UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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JOSE LUIS ROJAS FIGUERA,

Petitioner,

-against-

Anthony J. LAROCCO, in his official capacity as Sheriff of Nassau County; William JOYCE, in his official capacity as District Director of New York Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General,

Respondents.
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Civil Action No.
CV-25-3095

(Komitee, J.)

FEDERAL RESPONDENTS' MEMORANDUM OF LAW IN RESPONSE TO THE COURT'S JUNE 5, 2025 ORDER FOR RESPONDENTS TO SHOW CAUSE WHY A WRIT OF HABEAS SHOULD NOT ISSUE AND IN RESPONSE TO PETITIONER'S RESPONSE TO THE JUNE 5, 2025 ORDER FOR PETITIONER TO SHOW CAUSE WHY HIS CLAIM FOR RELIEF UNDER THE ADMINISTRATIVE PROCEDURES ACT SHOULD NOT BE DISMISSED IN LIGHT OF *TRUMP V. J.G.G.*

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The Federal Respondents, by their attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Megan Freismuth, of counsel, respectfully submit this memorandum of law in response to the Court's June 5, 2025 Order for Respondents to show cause why the writ for habeas corpus should not issue and in response to petitioner Jose Luis Rojas Figuera's ("Rojas Figuera") response to the Court's June 5, 2025 Order for Petitioner to show cause why his claim for relief under the Administrative Procedures Act should not be dismissed in light of *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025).

PRELIMINARY STATEMENT

In his amended habeas petition, Rojas Figuera argues that his detention violates the Due Process Clause of the Fifth Amendment and the Administrative Procedures Act ("APA"). However, Rojas Figuera's habeas petition is premature and should be denied because he has not availed himself of administrative remedies permitted under 8 U.S.C. § 1226(a). Rojas Figuera was detained on June 2, 2025 by the U.S. Department of Homeland Security, ("DHS"), Immigration and Customs Enforcement ("ICE") pursuant to its discretionary authority under § 1226(a),[1] which allows for the arrest and detention of an alien, like Rojas Figuera, pending a decision on whether he is to be removed from the United States. Under § 1226(a), Rojas Figuera has a two-level administrative process available to him to seek his release from detention before he can seek relief in habeas from the district court. Specifically, he may request a custody redetermination hearing,

[1] *See also* 8 U.S.C. § 1103(a) (in 1952, Congress enacted the Immigration and Nationality Act, ch. 477, 8 U.S.C. § 1103(a), 66 Stat. 173, charging the Attorney General "with the administration and enforcement" of the Act, and providing for the Attorney General to "establish such regulations * * * as he deems necessary for carrying out [that] authority." The Homeland Security Act of 2002 amended this provision, replacing it with a provision describing the authority of the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 1102, 116 Stat. 2137, 2273. The immigration courts and Board of Immigration Appeals ("BIA") continue to fall under the Department of Justice "(DOJ"). 8 U.S.C. § 1103(g).

referred to as a "bond hearing," before an immigration judge, and then may appeal the immigration judge's decision, if adverse to him, to the Board of Immigration Appeals ("BIA"). This administrative process could render judicial review of the habeas petition unnecessary.

At the time this suit was filed, Rojas Figuera had been detained for two days. Prior to filing his original habeas petition, Rojas Figuera had not yet sought a bond hearing with an immigration judge, nor by extension, the additional administrative processes should the immigration judge's determination have been unfavorable.

Likewise, Rojas Figuera's APA claim is precluded because other adequate remedies exist.[2] Federal Respondents agree with the Court that *J.G.G.*, and the terms of the APA itself, precludes an APA claim where an adequate remedy is available in habeas.

FACTUAL AND PROCEDURAL BACKGROUND

A. Rojas Figuera's Initial Encounter and Immigration Proceedings

Rojas Figuera is a citizen of Venezuela who unlawfully entered the United States without admission or parole. Declaration of Deportation Officer Michael Charles, dated June 30, 2025 ("Charles Decl.") (attached hereto), ¶¶ 4, 7. On October 16, 2023, Rojas Figuera entered the United States near El Paso, Texas, without inspection and was encountered by U.S. Customs and Border

