U.S. Department of Justice

United States Attorney
Eastern District of New York

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Brooklyn, New York 11201

March 27, 2026

By ECF

Honorable LaShann DeArcy Hall
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Fredy Eduviel Arriaga Hernandez v. Judith Almodovar, et al.*
Civil Action No. 26-cv-01572 (LDH)

Dear Judge DeArcy Hall:

This letter is respectfully submitted on behalf of Respondents Judith Almodovar, Pamela Bondi, Markwayne Mullin,[1] and Todd M. Lyons, in their official capacities, in response to the Order dated March 26, 2026 ("Order"). The Order directs Respondents to show cause why the Court should not construe Petitioner's electronic monitoring and check-in requirements as a form of detention.

The Petition for Writ of Habeas Corpus ("Petition") was filed on March 17, 2026. Respondents' response to the Order to Show Cause dated March 19, 2026 was due on March 25. However, on March 20, Immigration and Customs Enforcement ("ICE") released Petitioner, who is in removal proceedings, from custody at the Metropolitan Detention Center in Brooklyn ("MDC"). ICE enrolled Petitioner in the Alternative to Detention ("ATD") program. Petitioner's ATD comprises monthly biometric check-ins via an app on his cellphone and periodic in-person check-ins. Specifically, the biometric reporting means that Petitioner is required to log into to SmartLink app on his cellphone every month/four weeks, take a picture of himself (a "selfie") and send it to the ICE Enforcement and Removal Operations ("ERO") contractor so can confirm his location. Every eight weeks, Petitioner is required to check in at the contractor's office in person. The home visits to confirm that Petitioner resides there will be made by an employee of the contraction every eight weeks.

Petitioner states that he wants an order granting him unconditional release and vacating the conditions unilaterally imposed by the government. ECF Doc. No. 6 at 2. A federal prisoner challenging prison conditions may seek habeas relief under 28 U.S.C. § 2241. *See Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir. 2001). Habeas relief is available if a prisoner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.

[1] Markwayne Mullin succeeded Kristi Noem as Secretary of Homeland Security on March 24, 2026, and is automatically substituted as Respondent pursuant to Fed. R. Civ. P. 25(d).

§ 2241(c)(3). Section 2 of Article III of the Constitution of the United States "requires the existence of an actual case or controversy through all stages of federal judicial proceedings." *Thomas v. Martinez*, No. 21-cv-5623 (KAM), 2023 WL 8653997, at *2 (E.D.N.Y. Dec. 14, 2023); *see also Baez v. Tellez*, No. 21-cv-04760 (DC), 2023 WL 2020962, at *2 (E.D.N.Y. Feb. 15, 2023). "The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed." *Martin-Trigona v. Shiff*, 702 F.2d 380, 386 (2d Cir. 1983). "If at any time during the litigation, a party does not have an actual injury which is likely to be redressed by a favorable judicial decision, the case does not meet Article III's case or controversy test and is moot." *Geddes v. Lindsay*, No. 07-cv-5054 (NGG), 2008 WL 2620129, at *3 (E.D.N.Y. July 1, 2008) (internal quotation marks and citation omitted). A petition for a writ of habeas corpus does not necessarily become moot if the petitioner has been released from prison. The matter will remain a live case or controversy if there remains "some concrete and continuing injury" despite the release. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

In this case, Petitioner was released from the MDC without court intervention and not pursuant to a court order. Petitioner remains in removal proceedings but is no longer detained. He is now challenging the ATD program that is part of the conditions of his release on recognizance. *See* ECF Doc. No. 6. However, the Petition challenged his detention, not the conditions of release. Those conditions were lawfully imposed.

Petitioner maintains that his detention was governed by 8 U.S.C. § 1226(a) ("Section 1226(a)"). ECF No. 1 ¶¶ 44-45. That statute permits the Executive to place conditions on Petitioner's release from detention in its discretion. 8 U.S.C. § 1226(a)(2); *see* 8 C.F.R. § 1236.1(c)(8). Conditions may vary: ankle monitors; monthly biometric check-ins via a cellphone app on the alien's cellphone; and/or periodic in-person check-ins.

Petitioner is not without recourse. He may challenge the conditions of his release on recognizance through an administrative amelioration application under 8 C.F.R. § 1236.1(d). Petitioner must first exhaust his administrative remedies before seeking the relief he now asks the Court to order. *See Almonte Rojas v. Genalo*, No. 25-cv-6543 (EK), 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"); *see also Carmona*, 243 F.3d at 634 ("[F]ederal prisoners must exhaust their administrative remedies prior to filing a petition for habeas relief.").

