U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

February 6, 2026

By ECF
Honorable Hector Gonzalez
United States District Judge, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *R.P.L. v. Maldonado, et al.*, No. 1:25-cv-6886 (Gonzalez, J.)

Dear Judge Gonzalez:

This Office represents Respondents in the above-captioned action. On January 23, 2026, Petitioner filed a letter "Motion To Amend/Correct/Supplement" the Court's order dated December 26, 2025, in which he asks the Court to order that the monitoring conditions on his release be entirely lifted. *See* ECF No. 13 ("Post-Release Motion"). The Court ordered Respondents to "file a responsive letter . . . which shall provide its position regarding Petitioner's request" and "address whether" *Khabazha v. United States Immig. & Customs Enf't*, 2025 WL 3281514 (S.D.N.Y. Nov. 25, 2025), "is applicable" here. *See* Order dated Jan. 23, 2026. As detailed below, Respondents oppose Petitioner's request, and *Khabazha* is not applicable.

For aliens covered by 8 U.S.C. § 1226(a), unrestricted release is not the only lawful alternative to detention. Rather, under that statute, Congress permitted the Executive to place conditions on Petitioner's release in its discretion, which U.S. Immigration and Customs Enforcement ("ICE") did here. Indeed, ICE offered to reduce the conditions on Petitioner's release after Petitioner raised the instant issue with undersigned counsel. Petitioner may challenge such conditions through an administrative amelioration application under 8 C.F.R. § 1236.1(d), which Petitioner has repeatedly refused to do before coming to this Court. In sum, the Post-Release Motion seeks relief the Petition did not request, this Court did not order, the governing statute does not require, and that Petitioner may obtain through an administrative process. It should therefore be denied.

I. Background

Petitioner, a Guatemalan national who entered the United States at an unknown time and location, asserts in his habeas petition that it was "over a decade" ago that he sneaked across the border. ECF No. 1-2 ¶ 12. He was detained by ICE in September 2025, under 8 U.S.C. § 1225(b)(2)(A), pending completion of his removal proceedings, which was his first encounter with any immigration authority in his alleged decade-plus unlawful presence. *See* ECF No. 7-1 ¶¶ 4-14. In his habeas petition (ECF No. 1 ("Pet." or "Petition")), Petitioner sought his release, arguing that he is subject to the discretionary detention statute, 8 U.S.C. § 1226(a), pursuant to which release on bond subject to conditions is available. *See* Pet. ¶ 5. Petitioner sought an order "enjoin[ing] Respondents from re-detaining or denying bond to [him] in any subsequent proceeding . . . absent a change in relevant circumstances." *See* Pet., Prayer For Relief ¶¶ c-e.

The Court held that Petitioner was subject to § 1226(a). *See* ECF No. 10 at 4. The Court directed the Government to "immediately release Petitioner" and "order[ed] that Petitioner shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing." *Id.* at 10.

Petitioner remains in removal proceedings, where the immigration court is bound to treat him consistent with this Court's order as covered by § 1226(a). Because the dockets for those not detained move much more slowly than for detainees, Petitioner's next hearing date is not until August 19, 2027.

After his release, Petitioner, who has consistently been represented by counsel, agreed to participate in ICE's Intensive Supervision Appearance Program ("ISAP"). He signed a "GPS Agreement" to be "monitored using a BI GPS tracking device," commonly known as an ankle monitor. *See* ECF No. 13-1 at 3. And he agreed to periodically report for office visits and receive home visits. *See id.* at 4. ICE also gave Petitioner an ISAP Program Rules Agreement, which among other terms, gives Petitioner the right to "expect that your lifestyle, religious preference, values, cultural heritage and practices will be honored," "to seek and receive medical care and medical treatments outside of [his] geographic area," including emergency care, and a grievance procedure. *See id.* at 11-12. Petitioner does not claim those commitments were violated.

After the ISAP was put in place, Petitioner's counsel contacted this Office to request that ICE let Petitioner remain at large without any monitoring – despite Petitioner never previously requesting that and acknowledging he successfully evaded immigration authorities for at least "over a decade" (ECF No. 1-2 ¶ 12) – thereby leaving DHS without any point of contact with Petitioner until his next immigration court appearance in eighteen months. In response to Petitioner's request, ICE offered to adjust Petitioner's ISAP to remove the ankle monitor, and to instead conduct monthly biometric check-ins via an app on Petitioner's cell phone and require in-person check-ins approximately every few months. Petitioner rejected that offer.

This Office also reminded Petitioner about the 8 C.F.R. § 1236.1(d) amelioration application procedure available to him. Under 8 C.F.R. § 1236.1(d), Petitioner "at any time before a [removal order] becomes final" may "request amelioration of the conditions under which he or she may be released."[1] Petitioner refused to file such an application.

