

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IMBRAHIMA MBODJ,	:	
	:	
Petitioner,	:	Civil Action No. 26-0263
	:	
v.	:	
	:	
WARDEN OF FDC PHILADELPHIA,	:	
<i>et al.</i> ,	:	
	:	
Respondents.	:	

RESPONSE TO PETITIONER’S STATUS REPORT

Respondents submit the following in response to Petitioner’s concerns about the bond hearing he was provided on January 27, 2026. Per Order dated January 23, 2026, (ECF No. 6), the Court ordered Respondents to provide Petitioner a bond hearing in accordance with 8 U.S.C. § 1226(a). On January 27, 2026, the Immigration Judge (IJ) held the bond hearing and denied bond after finding Petitioner to be a flight risk. *See* Exhibit A. The IJ’s order is subject to judicial review via an administrative appeal to the BIA. *See* 8 C.F.R. 236.1(d)(3). Accordingly, because Petitioner was already afforded a bond hearing and can seek review of his custody determination with the BIA, the Court should deny his request for release.

Section 1226(a) provides that the Attorney General “may” issue a warrant for the arrest and detention of an alien pending a decision on whether the noncitizen is to be removed. Provided the alien is not subject to mandatory detention under § 1226(c), the Attorney General, through the DHS district director, makes an initial

custody determination as to whether it should detain an alien pending completion of the removal proceedings, or whether it should release the noncitizen on bond. *See* 8 C.F.R. § 236.1(e). If the district director denies bond and the alien is not subject to an administratively final order of removal, the alien may seek his release by requesting an initial bond redetermination hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d), 1003.19. An alien may appeal an IJ's decision on a bond redetermination to the BIA. *See* 8 C.F.R. § 236.1(d)(3). The BIA's decision to detain or release an arrested alien on bond is discretionary and is not subject to judicial review. 8 U.S.C. § 1226(e).

Numerous courts, including the Supreme Court, have looked favorably on the procedures governing § 1226(a). For example, the Third Circuit rejected a due process challenge to detention under section 1226(a). *See Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274 (3d Cir. 2018). In *Borbot*, a habeas petitioner argued that, based on the *length* of his detention under § 1226(a)—over one year—he was constitutionally entitled to a second bond hearing at which the Government would bear the burden of proof. *Id.* at 276–77. The Third Circuit rejected petitioner's argument, which relied on cases involving prolonged detention under the mandatory detention statute at 8 U.S.C. § 1226(c) and noted that, “unlike § 1226(c) detainees . . . who were detained for prolonged periods without being given any opportunity to apply for release on bond, [petitioner] *was granted meaningful process* prior to filing his habeas petition.” *Id.* at 279 (emphasis added). The Third Circuit's central holding was that no additional procedures were required because

the existing procedures for bond hearings under § 1226(a) are constitutionally adequate. *Id.* at 278–79. The Third Circuit specifically noted that “*Borbot* was afforded a prompt bond hearing, *as required by § 1226(a) and its implementing regulations*,” and it was on this basis that the court concluded he was “granted meaningful process.” *Id.* (emphasis added). *Borbot* thus stands for the proposition that section 1226(a) and its implementing regulations fully satisfy the requirements of due process.

Here, Respondents provided Petitioner the same type of process that was afforded to the petitioner in *Barbot*. Respondents provided Petitioner a bond hearing during which his counsel had the opportunity to present evidence in support of his argument that he should be released on bond. After considering that evidence, testimony, and the arguments of both parties, the immigration judge denied bond, finding Petitioner failed to meet his burden. If Petitioner disagrees with the IJ’s custody determination, he can and should file an appeal of that determination with the BIA rather than seek relief with this Court. Petitioner’s appeal—if timely made—will be heard by the Board of Immigration Appeals (BIA) in accordance with the applicable regulatory framework. *See, e.g.*, 8 CFR § 1003.3.

Petitioner argued in his status report that further proceedings in the immigration courts would be “futile.” *See Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3rd Cir. 1988) (“Exhaustion is not required if administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be

inadequate to prevent irreparable injury”). Petitioner has not even attempted to show that exhaustion would be futile because the agency “clearly and unambiguously” violated his statutory or constitutional rights. Petitioner has also not clearly shown that the administrative procedure (here an appeal to the BIA) is inadequate to prevent irreparable injury. In fact, plaintiff does not offer any reason why his detention awaiting BIA appeal would cause irreparable injury. Accordingly, because Petitioner was afforded a constitutionally adequate bond hearing with the opportunity to seek review with the BIA, this Court should deny Petitioner’s request to be released.

Dated: January 24, 2026

Respectfully submitted,

DAVID METCALF
United States Attorney

/s/ Colin Cherico
COLIN M. CHERICO
Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476
(215) 861-8788
Colin.Cherico@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and correct copy of the foregoing Stipulation for Transfer of Petitioner was filed electronically and is available for viewing and downloading from the ECF system.

Dated: January 24, 2026

/s/ Colin Cherico
Assistant U.S. Attorney

EXHIBIT A



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT

Respondent Name:

MBODJ, IBRAHIMA

To:

Creech, Laetitia Boisson
1835 Market Street
Suite 2710
Philadelphia, PA 19103

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

01/27/2026

Unable to forward - no address provided.

Attached is a copy of the **decision of the Immigration Judge**. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

Board of Immigration Appeals
Office of the Clerk
P.O. Box 8530
Falls Church, VA 22041

Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242B(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252B(c)(3) in deportation proceedings or section 240(b)(5)(c), 8 U.S.C. § 1229a(b)(5)(c) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:

Immigration Court

Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available.

Attached is a copy of the decision of the immigration judge relating to a **Credible Fear Review**. This is a final order. No appeal is available.

Other:

Date: 01/27/2026

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned to the right of the date.

Immigration Judge: MULLICAN, LEILA 01/27/2026

Certificate of Service

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Via: Mail | Personal Service | Electronic Service | Address Unavailable

To: Alien | Alien c/o custodial officer | Alien atty/rep. | DHS

Respondent Name : MBODJ, IBRAHIMA | A-Number : 241-701-440

Riders:

Date: 01/27/2026 By: ARANGO, HAROLD, Court Staff



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELIZABETH IMMIGRATION COURT**

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1835 Market Street
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Riders:

In Custody Redetermination Proceedings

Date:

01/27/2026

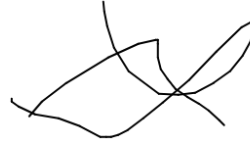
ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because
Flight risk

Granted. It is ordered that Respondent be:
 released from custody on his own recognizance.
 released from custody under bond of \$
 other:

Other:



Immigration Judge: MULLICAN, LEILA 01/27/2026

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due: 02/26/2026

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : MBODJ, IBRAHIMA | A-Number : 241-701-440

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