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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

HORACIO MUNOZ-SAUCEDO, Petitioner, v. YOLANDA PITTMAN, et al., Respondents.	CASE NO: 1:25-CV-2258 (O'Hearn, J.) ELECTRONICALLY FILED

PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS AND OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

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PRELIMINARY STATEMENT

After his release from custody in 2023, Petitioner Horacio Munoz complied with his order of supervision by attending check-ins and providing information requested by Immigration and Customs Enforcement (ICE). He did not obtain travel documents for his removal because an immigration judge ordered that he may not be removed to Mexico, and he has no ties to any other country. Yet today he is again detained in an ICE detention facility while ICE purports to investigate a country of removal. The likelihood of identifying a safe third country remains as remote as ever. And Mr. Munoz could not have reasonably understood that he was expected to continue requesting travel documents from unspecified countries—beyond the five to which ICE applied during his initial removal period—or risk re-detention. Therefore as discussed in Mr. Munoz's petition, motion for temporary restraining order, and below, his continued detention violates the statute, the Administrative Procedure Act (APA), and his procedural and substantive due process rights.

Respondents' arguments to the contrary are unavailing. First, this Court has jurisdiction, because Mr. Munoz was detained in an unknown location with an unknown custodian when his habeas petition was filed, and therefore he appropriately filed in the last-known district of confinement. Second, no provision of the Immigration and Nationality Act (INA) bars this Court from exercising jurisdiction because Mr. Munoz challenges his detention, not the execution of his

removal order. Finally, Mr. Munoz's petition shows that his continued detention is unlawful, and that he is suffering ongoing harm from this deprivation of liberty. This Court should grant his petition now, or alternatively grant a temporary restraining order or preliminary injunction ordering his release pending further proceedings.

ARGUMENT

I. The Court Should Grant Mr. Munoz's Petition for Writ of Habeas Corpus

A. Mr. Munoz correctly filed his petition in the District of New Jersey, and this Court retains jurisdiction notwithstanding his transfer

The writ of habeas corpus is an "indispensable mechanism for monitoring the separation of powers," and therefore "must not be subject to manipulation by those whose powers it is designed to restrain." *Boumediene v. Bush*, 553 U.S. 723, 765-66 (2008). While a habeas petitioner must generally sue his immediate custodian in the district where he is confined, the government may not defeat habeas jurisdiction by "passing about of the body of a prisoner from one custodian to another." *Anariba v. Dir. Hudson C'ty Corr. Center*, 17 F.4th 434, 446 (3d Cir. 2021) (quoting *Ex parte Catanzaro*, 138 F.2d 100, 101 (3d Cir. 1943)). Therefore, exceptions to the immediate custodian rule apply to ensure that the writ is always available. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 & n.9 (2004) (majority opinion); *see also id.* at 454 (Kennedy, J., concurring). Yet the logical conclusion of Respondents' argument is that, because Mr. Munoz was in transit at the time he filed his petition, there was no

place he could then bring a habeas petition. Resp. (Doc. No. 9), at 12 & n.4. This result would be contrary to the Constitution and the fundamental purpose of the writ of habeas corpus. U.S. Const. art. I, § 9; *see Demanjuk v. Meese*, 784 F.2d 1114, 1116 (D.D.C. 1986) ("[I]t is essential that petitioner not be denied the right to petition for a writ of habeas corpus."). Therefore, the Court should hold that it has jurisdiction over Mr. Munoz's petition.

1. Transfers subsequent to filing do not deprive the Court of jurisdiction.

In *Rumsfeld v. Padilla*, the Supreme Court reaffirmed that habeas petitions challenging present physical confinement should generally name the warden of the facility where the petitioner is held and be filed in the district of confinement. *Padilla*, 542 U.S. at 436; *see also Anariba*, 17 F.4th at 445. At the same time, it recognized that under *Ex parte Endo*, "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 441 (citing *Ex parte Endo*, 323 U.S. 283, 306 (1944)).. Therefore, the Third Circuit has held that the post-filing transfer of a petitioner out of the Court's jurisdiction does not divest the Court of jurisdiction, and district courts have consistently applied this rule. *Anariba*, 17 F.4th at 446; *see also Khalil v. Joyce*, -- F. Supp. 3d --, No. 25-1963, 2025 WL 972959, at *23 (D.N.J. Apr. 1, 2025)

(collecting cases). Respondents' suggestion that this case must be heard in the district where he is now confined, despite the fact that he was transferred there two days *after* he filed his petition, ignores this binding case law. Resp. at 10-12 & n.4. Rather, if the petition was properly filed in this District, this Court retains jurisdiction. It was.

