U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

May 15, 2026

Honorable Gary R. Brown
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *B.P.S. v. Genalo, et.al.,*
Civil Action No. 26-cv-2923 (Brown, J.)

Dear Judge Brown:

This Office represents Respondents in the above captioned habeas petition filed by Petitioner B.P.S. ("Petitioner"). Docket Entry ("DE") 1. This letter is respectfully submitted pursuant to Your Honor's Order to Show Cause dated May 15, 2026. DE 5.

By way of background, Respondents note that Petitioner, a native and citizen of Ecuador, initially entered the United States at or near El Paso, Texas, on or about December 26, 2022. *See* Exhibit A (copy of I-862, Notice to Appear, dated February 21, 2026).[1] Petitioner was neither admitted nor paroled after inspection by an Immigration Officer. *See id.* Petitioner is subject to removal pursuant to Immigration and Nationality Act section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

Further, Respondents provide the following information as required by Your Honor's order to provide the Court with information of a "particularized reason to believe that Petitioner presents a danger to the community, a flight risk" or any information that Petitioner should be detained due to his involvement with "illegal narcotics, violence, criminal history, firearms [or] gang affiliation, and the like." *See* DE #4.

Petitioner was arrested by the Nassau County Police Department ("NCPD") on February 20, 2026, and charged with two (2) counts of Grand Larceny in the Fourth Degree, a Class E felony, in violation of New York State Penal Law, Section 155.30. *See* Exh. B (RAP sheet dated May 15, 2026) at 4-5; *see also* Exh. C (NCPD Arrest Report dated Feb. 20, 2026) at 2. On Feb. 20, 2026, Petitioner, in concert with two other individuals, stole merchandise from Dick's Sporting Goods, totaling $1,822.99, and merchandize from Macy's, totaling $1,306.48. *See* Exh. C. After

[1] Because Petitioner has a pending motion to proceed under pseudonym [DE 3], Respondents have, out of an abundance of caution, redacted Petitioner's full name, and other identifying information, from the attached documents. Respondents do so without waiving, and expressly preserving, their right to oppose Petitioner's pseudonymity motion at the appropriate time.

Petitioner's arrest, the NCPD contacted Immigration and Customs Enforcement, which thereafter detained Petitioner, pursuant to an I-200 Warrant for Arrest [*see* Exhibit D], under the Laken Riley Act, 8 U.S.C. § 1226 (c)(1)(E) ("LRA").[2] Because Petitioner was detained pursuant to § 1226(c), detention is mandatory. *See* § 1226(c)(1) ("The Attorney General *shall take into custody* any alien who –" meets one or more of the enumerated subcategories of § 1226(c)(1), including § 1226(c)(1)(E)).

The Supreme Court and Second Circuit have acknowledged that detention is mandatory under Section 1226(c). In *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), *rehearing en banc denied*, 156 F.4th 171 (2d Cir. 2025), *cert petition filed*, No. 25-886 (Jan. 22, 2026), the Second Circuit noted that "noncitizens who have committed one of certain listed offenses . . . are subject to mandatory detention." *See* 103 F.4th at 140-41. "The 'Attorney General *shall* take into custody' any such noncitizen." *Id.* at 141. Their release is "allow[ed] . . . in extremely limited circumstances: only" under the provision now codified at 8 U.S.C. § 1226(c)(4). *Id.* Such detention "*must* continue 'pending a decision on whether the alien is to be removed from the United States." *Id.* at 142 (citing *Jennings*, 583 U.S. at 303).

Based upon Petitioner's inadmissibility under § 1182(a)(6)(A), and his criminal arrest for grand larceny of property valued above $1,000.00, the mandatory detention provision of § 1226(c) applies, thus, Respondents respectfully submit that Petitioner should not be released on his own recognizance, as provided in the Court's Order to Show Cause dated May 15, 2026. Respondents further respectfully note that there is nothing in the statute that requires consideration of whether Petitioner presents a flight risk or danger to the community as a condition precedent to the mandatory detention required by the LRA. Therefore, due process does not require an initial bond determination for those detained under Section 1226(c). *See Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), *rehearing en banc denied*, 156 F.4th 171 (2d Cir. 2025), *cert petition filed*, No. 25-886 (Jan. 22, 2026).

Respondents thank the Court for its consideration of this submission.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

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[2] The detention authority in 8 U.S.C. § 1226(c)(1)(E) covers "any alien who-- . . . (i) is inadmissible under [8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7)]; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, *theft, larceny, shoplifting,* or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person..." (emphasis added). Petitioner meets both criteria.