United States Department of Justice

United States Attorney
Northern District of New York

445 Broadway, Room 218
James T. Foley U.S. Courthouse
Albany, New York 12207-2924

Tel.: (518) 431-0247
Fax: (518) 431-0249

August 26, 2026

VIA CM/ECF
Hon. Elizabeth C. Coombe
U.S. District Judge
Federal Building and U.S. Courthouse
P.O. Box 7255
Syracuse, NY 13261-7255

RE: *Henrry Munoz Roblero v. Venturella, et al*
Civil Action No. 9:26-cv-01598 (ECC)

Dear Judge Coombe:

This Office represents the Respondents (the "Government") in this habeas corpus action, in which Petitioner Henry Munoz Roblero ("Petitioner") challenges his detention by the U.S. Department of Homeland Security ("DHS"), including U.S. Immigration and Customs Enforcement ("ICE"). On August 20, 2026, Petitioner filed this Petition for an Emergency Writ of Habeas Corpus Relief pursuant to 28 U.S.C. § 2241 ("Petition"). Dkt. No. 1. The Court thereafter ordered the Government to file a response by August 27, 2026. Dkt. No. 2.

The Government respectfully submits this abbreviated letter response in lieu of a formal responsive memorandum of law to preserve the legal issues, conserve judicial and party resources, and 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 Mexico who entered the United States without admission or inspection on an unknown date and at an unknown time. Ex. A.[1] DHS records indicate that Petitioner has no prior immigration encounters. According to the Form I-213, ICE Enforcement and Removal Operations ("ERO") officers encountered Petitioner in Troy, New York, on August 20, 2026. According to the Form I-213, upon seeing ICE vehicles and personnel, Petitioner attempted to flee. Ex. A. The Form I-213 further indicates that the Petitioner first entered a building in an effort to evade the officers, then, after officers obtained permission to enter the building, Petitioner left the building and attempted to flee on foot. Ex. A at 3. ERO officers apprehended Petitioner and questioned him about his immigration status. *Id.* Petitioner admitted that he had entered the United States unlawfully. *Id.* ERO officers then arrested Petitioner and served him with a Form I-200, Warrant for Arrest of Alien. Ex. B. That same day, ICE issued Petitioner a Notice

[1] Exhibits "A" – "D" have been provided to undersigned counsel by agency counsel for ICE.

to Appear, initiating removal proceedings. Ex. C. Petitioner also received a Form I-286, Notice of Custody Determination. Ex. D.

Respondents acknowledge that, under the Second Circuit's decision in *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), Petitioner's present detention is governed by 8 U.S.C. § 1226(a). In *da Cunha*, the Second Circuit held that § 1225(b)(2)(A) does not govern the detention of a noncitizen who is already present in the interior of the United States and is not apprehended while entering the country or shortly thereafter. *Id.* Although the record here does not establish precisely when Petitioner entered the United States, it establishes that ICE encountered him in the interior of the United States and not while he was entering the country or shortly thereafter. Accordingly, *da Cunha* likely controls the statutory detention question presented here. Respondents have petitioned the Supreme Court for review of *da Cunha*[2] and preserve all rights, including the rights to appeal, with respect to the appropriate statutory authority governing Petitioner's detention.

In light of *da Cunha*, Petitioner was provided the process that is due under § 1226(a). He was served with an administrative immigration arrest warrant and a Notice to Appear in immigration court. Under 8 U.S.C. § 1357(a)(2), officers may make a warrantless arrest only when they have probable cause to believe an individual is unlawfully present in the United States and reasonably conclude the person is "likely to escape before a warrant can be obtained." Here, although a warrant was served, if the Court determines that the warrant was procedurally defective because it was issued before the NTA, the arrest nonetheless remains lawful under § 1357(a)(2). Petitioner's admission to being unlawfully present provided probable cause, and his attempt to flee supported a contemporaneous, reasonable determination that he was likely to escape before a valid warrant could be secured. 8 USCS § 1357; *Contreras v. United States*, 672 F.2d 307, 1982 U.S. App. LEXIS 21325 (2d Cir. 1982); *See also Maillazhungo Saeteros v. Warden,* No. 9:26-cv-01220-BKS, Dkt. No. 6 (N.D.N.Y. June 17, 2026).

