Respectfully submitted,

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Dated: November 10, 2025

Eastern District of Michigan

Jeffrey Ndungi Sila,

Petitioner,

v.

Kevin Raycraft, in his official capacity as Immigration and Customs Enforcement (ICE), Acting Director of the Detroit Field Office,

Respondent.

Civil No. 25-13066

Honorable Stephen J. Murphy, III

Magistrate Judge Curtis Ivy, Jr.

Respondent's Brief in Support of His Response to the Court's Order to Show Cause

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Issue Presented

I. Should the Court dismiss this habeas suit when petitioner has been released from custody and this matter is moot and, in any event, petitioner never raised a valid challenge to his detention?

II. Should the Court conclude that respondent's counsel complied with Rule 11 when counsel accurately described the facts available at the time after a reasonable inquiry?

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Introduction

In 2022, petitioner, a noncitizen, was placed into removal proceedings before the Immigration Court in California and released on bond. A short time later, the immigration court temporarily closed his removal proceedings and the agency returned petitioner's bond funds. In 2025, the Kansas City Immigration Court re-opened petitioner's removal proceedings and, a few months after that, immigration officials encountered petitioner 750 miles away attempting to unlawfully enter another country. As a result, ICE detained petitioner under 8 U.S.C. § 1226(a) until an immigration judge could conduct a bond hearing to determine whether petitioner was a danger to the community or a flight risk. That hearing occurred on October 16, 2025, but the immigration judge erroneously ordered petitioner released without bond, so the agency moved for reconsideration and, after deliberation, on November 6, 2025, the immigration court amended its prior order and required that petitioner post bond. Pursuant to the immigration judge's amended order, petitioner was released from ICE custody on November 7, 2025.

The day before the immigration court issued its amended bond order, the Court issued an order in this case requiring respondent to show cause why the Court should not grant petitioner's request for a writ of habeas corpus based on allegations petitioner raised in his reply brief. It further ordered respondent's counsel to show cause why the Court should not sanction him for misrepresenting a fact in the case.

The Court should not grant petitioner's request for a writ of habeas corpus because he was released during the natural course of his administrative immigration proceedings, so his petition is moot and, in any event, his claim in this case (including the arguments he raised for the first time in his reply) did not entitle him to habeas relief. The Court should not sanction respondent's counsel because respondent's counsel did not misrepresent the facts in this case.

Background

Petitioner Jeffrey Ndungi Sila is a citizen of Kenya who entered the United States under a temporary visa that expired almost ten years ago. (Anderson Decl., ECF No. 5-2, PageID.44). In 2017, Sila was convicted of stealing $76,000 in public funds and sentenced to 87 months imprisonment. (*See U.S. v. Sila*, Crim. No. 16-00448 (N.D. Tex.), ECF No. 10, 39, 100, 216). After Sila's release from prison in 2022, immigration officials initiated administrative removal proceedings against him. (Anderson Decl., ECF No. 5-2, PageID.45–46). An immigration judge in California granted Sila release on bond while those proceedings were pending. (*Id.* at PageID.46). Later that year, the immigration court administratively closed Sila's administrative removal proceedings and, in February 2023, ICE returned Sila's bond funds. (*Id.*; Exhibit 1 - I-391 at 1 (showing that ICE returned Sila's bond funds on 2/1/2023); 8 C.F.R. § 1003.18(c).

In June 2025, the Kansas City Immigration Court re-opened Sila's administrative proceedings and, a few months after Sila received notice of the immigration court's action, immigration officials encountered Sila 750 miles from Kansas City at the Detroit-Windsor Tunnel attempting to enter Canada. (Anderson Decl., ECF No. 5-2, PageID.46; Sila Decl., ECF No. 1, PageID.11–12). During that encounter, immigration officials detained Sila under 8 U.S.C. § 1226(a). (Anderson Decl., ECF No. 5-2, PageID.46). Under that statute, Sila was entitled to request that an immigration judge review his custody and, if appropriate, the immigration judge was authorized to release Sila on bond if he posted bond of "at least $1,500." *See* 8 U.S.C. § 1226(a)(2)(A).

On September 26, 2025, Sila, proceeding *pro se*, filed this suit challenging his detention. (*See* Pet., ECF No. 1). In his petition, he argued that the agency was wrongfully denying him release on bond and relied on a series of district court cases holding that noncitizens detained under a different statute— 8 U.S.C. § 1225(b)(2)— were entitled to bond hearings. (*See id.* at PageID.1–7). When Sila filed his petition, he had not yet appeared at a bond hearing. (Anderson Decl., ECF No. 5-2, PageID.44–47).

