UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Cesar VARELA PALLO,

Petitioner,

v.

Stephen KURZDORFER, in his official capacity as Acting Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; Michael BALL, in his official capacity as Warden, Buffalo Federal Detention Facility; Markwayne MULLIN in his official capacity as Secretary of Homeland Security; Todd BLANCHE, in his official capacity as Attorney General.

Respondents.

Case No. 1:26-cv-01363-MAV

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

TABLE OF CONTENTS

INTRODUCTION 1
FACTUAL BACKGROUND 1
ARGUMENT 3
I. Counsel Agree Petitioner's Custody Is Governed by 8 U.S.C. § 1226(a) But ICE and the Immigration Courts Do Not, Which Would Make Exhaustion Futile. 3
II. His Detention Without Any Meaningful Custody Review Violated his Constitutional Rights. 3
III. The Proper Remedy Is Release 6
IV. To the Extent the Court Does Not Release Petitioner, a Burden-Shifted Bond Hearing Is Necessary Because He Is a Special Immigrant Juvenile and Presents Factors Distinct from *Mahmodi.* 7
CONCLUSION 10

TABLE OF AUTHORITIES

Cases

A.A.R.P. v. Trump, 145 S. Ct. 1364 (2025) 6

Alvarez Ortiz v. Freden, 808 F. Supp. 3d 579 (W.D.N.Y. 2025) 7

Barbosa da Cunha v. Freden, 175 F. 4th 61 (2d Cir. 2026) 3

Bustamente Romero, v. Bausch, No. 26-CV-00803-MAV, 2026 WL 1998751 (W.D.N.Y. July 10, 2026) 7

C.A.R. v. Genalo, No. 26-CV-4275 (JPO), 2026 WL 1506417 (S.D.N.Y. May 29, 2026) 4

Centeno Rochez v. Genalo, No. 26-CV-03707 (RER), 2026 WL 1948773 (E.D.N.Y. July 6, 2026) 5

Curimilma Quille v. Blanche, No. 26-CV-2818 (HG), 2026 WL 1453889 (E.D.N.Y. May 22, 2026) 5

Darko v. Sessions, 342 F. Supp. 3d 429 (S.D.N.Y. 2018) 7

F.R.R. v. Rodriguez, No. SA-25-CA-01564-XR, 2025 WL 3654266 (W.D. Tex. Dec. 5, 2025) . 8, 9

Garcia Lanza v. Noem, 822 F. Supp. 3d 326 (E.D.N.Y. 2026) 8, 9

Garcia v. Holder, 659 F.3d 1261 (9th Cir. 2011) 9

Herrera v. Blanche, No. 26-CV-03321 (OEM), 2026 WL 1674206 (E.D.N.Y. June 10, 2026).... 5

Howell v. I.N.S., 72 F.3d 288 (2d Cir. 1995) 3

Lopez Benitez v. Francis, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) 4

Mahmodi v. Marich, No. 25-CV-6762-MAV, 2026 WL 113473 (W.D.N.Y. Jan. 15, 2026) ... 1, 8, 10

Mathews v. Eldridge, 424 U.S. 319 (1976) 7

Osorio-Martinez v. Att'y Gen. United States of Am., 893 F.3d 153 (3d Cir. 2018) 8

Pastrana-Beltran v. Mullin, No. 26-CV-2657 (RER), 2026 WL 1398609 (E.D.N.Y. May 19, 2026) 5

