



U.S. Department of Justice

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Eastern District of New York*

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July 8, 2026

By ECF

Honorable Pamela K. Chen
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Okeke v. Maldonado, et al.*, 26-CV-2714 (Chen, J.)

Dear Judge Chen:

This Office represents Respondents in this habeas action, in which Petitioner Chidozie Wilson Okeke ("Petitioner"), through the "First Amended Emergency Petition for Writ of Habeas Corpus" ("Petition") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). See ECF No. 11. Respondents respectfully write to show cause as to why the Petition should not be granted.

I. Relevant Background

A. Petitioner's Background and Entry to the United States

Petitioner claims to be a national of Nigeria; Petitioner's citizenship is not clear at this time. Declaration of Supervisory Detention and Deportation Officer Brenden Cuni, dated July 5, 2026 ("Cuni Decl.") ¶ 2, 34¹. On August 27, 2023, Petitioner was admitted into the United States at John F. Kennedy Airport, from the United Kingdom, as a Nonimmigrant Visitor for Pleasure (B2); his visa was valid until February 26, 2025. *Id.* at ¶ 3. On December 7, 2023, Petitioner filed an application to register Permanent Residence of Adjust Status with United States Citizenship and Immigration Services ("USCIS") which was rejected on December 11, 2023. *Id.* at ¶ 4. On February 26, 2024, Petitioner failed to depart the United States and overstayed his B2 visa; as of May 2, 2026, Petitioner did not have legal status in the United States and did not have any pending petitions for relief before Immigration Court or USCIS. *Id.* at ¶¶ 5,6.

¹ On May 12, 2026 the Department of Homeland Security ("DHS") filed a Form I-261, "Additional Charges of Inadmissibility/Deportability" which stated that Petitioner is a citizen of South Africa, not Nigeria; this information was based on information that Petitioner self-reported. Petitioner makes no factual assertion regarding his citizenship in the Petition.

B. ICE Officers' Initial Interaction With Petitioner on May 2, 2026

On May 2, 2026, Officers with ICE Enforcement and Removal Operations (“ERO”), New York City Fugitive Operations, and Officers with the United States Customs and Border Protection (“CBP”), were working to locate and arrest a target who was not the Petitioner. *Id.* at ¶ 8. On May 2, 2026, Respondents observed an individual who matched the target’s physical description in a white Toyota Camry outside the target’s home. *Id.* at ¶ 9. After conducting query checks on the vehicle’s license plate, officers determined that the vehicle was registered to Petitioner. *Id.* at ¶ 10. Officers did further checks and confirmed that Petitioner did not have legal status in the United States. *Id.* at ¶ 11.

C. Traffic Stop of Petitioner on May 2, 2026

At approximately 7:15pm, SDDO Cuni issued an I-200, Warrant for Arrest of Alien, prior to approaching Petitioner’s vehicle. *Id.* at ¶ 12. At 7:20pm, officers began to follow Petitioner’s vehicle, and shortly thereafter, conducted a vehicle stop. *Id.* at ¶ 13. Officers approached and asked Petitioner to turn off his vehicle, which he did; he also provided a New York State driver’s license, which bore the same name as the vehicle registration and the same name as the I-200. *Id.* at ¶ 15. Officers ran a second query based on the pedigree information provided to Petitioner to confirm his identity. *Id.* at ¶ 16. Officers conducted a field interview, in which Petitioner informed them that he was born in Nigeria, was a citizen of Nigeria, and did not have documents allowing him to legally remain in the United States. *Id.* at ¶ 17.

D. Arrest of Petitioner on May 2, 2026

Officers instructed Petitioner, multiple times, to unlock and exit his vehicle; instead, Petitioner turned on the vehicle and placed it into drive. *Id.* at ¶ 18. Officers continued to issue multiple verbal commands for Petitioner to exit the vehicle; Petitioner said “no” and attempted to strike Officers with his vehicle. *Id.* at ¶ 19. Officers then utilized a window punch to break the driver and passenger side windows of the vehicle to gain control; Petitioner then began to throw closed fists at the two officers, and used elbow strikes while screaming. *Id.* at ¶ 20. One Officer was able to place the vehicle into the park gear. *Id.* at ¶ 21.

