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July 1, 2026

VIA CM/ECF
Hon. Anthony J. Brindisi
United States District Judge
Alexander Pirnie Federal Bldg. and U.S. Courthouse
10 Broad Street Utica, NY 13501

RE: *Matavaca Gualli v. Ball, et al.*
Civil Action No 9:26-cv-01247

Dear Judge Brindisi:

This Office represents the Respondents (or the "government") in this habeas corpus action, in which Petitioner Angel Julio Matavaca Gualli ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). On June 17, 2026, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ("Petition"). Dkt. No. 1. The same day, the Court ordered the government to file a response by July 1, 2026. Dkt. No. 2.

As an initial matter, Respondents note that Petitioner was afforded a bond hearing in Immigration Court on June 30, at which bond was set in the amount of $5000. Ex. A.[1]

Moreover, the Petitioner has not exhausted available administrative remedies before seeking relief in this District Court. "[G]enerally, any detainee must ordinarily exhaust potential administrative remedies before seeking relief through a § 2241 petition for writ of habeas corpus." *Morey v. Rodriguez*, 2017 U.S. Dist. LEXIS 151769, at 5 (D.N.J. Sept. 19, 2017). The requirement to exhaust administrative remedies "protect[s] the authority of administrative agencies, limit[s] interference in agency affairs, develop[s] the factual record to make judicial review more efficient, and resolv[es] issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003); *see also Giwah v. McElroy*, 1997 U.S. Dist. LEXIS 20136 at *9 (S.D.N.Y. Dec. 19, 1997) ("Imposing an exhaustion requirement may serve to give effect to agency discretion conferred by Congress, preserve the autonomy of the administrative agencies, permit the agency to develop a factual record and to apply its expertise, and to prevent flouting of administrative processes which could weaken the effectiveness of an agency by encouraging people to ignore its procedures."). *See also Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) ("Under the doctrine of exhaustion of administrative remedies, 'a party may not seek federal judicial review of an adverse

[1] Exhibits "A" – "E" have been provided to me by counsel for ICE.

administrative determination until the party has first sought all possible relief within the agency itself.'") (quoting *Guitard v. United States Secretary of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)).

Here, Petitioner has not yet completed the available administrative process. Petitioner had the right to request custody redetermination in immigration court, which he did. As noted above, at that hearing bond was set in the amount of $5000. Ex. A. Petitioner has the right to appeal the amount of his bond to the Board of Immigration Appeals. Because these remedies remain available and are actively being pursued, judicial intervention is not warranted at this time. Courts have squarely rejected attempts to bypass such procedures, holding that where a petitioner "has not yet exhausted all potential administrative remedies, then the Court must deny his petition." *Morey*, 2017 U.S. Dist. LEXIS 151769, at *6. Nor can Petitioner avoid this requirement by asserting that exhaustion would be futile or unlikely to succeed. The Second Circuit has made clear that "the unlikelihood of success of a claim is not tantamount to stating that it would have been futile to raise it." *Johansson v. Strada*, 2012 U.S. Dist. LEXIS 173923 (E.D.N.Y. Dec. 7, 2012). Accordingly, the Petition should be denied on this threshold basis, as Petitioner has neither exhausted available administrative remedies nor established any basis to excuse that failure.

If the Court is inclined to reach the merits, however, the Petition presents two issues: (1) whether ICE's statutory authority to detain Petitioner is governed by 8 U.S.C. § 1225(b)(2)(A) or § 1226(a); and (2) whether the Petitioner, if properly treated as detained under § 1226(a), was afforded the procedural safeguards available under that provision. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated letter response in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law, the government will be happy to submit one upon request.

Petitioner is a native and citizen of Ecuador. Ex. B at 1. He entered the United States without inspection, admission, or parole on or about April 6, 2022, near El Paso, Texas. *Id.* at 8. Petitioner was apprehended shortly thereafter near the border. Because Petitioner was apprehended within 100 miles of the border and within 14 days of entry, *id.* at 2, he was subject to expedited removal. 8 U.S.C. § 1225(b)(1)(A). However, Petitioner was processed and released on his own recognizance pursuant to an Order of Release on Recognizance ("OREC"), subject to conditions imposed therein, *id.* at 3, with a Notice to Appear in immigration court at a later date. Ex. B at 3. Those proceedings remain pending.

On June 17, 2026, ICE Enforcement and Removal Operations ("ERO") officers encountered Petitioner in New York during a targeted enforcement operation, of which Petitioner was the subject. Ex. C at 2. Contrary to the allegations in the Petition, Petitioner was detained pursuant to an immigration arrest warrant that had previously been prepared on June 16, 2026, one day before officers encountered and detained him on June 17, 2026. Ex. D at 2.

On June 17, 2026, a deportation officer executed a Form I-286 Notice of Custody Determination pursuant to Immigration and Nationality Act (INA) § 236, 8 U.S.C. § 1226, indicating that Petitioner was to be detained pending a final administrative determination in his immigration proceedings. Ex. D at 1, Ex. E. The Notice of Custody Determination also indicates that Petitioner was notified of his right to request a review of this custody determination by an immigration hearing (i.e., a bond hearing). *Id.* Petitioner exercised his right to request a custody re-determination hearing, which was then scheduled for June 30, 2026. Ex. D. Bond was set at $5000. Ex. A. Petitioner remains detained pending posting bond.

