UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Francisco Antonio CASTILLO LACHAPEL,

Petitioner,

- against -

William JOYCE, *et al.*,

Respondents.

No. 25 Civ. 4693 (JHR)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

JAY CLAYTON
United States Attorney for the
Southern District of New York
Attorney for Respondents
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel: (212) 637-2743

BRANDON M. WATERMAN
Assistant United States Attorney
– Of Counsel –

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes & Regulations:

The government, by its attorney, Jay Clayton, United States Attorney for the Southern District of New York, respectfully submits this memorandum of law in opposition to the petition for a writ of habeas corpus, filed on June 4, 2025, by petitioner Francisco Antonio Castillo Lachapel ("Castillo Lachapel").

PRELIMINARY STATEMENT

Castillo Lachapel is a citizen of the Dominican Republic who unlawfully entered the United States without admission or parole. He was first encountered by U.S. Border Patrol in January 2025 in Maine after a traffic stop. Border Patrol issued Castillo Lachapel a Notice to Appear (to commence § 1229a removal proceedings) and released release him in the interim. In June 2025, U.S. Immigration and Customs Enforcement ("ICE"), operating under the belief that Castillo Lachapel was amenable to the expedited removal process due to his initial encounter with Border Patrol near a port of entry in Maine, exercised its prosecutorial discretion and moved to dismiss Castillo Lachapel's removal proceedings, which the immigration judge granted. ICE detained Castillo Lachapel after his proceedings were dismissed and issued an expedited removal order for him. But after Castillo Lachapel's attorney produced evidence that Castillo Lachapel had been present in the United States for more than two years, ICE canceled the expedited removal order, as it determined that he is not amenable to expedited removal, and ICE has subsequently re-commenced § 1229a removal proceedings against Castillo Lachapel.

Castillo Lachapel filed this habeas petition to principally challenge ICE's efforts to dismiss his removal proceedings and invoke the expedited removal procedures against him. He asserts that subjecting him to the expedited removal process violates the Immigration and Nationality Act as well as due process. He also argues that his detention is unlawful. But all of Castillo Lachapel's claims fail. Because ICE has determined that he is not amenable to the expedited removal

procedures and is back in § 1229a removal proceedings, his claims challenging his proceedings are moot. And Castillo Lachapel has not demonstrated that his detention is unlawful.

FACTUAL AND PROCEDURAL BACKGROUND

A. Castillo Lachapel's Initial Encounter and Immigration Proceedings

The U.S. Department of Homeland Security ("DHS") learned of Castillo Lachapel's unlawful presence in the United States on January 17, 2025. *See* Declaration of Deportation Officer Anthony Caballero ("Caballero Decl.") ¶ 4. On that date, the Wiscasset Police Department ("WPD") encountered Castillo Lachapel during a traffic stop in Wiscasset, Maine. *Id.* Due to a language barrier, WPD contacted U.S. Border Patrol at U.S. Customs and Border Protection ("CBP") to assist in verifying Castillo Lachapel's identity. *Id.* Castillo Lachapel was taken to the nearby Port of Entry in South Portland, Maine, where he was interviewed in Spanish by a Border Patrol agent. *Id.* Castillo Lachapel admitted that he is a citizen of the Dominican Republic, and that he was unlawfully present in the United States. *Id.* Border Patrol placed Castillo Lachapel under arrest and issued and served Castillo Lachapel with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging him as an alien present in the United States without being admitted or paroled who is inadmissible under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 5. The NTA advised that Castillo Lachapel was to appear before an immigration judge in New York, New York, for a hearing scheduled to occur on March 7, 2025. *Id.* After completing processing, Border Patrol released Castillo Lachapel on his own recognizance due to a lack of bedspace. *Id.*

On March 3, 2025, the immigration court rescheduled Castillo Lachapel's hearing for June 4, 2025. *Id.* ¶ 6. On June 4, 2025, Castillo Lachapel appeared without counsel for his initial master calendar hearing before an immigration judge at the 290 Broadway immigration court in New

