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July 30, 2026

VIA CM/ECF

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

RE: *Rodriguez v. Lyons, et al.*
Civil Action No. 9:26-cv-01440 (AMN)

Dear Judge Nardacci:

This Office represents the Respondents (the "Government") in this habeas corpus action, in which Petitioner Gonzalo Reyes Rodriguez ("Petitioner") challenges his detention by U.S. Department of Homeland Security, including U.S. Immigration and Customs Enforcement ("ICE"). On July 26, 2026, Petitioner filed this Petition for an Emergency Writ of Habeas Corpus Relief pursuant to 28 U.S.C. § 2241 ("Petition"). Dkt. No. 1. The same day, the Court ordered the Government to file an answer by July 30, 2026. Dkt. No. 2.

The Petition presents two issues: (1) whether ICE has statutory authority to detain Petitioner under 8 U.S.C. § 1225(b) or whether his detention is governed by 8 U.S.C. § 1226(a); and (2) if Petitioner should have been detained under § 1226(a), whether the appropriate remedy is immediate release or an individualized bond hearing before an Immigration Judge. 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 Nicaragua. Ex. A at 1.[1] On or about August 26, 2022, Petitioner entered the United States near El Paso, Texas, without being inspected or admitted by an immigration officer. *Id.* On September 9, 2022, DHS paroled Petitioner into the United States because of time-in-custody constraints at the Ursula Rio Grande Valley Centralized Processing

[1] Exhibits "A" – "D" have been provided to undersigned counsel by ICE agency counsel.

Center in McAllen, Texas. *Id.* at 3. Petitioner was released subject to participation in the Alternatives to Detention program as a condition of parole. *Id.* According to Petitioner's Form I-94, his authorized parole period expired on November 2, 2022. Ex. B.

On the morning of July 26, 2026, Petitioner appeared at the ICE Albany Field Office in Ballston Spa, New York, where ICE arrested and detained him. Ex. C; Ex. D. ICE treated Petitioner's parole as having automatically terminated upon expiration of the authorized parole period under 8 C.F.R. § 212.5(e)(1)(ii) and placed him in detention pursuant to 8 U.S.C. § 1225(b).

The Government has maintained that *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), does not govern cases in which a noncitizen was apprehended at or near the time of entry, processed under § 1225(b), and subsequently released pursuant to immigration parole. Parole under 8 U.S.C. § 1182(d)(5)(A) is temporary, subject to such conditions as DHS may prescribe, and "shall not be regarded as an admission." Section 1182(d)(5)(A) further provides that, when the purposes of parole have been served, the noncitizen "shall forthwith return or be returned to the custody from which he was paroled," after which his case shall continue to be treated in the same manner as that of any other applicant for admission. Consistent with that statutory language, the Board of Immigration Appeals has held that a noncitizen released from detention under a grant of parole pursuant to § 1182(d)(5)(A), whose parole is later terminated, returns to custody under § 1225(b) pending completion of removal proceedings. *Matter of Q. Li*, 29 I. & N. Dec. 66, 69–70 (B.I.A. 2025) (citing 8 C.F.R. § 212.5(e)(2)(i)).

Respondents acknowledge, however, that although the Second Circuit did not expressly address or reject the interpretation adopted in *Matter of Q. Li*, its recent decision in *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026),[2] appears to foreclose the interpretation adopted there as applied to the circumstances presented here. In *da Cunha*, the Second Circuit held that § 1225(b)(2)(A) does not govern the detention of a noncitizen who entered the United States without inspection, was already present in the interior of the country, and was not apprehended while entering the country or shortly thereafter. *Id.* Rather, the court concluded that such a noncitizen's detention is governed by § 1226(a). *Id.*

[2] On July 23, 2026, the Government filed a petition in the United States Supreme Court seeking a writ of certiorari from the Second Circuit's decision in *da Cunha*. *See Rhoney v. Barbosa da Cunha*, No. 26-104 (Sup. Ct. July 23, 2026). The petition asks the Supreme Court to resolve the issue 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. A similar certiorari petition arising from a decision of the Sixth Circuit is also pending. *See Raycraft v. Lopez-Campos*, No. 25-1545 (Sup. Ct. June 22, 2026) (asking the Supreme Court to resolve the same issue raised in *da Cunha*, as well as whether detaining such aliens without a bond hearing during their removal proceedings comports with due process).

