

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAFAEL ANDRES RUBIO BOHORQUEZ,

Petitioner,

Civil Action No. 26-CV-2053

- against -

(Donnelly, J.)

MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security; KENNETH
GENALO, Acting Field Office Director, New
York City Field Office, U.S. Immigration and
Customs Enforcement; TODD BLANCHE,
Acting Attorney General, Department of Justice;
RAUL MALDONADO, Metropolitan Detention
Center Warden

Respondents.

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**MEMORANDUM OF LAW IN RESPONSE TO ORDER TO SHOW CAUSE WHY A
WRIT OF HABEAS CORPUS SHOULD NOT BE ISSUED**

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(Of Counsel)

Respondents, by their attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, Dkt. No. 1 (“the Petition” or “Pet.”), filed by petitioner Rafael Andres Rubio Bohorquez (“Petitioner”), and in response to this Court’s Order to Show Cause dated April 7, 2026.

PRELIMINARY STATEMENT

This is the second petition for writ of habeas corpus brought by Petitioner arising from his January 12, 2026 arrest by U.S. Immigration and Customs Enforcement (“ICE”). The first, filed in the federal district court for the Southern District of New York (“SDNY”), was denied by the Honorable John P. Cronan on March 23, 2026 (“the SDNY Petition”). *Bohorquez v. Francis et al.*, 2026 WL 811178 (S.D.N.Y. Mar. 23, 2026). On April 7, 2026, Petitioner filed a second petition in this district, seeking a second bite of the apple, and asks this Court to do what a federal district court judge already denied: ordering Respondents to release him from detention.

The Petition should be denied on three independent grounds. *First*, this Court does not have jurisdiction over the Petition because Petitioner was not in the Eastern District of New York (“EDNY”) at the time the Petition was filed. *Second*, the Petition should be dismissed because it asserts claims that Petitioner could have raised in the SDNY Petition and thus constitutes an abuse of the writ. *Finally*, even if the Court asserts jurisdiction over the action and determines the Petition does not constitute an abuse of the writ, the Petition should be denied on the merits because Petitioner’s detention is lawful. Petitioner, a native and citizen of Venezuela who overstayed his visitor visa, is being detained under 8 U.S.C. § 1226(a). He received an initial custody determination and, at this request, a bond hearing before an immigration judge as required by § 1226(a) and its implementing regulations.

BACKGROUND

A. Factual Background

Petitioner, a native and citizen of Venezuela, was admitted to the United States on a non-immigrant B1/B2 visa on October 24, 2012, with permission to remain in the United States until April 23, 2013. *See* Declaration of ICE Deportation Officer Craig Limoncelli (“Limoncelli Decl.”) ¶¶ 3-4. Petitioner departed the United States on November 12, 2012, and later returned, again entering the United States as non-immigrant B1/B2 on October 22, 2013, with permission to remain in the United States until April 21, 2014. *Id.* ¶¶ 4-5. On April 26, 2017, Petitioner was admitted to the United States on a non-immigrant B1/B2 visa with permission to remain in the United States until October 22, 2017. *Id.* ¶ 10. Petitioner failed to depart the United States within this time period. *Id.* On March 25, 2021, Petitioner filed a Form I-821, Application for Temporary Protected Status (“TPS”) with the U.S. Citizenship and Immigration Services (“USCIS”). *Id.* ¶ 11.

Petitioner’s TPS application was granted, with an effective date of September 15, 2021. *Id.* Petitioner’s TPS status was set to expire on September 9, 2022. *Id.* Petitioner was subsequently approved for TPS re-registration with USCIS approximately three times. *Id.* ¶¶ 11-14. On January 17, 2025, Petitioner filed for TPS re-registration with USCIS. *Id.* ¶ 15. On November 20, 2025, prior to obtaining a decision on his re-registration, Petitioner’s TPS status was terminated pursuant to 8 C.F.R. § 244.19. *Id.* On November 25, 2025, Petitioner filed an affirmative application for relief from removal with USCIS. That application remains pending. *Id.* ¶ 16.