York, New York. *Id.* ¶ 7. The immigration judge provided Castillo Lachapel with the initial advisals about the nature of the proceedings, among other things. *Id.* At the hearing, ICE made an oral motion to dismiss the removal proceedings pursuant to 8 C.F.R. § 239.2(c) based on the grounds set forth in 8 C.F.R. § 239.2(a)(7) (change in circumstances), which Castillo Lachapel opposed. *Id.* The immigration judge granted ICE's motion and dismissed the proceedings on the record. *Id.* After Castillo Lachapel left the courtroom, ICE arrested and detained him upon the reasonable belief that he was amenable to expedited removal. *Id.* ¶ 8.

On June 4, 2025, during processing after he was arrested, ICE personally served Castillo Lachapel with a Notice and Order of Expedited Removal pursuant to 8 U.S.C. § 1225(b)(1), based on ICE's determination that Castillo Lachapel is inadmissible to the United States under 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I). *Id.* ¶ 9. During processing, ICE noted that a database check shows that Castillo Lachapel filed an asylum application with U.S. Citizenship and Immigration Services on January 14, 2025. *Id.* ¶ 10. Castillo Lachapel declined to make a sworn statement to ICE, but he stated that he had unlawfully entered the United States by crossing the border in Texas on June 1, 2022. *Id.*

Due to lack of bedspace at the Orange County Jail, ICE's only detention facility in the Southern District of New York, ICE initially detained Castillo Lachapel at ICE's hold room facility at 26 Federal Plaza, New York, New York, pending his transfer to a long-term accommodation. *Id.* ¶ 11. ICE ultimately secured bedspace for Castillo Lachapel at Delaney Hall Detention Facility in Newark, New Jersey, and he was transferred there late in the evening on June 6, 2025. *Id.*

On June 6, 2025, an attorney acting on behalf of Castillo Lachapel provided ICE with evidence that Castillo Lachapel has been present in the United States for longer than two years (for purposes of showing he is not amenable to expedited removal). *Id.* ¶ 13.

On June 10, 2025, upon consideration of the evidence submitted by Castillo Lachapel's attorney, ICE canceled the expedited removal order issued to Castillo Lachapel, as ICE determined that Castillo Lachapel is not amenable to expedited removal and that he can only be placed in removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 14. On the same day, ICE also filed with the Varick Street Immigration Court in New York, New York, a new NTA charging Castillo Lachapel with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled. *Id.* ¶ 15. The immigration court rejected the filing due to deficiencies/errors. *Id.* On June 11, 2025, ICE contacted the Varick Street Immigration Court and successfully filed the NTA dated June 10, 2025—thereby commencing removal proceedings—and Form I-830, advising the immigration court of Castillo Lachapel's detention at Delaney Hall Detention Facility in Newark, New Jersey. *Id.* ¶ 17. Castillo Lachapel's removal proceedings are currently venued at the Elizabeth Immigration Court in Elizabeth, New Jersey, and an initial master calendar hearing has been scheduled for July 1, 2025. *Id.*

On June 12, 2025, ICE mailed a copy of the new NTA and I-830 to Castillo Lachapel and his attorney, and ICE requested that personnel at Delaney Hall Detention Facility personally serve a copy of the documents on Castillo Lachapel. *Id.* ¶ 18. Also on June 12, 2025, ICE attempted to conduct a new custody determination for Castillo Lachapel given that he is now detained under 8 U.S.C. § 1226(a), which involves interviewing Castillo Lachapel as part of that process. *Id.* ¶¶ 19, 20. ICE was unable to conduct the custody determination due to an emergency incident at the Delaney Hall facility. *Id.* ¶ 19. Absent extraordinary circumstances, ICE expects to promptly conduct a new custody determination for Castillo Lachapel on June 13, 2025, or if that is not possible, as soon as practicable. *Id.*

Castillo Lachapel is presently detained under 8 U.S.C. § 1226(a) pending the resolution of removal proceedings. *Id.* ¶ 20.