Additionally, Petitioner was provided a Form I-286 that informed him of the opportunity to request review of his custody determination by an Immigration Judge. Ex. D. *See* 8 C.F.R. §§ 236.1(d),

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[2] On July 23, 2026, the Government filed a petition in the United States Supreme Court seeking a writ of certiorari from the Second Circuit's decision in *da Cunha*. *See Rhoney v. Barbosa da Cunha*, No. 26-104 (Sup. Ct. July 23, 2026). The petition asks the Supreme Court to resolve the issue whether 8 U.S.C. § 1225(b)(2)(A) mandates the detention pending removal proceedings of aliens who are present in the United States without having been admitted. A similar certiorari petition arising from a decision of the Sixth Circuit is also pending. *See Raycraft v. Lopez-Campos*, No. 25-1545 (Sup. Ct. June 22, 2026) (asking the Supreme Court to resolve the same issue raised in *da Cunha*, as well as whether detaining such aliens without a bond hearing during their removal proceedings comports with due process).

1003.19, 1236.1(d). He has availed himself of that right, and a bond hearing will be scheduled imminently.

Although § 2241 contains no statutory exhaustion requirement, courts within this Circuit generally require exhaustion of available administrative remedies as a prudential matter before an immigration detainee seeks habeas relief. *See Michalski v. Decker*, 279 F. Supp. 3d 487, 495–96 (S.D.N.Y. 2018); *Raspoutny v. Decker*, No. 23-CV-3823 (GWG), 2023 WL 6132700, at *3–4 (S.D.N.Y. Sept. 19, 2023). Where, as here, an Immigration Judge may provide the practical relief sought through a bond hearing, resort to that process in the first instance may render judicial intervention unnecessary. *See Michalski*, 279 F. Supp. 3d at 495–96.

If the Court concludes that Petitioner is entitled to additional process with respect to his present detention, Respondents respectfully submit that the appropriate remedy is a prompt, individualized bond hearing before an Immigration Judge, not immediate release. As an initial matter, this case is distinguishable from those that involve the re-detention of a noncitizen whom ICE previously released pursuant to a custody determination under § 1226(a) or humanitarian parole under § 1182(d)(5). This case does not involve the revocation of a prior release determination. Rather, the record reflects that the August 20, 2026 encounter that resulted in his instant detention was Petitioner's first known immigration encounter.

Accordingly, Petitioner's request for immediate release should be denied and, at most, any relief should be limited to a prompt, individualized bond hearing before an Immigration Judge. At any such bond hearing, Petitioner would have the opportunity to present evidence concerning his family and community ties, immigration history, length of residence in the United States, employment history, and any other circumstances relevant to whether he presents a danger to the community or a risk of flight. The Government may likewise present any evidence relevant to the custody determination. The Immigration Judge may then make the individualized determination contemplated by § 1226(a) and its implementing regulations.

The Supreme Court has recognized Congress's broad grant of discretion to determine whether, and under what conditions, a noncitizen should be released pending removal proceedings. *See Reno v. Flores*, 507 U.S. 292, 294–95 (1993). Courts within the Second Circuit have concluded that, at an initial bond hearing under 8 U.S.C. § 1226(a), the noncitizen bears the burden of establishing that release is warranted. *See Mahmodi v. Marich*, No. 25-CV-6762-MAV, 2026 WL 113473, at *6 (W.D.N.Y. Jan. 15, 2026). *Mahmodi* further held that imposing that burden on a recently detained noncitizen is consistent with due process under *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Id.* at *7–10.