2. Because Mr. Munoz was in an unknown location at the time of filing, jurisdiction lies in the District of New Jersey, the last-known district of confinement.

The *Padilla* Court recognized that when a petitioner "is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules." 542 U.S. at 450 n.18; *see also Demanjuk*, 784 F.2d at 1116; Hertz & Liebman, 1 *Federal Habeas Corpus Practice & Procedure* § 10.1 (7th ed. 2015) ("The 'immediate custodian' rule . . . is inapplicable . . . where the prisoner's current whereabouts are unknown."). In *Padilla*, at least six justices agreed that in such a situation, "habeas jurisdiction would be in the district court from whose territory the petitioner had been removed." 542 U.S. at 455 (Kennedy, J., concurring); *see also* 542 U.S. at 460 (Stevens, J., dissenting). This long-recognized exception to the typical default rule ensures that the writ remains available at all times without permitting, or requiring, petitioners in this situation to file in every jurisdiction. *See Demjanjuk*, 784 F.2d at 1116. *Trump v. J.G.G.*, on which Respondents rely, is not to the contrary, because in that case the petitioners

and their counsel knew that they were detained in Texas but chose to file in Washington, D.C. 145 S. Ct. 1003, 1006 (2025); *see* Resp. at 11. Thus, the Court had no occasion to apply the unknown-location rule.

By contrast, in this case, Respondents allege that Mr. Munoz had been removed from New Jersey by the time he filed his petition, but had not yet arrived in Texas. Resp. at 12. He was in the custody of the Department of Homeland Security (DHS) at the time of filing, but it remains unknown what jurisdiction he was located in because he was in transit in an airplane. *Id.* To the best of counsel's knowledge at the time of filing he was still located at the Elizabeth Detention Center, so the petition was appropriately filed in this district. Pet., Ex. 8 (Doc. No. 1-10) (showing that ICE's online detainee locator showed that Mr. Munoz was detained at the Elizabeth Detention Center as of 4:22 p.m. on April 2, 2025); TRO Mot., Ex. A (Do No. 4-4), at ¶ 17; *see Boumedienne*, 553 U.S. at 779 (noting that common-law habeas corpus was "above all, an adaptable remedy"); *Ozturk v. Trump*, -- F. Supp. 3d --, No. 25-cv-10695, 2025 WL 1009445, at *10 (D. Mass. Apr. 4, 2025) (applying this principle to the place-of-confinement rule in a similar case).

The Government's statement that "ICE served Petitioner with a Notice of Transfer, informing Petitioner that he would be transferred to the El Paso Service Processing Center," is untrue and based on a misrepresentation in the declaration at Exhibit B. Despite repeated communications with Mr. Munoz's attorney, Ms.

Byelyakova, before and after the transfer, Supervisory Detention and Deportation Officer (SDDO) Cabezas never provided her a copy of the purported Notice of Transfer.[1] TRO Mot., Ex. A, at ¶ 17; Ex. C (emails between SDDO Cabezas and Ms. Byelyakova). Respondents have also failed to provide a copy of this document to this Court. And, contrary to SDDO Cabezas's representation that he notified Mr. Munoz on April 2 that he would be transferred to the El Paso Service Processing Center, Resp., Ex. B (Doc. No. 9-3), at ¶ 10, he told Ms. Byelyakova on the afternoon of April 3 that the "actual detention facility" where Mr. Munoz would be housed was "TBD." Ex. C. Therefore, like in other similar cases, Mr. Munoz's counsel did not and could not have known where was located at the time the petition was filed. *See Ozturk*, 2025 WL 1009445, at *2; *Khalil*, 2025 WL 972959, at *28, 35.

