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June 23, 2026

VIA CM/ECF
Hon. Anne M. Nardacci
U.S. District Judge
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

RE: *Sisalema Rea v. Ball, et al.*
Civil Action No. 9:26-cv-01248 (AMN)

Dear Judge Nardacci:

This Office represents the Respondents (or the "government") in this habeas corpus action, in which Petitioner William Wilfrido Sisalema Rea ("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 show cause by June 23, 2026, why the Petition should not be granted. Dkt. No. 2.

The Petition presents two issues: (1) whether ICE has statutory authority to detain the Petitioner under 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. A[1] at 3. He entered the United States without inspection, admission, or parole on or about April 27, 2024, near San Diego, California, with his family (including a minor child). *Id.* at 3-4. The family was apprehended shortly thereafter near the border. *Id.* Because Petitioner was apprehended within 100 miles of the border and within 14 days of entry, *Id.* at 4, he was subject to expedited removal. 8 U.S.C. 1225(b)(1)(A). However, Petitioner and his family unit were processed together and released due to "lack of bed space,"

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

subject to conditions imposed in an Order of Release on Recognizance ("OREC"), with a Notice to Appear in immigration court. Ex. A at 3-4; Ex. E; Ex. F.

On June 17, 2026, ICE Enforcement and Removal Operations ("ERO") officers encountered Petitioner in New York during a targeted enforcement operation, for which Petitioner was the subject of such enforcement. Ex. B at 2. The arresting officer conducted a warrantless arrest of the Petitioner at the scene due to the volume of morning traffic on the two-lane roadway where the stop was conducted and because of officer and detainee safety concerns. Ex. B at 3. An I-200 Warrant of Arrest was subsequently executed in a safe and secure environment. Ex. C. The arresting officer further determined that Petitioner was likely to escape before a warrant could be obtained because he had little or no known ties to the local community, was working without authorization, and was operating a vehicle registered in another state. Ex. B at 3.

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. 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) but declined to make an election and refused to sign the acknowledgment. *Id.* Petitioner remains detained pending completion of removal proceedings.

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 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. *Olivares v. Broome Cty. Corr. Facility*, 9:26-cv-00203 (AMN), Dkt. No. 18 (Mar. 11, 2026). 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; *Euriza Alvarez v. Philips*, No. 9:26-cv-00058-AJB, Dkt. No. 11 (N.D.N.Y. Feb. 17, 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 en banc or Supreme Court review or any change in controlling authority.

Nonetheless, the administrative record shows that Petitioner was arrested and is being detained under 8 U.S.C. § 1226(a). On June 17, 2026, ICE ERO officers encountered and arrested Petitioner in New York during a targeted enforcement operation. Ex. B at 2. The arrest was made without a warrant due to traffic conditions and safety concerns, and because the arresting officer determined there was a risk of flight given Petitioner's lack of local ties, unauthorized employment, and out-of-state vehicle registration. Ex. B at 3. An I-200 Warrant of Arrest was later executed in a secure setting. Ex. C. These circumstances confirm that the arrest and detention were lawful under the statutory and regulatory framework governing warrantless immigration arrests and detention pending removal proceedings. See 8 U.S.C. §§ 1226(a), 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(i).

In determining the procedural framework applicable to custody determinations under § 1226(a), courts have consistently recognized that the statute vests the Attorney General with broad discretionary authority over custody and bond decisions. See 8 U.S.C. § 1226(a)(1)–(2); *Reno v. Flores*, 507 U.S. 292, 294–95 (1993). Congress has likewise authorized immigration officers to arrest a noncitizen without a warrant where the officer has reason to believe the individual is removable and is likely to escape before a warrant can be obtained. See 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(i); *Rahman v. Catletti,* No. 1:26-cv-03054 (S.D.N.Y. 2026).The Supreme Court has further held that § 1226(a) does not impose procedural requirements beyond those set forth in the statutory text. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 847–48 (2018).

Petitioner also alleges a violation of the Due Process Clause of the Fifth Amendment based on his continued detention and seeks immediate release or, in the alternative, a bond hearing. Dkt. No. 1 at 6-7. The record does not support that claim. Petitioner's due process claim rests on his belief that his detention was effectuated without a warrant, but the record reflects that the arresting officer was authorized to conduct a warrantless arrest pursuant to 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(i) based on a determination that Petitioner was likely to escape before a warrant could be obtained. Ex. B at 3. The record further reflects that an I-200 Warrant of Arrest was subsequently executed in a safe and secure environment. Ex. C. Accordingly, Petitioner has failed to demonstrate that his arrest or continued detention violated the Due Process Clause or otherwise warrants habeas relief.

Likewise, Petitioner's assertion that he was denied access to a bond hearing is incorrect. Following his re-apprehension, Petitioner was advised of his right to seek review of the custody determination before an Immigration Judge but did not request such review. Ex. D. Accordingly,

the record does not support Petitioner's contention that he was denied an opportunity for custody review.

Moreover, even assuming *arguendo* that the Court were to grant the Petition, the appropriate remedy would be an individualized custody determination under § 1226(a), rather than immediate release.

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, it respectfully submits that the Court can resolve this matter on the present record without further briefing. The government further submits that this matter may be decided without a hearing. However, to the extent the Court determines that a full brief or hearing would be helpful or required, the government is fully prepared to appear and present Respondent's position.

Respectfully Submitted:

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CC: Counsel of Record (via CM/ECF)