On October 1, 2025, government appropriations for the Department of Justice lapsed and respondent's counsel was furloughed.

On October 2, 2025, Sila paid the filing fee. (Docket Entry 10/02/2025). On October 7, 2025, the Court issued an order requiring the respondent to respond to Sila's petition three days later, on October 10, 2025. (Order, ECF No. 3, PageID.19).

On October 7, 2025, Sila appeared at a bond hearing in immigration court, but Sila's attorney withdrew his request for release on bond at that time. (Anderson Decl., ECF No. 5-2, PageID.47).

In response to the Court's order requiring a response to Sila's habeas petition, counsel for the respondent requested a sworn declaration from a government official employed by ICE. (*See* Anderson Decl., ECF No. 5-2, PageID.47). The assigned ICE official prepared a declaration describing Sila's immigration history up to that point. (*See id.* at PageID.43–47). The declaration was prepared based on records available to the assigned ICE officer at that time and signed on October 9, 2025. (Anderson Decl., ECF No. 5-2, PageID.47). The immigration court docketed a requested by Sila's counsel for a bond hearing on October 9, 2025, after the assigned ICE officer reviewed the database containing information about Sila's immigration proceedings. (Exhibit 2 – Supp. Anderson Decl. ¶ 4). Accordingly, the ICE officer was not aware that Sila's counsel had requested a bond hearing on October 9, 2025, when the officer signed the declaration. (*See id.*).

On October 9, 2025, counsel for respondent requested a furlough exception to draft and file a response to Sila's petition. (*See* Resp., ECF No. 5). On October 10,

2025, counsel filed a response to Sila's petition based on the information contained in the ICE officer's declaration, which was prepared the previous day. (*See* Resp., ECF No. 5; Anderson Decl., ECF No. 5-2).

On October 16, 2025, Sila appeared at a bond hearing and requested release. An immigration judge ordered his release, but did not require that Sila post bond because the immigration judge believed that Sila's prior bond was still active. (*See* IJ Order 10/16/2025, ECF No. 10, PageID.65). The following day a DHS attorney in Sila's administrative removal proceedings filed an emergency motion to stay the immigration judge's order and requested reconsideration because Sila's prior bond had been returned in 2023. (Mot. to Stay, ECF No. 10, PageID.71–76; Exhibit 1 – I-391 at 1); 8 U.S.C. § 1226(a)(2)(A). A few days later, Sila opposed DHS's motion for reconsideration and requested that the immigration judge expedite its ruling on DHS's motion. (Resp. to Mot. to Stay, ECF No. 10, PageID.67–69).

On October 24, 2025, Sila filed his reply in this habeas suit. (*See* Reply, ECF No. 9, PageID.53). In his reply, Sila argued for the first time that he was entitled to release because an immigration judge had ordered his release on October 16, 2025. (*Id.* at PageID.56). Sila did not move to amend his petition to add claims related to the immigration judge's bond order of October 16th at that time. (*See id.*). Under the local rules, an opposing party is not permitted to respond to a reply. *See* Loc. R. 7.1.

On November 3, 2025, and November 5, 2025, Sila filed copies of the immigration judge's order from October 16, 2025. (Supp. Records, ECF No. 10; Supp. Records, ECF No. 11). Counsel for respondent forwarded those documents to ICE and requested that the agency take appropriate action.

On November 5, 2025, the Court issued an order requiring respondent to show cause why it should not grant Sila's petition for a writ of habeas corpus and to show cause why it should not sanction respondent's counsel for allegedly misrepresenting a fact in this case. (Order, ECF No. 12). The Court also indicated that "the Government may wish to address some recent out-of-circuit authority" and cited, as an example, an unreported district court case from another circuit. (*See id.* at PageID.84).

On November 6, 2025, the immigration judge granted DHS's motion for reconsideration and amended Sila's order granting release to require that he post bond of $7,500. (Exhibit 3 – Amended IJ Order at 1–2). Sila posted bond and was released from ICE custody on November 7, 2025. (Exhibit 2 – Supp. Anderson Decl. ¶ 12).

Argument

The Court should not grant Sila's request for a writ of habeas corpus because he is no longer in ICE custody and this suit is moot. Further, even if it were not moot, Sila never raised a valid challenge to his detention and the non-binding authority

cited by the Court does not alter that conclusion because it is inconsistent with controlling law. The Court should find that respondent's counsel did not violate Rule 11 because counsel did not misrepresent the facts in this case.

