U.S. Department of Justice

United States Attorney
Eastern District of New York

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Brooklyn, New York 11201

February 6, 2026

By ECF

Honorable Hector Gonzalez
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Ndiaye v. Francis, et al.*
Civil Action No. 26-cv-00069 (HG)

Dear Judge Gonzalez:

This letter is respectfully submitted in accordance with Your Honor's Order dated January 23, 2026 ("Order"), on behalf of Respondents LaDeon Francis, Acting Field Office Director, Immigration and Customs Enforcement ("ICE"), Kristi Noem, Secretary of Homeland Security ("DHS"), and Pamela Bondi, United States Attorney General, and in response to Petitioner's motion to clarify the Memorandum & Order dated January 14, 2026 ("Decision"). As discussed below, the Decision is silent as to the disputed issue, and Respondents agree that clarification of the Decision would be appropriate.

Background

Petitioner Issa Ndiaye, a citizen of Guinea, unlawfully entered the United States in February 2024 and was placed in removal proceedings. *See* ECF Doc. No. 7 at 2. In June 2025, he was arrested by Immigration and Customs Enforcement ("ICE"). *See id.* As of the filing of his petition for a writ of habeas corpus pursuant 28 U.S.C. § 2241 on January 6, 2026, Petitioner was being detained at the Metropolitan Detention Center in Brooklyn, New York. *See id.*

In the Decision, Your Honor granted the habeas petition and directed Petitioner's immediate release from custody. ECF Doc. No. 8. The Decision further ordered that "Petitioner shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where Respondents have the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a)." Decision at 6.

Petitioner was released from custody at 1:30 p.m. on January 14, 2026. *See* ECF Doc. No. 9. On January 23, 2026, Petitioner filed a letter contending that Respondents had "imposed new restraints on his liberty—namely a GPS ankle monitoring device" that "constitutes a form of ongoing custody that contravenes this Court's Order." ECF Doc. No. 11 at 1. As the parties were

unable to resolve the issue, Petitioner sought a court order clarifying the Decision pursuant to Rule 60(a) of the Federal Rules of Civil Procedure. *Id.* at 1. Petitioner requests that the Court "explicitly order Respondents to remove his GPS ankle monitor and to refrain from imposing any conditions beyond those that existed at the time of his arrest on June 23, 2025." *Id.* at 2.

The Order directs the government to file a responsive letter that provides its position regarding Petitioner's request. It also directs the government to address whether Judge Furman's analysis in *Khabazha v. United States Immigration and Customs Enforcement*, No. 25-cv-5279, 2025 WL 321514 (S.D.N.Y. Nov. 25, 2025) ("*Khabazha*"), is applicable to the instant motion. In that decision, Judge Furman rejected the respondents' arguments that because Khabazha was no longer physically in the custody of immigration officials, he was not "in custody." 2025 WL 321514, at *3. He held that Khabazha was "in custody" because he was subject to multiple conditions of release including wearing an ankle monitor and checking in at regular intervals. *Id.*

Respondents' Response to Petitioner's Post-Release Motion

Respondents do not oppose Petitioner's request for clarification of the Decision. However, Respondents do not agree with Petitioner's assertion that they have contravened the Decision. Although the Decision ordered Petitioner's release from custody, it did not specifically prohibit Respondents from requiring Petitioner to wear an ankle monitor or impose any other condition. The Decision precluded Respondents only from re-detaining Petitioner without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker.

Respondents contend that Petitioner has an available remedy. He may seek amelioration of the condition of his release (*i.e.*, the ankle monitor) pursuant to 8 C.F.R. § 236.1(d), should he choose to do so. Nevertheless, if Your Honor were to adopt the reasoning of *Khabazha* and clarify the Decision and direct removal of the ankle monitor, Respondents will comply.

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

Respectfully submitted,

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