In any event, Mr. Munoz could not have filed in the Western District of Texas on April 2 because he was not and had never been detained there. Resp., Ex. C (Doc. No. 9-4) (showing that he arrived at the El Paso Service Processing Center on April 4, 2025); *see Padilla*, 542 U.S. at 443 (stating the general rule that a petition challenging present physical confinement must be filed in the district of confinement). Thus, the only logical conclusion of Respondents' position is that at the time of filing on the evening of April 2, there was nowhere in the country where

[1] Longstanding ICE policy required it to serve that notice on counsel of record. ICE Policy 11022.1, § 5.3(2) (2012), *available at* https://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf.

Mr. Munoz could bring his petition. As Judge Farbiarz recently explained, this conclusion is inconsistent with the Suspension Clause and the writ's lengthy tradition in the United States:

> The implication of not applying the unknown custodian exception here is that, as of March 9, the Petitioner, detained in the United States, would not have been able to call on any habeas court. Not in Louisiana, New York, or New Jersey. And not anywhere else, either.
> That is too far. Our tradition is that there is no gap in the fabric of habeas --- no place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it. See, e.g., 3 William Blackstone, Commentaries *131 ("[T]he sovereign is at all times entitled to have an account, why the liberty of any of her subjects is restrained, wherever that restraint may be inflicted."); accord, e.g., Boumediene, 553 U.S. at 741, 128 S.Ct. 2229; 2 Joseph Story, Commentaries on the Constitution of the United States § 1341, p. 237 (3d ed. 1858).

Khalil, 2025 WL 972959, at *37. Therefore, this Court should apply the unknown location rule and find that this petition was appropriately filed in the District of New Jersey.

3. Mr. Munoz properly named his ultimate legal custodian because his immediate custodian was unknown at the time of filing.

In addition to filing in the district of confinement, a habeas petitioner must typically name the warden of the facility where he is detained as the respondent. *Padilla*, 542 U.S. at 447; *see Ozturk*, 2025 WL 1009445, at *10 (discussing the interplay between the place of confinement and immediate custodian rules). As discussed above, however, courts have long recognized an exception where the custodian is unknown at the time of filing. *Khalil*, 2025 WL 972959, at *28; *see*

Demanjuk, 784 F.2d at 1116. "Under such circumstances, the writ is properly served on the prisoner's ultimate custodian." *United States v. Moussaoui*, 382 F.3d 453, 465 (4th Cir. 2004); *accord Demanjuk*, 784 F.2d at 1116; *Khalil*, 2025 WL 972959, at *30; *United States v. Paracha*, No. 03-CR-1197, 2006 WL 12768, at *6 (S.D.N.Y. 2006).

This rule applies here. According to Respondents, Mr. Munoz was not at any detention facility at the time he filed his petition, so there was no warden he could sue. Resp. at 12 & Exs. B, C. Therefore, he appropriately named his ultimate custodian, Secretary of Homeland Security Kristi Noem. *See Khalil*, 2025 WL 972959, at *31 (stating that the Secretary of Homeland Security is the ultimate custodian of an ICE detainee). Moreover, as another court recently noted, the local ICE Field Office Director, John Tsoukaris, was likely Mr. Munoz's immediate custodian while he was in transit. *Ozturk v. Trump*, No. 2:25-cv-374, 2025 WL 1145250, at *8-9 (D. Vt. Apr. 18, 2025) (noting that the ICE field office director may have been the immediate custodian while the petitioner was in transit, and applying the unknown custodian rule). Therefore, Mr. Munoz named the appropriate custodians in his initial petition, and this Court retains jurisdiction.

4. Hearing this petition in this District is consistent with *Padilla*'s forum-shopping concerns.

The immediate custodian and place of confinement rules function to "prevent[] forum shopping by habeas petitioners," who could otherwise "name a

high-level supervisory official as respondent and sue that person wherever he is amenable to long-arm jurisdiction." *Padilla*, 542 U.S. at 447. At the same time, though, the *Endo* rule discussed above serves an equally important purpose of preventing forum-shopping by the government—a concern that is particularly prominent for ICE detainees, who the government can transfer frequently and without notice. *Anariba*, 17 F.4th at 448. As the Third Circuit explained,

> [T]he Government could willingly transfer an ICE detainee seeking habeas relief from continued detention to a jurisdiction that is more amenable to the Government's position, or the Government could transfer an ICE detainee for the purpose of intentionally introducing complicated jurisdictional defects to delay the merits review of already lengthy § 2241 claims. Taken to an extreme, the Government could transfer a petitioner with such consistency as to evade a district court ever even obtaining jurisdiction over a petitioner's § 2241 claims.