SDDO Cuni, who was present on the scene, withdrew his taser but never deployed it at any point during the interaction. *Id.* at ¶ 22. Officers were ultimately able to take Petitioner out of the vehicle and bring him to the ground. *Id.* at ¶ 23. At approximately 7:45pm, Petitioner was placed under arrest. *Id.* at ¶ 24.

E. Petitioner’s Transportation to Wyckoff Heights Medical Center (“WHMC”)

Petitioner continued to scream after being placed in the ERO vehicle; officers asked him if he needed medical attention, to which he answered yes. *Id.* at ¶ 25. Petitioner was transported to WHMC, where he remained until 2:10am, when he was discharged with medical clearance and then transferred to 26 Federal Plaza in Manhattan. *Id.* at ¶ 27. SDDO Cuni remained with Petitioner at WHMC; at WHMC, SDDO Cuni was unable to formally process Petitioner due to lack of access to databases and equipment. *Id.* at ¶ 28.

E. Petitioner's Detention and Processing

After arriving at 26 Federal Plaza, prior to 6:00am, Petitioner was processed and issued a Form I-862, Notice to Appear ("NTA"), and charged for remaining in the United States for a time longer than permitted in violation of INA § 237(a)(1)(B). *Id.* at ¶ 29. Officers also conducted an individualized custody determination and decided to detain Petitioner. *Id.* at ¶ 30. A Form I-286, Notice of Custody Determination was served on Petitioner on May 3, 2026. *Id.* The digital signature on the I-286 indicates it was signed at 5:58am on May 3, 2026, less than four hours after Petitioner's discharge from WHMC. *Id.*

On May 3, 2025, at 2:00pm, the NTA was filed on the Immigration Court through the EOIR Courts and Appeals System ("ECAS"). On May 4, 2026, at approximately 11:30pm, Petitioner was transported to the Metropolitan Detention Center in Brooklyn. *Id.* at ¶ 32.

Petitioner is detained pursuant to 8 U.S.C. 1226(a). *Id.*

To date, Petitioner has never sought a bond hearing in Immigration Court. *Id.* at ¶ 33. Rather, on May 22, 2026, Petitioner, through counsel, filed a Motion to Suppress; the Immigration Court is scheduled to hold a Suppression Hearing on July 31, 2026 at 8:30am. *Id.* at ¶ 35.

II. Petitioner Was Not Subjected to A Warrantless Arrest And Is Properly Detained Pursuant to 8 U.S.C. § 1226(a)

The Petition wrongly asserts that Petitioner was subjected to a warrantless arrest. ECF No. 11 at 74-77. As shown above, an I-200 was executed *prior* to the arrest of Petitioner. Any assertions to the contrary in the Petition should be disregarded as factually incorrect.

This habeas suit should be denied because he has been properly detained under 8 U.S.C. § 1226(a). Under § 1226(a), the Government may arrest and detain an alien during his removal proceedings or release him on bond or conditional parole. Section 1226(a) provides, in relevant part, that:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole;

8 U.S.C. § 1226(a). By regulation, immigration officers conduct custodial determinations and may release aliens if the alien meets his burden of showing 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); see *Fontanelli, as Next Friend of Bernal Garcia v. Francis*, No. 25-cv-07715 (JLR), 2025 WL 2773234, at *4 (S.D.N.Y. Sept. 29, 2025) (“The Government’s broad [post-arrest detention] discretion under § 1226(a) has a limitation: before the Government may exercise such discretion to detain a person, § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination, specifically whether the noncitizen is a danger to person or property or persons and is likely to appear for any future proceeding.”) (citations and internal quotation marks omitted); *Hamilton v. Shanahan*, No. 09-cv-6869 (SAS), 2009 WL 5173927, at *2 (recognizing that the alien bears the burden of proof).

