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BY CM/ECF
The Honorable Diane Gujarati
U.S. District Court, Eastern District of New York
225 Cadman Plaza East
Courtroom 4B South
Brooklyn, NY 11201

Re: *Yam v. Genalo et al., 1:26-cv-01341-DG*

Dear Honorable Madam:

The Kasen and Liu Law Firm, PLLC represents the petitioner.

This letter is respectfully submitted in reply to the respondents' response to the Court's Order to Show Cause.

The Department of Homeland Security ("DHS"), was formed through the Homeland Security Act of 2002, and absorbed the former Immigration and Naturalization Service ("INS"), creating three new offices in its stead: U.S. Customs and Border Protection ("CBP"); ICE; and USCIS. *See* ABOUT DHS: ORGANIZATION: OPERATIONAL AND SUPPORT COMPONENT PARTS (https://www.dhs.gov/operational-and-support-components) (last visited on March 13, 2026). *See also Rashid v. Mukasey*, 533 F.3d 127, 129, n. 2 (2d Cir. 2008).

It is respectfully submitted that the stance now adopted by the respondents is highly disingenuous and internally contradictory. For over twenty-three years, Immigration and Customs Enforcement ("ICE") and its predecessor agencies made no efforts to remove Mr. Yam. Just the opposite. ICE made the decision to exercise positive discretion by placing him on an order of supervision in lieu of removing him. A copy of one of Mr. Yam's handwritten check in sheets is attached hereto as Exhibit 1. Each time Mr. Yam appeared, the ICE officer handwrote the date and time of his next appointment. *Id.* Mr. Yam has also cooperated in efforts to obtain a travel document: a copy of the receipt issued to him by the Chinese Consulate General is attached hereto as Exhibit 2. USCIS found it appropriate to exercise positive

discretion by granting Mr. Yam an employment authorization document ("EAD"), pursuant to 8 C.F.R. § 274a.12(c)(18):

> An alien against whom a final order of deportation or removal exists and who is released on an order of supervision under the authority contained in section 241(a)(3) of the Act may be granted employment authorization in the discretion of the district director only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest. Additional factors which may be considered by the district director in adjudicating the application for employment authorization include, but are not limited to, the following:
> (i) The existence of economic necessity to be employed;
> (ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support; and
> (iii) The anticipated length of time before the alien can be removed from the United States.

Id. A redacted copy of Mr. Yam's EAD is attached hereto as Exhibit 3. Mr. Yam also has two minor children: copies of their redacted birth certificates are attached hereto as Exhibit 4. Prior to bringing this action, petitioner did seek the cooperation of ICE for his release. *See* Exhibit 5 (redacted).

It is respectfully submitted that Mr. Yam merits release because his detention has been prolonged; yet he has been cooperative with USCIS and ICE by abiding by his order of supervision, and seeking a travel document. Moreover, USCIS, as much a part of DHS as its sister agency, ICE, has viewed Mr. Yam as worthy of favorable treatment, despite his final removal order and related history.

Inasmuch as the Court may deem the respondent's response to the Order to Show cause to constitute a motion to dismiss, petitioner respectfully requests that the intended motion be set down for full briefing. Moreover, it is respectfully submitted that a dispositive motion is premature because, as of this writing, the summons has not yet been issued, and therefore, petitioner cannot yet formally serve respondents with the petition.

I thank your Honor for your kind attention to this matter.

Respectfully submitted,

Aleksander B. Milch

AM/jy
cc: All counsel of record