B. Castillo Lachapel's Habeas Petition

On June 4, 2025, while temporarily detained at ICE's 26 Federal Plaza holding facility, Castillo Lachapel filed the instant habeas petition. ECF No. 1. He asserts five counts, asserting violations of the INA, its implementing regulations, and due process. *See id.* ¶¶ 31-49.

ARGUMENT

CASTILLO LACHAPEL'S HABEAS PETITION SHOULD BE DENIED

A. Castillo Lachapel's Challenges to His Immigration Proceedings Are Moot

The circumstances underlying the claims in Castillo Lachapel's habeas petition have changed since he commenced this action, which has rendered moot Castillo Lachapel's claims concerning his removal proceedings. In short, based on the evidence he provided after he was detained, ICE has determined that Castillo Lachapel is not amenable to the expedited removal process given that he has been present in the United States for roughly three years, and ICE has recommenced removal proceedings against him. Thus, his claims concerning removal proceedings and expedited removal are moot.[1]

[1] Aside from being moot, Castillo Lachapel's claims challenging matters relating to removal proceedings and expedited removal are not properly presented in this habeas corpus action, as they are not challenges to detention. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release."); *see also* 28 U.S.C. § 2241 (authorizing federal courts to grant a writ of habeas corpus whenever a petitioner is "in custody in violation of the Constitution or laws or treaties of the United States"). Further, such issues are properly presented for resolution in the administrative process, and if there are issues, then through the judicial process Congress set out in statute for such review.

"Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). "An 'actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *Alvarez v. Smith*, 558 U.S. 87, 92 (2009). "The principle that a federal court 'lacks jurisdiction to consider the merits of a moot case is a branch of the constitutional command that the judicial power extends only to cases or controversies.'" *Chevron Corp. v. Donziger*, 833 F.3d 74, 123 (2d Cir. 2016) (citation omitted). "In order to satisfy the case-or-controversy requirement [of Article III], a party must, at all stages of the litigation, have an actual injury which is likely to be redressed by a favorable judicial decision." *United States v. Williams*, 475 F.3d 468, 478-79 (2d Cir. 2007). Federal courts have no authority to give an opinion upon a question that is moot as a result of events that occur during the pendency of the action. *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *see also Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of Watervliet*, 260 F.3d 114, 118-19 (2d Cir. 2001) ("Whenever mootness occurs, the court . . . loses jurisdiction over the suit, which therefore must be dismissed."). "The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed." *Martin-Trigona v. Shiff*, 702 F.3d 380, 386 (2d Cir. 1983).

Here, Castillo Lachapel's claims challenging ICE's actions or decisions to move to dismiss his removal proceedings and subject him to the expedited removal process are moot. While ICE had moved to dismiss Castillo Lachapel's removal proceedings and had issued him an expedited removal order, ICE has since learned—upon review of the evidence presented to ICE by Castillo Lachapel's attorney after he was arrested—that Castillo Lachapel has been present in the United States for more than two years. *See* Caballero Decl. ¶¶ 13-14. Consequently, on June 10, ICE determined that Castillo Lachapel was not amenable to the expedited removal process and that he

could only be placed in removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 14. On that date, ICE canceled the expedited removal order it issued to Castillo Lachapel, and issued a new NTA to re-commence removal proceedings. *Id.* Such proceedings commenced on June 11, and Castillo Lachapel is scheduled for a hearing before an immigration judge on July 1, 2025. *Id.* ¶ 17.

Because Castillo Lachapel is not subject to expedited removal and ICE will not invoke the expedited removal process against him now that he has demonstrated to ICE that he has been present in the United States for more than two years, and because ICE has placed Castillo Lachapel back into removal proceedings, Castillo Lachapel's claims challenging ICE's ability to invoke expedited removal against him are moot. *See, e.g.*, *Spencer v. Kemna*, 523 U.S. 1, 18 (1998) (admonishing that federal courts "are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong"); *see also Velvet Underground v. Andy Warhol Found. for the Visual Arts, Inc.*, 890 F. Supp. 2d 398, 403 (S.D.N.Y. 2012) ("As with any federal action, courts may not entertain actions for declaratory judgment 'when the parties are asking for an advisory opinion, when the question sought to be adjudicated has been mooted by subsequent developments, and when there is no standing to maintain the action.'" (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968))). Further, to the extent he seeks to challenge an unspecified policy that does not apply to Castillo Lachapel, he not only lacks standing to challenge it, but it is also moot for the same reasons stated above. *See, e.g.*, *California v. Texas*, 593 U.S. 659, 673 (2021) (to address the legality of a policy that is no longer in effect "would allow a federal court to issue what would amount to an advisory opinion without the possibility of any judicial relief." (quotation marks omitted)); *Zherka v. Martinez*, No. 07 Civ. 8047 (CB),2008 WL

