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March 26, 2026

**VIA ECF**
The Honorable Ann M. Donnelly
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Re: *Y.S.A. v. Genalo et. al.*, Case No. 26-cv-01557
Reply Letter to Respondents' Second Letter Brief

Dear Judge Donnelly,

Counsel for Petitioner write briefly to address the arguments raised by Respondents in response to the Court's order for supplemental briefing. *See* ECF No. 10. For the following reasons, these arguments are without merit.

**The Date Petitioner Pleaded Guilty is the Relevant Date to the Retroactivity Analysis**

Respondents argue that, because formal judgment in Petitioner's criminal case was entered after *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016), application of that decision to deem the offense a crime involving moral turpitude (CIMT) is not impermissibly retroactive. ECF No. 10 at 1. However, the Second Circuit has made it clear that it is the date of the guilty plea, not the date of sentencing or the date the judge signs the judgment of conviction, that controls in retroactivity cases like this one where the question is whether the offense can constitute a CIMT.

In *Obeya*, the Second Circuit explicitly addressed the relevant time: "We therefore take this opportunity to clarify that, when conducting retroactivity analysis in the immigration context, we look to whether it would have been reasonable for a criminal defendant to rely on the immigration rules in effect *at the time that he or she entered a guilty plea.*" *Obeya v. Sessions*, 884 F.3d 442, 448 (2d Cir. 2018) (emphasis added). Later, applying *Obeya* in another case, the Circuit found that the relevant question was whether "the state of the law when [Petitioner] *pleaded guilty*" would "have given [Petitioner] reason to believe that the BIA would treat his possession crime other than as a crime involving moral turpitude." *Ottey v. Barr*, 965 F.3d 84, 95 (2d Cir. 2020) (emphasis added). Here, and as confirmed by the documents submitted by Respondents, *see* ECF No. 10, Petitioner pleaded guilty on October 24, 2016, prior to the issuance of *Diaz-Lizarraga* on November 16, 2016. *See* Pet. at ¶ 80. *See also I.N.S. v. St. Cyr*, 533 U.S. 289, 321–23 (2001) (discussing how noncitizens rely on the immigration laws at the time in deciding whether to plead guilty and finding that the law at the time of the plea is what controls for retroactivity purposes.);

*accord Matter of Moreno-Escobosa*, 25 I. & N. Dec. 114, 114 (BIA 2009) ("It is the date of an alien's plea agreement, rather than the date of sentencing, that controls in determining whether the alien is eligible for a section 212(c) waiver.")

Respondents cite *Puello v. Bureau of Citizenship & Immigr. Servs.*, 511 F.3d 324 (2d Cir. 2007) to argue that formal entry of judgment controls, not the guilty plea. ECF No. 10 at 1. However, *Puello* is inapposite. There, the Court was called to answer a different question than the CIMT retroactivity question present here. In *Puello*, the question was whether a petitioner was ineligible to naturalize because he had been "*convicted* of an aggravated felony . . . on or after November 29, 1990." *Puello*, 511 F.3d at 326 (quoting 8 C.F.R. § 316.10(b) (emphasis added)). There, the petitioner had pled guilty to the offense, which all agreed was properly designated as an aggravated felony, prior to November 29, 1990, but formal judgment issued after. *Id.* The Court explained however that the date of the guilty plea could not qualify as the date he was "convicted," because in 1996, Congress explicitly defined "conviction" to occur when the formal judgment of guilt is entered, and further explicitly made such definition retroactive. *Id.*

Here, however, the relevant detention statutes do not turn on whether or not Petitioner was "convicted." Instead, the statute permits (but does not require) Respondents to deem a lawful permanent resident returning from vacation "seeking admission" if he "has *committed* an offense identified in section 1182(a)(2) of this title," which includes, as relevant here, one CIMT. 8 U.S.C. § 1101(a)(13)(C) (emphasis added). The same is true of the mandatory detention statute that Respondents claim applies, Section 1226(c), which states that the government "shall take into custody" individuals who are "inadmissible by reason of having *committed* any offense covered in section 1182(a)(2) of this title [*i.e.*, a CIMT]." U.S.C. § 1226(c)(1)(A) (emphasis added).[1] Because Petitioner's admission that he *committed* the offense is what put him in jeopardy under *Diaz Lizarraga*, not his conviction, this is also the relevant date for retroactivity purposes here. *See Matter of K-*, 7 I. & N. Dec. 594 (BIA 1957) (requiring a formal admission of guilt to prove commission of a crime for immigration purposes); *Pazcoguin v. Radcliffe*, 292 F.3d 1209, 1215–16 (9th Cir. 2002) (same).

