U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

June 26, 2026

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

Re: *Martinez Adauto v. Maldonado, et al.*, No. 26-cv-3784 (NJC)

Dear Judge Choudhury:

This Office represents Respondents in the above-referenced action, in which Petitioner Fernando Jefferson Martinez Adauto ("Petitioner") filed a Petition for a writ of habeas corpus on June 25, 2026, challenging his detention by Immigration and Customs Enforcement ("ICE"). *See* ECF Dkt. # 1. Respondents respectfully submit this letter in response to the Stay of Removal and Order to Show Cause entered on June 25, 2026 (ECF Dkt. #3) (the "Order"), requiring Respondents to provide certain information identified by the Court by today, June 26, 2026, at 11:30 a.m. As directed by the Order, Respondents address the merits of the Petition below, while reserving all rights, including the right to appeal, in lieu of a formal responsive memorandum of law to conserve judicial and party resources, and to expedite the Court's consideration of this case.

With regard to the questions posed to Respondents on the first two pages of the Order, Respondents respond as follows:

Petitioner is a native of Venezuela and has been assigned A number [redacted]. The undersigned has conferred with agency counsel for ICE who has stated that Petitioner is currently detained at the Metropolitan Detention Center in Brooklyn ("MDC"). *See* Declaration of ICE Deportation Officer ("DO") Demetrios Costakis ("Costakis Decl."), submitted herewith, ¶ 25. At the time of his arrest on May 4, 2026, Petitioner was processed at the Nassau County ICE Intake facility at 100 Carman Avenue, East Meadow, New York and then transferred to Nassau County Correctional Center ("NCCC") where he remained until May 7, 2026. *Id.* ¶¶ 16, 19. On May 7, 2026, Petitioner was transferred to Delaney Hall Detention Facility ("Delaney Hall") in New Jersey. *Id.* ¶ 20. Petitioner was subsequently transferred to MDC on May 14, 2026. *Id.* ¶ 25. Petitioner has not been detained at the Central Islip, New York federal courthouse in connection with the 2026 arrest and, as of the filing of this letter, there is no indication that he will be detained there other than as required to produce him for the hearing currently scheduled to be conducted on June 29, 2026. In the event Petitioner is detained after June 29, 2026, there is a possibility that he will be transferred; notwithstanding, ICE has been made aware of the Court's order prohibiting transfer of Petitioner to a facility outside of this district, the Southern District of New York or the

District of New Jersey[1] and has advised that Petitioner will not be transferred outside thereof prior to the Court's scheduled hearing on June 29, 2026. In the event Petitioner is transferred, this Office will promptly notify Petitioner's counsel. While detained at MDC, Petitioner's counsel may contact Deportation Officer ("DO") Alexander Thompson at Alexander.T.Thompson@ice.dhs.gov.

On or about December 5, 2023, Petitioner unlawfully entered the United States without admission or parole and without being inspected by an immigration officer. *See* Costakis Decl. ¶ 5. He was encountered by Customs and Border Protection ("CBP") on the same date. *Id.* ¶ 6. On December 8, 2023, CBP issued Petitioner a Notice to Appear ("NTA"), charging him as inadmissible, but that NTA was not filed with the Executive Office for Immigration Review ("EOIR"). *See Id.* ¶ 7. On the same date, Petitioner was released pursuant to an Order of Release on Recognizance. *See Id.* ¶ 8. On July 19, 2025, USCIS issued another NTA charging Petitioner as inadmissible, and that NTA was filed with EOIR on July 25, 2025. *Id.* ¶¶ 10, 11.

