UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GESER ABIMAEL LEIVA GARCIA,

Petitioner,

-against-

CHRISTOPHER SHANAHAN,
Field Office Director, New York Field Office,
U.S. Customs and Immigration Enforcement,

Respondent.

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Civil Action No. 26-cv-01508

(Komitee, J.)

RESPONDENT'S MEMORANDUM OF LAW IN RESPONSE TO PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF HIS DUE PROCESS AND FOURTH AMENDMENT CLAIMS

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May 13, 2026

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PRELIMINARY STATEMENT

In accordance with the Order to Show Cause dated April 22, 2026 (ECF Doc. 10), Respondent Christopher Shanahan, Field Office Director, New York Field Office, United States Immigration and Customs Enforcement ("ICE") respectfully submit this memorandum of law in response to Petitioner's Memorandum of Law in Support of His Due Process and Fourth Amendment Claims (ECF Doc. 11).

As discussed below, Petitioner's habeas petition, as deemed amended by the Court, should be denied.

STATEMENT OF THE CASE

Petitioner Geser Abimael Leiva Garcia ("Petitioner") filed the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF Doc. 1-2) ("Petition") on March 13, 2026, seeking immediate release from detention or a prompt bond hearing with the government bearing the burden of proof. ECF Doc. 1 at 4. According to ICE, Petitioner is a native and resident of Honduras who unlawfully entered the United States without inspection at an unknown time and place. *See* ECF Doc. 5-1 ¶¶ 3-4, Ex. B at 2. On February 27, 2026, ICE encountered Petitioner during an enforcement action, arrested and detained him pursuant to 8 U.S.C. § 1225(b)(2)(A), and issued a Notice to Appear ("NTA"). *Id.* at ¶ 6, Ex. A. The NTA charged Petitioner with being subject to removal pursuant to Section 212(a)(7)(i)(I) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(7), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport or other suitable travel document, or other document of identity and nationality as required under the regulations. *Id.* ¶ 6, Ex. A. Removal proceedings were initiated. *Id.* ¶ 8.

On March 15, 2026, the Court issued an Order to Show Cause directing Respondent to show cause why the petition should not be granted for substantially the same reasons articulated in *Sarmiento Guerrero v. Noem*, No. 25-cv-5881 (EK), 2025 WL 3214787 (Nov. 18, 2025),[1] and providing that if Respondent acknowledged that there was no meaningful distinction, either afford Petitioner a bond hearing or release him without further order of the Court on or before March 27, 2026. ECF Doc. 3. Respondent's response filed on March 24, acknowledged that the Court would likely find its *Sarmiento Guerrero* decision would control the outcome here, that the Court would find that the detention authority is 8 U.S.C. § 1226(A), and that Petitioner would be provided with a bond hearing on or before March 27. ECF Doc. 5 at 2. Petitioner then filed a letter asserting that a bond hearing before an immigration judge ("IJ") was a "legally deficient" remedy because an IJ lacks jurisdiction to conduct bond hearings, a bond hearing is not an adequate substitute for habeas relief, Petitioner has not had an individualized justification for continued detention, and Sarmiento Guerrero was released. ECF Doc. 6. Petitioner requested that the Court order immediate release. *Id.* at 2.

On March 26, 2026, the Court issued an Order stating that Petitioner had offered no binding authority for the proposition that a bond hearing is a "legally deficient" remedy apart from the due process clause itself, and directed the government to submit a letter on that issue by April 2.

On March 27, 2026, an IJ held a hearing and denied bond because Petitioner did not submit any evidence. *See* ECF Doc. 8 at 1.[2] Later that day, Petitioner filed a letter requesting that the

[1] In *Sarmiento Guerrero*, Your Honor rejected the government's arguments that Sarmiento Guerrero was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), concluding that 8 U.S.C. § 1226 more clearly applies to people who have been living in the United States. 2025 WL 3214787, at *4-5.