11517812, at * 2 (S.D.N.Y. May 2, 2008) (without injury in fact from complained-of policy, plaintiff lacks standing to challenge the policy).[2]

B. Castillo Lachapel's Challenges to His Detention Fails

In Count Three, Castillo Lachapel asserts a "kitchen sink" challenge to his detention, arguing that his detention violates due process because he was not accorded any pre-deprivation process, there was no change in his case compelling a change in his custody status, his detention is not rationally related to any immigration purpose or statutorily authorized, and that it is not the least restrictive mechanism for accomplishing any legitimate government purpose. *See* Pet. ¶¶ 42-44. Castillo Lachapel's challenge fails.

For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523-26 (2003); *Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal

[2] If the Court determines that such claims are not moot, the government respectfully requests an opportunity to submit a substantive response to the claims.

proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Section 1226 "generally governs the process for arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section 1226(a) provides that "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and the Department of Homeland Security ("DHS") thus have broad discretionary authority to detain an alien during removal proceedings.[3] *See* 8 U.S.C. §§ 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions"). When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS

[3] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors that account for the alien's ties to the United States and evaluate whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);[4] *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS]."). The immigration judge may also "consider the amount of bond that is appropriate." *Matter of Guerra*, 24 I. & N. Dec. at 40. Section 1226(a) does not provide an alien with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534); *cf. Reno v. Flores* 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General."). If, after the bond hearing, the immigration judge concludes that the alien should not be released, or the immigration judge has set a bond amount that the alien believes is too high, the alien may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

---

[4] The BIA has identified the following non-exclusive list of factors the immigration judge may consider: "(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties to the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States." *Matter of Guerra*, 24 I. & N. Dec. at 40.

Here, Castillo Lachapel's challenges to his detention are unavailing. For one, Castillo Lachapel's contention that his detention violates due process because it is not the least restrictive mechanism for accomplishing legitimate government interests, has been rejected by the Supreme Court. *See Demore*, 538 U.S. at 528 ("[W]hen the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal."). For another, his assertion that his detention lacks statutory authorization is wrong. He is currently in § 1229a removal proceedings, and his detention is governed by 8 U.S.C. § 1226(a): "§ 1226(a) authorizes [DHS] to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States." *Jennings*, 583 U.S. at 306; *Preap*, 586 U.S. at 409 (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions").

Moreover, in light of the extensive process available to him while detained under § 1226(a), Castillo Lachapel's detention challenge is premature because he has been detained for less than two weeks, and ICE is in the process of making a custody determination, after which he can seek a custody redetermination before an immigration judge (i.e., a bond hearing). While it is true that "[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court]," *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), exhaustion in this context should be required as a prudential matter, *accord Paz Nativi v. Shanahan*, No. 16 Civ. 8496 (JPO), 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017) ("before immigration detention may be challenged in federal court . . . exhaustion is generally required as a prudential matter" (collecting cases)).

CONCLUSION

For the foregoing reasons, the Court should deny Castillo Lachapel's habeas petition.

Dated: New York, New York
June 12, 2025

Respectfully submitted,

JAY CLAYTON
United States Attorney for the
Southern District of New York
Attorney for Respondents

By: */s/ Brandon M. Waterman*
BRANDON M. WATERMAN
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2743
Fax: (212) 637-2786
brandon.waterman@usdoj.gov

Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 3,750 words.