[2] Federal Respondents note that pursuant to Fed. R. Civ. P. 12(a)(2), they have 60 days to answer or otherwise respond to Rojas Figuera's APA claim should it not be otherwise dismissed by the Court. It is not clear to Federal Respondents why Rojas Figuera submitted a memorandum of law in support of the first amended petition for writ of habeas corpus that included briefing on the substance of Petitioner's APA claim (*see* Dkt. No. 9-1, pp. 6-15) when they were not asked to do so by the Court, Federal Respondents have not answered or moved on the APA claim, and Rojas Figuera did not seek emergency relief with respect to the habeas petition or APA claim. Accordingly, should Rojas Figuera's APA claim be deemed viable on the grounds referenced in the Court's June 5, 2025 order to show cause, Federal Respondents should have until 60 days from the date of service of the petition, or August 8, 2025, to answer or request a pre-motion conference on any proposed motion to dismiss. Accordingly, for purposes of this response, Federal Respondents will reserve its arguments on the substance and other threshold grounds of Rojas Figuera's APA claim and narrowly address whether the APA claim should be dismissed in light of *J.G.G.* or jurisdictionally on standing grounds.

Protection ("CBP") on the same day. *Id.* at ¶ 5. Rojas Figuera did not possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document. *Id.* at ¶ 6. On October 16, 2023, CBP personally served Rojas Figuera with a Notice to Appear ("NTA"), charging him under INA section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* at ¶ 7. That NTA was subsequently served on the Executive Office for Immigration Review ("EOIR"), New York – Federal Plaza Immigration Court ("Federal Plaza Immigration Court") in New York City, thereby commencing removal proceedings against Rojas Figuera. *Id.* On October 16, 2023, Rojas Figuera was released on his own recognizance. *Id.* at ¶ 8.

On June 24, 2024, Rojas Figuera appeared *pro se* for his first master calendar hearing in his removal proceedings before an immigration judge at the Federal Plaza Immigration Court. *Id.* at ¶ 9.[3] Rojas Figuera was granted a continuance of the immigration court proceedings to seek counsel until June 2, 2025. *Id.* In the interim, ICE determined that Rojas Figuera was potentially amenable to Expedited Removal proceedings per INA 235(b)(1)(A)(iii), 8 U.S.C. § 1225(b)(1)(A)(iii) and *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). *Id.* at ¶ 11. On June 2, 2025, Rojas Figuera appeared *pro se* for his second master calendar hearing in his removal proceedings at the Federal Plaza Immigration Court. *Id.* at ¶ 12. At that hearing ICE moved to dismiss removal proceedings before the immigration court. *Id.* The immigration judge denied this motion. *Id.* The immigration court again granted Rojas Figuera a continuance to seek counsel, this time until June 1, 2026. *Id.*

[3] Rojas Figuera and his mother were in consolidated removal proceedings before the immigration court. *Id.*

ICE determined that it would arrest Rojas Figuera and take him into custody under INA 236(a), 8 U.S.C. § 1226(a). *Id.* at ¶ 13. On June 2, 2025, Rojas Figuera was encountered and taken into custody by Homeland Security Investigations ("HSI") Special Agent ("SA") and an Enforcement and Removal Operations ("ERO") Officer[4] after his master calendar hearing. *Id.* at ¶¶ 14, 15.[5] On June 2, 2025, a Risk Classification Assessment ("RCA") was conducted for Figuera. *Id.* at 17. The RCA recommended to the Deportation Officer handling his processing that Figuera posed a high flight risk. *Id.* at 18. Accordingly, ICE made a discretionary determination that it would keep Rojas Figuera in custody without bond pending the outcome of his removal proceedings under INA 236(a), 8 U.S.C. § 1226(a). *Id.*

On June 2, 2025, Rojas Figuera was transferred to the Nassau County Correctional Center ("NCCC"), in East Meadow, New York and booked into the facility on the same day. *Id.* at ¶ 19. On June 5, 2025, Rojas Figuera was booked out of NCCC. *Id.* at ¶ 20. ICE determined that Rojas Figuera would be transferred to Joe Corley Processing Center ("JCPC") in Conroe, Texas due to a lack of bed space availability in New York. *Id.* at ¶ 21.

On June 22, 2025, Figuera was transferred from JCPC to the Orange County Jail ("OCJ"). in Goshen, New York *Id.* at ¶¶ 3, 30. Figuera has remained at OCJ since his initial transfer to the facility. *Id.* at ¶ 37. On June 23, 2025, ICE filed a Form I-830 with the Conroe Immigration Court indicating that Rojas Figuera is detained at OCJ. *Id.* at ¶ 31. The Conroe Immigration Court transferred removal proceedings to the Varick Street Immigration Court in New York City ("Varick Street Immigration Court"). *Id.* On the same date, EOIR issued a Notice of Hearing scheduling a

[4] HSI and ERO are both divisions of ICE, DHS.

