U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

November 5, 2025

Honorable Sanket J. Bulsara
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *Hayden Ryan Gopie Petitioner v. Lyons, et.al.*, 25-CV-5229 (Bulsara, J.)

Dear Judge Bulsara:

Respondents Todd Lyons, Director of United States Immigration and Customs Enforcement, New York ("ICE"), Kristi Noem, Secretary of the Department of Homeland Security, and Pamela Bondi, Attorney General of the United States (collectively "Federal Respondents") respectfully submit this addendum to their Memorandum of Law in Response to the Order to Show Cause Why a Writ of Habeas Should Not Issue ("Federal Respondents' Memorandum") (Dkt. No. 11) in light of the change in circumstances since the filing of Federal Respondents' Memorandum on September 30, 2025. For the reasons set forth in their initial Memorandum and below, Federal Respondents respectfully request that Petitioner Haydan Ryan Gopie's ("Petitioner") habeas petition be denied.

Relevant New Facts

As set forth in Federal Respondents' November 3, 2025 status letter (Dkt. No. 13) Petitioner's custody redetermination hearing -- commonly referred to as a "bond hearing" -- took place as scheduled on October 1, 2025 before an immigration judge ("IJ"). The IJ denied Petitioner's request to be released on bond on grounds that Petitioner is a "danger to the community". *Id.* Petitioner's notice of appeal to the Board of Immigration Appeals ("BIA") was due by October 31, 2025 to the Board of Immigration Appeals ("BIA"). *Id.* Petitioner did not file a notice of appeal with the BIA. *Id.*

Argument

In light of these recent developments, the petition should be dismissed. Petitioner has now received a bond hearing in accordance with 8 U.S.C. § 1226(a), was denied bond, and chose to not avail himself of the additional due process set forth in 8 U.S.C. § 1226(a)—an appeal of the denial to the BIA.

A. Petitioner Failed to Exhaust All Administrative Remedies

The petition should be dismissed because Petitioner has failed to exhaust all available administrative remedies by failing to appeal the IJ's denial of a bond to the BIA. *See, e.g.*, *Paz Nativi v. Shanahan*, No. 16-cv-8496, 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017) ("before immigration detention may be challenged in federal court . . . exhaustion is generally required as a prudential matter" (collecting decisions)). *See also* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3) (providing for appeal to the BIA).

In his Reply to Respondents' Opposition to Petition for Writ of Habeas Corpus Petitioner incorrectly states that he is "not required to appeal [the] denial". *See* Dkt. No. 15 at 7. Petitioner contends that "exhaustion is excused where the constitutional violation occurred before any hearing could cure it", citing only *Lopez Benitez v. Francis*, 2025 WL 2371588, at 9 (S.D.N.Y. Aug. 13, 2025). *Id.* But the facts in *Lopez Benitez* are inapposite to this case. In *Lopez Benitez*, the Government argued that petitioner was detained under 8 U.S.C. § 1225(b), which provides for mandatory detention, thus essentially admitting that it did not comply with the 1226(a) requirements regarding detention, such as an initial custody determination. *Lopez Benitez*, 2025 WL 2371588 at *4-5, 13. Here, there is no dispute that Petitioner was detained pursuant to ICE's discretionary authority under § 1226(a), which allows for the arrest and detention of an alien, like Petitioner, pending a decision on whether he is to be removed from the United States. Likewise, there is no dispute that ICE conducted an initial custody determination on September 16, 2025 and concluded that "Petitioner should be classified as a high risk to public safety given the nature of his criminal conviction for Endangering the Welfare of a Child, in violation of New York Penal Law § 260.10(1)" (Dkt. No. 11-1, Declaration of Anthony Burer ("Burer Decl.") ¶ 12), and further determined that Petitioner would be detained. *See id.* at 6.

As the *Lopez Benitez* court explained, if detention was discretionary under § 1226(a), such detention "would be . . . entitled to an appeal before an immigration judge." *Lopez Benitez*, 2025 WL 2371588 at *4. "[T]he implementing regulations [of § 1226(a)] provide that [bond] hearings are provided for the purposed of custody *re*-determination—a hearing held by an immigrations judge after ICE makes its initial decision to detain." *Id.* at *13 (emphasis in original) (internal quotations and citation omitted). Here, because there *was* an initial decision that Petitioner could appeal through the available processes under § 1226(a), he was required to do so.

Instead, Petitioner has inappropriately chosen to bypass his available appeal to the BIA and attempted to avail himself directly of this District Court. *Paz Nativi*, 2017 WL 281751, at *2 ("The pendency of a BIA appeal that could potentially moot [petitioner's] habeas petition counsels for the Court to stay its hand until the exhaustion of administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings."). Petitioner's failure to exhaust administrative remedies available under § 1226(a) warrants dismissal of his petition.

B. There is No Due Process Violation

As an initial matter, Petitioner cannot under the current administrative circumstances identify what process he was due and has not received. In his petition, Petitioner argues that his

procedural due process rights were violated because at the time of his arrest, ICE conducted "no individualized determination as to the factors, such as his high flight risk or dangerousness". Docket Entry No. 1 ¶ 39. However, Petitioner has since availed himself of the process to which he is entitled under §1226(a), and has failed to amend the original petition to reflect what process he claims he is still owed.

In any event, there is no procedural due process deprivation here—Petitioner received the process he was due. To state a claim for procedural due process, a plaintiff must establish: (i) a cognizable liberty or property interest, and (ii) a deprivation of that interest without being afforded the process that is due to the plaintiff. *See Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) (citing *Mathews v. Eldridge,* 424 U.S. 319, 334 (1976) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands.")). Petitioner was afforded a bond hearing, that is, a custody *re*-determination hearing, on October 1, 2025 before an IJ. Dkt. No. 13. As of October 1, 2025, Petitioner had been detained for 16 days. At that hearing, the IJ denied Petitioner's request to be released on bond on the grounds that is a "danger to the community". *Id.* Petitioner had the opportunity to receive more process by appealing this decision to the BIA, and chose not to pursue this. Dkt. No. 17. The process Petitioner received—and that which he elected not to pursue—is the process he is due. That alone warrant dismissal of his petition.

Petitioner should be required to amend his petition to explain, given the developments, what process he is currently challenging. Absent such amendment, the pending habeas petition should be dismissed.

The Federal Respondents thank the Court for its time and attention to this matter.

Respectfully submitted,

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