Rodriguez v. Perry, 747 F. Supp. 3d 911 (E.D. Va. 2024) 9

Tumba v. Francis, 813 F. Supp. 3d 394 (S.D.N.Y. 2025) 4, 7

Velasco Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020) 7, 10

Velesaca v. Decker, 458 F. Supp. 3d 224 (S.D.N.Y. 2020) 4

Vera Punin v. Garland, 108 F.4th 114 (2d Cir. 2024) 10

Yao v. Almodovar, 813 F. Supp. 3d 461 (S.D.N.Y. 2025) 4, 6, 7

Statutes

8 U.S.C. § 1227(c) 9

8 U.S.C. § 1101(a)(27)(J) 9

8 U.S.C. § 1225(b)(2) 2, 4, 7

8 U.S.C. § 1225(h) 9

8 U.S.C. § 1226(a) 3, 7

Regulations

8 C.F.R. § 1236.1(c)(8) 3

8 C.F.R. § 205.2 9

Board of Immigration Appeals Cases

Matter of Mercado-Martinez, 29 I. & N. Dec. 529 (BIA 2026) 10

INTRODUCTION

Mr. Cesar Varela Pallo is a young father with Special Immigrant Juvenile Status (SIJS) whom Respondents detained without any reference to his personal circumstances; SIJS grant; or lack of danger and flight risk. Nowhere in the documents they have filed is there any indication that an individualized custody determination was made for Mr. Varela Pallo after he was pulled from a vehicle in which he was riding to work as a passenger—nor does he recall one. Worse, the sole reason apart from his ongoing removal proceedings that Respondents have offered to detain Mr. Varela Pallo and to upend the prior decision to release him on recognizance—namely, that he failed to update his address with ICE—is blatantly false. He has repeatedly updated his address, most recently in March 2026. He also has no criminal history.

Mr. Varela Pallo's detention with neither notice nor a meaningful right to be heard violates the Immigration and Nationality Act and his right to due process. The appropriate remedy is release. In the alternative, because Mr. Varela Pallo has SIJS and because Respondents' sole stated reason to re-detain him is both erroneous and within Respondents' exclusive knowledge, the Court should not apply its prior holding in *Mahmodi v. Marich* and should instead order a burden-shifted bond hearing at which Respondents must demonstrate the need to detain him by clear and convincing evidence. *Cf. Mahmodi v. Marich*, No. 25-CV-6762-MAV, 2026 WL 113473, at *6 (W.D.N.Y. Jan. 15, 2026).

FACTUAL BACKGROUND

Respondents' submission confirms that Mr. Varela Pallo entered the U.S. without inspection in April 2024. *See* Notice to Appear (ECF No. 7); Varela Pallo Decl. at ¶ 2. He was determined not to pose a threat to public safety, Form I-213 Dated April 14, 2024 (ECF No. 7), and released on recognizance. Notice of Custody Determination (ECF No. 7).

Mr. Varela Pallo was granted Special Immigrant Juvenile Status (SIJS) in September 2025—a fact that does not appear anywhere in Respondents' response papers. *See* I360 Approval, Exh. A to Austin Decl. Throughout his time in removal proceedings, he has updated his address with the immigration court and ICE. ICE is a party to removal proceedings and has full access to the record of proceedings before the immigration courts. *See* E33, Exh. B to Austin Decl.; Varela Pallo Decl. at ¶ 5. He currently has a timely-filed direct appeal pending before the Board of Immigration Appeals. *See* Filing Receipt for Appeal or Motion Dated July 10, 2026 (ECF No. 7).

The I213 generated for Mr. Varela Pallo's second detention, on July 6, 2026, indicates that he was stopped randomly as ICE conducted surveillance in Binghamton, New York scanning license plates of passing vehicles. Mr. Varela Pallo was a passenger in the vehicle stopped. I213 Dated July 6, 2026 (ECF No. 7). The I213 indicates that officers used a facial recognition program to identify Mr. Varela Pallo, who did not have an identification on him. *Id.* The results confirmed that Mr. Varela Pallo was not the person Respondents sought, yet they detained him anyway.