[2] *See also* ECF Doc. 11-1 at 40-41 (Order of the Immigration Judge dated 3/27/26). In the IJ order, "Respondent" refers to Petitioner in this habeas action.

Court "schedule a second bond hearing in this matter" because counsel "did not have a meaningful opportunity to gather, prepare, and submit the necessary supporting documentation in advance of the bond hearing" and had submitted no evidence on Petitioner's behalf. ECF Doc. 7. In an Order dated March 28, 2026, the Court denied Petitioner's request, noting that Petitioner did not dispute that he had received an individualized bond determination and that the Court did not have authority to review the IJ's decision (citing 8 C.F.R. § 1226(e) and *Roman v. Decker*, No. 20-CV-6752, 2021 WL 3173138, at *3 (S.D.N.Y. July 27, 2021)).

On March 30, 2026, as required by the Order dated March 26, 2026, Respondent filed the letter responding to Petitioner's contention (in his March 24 letter) that the bond hearing would be "legally deficient" and that his release from detention is the only remedy. ECF Doc. 8.

Petitioner was provided with a second bond hearing on April 3, 2026, in response to his request for a custody determination pursuant to 8 C.F.R. § 1236. *See* ECF Doc. 11-1 at 42-43 (Order of the Immigration Judge). The IJ denied bond. *Id.*

By Order dated April 6, 2026, this Court denied Petitioner's request for immediate release.[3]

On April 11, 2026, the Court issued an Order to Show Cause directing Petitioner to show cause by April 20 why this case should not be dismissed as moot. Petitioner's response maintained that the case was not moot because he remains in immigration custody and the "prior bond proceeding did not cure the constitutional defects underlying his detention" and that his detention "is independently unlawful because it is rooted in a constitutionally defective arrest." ECF Doc. 9.

In an Order to Show Cause dated April 22, 2026, the Court noted that Petitioner could have, but did not raise his Fourth Amendment argument in his habeas petition, and construed his response as a request to amend. ECF Doc. 10. Petitioner was ordered to submit a brief in support

[3] The Court had not been made aware of that Petitioner had been afforded a second bond hearing.

of his due process and Fourth Amendment claims. Petitioner's brief was filed on April 30. ECF Doc. 11.

ARGUMENT

THE "AMENDED" PETITION SHOULD BE DENIED

Petitioner maintains that his detention violates the Fourth Amendment because it flows from an unconstitutional seizure and, therefore, cannot be sustained. ECF Doc. 11 at 3-7. Contrary to Petitioner's arguments, Petitioner's detention pursuant to 8 U.S.C. § 1226(a) is not unconstitutional.

ICE agents are authorized to arrest any alien in the United States if he has reason to believe that the alien "is likely to escape before a warrant can be obtained for his arrest" and "shall" take the alien without unnecessary delay for examination before an officer . . . having authority to examine aliens as to their right to enter or remain in the United States." 8 U.S.C. § 1357(a)(2). Here, ICE officers encountered Petitioner during the stop of a vehicle being driven by the individual who was the primary target of the enforcement operation. *See* ECF Doc, 5-1 p.2 ¶ 6, p.12. The ICE officers arrested Petitioner, detained him, and issued an NTA. *Id.* p.2 ¶ 8.

In support of his Fourth Amendment argument, Petitioner cites *Gopie v. Garland,* No. 25-cv-05229 (SJB), 2025 WL 3167130 (E.D.N.Y. Nov. 13, 2025) and *Diallo v. Joyce*, No. 25-CV-9909 (AS), 2025 WL 3718477 (S.D.N.Y. Dec. 23, 2025) as having granted habeas relief for a constitutionally deficient seizure in violation of the Fourth Amendment. ECF Doc. 11 at 5-6. However, neither *Gopie* nor *Diallo* mentions the Fourth Amendment. Rather, in *Gopie*, Judge Bulsara found that ICE had failed to make an initial custody determination for Gopie at the time of his arrest and detention pursuant to 8 U.S.C. § 1226(a), and thus violated his due process rights.