Id. at 447.

The exceptions to the immediate custodian rule serve to balance these concerns and ensure that the writ remains available without permitting petitioners to choose any forum they wish. *See Ozturk*, 2025 WL 1145250, at *10; *Khalil*, 2025 WL 972959, at *35-37; *see also Vasquez v. Reno*, 233 F.3d 688, 696 (1st Cir. 2000) (noting that the immediate custodian rule might not apply if ICE "spirited [a noncitizen] from one site to another in an attempt to manipulate jurisdiction"). Critically, Mr. Munoz does not argue that he could have filed anywhere in the country on April 2, just that he could file here, in his last-known district of confinement where he was held until just hours before filing. *Accord Ozturk*, 2025

WL 1145250, at *10. And, once he filed, his subsequent transfer did not divest this Court of jurisdiction. *Anariba*, 17 F.4th at 446. Therefore, this Court should reject Respondents' contrary arguments and exercise jurisdiction over this petition.

B. No provision of the INA strips this Court of jurisdiction over Mr. Munoz's claims

Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) prevents this Court from exercising jurisdiction over this petition. *Contra* Resp. at 14-19. Section 1252(g) "does not sweep broadly" but rather reaches three discrete actions by the DHS: "to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); *Tazu v. Att'y Gen. of the U.S.*, 975 F.3d 292, 296 (3d Cir. 2020). Section 1252(b)(9) requires challenges to orders of removal to be brought through petitions for review to the court of appeals, not through piecemeal habeas litigation. 8 U.S.C. § 1252(b)(9); *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 184 (3d Cir. 2020). The Supreme Court has repeatedly held that federal courts retain jurisdiction over habeas challenges to ICE detention notwithstanding these provisions. *Nielsen v. Preap*, 586 U.S. 392, 401-402 (2019); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). And, when in doubt, courts apply the presumption favoring judicial review. *Kucana v. Holder*, 558 U.S. 233, 237 (2010).

To be clear, Mr. Munoz does not challenge Respondents' authority to remove him after following the procedures required under *D.V.D. v. DHS*, -- F. Supp. 3d --, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025). Mem. of Law in

Support of Mot. for TRO (Doc. No. 4-1), at 8 ("ICE is free to continue its efforts to remove Mr. Munoz to other countries, but he must be released in the interim."). He does not seek a stay of removal or bring any challenge to his underlying order of removal that should be properly channeled to a petition for review. Pet. (Doc. 1) at 20. Rather, he only challenges ICE's revocation of his release on conditions of supervision and his continued detention.[2]

As Respondents concede, this Court has jurisdiction over Mr. Munoz's claim that his continued detention violates 8 U.S.C. § 1231, as interpreted by *Zadvydas v. Davis*, 533 U.S. 678 (2001). Resp. at 25 n.9; *see* Pet. at ¶¶ 36-43; Mem. of Law at 7-8. It also has jurisdiction over Mr. Munoz's due process challenge to the constitutionality of his ongoing detention. *See* Pet. at ¶ 55-56; Mem. of Law at 10-12; *Demore v. Kim*, 538 U.S. 510, 518 (2003) (exercising jurisdiction over a constitutional challenge to ICE detention); *Gayle v. Warden Monmouth C'ty Corr. Institution*, 12 F.4th 321 (3d Cir. 2021) (same); *German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d 203 (3d Cir. 2020) (same). The Supreme Court has rejected the argument that legal challenges to detention fall within the scope of § 1252(b)(9). *Jennings*, 583 U.S. at 295 n.3.

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[2] Therefore, this reply does not respond to Part I.C.3 of Respondents' brief, because he does not bring any challenge relating to notice of a third country of a removal and agrees that his rights in that respect will be adjudicated as part of the *D.V.D.* class action. Resp. at 29-31.

