U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

February 27, 2026

Honorable Nusrat J. Choudhury
United States District Court Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *Parada Cruz v. Kristi Noem, et. al.*, No. 26-cv-1112 (Choudhury, J.)

Dear Judge Choudhury:

This Office represents Respondents in the above-captioned case in which Petitioner Jose Miguel Parada Cruz ("Petitioner") filed a Petition for a writ of habeas corpus on February 26, 2026 challenging his detention by Immigration and Customs Enforcement ("ICE). *See* Docket Entry ("DE") # 1. Respondents respectfully submit this letter pursuant to the Stay of Removal and Order to Show Cause entered on February 26, 2026 (DE #3) (the "OTSC") requiring Respondents to provide certain information identified by the Court by February 27, 2026, at noon.

Petitioner has been assigned A number [redacted]. He was arrested and detained on February 26, 2026, pursuant to Immigration and Nationality Act section 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Attached hereto are the Form I-200, Warrant of Arrest, dated February 26, 2026 (Exhibit A); Form I-862, Notice to Appear ("NTA"), dated February 26, 2026 (Exh. B); original NTA dated March 13, 2006 (Exh. C).[1] Petitioner has been detained at the Nassau County Correctional Center ("NCCC") since his arrest, which is in accordance with the limitations set forth in the OTSC. Petitioner's counsel may contact Tony Petito at tony.petito@ice.dhs.gov to facilitate counsel's access to Petitioner.

Because the agreement between ICE and the NCCC limits a detainee's stay there to 72 hours, Petitioner will need to be transferred to another facility prior to the OTSC hearing on March 2, 2026. ICE is therefore currently working on arranging bedspace for Petitioner in either the Delaney Hall Detention Facility or Elizabeth Contract Detention Facility in the District of New Jersey, the Orange County Jail in the Southern District of New York, or the Metropolitan Detention Center in the Eastern District of New York. Petitioner has not been detained at 535 Federal Plaza, Central Islip, New York, nor does ICE intend to transfer him to Central Islip other than as required to produce him for the March 2nd hearing at 1:00 p.m.

[1] Pursuant to the allegations in the petition, Petitioner's original removal proceedings were terminated on August 5, 2015. *See* Petition ¶ 4; *see also id.* Exh. A.

The legal issues presented in the Petition concern 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 release him from detention. While reserving all rights, including the right to appeal, Respondents 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, in light of this Court's decision on the principal legal issues in *Rodriguez-Acurio v. Almodovar*, No. 25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025), and other matters such as *Castellon v. Doe, et al.*, No. 26-cv-0647, Memorandum and Order entered February 7, 2026 (DE # 13) ("*Castellon*"); *Covelli-Chaparro v. Bondi, et al.*, No. 26-cv-0118, Opinion and Order entered January 15, 2026 (DE # 13) ("*Covelli-Chaparro*") *Acevedo v. Nassau Correctional Center, et al.*, No. 26-cv-0250, Minute Entry and Order entered January 28, 2026 ("*Acevedo*") and *Caraguay v. Larocco*, No. 26-cv-0569, Memorandum and Order entered on February 4, 2026 (DE # 15) ("*Caraguay*").

While Respondents respectfully disagree with the Court's decisions in *Rodriguez-Acurio*, *Castellon*, *Covelli-Chaparro*, *Acevedo* and *Caraguay*, Respondents acknowledge that the decisions would control the result in this case if the Court adheres to those decisions, as the facts of this case are similar to those in *Rodriguez-Acurio*, insofar as Petitioner is a citizen of another country who entered the United States without inspection, who has not been admitted, who has been detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Accordingly, the Respondents adopt the arguments in the Government's Memorandum of Law in *Rodriguez-Acurio* (DE # 14).

Respondents note that several decisions in this Circuit have endorsed the Government's interpretation of the relevant statutory provisions, including the decision recently issued in *Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.), *notice* of *appeal filed. See also, e.g., Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855, at *7 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *notice of appeal filed; Liang v. Almodovar*, No. 25-cv-9322, 2025 WL 3641512, at *4-11 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); *Chen v. Almodovar*, 25-cv-9670, 2026 WL 100761, at *8-9 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Weng v. Genalo et al.*, No. 25-cv-09595, 2026 WL 1194248, at *1 (S.D.N.Y. Jan. 25, 2026) (Rearden, J.) ("Having considered the statutory text and other relevant authorities, the undisputed facts of this case, and the parties' submissions and oral arguments, the Court concludes that Petitioner's detention is governed by Section 1225."); *Arana v. Arteta*, 26-CV-240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.). Also, on February 6, 2026, the Court of Appeals for the Fifth Circuit, while not binding on this Court, held that the Government's interpretation of 8 U.S.C. § 1225 is correct. *Buenrostro-Mendez v. Bondi*, No. 25-20496, --- F. 4th --, 2026 WL 323330 (5th Cir. Feb. 6, 2026).[2]

[2] In addition to pending appeals by petitioners regarding the denials of habeas petitions, the Government has affirmatively appealed the grant of a habeas petition in *Cunha v. Moniz*, 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 Dec. 11, 2025, No. 25-3141 (2d Cir.) The *Cunha* appeal is proceeding on an expedited track and is scheduled to be fully briefed by March 3, 2026.

As to Petitioner's INA, APA, due process, and Article I, Section 9, Clause 2 of the United States Constitution ("Suspension Clause") (to the extent construed as arising under the APA) claims, these claims are not properly asserted in habeas. In *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025), in which claims including due process claims were brought under the APA, the INA and various habeas provisions, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement," regardless of whether he requests release from confinement, those claims "fall within the 'core' of the writ of habeas corpus and must be brought in habeas." The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). All the claims in this suit constitute a core habeas claim — though they fail for the reasons discussed above— and are not cognizable under the INA or the APA. Further, by the APA's terms, it is available only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Thus, Petitioner's APA claims are independently barred by this limitation. As noted by Justice Kavanaugh's concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *J.G.G.*, 604 U.S.at 674 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention.

Respondents have no objection to the Court deciding the petition on the submissions in lieu of a hearing. Respondents are aware of the Court's order prohibiting the transfer of Petitioner outside of the Eastern District of New York, the Southern District of New York, or the District of New Jersey, and to produce Petitioner at the hearing scheduled for March 2, 2026 at 1:00 p.m. should it go forward.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

By: */s/ Thomas R. Price*
Thomas R. Price
Assistant United States Attorney
(631) 715-7893
thomas.price@usdoj.gov

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Cc: Counsel of record by ECF