U.S. Department of Justice

United States Attorney
District of New Jersey
Civil Division

ALINA HABBA
ACTING UNITED STATES ATTORNEY

John T. Stinson
Assistant United States Attorney
Deputy Chief, Civil Division

401 Market Street, 4th Fl.
Camden, NJ 08101
john.stinson@usdoj.gov

main: (856) 757-5026
direct:(856) 757-5139

November 11, 2025

By ECF
Hon. Michael E. Farbiarz, U.S.D.J.
U.S. District Court for the District of New Jersey
Frank Lautenberg Post Office & U.S. Courthouse
2 Federal Square
Newark, NJ 07102

Re: *Mboup v. Cabezas*, No. 25-16882
Answer to the Amended Petition

Dear Judge Farbiarz:

This Office represents the Respondents in this § 2241 habeas matter. Pursuant to the Court's Text Order at ECF No. 10, we write in response to the Amended Petition (ECF No. 8). The Court should dismiss or transfer the Amended Petition

Petitioner filed the Amended Petition after the Court issued its November 3, 2025 Opinion and Order (ECF No. 4) resolving Petitioner's original Petition. The Court's Opinion directed Respondents to "file a letter on or before November 5 at 2:00pm indicating whether the Petitioner has, by that time, been afforded a bond hearing[.]" *Id*. Pursuant to that Opinion and Order, Petitioner received a bond hearing on November 4, 2025, where an Immigration Judge denied bond on jurisdictional grounds or, in the alternative, because she found Petitioner posed a flight risk. *See* ECF No. 9. Petitioner remains detained by ICE.

A. Immediate Release Is Not Appropriate

Petitioner argues that, because ICE did not conduct an "individualized pre-detention assessment" on October 21, 2025, he is entitled to immediate release. That is incorrect. The Court already found that Petitioner's detention without custody determination was improper, and the Court already granted relief—an order directing the Respondents to provide Petitioner with a bond hearing. ECF No. 4.

The judicial remedy to a due process violation is to order process, not to provide a grant of final relief. *See, e.g., German Santos v. Warden Pike Cnty. Corr. Facility*,

965 F.3d 203, 208-10 (3d Cir. 2020) (finding that a § 1226(c) detention that violated due process entitled the detainee to a bond hearing); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011) ("when detention becomes unreasonable, the Due Process Clause demands a hearing"); *Harris v. Herrey*, No. 13-4365 KM, 2013 WL 3884191, at *1 (D.N.J. July 26, 2013) ("If [§ 1226(a) detainee] requests, but is wrongfully denied, a bond hearing, he may ask this Court to order that such a hearing be held. After a bona fide bond hearing, the immigration judge might grant, or deny, release on bond."); *Morrison v. Elwood*, No. 12-4649 PGS, 2012 WL 5989456, at *4 (D.N.J. Nov. 29, 2012) (holding that an alien was wrongly detained under § 1226(c) when he should have been detained under a § 1226(a), and granting habeas relief by ordering that he receive an individualized bond hearing before an immigration judge).

Here, because the Court already ordered such process, and there is no basis for further relief, much less final relief in the form of release. *See Melgar-Melgar v. Green*, No. 16-1449 (KM), 2016 WL 3457004, at *2-3 (D.N.J. June 22, 2016) (refusing to grant further relief to a § 1226(a) detainee who received a bond hearing three months after he was detained); *Bolanos v. Green*, No. 16-4666 (MCA), 2017 WL 507227, at *2 (D.N.J. Feb. 7, 2017) (holding, regarding a § 1226(a) detainee, that he "has received the only relief this Court can provide to him—a bond hearing before an immigration judge"). The Court should not follow *Contreras Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at *7 (D.N.J. Oct. 23, 2025), where the district court granted immediate release for a perceived due process violation despite detainee having received an adequate bond hearing. That case involved particular facts and issues that do not exist here, including that the petitioner arrived as an unaccompanied minor fleeing persecution in her home country. *Id.* at *1.

B. Petitioner Cannot Challenge the Bond Hearing Outcome Here

This Court ordered that Respondents seek a bond hearing for Petitioner within 48 hours, and the immigration court provided one. Petitioner now argues that the two years he spent in the New York area prior to arrest demonstrate that he posed no flight risk, and the Immigration Judge's decision—denying bond based on flight risk—was based on insufficient factual grounds. Am. Pet. ¶¶ 52-58, 94-95. Petitioner should bring this up on appeal before the Board of Immigration Appeals ("BIA").

