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June 25, 2026

VIA CM/ECF
Hon. Brenda K. Sannes
Chief U.S. District Judge
Federal Building and U.S. Courthouse
P.O. Box 7255
Syracuse, NY 13261-7255

RE: *Aguilar v. Venturella, et al.*
Civil Action No. 9:26-cv-1268 BKS

Dear Chief Judge Sannes:

This Office represents Respondents David Venturella, Markwayne Mullin, Todd Blanche and Philip Rhoney ("Respondents" or the "government") in this habeas corpus action, in which Petitioner Luis Pineda Aguilar ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE").

On June 19, 2026, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ("Petition"). Dkt. No. 1. The same day, the Court issued a text order restricting the transfer of Petitioner outside the Northern District of New York and directing Respondents to file a response to the Petition by June 25, 2026. Later that day, Respondents submitted a letter motion requesting modification of the Court's Order Restricting Transfer of Petitioner. As set forth in that motion, Petitioner was en route to the Buffalo Federal Detention Facility ("BFDF") in Batavia, New York prior to the issuance of the transfer restriction order. The letter motion remains pending, with Petitioner's response due June 26, 2026.

As a part of its initial Order, the Court ordered that any response include updated information regarding Petitioner's location and any immigration proceedings being pursued. Dkt. No. 2. Petitioner remains housed at BFDF. As to the status of the immigration proceedings, the Petitioner was served with a Notice to Appear and has requested a bond hearing, which is currently scheduled for July 1, 2026. Ex. A.,[1] Ex. B. Accordingly, Respondents position is that the Petitioner has not exhausted available administrative remedies before seeking relief in this District Court.

[1] Exhibits "A"–"E" have been provided to me by counsel from ICE.

"[G]enerally, any detainee must ordinarily exhaust potential administrative remedies before seeking relief through a § 2241 petition for writ of habeas corpus." *Morey v. Rodriguez*, No. 2:17-cv-00056 (KM), 2017 U.S. Dist. LEXIS 151769, at 5 (D.N.J. Sept. 19, 2017). The requirement to exhaust administrative remedies "protect[s] the authority of administrative agencies, limit[s] interference in agency affairs, develop[s] the factual record to make judicial review more efficient, and resolv[es] issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003); *see also Giwah v. McElroy*, 1997 U.S. Dist. LEXIS 20136 at *9 (S.D.N.Y. Dec. 19, 1997) ("Imposing an exhaustion requirement may serve to give effect to agency discretion conferred by Congress, preserve the autonomy of the administrative agencies, permit the agency to develop a factual record and to apply its expertise, and to prevent flouting of administrative processes which could weaken the effectiveness of an agency by encouraging people to ignore its procedures."). *See also Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) ("Under the doctrine of exhaustion of administrative remedies, 'a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.'") (quoting *Guitard v. United States Secretary of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)).

Here, Petitioner has not yet completed the available administrative process, including his scheduled bond hearing on July 1, 2026, and any subsequent review within the immigration court system. Ex. A., Ex. B. Because these remedies remain available and are actively being pursued, judicial intervention is not warranted at this time. Courts have squarely rejected attempts to bypass such procedures, holding that where a petitioner "has not yet exhausted all potential administrative remedies, then the Court must deny his petition." *Morey*, 2017 U.S. Dist. LEXIS 151769, at *6. Nor can Petitioner avoid this requirement by asserting that exhaustion would be futile or unlikely to succeed. The Second Circuit has made clear that "the unlikelihood of success of a claim is not tantamount to stating that it would have been futile to raise it." *Johansson v. Strada*, 2012 U.S. Dist. LEXIS 173923 (E.D.N.Y. Dec. 7, 2012). Accordingly, the Petition should be denied on this threshold basis, as Petitioner has neither exhausted available administrative remedies nor established any basis to excuse that failure.

If the Court is inclined to reach the merits, however, the Petition presents two issues: (1) whether ICE's statutory authority to detain the Petitioner arises under 8 U.S.C. § 1225(b)(2)(A) or § 1226(a); and (2) whether Petitioner is entitled to a bond hearing or immediate release. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated letter response in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law, the government will be happy to submit one upon request.

Petitioner is a native and citizen of Guatemala who entered the United States without inspection, admission, or parole at an unknown date and time, and had no prior contact with immigration officials before his encounter with U.S. Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO"). Ex. C at 1, 3. On June 19, 2026, ERO officers

encountered Petitioner during enforcement operations in Schenectady, New York, marking his first contact with ICE, after which he was detained. *Id.* at 2.

