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June 27, 2026

VIA CM/ECF

Hon. Brenda K. Sannes
U.S. District Judge
Federal Building and U.S. Courthouse
Syracuse, NY 13261-7255

Re: *De Rocha v. Akshar et al.*, No. 9:26-cv-1263 (BKS)

Dear Judge Sannes:

This Office represents the Petitioner in the above-captioned habeas action, and writes in response to Respondents' Letter-Response, ECF No. 10 ("Opposition").

I. Introduction

Respondents' Opposition buries the lede. At the end of its five-page response, Respondents quietly acknowledge this case is indistinguishable from this Court's recent decision in *Gunes v. Warden*, 9:26-cv-0525 (BKS) (N.D.N.Y. May 18, 2026) ("*Gunes*"):

> The government concedes that this Court previously ordered a burden-shifted bond hearing under similar facts in *Gunes v. Warden*, 9:26-cv-0525 (BKS), Dkt. #11.

ECF No. 10. This is an understatement. The facts of *Gunes* mirror this case precisely: both involve detained individuals who have resided in the United States for over twenty years. Both cases involve individuals who already received bond hearings from Immigration Judges where the burden of proof rested with the non-citizen. Furthermore, the non-citizen in *Gunes* was detained for a *lesser* amount of time then the instant Petitioner when bringing his petition. *Compare Gunes*, 9:26-cv-0525, ECF No. 11 (*Gunes* detention "nearing six months," vs. 199 days, or close to seven months, for the instant Petitioner).

Indeed, it is noteworthy that Respondents do not even attempt to distinguish *Gunes* on the facts. Nor do Respondents engage with the *Mathews v. Eldridge* test. As a result, any argument by Respondents on the most critical legal question that applies to this case is deemed waived, and should remain waived, including at any future oral argument.

II. *Mathews v. Eldridge*

As indicated above, Respondents do not discuss *Mathews v Eldridge*, 424 U.S. 319, 348 (1976) ("*Mathews*"), or offer any argument why this Court's decision in *Gunes*, which applied *Mathews* to a similarly-situated petitioner, should not govern herein.[1]

An application of *Mathews* to the facts of Petitioner's current detention should, as in *Gunes*, result in immediate release or a burden-shifted bond hearing.

A. First Factor: "The Private Interest That Will be Affected by the Official Action"

The first *Mathews* factor, "the private interest that will be affected by the official action," undoubtedly weighs in the Petitioner's favor. As in *Gunes*, "Petitioner's 'interest in being free from imprisonment' is 'the most significant liberty interest there is,' and it 'cannot be abridged without adequate procedural protections.'" *Gunes*, 9:26-cv-0525, ECF No. 11, at 11 (*quoting Singh v. Maldonado*, No. 26-cv-00019, 2026 WL 233216, at *9 (E.D.N.Y. Jan. 29, 2026)).

B. Second Factor: "The Risk of an Erroneous Deprivation"

The second *Mathews* factor, "the risk of an erroneous deprivation . . . through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," *Mathews*, 424 U.S. at 335, also favors the Petitioner.

Indeed, in weighing this factor in *Gunes*, this Court explicitly acknowledged that the detained non-citizen had already been afforded a bond hearing in Immigration Court, but that such process was not sufficient:

> Although it is undisputed that a bond hearing was held . . . and that the immigration judge conducted an individualized determination, the immigration judge assigned Petitioner the burden of proving by clear and convincing evidence that he was not a flight risk or a danger to the community and denied bond on the ground that Petitioner could not establish that he was not a flight risk. . . . [I]n light of the lengthening detention, nearing six months, the Government's acknowledgment . . . that Petitioner could be facing 'months' in custody while the appeal proceeded, and the risk of deprivation of liberty, the Court finds a hearing at which the burden is shifted to the Government would provide a safeguard against erroneous deprivation of liberty.

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[1] Respondents' argument concerning exhaustion is unavailing. Respondents are well-aware that exhaustion is not necessary where the pursuit of administrative remedies would be futile. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.) (as amended) (judicial exhaustion may be excused when "available remedies provide no genuine opportunity for adequate relief" or exhaustion "would be futile"). No matter how many bond hearings Petitioner has in Immigration Court, or how many bond appeals are made by Petitioner to the Board of Immigration Appeals, the Petitioner will not be provided with a Constitutionally-mandated bond hearing where DHS bears the burden of proof absent a grant of habeas from this Court.

Gunes, 9:26-cv-0525, ECF No. 11, at 12. Here, the similarities are striking: Petitioner has also been afforded a bond hearing where he held the burden of proof, and Petitioner has also recently appealed his case to the Board of Immigration Appeals, which will likely involve "months" of litigation. Furthermore, the instant Petitioner has been detained longer than the petitioner in *Gunes*. The second *Mathews* factor, as in *Gunes*, supports Petitioner.

C. Third Factor: "The Government's Interest"

The third *Mathews* factor, "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," *Mathews*, 424 U.S. at 335, also weighs in the Petitioner's favor, namely because "the Government has not identified any interest that 'might counsel against its bearing the burden of proof by clear and convincing evidence.'" *Gunes*, 9:26-cv-0525, ECF No. 11, at 13 (*quoting Ortiz v. Freden*, 808 F. Supp. 3d 579, 600 (W.D.N.Y. 2025)). Indeed, Respondents have proffered no argument whatsoever on this matter. *Cf. Velasco Lopez v. Decker*, 978 F.3d 842, 854-55 (2d Cir. 2020) ("The Government has not convinced us that requiring it to justify Velasco Lopez's detention by clear and convincing evidence substantially undermines its legitimate interests or entails an undue administrative burden.").

III. Conclusion

Petitioner respectfully requests that the Court should, as in *Gunes*, apply the *Mathews* test and find that either immediate release, or a burden-shifted bond hearing is warranted.[2]

Dated: June 27, 2026

Respectfully submitted,

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[2] Petitioner reserves the right to seek EAJA fees in this matter.