Immigration officers issued Petitioner a Notice to Appear just over two years ago. ICE is now moving forward with Petitioner's immigration case. The Court directed that ICE must view Petitioner "as detained under § 1226(a)." ECF No. 4. That statute permits that an alien like Petitioner "may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]"

The fact that Petitioner was released on personal recognizance in September 2023 did not create a "substantive due process" right to avoid future immigration detention—nor does Petitioner cite to authority supporting that idea. Further, while

Petitioner does not expressly ask the Court to overturn the Immigration Judge's denial of bond on November 4, 2025, the implication of Paragraphs 52-58 of the Amended Petition is that Petitioner was denied a fair review. That is incorrect on its face given that Petitioner admits he was represented by counsel who introduced evidence and argued for his release on bond. *Id*. Regardless, Petitioner reserved his administrative appeal of the bond denial to the BIA, as permitted by regulations. *See* 8 C.F.R. § 1003.19(f). He thus has an unexhausted administrative remedy to any concerns about the Immigration Judge's finding that he is a flight risk. There is no jurisdiction for him to seek further review from the Court before that appeal is complete. *Jean-Claude W. v. Anderson*, No. 19-16282 (KM), 2021 WL 82250, at *2 (D.N.J. Jan. 11, 2021) ("To have jurisdiction to consider whether [an alien] was denied due process, however, I must confirm that [the individual] has exhausted all available administrative remedies; if he has not, then I cannot review the merits of his claim."); *Bravo v. Green*, No. 16-4937 (JLL), 2017 WL 2268315, at *3 (D.N.J. May 24, 2017) ("Immigration detainees seeking review of their detention by a district court via a petition for a writ of habeas corpus are required to exhaust all available administrative remedies before pursuing a habeas petition.").

If Petitioner later seeks to challenge the outcome of the BIA appeal, he must pursue that through a new habeas petition. *Bolanos*, 2017 WL 507227 at *2, n.2 ("To the extent Petitioner seeks to bring a claim that he has been denied a *bona fide* bond hearing, he is free to file a new Petition for habeas corpus raising that claim after he exhausts all available administrative remedies, including appealing the denial of bond to the BIA.") (emphasis in original); *Garcia v. Knight*, No. 23-2789 (KMW), 2023 WL 4045087, at *3 (D.N.J. June 16, 2023) (finding that a BOP inmate "may file a new habeas petition once he completes the exhaustion process administratively to the extent such pursuits do not resolve his claims."). Any new petition should be brought in his current place of confinement. 28 U.S.C. § 2242.

C. The Court Already Decided the § 1225 Issue and any APA Analogue

Petitioner again argues that ICE improperly arrested and detained him under § 1225(b)(2). The Court already resolved that issue, however, rendering it moot. ECF No. 4. Respondents acknowledge the Court's ruling and merely reincorporate their arguments from their Answer at ECF No. 3 to preserve the issues for any appeal.

Petitioner also advances an argument under the Administrative Procedure Act ("APA"), arguing that the "Respondents' decision to detain [Petitioner] and suddenly subject him to mandatory detention under Section 1225(b)(2) as a result of their indiscriminate Canal Street operation, irrespective of [Petitioner's] prior release under Section 1226 or the individual circumstances of his case, is arbitrary and capricious and contrary to law." Because ICE detained Petitioner pursuant to the BIA decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), Respondents' actions with respect to him were not arbitrary and capricious. ICE was expected to

follow that BIA precedent in detaining Petitioner. "Agencies are under an obligation to follow their own regulations, procedures, and precedents, or provide a rational explanation for their departures." *Nat'l Conservative Pol. Action Comm. v. Fed. Election Comm'n*, 626 F.2d 953, 959 (D.C. Cir. 1980); *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1165 (10th Cir. 2002) (same). Irrespective, the Court's order directing that Petitioner receive a bond hearing and be deemed held under § 1226 provided the requested relief and thus rendered Petitioner's APA arguments moot.

D. The Court Lacks Habeas Jurisdiction Over Petitioner's Conditions-of-Confinement and Arrest Claims

Petitioner also makes various allegations regarding the lawfulness of his arrest and the conditions of his confinement. These are not justiciable in a habeas petition. The Court should dismiss these claims for lack of jurisdiction.

Habeas relief under 28 U.S.C. § 2241 "is clearly quite limited." *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002). It is traditionally available only "where the deprivation of rights is such that it necessarily impacts the fact or length of detention." *Id.* By contrast, a change in the location or type of custody is a "condition of confinement" not cognizable in habeas. *Cardona v. Bledsoe*, 681 F.3d 533, 537 (3d Cir. 2012). Accordingly, the Third Circuit limits immigration detainees from pursuing condition-of-confinement claims in habeas except where there are plausible allegations that outright release from custody is only remedy for uniquely unconstitutional conditions, such as "the extraordinary circumstances . . . in March 2020 because of the COVID-19 pandemic." *Hope v. Warden York County Prison*, 972 F.3d 310, 324-25 (3d Cir. 2020).

The traditional limits on habeas jurisdiction do not leave detainees without a remedy for wrongful conditions of confinement. Constitutional claims challenging "the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core and may be brought pursuant to [a civil complaint] in the first instance." *Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *see also Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001); *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010). Immigration detainees may also have remedies for money damages under the Federal Tort Claims Act ("FTCA") for the alleged malfeasance of federal officials.

