**U.S. Department of Justice**

*United States Attorney*
*Southern District of New York*

*86 Chambers Street*
*New York, New York 10007*

February 4, 2026

**By ECF**
The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Rodriguez Perez v. Arteta*, No. 26-cv-885 (KPF)

Dear Judge Failla:

This Office represents the government in the above-referenced immigration habeas corpus action, brought by petitioner Yunior Joel Rodriguez Perez ("Petitioner"), an alien challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). On February 2, 2026, the Court issued an order directing the government to file a letter responding to certain questions by noon on February 4, 2026. ECF No. 4. I write respectfully to provide that response, and I apologize that this letter is being filed after the noon deadline.

a. Petitioner's A-number and current place of detention;
    a. Petitioner's A number is A[redacted]
    b. He is currently detained at the Miami Correctional Facility in Bunker Hill, Indiana.[1]

b. The statutory provision(s) under which Respondents assert the authority to detain Petitioner;
    a. Respondents assert that Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A).

c. A copy of any final order of removal;
    a. Petitioner does not have a removal order.

d. Any information regarding the procedural posture of any pending Department of Homeland Security or Executive Office for Immigration Review proceedings.
    a. Petitioner's removal proceedings are pending and he is currently scheduled for an individual hearing to occur on March 2, 2026.

e. An indication of whether this case is distinguishable from previous cases decided by this Court. *See, e.g.*, *Ortiz-Lopez* v. *Francis*, No.25 Civ. 7985 (KPF); *Villarreal Obregon* v. *Francis*, No. 25 Civ. 9465(KPF).
    a. The instant case is not materially distinguishable from the facts and legal issues presented in the Court's decisions in *Ortiz-Lopez* and *Villarreal Obregon*, as discussed further below.

[1] Petitioner was transferred before the Court's injunction issued.

b. **Relevant Facts**

Based on information received from ICE, Petitioner, a citizen of Honduras, unlawfully entered the United States without being admitted or paroled on or about June 16, 2019. At that time, U.S. Border Patrol encountered Petitioner and took him into custody. Border Patrol issued Petitioner a Notice to Appear and released him on his own recognizance. The NTA charged him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, and § 1182(a)(7)(A)(i)(I), as an alien present without valid entry documents

Since being released, Petitioner has been arrested three times for driving under the influence: he was convicted of driving while ability impaired in November 2021, convicted of driving while intoxicated on July 8, 2022, and most recently arrested on March 17, 2024 for aggravated driving while intoxicated (disposition pending).

On November 19, 2025, ICE officers conducted a targeted operation and arrested Petitioner in Newburgh, New York. He was arrested pursuant to an I-200 Warrant for Arrest of Alien, and subsequently detained him pursuant to 8 U.S.C. § 1225(b)(2)(A). His removal proceedings remain pending.

c. ***Ortiz-Lopez v. Francis***

On October 22, 2025, this Court issued a decision on the principal legal question presented in this action in a similar habeas case challenging an alien's re-detention after prior release on his own recognizance. *See Ortiz-Lopez v. Francis*, No. 25 Civ. 7985 (KPF), ECF No. 13 (S.D.N.Y. October 22, 2025); *Ortiz-Lopez* Tr. 28:18-31:25. The Court concluded that the petitioner—who was initially detained at the border in March 2024, charged with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), then released on his own recognizance, and who was arrested again in September 2025 following an immigration court hearing—was not appropriately detained pursuant to § 1225(b). *Ortiz-Lopez* Tr. 30:1-11.[2] Having concluded that the petitioner's detention was not authorized by § 1225(b)(2)(A), and assuming instead detention would be authorized under § 1226(a), the Court determined that petitioner's detention under § 1226 presented "clear procedural due process violations." *Ortiz-Lopez* Tr. 31:2-5.

Finally, the Court considered whether the petitioner should be required, as the government contends would be appropriate in a § 1226(a) case, to exhaust administrative remedies as a prudential matter by requesting a bond hearing before an immigration judge. The Court determined that in light of the importance of constitutional questions at issue, petitioner's denial of bond before an immigration judge, the number of similar habeas cases in this district and in this circuit, and concerns that such relief would be futile, it would not order petitioner "to remain detained to then be subjected to a detention hearing." *Ortiz-Lopez* Tr. 31:5-13.