Petitioner relies in vain on *Khabazha v. U.S. Immigration and Customs Enforcement,* No. 25-CV-5279 (JMF), 2025 WL 3281514 (S.D.N.Y. Sept. 2025) as being dispositive here. 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 on bond and subject to conditions, including wearing a GPS ankle monitor with a location tracker, a weekly reporting requirement, geographic restrictions, and home and office visits. *Khabazha*, 2025 WL 3281514 at *2. The court in *Khabazha* ordered the respondents to release him from the restrictions on his liberty imposed as a result of his unlawful re-detention, including the ankle monitor and the weekly reporting requirements. *Id.* at *9.

Khabazha is not applicable. First, *Khabazha* does not mention the availability of administrative remedy, *i.e.*, an amelioration application. Second, unlike in *Khabazha*, where the alien was previously released on his own recognizance while his removal proceeding was pending,

here the status quo prior to Petitioner's 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, and detention incident to removal proceedings, by entering the United States unlawfully without inspection. *Khabazha* does not demand unconditional release for all aliens in removal proceedings.

Further, the post-release conditions at issue here are de minimis. Petitioner has a monthly check in via cellphone and check-in visits at his residence and at an ICE contractor's office, each every eight weeks. He does not have weekly reporting requirements. Nor is he required to wear an ankle monitor, a more intrusive condition that has been found to not violate the Fourth Amendment. *See Lee v. Stone*, No. 1:20-cv-00186-BLW, 2021 WL 3409594 (D. Idaho Aug. 8, 2021) (citing *Karam v City of Burbank*, 352 F.3d 1188, 1194) (9th Cir. 2003) (finding that requiring attendance at court conferences and needing to obtain permission to leave the state were "de minimis" and did not constitute a seizure under the Fourth Amendment)).

Respondents request that the Court deny the Petition and Petitioner's request that Respondents ceases his de minimis ATD program.

The Order further directs Respondents to confirm whether Petitioner's detainment was effectuated pursuant to 8 U.S.C. § 1225 or 8 U.S.C. § 1226 and whether their arguments related thereto are the same as those previously rejected by the Court when ruling on the petitions in *Calvanagua Sanchez v. Genalo*, et al., No. 26-cv-476 (E.D.N.Y. Jan. 28, 2026), *Estrada Alfaro v. Genalo*, No. 26-cv-761 (E.D.N.Y. Feb. 10, 2026), and *Singh v. Genalo*, No. 26-cv-937 (E.D.N.Y. Feb. 17, 2026). In those three cases, Your Honor rejected the respondents' arguments that the petitioners' detentions were governed by 8 U.S.C. § 1225, and held that they were detained pursuant to 8 U.S.C. § 1226(a) because they had been living in the United States (as opposed to having been detained at the border). Your Honor further held that the petitioners had not received the individualized custody determinations to which they were entitled pursuant to 8 U.S.C. § 1226(a), and the pre-detention process violated due process.[2]

According to ICE, Petitioner was detained pursuant to 8 U.S.C. § 1225(b)(2)(A). The Petition alleges that Petitioner has resided in the United States since January 2023, after entering without inspection. ECF Doc. No. 1 ¶ 21. If Petitioner had not been released on March 20, Respondents' response to the Order to Show Cause dated March 19, 2026 would have been that ICE properly detained Petitioner pursuant to Section 1225(b)(2)A), and that such detention is mandatory. Your Honor would have rejected that argument, and found that Petitioner's detainment is governed by 8 U.S.C. § 1226(a) based on Your Honor's prior decisions in other cases.[3]

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[2] Respondents respectfully submit that this issue is moot, but are providing this response in compliance with the Order.

[3] Although Respondents respectfully disagree with Your Honor's rejection of the government's arguments that Section 1225(b) (mandatory detention) applies to aliens who are living in the United States at the time they are arrested and detained, Respondents recognized that it would be futile to repeat the statutory interpretation arguments in opposing the habeas petition in this case at this time. Respondents note that seven district judges in New York have ruled in favor of the government finding that Section 1225(b) applied. *Portilla Hernandez v. Noem*, No. 25-CV-10393, 2026 WL 836735 (S.D.N.Y. Mar. 26, 2026) (Halpern, J.); *Saamishvili v. Flanagan*, No. 25-cv-

Thank you for Your Honor's consideration of this submission.

Respectfully submitted,

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6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026) (Cogan, J.), *notice of appeal filed* Feb. 17, 2026; *Arana v. Arteta,* No. 26 Civ. 240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Lopez v. Noem*, No. 26 Civ. 00345, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.); *Chen v. Almodovar*, No. 25 Civ. 9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Chen v. Almodovar*, No. 25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), *notice of appeal filed* Dec. 18, 2025; *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra, J.), *notice of appeal filed* Dec. 16, 2025. Two courts of appeals that issued merits decisions in cases of this type ruled in favor of the government. Avila v. Bondi, -- F.4th --, 2026 WL 819258 (8th Cir. Mar. 25 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 501-08 (5th Cir. 2026).