Respondents provide no evidence that Mr. Varela Pallo received an individualized custody determination and he does not believe any was performed. Varela Pallo Decl. at ¶ 5 ("To my knowledge, they did not analyze anything about me in particular; they just put me in handcuffs…"). The I213 states "[r]ecord checks determine [sic] that he is currently in proceedings in NYC and failed to notify ICE of his address change." *Id.* However, their own submission from June 30, 2026, IJ Order (ECF No. 5 at 11), shows the immigration court sent him mail at his home two weeks earlier. *See* E33, Exh. B to Austin Decl. Tellingly, Respondents' counsel does not echo ICE's claim as to Petitioner's address. Instead, their brief acknowledges that the true basis for detention was ICE's belief that Petitioner is subject to 8 U.S.C. § 1225(b)(2). Res. at 3. Though contrary to binding precedent in this Circuit, that assertion is at least consistent with the

justification offered by ICE at the time of his arrest: that he would "be processed as a T-other due to his ongoing proceedings" and detained at Batavia. I213 Dated July 6, 2026 (ECF No. 7).

ARGUMENT

I. Counsel Agree Petitioner's Custody Is Governed by 8 U.S.C. § 1226(a) But ICE and the Immigration Courts Do Not, Which Would Make Exhaustion Futile.

The parties appear to agree that Section 1226(a) governs Petitioner's custody under *Barbosa da Cunha v. Freden*, 175 F. 4th 61 (2d Cir. 2026). *See* Res. at 4 (noting its arguments in favor of mandatory detention "were disagreed with by *Barbosa Da Cunha*"). In *Barbosa Da Cunha*, the Second Circuit reasoned that a noncitizen who is residing in the interior of the United States is neither arriving nor seeking admission because he is already present and not "at the threshold of entry." In Petitioner's case, this argument is bolstered by his Special Immigrant Juvenile Status. *See infra* at IV(i).

At the same time, Respondents' counsel concede that their clients do not adhere to this view. Res. at 3. Absent an order from this Court, neither ICE nor the immigration court will treat Petitioner as though he is subject to Section 1226(a) detention because of his original apprehension years ago at the U.S. border. *See* Pet'n at ¶ 33-34; Res. at 3 (alleging Petitioner "is subject to mandatory detention and not entitled to a bond hearing"). Because an IJ will not find jurisdiction to grant him bond, the imposition of an administrative exhaustion requirement would be an exercise in futility. *See* Pet'n at ¶ 33 (citing *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995)). Accordingly, the Court should not require that he exhaust prior to adjudicating the instant petition.

II. His Detention Without Any Meaningful Custody Review Violated his Constitutional Rights.

When Petitioner was re-detained by ICE on July 6, 2026, he was entitled—at a minimum—to an initial individualized custody review pursuant to both Section 1226(a) and 8 C.F.R. §

1236.1(c)(8). That regulation "requires that the Government make an individualized determination based on (1) whether the noncitizen is a 'danger to property or persons' and (2) whether the noncitizen is 'likely to appear for any future proceeding' before detaining him." *C.A.R. v. Genalo*, No. 26-CV-4275 (JPO), 2026 WL 1506417, at *2 (S.D.N.Y. May 29, 2026) (quoting 8 C.F.R. § 1236.1(c)(8)); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("1226(a) and its implementing regulations require ICE officials to make an individualized custody determination").

"These procedural protections matter. They are not mere technicalities." *Yao v. Almodovar*, 813 F. Supp. 3d 461, 476 (S.D.N.Y. 2025). But Respondents have not provided any evidence that Mr. Varela Pallo received such a review—to the contrary, they have claimed that he is subject to mandatory detention, more than two months after the decision in *Barbosa Da Cunha.*[1] Furthermore, Respondents seemingly relied on a false premise: namely, that Mr. Varela Pallo did not update his address with ICE, when in fact he did update his address and ICE had and has his current address. This misstatement undercuts any claim that ICE made an individualized custody determination. Taken together with Respondents' assertion that 8 U.S.C. § 1225(b) authorizes mandatory detention, the record reflects an arrest-first, review-never approach.