In *Diallo*, Judge Subramanian concluded that the petitioner's detention pursuant to 8 U.S.C. § 1231 violated due process.

The arguments in Petitioner's brief concern only the Fourth Amendment despite including the words "Due Process Claims" in the caption of his brief. In the event that the Court does not consider Petitioner to have waived such a claim, Respondent provides the following argument.

The Due Process Clause, which is found in the Fifth Amendment to the United States Constitution, requires that the government provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). However, "[t]he Due Process Clause does not demand that the government provide the same kind of procedural protections for every deprivation of a property or liberty interest." *Weinstein v. Albright*, 261 F.3d 127, 134 (2d Cir. 2001). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldrige*, 424 U.S. 319, 334 (1976) (citation omitted). To prevail on a due process claim, a claimant must identify a constitutionally protected property or liberty interest and demonstrate that the government has deprived that party of the interest without due process of law. *See Weinstein,* 261 F.3d at 134. Petitioner cannot make that showing here.

The Supreme Court "has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (collecting cases). Because aliens who enter the United States illegally have not been admitted to the United States, under the Due Process Clause, they have "only those rights regarding admission that Congress has provided by statute." *Department of Homeland Security v. Thuraissigiam*, 591

U.S. 103, 140 (2020). No court has ever held that an alien not lawfully admitted to the United States holds a fundamental right to remain at liberty in the United States. To the contrary, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003); *see also Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) ("Detention during removal proceedings is a constitutionally valid aspect of the deportation process.").

It is indisputable that since being detained, Petitioner has been provided with two bond hearings *i.e.*, custody redeterminations, before an IJ pursuant to 8 U.S.C. § 1226(a). That statute permits the Executive, pending a decision on whether to remove an alien who has been arrested and detained, to either (1) continue to detain the alien or (2) release him on bond or conditional parole.[4] IJs are within the Department of Justice Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.13. The IJ decided to deny bond to Petitioner at the hearing on March 27. *See* ECF Doc 11-1 at 40-41. Although Petitioner claims that his counsel was denied sufficient time to prepare for that hearing, there was no denial of due process. Petitioner was given a second bond hearing on April 3. *See* ECF Doc. 11-1 at 42-43.

Petitioner is not without recourse; he has appeal rights with respect to his detention. Petitioner can appeal the IJ's decision denying bond to the Board of Immigration Appeals ("BIA"). *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19(f), 1003.38, 1236.1(d)(3). To the extent that Petitioner believes that there were procedural defects in the hearings before the IJ, the BIA is authorized to correct any such errors. *See, e.g., United States v. Gonzalez-Roque*, 301 F.3d 39, 47-48 (2d Cir. 2002) ("While constitutional claims lie outside the BIA's jurisdiction, it clearly can address procedural defects in deportation proceedings.").

[4] That discretion is limited only by 8 U.S.C. § 1226(c), which concerns the detention of criminal aliens and is not applicable here.

As this Court recognized in the Order dated March 28, this Court does not have authority to review the IJ decision denying bond. The INA provides that "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). "Section 1226(e) specifically divests [district courts] of jurisdiction to review the decisions of the IJ and the BIA (acting on behalf of the Attorney General) regarding the detention of aliens under Section 1226." *Hamilton v. Shanahan*, No. 09-Civ. 6869 (SAS), 2009 WL 5173927, at *3 (S.D.N.Y. Dec. 30, 2009); *see also Arevalo-Guasco v. Dubois*, 788 Fed Appx. 25, 27 (2d Cir. 2019) (concluding that "Section 1226(e) precludes judicial review of the IJ's weighing of evidence and factual findings regarding whether [Petitioner-Appellant] is a danger to the community" (citations omitted)).

In conclusion, Petitioner has not shown that his constitutional rights are being violated.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the habeas petition, as deemed amended, and dismiss this action.

Dated: Brooklyn, New York
May 13, 2026

Respectfully submitted,
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