On March 29, 2023, Petitioner was arrested in Queens, New York, by the New York City Police Department, and charged with Assault in the third degree, in violation of NYPL 120.00, a Class A Misdemeanor, and Harassment in the Second Degree, in violation of NYPL 240.26, a violation. *Id.* ¶ 13. Charges were subsequently dropped and his arrest record sealed. *Id.*

On January 12, 2026, a Homeland Security Investigations Officer arrested Petitioner pursuant to an I-200, Warrant of Arrest of Alien, at the USCIS Office located in Bethpage, New York. *Id.* ¶ 17. Petitioner was then transported to the ICE processing facility for processing¹ and further detention arrangements. Limoncelli Decl., ¶ 17. During processing, Petitioner was served with a Form I-862, Notice to Appear (“NTA”); the aforementioned Form I-200; and a list of free legal services. *Id.* ¶ 18. ICE also conducted an initial custody determination and determined that Petitioner would remain detained pending removal proceedings; this determination was noted in the Form I-286, Notice of Custody Determination, which Petitioner refused to sign. Limoncelli Decl. ¶ 18. The NTA charged Petitioner as removable under Immigration and Naturalization Act (“INA”) § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B), in that after admission as a nonimmigrant under INA § 101(a)(15), Petitioner remained in the United States for a time longer than permitted. Limoncelli Decl., ¶ 19. ICE filed the NTA with the immigration court the same day, commencing removal proceedings against Petitioner. *Id.* ¶ 20.

During removal proceedings, Petitioner filed a request for a bond hearing. A bond hearing was scheduled for February 2, 2026. *Id.* ¶¶ 26-27. On February 2, 2026, Petitioner appeared without counsel before an immigration judge for a bond hearing. *Id.* ¶ 28. At the conclusion of the hearing, the immigration judge denied Petitioner’s request for release on bond, concluding that Petitioner failed to meet his burden of demonstrating that he is not a danger to the community. *Id.* Also on February 2, 2026, the immigration judge took pleadings in Petitioner’s case. Petitioner admitted the factual allegations contained in the NTA and denied removability. The immigration

¹ Your Honor ordered Respondents to “advise the Court whether any property was seized from the petitioner when he was arrested, and file any records associated with the seizure of property.” *See* Order to Show Cause dated April 7, 2026. ICE did seize property from Petitioner, including a laptop, two cellular phones, clothing, and funds, which are inventoried in a Form 589, Property Receipt. *See* Exhibit D to Limoncelli Decl.

judge sustained removability based on evidence and argument by ICE. Additionally, Petitioner indicated his intent to file a Motion to Terminate Proceedings. *Id.* ¶ 29.

On February 3, 2026, Petitioner was transferred from Orange County Jail, located in Goshen, New York, to the MDC. *Id.* ¶ 22.

On February 10, 2026, Petitioner filed a Motion to Terminate Removal Proceedings. ICE filed a response, in opposition to the motion on February 20, 2026. *Id.* ¶ 31.

On March 4, 2026, Petitioner appeared with counsel before an immigration judge for a master calendar hearing. *Id.* ¶ 32. Petitioner's hearing was adjourned for him to properly file a relief application with the immigration court. *Id.*

On March 17, 2026, Petitioner filed a relief application with the immigration court. *Id.* ¶ 31. On March 18, 2026, Petitioner appeared with counsel before an immigration judge for a master calendar hearing. *Id.* At that hearing, Petitioner's relief application was reviewed by the immigration judge. *Id.* Petitioner's relief application was found to be incomplete and was deemed abandoned. *Id.* Consequently, the immigration judge ordered Petitioner removed to Venezuela. On March 18, 2026, Petitioner filed a Motion to Reopen with the immigration court. *Id.* ¶ 33. On March 23, 2026, the immigration judge denied Petitioner's Motion to Reopen. *Id.*