[5] Additional detail regarding Rojas Figuera's detention and removal proceedings, which are not material to the issues raised in this memorandum, are contained in the Charles Declaration, ¶¶ 15-16, 19-27.

master calendar hearing in his removal proceedings on June 25, 2025 at the Varick Street Immigration Court. *Id.* 36. On June 25, 2025, Figuera appeared *pro se* for a master calendar hearing in his removal proceedings. *Id.* at ¶ 36. The immigration judge provided advisals and granted Rojas Figuera a continuance to seek counsel until July 2, 2025. *Id.*

On June 24, 2025, attorney Paige Austin filed an E-28 notice of appearance on behalf of Rojas Figuera in custody redetermination proceedings and filed a custody redetermination (i.e., a bond hearing) request. *Id.* at ¶ 34. On the same date, EOIR issued a Notice of Hearing scheduling a custody redetermination hearing (i.e., a bond hearing) on July 2, 2025 at the Varick Street Immigration Court. *Id.* at ¶ 34.

Venue for both Figuera's removal and custody redetermination proceedings are currently at the Varick Street Immigration Court. *Id.* at ¶ 37.

B. Rojas Figuera's Habeas Petition

In the interim, two days after being detained, Rojas Figuera filed his original habeas petition pursuant to 28 U.S.C. § 2241. He contends that his detention violates the Due Process Clause of the Fifth Amendment and the APA. Dkt. No. 1. On June 5, 2025, this Court ordered Rojas Figuera to show cause why his claim for relief under the APA should not be dismissed in light of *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025), and ordered Respondents to show cause why the writ should not issue. On June 18, 2025, Rojas Figuera filed his response to the order to show cause, as well and his first amended habeas petition. Dkt. Nos. 9 & 10.

C. Rojas Figuera's Bronx Family Court Proceedings

Concurrently to the events outlined above, Rojas Figuera was also scheduled for a hearing before the Bronx County Family Court on June 23, 2025. *See* Charles Decl. ¶ 28. As alleged, this Bronx County Family Court proceeding is related to his forthcoming attempt to qualify for Special

Immigrant Juvenile status, unrelated to his habeas petition. *See* Amended Petition at ¶ 11. A subsequent Order to Produce from the Bronx County Family Court specifically called for a virtual appearance. *Id.* DHS coordinated with both the relevant court and JCPC as well as the OCJ to facilitate a virtual appearance by Rojas Figuera on that date. *Id.* at ¶¶ 29, 32. On June 23, 2025, Rojas Figuera was produced for his hearing at the Bronx County Family Court through the video teleconferencing systems at OCJ, as previously arranged. *Id.* at ¶ 33.

ARGUMENT

I. ROJAS FIGUERA'S HABEAS PETITION SHOULD BE DENIED

A. Rojas Figuera is Lawfully Detained Pursuant to 8 U.S.C. § 1226(a)

Rojas Figuera alleges that his detention violates due process because he was not accorded "sufficient process" prior to his detention, there was no change in his case compelling a change in his custody status, his detention is not rationally related to any immigration purpose or statutorily authorized, that he is not entitled to a bond hearing, and that detention interferes with his ability to participate in family court proceedings. *See* Amended Petition. ¶¶ 32-34. Rojas Figuera's challenges fail because he is lawfully detained pursuant to 8 U.S.C. § 1226(a).

In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. Section 1226 "generally governs the process for arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section 1226(a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). When a noncitizen is taken into ICE custody under § 1226(a), an ICE official makes the initial custody determination, including the setting of a bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1). Per regulations, an ICE officer may "in the officer's discretion, release

an alien . . . provided that the alien demonstrates to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8); 8 C.F.R. § 1236.1(c)(8).

The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. §§ 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for anyone's arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions"). Here, as acknowledged in his own pleadings, Rojas Figuera is currently in 8 U.S.C. § 1229a removal proceedings and ICE exercised its discretion in making the initial custody determination as prescribed by 8 U.S.C. § 1226(a). *See* Amended Petition ¶ 26 ("[f]or individuals who are in removal proceedings following entry without inspection and who, like Luis [sic], have no criminal history, detention has historically been authorized by 8 U.S.C. § 1226(a))". *See* Charles Decl. ¶¶ 13, 17-18 (describing ICE's discretionary decision to detain Rojas Figuera without bond).