I. The Court Should Not Grant Sila's Petition for a Writ of Habeas Corpus

The Court should not grant Sila's petition because it is moot and no longer presents an actionable case or controversy. Even if the case were not moot, habeas relief would not be warranted because the only allegations in Sila's petition were frivolous and the new arguments he raised in reply, which were based on events that occurred after the agency responded to Sila's petition, are neither valid nor properly considered on Sila's active petition.

1. Sila's Habeas Petition is Moot

The jurisdiction of federal courts is limited to actual cases or controversies. *See* U.S. Const. Art. III, § 2. "That limitation requires those who invoke the power of a federal court to demonstrate standing—a personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013) (quotation omitted). An "actual controversy" must exist at the time the complaint is filed and at all subsequent stages of the litigation. *Id.* A case becomes moot (*i.e.*, it no longer presents an actual controversy) "when events occur during the pendency of a litigation which render the court unable to grant the requested relief." *Demis v.*

Sniezek, 558 F.3d 508, 513 (6th Cir. 2009) (citing *Carras v. Williams,* 807 F.2d 1286, 1289 (6th Cir. 1986)); *Enazeh v. Davis*, 107 F. App'x 489, 491 (6th Cir. 2004).

Here, Sila's petition is moot. The only relief available in a habeas suit is release from custody. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–20 (2020). Sila has been released from custody. (Exhibit 1 – Supp. Anderson Decl. ¶ 12). Accordingly, there is no active case or controversy for this Court to adjudicate and the case is moot. *See Demis*, 558 F.3d at 513.

No exceptions to the mootness doctrine apply here. In "exceptional circumstances" courts have found an exception to the mootness doctrine in cases that present "an issue capable of repetition but evading review." *See Enazeh*, 107 Fed. App'x at 491 (citing *Weinstein v. Bradford*, 423 U.S. 147, 148–49 (1975)). However, "[t]his exception applies only where: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Id.* (quotation omitted).

Here, there are no exceptional circumstances warranting an exception to the mootness doctrine. Sila was detained for approximately ten weeks. (*See* Pet., ECF No. 1). Therefore, the duration of this dispute was not too short to be fully litigated. In addition, there is no reason to believe that Sila will be subject to the same action again, given that he was only detained because he attempted to unlawfully cross an

international border 750 miles from his home address, which Sila claims was a mistake. (*See* Sila Decl., ECF No. 1, PageID.12–13); 8 C.F.R. § 236.1(c)(8). Accordingly, nothing in the record would support an argument that the events leading to Sila's detention are likely to recur based on any action by the agency.

2. *Sila Never Properly Raised a Valid Challenge to His Detention*

Sila did not raise a valid challenge to his detention in his habeas petition. Further, the new arguments and facts Sila raised in his reply cannot be the basis for a grant of habeas corpus until he amends his petition and, in any event, the facts and arguments he now raises would not entitle him to a writ of habeas corpus.

A. Sila's Petition Was Meritless

In his petition, Sila challenged his detention primarily by relying on district court cases (that are now on appeal) holding that certain noncitizens could not be detained under § 1225(b)(2) because that statute did not permit release on bond. (*See* Pet., ECF No. 1, PageID.3–4). This argument was legally meritless because Sila was never detained under a statute that precluded his release on bond; he was detained under § 1226(a), which allowed release on bond if Sila could meet his evidentiary burden in immigration court. (*See* Anderson Decl., ECF No. 5-2, PageID.46). And, because the procedures available to Sila for requesting release on bond under § 1226(a) comply with due process, Sila could not have raised any valid challenge to his detention in this case. *See, e.g.*, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202–

10 (9th Cir. 2022); *Miranda v. Garland*, 34 F.4th 338, 358–64 (4th Cir. 2022); *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 275–77 (3d Cir. 2018). Sila's petition was also factually meritless because, at the time that Sila filed this suit on September 26, 2025, he knew he could request release on bond, but he had not properly requested a bond hearing because of errors by his own immigration attorney and delays by the immigration court, which are not attributable to respondent because respondent is not responsible for Sila's attorney or the immigration court. (*See* Anderson Decl., ECF No. 5-2, PageID.44–47; Reply, ECF No. 9, PageID.55 (conceding that his attorney had attempted to request a bond hearing in the wrong immigration court before Sila filed this habeas suit)).