Many courts in this district have concluded that Respondents' failure to undertake any custody review violates not only the statute but also the due process clause. *E.g. Tumba v. Francis*, 813 F. Supp. 3d 394, 404–05 (S.D.N.Y. 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 491–96 (S.D.N.Y. 2025). Even where ICE purports to conduct a custody review, courts have found that the review does not satisfy the requirements of the statute or regulation when ICE has relied on categorical proxies for flight risk—such as lack of status, unlawful entry, or unauthorized

[1] The I213 notes that Petitioner is *in ongoing removal proceedings*. But that is not an individualized determination—nor does it afford sufficient process. *Cf. Zadvydas*, 533 U.S. at 690-91 (a person's liberty cannot be infringed upon without "adequate procedural protections").

employment—rather than a genuine individualized assessment. *See Pastrana-Beltran v. Mullin,* No. 26-CV-2657 (RER), 2026 WL 1398609, at *2 (E.D.N.Y. May 19, 2026) (ordering immediate release because ICE did not comply with 8 U.S.C. § 1226(a) where initial custody determination relied on noncitizen's manner of entry to deem him a flight risk)*; Curimilma Quille v. Blanche,* No. 26-CV-2818 (HG), 2026 WL 1453889, at *4 (E.D.N.Y. May 22, 2026) (ordering release where ICE relied on Petitioner's undocumented status since that is not an individualized reason)*; Centeno Rochez v. Genalo,* No. 26-CV-03707 (RER), 2026 WL 1948773, at *2 (E.D.N.Y. July 6, 2026) (ordering release where ICE's custody determination was premised on lack of status and noncitizen's "fail[ure] to alert DHS of his presence, and fail[ure] to register as required in the Alien Registration Act"). Courts have also rejected custody determinations that were predicated on misstatements or omissions about a person's circumstances. *See Curimilma Quille*, 2026 WL 1453889, at *4 (finding immigration authorities' claim that petitioner lacked family or community ties to be a "blatant error"); *Herrera v. Blanche*, No. 26-CV-03321 (OEM), 2026 WL 1674206, at *4 (E.D.N.Y. June 10, 2026) (noting that ICE's flight risk assessment was incomplete because the petitioner had "a wife and two children and two nephews in New York that are financially dependent upon him…[and was involved] with his church and community").

Just as in those cases, Mr. Varela Pallo's summary re-detention on July 6, 2026 violated the statute; regulation; and due-process clause. His I-213 does not indicate any individualized custody review was conducted. Nor does the I-213 claim that Mr. Varela Pallo was interviewed or given an opportunity to speak or address whether he would be detained. Presumably as a result of this lack of individualized review, the form contains material omissions. It fails to note that Mr. Varela Pallo has approved Special Immigrant Juvenile Status.[2] And it falsely contends that he

[2] The "family" portion of the form is inexplicably redacted in full, rendering it impossible for the Court to determine if this information was accurate.

failed to update his address with ICE, when in fact he had done so at least three times, most recently in March 2026. *See* E33, Exh. B to Austin Decl.; Varela Pallo Decl. at ¶ 5. The immigration court had corresponded with him at that address less than two weeks earlier. IJ Order, Exh. C to Austin Decl. (showing unredacted address that appears on the same order filed by Respondents).

These errors are not harmless. Mr. Varela Pallo has SIJS; he is the parent of a young U.S.-citizen daughter; he has a fixed address; and he has diligently updated his address throughout his removal proceedings. These factors, which Respondents appear to have entirely overlooked, might well have resulted in the decision *not* to detain Mr. Varela Pallo had they been adequately and fairly considered. *See Yao*, 813 F. Supp. 3d at 476 (concluding that it was at least "plausible that, had ICE faithfully applied § 1226, it would have decided not to detain Yao").

Because ICE performed no meaningful review of Petitioner's custody at the time he was detained, his redetention was unlawful. When the government seeks to re-detain a person who has been living at liberty, procedural due process requires safeguards—namely, meaningful notice and an opportunity to be heard. *See A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025) (procedural due process protects against "the mistaken or unjustified deprivation of life, liberty, or property") (cleaned up). The statute and its implementing regulation do the same. In the absence of such safeguards, Mr. Varela Pallo should not have been detained.

