

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MODOU MBOUP,

Petitioner,

- against -

ALEXANDER CABEZAS, in his official capacity as Acting Assistant Field Office Director for the Newark Field Office for Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PAMELA JO BONDI, in her official capacity as Attorney General of the United States of America,

Respondents.

Civil No. 2:25-CV-16882

Hon. Michael E. Farbiarz,
U.S.D.J.

**REPLY IN FURTHER SUPPORT OF PETITIONER MODOU MBOUP'S
AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

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Petitioner Modou Mboup (“Modou”) respectfully submits this reply in further support of his Amended Petition for Writ of Habeas Corpus (ECF No. 8) (“Amended Petition” or “Am. Pet.”) and in response to Respondents’ Answer to the Amended Petition (ECF No. 13) (“Ans.” or “Answer”).¹

INTRODUCTION

In connection with Modou’s Original Petition—which he filed *pro se*—this Court correctly determined that Modou is “held under § 1226” and that he “is entitled to habeas relief.” *Mboup v. Field Off. Dir. of New Jersey Immigr. & Customs Enf’t*, No. 2:25-CV-16882, 2025 WL 3062791, at *2 (D.N.J. Nov. 3, 2025). The Court reserved decision on the specific form of relief, however, noting that “[w]hat that habeas relief might ultimately amount to is unclear.” *Id.*

Shortly thereafter, Modou filed his Amended Petition clarifying the bases of his claims for habeas relief, including that he was entitled to an individualized assessment prior to his re-detention, and setting forth the law supporting his request for immediate release. Respondents’ Answer does nothing to rebut either point.

Indeed, Respondents do not dispute that, because Modou was detained under Section 1226, the Due Process Clause required that he be provided an individualized assessment of his flight risk and danger *before* Respondents re-detained him.

¹ Capitalized terms not defined herein shall have the same meaning as in the Amended Petition.

Likewise, Respondents do not dispute that they failed to provide Modou with the requisite individualized assessment. Nor could they. Modou was swept up in a raid targeting West African street vendors, even though he was not one and was not engaging in street vending activities.

Instead, Respondents mischaracterize the Court's Order and argue that, because Respondents hastily held a bond hearing after the Court issued its Order, any pre-arrest deprivation of due process was cured. The law provides otherwise. As recently explained by Judge Semper, a bond hearing held post-detention "does not rectify the lack of individualized determination at the time of arrest." *Contreras Maldonado v. Cabezas*, No. 25-CV-13004, 2025 WL 2985256, at *5 (D.N.J. Oct. 23, 2025). As such, immediate release is the appropriate remedy.

Additionally, Respondents suggest that the Court does not have jurisdiction here and should transfer the case to the Western District of Louisiana. Again, Respondents are wrong. The Court previously held that it had habeas jurisdiction over the Original Petition, even after Modou was moved out of New Jersey. *Mboup*, 2025 WL 3062791, at *1 n.2. Accordingly, the Court maintains jurisdiction over this proceeding even though an Amended Petition was filed. Further, because Modou's claims do not challenge his conditions of confinement or the substance of his bond hearing in Louisiana, there is no basis to transfer his case based on the allegations in the Amended Petition.

In sum, and for the reasons more specifically set forth below, this Court should retain jurisdiction over Modou’s Amended Petition and order his immediate release.

ARGUMENT

I. IMMEDIATE RELEASE IS THE ONLY APPROPRIATE REMEDY FOR RESPONDENTS’ PRE-DEPRIVATION VIOLATION OF MODOU’S DUE PROCESS RIGHTS.

Respondents advance two arguments for why the Court should not order Modou’s immediate release. Both fall flat.

First, Respondents assert that the Court “already granted relief” by entering “an order directing the Respondents to provide Petitioner with a bond hearing[.]” and that, because the Court already “ordered such process, . . . there is no basis for further relief[.]” Ans. at 1–2. Not so.

The Order required Respondents to promptly “file a letter . . . indicating whether the Petitioner has, by that time, been afforded a bond hearing in accordance with § 1226(a), and if not, why not.” *Mboup*, 2025 WL 3062791, at *2. The Order did not hold that providing such a bond hearing would conclusively resolve Modou’s claim. Rather, the Court explained that, “*at a minimum*,” Respondents are required to treat Modou “as detained under § 1226(a)[.]” and the Court expressly *reserved* on the issue of relief, holding that “[w]hat that [habeas] relief might ultimately amount

to is unclear.” *Mboup*, 2025 WL 3062791, at *2 (emphases added).² As such, Respondents’ argument that relief has already been awarded is incorrect.

Second, Respondents contend that Modou’s November 4, 2025 bond hearing retroactively cured their violation of Modou’s due process right to a pre-detention individualized determination, and that no further relief is warranted. Ans. at 1–2. Again, not so.

