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June 1, 2026

VIA ECF

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

Re: Andradez Materan v. Maldonado, et al.
26-CV-3185-NJC

Dear Judge Choudhury:

I am pro bono counsel for Petitioner Miguel Andradez Materan. I have taken the liberty of submitting my reply in letter form.

Respondents do not dispute that 8 U.S.C. §1226(a) and its implementing regulations require ICE officials to make an individualized custody determination. Velesaca v. Decker, 458 F.Supp.3d 224, 241 (S.D.N.Y. 2020). Presumably they will not deny that:

> "The Fifth Amendments Due Process Clause forbids the government to 'depriv[e]' any 'person . . . of . . . liberty . . . without due process of the law.' Freedom from imprisonment -- from government custody, detention or other

> forms of physical restraint -- lies at the heart of the liberty that Clause protects."

Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

In the context of redetention, procedural due process requires prior notice and a meaningful opportunity to respond. Lopez v. Sessions, 2018 WL 2932726, at *12 (S.D.N.Y. 2018).

The Respondents contend that Petitioner has received the individualized custody determination to which he is entitled as a matter of due process, and that therefore this Court lacks jurisdiction to consider his petition. But the Record presented by Respondents does not support Respondents' contention that an individualized custody determination was made.

According to the Declaration of Deportation Officer Demetrious Costakis (Doc. 11-1 at ¶17), Petitioner was arrested by ICE and transported for ICE processing at 6:20 p.m on May 4, 2026. According to the Declaration of Deportation Officer John Diaz (Doc. 11-2 at ¶9), the custody determination was made at 7:49 p.m. on May 4, 2026, an hour and a half later. The only description given of this custody determination is that it "included an interview of petitioner and a review of his immigration and criminal history." Diaz Declaration, Doc. 11-2 at ¶9.

It appears from this sequence of events that Petitioner was taken into custody by ICE and deprived of his liberty before any individualized custody determination had been made, and that the asserted custody determination was an after-the-fact ratification of action that had already been taken.

In addition, the applicable regulation (8 C.F.R. §1236.1(c)(9)) provides that when a non-citizen has been released from custody, his release may be revoked at the discretion of "the District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, Assistant District Director for Detention Deportation, or officer in charge." There is no indication in the Record that Deportation Officers Costakis

and Diaz hold any of those positions, which raises a question whether the revocation of Petitioner's release was properly authorized under the regulations.

It is not a sufficient response to these deficiencies to say that the Government could follow the proper procedure and immediately re-detain Petitioner again:

> ". . . requiring an arm of the government to redo a procedurally deficient decision as the Constitution and the law require is not a meaningless exercise. It cannot be meaningless if this country is to be governed by the rule of law."

Ceesay v. Kurzdorfer, 781 F.Supp.3d 137, 158 (W.D.N.Y. 2025).

In short, it is petitioner's position that there are issues to be resolved at the hearing that has been scheduled by the Court.

Respectfully,

Jethro M. Eisenstein

JME/s
cc: All counsel of record VIA ECF