U.S. Department of Justice

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By ECF

February 6, 2026

Honorable Ann M. Donnelly
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *J.G.I. v. Genalo*, No. 26-cv-581 (Donnelly, J.)

Dear Judge Donnelly:

This Office represents Respondents U.S. Attorney General Pamela Bondi, U.S. Department of Homeland Security ("DHS") Secretary Kristi Noem, Acting U.S. Immigrations and Customs Enforcement ("ICE") Director Todd M. Lyons, and ICE New York Field Office Director Kenneth Genalo (collectively, the "Federal Respondents") in the above-captioned case in which Petitioner J.G.I., an alien in removal proceedings, filed a petition for a writ of habeas corpus on February 2, 2026 challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* ECF No. 1. The legal issues presented concern, *inter alia*, whether Petitioner's detention violates his due process protections and the statutory authority for ICE's detention of Petitioner. Petitioner principally seeks an order from this Court directing ICE to immediately release him from detention.

The Order to Show Cause directs the United States Attorney, as attorney for Respondents, to show cause why the petition should not be granted and why Respondents should not be ordered to immediately release Petitioner from detention. The Order directs the government to address whether the Petition is controlled by Your Honor's prior opinion in *Ye v. Maldonado*, No. 25-cv-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (Donnelly, J.), as well as the prior opinion of Honorable Hector Gonzalez, U.S. District Judge, in *O.F.B. v. Maldonado*, No. 25-cv-6336, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) ("*O.F.B.*")

The Order to Show Cause provides that the government may waive its right to a response and consent to Petitioner's release without prejudice to its rights on appeal. The government has not opted to release Petitioner voluntarily. While reserving all rights, including the right to appeal, the Federal Respondents respectfully submit 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.

Relevant Facts

Petitioner unlawfully entered the United States at an undetermined place and time. See Decl. of Tony Petito, ¶ 3.[1] On May 22, 2018, Petitioner was served with a Form I-862, Notice to

[1] Information has been redacted from the Petito Declaration, as well as exhibits attached to it, for privacy or law enforcement sensitivity concerns.

Appear ("NTA"), charging him with removability pursuant to Immigration and Nationality Act ("INA") § 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. Petito Decl., ¶ 7 & Ex. C. The NTA was filed with the Executive Office for Immigration Review on May 23, 2018, which commenced removal proceedings against Petitioner. Petito Decl., ¶ 9.

On February 1, 2026, ICE officers encountered Petitioner in Freeport, New York. Petito Decl., ¶ 15 & Ex. F. Petitioner provided identification to officers during that encounter. Petito Decl., ¶ 15. A record check revealed that Petitioner was a citizen and national of Guatemala without lawful status in the United States. Petito Decl., ¶ 15 & Ex. F. That same day, ICE served Petitioner with a Form I-200, Warrant for Arrest of Alien, reflecting that he would be detained. Petito Decl., ¶ 16 & Ex. G.

Petitioner is currently detained at the Metropolitan Detention Center in Brooklyn, New York ("MDC Brooklyn"). Petito Decl., ¶ 25.[2] Petitioner has never been admitted to the United States. Petito Decl., ¶ 25. He is detained by ICE under 8 U.S.C. § 1225(b)(2)(A). Petito Decl., ¶¶ 25-26.

Habeas Petition

Petitioner commenced this action on February 2, 2026. ECF No. 1. Petitioner argues that the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) does not apply to him because (1) he was present in the United States at the time he was arrested by ICE; (2) his detention violates the Due Process Clause of the Fifth Amendment of the United States Constitution; and (3) his detention violates the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*

The *Ye* and *O.F.B.* Decisions

In *Ye* and *O.F.B.*, the government maintained that INA Section 235(b), 8 U.S.C. § 1225(b) ("Section 1225(b)"), Section 1225(b) mandated the petitioners' detention because they had entered the country illegally and were not "admitted" to the United States. At the time of his arrest and detention following an immigration court hearing, Ye had been living in the United States for almost two years, was in removal proceedings and had a pending application for asylum when he was arrested and detained at a check-in appointment. *See Ye*, 2025 WL 3521298, at *1-2. Similarly, O.F.B. had been living in the United States for over two years, had filed an asylum claim, and was in removal proceedings. *See O.F.B.*, 2025 WL 3277677, at 1-*2.