Similarly, section 1252(g) does not bar jurisdiction over Mr. Munoz's challenges to the revocation of his supervised release and his re-detention, because those actions were not taken in order to execute his removal order. Pet. at ¶¶ 44-56; Mem. of Law at 9-11. Indeed, the entire thrust of Mr. Munoz's petition, which Respondents do not meaningfully contest, is that ICE re-detained him for no purpose because it has not identified a country of removal and has no immediate plans to remove him. Pet. at ¶¶ 39-41; Mem. of Law at 7-8, 12; *see* Resp. at 30 (noting that Mr. Munoz's removal has not been scheduled and "DHS is still in the process of investigating a third country of removal"). Therefore, this case is distinguishable from *Tazu*, where the court held that "a brief door-to-plane detention is integral to the act of 'executing a removal order.'" 975 F.3d at 298. Mr. Munoz has already been detained longer than the three weeks it would have taken ICE to remove Mr. Tazu absent a judicial stay. *See Tazu*, 975 F.3d at at 298. And, unlike Mr. Tazu, Mr. Munoz does not seek to enjoin his removal but only requests that he be released from custody. *See id.* at 297; Pet. at 20. Therefore, his claim is not barred by § 1252(g).

Additionally, this is not a challenge that could be brought as part of a petition for review or in any other context. Therefore, this Court has jurisdiction notwithstanding § 1252(b)(9). *Tazu*, 975 F.3d at 299 (noting that subsection (b)(9) does not bar claims for which "review is now or never"); *E.O.H.C.*, 950 F.3d at 184-

85 (same). For all these reasons, the Court should reject Respondents' attempt to evade judicial review and exercise jurisdiction over this petition.

C. Mr. Munoz's continued detention violates 8 U.S.C. § 1231 and the Constitution

1. Mr. Munoz may challenge his detention now.

In *Zadvydas*, the Supreme Court interpreted 8 U.S.C. § 1231 and held that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." 533 U.S. at 699. It explained:

> In answering that basic question, the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.

Id. To implement that principle, it created a rebuttable presumption that six months of detention is reasonable. *Id.* at 701. However, just as the government can extend detention beyond six months if detention is still reasonably foreseeable, a noncitizen can show that detention has become unreasonable before the six-month mark. *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008). "At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period." *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020); *accord Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020).

The contrary district court decisions that Respondents cite are unpersuasive, because they misread *Zadvydas* as creating a bright-line rule. Resp. at 22 (citing *Kevin A.M. v. Essex C'ty Corr. Facility*, No. 21-11212, 2021 WL 4772130, at *2 (D.N.J. Oct. 21, 2021) and *Luma v. Aviles*, No. 13-6292, 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2024)). The *Zadvydas* Court made clear, however, that the six-month presumption merely serves to "guide lower court determinations." 533 U.S. at 701. Additionally, both *Kevin A.M.* and *Luma* were challenges to prolonged pre-final removal order detention that converted into *Zadvydas* cases when the petitioners' removal orders became final. 2021 WL 4772130, at *1; 2014 WL 5503260, at *2, 4. Therefore, neither petitioner meaningfully argued that their removal was not reasonable foreseeable, so these courts' rulings on that issue have little persuasive value. *See, e.g.*, *Jaroslawicz v. M&T Bank Corp.*, No. 15-897, 2024 WL 474846, at *16 n.4 (D. Del. Feb. 7, 2024) (declining to rely on another court's resolution of an issue that was not fully briefed). This Court should follow *Zadvydas* and consider whether Mr. Munoz's removal is reasonably foreseeable now.

2. Mr. Munoz's removal is not reasonably foreseeable because there is no country in the world to which he may be removed.

Mr. Munoz's detention is not reasonably foreseeable because he may not be removed to his native country, Mexico, and there is no other country to which he can be removed. Respondents do not meaningfully dispute this fact or offer any

suggestion about where he might be removed and when. Instead, they unsuccessfully attempt to blame Mr. Munoz for failing to obtain travel documents to some unspecified country to which he has no ties. This argument is unavailing.

