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February 6, 2026

By ECF
The Honorable Hector Gonzalez
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *F.H.H. v. Genalo, et al.*, No. 26-cv-525 (HG)

Dear Judge Gonzalez:

We represent Petitioner F.H.H. in the above-captioned habeas proceeding. Petitioner filed the Emergency Petition for Writ of Habeas Corpus on January 29, 2026. ECF No. 1 ("Petition"). Pursuant to the Court's Order to Show Cause, *see* Dkt. Order dated Jan. 30, 2026, Respondents filed their Response on February 4, 2026, *see* ECF No. 8 ("Response").[1] In the Response, Respondents "acknowledge that Your Honor's prior decisions in *O.F.B.*, *R.P.L.*, and *Ndiaye* would control the outcome here, and recognize that it would be futile to repeat the government's statutory interpretation arguments in opposing the habeas petition." *Id.* at 3. Respondents also incorporate by reference the arguments made by the government in *O.F.B. v. Maldonado*, No. 25-cv-6336 (HG) (E.D.N.Y.).[2] *Id.* at 1.

Given that Respondents acknowledge that *O.F.B.*, *R.P.L.*, and *Ndiaye* control the outcome of this case and Petitioner agrees, Petitioner respectfully requests that the Court order F.H.H. immediately released just as the Court did in each of those cases. *See O.F.B. v. Maldonado*, No. 25-cv-6336 (HG), 2025 WL 3277677, at *8 (E.D.N.Y. Nov. 25, 2025); *R.P.L. v. Maldonado*, No. 25cv-6886 (HG), 2025 WL 3731864, at *4 (E.D.N.Y. Dec. 26, 2025); *Ndiaye v. Francis*, No. 26-cv-69 (HG), 2026 WL 99930, at *3 (E.D.N.Y. Jan. 14, 2026).

Petitioner additionally requests that Respondents be ordered to "return[] him to the status of liberty he enjoyed prior to the recent re-detention." Petition, Prayer for Relief ¶ d. Prior to his

[1] Petitioner has identified some factual issues in the Declaration of Deportation Officer Kareem Biggs, ECF No. 8-1, and the Declaration of Assistant Field Office Director Carla Calidonio, ECF No. 7-1, relating to Petitioner's immigration and criminal history. Since those factual issues are not material to the legal question governing the instant petition, however, Petitioner refrains from discussing them in this letter and reserves the right to clarify such factual issues at a later date, if necessary.

[2] Petitioner similarly incorporates by reference the arguments made by Petitioner O.F.B. in reply. *See* Pet'r Reply Br. ISO Emergency Order to Show Cause & Emergency Petition for Writ of Habeas Corpus, ECF No. 12, *O.F.B. v. Maldonado*, No. 25-cv-6336 (HG) (E.D.N.Y.). Undersigned counsel represented Petitioner O.F.B. as well.

recent re-detention by Respondents, Petitioner was free from detention without any constraints on his liberty imposed by immigration authorities—that is, he was not subject to any electronic monitoring by Immigration and Customs Enforcement ("ICE") or any required in-person or phone check-ins with ICE or its Intensive Supervision Appearance Program. Petitioner respectfully requests that he be ordered returned to this status such that Respondents are prohibited from imposing any additional constraints on his liberty upon his release from his current detention under the Court's order. Respondents do not address this aspect of Petitioner's request in their Response.[3]

Lastly, Petitioner seeks to briefly address Respondents' statement that Petitioner "would still be subject to mandatory detention" under 8 U.S.C. § 1226(c)(1)(E)(ii). Response at 3. In the attached Declaration of Deportation Officer Kareem Biggs ("Biggs Decl."), ECF No. 8-1, Officer Biggs asserts that Petitioner's arrest for and charge with Burglary in the Second Degree (Class C Felony) under New York Penal Law ("NYPL") § 140.25 (2) qualifies Petitioner for mandatory detention under 8 U.S.C. § 1226(c)(1)(E). *See* Biggs Decl. ¶ 16. Critically, Respondents do not argue that Petitioner should not be released from his current detention despite their position that § 1226(c)(1)(E) would apply to Petitioner; instead, "ICE respectfully reserves the right" to detain Petitioner "in the future" under § 1226(c) or § 1231 as relevant. Response at 3. Accordingly, Respondents do not take the position that this reservation prevents the Court from ordering Petitioner immediately released from his current detention.

Any future re-detention of Petitioner under either § 1226(c) or § 1231 would raise different factual and legal questions not presented by the instant Petition, and therefore, the Court need not address the potential application of either of those provisions to any future detention in order to immediately release Petitioner from his current detention. However, Petitioner notes that any detention of him under § 1226(c)(1)(E) presents substantial due process concerns. The provision—recently enacted under the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025)—mandates detention for certain inadmissible noncitizens who are arrested for or charged with certain crimes. Petitioner does not concede that NYPL § 140.25 (2) qualifies as listed offense under § 1226(c)(1)(E). However, even if it does, subjecting noncitizens who have only been arrested for or charged with (but not convicted of) certain crimes to mandatory detention without the opportunity to seek bond violates the Due Process Clause. *See, e.g.*, *Doe v. Moniz*, 800 F. Supp. 3d 203, 216–17 (D. Mass. 2025); *S.E. v. Noem*, No. 26-cv-356, 2026 WL 206085, at *2–4 (E.D. Cal. Jan. 27, 2026).

This case demonstrates precisely why this is so: following the complaint charging him with NYPL § 140.25 (2), F.H.H. pled guilty to Criminal Contempt in the First Degree, NYPL § 215.51. *See* Petition ¶ 22. F.H.H. was never convicted of or admitted to committing burglary. Unlike

[3] To the extent the Court would like supplemental briefing on this issue, Petitioner respectfully requests that the Court order him immediately released pending any supplemental briefing and decision on whether additional constraints on his liberty connected to his release from his current detention are lawful considering Respondents' due process violation upon re-detaining Petitioner on January 29, 2026.

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Demore v. Kim, 538 U.S. 510 (2003), where the convictions of the noncitizens detained under § 1226(c) "were obtained following the full procedural protections our criminal justice system offers," *id.* at 513, the burglary arrest and charges against F.H.H. were not undertaken with the same procedural protections. Thus, the risk of erroneous detention is exceedingly high, and the government's interest in detaining a noncitizen in civil immigration detention who has not been convicted of a crime is very low. Even more, as the Petition describes, F.H.H.'s criminal history is a result of the extreme abuse and trafficking that his former partner subjected him to. *See* Petition ¶¶ 21–22; ECF No. 1-2, New York State Notice of Confirmation of Human Trafficking. Subjecting F.H.H. to mandatory detention for merely being arrested and charged with—but not convicted of—a crime that arose from the extreme abuse he suffered would be a significant due process violation.

* * *

In sum, given that Respondents acknowledge that Your Honor's prior cases control the outcome of this case, Petitioner respectfully requests that the Court order Petitioner immediately released and returned to the status of liberty he enjoyed prior to the recent re-detention

We thank the Court for its consideration of this letter.

Respectfully submitted,

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cc: Counsel of Record (by ECF)