Similarly, in his petition, Sila vaguely argued that he could not be detained because an immigration judge had released him on bond in 2022. (*See* Pet., ECF No. 1, PageID.1, 3). This argument was legally meritless because, under the unambiguous text of the governing statute, which this Court is bound to apply, "[t]he Attorney General at any time may revoke a bond . . . rearrest the alien under the original warrant, and detain the alien" and "[n]o court may set aside any action or decision by the Attorney General . . . regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. §§ 1226(b), (e); *BedRoc Ltd., LLC v. United States,* 541 U.S. 176, 183 (2004) (stating that the court's "inquiry begins with the statutory text, and ends there as well if the text is unambiguous."). Further,

the only authority Sila cited for this argument only supported the validity of his detention after immigration officials encountered him at an international border far from his home only a few months after the Kansas City immigration court had re-opened his removal proceedings. (*See* Sila Decl., ECF No. 1, PageID.12–13; Pet, ECF No. 1, PageID.3 (citing *Matter of Sugay*)); *Matter of Sugay*, 17 I. & N. Dec. 637, 639 (BIA 1981) ("We find without merit counsel's argument that the District Director was without authority to revoke bond once an alien has had a bond redetermination hearing."). Similarly, Sila's argument that he was immune to re-detention because of his 2022 bond order was factually incorrect because the immigration judge's bond order had been rescinded in 2023, (*see* Exhibit 1 – I-391 at 1), and, even if it had not been, his arrest at the Detroit-Windsor Tunnel would have automatically revoked his bond by operation of law, *see* 8 C.F.R. § 236.1(c)(9).

Even if Sila had cited the unreported district court case identified by the Court in its order to show cause, it would not have affected this analysis. The Court cites *Rodriguez Diaz*, in which a district court issued a preliminary injunction preventing ICE from re-detaining a noncitizen until it provided him a "pre-deprivation hearing." *Rodriguez Diaz v. Kaiser*, No. 25-05071, 2025 WL 3011852, at *1 (N.D. Cal. Sept. 16, 2025). The district court in *Rodriguez Diaz* supported its conclusion primarily by relying on a Supreme Court case involving a U.S. citizen released on parole, which the Sixth Circuit has never applied to prevent ICE from re-detaining a

noncitizen released on bond. *See id.* at *9–15 (citing *Morrissey v. Brewer*, 408 U.S. 471, 481–82 (1972)). Meanwhile, the district court in *Rodriguez Diaz* disregarded the plain language of § 1226(b) and (e), which, respectively, grant the agency discretion to revoke bond and precludes judicial review of "decisions about the application of § 1226 to particular cases." *Nielsen v. Preap*, 586 U.S. 392, 401 (2019) (quotation omitted). It disregarded the holding of a published Ninth Circuit case that should have dictated a different outcome. *See Rodriguez Diaz*, 53 F.4th at 1202–10. And it disregarded a series of recent Supreme Court cases commanding lower courts to simply apply the plain language of immigration statutes because Congress is entitled to determine the process due to noncitizens under the Constitution. *See* 8 U.S.C. §§ 1226(b), (e); *Biden v. Texas*, 597 U.S. 785, 807 (2022) ("We merely hold that section 1225(b)(2)(C) means what it says"); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580–81 (2022) (holding that § 1231 does not require bond hearings within six months because "[t]his text, which does not address or even hint at the requirements imposed below, directs that we answer this question in the negative.") (quotation omitted); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018) (same with respect to § 1225(b) and § 1226(c)). Accordingly, the unreported, out-of-circuit decision in *Rodriguez Diaz* makes no difference to the analysis of the issues in this case because it is not consistent with the controlling law governing the Court.

B. Sila's New Arguments Do Not Entitle Him to a Writ of Habeas Corpus

While *pro se* litigants are granted some leniency, "the 'leniency standard' has still required basic pleading standards." *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004). Under Rule 8, a party must state their claim for relief in their initial pleading. Fed. R. Civ. P. 8. If new facts or claims arise during litigation, a party must amend or supplement their pleading so that the opposing party has a fair chance to respond. *See* Fed. R. Civ. P. 15(a), (d). A party may not amend their pleading by raising new claims in a reply brief. *See* Fed. R. Civ. P. 8, 15; *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 440 (6th Cir. 2020) (holding that a party cannot amend their pleading by alleging new claims in a brief).

Here, the Court cannot grant a writ of habeas corpus based on facts and arguments raised for the first time in Sila's reply brief. Sila filed his petition seeking a writ of habeas corpus on September 26, 2025, and he has never amended or supplemented his petition. (*See* Pet., ECF No. 1). In his reply, he raises arguments relating to a bond order issued on October 16, 2025, which was several weeks after he filed this suit and almost a week after respondent filed its brief opposing Sila's petition. (*See* Reply, ECF No. 9, PageID.56). Therefore, the Court may not issue a writ of habeas corpus based on those arguments.