Although Petitioner was initially apprehended and processed under § 1225 shortly after his entry in 2022, he was then paroled and re-detained on July 26, 2026. In light of *da Cunha*, Respondents respectfully acknowledge that the Court is likely to conclude that Petitioner's present detention is governed by § 1226(a).[3]

This Court's prior decisions, as well as decisions from other courts within this District and throughout the Second Circuit, independently support that conclusion. *See, e.g.*, *Aguiar Olivares v. ICE*, No. 9:26-cv-00203 (AMN), Dkt. No. 18, at 18 (N.D.N.Y. Mar. 11, 2026) (concluding that a petitioner who had been paroled into the United States more than two years earlier was detained under § 1226(a), rather than § 1225(b)(2)(A)); *Marquez Ampuero*, 2026 WL 1983211, at *5–7 (rejecting the argument that a noncitizen who was apprehended at the border, subsequently paroled, and permitted to reside in the United States for several years remained subject to mandatory detention under § 1225(b)(2)(A)). As explained in *Marquez Ampuero*, courts within this Circuit have repeatedly held that, where a noncitizen's later arrest "was not a continuation of the initial border encounter, but an independent decision to detain the individual after the expiration of his parole," the resulting detention is governed by § 1226. *Id.* at *6 (quoting *Ivonin v. Rhoney*, No. 6:25-cv-06673 (EAW), 2026 WL 199283, at *4 (W.D.N.Y. Jan. 26, 2026), and citing *Campbell v. Almodovar*, No. 1:25-CV-09509 (JLR), 2025 WL 3538351, at *6 (S.D.N.Y. Dec. 10, 2025), *opinion clarified*, No. 1:25-CV-09509 (JLR), 2025 WL 3626099 (S.D.N.Y. Dec. 15, 2025); *see also Hernandez Villasmil v. Blanche*, No. 9:26-cv-00713 (MAD), 2026 WL 1235068, at *6 (N.D.N.Y. May 5, 2026) (holding that a petitioner who had been paroled into the United States and continued to reside here after the termination of his parole was no longer "seeking admission" and therefore was subject to § 1226(a)); *Torrez Arce v. Blanche*, No. 9:26-cv-00501 (ECC), 2026 WL 1430509, at *3–4 (N.D.N.Y. May 21, 2026) (concluding that a petitioner who had been paroled into the United States approximately two years before his arrest was not "seeking admission" when rearrested and therefore was not subject to § 1225(b)(2)(A)).

If the Court concludes that *da Cunha* and this Court's prior jurisprudence require Petitioner's detention to be treated as arising under § 1226(a), the proper remedy is an individualized bond

[3] Section 1226(a) does not, by its terms, condition re-detention on a showing of changed circumstances. Nevertheless, courts within this District have concluded that due process generally requires the Government to identify materially changed circumstances, or, at minimum, to make a new, individualized determination that detention is warranted before revoking a prior release determination and returning a noncitizen to custody. *See Marquez Ampuero v. Venturella*, No. 9:26-cv-01267 (MAD), 2026 WL 1983211, at *7–9 (N.D.N.Y. July 8, 2026) (ordering the petitioner's release where the Government failed to demonstrate that ICE had made an individualized determination that he posed a danger or flight risk before re-detaining him years after his initial release); *Rea v. Ball*, No. 9:26-cv-01248 (AMN)(N.D.N.Y. July 2, 2026) (ordering the immediate release of a previously released petitioner who had complied with ICE supervision and concluding that the record did not support ICE's asserted basis for his warrantless re-arrest or continued detention).

hearing before an Immigration Judge, not immediate release. At that hearing, Petitioner should bear the burden of demonstrating that release is warranted.

The Supreme Court has recognized Congress's broad grant of discretion to determine whether, and under what conditions, a noncitizen should be released pending removal proceedings. *See Reno v. Flores*, 507 U.S. 292, 294–95 (1993). Courts within the Second Circuit have concluded that, at an initial bond hearing under 8 U.S.C. § 1226(a), the noncitizen bears the burden of establishing that release is warranted. *See Mahmodi v. Marich*, No. 25-CV-6762-MAV, 2026 WL 113473, at *6 (W.D.N.Y. Jan. 15, 2026). *Mahmodi* further held that imposing that burden on a recently detained noncitizen is consistent with due process under *Mathews*.[4] *Id.* at *7–10.