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[2] In *Ortiz-Lopez*, ICE argued that the petitioner was detained under 8 U.S.C. § 1225(b)(2)(A) because, as an alien who entered without inspection or parole, and was initially detained soon after crossing the border, he was an applicant for admission who is treated, for constitutional purposes, as if stopped at the border. As such, he would not be entitled to release or a bond hearing. *See Ortiz-Lopez v. Francis*, No. 25 Civ. 7985 (KPF), ECF No. 11, at 5-10 ("Gov't Br.").

The Court directed the government "to immediately release [petitioner] from custody and to impose only the restraints on his liberty that existed prior to his re-detention." *Ortiz-Lopez*, ECF No. 13 at 2. The Court further ordered that petitioner "not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where the Government will have the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a)." *Id.*

d. **Discussion**

The primary legal issue presented in this case concerns the statutory authority for Petitioner's detention—whether it is 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)(2)(A). This Court resolved this identical issue in *Ortiz-Lopez*, and, as noted, the facts in this case are not materially distinguishable from those in *Ortiz-Lopez*. While the government respectfully disagrees with the Court's decision in *Ortiz-Lopez*, the government acknowledges that the *Ortiz-Lopez* decision would control the result in this case if the Court adheres to its prior decision. Thus, while the government does not consent to issuance of the writ, while reserving all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, the government is content with relying on, and incorporate by reference, the legal arguments they presented in *Ortiz-Lopez*, and believes the Court can decide this matter without further briefing. In light of this submission, the government does not intend to file an additional response to the petition unless the Court requests either an additional submission or a formal brief; the government will do so upon the Court's request.[3]

Regarding relief, this case is different from the others that were before the Court in that Petitioner has a criminal history and was targeted for re-arrest by ICE. Thus, to the extent the Court finds that his detention can only be under § 1226(a), the government respectfully requests either (1) if the Court orders immediate release, that the Court permit ICE to set reasonable conditions of release and not restrain ICE from re-detaining him under § 1226(a) without first seeking a pre-arrest bond hearing (he would be entitled to a bond hearing if he were arrested and detained under § 1226(a)); or (2) that the Court order an individualized bond hearing rather than outright release. *See, e.g. Jimenez Garcia v. Joyce*, No. 26 Civ. 429 (AS), 2026 WL 251889 (S.D.N.Y. Jan. 30. 2026) (in similar case where ICE targeted a non-citizen for arrest because of criminal history, ordering a bond hearing before an immigration judge rather than outright release).

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[3] Since the time of this Court's decision, other judges in this District have issued decisions reaching the same result (by far, the majority view), but four judges have reached the opposite result. *See, e.g., Deres Arana v. Arteta*, No. 26 Civ. 240 (GHW), 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026); *Weng v. Genalo*, No. 25 Civ. 9595 (JHR), 2026 WL 194248 (S.D.N.Y. Jan. 23, 2026); *Yinxiao Chen v. Almodovar*, No. 25 Civ. 9670 (JPC), 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026); *Liang v. Almodovar*, 25 Civ. 9322 (MKV), 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *Xiaoquan Chen v. Almodovar*, No. 25 Civ. 8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025). Further, the government notes for the Court's awareness that there are several appeals that have been filed and are pending at the Second Circuit on this issue. *See, e.g., Da Cunha v. Moniz*, No. 25-3141 (2d Cir.) (government's opening brief filed Jan. 16, 2026; appeal expedited).

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I thank the Court for its consideration of this submission, and I sincerely apologize for filing this submission after the noon deadline that the Court had set.[4]

Respectfully submitted,

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[4] If the Court is inclined to order the immediate release of Petitioner, the government respectfully submits that an order requiring ICE to first bring Petitioner back to the New York City area, and then immediately release them, would be appropriate. *See, e.g.*, *Villarreal Obregon* v. *Francis*, No. 25 Civ. 9465(KPF), No. 12 (Order) (directing ICE to transport petitioners back to the Southern District of New York by a certain date and to immediately release them upon their return).