Further, even if Sila had properly amended his petition to include his new allegations about the immigration judge's October 16 order, a writ of habeas corpus

would not have been warranted. While Sila is correct that the immigration judge issued an order granting his release on October 16th, that order was defective and did not entitle him to release under the governing statute, so DHS promptly sought to stay that order to correct the immigration judge's error. (Mot. to Reconsider, ECF No. 10, PageID.74–76). Once the immigration court corrected its error and Sila posted bond, the agency promptly released Sila. (Exhibit 2 – Supp. Anderson Decl. ¶¶ 11–12; Exhibit 3 – Amended IJ Order at 1–2). Thus, Sila properly pursued the administrative procedures provided by Congress which resulted in Sila obtaining the appropriate relief under the governing statutes. (*See id.*). This occurred without any involvement from the Court in this habeas suit, which further demonstrates that habeas relief was never warranted in this case.

II. Respondent's Counsel Did Not Violate Rule 11

Under Rule 11, attorneys must certify that to "the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstance . . . the factual contentions have evidentiary support . . . and the denials of factual contentions are warranted on the evidence or, if specifically so identified are reasonably based on belief or lack of information." Fed. R. Civ. P. 11(b). A court may impose an "appropriate sanction" on an attorney if, "after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated." Fed. R. Civ. P. 11(c).

Here, respondent's counsel did not violate Rule 11. Counsel's representations were warranted based on the available evidence after a reasonable inquiry under the circumstances. On October 7, 2025, the Court issued an order requiring counsel to respond to Sila's petition in three days during a government shutdown. (Order, ECF No. 3). In response, counsel promptly requested a sworn declaration from a knowledgeable agency official and an agency official provided the requested declaration in the afternoon on October 9, 2025. (*See* Anderson Decl., ECF No. 5-2, PageID.47). The only information contained in that declaration regarding Sila's request for a bond hearing indicated that Sila's attorney had withdrawn his request for release on bond on October 7, 2025. (*See id.*). Respondent's counsel is entitled to presume that a sworn statement by a government official is accurate. *See United States v. Chem. Found.*, 272 U.S. 1, 14–15 (1926); *Parra-Morela v. Holder*, 504 F. App'x 461, 462 (6th Cir. 2012). Therefore, given the short time remaining between the completion of the official's declaration and the response deadline, it was reasonable for counsel to argue that Sila had not requested bond when the response brief was filed because that is what the available evidence showed at the time. *See Salkil v. Mount Sterling Twp. Police Dep't*, 458 F.3d 520, 530 (6th Cir. 2006) (holding that Rule 11 "requires the district court to analyze counsel's conduct as it appeared at the time counsel acted.").

Further, the alleged omission cited by the Court was not offered as a fact; it was offered as argument to rebut Sila's allegations and it did not mislead the Court in any relevant way. (*See* Order, ECF No. 12, PageID.83 (criticizing statements in the introduction and argument sections of the response, not in the fact section). The main point of respondent's legal argument was that Sila's habeas petition was frivolous because he was detained under a statute that allowed him to request release on bond. (*See* Resp., ECF No. 5, PageID.33–36). That is, the mere possibility that Sila could request release on bond was sufficient to demonstrate that Sila had no valid statutory or constitutional challenge to his detention, whether or not Sila ever actually requested release on bond. *See, e.g.*, *Borbot*, 906 F.3d at 277 ("But Borbot cites no authority, and we can find none, to suggest that duration alone can sustain a due process challenge by a detainee who has been afforded the process contemplated by § 1226(a) and its implementing regulations."). Therefore, the precise date on which Sila actually requested release on bond is immaterial because he indisputably did not properly request release on bond until long after he filed this suit. (*See* Pet., ECF No. 1; IJ Order, ECF No. 10, PageID.65). And, in any event, despite any filings by Sila on October 9, 2025, he did not actually perfect his request for release until he appeared at a bond hearing with an immigration judge and requested that the judge adjudicate his request on the merits, which did not occur until October 16, 2025. (*See* IJ Order, ECF No. 11, PageID.78).

Conclusion

Respondent respectfully requests that the Court vacate its order to show cause and dismiss this case as moot.

Respectfully submitted,

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Dated: November 10, 2025

Certificate of Service

I hereby certify that on November 10, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

I further certify that I have mailed by U.S. mail a copy of Respondent's Response to the Court's Order to Show Cause, to the following non-ECF participants at their current address listed on the docket, which is:

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/s/ Zak Toomey
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