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April 2, 2026

Hon. Anthony J. Brindisi
U.S. District Judge
Alexander Pirnie Federal Bldg.
and U.S. Courthouse
10 Broad Street
Utica, NY 13501

RE: *Sivanantharsha v. Askhkar, et al.*
Civil Action No. 9:26-cv-00398-AJB

Dear Judge Brindisi:

I write to provide a status report on behalf of the Federal Respondents pursuant to the Court's text order dated March 31, 2026.

As the Court has already been advised by Petitioner's counsel, the Second Circuit granted the Petitioner's motion to stay his order of removal pending determination of his Petition for Review (PFR) in that Court.

As the government explained in its brief, until today Petitioner was subject to an administratively final order of removal that had not been stayed by a court, and therefore was detained pursuant to 8 U.S.C. § 1231. The government concedes that the Second Circuit held in *Hechavarria v. Sessions*, 891 F.3d 49 (2d Cir. 2018), that the issuance of a court-ordered stay of a final removal order reverts Section 1231 detention to pre-order-of-removal detention authority – which in that case was Section 1226(c) because Hechavarria was a "criminal alien" pursuant to that statute. *Id.*

Here, the government maintains that, because Petitioner entered the United States without being admitted or paroled, he is subject to detention under 8 U.S.C. § 1225(b)(2), and the Second Circuit stay reverts his detention back to Section 1225(b). However, the government acknowledges that this Court has previously rejected that statutory argument. *See Alvarez v. Philips, et al.*, 9:26-cv-0058 (AJB) ("the Court disagrees [with the government's argument] and again adheres to its conclusion that [8] U.S.C. § 1226(a), not § 1225(b)(2)(A), governs Petitioner's detention."). The government further acknowledges that the other district court judges in the Northern District of New York have reached the same conclusion. *See Morales Mendez v. Field Office Director*, Case No. 9:26-cv-00337-ECC, Dkt. # 11, at 5 (Mar. 16, 2026); *Gaspar v. Akshar*, Case No. 9:26-cv-00118-BKS, Dkt. # 13, at 15 (Feb. 17, 2026); *Noguez v. Brophy*, Case No. 9:26-cv-00030-MAD, Dkt. # 14, at 6 (Feb. 13, 2016); *Bravo Perez v. Bondi*, Case No. 9:26-cv-00205-ECC, Dkt. # 10 at 2 (Feb. 20, 2026) (Order; Memorandum-Decision

and Order forthcoming); *cf. Martins v. Akshar*, Case No. 9:26-cv-00095-MAD, Dkt. # 16, at 10 (Feb. 3, 2026).

On the legal issue of which statute governs Petitioner's detention here now that the Second Circuit has issued a stay—whether it is 8 U.S.C. § 1226(a), or 8 U.S.C. § 1225(b)—the government acknowledges that this Court's decision in *Alvarez* would control the result here if the Court adheres to that decision, as the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention. The government does not consent to issuance of the writ and reserves all rights, including the right to appeal, but relies on its legal arguments presented in *Alvarez* and other cases before this Court to conserve judicial and party resources while expediting the Court's consideration of this case.

The government further submits that the appropriate remedy, if the Court issues the writ, is not release but rather a bond hearing at which the Petitioner bears the burden of proof. As the government argued in its Response to the Petition, the Immigration Judge's decision denying Petitioner's relief application and ordering him removed, and the BIA's dismissal of his appeal of that decision, represent a significant change in circumstances from the time that he was released on bond nearly six years ago. Additionally, in denying immigration relief to the Petitioner, the immigration judge determined that Petitioner did not testify credibly, a finding that the BIA did not disturb on appeal. Moreover, based on the government's filing of a notice of intent to remove with the Second Circuit, Petitioner is now aware that the government has obtained a travel document and is prepared to remove him if and when his PFR is denied. These facts significantly increase Petitioner's flight risk. As such, the appropriate remedy is for a bond hearing at which he bears the burden of establishing that he is not a flight risk or danger to the community under these current – and changed – circumstances.

Thank you for your consideration of this matter.

Respectfully Submitted,

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