170.55(8). Moreover, as the Court is likely aware, even before the final dismissal and sealing, because Deglis has not been convicted of anything, New York law recognizes he shall not "suffer any disability or forfeiture as a result of" receiving an ACD. *Id.*

Immediate release is the only appropriate remedy

If *Rivera Esperanza* applies, then the proper remedy is immediate release. *See* Opp. at 1. "[G]iven the nature of the constitutional violation [Deglis] sustained here – i.e., Respondents' failure to conduct [an] individualized assessment before detaining him – any post-deprivation review by an immigration judge would be inadequate." *Lopez Benitez*, 2025 WL 2371588, at *14. As Judge Torres held in a very similar context:

> The suggestion that government agents may sweep up any person they wish, for any reason, and hold that person in the conditions in which [the petitioner] was and is being held without consideration of dangerousness or flight risk so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment. Respondents' suggestion that [the petitioner] has an adequate remedy available to her thus rings hollow.

Chipantiza-Sisalema v. Francis, No. 25-cv-5528, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (Torres, J.) (footnotes and internal citations omitted).[3]

Despite this litany of cases ordering immediate release, Respondents ask this Court to instead order a bond hearing by an Immigration Judge, relying on *Romero Perez v. Francis*, No. 25-cv-8112, 2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025) (Koeltl, J.). But the

[3] *See also Kelly v. Almodovar*, No. 25-cv-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (Torres, J.); *Tumba Huamani*, 2025 WL 3079014, at *7; *Guzman Cardenas*, 2025 WL 3215573, at *3.

subsequent proceedings in that case alone demonstrate why such proceedings would be futile and why outright release is necessary. The case also illustrates why even further protections being requested by Deglis are necessary. In *Romero Perez*, Judge Koeltl ordered that a bond hearing be held within seven days. *See id.* at *4. But the Immigration Judge refused to hold a hearing on the merits, instead denying bond for lack of jurisdiction – based on an argument the district court had rejected – and so the petitioner was forced to file an emergency motion seeking enforcement of the district court's order. *See* Pet.'s Mot. to Enforce Nov. 6, 2025 Order 1, No. 25-cv-8112 ECF No. 31 (Nov. 10, 2025). Following that emergency motion, the Immigration Judge scheduled a second hearing to grant bail. *See* Pet.'s Am. Mot. to Enforce Nov. 6, 2025 Order 1, No. 25-cv-8112 ECF No. 33 (Nov. 13, 2025). But as soon as bail was granted, the respondents invoked an automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2) to bar the petitioner's release – ostensibly based on their argument rejected by the district court that § 1225(b)(2)(A) applied. *See* Pet.'s Am. Mot. to Enforce Nov. 6, 2025 Order 1, No. 25-cv-8112 ECF No. 33 (Nov. 13, 2025). And only then, after the petitioner was twice denied the opportunity to be released and twice had to file emergency motions with the district court, was the petitioner released. *See* Letter to the Honorable John G. Koeltl, No. 25-cv-8112 ECF No. 34 (Nov. 14, 2025).

To avoid such "a Kafkaesque process of attempted removal and detention," *J.G.O.*, 2025 WL 3040142, at *1, we respectfully submit that it is necessary to not only grant Deglis immediate release but also to enjoin Respondents from denying bond to Deglis in any subsequent proceeding on the basis that he must be detained under 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226(c) absent a change in relevant circumstances and, if Deglis is granted bond, enjoin Respondents from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(2). *See Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (Ho, J.) (granting these additional remedies).

* * *

We respectfully request that Your Honor grant Deglis's habeas petition; order his immediate release; enjoin Respondents from denying bond to him in any subsequent proceeding on the basis that he must be detained 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226(c) absent a change in relevant circumstances; if Deglis is granted bond, enjoin Respondents from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(2); and grant attorney's fees and costs pursuant to 5 U.S.C. § 504 and 28 U.S.C. § 2412.

Respectfully submitted,

/s/ Victor L. Hou

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cc: All counsel by ECF