That conclusion accords with the statutory framework recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). There, the Supreme Court rejected an interpretation of § 1226(a) that would require the Government to prove by clear and convincing evidence that continued detention is necessary or to provide periodic bond hearings. *Id.* at 301–03. The Court explained that § 1226(a) provides only that the Attorney General "may release" a noncitizen on bond and does not place the burden of proof on the Government. *Id.* The BIA likewise has long held that "[t]he burden is on the alien to show to the satisfaction of the Immigration Judge that he or she merits release on bond." *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006).

Although due process may require additional procedural protections once detention becomes prolonged, Petitioner's detention has not reached that point. *See Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (requiring the Government to bear the burden only after concluding that the petitioner's detention had become prolonged). Accordingly, neither § 1226(a) nor its implementing framework places the burden of proof on the Government at an initial bond hearing. See *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). Nor has the Second Circuit held that due process categorically requires the Government to bear that burden at every § 1226(a) bond hearing. Rather, whether due process requires a shifted burden depends on the circumstances of the particular detention, evaluated under the framework set forth in *Mathews v. Eldridge*. See *Velasco Lopez v. Decker*, 978 F.3d 842, 855 & n.13 (2d Cir. 2020); *Mahmodi v. Marich*, 2026 WL 113473, at *5–9 (W.D.N.Y. Jan. 15, 2026).

Respondents recognize that Petitioner remained at liberty and subject to supervision for nearly four years before his re-detention. Courts within this District, including this Court, have concluded that, when a noncitizen previously released under § 1226(a) is later returned to custody, due process may require the Government to identify materially changed circumstances supporting that decision. *See Rea v. Ball*, No. 9:26-cv-01248 (AMN). However, ICE treated Petitioner's detention on July 26, 2026, as a return to custody under § 1225(b) following the expiration of his parole, rather than as the revocation of a prior release determination under § 1226(a). ICE therefore did not undertake a changed-circumstances analysis under § 1226(a).

[4] 424 U.S. 319, 335 (1976).

If the Court concludes that Petitioner's present detention is governed by § 1226(a), Respondents respectfully submit that the appropriate remedy is a prompt, individualized bond hearing before an Immigration Judge, not immediate release. At that hearing, Petitioner may present evidence concerning his compliance with the Alternatives to Detention program, his family and community ties, his immigration history, and any other circumstances relevant to whether he presents a danger to the community or a risk of flight. The Immigration Judge may then make the individualized custody determination contemplated by § 1226(a) and its implementing regulations.

Immediate release would bypass that statutory framework and preclude the Immigration Judge from making the custody determination Congress entrusted to the Executive Branch. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d), 1236.1(d). A prompt bond hearing would remedy any procedural deficiency the Court may find while preserving the Government's authority to detain Petitioner if he fails to establish that release is warranted.

Finally, any application for attorney's fees under the Equal Access to Justice Act ("EAJA") is premature. An EAJA application must be filed within 30 days of a "final judgment," meaning a judgment that is final and no longer appealable. 28 U.S.C. § 2412(d)(1)(B), (d)(2)(G). That filing period does not begin until the time to appeal has expired. *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991). Because no final judgment has been entered in this matter, any request for attorney's fees should be denied without prejudice as premature. *See United States v. 27.09 Acres of Land*, 1 F.3d 107, 111 (2d Cir. 1993); *Barbour v. Colvin*, No. 12-CV-00548 (ADS), 2013 WL 7206218, at *1 (E.D.N.Y. Aug. 1, 2013).

In sum, Respondents respectfully request that the Court deny the Petition to the extent it seeks Petitioner's immediate release. If the Court determines that Petitioner's detention is governed by 8 U.S.C. § 1226(a), Respondents request that the Court order a prompt, individualized bond hearing before an Immigration Judge, at which Petitioner shall bear the burden of demonstrating that he does not present a danger to the community or a risk of flight and that his release is otherwise warranted. Respondents further request that any application for attorney's fees be denied without prejudice as premature.

The Government does not consent to the issuance of the writ and reserves all rights, including the right to appeal. Respondents respectfully submit that the Court may resolve the Petition on the present record without further briefing or an evidentiary hearing, which is currently scheduled for August 3, 2026. Should the Court determine that additional briefing or proceedings would assist its consideration of the Petition, Respondents are prepared to comply with any further order of the Court.

Thank you for the Court's consideration of this matter.

Respectfully Submitted,

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