Because Modou’s detention is governed by Section 1226(a), *Mboup*, 2025 WL 3062791, at *2, the Due Process Clause required that Respondents provide Modou with an individualized assessment before he was detained. *See Contreras Maldonado*, 2025 WL 2985256, at *6 (“The Court therefore finds that Petitioner’s due process rights were violated when she was detained without an individualized determination under § 1226(a) and its implementing regulations.”); *see also* Am. Pet. ¶ 73 (collecting cases requiring individualized assessment prior to detention). And, as other courts in this District have held, because Respondents did not conduct the required assessment *before* detention, the appropriate remedy is immediate

² Because the Order left the appropriate relief undecided, and because the Court has not passed on the claims in the Amended Petition, this case is not moot as Respondents suggest, Ans. at 3. *See Schall v. Joyce*, 885 F.2d 101, 105 (3d Cir. 1989) (plaintiff’s receipt of “partial relief” in the form of a hearing did not render lawsuit moot); *Interfaith Cmty. Org., Inc. v. PPG Indus. Inc.*, 702 F. Supp. 2d 295, 301 (D.N.J. 2010) (quoting *Calderon v. Moore*, 518 U.S. 149, 150 (1996)) (“Even the availability of a ‘partial remedy,’ one that is not ‘fully satisfactory,’ avoids mootness.”).

release from custody. *Contreras Maldonado*, 2025 WL 2985256, at *7; *Rivera Zumba v. Bondi*, No. 25-CV-14626, 2025 WL 2753496, at *10–*11 (D.N.J. Sept. 26, 2025) (Hayden, J.). This Court should follow suit.

Respondents’ effort to distinguish *Contreras Maldonado* is unavailing. Indeed, the “perceived due process violation” at issue in *Contreras Maldonado*, Ans. at 2, is the same due process violation at issue here: Respondents improperly detained petitioner pursuant to Section 1226(a) without conducting the pre-detention individualized assessment to which petitioner was entitled under the Due Process Clause, *Contreras Maldonado*, 2025 WL 2985256, at *6. Additionally, the “particular facts and issues” in *Contreras Maldonado*, including that the petitioner “arrived as an unaccompanied minor fleeing persecution in her home country,” Ans. at 2, were not cited as the basis for the court’s decision, nor noted as relevant to its grant of immediate release, *see generally Contreras Maldonado*, 2025 WL 2985256.

Moreover, *Contreras Maldonado* does not stand alone: numerous courts, in this District and beyond, have determined that, irrespective of individualized facts and circumstances, where a petitioner is detained pursuant to Section 1226(a), release is the appropriate remedy for a pre-detention deprivation of due process. *See, e.g., Rivera Zumba*, 2025 WL 2753496 at *10–*11; *Bermeo Sicha v. Bernal*, No. 25-CV-00418, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025), *appeal filed*, No. 25-CV-2062 (1st Cir. Nov. 3, 2025); *E.A. T-B. v. Wamsley*, No. 25-CV-1192, 2025

WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Savane v. Francis*, No. 25-CV-6666, 2025 WL 2774452, at *10 (S.D.N.Y. Sept. 28, 2025); *Munoz Materano v. Arteta*, No. 25-CV-6137, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025). Meanwhile, the cases that Respondents rely upon to argue against release, Ans. at 1–2, are entirely inapposite. None address the failure to provide a pre-deprivation individualized assessment and none support Respondents’ assertion that release is not a proper habeas remedy here.

Finally, the remedy of immediate release is all the more appropriate given that Modou was *re*-detained after previously being released on his own recognizance by U.S. Customs and Border Protection (“CBP”) pursuant to its authority under Section 1226. Am. Pet. ¶ 22; ECF No. 8-4. Respondents have failed to identify—much less establish—any changed circumstances that would warrant the revocation of CBP’s prior custody determination. *See generally* Ans. Thus, Modou’s immediate release is the proper remedy. *See, e.g., Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *1, *4 (S.D.N.Y. Aug. 15, 2025) (ordering immediate release based on violation of petitioner’s due process rights where he was re-arrested without notice, opportunity to respond, or showing of changed circumstances); *Valdez v. Joyce*, No. 25-CV-4627, 2025 WL 1707737, at *1, *4 (S.D.N.Y. June 18, 2025) (ordering immediate release where noncitizen, previously released on

recognizance, was re-arrested after appearance in immigration court with no explanation for re-detention); *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528, 2025 WL 1927931, at *1, *3–*4 (S.D.N.Y. July 13, 2025) (similar); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at *13, *19 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (similar). Indeed, anything less than immediate release would condone Respondents’ refusal to provide the requisite pre-detention process and deprive Modou of his rights under the Due Process Clause of the Constitution.

