



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

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February 9, 2026*

By ECF

Honorable Ann M. Donnelly
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Re: *Sumit Sumit v. Maldonado, et al.*
Civil Action No. 26-cv-0650 (Donnelly, J.)

Dear Judge Donnelly:

This Office respectfully submits this letter brief¹ on behalf of the Respondents in accordance with the Court's Orders and in response to the petition for issuance of a habeas writ filed by Khushi Ram ("Petition").² Attached to this response are a Notice to Appear dated November 30, 2023 (Exhibit A); a Warrant of Arrest dated November 30, 2023 (Exhibit B); a Notice of Custody Determination dated November 30, 2023 (Exhibit C); an Order of Release on Recognizance dated November 30, 2023 (Exhibit D); a Form I-213 Record of Deportable/Inadmissible Alien dated November 30, 2023 (Exhibit E); a Cancellation of Order of Removal dated November 14, 2025 (Exhibit F); a Warrant for Arrest dated November 14, 2025 (Exhibit G); a Form I-213 Record of Deportable/Inadmissible Alien dated November 14, 2026 (Exhibit H); a Notice About Section 236(a) Initial Detention Decisions (Exhibit I); and a Property Receipt (Exhibit J).³

Facts

The Petition alleges that Petitioner entered the United States by crossing the border without inspection on or about November 29, 2023 and that he has not left the country since. Petition at ¶1. The Petition further alleges, among other things, that the Petitioner was detained by ICE on November 14, 2025. Petition at ¶2.

¹ While reserving all rights, including the right to appeal, Respondents submit this brief in lieu of a memorandum of law to conserve judicial and party resources, and to expedite the Court's consideration of this case, in light of this Court's decision on the principal legal issues in *Ye v. Maldonado*, No. 25-cv-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) ("*Ye*"). With leave of the Court, the Respondents incorporate all arguments made in the Government's opposition memorandum in *Ye*, 25-cv-6417, ECF No. 8.

² This Office apologizes for the hour of this filing and request leave to file nunc pro tunc.

³ Information has been redacted from some documents for privacy reasons.

ICE records indicate that the Petitioner, a native of India, entered the country without being admitted or paroled, was arrested pursuant to warrant issued November 30, 2023, and issued a Notice to Appear (“NTA”). *See* Exhibits A and B. The NTA charged that Petitioner was inadmissible pursuant to § 212 (a)(6)(A)(i) of the Immigration and Naturalization Act (“INA”). Petitioner was then released on his own recognizance after a custody determination. *See* Exhibits C and D; *see also* Exhibit E. Petitioner was arrested again on November 14, 2025 after his Order of Release was revoked. *See* Exhibits F and G; *see also* Exhibit H. He was provided with a notice concerning Section 236(a) Initial Determinations that day as well. *See* Exhibit I.

Petitioner’s Claims

In brief, Petitioner asserts claims based on alleged Fifth Amendment due process violations (*see* Petition, Counts One and Two, at 6-8) and violation of the Administrative Procedure Act (*see* Petition, Count Three, at 8). Petitioner asks that the Court he be immediately released from custody. Petition at 8-9.

Ye v. Maldonado

On December 8, 2025, this Court issued a decision on the principal legal question presented in this action in a similar habeas case challenging an alien’s re-detention after prior release on an order of recognizance. The Court concluded that the petitioner, who was initially detained after crossing the border in 2023, served with an arrest warrant referencing 8 U.S.C. § 1226, and released on an order of recognizance that also referenced § 1226, and who was arrested again in October 2025, was detained pursuant to § 1226 and not, as ICE contended, § 1225 as an applicant for admission.⁴ *Ye v. Maldonado*, 2025 WL 3521298, at *1, *5-6. The Court relied on its interpretation of the language of the two provisions and of the broader statutory scheme, as well as the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Id.* at *4-5. The Court also considered relevant the fact that the Government’s records relating to the petitioner’s arrest cited 8 U.S.C. § 1226.⁵ *Id.* at *5. The Court also stated that it was persuaded by the reasoning

⁴ Specifically, ICE contended that the petitioner’s detention was governed by 8 U.S.C. § 1225(b)(2)(A) because, as an alien who entered without inspection or parole, and who was initially detained after crossing the border, he was an applicant for admission who is treated, for constitutional purposes, as if stopped at the border. As such, he would not be entitled to release or a bond hearing that is a feature of detentions under 8 U.S.C. § 1226(a), which applies only to already admitted aliens, such as those who entered on visas but overstayed. *See Ye v. Maldonado*, No. 25-cv-6417 (AMD), ECF No. 8, at 7–13 (Resp’s Mem. Law Opp.).

⁵ The Government respectfully disagrees that its prior release of petitioner in *Ye* under Section 1226 is controlling. Another court in this Circuit recently rejected the proposition that “if one presidential administration fails to enforce a statute, the next administration cannot enforce it, even though the statute clearly applies, according to its plain terms, and no promises not to enforce it have been made.” *Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855, at *7 (S.D.N.Y. Dec. 4, 2025), *notice of appeal filed Dec. 16, 2025*; *see also Liang v. Almodovar*, No. 25-cv-9322, at *8 (S.D.N.Y. Dec. 15, 2025) (rejecting proposition that “prior Administration’s decision to catch and then release Petitioner into the interior under Section 1226 means that the current Administration has ‘relinquished the authority[]’ . . . to apply Section 1225 according to its plain terms.”).

of the large number of courts considering similar petitions that have rejected the government's position. *Id.* at *3-4.

Having concluded that the petitioner's detention was governed by § 1226, the Court conducted the three-part due process analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), concluding that detention of the petitioner without process violated his due process rights. *Id.* at *7-8. The Court further held that, even if Section 1225 applied, petitioner's detention violated his due process rights because the government did not follow the regulatory procedures required to revoke parole pursuant to 8 U.S.C. § 1182. *Id.* The Court granted the petition and directed the government to release petitioner from custody within 24 hours and to return to petitioner any property seized at the time of his arrest. *Id.* at *9.

Discussion

The Respondents acknowledge that the Petitioner's claims are similar to those asserted in *Ye*. While the Respondents respectfully disagree with the Court's decision in *Ye*, they acknowledge that the decision would control the result in this case if the Court adheres to that decision. The same is true with respect to the decision in *O.F.B. v. Maldonado*, No. 25-cv-6336, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) (Gonzales, J.)

The Respondents suggest that the Court should not do so in view of recent decisions by several courts including *Arana v. Arieta*, No. 26-cv-240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.); *Lopez v. Noem*, No. 26-cv-345, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.); *Chen v. Almodovar, et al.*, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (Cronan, J.); *Chen v. Almodovar*, No. 25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.), appeal filed Dec. 16, 2025, No. 25-3169 (2d Cir.); and *Candido v. Bondi*, No. 25-cv-867 (Sinatra, J.), 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025), appeal filed Dec. 16, 2025, No. 25-3159 (2d Cir.).

The Respondents urge the Court to reconsider the reasoning of these decisions. In doing so, they note that these and other decisions, which have found that petitioners were subject to mandatory detention, square with the conclusion of the first court of appeals decision on point, *Buenrostro-Mendez v. Bondi*, No.25-20496, -- F.4th --, 2026 WL 323330 (5th Cir. Feb. 6, 2026).

Lastly, the Court should dismiss Petitioner's APA claim. The limited waiver of sovereign immunity in the APA is only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Petitioner has availed himself of an adequate remedy, specifically, a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *See Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, and the APA, is the proper vehicle here.").

The Respondents thank the Court for its consideration of their arguments.

Respectfully submitted,
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Exhibits to Respondents' Letter Brief