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[2] Respondents note that on February 3, 2026, at approximately 12:10 p.m., this Court ordered that Petitioner "shall not be transferred to a facility outside of this District." *See* Feb. 3, 2026 Minute Entry. However, because the Nassau County Correction Center (the facility at which Petitioner was initially detained) is a temporary staging facility, ICE had already pre-scheduled a transfer of Petitioner to Delaney Hall Detention Facility in Newark, New Jersey, which was initiated at approximately 12:26 p.m. *See* Petito Decl., ¶ 23. Approximately half an hour later that same day, ICE placed a notification in an internal database reflecting the Court's order that Petitioner shall not be transferred outside of the Eastern District of New York. *See* Petito Decl., ¶ 24. ICE then arranged for Petitioner's transfer back to the Eastern District of New York, and Petitioner was transferred to MDC Brooklyn, where he is currently detained. *See* Petito Decl., ¶¶ 24-25.

This Court and Judge Gonzalez disagreed with the government's arguments, and concluded that Section 1225(b) does not apply to noncitizens like the petitioners who had been living in the United States for years, and that INA Section 236, 8 U.S.C. § 1226(a) ("Section 1226(a)"), governed their detention.[3] *Ye*, 2025 WL 3521298, at *6; *O.F.B.*, 2025 WL 3277677, at *3-*5.

Your Honor concluded that the petitioner, who was initially detained after crossing the border in 2023, served with an arrest warrant referencing 8 U.S.C. § 1226, and released on an order of recognizance that also referenced § 1226, and who was arrested again in October 2025, was detained pursuant to § 1226 and not, as ICE contends, § 1225 as an applicant for admission.[4] *Ye v. Maldonado*, 2025 WL 3521298, at *1, *5-6. The Court relied on its interpretation of the language of the two provisions and of the broader statutory scheme, as well as the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Id.* at *4-5. The Court also considered relevant the fact that the government's records relating to the petitioner's arrest cited 8 U.S.C. § 1226.[5] *Id.* at *5. The Court also stated that it was persuaded by the reasoning of the large number of courts considering similar petitions that have rejected the government's position. *Id.* at *3-4.

Having concluded that the petitioner's detention was governed by § 1226, the Court conducted the three-part due process analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), concluding that detention of the petitioner without process violated his due process rights. *Id.* at *7-8. The Court further held that, even if Section 1225 applied, petitioner's detention violated his due process rights because the government did not follow the regulatory procedures required to revoke parole pursuant to 8 U.S.C. § 1182. *Id.* The Court granted the petition and directed the government to release petitioner from custody within 24 hours and to return to petitioner any property seized at the time of his arrest. *Id.* at *9.[6]

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[3] Under Section 1226(a), the government may arrest and detain an alien during his removal proceedings or release him on bond or conditional parole.

[4] ICE contended that the petitioner's detention was governed by 8 U.S.C. § 1225(b)(2)(A) because, as an alien who entered without inspection or parole, and who was initially detained 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 that is a feature of detentions under 8 U.S.C. § 1226(a). *See Ye v. Maldonado*, No. 25-cv-6417 (AMD), ECF No. 8, at 7–13 (Resp's Mem. Law Opp.).

[5] The Federal Respondents respectfully disagree that the prior release of petitioner under Section 1226 is controlling. Another court in this Circuit recently rejected the proposition that "if one presidential administration fails to enforce a statute, the next administration cannot enforce it, even though the statute clearly applies, according to its plain terms, and no promises not to enforce it have been made." *Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855, at *7 (S.D.N.Y. Dec. 4, 2025), *notice of appeal filed Dec. 16, 2025*; *see also Liang v. Almodovar*, No. 25-cv-9322, at *8 (S.D.N.Y. Dec. 15, 2025) (rejecting proposition that "prior Administration's decision to catch and then release Petitioner into the interior under Section 1226 means that the current Administration has 'relinquished the authority[]' . . . to apply Section 1225 according to its plain terms.").

[6] The Federal Respondents note that multiple district court judges in this Circuit have endorsed the government's interpretation of the relevant statutory provisions. In *Xiaoquan Chen v. Almodovar*, No. 25-cv-8350, 2025 WL 3484855, at *7 (S.D.N.Y. Dec. 4, 2025), *notice of appeal filed* Dec. 16, 2025, the petitioner had entered the United States without having been admitted, was detained, and was released on his own recognizance due to lack of bed space; he was recently re-detained pursuant to 8 U.S.C. § 1225(b)(2)(A). The Honorable Mary Kay Vyskocil dismissed the habeas petition, holding that "under the plain language" of § 1225(b)(2)(A), which by its terms requires mandatory detention for "applicant[s] for admission," the petitioner—an applicant for admission—was subject to mandatory detention. *Xiaoquan Chen*, 2025 WL 3484855 at *4. In particular, the court cited the statutory definition of "applicant for admission" in Section 1225(a), which "is specifically defined to include an 'alien *present in* the United States who

Discussion as to 8 U.S.C. § 1225(b)(2)(A)