Notably, the statute separates arrest from detention. Section 1226(a) expressly and unequivocally provides the custody determination is a decision about whether to “*continue to detain*” the arrested alien or to release the alien on bond or parole (emphasis added). The statute’s use of the phrase “continue to detain” necessarily means that, at the time the government makes the custody determination, the alien has already been apprehended and detained. Consistent with the statutory language the Second Circuit has described the § 1226(a) determination as a “*post-arrest custody determination*” See *Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (emphasis added).

Here, within four hours of Petitioner’s discharge from WHMC, and within ten hours of his arrest, ICE conducted an initial custody determination, and decided to detain him, as reflected in a Custody Determination served upon Petitioner. See Cuni Decl. ¶ 30. Petitioner cannot be heard to complain about this sequence of events because the ICE Officers took him to WHMC due to his own request for medical attention. Once ICE makes the individualized custody determination, 8 U.S.C. § 1226(e) jurisdictionally bars courts from reviewing that determination. Section 1226(e) provides that “[ICE]’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by [ICE] under this section regarding the detention of any [noncitizen] or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e). Thus, “[a] district court has no authority to review ICE’s discretionary determinations made under [Section 1226] or otherwise question their propriety.” *Fontanelli*, 2025 WL 2773234, at *4 (citing 8 U.S.C. § 1226(e)).

Petitioner still has recourse, but it is administrative, not judicial. To wit, he can request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge at any time before a final order of removal is issued. See 8 C.F.R. § 236.1(d)(1). Under 8 C.F.R. § 1003.19(h)(3), an alien may seek a redetermination of custody conditions set by ICE before an immigration judge must “first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview.” See *Hylton v. Shanahan*, No. 15-cv-1243, 2015 WL 3604328 (S.D.N.Y. June 9, 2015) (declining to shift burden of proof onto government in a bond hearing in immigration court where respondent was detained under § 1226(a)). If dissatisfied with the immigration judge’s decision, the alien can seek review by the Board of Immigration Appeals (“BIA”). See 8 C.F.R. §§ 236.1(d)(3), 1003.19(F), 1003.38, 1236.1(d)(3); see also *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.”).

Critically, Petitioner, who has been detained since May 3, 2026, has never requested a bond hearing. He is represented by counsel in Immigration Court but has, to date, never sought a bond hearing; rather, he seeks other administrative relief, namely a Suppression Hearing (discussed *infra*). Petitioner clearly appears to understand that the appropriate remedy in this matter is a bond hearing. ECF No. 11 at 28, ¶ 5. Respondents are willing to conduct a burden-shifted bond hearing in this matter; Petitioner has never sought one in Immigration Court.

Petitioner has not exhausted administrative remedies. Numerous courts in this Circuit have held that to the extent that habeas petitioners want to challenge the initial custody determination, ordinarily they must exhaust administrative remedies before seeking federal court intervention. *See, e.g., Almonte Rojas v. Genalo*, No. 25-cv-6543, 2026 WL 275991, at *1 (E.D.N.Y. Feb. 3, 2026) (Komitee, J.) (citing *Castillo Lachapel v. Joyce*, 786 F. Supp. 3d 860, 864 (S.D.N.Y. 2025)); *accord Fontanelli*, 2025 WL 2773234, at *5-8. *See also Capunay Guzman v. Joyce*, 786 F.Supp.3d 865, 869-871 (S.D.N.Y. 2025); *Roman v. Decker*, No. 20-cv-3752 (JGK), 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.’” *Guzman*, 786 F.Supp.3d at 869-871 (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)). As the court in *Castillo Lachapel* explained, “[i]f the immigration judge releases [petitioner] on bond, his [habeas petition would be moot . . . And even if the immigration judge denies bond, [the] petition could be mooted if the [BIA] reverses that determination.” 786 F. Supp. 3d at 864 (internal quotation marks and citation omitted).

Nor do 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.” *See Beharry*, 329 F.2d at 62. 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 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. Petitioner has been detained for sixty four (64) days at the time of this filing. The risk of prolonged detention does not constitute an irreparable injury that excuses the prudential exhaustion requirement. *See Michalski v. Decker*, 279 F. Supp. 3d 487, 496 (S.D.N.Y. January 4, 2018); *Capunay Guzman*, 786 F. Supp. 3d at 871; *Roman*, 2020 WL 4273823, at *8.