B. Rojas Figuera Has Not Exhausted Administrative Remedies

Numerous courts in this Circuit have held, as recently as June 2025, in cases substantially similar to this one, that "'[a] habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention.'" *See Castillo Lachapel v. Joyce, et al.*, No. 25-cv-4693, 25 WL 1685576, at *3 (S.D.N.Y. June 16, 2025) (quoting *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y. 2018). *See also Capunay Guzman v. Joyce*, et al., No. 25-cv-4777, 2025 WL 1696891, at *2 (S.D.N.Y. June 17, 2025); *J.C.G. v. Genalo*, No. 24-cv-8755, 2025 WL 88831, at *4 (S.D.N.Y. Jan. 14, 2025); *Roman v. Decker*, No. 20-cv-3752, 2020 WL 4273823, at * 7 (S.D.N.Y. July 24, 2020); *Paz Nativi v. Shanahan*, No. 16-cv-8496, 2017 WL 281751, at *1

(S.D.N.Y. Jan. 23, 2017) ("before immigration detention may be challenged in federal court . . . exhaustion is generally required as a prudential matter" (collecting cases)). The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[ ] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Id.* (*quoting Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)).

Here, Rojas Figuera has not availed himself of administrative remedies available pursuant to § 1226(a), to wit, a two-level administrative review process that includes a "custody redetermination hearing" (also referred to as a "bond hearing") before an immigration judge (*see* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d)) and an appeal to the BIA should the immigration judge conclude that he should not be released, or the immigration judge has set a bond amount that he believes is too high (*see* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3)). *See Monterosa v. Decker*, No. 20-cv-02653, 2020 WL 1847771, at *3 (S.D.N.Y. Apr. 11, 2020) ("After ICE makes an initial detention decision, any person who is detained has the right to request a bond hearing before an Immigration Judge."); *Michalski*, 279 F. Supp. 3d at 496 (finding that a bond hearing is the appropriate avenue for petitioner's request for release from detention where "as opposed to challenging the length of his detention, [petitioner] essentially challenges the arrest and detention under § 1226(a) without any evaluation of legal justification as unconstitutional"). As the court in *Castillo Lachapel* explained, "If the immigration judge releases [Petitioner] on bond, his [habeas] petition would be moot . . . And even if the immigration judge denies bond, [Petitioner]'s petition could be mooted if the Board of Immigration Appeals reverses that determination." 2025 WL 1685576 at *3 (internal quotations and citation omitted). Thus

"[b]ecause [Petitioner]'s [potential] bond hearing may provide him with the relief that he seeks—i.e., his release", the Court should require that Rojas Figuera exhaust the administrative avenues available to him pursuant to § 1226(a) before seeking judicial relief. *See id.* At the time of this filing, a bond hearing for Rojas Figuera is scheduled for July 2, 2025 at the Varick Street Immigration Court. *See* Charles Decl. ¶ 34. At that hearing, the immigration judge could release Rojas Figuera on bond, thereby mooting this entire action, or if denied, Rojas Figuera would then be permitted to appeal the immigration judge's decision to the BIA. Until that process is complete, his habeas petition is premature for failure to exhaust administrative remedies.

C. Recognized Exceptions to Exhaustion are Inapplicable

A district court may in its discretion excuse exhaustion when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile and (4) in certain instances a plaintiff has raised a substantial constitutional question." *See Beharry*, 329 F.2d at 62. Numerous courts in this Circuit have also found that none of these exceptions apply where, as here, an immigration judge or the BIA could release a habeas petitioner detained under 8 U.S.C. § 1226(a) on bond.[6] *See, e.g.*, *Castillo Lachapel*, 2025 WL 1685576 at *3; *Capunay Guzman*, 2025 WL

[6] In his Amended Petition, Rojas Figuera cites to *Valdez v. Decker [sic]*, 25-cv-4627 (S.D.N.Y. June 18, 2025), in which the court held that petitioner's recent detention at an immigration courthouse violated due process. *See* Dkt. No. 9, ¶ 33. This case is distinguishable from the facts here. In *Valdez*, the court excused the petitioner from exhaustion of administrative remedies and reviewed his habeas claim. *Valdez v. Joyce, et al.*, 25-cv-4627, 2025 WL 1707737, *5, FN 1 (S.D.N.Y. June 18, 2025). In so doing, the court appeared to reply upon petitioner's claim that he "may not be entitled to a bond hearing". *Id.* Here, Rojas Figuera is entitled to a bond hearing under 8 U.S.C. § 1226(a). Thus, the concern that the petitioner in *Valdez* may not have been afforded any process, *i.e.*, the bond hearing, does not exist here. The *Valdez* court also relied upon *Quintanilla v. Decker*, No. 21-cv-417, 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) in finding that petitioner raised a constitutional question that could not be properly addressed by the Immigration Board or Board of Immigration Appeals. *Id.* However, in *Quintanilla*, unlike here, petitioner had already requested release at a bond hearing, where the immigration judge denied

1696891 at *2-*3; *Monterosa*, 2020 WL 1847771 at *6-*7; *Roman*, 2020 WL 4273823, at *7; *Michalski*, 279 F. Supp. 3d at 496; *Paz Nativi,* 2017 WL 281751 at *1-2.