Petitioner initially executed a written voluntary departure request, knowingly and voluntarily waiving applications for relief and acknowledging that he would remain in DHS custody pending departure. Ex. D. ICE agency counsel subsequently informed undersigned counsel that ICE received an email on June 23, 2026, from Petitioner's counsel requesting withdrawal of the voluntary departure request. Thereafter, a Notice to Appear was served on Petitioner, placing him in removal proceedings. Ex. B.

While the Government maintains its position that 8 U.S.C. § 1225 applies, it is aware that in April 2026 the United States Court of Appeals for the Second Circuit rejected that position in *Barbosa Da Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026). *Barbosa Da Cunha* held that 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens like Petitioner who are present in the United States after entering without inspection and admission and who were not apprehended at or near the border at the time of entry. Rather, the Second Circuit held that 8 U.S.C. § 1226(a) applies.

Respondents also respectfully note that Your Honor's prior jurisprudence would, regardless of *Barbosa Da Cunha*, lead to the same conclusion that § 1226(a), rather than § 1225(b)(2)(A), governs Petitioner's detention. *See, e.g.*, *Gaspar v. Ashkar*, No. 9:26-cv-00118 (BKS), Dkt. #13 at 12–15 (N.D.N.Y. Feb. 5, 2026) (rejecting the argument that noncitizens who previously entered and reside in the United States are subject to mandatory detention under § 1225(b)(2)(A), and concluding instead that § 1226(a) governs such detentions).

Accordingly, while the Government acknowledges that under Second Circuit precedent, detention is likely governed by 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2)(A). However, even under § 1226(a), Petitioner is not entitled to immediate release.

First, the Petitioner is receiving the process required under 8 U.S.C. § 1226(a), including the opportunity to request a bond hearing. Ex. A, Ex. E. Specifically, the Petitioner has availed himself of this process and has requested review of the custody determination by an immigration judge. *Id.* He is scheduled for a bond hearing before an immigration judge next week. Because these procedures are available and have been afforded, Respondents respectfully submit that there is no due process violation based on any alleged lack of custody review.

Second, the Petition incorrectly alleges that Petitioner was previously released in 2023 following an individualized custody determination and, on that basis, asserts that this case involves an alien who has been re-detained after release. That assertion is factually incorrect. Petitioner was first taken into custody in June 2026 during enforcement operations based on his immigration status and manner of entry. Ex. C at 2. Accordingly, cases involving re-detention following release are inapposite.

Third, because Petitioner is currently receiving the statutory custody-review process under 8 C.F.R. §§ 236.1(d) and 1236.1(d), Ex. E, the Respondents respectfully submit that he cannot show entitlement to immediate release as a matter of law.

For these reasons, even assuming that 8 U.S.C. § 1226(a) governs Petitioner's detention, the Petition should be denied because Petitioner has failed to exhaust administrative remedies. Alternatively, the Court should deny the request for immediate release and defer any further consideration until the scheduled bond hearing. Respondents further request any other relief the Court deems just and proper.

The Petitioner has requested that, if a bond hearing is ordered, the Court impose a burden-shifting framework requiring the Government to justify continued detention. That request is contrary to the governing statutory and regulatory scheme. If the Court orders a bond hearing under 8 U.S.C. § 1226(a), the burden of proof should properly rest with the Petitioner. Section 1226(a) authorizes discretionary detention and permits release only upon a showing that the noncitizen does not pose a danger to property or persons and is not a flight risk. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(c)(8), (d)(1). The implementing regulations further place the burden on the detainee in custody redetermination proceedings to demonstrate that release is warranted. 8 C.F.R. § 1236.1(d)(1). The Board of Immigration Appeals has consistently held that the respondent bears this burden in bond determinations under § 1226(a), reflecting the settled principle that release from discretionary detention is an exception requiring affirmative justification. *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006); *Matter of Adeniji*, 22 I. & N. Dec. 1102 (B.I.A. 1999). This allocation is consistent with the broader statutory framework of the Immigration and Nationality Act, which places the burden on noncitizens to establish eligibility for relief from removal. 8 U.S.C. § 1229a(c); 8 C.F.R. § 1240.8. Accordingly, any bond hearing ordered under § 1226(a) should proceed under the established regulatory and administrative framework requiring the Petitioner to demonstrate that release on bond is warranted.

The government further submits that this matter may be decided without a hearing. However, if the Court determines that a hearing would be helpful, the government is fully prepared to appear and present Respondents' position.

Thank you for your consideration of this matter.

Respectfully Submitted,

TODD BLANCHE
Acting Attorney General

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CC: Counsel of Record (via CM/ECF)