On March 21, 2026, Petitioner was transferred to Delaney Hall Detention Facility ("DHDF"). *Id.* ¶ 23. On April 1, 2026, Petitioner was scheduled for transfer from DHDF to MDC for April 6, 2026. *See* Declaration of Abdul L. Uddin ("Uddin Decl."), ¶ 4. On April 6, 2026, Petitioner was transferred from DHDF at 12:30 p.m. and transported to and booked into MDC at approximately 3:00 p.m. *Id.* ¶ 5. Medical staff at MDC determined that Petitioner could not be detained at the MDC. *Id.* ¶ 6. Based on the medical determination, ICE initiated transfer of the Petitioner on April 7, 2026. *Id.* ¶ 7. At approximately 12:00 p.m. on April 7, 2026, Petitioner

departed the MDC and arrived at DHDF at 1:00 p.m. *Id.* ¶ 8. For security reasons, ICE does not publicly provide information on its Online Detainee Locator System (“ODLS”) about transfers that are planned or in progress. Once a person is transferred and booked into another ICE detention, ODLS is updated. *See* ICE, About the Detainee Locator / FAQs, available at, <https://locator.ice.gov/odls/#/about?includeCBP=true&moreInfoNoResults=https:%2F%2Fwww.cbp.gov%2Fborder-security%2Falong-us-borders%2Fmissing-migrant-program> (last accessed on April 10, 2026).

On April 6, 2026, Petitioner retained new counsel. *See* Limoncelli Decl., ¶ 36. On that same day, Petitioner filed a new Motion to Reopen his removal proceedings. *Id.* On April 7, 2026, the immigration judge granted Petitioner’s Motion to Reopen. *Id.* Petitioner’s removal proceedings remain pending. He is awaiting a future hearing date from the immigration court. *Id.* ¶ 37.

B. The SDNY Habeas Petition

On January 12, 2026, the same day he was arrested and detained, Petitioner filed, through counsel, the SDNY Petition pursuant to 28 U.S.C. § 2241. *See Bohorquez v. Francis, et al.*, No. 26-cv-264 (S.D.N.Y. Mar. 23, 2026) (Cronan, J.), Dkt. No. 1. On January 22, 2026, Petitioner filed an amended petition. *Id.* Dkt. 16. Petitioner argued that his immigration detention was unlawful because his TPS had not been withdrawn, or, in the alternative, that the withdrawal of his TPS was unlawful. *Id.* On March 23, 2026, Judge Cronan denied the petition, rejecting Petitioner’s arguments, finding that, first, as a factual matter, Petitioner’s TPS had been withdrawn, and, second, that Petitioner had not established that the withdrawal was unlawful. *Bohorquez*, 2026 WL 811178, **6-11.

C. The Habeas Petition Before This Court

Fifteen days after Judge Cronan denied the SDNY Petition was denied, Plaintiff filed this Petition, challenging the lawfulness of his detention on due process grounds that were not raised before Judge Cronan. He now argues that his January 2026 arrest and detention violated his due process rights because ICE did not conduct an individualized assessment of his flight risk or his danger to the community prior to detaining him and that he was not provided a constitutionally adequate bond hearing. Pet., ¶¶ 27-32.

ARGUMENT

I. Court Lacks Jurisdiction Over the Petition

This Court cannot grant the relief sought by Petitioner because he was not detained in the EDNY at the time the Petition was filed on April 7, 2026. The Petition was filed in the wrong federal judicial district, and should be transferred to the proper forum, the District of New Jersey.

An action that challenges the validity of an individual's detention "falls within the 'core' of the writ of habeas corpus and thus must be brought in habeas". *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). And that action must be brought in the district where the petitioner is detained. *Id.*; see also *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement").