While the Federal Respondents respectfully disagree with Your Honor's decision in *Ye*, the Federal Respondents acknowledge that this decision would control the result in this case if the Court adheres to it, because, as in that case, ICE's detention of the Petitioner in this case is based on ICE's position as to the scope of 8 U.S.C. § 1225(b)(2)(A), and the Court rejected that position in *Ye*. Thus, to conserve judicial resources and to expedite the Court's consideration of this case,

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has not been admitted.'" *Id.* (emphasis in *Xiaoquan Chen*) (citing Section 1255(a)). Moreover, the court noted that the terms "'admitted' and 'admission' are specifically defined in terms of '*lawful*' entry," not mere physical entry. *Id.* (emphasis in *Xiaoquan Chen*) (citing 8 U.S.C. § 1101(a)(13)(A)); *accord Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932, at *1-2 (W.D.N.Y. Dec. 4, 2025) (holding detention under 8 U.S.C. § 1225(b)(2)(A) was proper for alien present in United States unlawfully without having been admitted based on a "a straightforward and fair reading of the governing statute," noting that "[t]he fact that more district courts . . . have decided this issue differently from this [c]ourt is neither binding nor persuasive"), *notice of appeal filed* Dec. 16, 2025. *Xiaoquan Chen* also rejected the proposition that Congress would not have needed to pass the LRA – which provides for mandatory detention for "inadmissible" aliens charged with, arrested for, convicted of, or who admit to, certain crimes – if Section 1225 already provided for mandatory detention. *Xiaoquan Chen*, 2025 WL 3484855, at *6-7. The court explained, *inter alia*, that the LRA mandates detention in additional circumstances – for example, for aliens who fraudulently procure visas – not covered by Section 1225. *Id.* On December 15, 2025, Judge Vyskocil issued another decision concluding that the government's interpretation is correct. *See Wenxin Liang v. Almodovar*, No. 25-cv-9322, 2025 WL 9322, at *4-11 (S.D.N.Y. Dec. 15, 2025) (holding that petitioner who entered the United States without being admitted was properly subject to detention under the plain language of Section 1225, notwithstanding prior release on his own recognizance under Section 1226, and further concluding that petitioner was not entitled to any process beyond that set forth in the statute).

In *Yinxiao Chen v. Almodovar*, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026), the Honorable John P. Cronan issued a decision endorsing the government's interpretation. In *Chen*, the petitioner entered the United States without inspection or legal documents, was arrested and later released on his own recognizance under 8 U.S.C. § 1226, served with a Notice to Appear for removal proceedings, and recently detained under 8 U.S.C. § 1225(b)(2)(A). *See Chen*, 2026 WL 100761 at *5-*6. Judge Cronan denied the habeas petition, concluding that the text, structure, and context of § 1225(b)(2)(A) confirm that statute covers aliens like that petitioner. *Id.* at *8-*14. With respect to the text of § 1225(b)(2)(A), Judge Cronan held that § 1225(a)(1) "'deem[s]'" an "applicant for admission" "'[a]n alien *present in the United States who has not been admitted* or who arrives in the United States (whether or not at a designated port of arrival ...).' " *See id.* at *8 (emphasis supplied in *Chen*). Given that the detention authority in § 1225(b)(2)(A) covers "an alien who is an applicant for admission," Judge Cronan held, it follows that "[p]ut together, Section 1225(b)(2)(A) initially reaches situations concerning noncitizens . . . present in the United States who have not gained lawful entry into the country after inspection and authorization by an immigration officer." *Id.*

In another recent case, the Honorable Jennifer F. Rearden, in *Weng v. Genalo*, No. 25 Civ. 9595, 2025 WL 194248 (S.D.N.Y. Jan. 25, 2026) concluded that the petitioner in that case was subject to § 1225(b)(2)(A) mandatory detention even though ICE had previously released him from detention on a § 1226(a)(2)(B) order of release on recognizance. Judge Rearden noted that Congress in 1996 enacted § 1225(a)(1) and 8 U.S.C. § 1101(a)(13)(A), which together limited the category of those "admitted" to persons who lawfully entered the United States. *Id.* at *3. Thus, persons who entered the United States unlawfully have not been "admitted", and are subject to § 1225(b)(2)(A) mandatory detention. *Id.* Judge Rearden also, *inter alia,* declined to follow the courts that have held § 1226 (a) mandatory detention applies only to persons who are "seeking admission" and thus cannot apply to persons who are already in the United States. She perceptively noted that "the term 'applicant for admission' in Section 1225 is defined to include an 'alien *present* in the United States who has not been admitted," 8 U.S.C. § 1101(a)(13)(A) (emphasis added) and thus explicitly encompasses aliens who are 'already here.' " *Id.* at *4.

