IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RAVIRAJH SIVANANTHARSHA,
***Petitioner*,**
v.

FREDERICK J. AKSHAR II,
in his official capacity as Warden of the Broome County Correctional Facility, et al;

Respondents.

Civil Action No. 9:26-cv-398 (AJB)

Immigration No. [redacted]

REPLY TO RESPONSE TO PETITION

INTRODUCTION

Respondents argue that Petitioner is being lawfully held pursuant to their detention authority under 8 U.S.C. § 1231, "addresses immigrants in the 'removal period,' the term used in the statute to describe the 90–day period following an order of removal during which 'the Attorney General shall remove the alien.'" See *Hechavarria v. Sessions*, 891 F.3d 49, 54 (2d Cir. 2018) (quoting 8 U.S.C. § 1231(a)(1)(A)). Petitioner argues that his detention could only be under § 1226, as he is not immediately removable, given the fact that a motion for a stay of removal is pending before the Second Circuit and the forebearance policy is in effect.

It bears noting that Petitioner was not litigating his asylum claim before the Second Circuit at the time that he was unlawfully and arbitrarily re-detained by Respondents at his home in Buffalo despite having posted a bond and having complied with all the conditions of that bond. His matter was pending before the Board of Immigration Appeals, which engages in *de novo* review of immigration court decisions, and as such, no final order of removal was in place. However, during his eight months of confinement without a bond hearing after being re-

detained, Petitioner's asylum claim was denied by the Board of Immigration Appeals and a Petition for Review was filed at the Second Circuit.

DETENTION AUTHORITY

"Broadly speaking, section 1226 governs the detention of immigrants who are not immediately deportable." *Hechavarria*, 891 F.3d at 57, as amended (May 22, 2018) (citing, *inter alia*, *Leslie v. Att'y Gen. of the U.S.*, 678 F.3d 265, 270 (3d Cir. 2012) ("Our review indicates that every circuit to consider the issue has held that § 1226, not § 1231, governs detention during a stay of removal."); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008) ("We agree with *Prieto–Romero* and hold that § 1231(a) does not provide authority to detain an alien whose removal order is administratively final, but whose removal has been stayed by a court of appeals pending its disposition of his petition for review.")).

Respondents also acknowledge that an "overwhelming majority of courts in this Circuit" have found that the Second Circuit's forbearance policy "amounts to a 'court ordered stay of removal of the alien.'" *Singh v. Francis*, No. 26-CV-00344 (OEM), 2026 WL 507890, at *3 (E.D.N.Y. Feb. 24, 2026) (citing *Rodriguez Sanchez v. Decker*, 431 F. Supp. 3d 310, 314 (S.D.N.Y. 2019); *Falodun v. Session*, 6:18-cv-06133-MAT, 2019 WL 6522855, at *5 (W.D.N.Y. Dec. 4, 2019); *Doe v. Decker*, 21 Civ. 5257 (LGS), 2021 WL 6066015, at *2 n.1 (S.D.N.Y. Nov. 19, 2021); *Thomas v. Whitaker*, No. 18-CV-6870, 2019 WL 1641251, at *3 (W.D.N.Y. Apr. 16, 2019) (holding that petitioner who sought judicial review of a removal order by the Second Circuit and had a pending motion for a stay of removal before that court was detained pursuant to § 1226 because "[i]n light of [his] pending appeal and motion to stay, combined with the government's forbearance policy, [he] is not 'immediately deportable' and his removal is 'not inevitable'"). "As the government concedes, under its forbearance agreement with the Second Circuit, Thomas may not be removed while his motion to stay is pending." *Id.*

IMMIGRATION BONDS AND THE ILLEGAL RE-DETENTION OF PETITIONER DESPITE HAVING POSTED A BOND

Respondents argue that Petitioner's bond, set in April 2020, "was to secure his appearance in immigration court for his removal proceedings." They claim that "Those proceedings terminated in the denial of his asylum petition and the issuance of an order of removal." They also claim that "[t]his was a substantial change in circumstance from his initial detention in February 2020 and release on bond in April 2020." They cite to no authority for the premise that an immigration judge's non-final order somehow automatically terminates an immigration bond. This is because there is no such authority. Immigration bonds continue beyond the immigration judge's decision – and cannot be revoked unilaterally by ICE ERO enforcement officers. To do so would be akin to police being able to unilaterally revoke a criminal defendant's court-ordered bail and re-detain him with no due process, even if he hasn't committed any new offenses or violated conditions of his bail. That is exactly what has happened here.

If there was a substantial change in circumstances such that Respondents wanted to re-detain Petitioner during the pendency of his BIA appeal, the proper course of action would have been for them to file a motion for a custody redetermination hearing before an immigration judge, where Petitioner would have had a pre-deprivation hearing and would have been able to challenge any contention that the immigration judge's denial of his claim for relief was somehow an indicia of greater flight risk.

Rather, Respondents arbitrarily and unlawfully arrived at Petitioner's home in Buffalo, knocked on the door, and proceeded to handcuff him and take him away, with absolutely no due process. No administrative "warrant" can ameliorate such an unlawful detention in violation of statutory law and the Constitution. Such a "warrant" is hardly worth the paper it is printed on.

Attendant to this illegal detention, Petitioner has now been held in detention for over eight months. He requested bond hearings, but was denied them. Respondents accelerated the adjudication of his appeal before the BIA, and his case was denied by the troubled administrative tribunal. Due process at the BIA is a thing of the past, if it ever existed. Indeed, under the current administration, a purge occurred at the BIA, which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired.[1] The statistical impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71 published decisions.[2] Of those, 69 decisions (97%) favored the administration.[3] By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions.[4] Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% pro-government outcomes—achieved through wholesale termination of one administration's appointees —speaks for itself. To replace purged judges, the DOJ launched recruitment for what it explicitly marketed as "deportation judges."[5] DHS–a party in immigration proceedings before EOIR– promoted these openings on social media with enforcement-focused language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."[6]

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[1] Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undoc umented-immigrants/.

[2] Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29.

[3] Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration

[4] Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), https://www.justice.gov/eoir/volume-28. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021)

[5] Murphy Marcos *supra* note 2.

[6] dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.

Now, as Petitioner seeks due process in an Article III Court, the Respondents argue that, should this Court find that Petitioner's rights were violated, the only due process to which he is entitled should be nothing more than a *new bond hearing* – before same arbiter who denied him bond under the government's illegal bond denial policy and thereby subjected him to 8 months of unlawful detention. They suggest that a new bond hearing, which they denied Petitioner, would somehow ameliorate the 8 months of his life he has spent in confinement despite having already been granted a bond that he posted before, and which was unilaterally and arbitrarily revoked by Respondents without any due process whatsoever.

Petitioner implores this Court to vindicate his rights by following the rationale of *Morales Mendez v. Field Office Director, et al.*, No. 9:26-cv-337-ECC (N.D.N.Y. March 16, 2026). In that case, Judge Coombe held that where "Petitioner's detention violates her rights under the Due Process Clause of the Fifth Amendment"…"[t]he appropriate remedy is release" because "a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity for relief because the detention without adequate pre-deprivation procedures has already been carried out." *Id.*, citing *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065, 2025 WL 3314420, at *32-33 (E.D.N.Y. Nov. 28, 2025).

Respectfully submitted,

Dated: March 26, 2026

/s/ Matthew K. Borowski

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