U.S. Department of Justice

United States Attorney
Eastern District of New York

271-A Cadman Plaza East
Brooklyn, New York 11201

March 24, 2026

By ECF

Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Geser Abmael Leiva Garcia v. Christopher Shanahan,*
Civil Action No. 26-cv-01508 (EK)

Dear Judge Komitee:

This letter is respectfully submitted on behalf of Respondent Christopher Shanahan, Field Office Director, New York Field Office, U.S. Immigration and Customs Enforcement ("ICE") , United States Attorney General, in response to the Order to Show Cause dated March 15, 2026 ("Order"). Petitioner Geser Abmael Leiva Garcia ("Petitioner") seeks release from detention. *See* Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF Doc. No. 1-2) ("Petition") Request for Relief.

The Order directs Respondent to show cause why the Petition should not be granted for substantially the same reasons articulated in *Sarmiento Guerrero v. Noem*, No. 25-cv-5881 (EK), 2025 WL 3214787 (Nov. 18, 2025). The Order further provided that if Respondent acknowledges that the Petition presents no meaningful distinction, he will either afford Petitioner a bond hearing or release him without further order of the Court on or before March 27, 2026.

According to ICE, Petitioner is a native and resident of Honduras who unlawfully entered the United States without inspection at an unknown time and place. *See* Declaration of Deportation Officer Michael Charles dated March 24, 2026 ¶¶ 3-4; *see also id.* Ex. B at 2. On February 27, 2026, ICE encountered Petitioner during an enforcement operation, and arrested and detained him. *Id.* ¶ 6. Petitioner was issued a Notice to Appear ("NTA") that charged him with being subject to removal pursuant to Section 212(a)(7)(i)(I) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(7), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport or other suitable travel document, or other document of identity and nationality as required under the regulations. *Id.* ¶ 6, Ex. A. ICE filed the NTA with the Executive Office for Immigration Review ("EOIR") to commence removal proceedings. *Id.* ¶ 8. Also on February 27, ICE Enforcement and Removal

Office ("ERO") cancelled Petitioner's parole. *Id.* ¶ 7, Ex. C; *see id.* ¶ 5. Since March 4, 2026, Petitioner has been detained at the Metropolitan Detention Center. *Id.* ¶ 13.

Petitioner is detained pursuant to Section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(5)(A) ("Section 1225(b)(5)(A)"). *Id.* ¶ 14. Respondent's position is that ICE properly detained Petitioner pursuant to Section 1225(b)(5)A), and that such detention is mandatory. However, Respondent acknowledges that Your Honor likely will find that the decisions in *Sarmiento Guerrero* control the outcome here. Your Honor rejected the government's arguments that Sarmiento Guerrero was subject to mandatory detention under Section 1225(b)(2)(A), concluding that 8 U.S.C. § 1226 more clearly applies to people who have been living in the United States. 2025 WL 3214787, at *4-5. Your Honor ordered Sarmiento Guerrero, who had already had a bond hearing, released from custody. *Id.* at *7. Your Honor subsequently granted Sarmiento Guerrero's petition and permanently enjoined the respondents from detaining him on the basis of Section 1225(b)(2) on February 19, 2026. *See* 2026 WL 472887. Respondent respectfully disagrees with Your Honor's rejection of the government's arguments that Section 1225(b) (mandatory detention) applies to aliens who are living in the United States at the time they are arrested and detained.[1] Nevertheless, Respondent recognizes that it would be futile to repeat the government's statutory interpretation arguments in opposing the Petition at this time.

According to ICE, Petitioner will be provided with a bond hearing on or before March 27, 2026.

In providing this response, Respondent respectfully reserves all rights, including the right to appeal.[2]

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[1] Respondent notes that six district court judges in New York have ruled in favor of the government finding that Section 1225(b) applied. *Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.), *notice of appeal filed* Feb. 17, 2026; *Arana v. Arteta,* No. 26 Civ. 240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Lopez v. Noem*, No. 26 Civ. 00345, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.); *Chen v. Almodovar*, No. 25 Civ. 9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Chen v. Almodovar*, No. 25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *notice of appeal filed* Dec. 18, 2025; *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra, J.), *notice of appeal filed* Dec. 16, 2025. The only court of appeals to issue a merits decision in a case of this type ruled in favor of the government. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 501-08 (5th Cir. 2026).

[2] The government's appeal of another court's decision holding that Section 1226(a) as opposed to Section 1225(b) applies to persons who entered the United States without inspection is scheduled for oral argument before the Second Circuit on April 6, 2026, *Barbosa da Cunha v. Freden,* No. 25-3141; *see* 2025 WL 3280575 (W.D.N.Y. Nov. 25, 2025)).

Thank you for Your Honor's consideration of this submission.

Respectfully submitted,

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