The Second Circuit has made it clear that a person who files a habeas petition to challenge his detention must file the petition in the district where he is detained at the time the petition is filed. *Ozturk v. Hyde*, 136 F.4th 382, 390-91 (2d Cir. 2025). Ozturk was arrested near her home in Massachusetts on March 25, 2025 at approximately 5:25 p.m. and detained by ICE. Her attorneys' efforts to determine her whereabouts were unsuccessful because, due to security concerns, ICE did not respond to her attorney's inquiries and did not permit her to speak with them. *Id.* at 390-91.

The attorneys filed a habeas petition in the District of Massachusetts at approximately 10:00 p.m. that night. *Id.* at 390, 391. However, at that time, Ozturk was detained by ICE in Vermont. *See id.* at 390. The following day, ICE transported her to a facility in Louisiana. *Id.* at 390.

The Second Circuit held that because Ozturk was detained in the District of Vermont at the time the petition was filed, that district is “the **only** district in which the petition could have been brought at the time it was filed, and thus the **only** district to which it could be transferred under [28 U.S.C.] § 1631.” 136 F.4th at 391 (bolded emphasis in original). The Second Circuit further held that the only other action the District of Massachusetts could have taken was to dismiss the action without prejudice. *Id.* at 391; *see also Khalil v. Joyce*, 771 F.Supp.3d 268, 273 (S.D.N.Y. 2025) (Furman, J.) (holding that the proper venue to file a habeas petition is the district in which the petitioner was detained at the time of filing; transferring that action from the Southern District of New York to the District of New Jersey pursuant to 28 U.S.C. § 1406(a) because Khalil was detained in New Jersey at the time the action was filed).

Consistent with *Ozturk* and *Khalil*, district court judges in this Circuit have transferred habeas actions to the district in which the petitioner was detained at the time the petition was filed. *See O.G.C. v. Genalo*, No. 26-cv-1588 (E.D.N.Y. April 7, 2026) (Gujarati, J.) (transferring to District of New Jersey where petitioner was at an airport in New Jersey at the time the habeas petition was filed); *Cardenas v. Larocco*, 2026 WL 473850, at *1 (E.D.N.Y. Feb. 19, 2026) (Merle, J.) (transferring action to the District of New Jersey); *Hernandez v. Lyons*, 2026 WL 145562, at *1 and n.3 (S.D.N.Y. Jan. 20, 2026) (transferring action to the District of New Jersey and rejecting, as contrary to, *inter alia*, *Ozturk*, Hernandez’s argument that the convenience of the parties makes the Southern District of New York a proper forum); *Gao v. Lyons*, 2026 WL 89037 (E.D.N.Y. Jan. 12, 2026) (Gujarati, J.) (granting Gao’s motion, to which the government consented, to transfer

the action to the Southern District of Mississippi); *Saamishvili v Flanagan*, 2025 WL 3090134, at *1 (S.D.N.Y. Nov. 5, 2025) (transferring action to the EDNY); *Persaud v. Bureau of Immigration and Customs Enforcement*, 2004 WL 1936213, at *1 (E.D.N.Y. Aug. 31, 2004) (Block, J.) (*sua sponte* concluding that jurisdiction was lacking in the EDNY and transferring the action to the Western District of Louisiana, where Persaud was detained when the action was filed).²

Here, Petitioner was in DHDF at the time the Petition was filed. The previous day, April 6, 2026, Petitioner was transferred from DHDF to the MDC, arriving at the MDC at approximately 3:00 p.m. *See* Uddin Decl. ¶ 5. The medical staff at the MDC, however, determined that Petitioner could not be detained at the MDC and thus the decision was made to return Petitioner back to DHDF. *Id.* ¶¶ 6-7. Petitioner departed the MDC at approximately 12:00 p.m. on April 7 and arrived at DHDF at approximately 1:00 p.m. on April 7. *Id.* ¶ 8. According to the ECF bounce for the filing, Petitioner's counsel filed the Petition at 2:04 p.m. on April 7, 2026. At 2:04 p.m. on April 7 (the time the Petition was filed), Petitioner was detained in New Jersey. These circumstances are materially indistinguishable from those in *Ozturk*, where the habeas petition was filed in Massachusetts (where the petitioner resided), but the petitioner was at the ICE Field Office in