Petitioner's allegations concerning his conditions of confinement do not rise to the extraordinary level that existed at the height of the COVID-19 pandemic, which means they are not cognizable in habeas.[1] For example, Petitioner asserts that

[1] The Supreme Court has never "delineated the circumstances that might qualify as 'exceptional'" warranting habeas jurisdiction for conditions-of-confinement claims

Respondents infringed on his speech and legal representation rights as retaliation for pursuing this action. Am. Pet. ¶ 125. The Amended Petition also contains allegations about conditions of confinement in detention in Louisiana which presumably relate to Petitioner's retaliation claim. Am. Pet. ¶¶ 46-50. However, even if the Court accepted those allegations at the pleadings stage, there are remedies short of release that could address the allegations, such as ordering access to counsel or the undoing of other specific conditions. Petitioner can and must bring his allegations regarding his confinement in a civil complaint where such relief is available.

Consistent with this conclusion, district courts routinely dismiss conditions-of-confinement claims brought in habeas. *See Folk v. Warden Schuylkill FCI*, No. 23-1935, 2023 WL 5426740, at *2 (3d Cir. 2023) (per curiam) (finding "conditions-of-confinement claim related to the conditions of the facilities or the lack of adequate medical care . . . non-cognizable" under § 2241); *Johnson v. Warden Canaan USP*, 699 Fed. App'x 125, 126 (3d Cir. 2017) (affirming District Court's reasoning that habeas corpus was "not an available remedy" because "Johnson was challenging the conditions of his confinement rather than the execution of his sentence"); *Simms v. Shartle*, No. 12-5012 RMB, 2012 WL 4506390, at *2 (D.N.J. Sept. 28, 2012) ("In addition, to the extent Petitioner wishes to assert claims alleging retaliation, denial of access to the courts, tampering with legal mail, violation of his Equal Protection rights, etc., *none* of these challenges can be litigated in the habeas proceedings at bar."). Thus, Court should dismiss Petitioner's First Amendment claims.

Likewise, the Court should dismiss Petitioner's challenges to the lawfulness of his arrest for lack of jurisdiction. He alleges that federal officers arrested him on Canal Street in New York without a warrant and sufficient probable cause. Am. Pet. ¶ 110. Petitioner can bring this Fourth Amendment challenge in immigration court, through a motion to suppress. *See, e.g., Oliva-Ramos v. Att'y Gen.,* 694 F.3d 259, 270-72 (3d Cir. 2012); *United States v. Mitra-Hernandez*, No. 20-1175, 2022 WL 205419, at *1 (3d Cir. Jan. 24, 2022). The Fourth Amendment can also support a claim in civil rights litigation. *See generally Argueta v. U.S. Immigration & Customs Enforcement,* 643 F.3d 60 (3d Cir. 2011) (addressing a claim under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971)). Or Petitioner may have recourse under the FTCA to sue the United States. Either way, his remedy does not lie in habeas.

---

involving convicted inmates. *Cf. Reese v. Warden Phila. FDC*, 904 F.3d 244, 246 n.2 (3d Cir. 2018) (discussing pretrial detainee); *see also Ziglar v. Abbasi*, 582 U.S. 120, 145 (2017) (noting that the Supreme Court has "left open the question whether [a detainee] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus" but that those "detainees may seek injunctive relief" through a civil complaint).

E. Transfer to Western District of Louisiana

In its Text Order, the Court asked Respondents to address "whether transfer of the petition to the Western District of Louisiana is lawful and appropriate, in light of the fact that a portion of the allegations of wrongdoing raised in the Amended Petition appear to relate to events that have taken place in Louisiana." ECF No. 10. This inquiry follows the Court's conclusion that it had jurisdiction over Petitioner's original Petition at ECF No. 1. *See* ECF No. 4, Opinion and Order at 1, n.2.

To the extent the Court does not dismiss any remaining claims for lack of jurisdiction, the Court should transfer the petition to the Western District of Louisiana. Petitioner is currently detained there. Thus, any additional habeas disputes belongs in that jurisdiction. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (holding that "for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement."). Further, to the extent the Court does not dismiss any of Petitioner's conditions-of-confinement claims, those claims involve a detention facility in the Western District of Louisiana, and the witnesses and evidence are in that district. Accordingly, Respondents respectfully request that the Court dismiss this matter for lack of jurisdiction or transfer it to the Western District of Louisiana.

Respectfully submitted,

TODD BLANCHE
U.S. Deputy Attorney General

ALINA HABBA
Acting United States Attorney
Special Attorney

By: /s/ *John T. Stinson*
JOHN T. STINSON
Assistant United States Attorney
Deputy Chief, Civil Division

cc: Counsel of Record