III. The Proper Remedy Is Release

As Mr. Varela Pallo argued in his petition, the proper remedy for these violations is release. Pet'n at ¶ 35-39. Courts in this district have ordered immediate release as the appropriate remedy for precisely this violation. *See* Pet'n at ¶ 35 (collecting cases). This Court has also ordered release when, in revoking an order of supervision, ICE failed to comply with regulations that "implicates the fundamental rights of notice and an opportunity to be heard." *Bustamente Romero, v. Bausch*,

No. 26-CV-00803-MAV, 2026 WL 1998751, at *6 (W.D.N.Y. July 10, 2026). It has done so because it was clear "the substance of th[e] regulation's requirements" were not fulfilled in the course of re-detaining a person who was formerly at liberty. *Id.* at 6. The same is true here. Like the petitioner in *Bustamente Romero,* Mr. Varela Pallo had neither notice nor an opportunity to be heard as to whether he should be re-detained. Moreover, because Respondents failed to conduct an initial custody review in this case—a point they effectively concede by insisting that 8 U.S.C. § 1225(b) mandates Mr. Varela Pallo's detention—ICE failed to comply with 8 U.S.C. § 1226(a)'s minimal requirements. "[A] bond hearing could not retrospectively cure the due process violation, which derived from her unlawful arrest and detention without the statutorily required exercise of discretion." *Yao*, 813 F. Supp. 3d at 476–77; *see also Tumba Huamani*, 813 F. Supp. 3d at 406. Accordingly, release is the appropriate remedy.

IV. To the Extent the Court Does Not Release Petitioner, a Burden-Shifted Bond Hearing Is Necessary Because He Is a Special Immigrant Juvenile and Presents Factors Distinct from *Mahmodi.*

As this Court has noted, the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Given the immense interest at stake when a person is deprived of their liberty, the "consensus view [is that] that where, as here, the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified." *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018); *e.g. Alvarez Ortiz v. Freden*, 808 F. Supp. 3d 579, 601 (W.D.N.Y. 2025) (ordering a burden-shifted bond hearing after a *Mathews* analysis).

Petitioner respectfully urges the Court to assign such an allocation of the burden here and submits that this Court's analysis of the *Mathews* factors in *Mahmodi* is inapplicable for at least

two reasons. *Cf.* Res. at 4 (citing *Mahmodi v. Marich,* No. 25-CV-6762-MAV, 2026 WL 113473, at *6 (W.D.N.Y. Jan. 15, 2026)). First, Petitioner has Special Immigrant Juvenile Status, which Respondents fail to even mention much less analyze. SIJS materially affects the *Mathews* analysis at every step. Second, like *Velasco* and unlike *Mahmodi*, the petitioner here confronts issues squarely within Respondents' exclusive information and knowledge in seeking bond, namely whether he adequately apprised ICE of his address. As a result, the resource discrepancy that the Second Circuit referenced in *Velasco* is a factor in petitioner's favor.

For those reasons, Petitioner urges the Court to revisits its as-applied analysis in *Mahmodi* and, if it declines to order his immediate release, order that Respondents bear the burden of proof at any bond hearing.

i. Petitioner's Special Immigrant Juvenile Status Alters the Analysis of His Rights.

Petitioner's Special Immigrant Juvenile Status materially alters the *Mathews* analysis. First, a grant of SIJS establishes Petitioner's "substantial legal relationship with the United States." *Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 168 (3d Cir. 2018). Congress created SIJS relief over 35 years ago to protect immigrant children who have been abused, abandoned or neglected and to "provide[] a path to residency and U.S. citizenship." *Garcia Lanza v. Noem*, 822 F. Supp. 3d 326, 329 (E.D.N.Y. 2026); *see also F.R.R. v. Rodriguez*, No. SA-25-CA-01564-XR, 2025 WL 3654266, at *6 (W.D. Tex. Dec. 5, 2025). The design of this program, then, "show[s] a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status." *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) (abrogated on other grounds); *see also* 8 C.F.R. § 205.2 (requiring "good and sufficient cause" to revoke SIJS as well as notice and an opportunity to respond).

