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REPLY TO WHITE PLAINS OFFICE

BY ECF

May 13, 2026

The Honorable Gary Brown, U.S.D.J.
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *Lakhwinder Singh v. Blanche, et al.*, No. 26-cv-2825 (GRB) *Petitioner's Reply To Respondents' Order-To-Show-Cause Letter and In Further Support Of Emergency Release*

Dear Judge Brown:

Petitioner Lakhwinder Singh respectfully submits this reply to Respondents' letter filed in response to this Court's Order to Show Cause. Respondents' letter should be rejected because it does not answer the question the Court asked. The Court ordered Respondents to show, within twelve hours, whether the Government had "any particularized reason to believe that Petitioner presents a danger to the community, a flight risk, or otherwise should be detained because of involvement with illegal narcotics, violence, criminal history, firearms, gang affiliation and the like." Respondents gave the Court none of that. They offered no declaration from the arresting officers, no criminal-history record, no evidence of violence, no narcotics allegation, no firearms allegation, no gang allegation, no particularized flight-risk evidence, no custody-review worksheet, no warrant, no Form I-200 arrest warrant, no Form I-205 warrant of removal, no Form I-286 custody determination, and no individualized reason why Mr. Singh cannot be safely released. Instead, Respondents filed a two-page letter about final-order chronology, asylum credibility, mandatory detention, and jurisdiction. That is not a response to the Court's Order. It is an evasion of it.

Respondents' silence on dangerousness matters. The Court did not ask for a general immigration history. The Court asked for a particularized reason to detain this man. Respondents' own submission contains no evidence that Mr. Singh has any criminal history, any violent history, any narcotics involvement, any firearms involvement, or any gang affiliation. Respondents also do not claim that he failed to appear for the USCIS interview. To the contrary, the arrest occurred because he appeared for a government-scheduled marriage-based green-card interview. A man who voluntarily appears at a USCIS interview

with a United States citizen spouse is not acting like a fugitive. Respondents' failure to provide the facts requested by the Court should be treated as a concession that the Government has no particularized evidence of danger or flight risk.

Respondents' reliance on the Second Circuit's summary order in *Singh v. Garland* is also beside the point. That order denied a petition for review from the denial of asylum, withholding of removal, and CAT relief based on an adverse credibility finding. It did not decide whether ICE lawfully arrested Mr. Singh at a USCIS marriage interview. It did not decide whether DHS had a warrant. It did not decide whether DHS followed 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.3, 8 C.F.R. § 287.8, 8 C.F.R. § 236.1, or 8 C.F.R. § 241.2. It did not decide whether Mr. Singh is dangerous. It did not decide whether he is a flight risk. It did not decide whether his United States citizen spouse's I-130 and his adjustment process give him a lawful basis to seek reopening. And it did not decide whether DHS can ambush a long-resident noncitizen at a green-card interview without producing any custody paperwork. The Second Circuit order says only that the adverse credibility determination was dispositive of asylum, withholding, and CAT because those forms of relief were based on the same factual predicate. That is not a custody finding. It is not a dangerousness finding. And it is not a substitute for the evidence this Court ordered Respondents to produce.

Respondents' jurisdiction argument is equally misplaced. Mr. Singh is not asking this Court to review the merits of the asylum denial. He is not asking this Court to grant adjustment of status. He is not asking this Court to adjudicate the I-130 or I-485. He is asking this Court to review his detention, the legal basis for his arrest, the lack of custody process, the lack of a warrant, the lack of particularized danger evidence, and DHS's failure to comply with the statutes and regulations that govern civil immigration arrests and detention. That is classic habeas territory. In *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001), the Supreme Court held that habeas remains available to review continued immigration custody after a final order. In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999), the Supreme Court held that 8 U.S.C. § 1252(g) is narrow and applies only to three discrete actions: commencing proceedings, adjudicating cases, and executing removal orders. And in *Öztürk v. Hyde*, 136 F.4th 382 (2d Cir. 2025), the Second Circuit rejected the Government's attempt to use the INA's jurisdiction-stripping provisions to block a habeas challenge to unlawful immigration detention.