With respect to the first exception, as explained above, Rojas Figuera has available administrative remedies—a bond hearing with an immigration judge *and* appeal of the immigration judge's decision, if adverse, to the BIA. *See Castilla Lachapel*, 2025 WL 1685576, at *3 (describing the two levels of administrative review available to petitioner). "Because [Petitioner]'s [potential] bond hearing may provide him with the relief that he seeks—i.e., his release—this Court concludes in the exercise of its discretion that [Petitioner] must exhaust these avenues before seeking judicial relief." *Id.* (internal quotations and citations omitted). *See Michalski*, 279 F. Supp. 3d at 496 (finding that a scheduled bond hearing "scuttles" petitioner's habeas petition because the immigration judge could release him on bond making his habeas petition moot); *Paz Nativi*, 2017 WL 281751, at *2 ("The pendency of a BIA appeal that could potentially moot [petitioner's] habeas petition counsels for the Court to stay its hand until the exhaustion of administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings.").

The second exception is also inapplicable. Rojas Figuera cannot show irreparable harm at this point in time. He has been detained for twenty-eight days[7], and his bond hearing is already

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bond. 2021 WL 707062 at *2. Petitioner in *Quintanilla* brought a habeas action challenging the burden of proof applied at the bond hearing, and seeking release without a further bond hearing or a supplemental bond hearing where the Government would bear the burden of proof. *Id.* The *Quintanilla* court held that petitioner was excused from appealing the immigration judge's decision to the BIA and exhausting administrative remedies because the challenged burden of proof would be the same at the BIA, rendering any appeal futile. *Id.* Here, Rojas Figuera has not even had an initial bond hearing. Thus *Quintanilla,* and *Valdez*, are inapposite.

[7] Rojas Figuera incorrectly alleges that he has been detained since January 13, 2025. *See* Amended Petition ¶ 6.

scheduled. *See Capunay Guzman*, 2025 WL 1696891, at *1, *3 (where petitioner had been detained for nineteen days "'[t]he risk of prolonged detention'-as opposed to actual prolonged detention-'does not constitute an irreparable injury that excuses the prudential exhaustion requirement'") (quoting *Roman*, 2020 WL 4273823, at *8). *Cf. Michalski*, 279 F. Supp. 3d at 496 (petitioner's "claim that prolonged detention constitutes an irreparable injury that may excuse exhaustion has been rejected by courts in this District"). Further, contrary to Rojas Figuera's allegation that as a result of his detention "he will be unable to attend his family court proceeding on June 23, 2025" (Amended Petition ¶ 35), ICE made him available virtually for the hearing. *See* Charles Decl. ¶ 33.

Similarly, as to the third exception, Rojas Figuera has not shown that a bond hearing would be futile. Indeed, such an argument would be premature since a bond hearing is scheduled but has not yet taken place. *See Michalski*, 279 F. Supp. 3d at 496; *Capunay Guzman*, 2025 WL 1696891, at *2 (petitioner's "arguments concerning the futility of any bond motion are similarly premature, as he has not yet made a motion for bond"). *See also Cabral v. Decker*, 331 F. Supp. 3d 255, 263 n. 6 (S.D.N.Y. 2018) ("[T]he question of whether the petitioner's yet-to-happen bond hearing complies with due process is not before this Court.").

With respect to the fourth exception, "[m]ere existence of a constitutional issue . . . does not create an automatic exception to an exhaustion requirement." *Monterosa,* 2020 WL 1847771, at *5. "Thus, when applying this exception, 'courts will endeavor to avoid deciding a constitutional issue if the case might be resolved on a narrower factual basis.'" *Capunay Guzman*, 2025 WL 1696891, at *3 (quoting *Monterosa*, 2020 WL 1847771, at *5). As the court in *Capunary Guzman* noted, only a few courts in this Circuit have excused exhaustion under the fourth exception in cases where the petitioner had been detained and denied bond at the bond hearing, or was not yet detained

and sought to prevent re-detention. *See id.* (collecting cases). Rojas Figuera does not fall under either category.

