U.S. Department of Justice

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April 22, 2026

BY ECF
Honorable Chief Judge Renée Marie Bumb
U.S. District Court for the District of New Jersey
Mitchell Cohen Building & U.S. Courthouse
4th & Cooper Streets, Room 1050
Camden, New Jersey 08101

Re: *Durdyyev v. Warden,* Civ. No. 26-4139 (RMB)
Expedited Answer to § 2241 Petition

Dear Chief Judge Bumb:

This Office represents Respondents in this habeas action, in which Petitioner claims he is being illegally detained without a charging document. Pet ¶ 11. We respectfully request the Court deny relief. The "Notice To Appear" ("NTA") was served on Petitioner in person on April 14, 2026, and filed with the immigration court on April 19, 2026. *See* Ans. Ex B at 3 (NTA April 14, 2026, "Certificate of Service"); Ans. Ex A at 2 (I-213, April 14, 2026, "Durdyyev was arrested pursuant to a Warrant of Arrest, form I-200, served a NTA and transported to 620 Frelinghuysen Ave, Newark, NJ for processing."). As the NTA explains, Petitioner is detained as a visa-overstay pursuant to INA § 237(a)(1)(B) and, therefore, he is subject to custody under 8 U.S.C. § 1226(a). *See* Ans. Ex A at 2 (I-213, April 14, 2026); Ans. Ex. B. (NTA, April 14, 2026- removable pursuant to INA Section 237(a)(1)(B)); Pet ¶ ¶ 2, 3. As a result, Petitioner is eligible for a bond hearing under 8 U.S.C. § 1226(a) with the Executive Office of Immigration Review ("EOIR"), but he has not yet requested one. Moreover, there is no basis for immediate release from detention. Petitioner has a criminal history and currently has an assault with intent to cause bodily harm charge pending in Edison, New Jersey. *See* Ans. Ex A at 3 (I-213, April 14, 2026: July 14, 2023, Possession of a weapon with unlawful purpose (dismissed March 2025) and July 14, 2023, assault with intent to cause bodily harm -still pending).

Petitioner entered the United States on August 1, 2016, on a nonimmigrant F-1 student visa at the John F. Kennedy International Airport in Queens, New York and has remained in the country since that time. Pet. ¶ Intro; *See* Ans. Ex. A at 2 (I-213, April 14, 2026). According to ICE records, Petitioner had authorization to remain in the United States from August 1, 2016, for a temporary time not to exceed May 29, 2018. *See* Ans. Ex. B (NTA April 14, 2026). Nevertheless, Petitioner concedes

that he overstayed his visa and remained in the United States without lawful status. Pet ¶¶ Intro; "III. Parties" at paragraph one; ¶¶ 2, 3. Ans. Ex. B (NTA April 14, 2026). U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner on April 14, 2026. *See* Ans. Ex A at 2 (I-213, April 14, 2026). Petitioner was determined to be removable from the United States, and a Notice to Appear (NTA) was served on Petitioner, charging him under section 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(B) (presence in violation of law). Ans. Ex. B (NTA, April 14, 2026); Ans. Ex. A at 2 (Form I-213 April 14, 2026). Petitioner is currently subject to removal proceedings. Ans. Ex. B (Notice to Appear, April 14, 2026).

Petitioner does not appear to dispute ICE's statutory detention authority under 8 U.S.C. § 1226(a), but he seeks immediate release for an alleged due process violation. Pet. ¶¶ Intro; and Claims For Relief, Count 1. Because Petitioner has not availed himself of the process available to him, the court should deny the Petition. In addition, the NTA, which was served on Petitioner in person on April 14, 2026, in person, is currently pending before the immigration court. Ans. Ex. B at 3. A copy of the NTA was sent to Petitioner's counsel on Monday, April 20, 2026.

Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), immigration officials have discretion to release a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.[1] By regulation, immigration officers can release if the noncitizen demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge (IJ). *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention, release the noncitizen on bond, or release the noncitizen on conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I&N Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38. "At a bond hearing under [§ 1226(a)], the noncitizen bears the burden of proving that he is neither a danger to the community nor

[1] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023).

a flight risk." *Sandhu v. Tsoukaris*, No. 25-14607 (BRM), 2025 WL 3240810, at *8 (D.N.J. Nov. 20, 2025) (citing *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018)). If bond is denied, the noncitizen may appeal to the Board of Immigration Appeals. *See* 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3).

Accordingly, Petitioner has the ability under statute to seek a bond hearing before an immigration judge and administrative appeal rights if an IJ denies bond. On April 20, 2026, this Office notified Petitioner's counsel via email that Petitioner was entitled to a bond hearing, and all he has to do is submit a motion to the EOIR to obtain such a hearing. *See, e.g.*, 8 C.F.R. §§ 1236.1, 1003.19. This Office also attached to the email a copy of the April 14, 2026 Notice to Appear which was filed with the immigration court on April 19, 2026. Petitioner has not pursued that administrative avenue for relief, and Respondents urge that the Court lacks jurisdiction to consider his habeas petition as a result. *See Jelani B. v. Anderson*, No. 20-6459 (SDW), 2020 WL 5560161, at *2 (D.N.J. Sept. 17, 2020) ("Because the exhaustion requirement is jurisdictional, the failure of a habeas petitioner to present his claims first to the immigration courts is fatal to the District Court's jurisdiction over [his] habeas petition.") (internal quotation marks omitted). Because Petitioner's detention arises under § 1226(a), not § 1225(b)(2), Petitioner need only submit his motion to EOIR to seek a bond hearing.

Respondents respectfully request that the Court deny habeas and dismiss the Petition because Petitioner has a clear administrative avenue for relief.

We thank the Court for its attention to this matter.

Respectfully submitted,

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cc: Counsel of record (via ECF)