Similarly, as to the third exception, Petitioner has not shown that a bond hearing would be futile. *See Capunay Guzman*, 786 F. Supp. 3d at 870 (petitioner’s “arguments concerning the futility of any bond motion are similarly premature, as he has not yet made a motion for bond”). *See also Cabral v. Decker*, 331 F. Supp. 3d 255, 263 n. 6 (S.D.N.Y. September 21, 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, the “[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. 3d at 871 (quoting *Monterosa*, 2020 WL 1847771, at *5). As the court in *Capunay Guzman* noted, only a few courts in this Circuit have excused exhaustion under the fourth exception in cases where the petitioner had been detained and denied bond at the bond hearing, or was not yet detained and sought to prevent re-detention. *See id.* (collecting cases). Indeed, where Petitioner has not yet had his bond hearing, through his own decision to delay it, his claims can be mooted by the possibility of being released on bond after exhausting his administrative remedies, and thus [he] has failed to show that the fourth exception to the prudential exhaustion requirement applies. *See id.*

Respondents respectfully submit that the instant case is substantively different than *Leiva v. Shanahan*, No. 26-cv-1509, 2026 WL 829119 (E.D.N.Y. Mar. 26, 2026) (Chen, J.). In *Leiva*, the Petitioner was “merely arrested for being suspected of being removable.” *Id.* at *2. Here, the Officers not only conducted a number of background checks to determine that he did not have legal status in this country, and furthermore, Petitioner confirmed that information when he spoke to the Officers. Cuni Decl. at ¶¶ 13-17. As an additional matter, here, the was NTA issued and the individualized custody determination occurred at the earliest possible opportunity after Petitioner was released from WHMC. *Id.* at ¶¶ 28-31. Therefore, Respondents respectfully submit that the instant matter differs from *Leiva* and Your Honor’s decision in *Leiva* is not dispositive here.

This Petition should be denied, and Petitioner required to exhaust his administrative remedies, rather than attempting to come directly to this Court for relief.

III. Petitioner Is Inappropriately Pursuing Fourth Amendment Claims In This Action

Count Five of the Petition alleges violations of Petitioner's Fourth Amendment rights. ECF No. 11 at 97-101. First, Petitioner there wrongfully asserts that his arrest was warrantless; as shown *supra*, it was not. Further, Petitioner is seeking to remedy the alleged Fourth Amendment violations in Immigration Court. There is a fully briefed suppression motion in Immigration Court with a hearing date of July 31, 2026.

Respondents note here that a writ of habeas corpus cannot be granted on the basis of a Fourth Amendment challenge. *See Lainez v. Blanche*, No. 26-CV-3103, 2026 WL 175829, at *2, FN2 (E.D.N.Y. June 18, 2026) (Donnelly, J.); *Leiva Garcia v. Shanahan*, No. 26-CV-1508, 2026 WL 1631608, at *2 (E.D.N.Y. June 6, 2026) (Komitee, J.). Indeed, the only relief for Fourth Amendment violations in the immigration context contemplated in this Circuit involve suppression of evidence—not release. *See Almeida-Amaral v. Gonzales*, 461 F.3d 231 (2d Cir. 2006) (citing *INS v. Lopez-Mendoza*, 468 U.S. 1046, (1984)). Therefore, even if there *were* a valid Fourth Amendment challenge here—and there is not--the Court would not need to evaluate the merits of such a claim, because such a challenge cannot be the basis for release. *Lainez*, *2.

* * *

For the aforementioned reasons, Respondents respectfully submit that the Petition should be denied. Further, Respondents respectfully submit that the appropriate remedy in this matter is a bond hearing; Respondents are willing to conduct a bond hearing should the Court order it, but notes that Petitioner has, to date, not sought a bond hearing in Immigration Court (although he seeks one here).

Respectfully submitted,

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