Accordingly, and in keeping in line with the vast majority of courts in this Circuit that have addressed habeas claims arising out of § 1226(a) detentions, Rojas Figuera's amended petition for habeas should be denied on the grounds that he has not exhausted his available administrative remedies and no exception to exhaustion is applicable.

II. ROJAS FIGUERA'S APA CLAIM SHOULD BE PRECLUDED

A. Rojas Figuera's Request for Relief Can be Adequately Addressed in Habeas

In his response to the order to show cause why his APA claim should not be dismissed in light of *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025), Rojas Figuera argues that i) the Supreme Court's holding does not extend beyond challenges to actions under the Alien Enemies Act ("AEA") and ii) he requests relief under the APA distinct from that sought in habeas. *See* Dkt. No. 10, Petitioner's Response to Order to Show Cause as to the Viability of APA Claims After *Trump v. J.G.G.* ("Pet. Response"). Both arguments lack merit.

In J.G.G., the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." *See J.G.G.*, 145 S. Ct. at 1005 (cleaned up) (internal quotation marks and citation omitted). The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). And the Supreme Court in *J.G.G.* did not expressly limit its holding to challenges brought only under the AEA as Rojas Figuera alleges.

Furthermore, although Rojas Figuera tenuously argues that his APA claim challenges the so-called "courthouse arrest policy" independent of his detention, the Court need not at this juncture determine whether judicial review of the APA claim is precluded on the merits because

doing so is "'beyond what [is] necessary to vindicate due process rights'" when habeas is available. *See J.G.G.*, 145 S. Ct. at 1005 (quoting *Heikkila*, 345 U.S. at 229).

However, aside from the holding in *J.G.G.*, by the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Thus, Rojas Figuera's APA claim is independently barred by this limitation in 5 U.S.C. § 704. As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Rojas Figuera can challenge his detention. Even if Rojas Figuera's APA claim had merit, which it does not, the result would be the same as that in habeas-release from detention.

Raspoutny v. Decker, 708 F. Supp. 3d 371 (S.D.N.Y. 2023), a case involving a petitioner who challenged his detention pursuant to § 1226(a), is also instructive. In declining to review petitioner's APA claim, the *Raspoutny* court likewise held that "petitioner points to no statute that permits review of the arrest. The arrest also does not fit into the second category—final agency action for which there is no other adequate remedy in a court—because the issuance of a writ of habeas corpus under 28 U.S.C. § 2241 would provide an adequate remedy were the Court to find [petitioner's] custody to be improper." *Id.* at 381 (cleaned up) (citing *Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) ("[B]ecause plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim."). *See also Quintanilla,* 2021 WL 707062, at *3 (finding a violation of due process and thus not addressing petitioner's INA or APA claims).

Rojas Figuera attempts to distinguish *Raspoutny* because his APA claim does not seek "identical" relief as his habeas claim, as in *Raspoutny,* fall short. *See* Pet. Response at p. 6. As an initial matter, as previously noted, Rojas Figuera has not established how habeas relief would not be an "adequate" remedy when what he seeks is his release from detention. Further, Rojas Figuera's position finds no support in the text of 5 U.S.C. § 704. *See Panjiva, Inc. v. U.S. Customs and Border Protection,* 342 F. Supp. 3d 481 (S.D.N.Y. 2018) ("[a]lternative remedies need not be identical to bar review under § 704"); *Zaidan v. Tillerson*, No. 17-cv-3604, 2018 WL 3769966, at *3 (E.D.N.Y. Aug. 9, 2018) ("Alternative remedies need not be identical to bar review under § 704; they need only be adequate."); *Jones v. U.S. Dep't of Hous. & Urban Dev.*, No. 11 -cv-0846, 2012 WL 1940845, at *6 (E.D.N.Y. May 29, 2012) (reasoning that an alternative was adequate "whether or not relief is ultimately granted").