² Respondents recognize that there are two decisions to the contrary in this District, *Valdez Acevedo v. Nassau County Correctional Center*, No. 26-cv-250, 2026 WL 184645 (E.D.N.Y. Jan. 24, 2026) (Choudhury, J.) and *Flores-Linares v. Bondi*, No. 26-cv-00298, 2026 WL 179208 (E.D.N.Y. Jan. 22, 2026) (Bulsara, J.). Both decisions are inconsistent with *Ozturk*. *Valdez* and *Flores-Linares* both noted that the counsel for the petitioners were unaware of the district in which the petitioners were detained at the time the actions were commenced. *Valdez*, 2026 WL 2026 WL 184645, at *1; *Flores-Linares*, 2026 WL 179208 at *4. Yet the same was true in *Ozturk*, 136 F.4th at 390-91 (noting that ICE declined to disclose *Ozturk*'s location to her attorneys). *Flores-Linares* also noted that Flores was detained in the EDNY earlier in the day that she filed her petition. *Id.* at *5. Again, the same was true in *Ozturk*, 136 F.4th at 390-91 (*Ozturk* was initially detained in Massachusetts until approximately 5:50 p.m., and the petition was filed at approximately 10:00 p.m. that same day). Moreover, here, Petitioner had been detained at DHDF from March 21, 2026 until April 6, 2026 when he was transferred to the MDC. Less than 24 hours later, he was transferred back to DHDF following a determination by the MDC medical staff. Petitioner's counsel appears to have known that ICE was transferring Petitioner back to DHDF prior to filing the Petition. *See* Pet., ¶ 4 ("Mr. Rubio also asks this Court to enjoin his transfer outside this district, which he has been informed is imminently taking place today.").

Vermont (before being sent to Louisiana) at the time the petition was filed. *See* 136 F. 4th at 390. The petitioner's counsel failed in efforts to ascertain her whereabouts and filed in her last known location (Massachusetts). *Id.* at 390-91. Despite the confusion, the Second Circuit held that the District of Massachusetts had correctly found that it lacked habeas jurisdiction and transferred the petition to the District of Vermont because that is where the petitioner was located at the time the petition was filed. *Id.* at 391; *see also* O.C.G., No. 26-cv-1588 (finding that the petitioner was detained in New Jersey where he departed the MDC at 7:26 p.m., arriving at Newark Liberty International Airport at 8:15 p.m. for purposes of boarding flight to Louisiana, and petition was filed at 9:44 p.m.).

When the Petition was filed, Petitioner was not detained or confined in the EDNY. Accordingly, this action should be transferred to the District of New Jersey pursuant to 28 U.S.C. § 1631.

II. Petitioner Cannot Show Cause for Failing to Raise Due Process Claims in the SDNY Petition and Thus the Petition Should be Dismissed As Abuse of the Writ

In the event that this Court does not transfer this action, the Court should deny the Petition as an “abuse of the writ.” Although *res judicata* does not automatically provide a basis for dismissing a later habeas corpus petition, a prior adjudication may be given “controlling weight.” *See McCleskey v. Zant*, 499 U.S. 467, 480–81 (1991) (quoting *Salinger v. Loisel*, 265 U.S. 224, 231 (1924)). “One frequently recognized indicator of abusiveness is whether the petitioner could have asserted his present claims in his prior petition.” *Esposito v. Ashcroft*, 392 F.3d 549, 550 (2d Cir. 2004). This doctrine has been applied to habeas petitions in which the petitioner is an immigration detention. *See, e.g., Id.*

