U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

April 20, 2026

Honorable Nusrat J. Choudhury
United States District Court Judge
Eastern District of New York
1040 Federal Plaza
Central Islip, New York 11722

Re: *Erick Alexander Quijada Melara v. Genalo, et al.*
No. 26-cv-2203 (Choudhury, J.)

Dear Judge Choudhury:

This Office represents Respondents Kenneth Genalo, in his official capacity as Acting Director of the New York Field Office of U.S. Immigration and Customs Enforcement ("ICE"); [1] Markwayne Mullin, in his official capacity as Secretary of the U.S. Department of Homeland Security ("DHS"); DHS; and Todd Blanche, in his official capacity as Acting Attorney General of the United States (together, "Respondents") in the above-referenced action, in which Petitioner Erick Alexander Quijada Melara ("Petitioner") filed a Petition for a writ of habeas corpus on April 14, 2026, challenging his enrollment in ICE's Alternative to Detention ("ATD") program. *See* Dkt. # 1. Respondents respectfully submit this letter in response to the Stay of Removal and Order to Show Cause entered on March 20, 2026 (ECF Dkt. # 7) (the "Order"), requiring Respondents to submit their response to the Petition by 10 a.m. today, April 20, 2026. [2]

As set forth below, the Court should dismiss this action as an abuse of the writ of habeas corpus because Petitioner improperly seeks relief -- *i.e.*, release from the requirements of the ATD program -- that he failed to obtain in a case he commenced in December 2025 seeking release from ICE custody in the United States District Court in the District of New Jersey, *Quijada Melara v. U.S. Immigration and Customs Enforcement, et al.*, No. 25-cv-19016 (Farbiarz, J.) (the "First Habeas Action"),

[1] Under Fed. R. Civ. P. 25(d), the successor of a party who is a public official is automatically substituted as the party to the suit; therefore, Kenneth Genalo has been substituted for former Acting New York Field Office Director Joseph Cardinale.

[2] The undersigned sincerely apologizes to the Court for Respondents' failure to adhere to the 10 a.m. deadline set forth in the Order. This error is entirely due to the undersigned's mis-reading of the Order, and failure to notice that the deadline included a time as well as a date for Respondents to comply.

Relevant Factual Background

Plaintiff, a native and citizen of El Salvador, entered the United States without inspection on or about November 4, 2022. *See* Declaration of Acting Supervisory Detention and Deportation Officer ("SDDO") Achilles Shinas, dated April 20, 2026, at ¶¶ 3-4; Exh. A to Shinas Decl. at p. 3.[3] On or about November 4, 2022, agents of the U.S. Border Patrol encountered Petitioner, found him to be inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I)) and issued him a Form I-860 Expedited Removal Order. Shinas Decl. at ¶¶ 5-6; Exh. A to Shinas Decl. at p. 3.

On December 4, 2025, officers from Long Island Fugitive Operations, Homeland Security Investigations ("HSI") and Customs and Border Protection ("CBP") arrested Petitioner in Brentwood, New York, pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed him in detention. Shinas Decl. at ¶ 7; Exh. A to Shinas Decl. at p. 2.

On December 25, 2025, Petitioner filed a Petition for Writ of Habeas Corpus ("First Habeas Petition") in the Eastern District of New York, as Civil Action No. 25-cv-7086, where it was assigned to the Honorable Joanna Seybert. *See* Docket Sheet for No. 25-cv-7086 (E.D.N.Y.), a copy of which is attached hereto as Exhibit A-1; First Habeas Petition, a copy of which is attached hereto as Exhibit A-2. In an Electronic Order entered on December 29, 2025, Judge Seybert noted that Petitioner alleged that he "is in the physical custody of Respondents at the Delaney Hall Detention Facility in Newark, New Jersey." Exh. A-1 at p. 2; Exh. A-2 at pp. 2, 4, 6. As a petition seeking relief under 28 U.S.C. § 2241 "must be brought in the district of confinement," Judge Seybert directed the Clerk of the Court to transfer the First Habeas Action to the United States District Court for the District of New Jersey. Exh. A-1 at p. 2.

On December 29, 2025, the First Habeas Action was transferred to the District of New Jersey, where it was designated as Civil Action No. 25-cv-19016 and assigned to the Honorable Michael E. Farbiarz. *See* Docket Sheet for No. 25-cv-19016 (D. N.J.), a copy of which is attached hereto as Exhibit A-3; *see also* Exh. A-2. On January 12, 2026, Judge Farbiarz ordered that a bond hearing be conducted in Immigration Court on or before 12 noon on January 13, 2026. *See* Exh. A-3 at p. 4.