Additionally, Rojas Figuera's suggestion that he should also be entitled to a declaration that the purported "courthouse arrest policy" is arbitrary and capricious so that Federal Respondents would be "prevent[ed] [] from again taking the same action against Petitioner, if it orders his release under his habeas claim" is untenable. *See* Pet. Response at p. 6. Rojas Figuera cannot seek relief through APA for an injury that has yet to occur. *See, e.g., Ag-Innovations, Inc. v. United States Dep't of Agric.*, 6 Fed. App'x. 97, 98 (2d Cir. 2001) (vacating the judgment of the district court and remanding with instructions to dismiss the case as moot because plaintiffs sought only prospective relief, and that any future agency action was "entirely speculative"). *See also* II(B), *infra.*

Rojas Figuera's citation to several cases to support his contention that there is a "strong consensus" amongst courts in this Circuit that APA claims can be brought concurrently with habeas claims is misleading. *See* Pet. Response at p. 4. Importantly, these cases pre-date *J.G.G.* In any

event, these cases address APA claims that i) seek relief entirely distinct from release from detention; ii) relief for a class including yet unknown or prospective members; and/or iii) fail to address the substance of either the APA claim or habeas claim such that they do not provide any support one way or the other for the argument that both claims can be litigated concurrently. *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020) (applying standard for preliminary injunction where plaintiffs sought relief under the APA to set aside ICE policy and certification for a class that included prospective members, but did not bring a habeas petition); *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 608–09 (S.D.N.Y. 2018) (applying standard for preliminary injunction where plaintiffs sought relief under the APA to set aside an Office of Refugee Resettlement policy and certification for a class that included prospective members, and finding that the certified class stated a cognizable due process claim); *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 456, 468 (S.D.N.Y. 2018) (granting habeas relief and applying standard for preliminary injunction with respect to plaintiff's INA and APA claims, which sought to remedy a legal error with respect to an underlying denial of his adjustment of status application, which if corrected, could provide additional relief beyond release); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 952, 954, 958 (S.D.N.Y. 2018) (granting habeas relief and applying standard for preliminary injunction with respect to plaintiff's INA and APA claims, which sought to remedy a legal error with respect to an underlying order of removal, which if corrected, could provide additional relief beyond release); *Ceesay v. Kurzdorfer*, --- F.Supp.3d. ---, No. 25-cv-267, 2025 WL 1284720, at *14, n. 20 (W.D.N.Y. May 2, 2025) (granting habeas relief and reviewing challenges under the INA to actions leading up to revocation of his release—not the ability to remove him—specifically, that the official who revoked release did not have authority, that ICE failed to provide him with an initial information interview, and that ICE failed to provide him the opportunity for an orderly departure;

Gonzalez Evangelista v. Decker, No. 2-cv-8758, 2021 WL 101201, at *3-*5 (S.D.N.Y. Jan. 12, 2021) (ruling on habeas petitioner's due process claim, but not addressing his claims under the APA or INA).

Indeed, in two recent cases issued in June 2025, that post-date *J.G.G.*,out of this Circuit involving facts substantially similar to Rojas Figuera, the courts undertook an analysis of the habeas claim, making dispositive findings on only that portion of the petition, and did not address the APA or other statutory claims whatsoever. *See Valdez*, 2025 WL 1707737, at *5, FN 4 (not addressing the APA claim where, when it was undetermined whether a bond hearing was available, the court addressed the due process claim); *Capunary Guzman*, 2025 WL 1696891, *1 (not addressing the APA claim where detention was pursuant to § 1226(a)).

For the reasons set forth in *J.G.G.*, as well as by the terms of the APA itself, Rojas Figuera's APA claim should be precluded because habeas provides an adequate remedy.

B. Rojas Figuera Does Not Have Standing to Bring His APA Claim

Rojas Figuera seeks to have the purported "courthouse arrest policy" declared unlawful under the APA, but he does not have standing to request such relief. "Article III of the Constitution confines the jurisdiction of federal courts to "Cases" and "Controversies." *Diamond Alternative Energy, LLC v. Env't Prot. Agency*, No. 24-7, 2025 WL 1716141, at *6 (U.S. June 20, 2025) (citing § 2, cl. 1.). "For a lawsuit to constitute a case within the meaning of Article III, the plaintiff must have standing to sue. To demonstrate standing, plaintiffs must answer a basic question—'What's it to you?'". *Id.* (quoting *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 379 (2024) (other internal citations omitted). "In other words, plaintiffs must show that they possess a personal stake in the dispute and are not mere bystanders." *Id.* (cleaned up) (omitting internal quotations

and citations). Standing requires three elements: injury in fact, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

i. Injury in Fact

Injury in fact requires the plaintiff to demonstrate an injury that is "concrete and particularized," and "actual or imminent, not conjectural or hypothetical". *See Lujan*, 504 U.S. at 560 (internal quotation marks and citation omitted). To the extent that Rojas Figuera alleges that if the immigration judge releases him, or the BIA releases him subject to an appeal of the immigration judge's decision, or finally, the court releases him after full exhaustion of administrative remedies under habeas, he might be re-detained under the so-called "courthouse arrest policy", such injury in entirely speculative. *See* Response at p. 6; *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401, (2013) ("R]espondents' theory of future injury is too speculative to satisfy the well-established requirement that threatened injury must be certainly impending.") (internal quotations and citation omitted).