Eleven days after rejecting ICE's offer, refusing to negotiate further, or file an amelioration application, Petitioner filed the Post-Release Motion. Despite previously seeking to be brought under the ambit of § 1226(a), under which the Executive may put in place conditions on an alien's release, and agreeing to the ISAP, Petitioner now argues ICE "ha[d] no legal basis to add restrictions to his release." *See* Post-Release Motion at 1-2. As relief, Petitioner asks the Court to "direct Respondents to return [him] to the status quo prior to his unlawful detention and not impose any form of . . . custody conditions, including but not limited to, any form of monitoring and mandatory reporting." *See* ECF No. 13 at 3.

II. Respondents' Position Regarding Petitioner Seeking An Unmonitored Release

Petitioner's contention that ICE has "no legal basis to add restrictions to his release" (*id.* at 2) is wrong. Petitioner asked for and received from this Court an order that he is subject to 8 U.S.C. § 1226(a). Section 1226(a)(2), in turn, permits release on, among other terms, "conditions

[1] Given that it is more than seven days after Petitioner was released, he must make his amelioration application to the "district director." 8 U.S.C. § 1236.1(d)(2).

prescribed by[] the [Executive]." *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 1236.1(c)(8). Conditions may vary: as noted above, in an attempt to work with Petitioner, ICE offered that Petitioner's ISAP be reduced to monthly biometric check-ins via an app on Petitioner's cell phone and periodic in-person check-ins. Petitioner – who evaded immigration authorities for "over a decade" – would otherwise remain at large with no check on his appearing at his next removal proceeding date eighteen months from now.

This Court's order that Petitioner is covered by § 1226(a) also affords Petitioner administrative options for challenging the conditions on his release under 8 C.F.R. § 1236.1(d). During discussions with Petitioner's counsel, undersigned counsel made sure Petitioner's counsel was aware of that process, as it was available to Petitioner when his ISAP was put in place, remained available to Petitioner when counsel were discussing this issue, and is still available to him today. Petitioner may not self-select out of the very process where he can seek the relief he now asks this Court to order. *See Rojas v. Genalo*, 2026 WL 275991, at *1 (E.D.N.Y. Feb. 3, 2026) (Komitee, J.) (alien who "wishes to challenge her initial custody determination . . . must first exhaust administrative remedies").

In support of this Court's intervention, Petitioner cites *Khabazha*, which this Court asked Respondents to address. In *Khabazha*, unlike here, the alien was first encountered by immigration authorities shortly after entering the United States, released on his own recognizance during the pendency of his removal proceedings, later re-detained, and ultimately released subject to conditions. *Khabazha*, 2025 WL 3281514 at *1. That alien's habeas action did not question which statute governed his detention, but rather challenged the conditions of his release. *Id.* at *2. As relief for granting the habeas petition, *Khabazha* held that the alien must be restored to his release on recognizance. *Id.* at *9.

Khabazha is not applicable for two reasons. *First*, in *Khabazha*, that alien did not have an amelioration application available to him because an immigration judge previously found him subject to § 1225(b)(2)(A). By contrast here, Petitioner has an amelioration application available to him, as the district director will be bound by this Court's order to treat Petitioner as covered by § 1226(a). Petitioner is choosing not to pursue that option. *Second*, unlike in *Khabazha*, where the alien was previously released on his own recognizance by Executive discretion while his removal proceeding was pending, here the "status quo prior to [Petitioner's] unlawful detention" was Petitioner's undetected, unmonitored, presence in the United States. There was no prior status quo of release on recognizance during removal proceedings because Petitioner avoided removal proceedings by evading detection for over a decade. *Khabazha* does not demand unconditioned release for all aliens in removal proceedings.

ICE will, of course, comply with any clarification of the Court's order. Respondents, however, respectfully submit that Petitioner should be subject to some form of monitoring or check-in. Given Petitioner's successful request to be treated under § 1226(a) granted, he is subject to the Congressionally authorized Executive discretion to place conditions on his release. And through regulations the Executive put in place, Petitioner has available to him the option to ask to ameliorate those conditions, but he refuses to do so. Petitioner offers no basis for this Court to usurp the authority Congress granted the Executive to place conditions on a § 1226(a) detainee's release, nor to permit Petitioner to skip the administrative amelioration application available to him.

Respondents thank the Court's consideration of this submission.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

By: */s/ Justin S. Kirschner*
Justin S. Kirschner
Assistant U.S. Attorney
(718) 254-6884
Justin.Kirschner@usdoj.gov

Cc (via ECF): all counsel of record.