First, Mr. Munoz did everything that was asked of him during his initial 90-day removal period. TRO Mot., Ex. A, at ¶¶ 8-9 (indicating that Mr. Munoz's deportation officer asked him for five random countries as a "formality" and then did not communicate with him again for the duration of the 90-day period). *Contra* Resp. at 23. For that reason, ICE did not suspend his 90-day removal period pursuant to 8 U.S.C. § 1231(a)(1)(C), instead, that period ran and has now concluded. Pet. at ¶ 32. Respondents may not go back in time to suspend the period now.

Nor is there a basis to do so. As Respondents indicate, this provision applies when a noncitizen "has the keys to his freedom in his pocket and could likely effectuate his removal by providing the information requested by [ICE]." *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003); *accord Bailey v. Lynch*, No. 16-2600, 2016 WL 5791407, at *3 (D.N.J. Oct. 3, 2016). ICE has never requested any information from Mr. Munoz to help facilitate the production of travel documents. And Mr. Munoz in no way has the "keys to freedom in his pocket," because there is nowhere he could be removed to no matter what he does. Therefore, § 1231(a)(1)(C) does not apply.

Similarly, the cases Respondents cite to suggest that Mr. Munoz may not seek relief under *Zadvydas* are inapposite. They all involve petitioners who, unlike Mr. Munoz, were not granted withholding of removal and therefore could legally be removed to their home countries but for their obstruction. *Ugarte v. Green*, No. 17-1436, 2017 WL 6376498, at *3 (D.N.J. Dec. 13, 2017); *Conceicao v. Holder*, No. 12–4668, 2013 WL 1121373, at *2 (D.N.J. Mar.13, 2013); *Camara v. Gonzales*, No. 06–1568, 2007 WL 4322949, at *2 (D.N.J. Dec. 6, 2007). Again, Mr. Munoz's case is entirely dissimilar because he has done nothing to obstruct the issuance of otherwise available travel documents. *See generally* Resp., Ex. B (Cabezas Decl.). The only allegation against him is that he failed to make requests to unspecified third countries to which he has no connection. Pet., Ex. 6. One month into his second post-order period of detention, ICE still has not indicated which country it believes he could be removed to. Resp. at 30. There is nothing Mr. Munoz could do to make his removal more likely. Indeed, truly comparable cases have repeatedly been dismissed as moot because ICE has released the petitioners after failing to identify a country of removal. *See Hernandez Castillo v. Oddo*, 3:24-cv-164 (W.D. Pa. 2024); *Altamirano Flores v. Oddo*, 3:23-cv-238 (W.D. Pa. 2023); *Vasquez Martinez v. Lowe*, No. 4:24-cv-679 (M.D. Pa. 2024); *Giron v. Lowe*, No. 1:24-cv-900 (M.D. Pa. 2024). Mr. Munoz's removal is not reasonably foreseeably because there is nowhere he can be removed. Therefore, Mr. Munoz's continued detention violates § 1231 as

interpreted by *Zadvydas*, as well as the Due Process Clause of the Constitution. *See Zadvydas*, 533 U.S. at 690-691 (discussing the constitutional problems with prolonged post-order detention); *see also* Mem. of Law at 7-8, 11-12.

D. Mr. Munoz's re-detention without sufficient notice violated agency policy and the Due Process Clause

1. The order of supervision provided inadequate notice in violation of the agency's policy.

It is well settled that "rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency," and that a failure to follow those rules without explanation is arbitrary, capricious, and an abuse of discretion. *Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171, 175 (3d Cir. 2010). Here, ICE violated its own policy by failing to give Mr. Munoz adequate notice before re-detaining him for failing to comply with the conditions of his order of supervision. Respondents argue that Count II of the petition fails because Mr. Munoz did not show that the order of supervision violated any statute or regulation. Resp. at 26-27. However, they disregard Mr. Munoz's argument that they violated the APA by failing to adhere to their own policies implementing the relevant statutory and regulatory provisions. Pet. at ¶¶ 44-54, Mem. of Law at 9-10. Specifically, they

failed to adhere to the procedures established in the Detention and Deportation Officers' Field Manual (2006) (hereinafter "the Policy").[3]