ii. Causation and Redressability

Causation and redressability "are usually flip sides of the same coin." *Diamond Alternative*, 2025 WL 1716141, at *6 (internal quotation and citation omitted). "Causation requires the plaintiff to show that the injury was likely caused by the defendant, and redressability requires the plaintiff to demonstrate that the injury would likely be redressed by judicial relief." *Id.* (internal quotation and citation omitted).

"To satisfy the causation requirement, the alleged injury must be 'fairly traceable to the actions of the defendant.'" *Am. Bird Conservancy v. Harvey*, 232 F. Supp. 3d 292, 305 (E.D.N.Y. 2017) (quoting *Connecticut v. Am. Elec. Power Co.*, 582 F.3d 309, 345 (2d Cir. 2009). *See also Lujan*, 504 U.S. at 560. "This requirement 'ensures that there is a genuine nexus between a

plaintiff's injury and a defendant's alleged . . . conduct . . . .'" *Id.* Rojas Figuera alleges that he was detained as part of a "campaign of immigration-courthouse arrests" (*see* Dkt. No. 9-1, Memorandum of Law in Support of First Amended Petition for Writ of Habeas Corpus ("Pet. Mem. of Law") at 6), but has provided no support for such allegation. Although Rojas Figuera references an ICE guidance dated May 27, 2025 regarding "Civil Immigration Enforcement Actions In or Near Courthouses", the guidance does not mandate detention of any particular person or group of persons as he alleges. *See* Pet. Mem. of Law at p. 7; Dkt. No. 9-3, Declaration of Paige Austin ("Austin Decl."), Ex. F. Indeed, the guidance merely states that ICE "*may* conduct civil immigration enforcement action in or near courthouses". *Id.* The guidance further provides that ICE "will make enforcement determinations on a case-by-case basis". *Id.* This case-by-case discretion to make enforcement decisions is precisely what § 1226(a) permits. Here, Rojas Figuera was identified as subject to expedited removal, and ultimately detained under 1226(a) discretionary authority pending the outcome of removal proceedings. *See* Charles Decl. ¶¶ 11, 13, 18. Indeed, Rojas Figuera acknowledges that, for aliens similarly situated to him, "detention has historically been authorized by 8 U.S.C. § 1226(a)." Amended Petition ¶ 9. *See Am. Bird Conservancy*, 232 F. Supp. 3d at 305 (the requirement that there be a nexus between the injury and the conduct complained of "is in large part designed to ensure that the injury complained of is not the result of the independent action of some third party not before the court") (internal quotations and citation omitted).

In any event, Rojas Figuera cannot establish that if he was originally detained pursuant to such "policy", that injury is redressable. To show redressability, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal quotation marks and citation omitted). Here, Rojas Figuera seeks a declaration that

the "courthouse arrest policy" is unlawful under the APA. *See* Pet. Mem. of Law at p. 11. Even assuming a "policy" exists as applied to Rojas Figuera, he fails to show how such a declaration would redress his detention. Rojas Figuera was lawfully detained under § 1226(a)'s discretionary authority. Overturning this purported "policy" would not change this authority or Federal Respondents' discretion to use this authority as it pertains to Rojas Figuera's current detention or any future detention should he be released. *See, e.g.*, *Guan v. Mayorkas*, 530 F. Supp. 3d 237, 262–63 (E.D.N.Y. 2021) ("For standing purposes, redressability refers to a 'non-speculative likelihood that the injury can be remedied by the requested relief.'" (quoting *W.R. Huff Asset Mgmt. Co., LLC v. Deloitte & Touche LLP*, 549 F.3d 100, 106–07 (2d Cir. 2008)).

CONCLUSION

For the foregoing reasons, the Court should deny Rojas Figuera's habeas petition and find that his APA claim is precluded by *J.G.G.* or on the basis of standing[8].

Dated: June 30, 2025
Central Islip, New York

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[8] In the event Rojas Figuera's APA claim survives the Court's show cause order, Federal Respondents reiterate that they reserve their right to make merits and threshold arguments, whether by a timely filed answer or pre-motion conference letter.

Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 6,417 words.