**U.S. Department of Justice**

*United States Attorney*
*Eastern District of New York*

*610 Federal Plaza*
*Central Islip, New York 11722*

March 12, 2026

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

*Domingo Flores Aparcio v. Ken Genalo, et al,* 26-cv-1411 (Choudhury, J.)

Dear Judge Choudhury:

This Office represents Respondents Ken Genalo, New York Field Office Director, Enforcement and Removal Operations, Immigration and Customs Enforcement ("ICE"); Todd Lyons, Director, ICE; Kristi Noem, Secretary, U.S. Department of Homeland Security; and Pamela Bondi, U.S. Attorney General (collectively, "Respondents") in the above-captioned action in which Petitioner Domingo Flores Aparicio ("Petitioner") filed a Petition for a writ of habeas corpus on March 11, 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 March 11, 2026 (DE #5) (the "OTSC") requiring Respondents to provide certain information identified by the Court by March 12, 2026, at 3:00 p.m.

**Factual Issues Responsive to the OTSC**

Petitioner entered the United States without inspection at an unknown place and time. *See* Declaration of Michael Damiano ("Damiano Decl.") ¶ 5. On September 14, 2017, after having filed an application for an immigrant benefit with the United States Citizenship and Immigration Services ("USCIS"), Petitioner was placed into removal proceedings by USCIS through the issuance of an I-862, Notice to Appear ("NTA").[1] *See id.* ¶ 7. On February 26, 2025, ICE dismissed Petitioner's removal proceedings without prejudice as a matter of discretion. *See id.* ¶ 9; Exh. A (Order on Motion to Dismiss). Petitioner has been assigned A number [redacted].[2] *See id.* ¶ 3. He was arrested and detained on March 11, 2026, pursuant to Form I-200, Warrant of Arrest ("I-200"), dated March 11, 2026. *See id.* ¶¶ 14, 18, 24, 25; Exh. B. During processing, Petitioner was

[1] As of the filing of this response, Respondents have not been able to provide a copy of the September 14, 2017, NTA.

[2] The Petition indicates that Petitioner's A number is [redacted]. Additionally, ICE's records indicate that Petitioner is a citizen of Mexico, whereas the Petition alleges that he is a citizen of Honduras. *See* Damiano Decl. ¶ 3; *compare* Petition ¶ 12.

placed into removal proceedings through the issuance of an NTA dated March 11, 2026, charging Petitioner with inadmissibility pursuant to Section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i) as being an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General of the United States of America. *See id.* ¶ 26; Exh. C. Petitioner is detained pursuant to Immigration and Nationality Act section 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). *See id.* ¶ 27. Petitioner was processed on March 11, 2026, at the ICE Nassau County Intake Facility at 100 Carmen Avenue, East Meadow, New York, and subsequently transferred, that day, to the Nassau County Corrections Center ("NCCC") in East Meadow, New York, where he has been detained since his arrest, which is in accordance with the limitations set forth in the OTSC. Petitioner's counsel may contact Supervisory Deportation and Detention Officer Jason Langlois at Jason.V.Langlois@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 16, 2026, at 2:00 p.m., if that hearing goes forward or the Petitioner is not sooner released. ICE is aware of the Court's Stay and OTSC and is therefore currently working on arranging bedspace for Petitioner within the District of New Jersey, the Southern District of New York, or the Eastern District of New York. Petitioner has not been detained at 535 Federal Plaza, Central Islip, New York nor, barring unforeseen circumstances, does ICE intend to transfer him to Central Islip other than as required to produce him for the March 16th hearing at 2:00 p.m.

**Legal Analysis Responsive to the OTSC**

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, and 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, however, 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*, 166 F. 4th 494, 498-508 (5th Cir. 2026).[3]

Additionally, to the extent that Petitioner's Fourth Amendment and Accardi Doctrine claims, and claim for the production of an administrative record, are construed as arising under the APA, this statute is not the proper vehicle for Petitioner's claims arising out of his detention, which drives this suit. 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.

To the extent that Petitioner's Fourth Amendment claim is construed as arising directly under the Fourth Amendment, and not under the APA, the claim fails because his civil detention was a reasonable and lawful exercise of federal immigration authority. As the Supreme Court recognized in *Abel v. United States*, 362 U.S. 217 (1960), administrative arrests for deportation

[3] 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 for oral argument on April 4, 2026.

have a long-standing statutory history and are distinct from arrests for criminal offenses. The Supreme Court held that that "[s]tatutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time. It would emphasize the disregard for the presumptive respect the Court owes to the validity of Acts of Congress, especially when confirmed by uncontested historical legitimacy, to bring into question for the first time such a long-sanctioned practice of government at the behest of a party who not only did not challenge the exercise of authority below, but expressly acknowledged its validity." *Abel*, 362 U.S. at 230. Petitioner's arrest was not a criminal arrest requiring a judicial warrant or probable cause of a new crime; rather, it was a civil, administrative arrest carried out pursuant to the broad authority granted by Congress to enforce the nation's immigration laws.

For the foregoing reasons, 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 16, 2026 at 2:00 p.m. should it go forward.

Respectfully submitted,

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Encls.

Cc: Counsel of record by ECF