The Government's reliance on § 1252(g) fails for that reason. A detention challenge is not the same thing as a challenge to removal. The Second Circuit made that clear in *Öztürk*: when a petitioner challenges unlawful detention and seeks release while other immigration proceedings continue, § 1252(g) does not bar the district court from hearing the habeas claim. The court explained that § 1252(g) is narrow and does not cover "many other decisions or actions that may be part of the deportation process," including challenges to detention. *Öztürk*, 136 F.4th at 405–06. The same rule applies here. This Court can order release or require lawful custody process without adjudicating the validity of the asylum denial or granting adjustment of status.

Respondents' § 1231 argument also does not answer the unlawful-arrest and unlawful-custody claim. Section 1231(a)(2) provides for detention only "during the removal period." The removal period is ninety days. It begins on the latest of the date the order becomes administratively final, the date of the court's final order if judicial review was accompanied by a stay, or release from non-immigration custody. 8 U.S.C. § 1231(a)(1)(A)–(B). Respondents' own letter says the BIA dismissed the appeal on June 8, 2022, the Second Circuit denied the petition for review on December 26, 2023, and the mandate issued on February 16, 2024. Even using the latest date favorable to the Government, the ninety-day removal period expired long before this 2026 detention. Respondents have not invoked § 1231(a)(1)(C), have not alleged that Mr. Singh obstructed removal, and have not produced proof that the removal

period was lawfully extended. Therefore, Respondents cannot simply say "§ 1231(a)(2)" and avoid the Court's order to show individualized cause for detention.

After the ninety-day removal period, detention is not governed by § 1231(a)(2)'s mandatory-detention language. It is governed, if at all, by § 1231(a)(6), which permits continued detention only for certain persons, including those who are a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6). The regulations implementing post-order custody require individualized custody review and written reasons for continued detention. 8 C.F.R. § 241.4(d). The regulations also recognize that DHS may release a person under supervision if he does not pose a danger or flight risk. 8 C.F.R. § 241.13(b)(1). Respondents gave the Court no such individualized review and no such reasons. They gave only a legal label. A legal label is not evidence.

The initial seizure is independently unlawful. DHS cannot cure an unlawful arrest by pointing later to a removal order. If DHS arrested Mr. Singh without a warrant, it had to satisfy the narrow warrantless-arrest standard in INA § 287(a)(2), 8 U.S.C. § 1357(a)(2): the officer had to have reason to believe that Mr. Singh was removable and that he was likely to escape before a warrant could be obtained. The regulation says the same thing: "[a] warrant of arrest shall be obtained" unless the officer has reason to believe the person is likely to escape before a warrant can be obtained. 8 C.F.R. § 287.8(c)(2)(ii). Mr. Singh had a fixed address, a United States citizen spouse, pending marriage-based filings, and appeared voluntarily at a government interview. Those facts defeat, rather than support, any claim that he was likely to escape before DHS could obtain a warrant.

If DHS claims it arrested Mr. Singh under pre-final-order custody authority, Respondents had to produce the Form I-200 warrant or explain why a warrantless arrest complied with § 1357(a)(2) and 8 C.F.R. § 287.8. If DHS claims it arrested him under final-order authority, Respondents had to produce the Form I-205 warrant of removal and the post-order custody paperwork required by Part 241. See 8 C.F.R. § 241.2. Respondents produced none of that. They did not even identify the document the arresting officers relied on at the moment they seized him. That omission is fatal at this stage because the petition challenges detention at its inception. The Government cannot answer an unlawful-arrest claim by skipping over the arrest.

DHS also had to follow the regulations that protect a person after a warrantless civil immigration arrest. Under 8 C.F.R. § 287.3(a), a person arrested without a warrant must be examined by an officer other than the arresting officer unless no other qualified officer is readily available and delay would result. Under § 287.3(c), the person must be advised of the reasons for the arrest, the right to counsel at no expense to the Government, provided a list of free legal services, and advised that any statement may be used against him. Under § 287.3(d), DHS must make a custody determination within forty-eight hours, absent emergency or extraordinary circumstances. Respondents do not show that any of that happened. They do not attach the required advisals. They do not attach a custody determination. They do not attach a custody-review record. They do not show that an independent officer examined Mr. Singh. This is not harmless paperwork. These are the regulations that make a civil immigration arrest lawful.