The Government acknowledges that the United States Court of Appeals for the Second Circuit recently held in *Da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), that § 1225(b)(2)(A) does not authorize mandatory detention of noncitizens in certain circumstances and that such noncitizens are instead detained under 8 U.S.C. § 1226(a). Respondents note that *Da Cunha* does not address the distinct custody posture presented here, where Petitioner was initially encountered at or near the border shortly after entry, processed under § 1225(b)(1), released from custody, and later re-apprehended and detained. *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025). It therefore does not control the statutory question presented in this case.

However, the government acknowledges that this Court's prior decisions held that § 1226(a), not § 1225(b)(2), govern subsequent re-detention of a noncitizen previously released on an OREC, even where the noncitizen was initially encountered at or near the border and was subject to expedited removal procedures. *See, e.g., Euriza Alvarez v. Philips*, No. 9:26-cv-00058-AJB, Dkt. No. 11 (N.D.N.Y. Feb. 17, 2026) (rejecting the argument that noncitizens who previously entered and reside in the United States are subject to mandatory detention under § 1225(b)(2)(A), and concluding instead that § 1226(a) governs such detentions). The government further acknowledges that other courts in this district have reached the same conclusion. *See, e.g., Hassan v. Bondi*, 9:26-cv-00319 (BKS), Dkt. No. 10 at 5–8 (April 1, 2026); *Noguez v. Brophy*, Case No. 9:26-cv-00030 (MAD), Dkt. No. 14 at 6 (Feb. 13, 2026); *Martins v. Ashkar*, 9:26-cv-95, Dkt. #16, at 6-8; *E Olivares v. Broome Cty. Corr. Facility*, 9:26-cv-00203 (AMN), Dkt. No. 18 (Mar. 11, 2026).

Accordingly, while the Second Circuit has not yet addressed this precise release-and-re-detention scenario, the Government recognizes that *Da Cunha* is binding on this Court and would likely control the resolution of the statutory question presented. To the extent *Da Cunha* is deemed applicable, it would support application of § 1226(a) to Petitioner's detention. The Government respectfully preserves its position that § 1225(b)(2)(A) remains the correct statutory authority as a matter of statutory interpretation and reserves all rights to seek further review or reconsideration of that issue in the event of Supreme Court review or any change in controlling authority.[2]

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[2] On June 22, 2026, the government filed a petition in the United States Supreme Court seeking a writ of certiorari from the Sixth Circuit's decision in *Lopez-Campos v. Raycraft*, No. 25-1965

However, even under 8 U.S.C. § 1226(a), Petitioner is not entitled to immediate release. The administrative record confirms that Petitioner's current detention is governed by § 1226(a), and he has received all process required under that provision, including requesting and receiving a bond hearing, at which bond was set. Ex. A. Because the statutory process was made available and afforded to Petitioner, there is no basis for a due process claim premised on any alleged failure to provide custody review.

At the time of Petitioner's re-apprehension, he was served with an immigration arrest warrant, see Ex. D at 2, and issued a Form I-286 custody determination reflecting discretionary detention pending completion of removal proceedings. Ex. D at 1. He was advised of his right to seek custody redetermination before an Immigration Judge and exercised that right, resulting in a hearing on June 30, 2026. Ex. A.

These facts demonstrate that Petitioner received the procedural protections associated with § 1226(a), including notice of custody status and the opportunity for individualized bond review. See 8 C.F.R. § 1236.1(c)(8), (d)(1). Accordingly, he cannot establish entitlement to immediate release as a matter of law where the statutory custody-review process has been afforded. Even assuming § 1226(a) governs his detention, the Petition fails because Petitioner identifies no procedural or constitutional deficiency in light of the availability and provision of custody determination and bond review procedures. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 847–48 (2018); *Reno v. Flores*, 507 U.S. 292, 294–95 (1993).

To the extent Petitioner asserts a due process violation based on allegedly warrantless detention, that claim is belied by the record, which reflects he was served with an administrative arrest warrant prior to custody. Ex. D at 2. Moreover, even assuming arguendo any alleged defect, the appropriate remedy would be an individualized custody determination under § 1226(a), not immediate release.

If the Court were to grant any relief in the form of a bond hearing, the governing regulations place the burden on the detainee to establish that release is warranted. 8 C.F.R. § 1236.1(c)(8), (d)(1). Consistent with Board precedent, the noncitizen bears the burden of demonstrating that he is neither a danger to the community nor a flight risk. *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006); *Matter of Adeniji*, 22 I. & N. Dec. 1102 (B.I.A. 1999). This allocation is consistent with the broader statutory scheme of the Immigration and Nationality Act, which places the burden on

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(May 11, 2026). *See Raycraft v. Lopez-Campos*, No. 25-1545 (Sup. Ct. June 22, 2026). The petition asks the Supreme Court to resolve a deepening Circuit split, of which *Barbosa da Cunha* is part, by addressing: (1) whether 8 U.S.C. § 1225(b)(2)(a) mandates the detention pending removal proceedings of aliens who are present in the United States without having been admitted, and (2) whether detaining such aliens without a bond hearing during their removal proceedings comports with due process.

noncitizens to establish eligibility for relief. See 8 U.S.C. § 1229a(c); *Jennings*, 138 S. Ct. at 847–48. Therefore, Petitioner's request for a burden-shifting framework is contrary to the governing statutory and regulatory structure and should be rejected—particularly in light of the fact that he was granted bond.

The government further submits that this matter may be decided without a hearing. However, if the Court determines that a hearing would be helpful, the government is fully prepared to appear and present Respondent's position.

Thank you for your consideration of this matter.

Respectfully Submitted:

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CC: Counsel of Record (via CM/ECF)