That conclusion accords with the statutory framework recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). There, the Supreme Court rejected an interpretation of § 1226(a) that would require the Government to prove by clear and convincing evidence that continued detention is necessary or to provide periodic bond hearings. *Id.* at 301–03. The Court explained that § 1226(a)

provides only that the Attorney General "may release" a noncitizen on bond and does not place the burden of proof on the Government. *Id.* The BIA likewise has long held that "[t]he burden is on the alien to show to the satisfaction of the Immigration Judge that he or she merits release on bond." *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

Although due process may require additional procedural protections once detention becomes prolonged, Petitioner has been detained for only a matter of hours at the time of this filing. *See Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020). Accordingly, neither § 1226(a) nor due process categorically places the burden of proof on the Government at an initial bond hearing. *See In re Guerra*, 24 I. & N. Dec. at 40. Nor has the Second Circuit held that due process requires the Government to bear that burden at every § 1226(a) bond hearing. Rather, whether due process requires a shifted burden depends on the circumstances of the particular detention, evaluated under the framework set forth in *Mathews*. *See Velasco Lopez*, 978 F.3d at 855 & n.13; *Mahmodi*, 2026 WL 113473, at *5–9.

Immediate release would bypass that statutory framework and preclude the Immigration Judge from making the custody determination Congress entrusted to the Executive Branch. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d), 1236.1(d). A prompt bond hearing would remedy any procedural deficiency the Court may find while preserving the Government's authority to detain Petitioner if he fails to establish that release is warranted.

While the Government maintains that Petitioner is not entitled to immediate release, should the Court grant such relief, Respondents respectfully request that they be afforded until 5:00 p.m. on the day following such order to effectuate Petitioner's safe and secure release. Further, should the Court require a report certifying compliance with any release order, Respondents respectfully request that they be permitted to submit such report by 5:00 p.m. on the business day following the release.

Finally, any application for attorney's fees under the Equal Access to Justice Act ("EAJA")[3] is premature. An EAJA application must be filed within 30 days of a "final judgment," meaning a

[3] Moreover, any EAJA petition, should one be filed at the appropriate time, should be stayed pending the Supreme Court's resolution of *Montoya-Palacios v. Liggins*, No. 25-1223. On June 29, 2026, the Supreme Court granted certiorari in *Montoya-Palacios* to resolve whether EAJA's reference to "any civil action" encompasses an action seeking a writ of habeas corpus to challenge civil immigration detention. The case arises from the Fourth Circuit, where the court concluded that the petitioner was not entitled to attorney's fees under EAJA because habeas proceedings do not constitute "civil actions" for purposes of EAJA's limited waiver of sovereign immunity. The Supreme Court's resolution of that question may directly bear on whether attorney's fees are available under EAJA in this action. Accordingly, if Petitioner seek attorney's fees before the

judgment that is final and no longer appealable. 28 U.S.C. § 2412(d)(1)(B), (d)(2)(G). That filing period does not begin until the time to appeal has expired. *See Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991). Because no final judgment has been entered in this matter, any request for attorney's fees should be denied without prejudice as premature. *See United States v. 27.09 Acres of Land*, 1 F.3d 107, 111 (2d Cir. 1993); *Barbour v. Colvin*, No. 12-CV-00548 ADS, 2013 WL 7206218, at *1 (E.D.N.Y. Aug. 1, 2013).

Respondents respectfully submit that the Court may resolve the Petition on the present record without further briefing or an evidentiary hearing. Should the Court determine that additional briefing or proceedings would assist in its consideration of the Petition, Respondents are prepared to comply with any further order of the Court.

Thank you for the Court's consideration of this matter.

Respectfully Submitted,

TODD BLANCHE
Attorney General

JOHN A. SARCONE III
First Assistant United States Attorney

By: *s/ Alexis M. Osborne*
Alexis M. Osborne
Assistant United States Attorney
Bar Roll No. 707475

Supreme Court resolves *Montoya-Palacios*, Respondents respectfully reserve the right to request that any EAJA litigation be stayed pending the Supreme Court's decision.