II. THIS COURT HAS JURISDICTION OVER THE CLAIMS IN THE AMENDED PETITION, AND THERE IS NO BASIS FOR TRANSFER TO THE WESTERN DISTRICT OF LOUISIANA.

Respondents contend that “the Court should transfer the petition to the Western District of Louisiana” because “Petitioner is currently detained there.” Ans. at 6. However, Modou was already detained in Louisiana when the Court held that, because “Petitioner was physically present in New Jersey when the habeas petition was filed on October 23 . . . [t]hat establishe[d] habeas jurisdiction, and *the Court keeps that jurisdiction regardless of whether the Petitioner was later moved.*” *Mboup*, 2025 WL 3062791, at *1 n.2 (emphasis added) (citing *Khalil v. Joyce (Khalil II)*, 777 F.Supp.3d 369, 410 (D.N.J. Apr. 1, 2025)). Moreover, the filing of the Amended Petition (which primarily clarified claims originally filed *pro se*) after Modou was transferred out of the District does not divest the Court of jurisdiction.

See, e.g., Khalil II, 777 F.Supp.3d at 410; *Öztürk v. Hyde*, 136 F.4th 382, 394 (2d Cir. 2025).

Furthermore, the substance of Modou’s claims does not support transfer to the Western District of Louisiana. While Modou’s conditions of confinement and bond hearing are described in the Amended Petition, Modou does not assert a conditions-of-confinement claim or a claim that what occurred at his bond hearing was constitutionally deficient. Rather, the Amended Petition challenges the (lack of) process leading up to Modou’s detention in New Jersey and his transfer from the District as a form of retaliation for filing his Original Petition.³

Additionally, Respondents argue that Modou’s First and Fourth Amendment claims “are not justiciable in a habeas proceeding.” Ans. at 4. They are wrong. Respondents cite no authority supporting their assertion that Modou “can and must” bring his First Amendment allegations in a civil complaint rather than in habeas. Ans. at 5. To the contrary, this Court has previously entertained First Amendment challenges in a habeas proceeding. *See generally Khalil v. Joyce*, 780 F.Supp.3d

³ While the latter is a new claim, the Court may still exercise jurisdiction without transferring the petition to the Western District of Louisiana. *See, e.g., Khalil v. Joyce*, 771 F.Supp.3d 268, 290 (S.D.N.Y. 2025) (“Given that Khalil must litigate his core claims in New Jersey, it would be both more convenient for all involved and in the interests of justice for the New Jersey court to resolve any non-core claims that he may bring as well.”) (cleaned up). Should the Court disagree, however, Modou asks that the Court dismiss or decline to rule on his First Amendment claim in lieu of transferring his petition to the Western District of Louisiana on that basis.

476 (D.N.J. Apr. 29, 2025); *Khalil II*, 777 F.Supp.3d 369; *see also Öztürk*, 136 F.4th 382; *Bello-Reyes v. Gaynor*, 985 F.3d 696 (9th Cir. 2021). Likewise, several recent district court cases have permitted Fourth Amendment claims to proceed in the context of habeas petitions. *See, e.g., Munoz Materano*, 2025 WL 2630826, at *17 (permitting Fourth Amendment claim in habeas petition challenging ICE detention); *Rosado*, 2025 WL 2337099, at *16–*18 (considering Fourth Amendment claim as part of habeas petition and ordering petitioner’s immediate release).⁴

In sum, the nature of the claims brought and relief sought in the Amended Petition do not require transfer. Rather, consistent with this Court’s precedent, this Court retains jurisdiction to adjudicate what Modou asserts are continuing violations stemming from his arrest and unlawful detention. Moreover, the equities favor maintaining jurisdiction in this District, given that Modou was confined within this District at the time his Original Petition was filed and the Court is already familiar with the law and facts relevant to this action. *See Khalil II*, 777 F.Supp.3d at 408 (noting that “[p]er the Supreme Court, courts must apply the habeas statute with an eye to the underlying equitable nature of the writ”) (collecting cases); *Öztürk v. Trump*, 777 F.Supp.3d 26, 42 (D. Mass. 2025) (similar). Judicial economy and

⁴ Even if Respondents are correct that Modou could assert a Fourth Amendment claim in various other forums, Ans. at 5, Respondents provide no authority that he is required to do so, or that he is prohibited from bringing a Fourth Amendment claim in this proceeding.

matters of equity thus militate in favor of this Court declining to transfer Modou's case.

CONCLUSION

In light of Respondents' violations of Modou's due process and First and Fourth Amendment rights, Modou should be released from detention immediately.

Dated: New York, New York
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