On May 4, 2026, Petitioner was arrested by the Nassau County Police Department ("NCPD") and charged with Grand Larceny in the Fourth Degree. *Id.* ¶ 13; *see also* Petition. On the same date, NCPD contacted ICE regarding Petitioner's arrest and to verify his identity. *Id.* ¶ 14. Record checks revealed that Petitioner was a citizen of Venezuela with no lawful immigration status in the United States. *Id.*

On May 4, 2026, ICE arrested Petitioner and cancelled his Order on Recognizance. *See Id.* ¶¶ 16, 17. Petitioner was detained pursuant to 8 U.S.C. § 1226(c)(1)(E). *See Id.* ¶ 25.[2] Petitioner's next master calendar hearing in Immigration Court is June 29, 2026 at 8:30 a.m. *See Id.* ¶ 22; Ex. G.[3]

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[1] Your Honor has also ordered that Petitioner not be removed from the United States pending the Court's further Order; ICE will comply with this Order as well but, even absent such Order, Respondents respectfully note that there is no administratively final order of removal for Petitioner.

[2] Respondents acknowledge that the facts of this case match the facts of the case *Materan v. Maldonado, Jr.*, 26-cv-3185 (Choudhury, J.). In that case, while petitioner Materan's crime – Grand Larceny in the 4th Degree, like Petitioner here – is one of the crimes enumerated under 8 U.S.C. § 1226(c)(1)(E), ICE initially determined that petitioner Materan would be detained under 8 U.S.C. § 1226(a), and processed him accordingly. Here, Petitioner was determined to be detained under 8 U.S.C. § 1226(c)(1)(E).

[3] The Declaration does not state that the hearing notice is an attachment, but the hearing notice is attached thereto as Exhibit G.

Respondents acknowledge that Petitioner's next Immigration Court hearing is scheduled for the same date on which the Court has scheduled a hearing. *See* Order. Because the immigration court hearing is scheduled for 8:30 a.m., Respondents do not anticipate an issue with producing Petitioner for both his immigration court appearance and the Court's hearing at 3:30 p.m.

The legal issues presented in this action concern whether Petitioner's detention violates his due process protections. The statutory basis for Petitioner's detention is 8 U.S.C. § 1226(c)(1)(E). The Court's holding in *Da Cunha v. Freden*, 25-3141-pr (2d Cir. Apr. 28, 2026)—that 8 U.S.C. § 1225(b)(2)(A) does not apply to aliens who are present in the United States after entering the country without inspection and admission, and who were not apprehended at or near the border at the time of entry—does not apply to this matter.

Respondents respectfully submit that the principal legal issues herein have already been briefed, and been considered by the Court, in *Sherika Wright v. Mullin, et al.*, No. 26-cv-2114 (Choudhury, J.). The Government acknowledges that the facts of this case are materially indistinguishable from those in *Wright*. Accordingly, the Government respectfully adopts the Government's opposition and supplemental memoranda of law in *Wright* (ECF Nos. 10 and 19).

Notwithstanding, Respondents note that since the *Wright* case was briefed, at least one Court has denied a habeas petition in which the Petitioner argued that detaining an alien under § 1226(c)(1)(E) based on an arrest and pending criminal charges, without a conviction, offends due process. *See Chavarria-Zepada v. Bondi*, No. 26-CV-1095 (ECF Entry dated May 8, 2026) (DeArcy Hall, J.).[4]

Nonetheless, to conserve judicial resources and to expedite the Court's consideration of this case, Respondents submit that the Court can decide this matter without further briefing or additional hearings. However, should the Court prefer to receive a memorandum of law in this matter, Respondents will file such a brief upon the Court's request. Notwithstanding their submission of this letter in lieu of a formal brief, Respondents reserve all rights, including the right to appeal.

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[4] The *Chavarria-Zepada* case was referred to in the supplemental memorandum filed in *Wright*. *See Wright,* No. 26-cv-2114, ECF No. 19, n. 1. At the time, plaintiff Chavarria-Zepada's petition was pending, but it has since been denied.

By way of an additional update to the *Wright* briefing, the Supreme Court has since granted certiorari in *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), *rehearing en banc denied*, 156 F.4th 171 (2d Cir. 2025), *cert granted*, No. 25-886 (June 15, 2026).

Respondents thank the Court for its consideration of this submission.

Respectfully submitted,

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