U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

March 2, 2026

Honorable Nusrat J. Choudhury
United States District Court Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *Carreno v. Bondi, et al.*, 26-cv-1180 (NJC)

Dear Judge Choudhury:

This Office represents the Respondents in the above-captioned case in which Petitioner Andres Efrain Cedeno Carreno ("Petitioner") filed a petition for a writ of habeas corpus on March 1, 2026 challenging his detention by Immigration and Customs Enforcement ("ICE"). *See* Docket Entry No. 1. Respondents respectfully submit this letter pursuant to the Stay of Removal and Order to Show Cause entered on March 1, 2026. Docket Entry No. 3.

Petitioner is a native of Ecuador and entered the United States on or about June 20, 2024, on a B2 Visitor Visa (the "Visa"). Pursuant to the Visa, Petitioner was authorized to remain in the United States until December 19, 2024 but failed to depart the United States as required. He was arrested and detained on February 27, 2026 pursuant to Immigration and Nationality Act section 237(a)(1)(B). Attached hereto are the Form I-200 Warrant of Arrest, dated February 27, 2026, the Form I-862 Notice to Appear ("NTA"), dated February 27, 2026 and the Form I-286 Notice of Custody Determination, dated February 27, 2026. Petitioner has been assigned A number [redacted]. The undersigned has conferred with agency counsel for ICE who has informed that Petitioner was detained by ICE on February 27, 2026 and, at present, is detained at Delaney Hall Detention Facility ("DHDF") in Newark, New Jersey. Petitioner has not been detained at the Central Islip, New York federal courthouse and, as of the filing of this letter, there is no indication that he will be detained there other than as required to produce him for the March 3, 2026 hearing at 12 p.m. ICE has been made aware of the Court's order prohibiting transfer of Petitioner to a facility outside of this district, the Southern District of New York or the District of New Jersey and has advised that he will not be transferred outside thereof prior to the Court's scheduled hearing at 12 p.m. on March 3, 2026. While Petitioner is detained at DHDF, Petitioner's counsel may contact Deportation Officer Imani Montgomery at Imani.J.Montgomery@ice.dhs.gov.

The statutory basis for detaining Petitioner is 8 U.S.C. § 1226(a). The legal issues presented concern whether Petitioner's detention violates his due process protections, and the statutory authority for ICE's detention of Petitioner. Petitioner seeks an order from this Court directing Respondents to release him from detention or, at a minimum, provide Petitioner with a "prompt individualized bond hearing before an immigration judge". Docket Entry No. 1 at p. 9, Request

for Relief. While reserving all rights, including the right to appeal, the government submits this letter in lieu of a formal responsive 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 *Rodriguez-Acurio v. Almodovar*, No. 25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) ("*Acurio*"), in which the Court, finding detention based on 8 U.S.C. § 1226(a), released the petitioner where, *inter alia*, there was no pre-detention notice and opportunity for the petitioner to be heard. *See also Gopie v. Lyons, et al.*, No. 25-cv-5229, 2025 WL 3167130, at *3-*4 (E.D.N.Y. Nov. 13, 2025)(SJB) (releasing petitioner because, *inter alia*, a custody determination must be made prior to, or contemporaneous with, the detention).

While the government respectfully disagrees with the decisions in *Rodriguez-Acurio* and *Gopie*, Respondents acknowledge that these opinions would control the result in this case if the Court adheres to those decisions.

In the Immigration and Nationality Act, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. Section 1226 "generally governs the process for arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section 1226(a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). When an alien is taken into ICE custody under § 1226(a), an ICE official makes the initial custody determination. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1). Per regulations, an ICE officer may "in the officer's discretion, release an alien . . . provided that the alien demonstrates to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8); 8 C.F.R. § 1236.1(c)(8).

The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. §§ 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for anyone's arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions"). Here, Petitioner is currently in removal proceedings and ICE exercised its discretion in making the initial custody determination as prescribed by 8 U.S.C. § 1226(a).

Respondents note that several decisions in this Circuit have dismissed petitions similar to Petitioner's here, holding that "to the extent [a petitioner] wishes to challenge [his] initial custody determination, [he] must first exhaust the administrative remedies at [his] disposal" *Rojas v. Genalo,* No. 25-cv-6543, 2026 WL 275991, at *1 (E.D.N.Y. Feb. 3, 2026) (Komitee, J.); *see also Castillo Lachapel v. Joyce, et al.*, No. 25- cv- 4693, 25 WL 1685576, at *3 (S.D.N.Y. June 16, 2025) (quoting *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y. 2018)) ("'[a] habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention'"); *accord, Fontanelli v. Francis*, No. 25-cv- 7715, 2025 WL 2773234, at *5-8 (S.D.N.Y. Sept. 29, 2025). *See also Capunay Guzman v. Joyce, et al.*, No. 25-cv-4777, 786 F. Supp.3d 865, 870 (S.D.N.Y. June 17, 2025); *Roman v. Decker*, No. 20-cv-3752, 2020 WL 4273823, at * 7 (S.D.N.Y. July 24, 2020); *Paz Nativi v. Shanahan*, No. 16- cv-8496, 2017 WL

281751, at *1 (S.D.N.Y. Jan. 23, 2017) ("before immigration detention may be challenged in federal court . . . exhaustion is generally required as a prudential matter" (collecting cases)). The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[ ] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Capunay Guzman*, 786 F.Supp.3d at 869 (*quoting Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)). Thus, courts in this district have required those challenging their detention under Section 1226(a) to first exhaust administrative remedies. *See, e.g.*, *Rojas*, 2026 WL 275991, *1 (denying habeas petition in light of failure to exhaust).