More recently, the Honorable Gregory H. Woods, in *Deras Arana v. Arteta*, No. 26 Civ. 240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) concluded that "Section 1225(b)(2) clearly applies to Petitioner" by adopting the reasoning set forth in *Xiaoquan Chen*. *Id.* at *3.

the Federal Respondents hereby rely upon, and incorporates by reference, the legal arguments it presented in *Ye*[7] and respectfully submits that the Court can decide this matter without further briefing. Notwithstanding its submission of this letter in lieu of a formal brief, the Federal Respondents reserve all rights, including the right to appeal.[8]

Discussion as to Other Issues Raised in the Petition

As noted above, the Federal Respondents acknowledge that the Court's decision in *Ye*, if applied to this case, would result in the Court granting the Petition—regardless of the merits of the other issues raised in the Petition—because the sole basis for Petitioner's detention is ICE's position as to the scope of 8 U.S.C. § 1225(b)(2)(A) and the Court rejected that position in *Ye*. Nonetheless, the Federal Respondents briefly write to provide its position on two other issues raised in the Petition.

First, to the extent that Petitioner contends that he is a class member as defined in the *Maldonado Bautista* cases, *see* Pet. ¶ 52 n.6, the Federal Respondents disagree that the *Maldonado Bautista* cases have nationwide effect.[9]

The Court here need not reach the *Maldonado Bautista* issues. If the Court follows the interpretation of §§ 1225 and 1226 that it articulated in *Ye*, then that analysis is dispositive, and it need not reach the *Maldonado Bautista* issues. Other district courts in this Circuit have dealt with this issue in a like manner. *See Padilla Molina v. Deleon*, No. 25-cv-6526, 2025 WL 3718728 at *5 (E.D.N.Y. Dec. 23, 2025) (Azrack, J.) ("[I]t is unnecessary for the Court to decide whether *Bautista* controls in the instant case because, as explained above, the Court has already determined that the interpretation of Sections 1225 and 1226 advanced by Petitioner and adopted by hundreds of district court decisions is the correct one"); *Ulloa Montoya v. Bondi*, No. 25-cv-6363, 2025 WL 3718694 at *3, (E.D.N.Y. Dec. 23, 2025) (Azrack, J.) (articulating the same reasoning set forth in *Padilla Molina*); *Qunjie Yao v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3653433, at *12 n.10, (S.D.N.Y. Dec. 17, 2025) (holding, in light of its interpretation of Sections 1225 and 1226, that "the Court does not have to reach [Petitioner's] alternative argument: that he is eligible for a bond review under an order affording such relief to a nationwide class" as issued in *Maldonado Bautista*).

Respondents respectfully submit that the Court's interpretation of Sections 1225 and 1226 are sufficient to reach a resolution in this matter, and that based on its interpretation, it is

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[7] Specifically, the Federal Respondents incorporate by reference the arguments raised in its opposition brief in *Ye*, No. 25-cv-6417, ECF No. 8.

[8] In addition to the pending appeals by petitioners regarding the denials of habeas petitions as noted above, the government has appealed the grant of a habeas petition in *Da Cunha v. Moniz*, No. 25-cv-6532 (W.D.N.Y. Nov. 25, 2025) (concluding, *inter alia*, that Section 1226(a), not Section 1225(b)(2)(A), applied), *notice of appeal filed*, No. 25-3141 (2d Cir. Dec. 11, 2025). The government filed its opening appellate brief in *Da Cunha* on January 16, 2026.

[9] In other cases, the government has argued that: (1) the *Maldonado Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California on jurisdictional grounds; and (2) the Court should not give preclusive effect to the declaratory judgment because it is on appeal; and (3) issue preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the government and in habeas corpus proceedings. These arguments were adopted by at least two district courts. *See Calderon Lopez v. Lyons*, 2025 WL 3683918, (N.D. Tex. Dec. 19, 2025); *Rodriguez v. Jeffreys*, 2025 WL 3754411 (D. Neb. Dec. 29, 2025).

unnecessary for it to opine on the effects of *Maldonado Bautista* here.

The Federal Respondents also respectfully note that neither Your Honor's decision in *Ye*, nor Judge Gonzalez's decision in *O.F.B.*, addressed the alternative basis for relief asserted in the Petition that Respondents violated the APA. Petitioner's attempt to obtain relief under the APA fails. The limited waiver of sovereign immunity in the APA is only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Here, Petitioner has availed himself of an adequate remedy, specifically, a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *See Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, and the APA, is the proper vehicle here.").

Accordingly, for the reasons set forth in the Government's brief in *Ye*, the Federal Respondents respectfully requests that the Court deny this habeas petition.

Thank you for the Court's time and attention to this matter.

Respectfully submitted,

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