On January 13, 2026, Petitioner appeared, with counsel, for the bond hearing at the Elizabeth Immigration Court in New Jersey . Shinas Decl. at ¶ 8; *see* Exh. B to Shinas Decl. (Order of the Immigration Judge issued on January 13, 2026); Letter - Update Regarding Bond Hearing filed by the Government on January 13, 2026, in No. 25-cv-19016 (D. N.J.) Dkt. # 13, a copy of

[3] Exhibit A to the Shinas Decl., a copy of Form I-213 Record of Deportable/Inadmissible Alien, dated December 5, 2025, was attached to a letter filed by the Office of the United States Attorney for the District of New Jersey in the First Habeas Action on January 6, 2026. A copy of the Letter - Response Regarding Applicability of *Bautista* Class Action, with exhibits (Dkt. # 11 - 11-2 in No. 25-cv-19016 (D. N.J.)), is attached hereto as Exhibit A-4.

which is attached hereto as Exhibit A-5. The Immigration Judge ordered the Petitioner released from custody under bond in the amount of $10,000.00.[4] Shinas Decl. at ¶ 8; Exh. B to Shinas Decl.

In an Electronic Order entered on January 14, 2026, Judge Farbiarz stated that, as a bond hearing had been conducted, the First Habeas Petition should be dismissed, but provided that "[i]f a party has a different view, it should explain why in a brief letter to be filed on or before January 16 at 5:00 pm. If no persuasive letter is received, the petition will be promptly dismissed." *See* Exh. A-3 at p. 5. On January 15, 2026, Petitioner posted bond and was released from the Delaney Hall Detention Facility. Shinas Decl. at ¶ 9. 16. When Petitioner was released, DHS issued him a Form G-56 Call-In Letter that directed him to report to the ICE Docket Control Office at 26 Federal Plaza in New York, New York ("26 Federal Plaza") on January 16, 2026, at 10 a.m. Shinas Decl. at ¶ 10; Exh. C to Shinas Decl.

On January 16, 2026, Petitioner appeared at the ICE Docket Control Office at 26 Federal Plaza as directed and was enrolled in an Alternative to Detention ("ATD") program, which included home and office visits for the next 12 weeks, court tracking, GPS monitoring (using an ankle monitor, which was affixed to Petitioner at this appearance) and alert management (notification of any violation of the ATD, including but not limited to missed biometric check-ins, cutting the GPS strap, tampering with the GPS unit, or low battery power of the GPS unit). Shinas Decl. at ¶ 11. The ICE Docket Control Office directed Petitioner to report to the BI Intensive Supervision Appearance Program ("ISAP") office on Long Island, which would perform the GPS monitoring, and Petitioner reported to the BI ISAP office on Long Island that same day, January 16, 2026. Shinas Decl. at ¶ 12. Petitioner did not file any objection to his enrollment in the ATD program, or his being placed on an ankle monitor by ICE, in the First Habeas Action. *See* Exh. A-3, at p. 5. As no party had objected to dismissal of the First Habeas Action – on January 16, 2026, or in the three days thereafter – on January 20, 2026, Judge Farbiarz entered an Order dismissing the First Habeas Petition. *Id.*

On April 8, 2026, Petitioner appeared with counsel for a master calendar hearing before the New York - Varick Immigration Court. Shinas Decl. at ¶ 13; *see* Exhibit D to Shinas Decl. (Amended Order of the Immigration Judge entered on April 8, 2026). The Immigration Court ordered Petitioner removed from the United States to El Salvador. *Id.* On April 14, 2026, Petitioner filed a Notice of Appeal of the order of removal with the Board of Immigration Appeals ("BIA"). Shinas Decl. at ¶ 15; Exhibit E to Shinas Decl. The appeal remains pending. Shinas Decl. at ¶ 15.

[4] Notably, the Order of the Immigration Judge entered on January 13, 2026, states only that Petitioner's "request for a change in custody status is hereby ordered: Granted. It is ordered that [Petitioner] be: released from custody under bond of $10,000.00." Exh. B to Shinas Decl. The Order does not contain any language that could be interpreted as precluding ICE from enrolling Petitioner in any type of monitoring program.

Petitioner Has Abused the Writ

A. The Abuse of the Writ Doctrine

Under the abuse of the writ doctrine, "a court need not entertain a petition that abuses the habeas process." *Esposito v. Ashcroft,* 392 F.3d 549, 550 (2d Cir. 2004). This doctrine has been applied to habeas petitions in the immigration context. *See, e.g., id.* (challenge to removal); *Cardona v. Taylor,* No. 17-cv-320, 2017 WL 1291996, at *2 (S.D.N.Y. April 3, 2017) (Woods, J.) (immigration detention). "[T]he 'abuse of the writ' doctrine is a substitute for *res judicata* in the context of habeas petitions." *Id.* (citing *Muniz v. United States*, 236 F.3d 122, 126 (2d Cir. 2001)). A prior adjudication may be given "controlling weight" in determining whether a petition is an abuse of the writ. *See McCleskey v. Zant*, 499 U.S. 467, 480–81 (1991) (quoting *Salinger v. Loisel*, 265 U.S. 224, 231 (1924)). A successive habeas action can be dismissed as abusive if the action repeats a previously asserted claim or "rais[es] new claims that could have been pursued in a prior petition." *Esposito,* 392 F.3d at 550. Thus, "[o]ne frequently recognized indicator of abusiveness is whether the petitioner could have asserted his present claims in his prior petition." *Id.*