The Second Circuit requires immigration agencies to follow their own regulations when those regulations protect individual rights. In *Montilla v. INS*, 926 F.2d 162, 166–69 (2d Cir. 1991), the court held that where the agency fails to comply with regulations designed to safeguard a noncitizen's rights, the proceeding cannot simply continue as if the violation did not matter. That principle applies here. DHS cannot arrest a person at a USCIS interview, deny him a meaningful custody process, fail to produce the warrant or statutory basis for arrest, and then avoid review by saying "final order."

The prior release-on-recognizance history makes DHS's conduct even more problematic. Mr. Singh was previously released after passing credible fear. If DHS wished to revoke that release, it had to use the custody framework Congress and the regulations created. 8 C.F.R. § 236.1(c)(9) permits revocation of release by specified officials, but that does not authorize an ambush arrest with no warrant, no custody notice, no explanation, and no meaningful review. The same regulation contemplates custody determinations, release procedures, recourse to other administrative authority, notice of custody determination, and communication with the immigration court. 8 C.F.R. § 236.1(c), (d), (f), (g). Respondents do not show that they followed those procedures.

Respondents also do not address the defective Notice to Appear. The first NTA served on Mr. Singh did not state the time and place of his removal hearing. Congress required an NTA to include the "time and place" of the proceedings. 8 U.S.C. § 1229(a)(1)(G)(i). The Supreme Court has recognized that an NTA missing time-and-place information is not a complete statutory notice to appear for important purposes under the INA. *Pereira v. Sessions*, 585 U.S. 198, 202, 211–12 (2018); *Niz-Chavez v. Garland*, 593 U.S. 155, 160–61 (2021). Respondents' letter does not attach the NTA, does not attach any later notice of hearing, does not prove service of any later notice, and does not explain how Mr. Singh was given meaningful notice and a meaningful opportunity to appear.

Petitioner recognizes the limits of the defective-NTA argument. In the Second Circuit, a defective initial NTA does not automatically divest the immigration court of jurisdiction if a later notice of hearing supplies the missing time-and-place information. *Banegas Gomez v. Barr*, 922 F.3d 101, 110–12 (2d Cir. 2019). And in *Campos-Chaves v. Garland*, 602 U.S. ___ (2024), the Supreme Court held that, in the in absentia context, the question is whether the person received notice for the hearing at which he was ordered removed. But those cases do not help Respondents here because Respondents did not produce the later notice, did not prove receipt, and did not connect any alleged notice history to the present detention. If DHS wants to use a claimed failure to appear, alleged noncompliance, or prior ROR revocation as a detention justification, DHS must prove proper notice. Respondents did not.

Where the Government relies on notice to justify an in absentia consequence or a failure-to-appear theory, the burden is on the Government to prove that notice was properly provided. The statute authorizes an in absentia removal order only if DHS establishes by **"clear, unequivocal, and convincing evidence" that written notice was provided and that the person is removable.** 8 U.S.C. § 1229a(b)(5)(A). The regulation similarly requires clear, unequivocal, and convincing evidence that written notice of the time and place of proceedings and the consequences of failing to appear were provided. 8 C.F.R. § 1003.26(c). And when notice is allegedly mailed, the agency must consider evidence of nonreceipt; regular mail receives only a weaker presumption of delivery. *Lopes v. Gonzales*, 468 F.3d 81, 84–86 (2d Cir. 2006); *Matter of M-R-A-*, 24 I. & N. Dec. 665, 673–74 (B.I.A. 2008). Respondents' letter ignores this burden entirely.

The motion-to-reopen and adjustment process also shows why Respondents' asylum-focused opposition is irrelevant. Mr. Singh is not asking this Court to relitigate the asylum claim rejected by the Second Circuit. He is pursuing a different form of relief based on a different legal and factual basis: adjustment of status through a bona fide marriage to a United States citizen. The Supreme Court has described a motion to reopen as an "important safeguard" intended to ensure a proper and lawful disposition of immigration proceedings. *Kucana v. Holder*, 558 U.S. 233, 242 (2010); *Dada v. Mukasey*, 554 U.S. 1, 18 (2008). The regulations also expressly allow motions to reopen based on new facts supported by affidavits or other evidence, and require the relevant application and supporting documents when reopening is sought to apply for relief. 8 C.F.R. § 1003.2(c)(1).