Petitioner's first habeas petition, the SDNY Petition, was dismissed on the merits in a written decision supported by findings of facts and conclusions of law. *Bohorquez*, 2026 WL

811178. In the SDNY Petition, Petitioner argued that his January 12, 2026 arrest and detention violated the Due Process Clause of the Fifth Amendment. *Bohorquez*, No. 26-cv-264, Dkt. No 16, ¶¶ 48-50. In the present petition, Petitioner again claims that his initial January 12, 2026 detention violated his due process rights; however, he now argues that ICE should have conducted an individualized determination prior to taking him into custody. Pet., ¶¶ 27-30. Petitioner does not assert any newly discovered facts in this Petition that are material to his due process arguments. Moreover, at the time the SDNY Petition was filed, Petitioner was represented by competent counsel, who filed the original petition and an amended petition on his behalf. *See Bohorquez*, No. 26-cv-264, Dkt. Nos. 1 and 16.

When seeking to file a second or successive petition for habeas relief that raises a claim that was not included in the initial petition, a petitioner generally is required to “show cause for failing to raise [the claim]” and prejudice. *Roccisano v. Menifee*, 293 F.3d 51, 58 (2d Cir. 2002) (quoting *McCleskey*, 499 U.S. at 494). As the *McCleskey* Court articulated, a petitioner must show that some “objective factor external to the defense impeded counsel’s efforts to raise the claim” in the initial petition. *McCleskey*, 499 U.S.C. at 493-94; *see also Roccisano*, 293 F.3d 51 at 59. Petitioner provides no basis for raising this new argument. In fact, Petitioner does not even mention the SDNY Petition in his Petition herein.³

III. Petitioner Is Properly Detained Pursuant to 8 U.S.C. § 1226(a)

Assuming *arguendo* the Court has jurisdiction over the Petition and the Court permits Petitioner to file a successive petition, the Court should deny the Petition on the merits. Petitioner is properly being detained pursuant to § 236(a) of the INA, 8 U.S.C. § 1226(a). *See Limoncelli Decl.* ¶ 25.

³ Petitioner’s counsel in this action is not listed as counsel for him in the SDNY action.

Section 1226(a) provides, in relevant part

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General

- (1) may continue to detain the arrested alien; and
- (2) may release the alien on—
 - (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
 - (B) conditional parole; 8 U.S.C. § 1226(a).

Section 8 U.S.C. § 1226(a) applies to aliens who have been lawfully admitted into the United States but are subject to removal proceedings, like Petitioner. As quoted above, § 1226(a) provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” Under § 1226(a), the government may detain an alien during his removal proceedings or release him on bond or conditional parole. By regulation, immigration officers can release detained aliens if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8) (“any officer authorized to issue a warrant of arrest *may, in the officer’s discretion, release* an alien ... provided that *the alien must demonstrate to the satisfaction of the officer* that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.”) (emphasis added). No statute or regulation requires that such determination be provided prior to detention, nor does Petitioner point to any. To the contrary, the use of the verb “release” in 8 C.F.R. § 236.1(c)(8) expressly contemplates that the assessment would be conducted after detention. There is no other plausible interpretation. Similarly, the plain language of the regulation requires the alien—not the government—to carry the burden of demonstrating that the alien is not a flight risk or danger to the community, and, even then, the decision to release an alien under § 1226(a) is within the officer’s discretion. 8 C.F.R. § 236.1(c)(8).

Once ICE makes such an initial custody determination, 8 U.S.C. § 1226(e) jurisdictionally bars courts from reviewing that determination. Section 1226(e) provides that “[ICE]’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by [ICE] under this section regarding the detention or release of any [noncitizen] or the revocation or denial of bond or parole.” Thus, “[a] district court has no authority to review ICE’s discretionary determinations made under [§ 1226a)] or otherwise question their propriety.” *Fontanelli*, 2025 WL 2773234, at *4 (citing § 1226(e)). As such, insofar as Petitioner is asking the Court to review the initial custody determination here, the Court has no jurisdiction to do so.