SIJS is predicated on a finding by a family court that, inter alia, it is not in a minor's best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J). A grant confers significant legal benefits. *See Osorio-Martinez*, 893 F.3d at 163-164 (discussing legal effects of SIJS). Among these, SIJS designees are "deemed ... to have been paroled into the United States." 8 U.S.C. § 1225(h)(1).[3] As a result, many courts have concluded a grant of SIJS transforms a young person's legal status to one indisputably present in the U.S., rather than on the threshold of entry. *See, e.g.*, *F.R.R.*, 2025 WL 3654266, at *8 ("Petitioner is already present in the United States, as his SIJS designation confirms."); *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 916 (E.D. Va. 2024) (finding petitioner's award of "SIJ status in January 2017 [] converted him from being an arriving alien to an alien present in the United States").

Next, "the risk of erroneous deprivation is considerable given the grant of SIJ status..." *Garcia Lanza*, 822 F. Supp. 3d at 335. Congress afforded youth like Petitioner special rights through SIJS. 8 U.S.C. § 1255(h)(2) (waiving many inadmissibility grounds); 8 U.S.C. § 1227(c) (waiving certain removability grounds). Indeed, the entire purpose of SIJS is to afford protection and an eventual path to permanent residence in the U.S. Detention unless a young person can prove themselves worthy of release is inimical to the entire structure and rationale for the statute.

Finally, the SIJS statute indicates a strong public interest in allowing certain vulnerable immigrant youth to obtain stability and permanency in the United States.

ii. Respondents' Resource Disparity Is Directly Relevant to Whether Petitioner Will Obtain Bond.

[3] The fact that Petitioner is paroled by operation of law supports a remedy of immediate release. Parole, by definition, entails release from custody. *See generally* 8 C.F.R. § 212.5. Ordering release would restore the status quo ante and provide complete relief. A delayed release would instead let Respondents dilute—and effectively nullify—the parole protections Congress afforded SIJS recipients.

Also relevant is the purported basis for Petitioner's detention and the Government's "substantial resources to deploy." *Velasco Lopez*, 978 F.3d at 853. Respondents have not alleged that they provided Petitioner with an individualized custody review. *See supra* at II. But to the extent they offer any explanation for detaining him, as is that he was "currently in proceedings and failed to notify ICE of his address change." *See* I-213 Dated July 6, 2026 at *3 (ECF No. 5). Like the criminal charges in *Velasco*, that allegation—while not pressed by Respondents' counsel and unsubstantiated—is potentially dispositive of his flight risk at a bond hearing. *See Matter of Mercado-Martinez*, 29 I. & N. Dec. 529, 530 (BIA 2026) ("A Form I-213 is presumptively admissible and reliable") (citing *Vera Punin v. Garland*, 108 F.4th 114, 125 (2d Cir. 2024)).

But Respondents fail to state when, where or how Mr. Varela Pallo failed to update his address with ICE—or to supply the paperwork showing as much. The release notice they filed from the U.S. border in this case does not contain a date or address to report to, Order of Release on Recognizance (ECF No. 5), and Mr. Varela Pallo contends he was never directed to report. Varela Pallo Decl. at ¶ 5. Meanwhile, he diligently updated his address with the immigration court and with ICE. E33, Exh. B to Austin Decl.

Because this allegation lies squarely within Respondents' purview to substantiate, they should have to do so. *Mahmodi*, 2026 WL 113473, at *8 (reasoning that there was no resource differential between the parties since "neither Petitioner has a criminal record that would implicate the alleged informational disadvantage caused by the 'substantial resources' Respondents may utilize to discover information").

CONCLUSION

For the foregoing reasons, Petitioner asks the Court to grant his petition and order his immediate release from custody or in the alternative a burden-shifted bond hearing.

Dated: July 24, 2026

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CERTIFICATE OF SERVICE

I, Paige Austin, certify that on July 25, 2026, I electronically filed the attached the foregoing Petitioner's Reply in Support of Petition for Writ of Habeas Corpus and accompanying Exhibits with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

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