The BIA and the Second Circuit have long recognized that reopening may be appropriate so a respondent can pursue adjustment of status based on a United States citizen spouse, subject to the usual procedural and discretionary requirements. In *Matter of Garcia*, 16 I. & N. Dec. 653, 657 (B.I.A. 1978), the BIA held that discretion should generally be favorably exercised where a prima facie approvable visa petition and adjustment application have been submitted in the course of proceedings or on a motion to reopen. In *Matter of Velarde-Pacheco*, 23 I. & N. Dec. 253, 256 (B.I.A. 2002), the BIA held that a properly filed motion to reopen may be granted to pursue adjustment based on a bona fide marriage, including where the I-130 remains pending, if the listed factors are satisfied. In *Matter of Lamus-Pava*, 25 I. & N. Dec. 61, 64–65 (B.I.A. 2009), the BIA held that a motion to reopen for marriage-based adjustment may not be denied merely because DHS opposes it, without regard to the merits of DHS's opposition. **And in *Melnitsenko v. Mukasey*, 517 F.3d 42, 50–52 (2d Cir. 2008), the Second Circuit held that the BIA abused its discretion by denying a motion to reopen based solely on DHS opposition where the respondent sought adjustment based on marriage to a United States citizen.**

That does not mean this Court must decide the motion to reopen. It means the Government cannot pretend the only relevant fact is the old asylum appeal. Marriage-based adjustment is a recognized legal pathway. A pending or forthcoming motion to reopen is a recognized procedure. Mr. Singh's appearance at the marriage interview is strong evidence that he was pursuing legal relief openly, not hiding from DHS. The adverse credibility ruling in the asylum case may be argued by DHS in the immigration court as a discretionary factor if proceedings are reopened, but it is not proof that Mr. Singh is dangerous, involved in narcotics, violent, armed, gang-affiliated, or likely to flee. It is therefore not responsive to the Court's Order.

Respondents' position would allow DHS to do exactly what due process forbids: invite a long-resident noncitizen to a green-card interview, arrest him without producing a warrant or individualized custody basis, deny immediate process, and then defend the detention with boilerplate references to a final order and a past asylum ruling.

The Constitution does not permit imprisonment first and process later. Liberty is the norm, detention is the carefully limited exception, and civil detention must be tied to a lawful statutory basis and fair procedure. *Zadvydas*, 533 U.S. at 690. In the Second Circuit, where a person is detained under discretionary civil immigration custody, due process requires the Government to justify detention, and the proper remedy is a hearing at which the Government bears the burden of proving danger or flight risk by clear and convincing evidence. *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020).

Nor does *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), save Respondents. Petitioner is not arguing here that an unlawful arrest automatically vacates the removal order or requires suppression in the immigration merits case. He is challenging the detention itself. The question is whether DHS may continue to imprison him after failing to show the warrant, custody authority, post-arrest process, or danger evidence the Court specifically requested. *Lopez-Mendoza* does not hold that DHS may detain someone unlawfully. It does not bar habeas review of detention. And it does not excuse Respondents' failure to comply with this Court's Order.

The Court should therefore reject Respondents' letter as nonresponsive. Respondents were ordered to show particularized cause for detention. They did not. They relied on legal conclusions, not evidence. They cited a final order, but did not show why § 1231(a)(2) still applies years after the removal period expired. They cited § 1252(g), but detention claims remain reviewable in habeas. They cited an asylum credibility ruling, but that ruling is not evidence of dangerousness or flight risk. They did not produce a warrant. They did not produce a custody determination. They did not produce a post-order custody

review. They did not produce proof that Mr. Singh was likely to escape before a warrant could be obtained. They did not produce proof that his prior release was lawfully revoked through the correct custody process. And they did not address the defective NTA or prove that any later hearing notice cured the original notice defect.

For these reasons, the Court should order Mr. Singh immediately released under his prior recognizance, an order of supervision, or other reasonable conditions. In the alternative, the Court should order an immediate custody hearing within twenty-four hours before a neutral adjudicator, at which Respondents must produce the arrest paperwork, any Form I-200 or Form I-205, any Form I-286, any post-order custody review, proof of service of any hearing notice on which DHS relies, and particularized evidence of danger or flight risk. If Respondents cannot make that showing by clear and convincing evidence, Mr. Singh should be released.

Most respectfully submitted,

/s/ S. Michael Musa-Obregón
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