Here, Petitioner, who is being detained pursuant to 8 U.S.C. § 1226(a), has not availed himself of administrative remedies available pursuant to § 1226(a); specifically, a two- level administrative review process that includes a bond hearing before an immigration judge (*see* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d)) and an appeal to the Board of Immigration Appeals ("BIA") should the immigration judge conclude that he should not be released, or the immigration judge has set a bond amount that he believes is too high (*see* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3)). *See Monterosa v. Decker*, No. 20-cv-02653, 2020 WL 1847771, at *3 (S.D.N.Y. Apr. 11, 2020) ("After ICE makes an initial detention decision, any person who is detained has the right to request a bond hearing before an Immigration Judge."); *Michalski*, 279 F. Supp. 3d at 496 (finding that a bond hearing is the appropriate avenue for petitioner's request for release from detention where "as opposed to challenging the length of his detention, [petitioner] essentially challenges the arrest and detention under § 1226(a) without any evaluation of legal justification as unconstitutional"). As the court in *Castillo Lachapel* explained, "If the immigration judge releases [Petitioner] on bond, his [habeas] petition would be moot . . . And even if the immigration judge denies bond, [Petitioner]'s petition could be mooted if the Board of Immigration Appeals reverses that determination." 2025 WL 1685576 at *3 (internal quotations and citation omitted). Thus, "[b]ecause [Petitioner]'s [potential] bond hearing may provide him with the relief that he seeks—*i.e.*, his release," the Court should require that Petitioner exhaust the administrative avenues available to him pursuant to § 1226(a) before seeking judicial relief. *See id.*

Nor does the government believe that any of the recognized exceptions to exhaustion apply here. A district court may in its discretion excuse exhaustion when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry*, 329 F.2d at 62 (quotation omitted). Numerous courts in this Circuit have also found that none of these exceptions apply where, as here, an immigration judge or the BIA could release a habeas petitioner detained under 8 U.S.C. § 1226(a) on bond. *See, e.g.*, *Castillo Lachapel*, 2025 WL 1685576 at *3; *Capunay Guzman*, 786 F. Supp.3d at 870; *Monterosa*, 2020 WL 1847771 at *6-*7; *Roman*, 2020 WL 4273823, at *7.

With respect to the first exception, as explained above, Petitioner has available administrative remedies—a bond hearing with an immigration judge *and* appeal of the immigration judge's decision, if adverse, to the BIA. *See Castilla Lachapel*, 2025 WL 1685576, at *3 (describing the two levels of administrative review available to petitioner). "Because

[Petitioner]'s [potential] bond hearing may provide him with the relief that he seeks—i.e., his release—this Court concludes in the exercise of its discretion that [Petitioner] must exhaust these avenues before seeking judicial relief." *Id.* (internal quotations and citations omitted). *See Michalski*, 279 F. Supp. 3d at 496 (finding that a scheduled bond hearing "scuttles" petitioner's habeas petition because the immigration judge could release him on bond making his habeas petition moot); *Paz Nativi*, 2017 WL 281751, at *2 ("The pendency of a BIA appeal that could potentially moot [petitioner's] habeas petition counsels for the Court to stay its hand until the exhaustion of administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings.").

The second exception is also inapplicable. Petitioner cannot show irreparable harm at this time. He has been detained for three days, and has an immigration court hearing scheduled for March 12, 2026. *See Capunay Guzman*, 786 F. Supp. at 871 (where petitioner had been detained for approximately nineteen days "'[t]he risk of prolonged detention'—as opposed to actual prolonged detention— 'does not constitute an irreparable injury that excuses the prudential exhaustion requirement'") (quoting *Roman*, 2020 WL 4273823, at *8). *Cf. Michalski*, 279 F. Supp. 3d at 496 (petitioner's "claim that prolonged detention constitutes an irreparable injury that may excuse exhaustion has been rejected by courts in this District").

Similarly, as to the third exception, Petitioner has not shown that a bond hearing would be futile. *See Cabral v. Decker*, 331 F. Supp. 3d 255, 263 n. 6 (S.D.N.Y. 2018) ("[T]he question of whether the petitioner's yet-to-happen bond hearing complies with due process is not before this Court.").

With respect to the fourth exception, "[m]ere existence of a constitutional issue . . . does not create an automatic exception to an exhaustion requirement." *Monterosa,* 2020 WL 1847771, at *5. "Thus, when applying this exception, 'courts will endeavor to avoid deciding a constitutional issue if the case might be resolved on a narrower factual basis.'" *Capunay Guzman*, 786 F. Supp. at 871 (quoting *Monterosa*, 2020 WL 1847771, at *5). In any event, the process that is due to Petitioner is a hearing before an immigration judge and an appeal before the BIA; he is not being deprived of that process, except insofar as he chooses to reject that recourse in favor of federal court.

Notwithstanding, and as stated above, while the government respectfully disagrees with the decisions in *Rodriguez-Acurio* and *Gopie*, Respondents acknowledge that they would control the result in this case if the Court adheres to them and others like it. The government has no objection to the Court deciding the petition on the papers in lieu of a hearing.

Thank you for your consideration of this matter.

Respectfully Submitted,

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