This is in line with the reasons behind the presumption against retroactivity. When noncitizens make the decision to plead guilty, they are presumed to do so in reliance on the immigration laws at the time of their plea. *See St. Cyr*, 533 U.S. at 321–22 ("There can be little doubt that, as a general matter, alien defendants considering whether to enter into a plea agreement are acutely aware of the immigration consequences of their convictions.") Thus, as a general matter,

[1] Petitioner further notes that he is not being deemed inadmissible by Respondents solely because of the CIMT—instead, he is being deemed as inadmissible because he traveled abroad for a short vacation. 8 U.S.C. § 1101(a)(13)(C). Had Petitioner not traveled abroad, he could not have been subject to the inadmissibility grounds of detention, as a lawful permanent resident. Instead, he would only potentially be subject to the deportability grounds of detention. Those are not triggered by commission of a single CIMT (other than CIMTs that occur within 5 years of admission, not relevant here). Instead, deportability requires conviction of *two or more* CIMTs. *See* 8 U.S.C. § 1227(a)(2)(A) For the reasons discussed in the Petition, deeming him subject to mandatory detention—whether under Section 1225(b)(2) or Section 1226(c)—on the basis of a criminal conviction nearly a decade old that would not have subjected him to deportability or detention had he never taken a vacation, violates due process. *See* Pet. at 81–83.

the retroactivity analysis hinges on an individual's expectations when making the decision to enter into the plea agreement, not on what happens next. *See id.*

As a result, the Second Circuit has made it clear that the relevant date for the retroactivity analysis is the date of noncitizen's guilty plea. *See Obeya*, 884 F.3d at 448. Respondents do not dispute that, if this is the case, Petitioner's conviction cannot be considered a CIMT, and consequently, that he has been illegally detained for the past seven months.

**Respondents Did Not Provide an Individualized Determination Prior to Petitioner's Detention, Warranting His Immediate Release**

Regardless of which detention statute can apply, if any, Respondents recognize that Petitioner is entitled to due process rights. *See* ECF No. 7; ECF No. 10. As Respondents also note, a lawful permanent resident *may* be treated as "seeking admission" if they fall within the statute's enumerated categories. *See* ECF No. 10 (citing *Lau v. Bondi*, 130 F.4th 42, 47 (2d Cir. 2025)). However, Respondents do not claim to have made any individualized determination that it was appropriate to designate Petitioner as "seeking admission," or when deciding to subject Petitioner to detention in the first place. To the contrary, their repeated insistence that a mandatory detention statute applies effectively concedes that no individualized assessment occurred. But in order to pass constitutional muster, particularly for a long-time lawful permanent resident who is returning from a brief vacation, the government must at least make an individualized determination that the individual presents a flight risk or a danger to the community in order for civil immigration detention to serve a proper governmental purpose. *See* ECF No. 1 ("Pet.") at ¶¶ 84-89. Here, Respondents do not dispute that Petitioner is neither.

Therefore, as discussed in his Petition, all three of the *Mathews* balancing factors weigh heavily in favor of Petitioner. *See* Pet. at ¶¶ 72-78. Petitioner's release is thus the only remedy that can cure the initial failure to exercise the discretion required to detain Petitioner, thereby violating his due process rights and the INA. *See* ECF No. 8 at 6-7.

* * *

Respondents' letter indicates only two limited points of disagreement with Petitioner's claims: 1) they dispute the date applicable to the retroactivity analysis, and 2) they disagree about the effectiveness of a bond hearing in immigration court. Because Respondents' contention regarding retroactivity is incorrect, and because there was no prerequisite individualized determination, a bond hearing is no cure for the violations associated with his initial detention. As a result, the Court should order him released.

Respectfully Submitted,

Dated: March 26, 2026
New York, NY

/s/ Alexandra Lampert
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cc: Counsel for Respondents via ECF