U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

February 6, 2026

BY ECF
Hon. Jeannette A. Vargas
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: ***L.S.M. v. Genalo, et al.*** **No. 26 Civ. 942 (JAV)**

Dear Judge Vargas:

This Office represents the government in the above-referenced habeas corpus matter brought by petitioner L.S.M. ("Petitioner"). I write respectfully to respond to the Court's questions as set forth in the Court's Order to Answer dated February 4, 2026 (ECF No. 4). The below responses are based on information provided by ICE.

a. **whether Petitioner was, as the Petition alleges . . . located in the Southern District of New York at the time that the Petition was . . . .**

Response: Petitioner was in the Southern District of New York when the Petition was filed. Thus, venue is proper.

b. **Petitioner's A-number, current place of detention, and a contact person who can facilitate counsel's access to Petitioner.**

Response: Petitioner's A-number is: A240-105-103

Petitioner is currently detained at Orange County Jail, 110 Wells Farm Road, Goshen, New York 10924. Counsel can submit G-28s (Notice of Appearance) through the online platform ERO eFile. A G-28 notice must be on file for information to be disclosed. Deportation Officers may be contacted via NYCDetaineeInquiry@ice.dhs.gov or (212) 863-3401. Counsel may visit clients seven days a week between 8 a.m. and 10 p.m. or via video through https://ocjailvisit.orangecountygov.com/app. In person or video visits can be scheduled by telephoning (845) 291-4033 or via email at Jailvisiting@orangecountygov.com. Information about a detainee may be obtained between 8 a.m. and 4 p.m. at (845) 291-7758 or (845) 291-7760. Counsel should have the detainee's biographical information, including first and last name, any aliases the detainee has used, his date of birth, and his country of birth. Urgent messages can be left at (845) 291-7515, leaving the detainee's full name, A number and caller's name and telephone number.

c. **confirmation that ICE has been provided with a copy of this Order.**

Response: This Office provided ICE a copy of the Court's Order.

d. **the statutory provision(s) under which Respondents assert the authority to detain Petitioner.**

Response: Respondents assert that the statutory authority governing Petitioner's detention is 8 U.S.C. § 1225(b)(2)(A).

e. **If the asserted basis for Petitioner's detention is 8 U.S.C. § 1225(b)(2)(A), whether there is any basis to distinguish this case from *McDonald v. Francis*, 25-CV-9355 (JAV). If not, whether Respondents would consent to issuance of the writ—subject to preservation of Respondents' arguments for appeal. If there is a basis to distinguish, whether Respondents waive the right to submit an answer and consent to issuance of the writ subject to preservation of Respondents' arguments for appeal.**

Response: The instant case is not materially distinguishable from the facts and legal issues presented in the Court's decision in *McDonald v. Francis*, 25-CV-9355 (JAV). Based on information this Office has obtained from ICE, Petitioner, a citizen of Guatemala, unlawfully entered the United States at an unknown time, and was encountered by immigration authorities in New York for the first time when ICE arrested him on November 10, 2025. Following his arrest, ICE served Petitioner with a Notice to Appear, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i0, and placed him into removal proceedings. Pending completion of those proceedings, ICE is detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A).

The primary legal issue presented here 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 *McDonald*, and, as noted, the facts in this case are not materially distinguishable from those in *McDonald*. While the government respectfully disagrees with the Court's decision in *McDonald*, the government acknowledges that the *McDonald* 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, to conserve judicial resources and to expedite the Court's consideration of this case, the government is content with relying on, and incorporate by reference, the legal arguments it presented in *McDonald*, and believes the Court can decide this matter without further briefing. If the Court would prefer that the government submit a formal brief, the government will do so upon the Court's request.

f. **a copy of any final order of removal.**

Response: Petitioner is not subject to a final removal order.

g. **any information regarding the procedural posture of any pending Department of Homeland Security or Executive Office for Immigration Review proceedings.**

Response: Petitioner's removal proceedings are currently pending. He has an individual merits hearing scheduled for February 10, 2026 (on the detained docket).

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Based on the foregoing responses, the government does not believe that a further submission to the Court is necessary. If, however, the Court would like to receive a formal brief from the government, it will make such a submission upon the Court's request.

The Court has ordered the parties to appear for a case management conference on February 11 at 2:30 p.m. The government believes the Court can resolve this matter without a conference. Should the Court prefer to hold the conference, however, the government will be happy to appear.

I thank the Court for its consideration of this submission.

Respectfully submitted,

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Southern District of New York

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cc: Counsel of Record (by ECF)