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October 1, 2026

VIA CM/ECF
Hon. Anne M. Nardacci
U.S. District Judge
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

RE: *Shahryar v. Rhoney, et al.*
Civil Action No. 9:26-cv-01831 (AMN)

Dear Judge Sannes:

This Office represents the Respondents (the "Government") in this habeas corpus action, in which Petitioner Syed Seramat Shahryar ("Petitioner") challenges his detention by the U.S. Department of Homeland Security ("DHS"), including U.S. Immigration and Customs Enforcement ("ICE"). On September 25, 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 October 1, 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 Pakistan who entered the United States on January 6, 2021, pursuant to an F-1 student visa to attend Clarkson University. Ex. A at 3.[1] On December 3, 2021, Petitioner's immigration status was terminated. *Id.* On January 18, 2022, Petitioner transferred to Hudson Valley Community College and was again admitted to the United States on an F-1 student visa. *Id.* On April 18, 2023, Petitioner's legal status was terminated due to Petitioner's failure to attend classes at Hudson Valley Community College. *Id.* On January 18, 2025, Petitioner filed an Application for Asylum (Form I-589), which remains pending. Ex. A at 3. DHS records do not reflect any prior immigration encounters by ICE Enforcement and Removal Operations ("ERO") with Petitioner. *Id.*

On September 25, 2026, ICE ERO officers encountered Petitioner in Clifton Park, New York, after conducting record checks in the surrounding area and locating a vehicle belonging to Petitioner.

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

Ex. A at 2. Those record checks revealed that Petitioner was unlawfully present in the United States after overstaying his visa. *Id.* According to the Form I-213 prepared following the encounter, Petitioner was arrested without incident and served with a Form I-200, Warrant for Arrest of Alien, while on scene. Exs. A at 3; Ex. B. Shortly thereafter, Petitioner was brought to the ICE ERO office ("ICE Malta Holding Room") located in Malta, New York, where he was issued a Notice to Appear, thereby initiating removal proceedings. Ex. C. Petitioner refused to sign the Certificate of Service of the Notice to Appear. *Id.* Petitioner was also provided a Form I-286, Notice of Custody Determination. Exs. A at 4; Ex. D. The Form I-286 does not bear Petitioner's signature and indicates that the Petitioner "refused to sign" the form that would allow Petitioner to request a review of the custody determination by an immigration judge. *Id.* While at the ICE Malta Holding Room, Petitioner was also served with another Form I-200, Warrant for Arrest of Alien. Ex. E

Petitioner's detention is authorized by 8 U.S.C. § 1226(a), as an alien (and not applicant for admission, *see* 8 U.S.C. § 1225) in removal proceedings. *See, e.g.*, *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 504-05 (5th Cir. 2026) (observing that "[o]nly § 1226(a) applies to admitted aliens who overstay their visas"). As an alien detained pursuant to § 1226(a), Petitioner has benefitted from numerous procedural safeguards and received all process due. He was provided an opportunity to seek an immigration judge's review of his custody determination. He may request a bond hearing at any time and one will be provided for him. Ex. D. 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 evidence relevant to the custody determination. The Immigration Judge may then make the individualized determination contemplated by § 1226(a) and its implementing regulations. The Petition fails to explain why the process expressly contemplated by Congress in § 1226(a) in this situation is inadequate or inapplicable.

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. 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.

Nor should this Court shift the burden of proof to the government at any bond hearing. Courts within the Second Circuit have held that the burden at an initial § 1226(a) bond hearing rests on the noncitizen. *See Mahmodi v. Marich*, No. 25-CV-6762-MAV, 2026 WL 113473 (W.D.N.Y. Jan. 15, 2026). This is consistent with *Jennings v. Rodriguez*, 583 U.S. 281, 301-03 (2018), which held that § 1226(a) does not require the Government to prove dangerousness or flight risk by clear

and convincing evidence and does not mandate periodic bond hearings. *Id.* The BIA's longstanding rule is the same. *See In Re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

While due process may sometimes require additional safeguards once detention becomes prolonged, see *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020), Petitioner had been detained only for a matter of hours at the time of filing. Neither § 1226(a) nor due process requires shifting the burden of proof to the Government at an initial bond hearing. Whether such a shift is required depends on the circumstances under *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Velasco Lopez*, 978 F.3d at 855 & n.13; *Mahmodi*, 2026 WL 113473, at *5–9.

While the Government maintains that Petitioner is not entitled to immediate release, should the Court grant such relief, Respondents respectfully request until 5:00 p.m. the following day to effectuate Petitioner's safe release. Should the Court require a compliance report, Respondents request until 5:00 p.m. on the next business day to submit it.

Respondents further assert that any limitation on the Government's ability to re-detain Petitioner should not be conditioned on a pre-detention hearing, for which there is no regulatory mechanism. Immigration Judges may review custody only after detention has occurred. *See* 8 C.F.R. § 1003.19(a). No process currently exists to obtain a pre-detention hearing.

Finally, any application for fees under the EAJA is premature.[2] Such applications must be filed within 30 days of a "final judgment," meaning a judgment no longer appealable. 28 U.S.C. § 2412(d)(1)(B), (d)(2)(G). That period does not begin until the time to appeal has expired. *See Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991). No final judgment has been entered here, so any fee request should be denied without prejudice as premature. *See United States v. 27.09 Acres of Land*, 1 F.3d 107, 111 (2d Cir. 1993).

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

Respondents respectfully submit that the Court may resolve the Petition on the present record without further briefing or an evidentiary hearing. If the Court requires additional briefing or proceedings, Respondents will promptly comply.

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

Respectfully Submitted,

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