Even more significantly, Petitioner is being detained not merely because of ICE’s determination, but because an immigration judge has denied him bond. 8 U.S.C. § 1226(e) bars district courts from reviewing IJ decisions under § 1226 concerning detention of aliens. *Singh v. Francis*, 2026 WL 809385, at *1 (E.D.N.Y. Mar. 23, 2026) (Merchant, J.) Petitioner has not exhausted his administrative remedies with respect to the immigration judge’s denial of bond. After an initial custody determination is made, an alien may file an appeal with the Board of Immigration Appeals (“BIA”). 8 C.F.R. § 236.1(d). At this hearing, the detainee bears the burden of establishing “that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006); *see also Black v. Almodovar*, 156 F.4th 171, 202 (2d. Cir. 2025) (“burden-allocation protocols for § 1226(a) detainees ...depend on whether the bond hearing is provided (i) as a matter of course (in which the noncitizen bears the burden), or (ii) as a remedy for unreasonably prolonged detention (in which case the government bears the burden.”).

Numerous courts in this Circuit have held, in cases substantially similar to this one, that “[a] habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention.” See *Almonte Rojas v. Genalo*, No. 25-cv-6543, 2026 WL 275991 (E.D.N.Y. Feb. 3, 2026) (Komitee, J.) (quoting *Castillo Lachapel v. Joyce*, 786 F. Supp. 3d 860, 864 (S.D.N.Y. 2025)); accord, *Fontanelli*, 2025 WL 2773234, at *5-8. See *Guzman v. Joyce*, 786 F. Supp. 3d 865, 869 (S.D.N.Y. 2025); *J.C.G. v. Genalo*, No. 24-cv-8755, 2025 WL 88831, at *4 (S.D.N.Y. Jan. 14, 2025); *Roman v. Decker*, No. 20-cv-3752, 2020 WL 4273823, at * 7 (S.D.N.Y. July 24, 2020); *Paz Nativi v. Shanahan*, No. 16-cv-8496, 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017) (“before immigration detention may be challenged in federal court . . . exhaustion is generally required as a prudential matter” (collecting cases)). The exhaustion requirement “aims to provide the agency with a chance to correct its own errors, ‘protect[] the authority of administrative agencies,’ and otherwise conserve judicial resources by ‘limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.’” *Id.* (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)).

Here, Plaintiff received a bond hearing before an immigration judge on February 2, 2026, several weeks after being detained (Limoncelli Decl., ¶ 27), where he bore the burden of establishing that he does not present a danger to persons or property or a flight risk. *Black*, 156 F.4th at 202. The immigration judge denied the bond and Petitioner appealed. See Limoncelli Decl., ¶ 28). The appeal is pending and therefore Petitioner has not exhausted his administrative remedies. Petitioner’s contention that an appeal to the BIA would be futile is incorrect. Pet., ¶ 13. First, for the reasons stated below, Petitioner is not entitled to a pre-deprivation individualized review. There is no support in the INA or its implementing regulations for such a review. Second,

the BIA has the authority to order Petitioner released from custody, and Petitioner does not allege otherwise.

Thus, because Petitioner's BIA appeal may provide him with the relief that he seeks—i.e., his release, the Court should require that Petitioner exhaust the administrative avenues available to him pursuant to § 1226(a) before seeking judicial relief. *Castillo Lachapel*, 786 F. Supp.3d at 864 (“If the immigration judge releases [Petitioner] on bond, his [habeas] petition would be moot . . . And even if the immigration judge denies bond, [Petitioner]’s petition could be mooted if the [BIA] reverses that determination.”).

CONCLUSION

For the reasons stated herein, the Petition should be denied.

Dated: Brooklyn, New York
April 10, 2026

Respectfully submitted,

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