"When a prisoner files a second or subsequent [habeas] application, the government bears the burden of pleading abuse of the writ." *McCleskey,* 499 U.S. at 494. "The government satisfies this burden if, with clarity and particularity, it notes [the] petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that [the] petitioner has abused the writ." *Id.* Once the government has satisfied that burden, the petitioner bears the burden to disprove abuse by "show[ing] cause for failing to raise [the claim] and prejudice therefrom." *Id.* As *McCleskey* articulated, in order to show the requisite cause, a petitioner must show that some "objective factor external to the defense impeded counsel's efforts to raise the claim" in the initial petition. *McCleskey*, 499 U.S. at 493-94; *see also Roccisano v. Menifee*, 293 F.3d 51, 58-59 (2d Cir. 2002). The petitioner may also disprove abuse by carrying his burden of "show[ing] that a fundamental miscarriage of justice would result from a failure to entertain the claim." *McCleskey*, 499 U.S. at 494-95.

B. Respondents Have Sufficiently Pleaded an Abuse of the Writ

Here, Respondents have shown, for multiple reasons, an abuse of the writ. Petitioner filed the First Habeas Petition, on December 25, 2025, with respect to his detention by ICE on December 4, 2025 – the selfsame detention that led to Petitioner's enrollment in the ATD program that forms the basis for the instant action. *See* Petition at ¶¶ 2-5, 7-8, 29; *see* Exh. A-2 (First Habeas Petition) at ¶¶ 10-11, 30, 34, 36-37, Prayer for Relief (requesting immediate release from detention or, alternatively, a bond hearing before an immigration judge).

Respondents also have shown that Petitioner subsequently brought the instant action; and that in this action, he seeks the same relief that he sought in the First Habeas Action – in which the Court granted the relief he sought, directing that the immigration court conduct a bond hearing on or before January 13, 2026, which resulted in his release from confinement. *See Cardona*, 2017 WL 1291996, at *2 (denying petition as an abuse of the writ because it sought the same relief as the prior petition, i.e., a bond hearing).

Significantly, and additionally, Petitioner had a remedy for challenging his enrollment by ICE in the ATD program, in which he was fitted with an ankle monitor, before Judge Farbiarz. While the Order entered by Judge Farbiarz on January 14, 2026, expressly stated that the Court intended to dismiss the First Habeas Action because a bond hearing had been conducted, as requested in the First Habeas Petition (*see* Exh. A-2 at ¶¶ 11, 30, 36-37, Prayer for Relief), "[i]f a party has a different view [that the petition should not be dismissed], it should explain why in a brief letter to be filed on or before January 16 at 5:00 pm." Exh. A-3 at p. 5. Although ICE enrolled Petitioner in the ATD program, and fitted him with an ankle monitor, when he appeared for his appointment scheduled for 10 a.m. on January 16, 2026, Petitioner did not file a letter on the docket in the First Habeas Action on that day -- or at any time before the Court entered its Order dismissing the First Habeas Action on January 20, 2026. *See id.* His failure to utilize the remedy available to him provides additional support for the conclusion that the Court should deny the Petition herein as an abuse of the writ. *See Esposito v. Ashcroft*, 288 F. Supp. 2d 292, 297 (E.D.N.Y. 2003) (Weinstein, J.) (in dismissing a habeas petition, the court noted that Esposito's counsel did not provide a credible reason for failing to appeal the prior district court decision), aff'd 392 F.3d 549 (2d Cir. 2004). Thus, Respondents have carried their burden of pleading abuse of the writ.

C. Petitioner Cannot Disprove Abuse

Petitioner cannot satisfy his burden of disproving abuse by showing cause for filing a second habeas petition. He provides no legally sufficient justification for bringing the instant Petition. The Petition does not identify any objective factor that impeded him from litigating his claim for release from the ankle monitor or any other condition of the ATD program in the First Habeas Action.

Petitioner cannot carry of his burden of showing that denial of the instant Petition would result in a fundamental miscarriage of justice. He could have sought redress from Judge Farbiarz in the First Habeas Action on the same day that ICE fitted him with the ankle monitor. *See* Exh. A-3 at p. 5 (Order entered on January 14, 2025). Instead, he waited some three months before commencing this action – in the Eastern District of New York – his preferred forum, where he initially filed his First Habeas Action. *See* Exh. A-1. As Petitioner failed to utilize the alternative remedy, it is not manifestly unjust to deny him an opportunity to proceed with a second habeas petition after he neglected to timely exercise his option to raise this issue in the First Habeas Action.

Accordingly, the Court should deny the instant Petition as an abuse of the writ of habeas corpus.

Respondents thank the Court for its consideration of this submission.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

By: /s/ *Mary M. Dickman*
Mary M. Dickman
Assistant United States Attorneys
(631) 715-7863
mary.dickman@usdoj.gov

Cc: (Via ECF)
Lorne Jeffrey Kelman, Esq.
Counsel for Petitioner