In *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954), the Supreme Court held that an agency may not violate its own regulations. It expanded this principle to cover internal agency policies in *Morton v. Ruiz*, 415 U.S. 199, 204-06 (1974). In that decision, the Court held that the agency's failure to comply with its internal manual was arbitrary and capricious under the APA, reasoning that "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures ... even where the internal procedures are possibly more rigorous than otherwise would be required." *Id.* at 235. Following *Morton*, courts consider the language and context of the agency's policy to determine whether a policy is binding and, thus, affects the rights of individuals. *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also INS v. Yang*, 519 U.S. 26, 31–32 (1996) ("Though the agency's discretion is unfettered at the outset, if it announces and follows—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned

[3] U.S. Dep't of Homeland Sec., Detention and Removal Operations Policy and Procedure Manual (2006), https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf

as 'arbitrary, capricious, [or] an abuse of discretion.'"). Therefore, agency actions are arbitrary and capricious when they fail to comply with binding internal policies.

The Policy involved was not merely intended to facilitate internal agency housekeeping but to afford imperative procedural safeguards to noncitizens. It implements and expands the statutory and regulatory provisions, such as 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.5(a)(2). The language in the opening statement makes it clear that its provisions are binding:

> [T]he DROPP is the only approved source of ORO policy and procedures [...] The contents of Detention and Removal Operations Policy and Procedure Manual (DROPPM) represent official ORO policy. To the extent that any material conflicts with or otherwise differs from previous issuances, this manual will be the controlling document."

Chapter 1, DDOFM, at 1-2. Therefore, the agency's non-compliance with the Policy violates the APA pursuant to *Morton*. *See* 415 U.S. at 235; *see also Aracely R. v. Nielsen*, 319 F. Supp. 3d 110, 149 (D.D.C. 2018) (recognizing an APA claim where the agency failed to comply with an internal directive in declining the parole requests); *Ravulapalli v. Napolitano*, 773 F.Supp.2d 41, 53–54 (D.D.C. 2011) (holding that the plaintiff stated an APA claim based on the allegation that the defendant failed to follow internal policy guidelines directing its review of the plaintiff's visa petition).

Among other things, the Policy sets out procedures for the removal process during the initial ninety days post-removal order and release under supervision

thereafter. Chapters 16-17, DDOFM, at 76-105. As relevant here, the Policy instructs officers to schedule an interview with a noncitizen and complete the paperwork to request travel documents once the order of removal becomes final. Chapter 16, DDOFM, at 78. At the mimety-day mark post-order, the field offices are to conduct post-order custody reviews ("POCR"). Chapter 17, DDOFM, at 94-95. The two main factors considered at the interviews are 1) availability of a travel document and significant likelihood of removing the alien in the reasonably foreseeable future (pursuant to 8 CFR § 241.13) and 2) threat to the public or flight risk (pursuant to 8 CFR § 241.4). *Id.* The removal period will be extended and the noncitizen may remain in detention during such extended period if the non-citizens fails or refuses to make timely application in good faith for travel or other documents necessary to facilitate the departure. *Id.* at 96. Prior to the suspension of a removal period, the noncitizen should be "served with a notice of what he/she is required to do" and "given the opportunity to comply." *Id.* at 97.

Following the interview, the noncitizen must be notified in writing whether he is to be released from custody or remain detained pending removal or further review of his custody status. *Id.* at 101. If a decision is made to release the noncitizen, he should be served the Release Notification, Order of Supervision (Form I-220B) with all appropriate attachments. *Id.* Prior to release, the officers must "[e]xplain the conditions of release to the alien and ensure the alien acknowledges these

conditions." Chapter 16, DDOFM, at 73. If the noncitizen violates the conditions of release, the order of supervision may be revoked upon issuance of the notice of revocation and an informal interview with the noncitizen. Chapter 17, DDOFM, at 103-104.

In sum, the Policy requires ICE officers to give a clear explanation of supervision requirements upon release of the noncitizen at the expiration of the removal period. Mr. Munoz did not receive an adequate explanation despite his repeated interactions with ERO personnel. The initial paperwork issued to him upon release indeed stated that he was required to "provide written copies of requests to Embassies or Consulates." However, any reasonable person would not view this vague statement as a clear explanation of the conditions of release. This is especially true in cases where the noncitizen has no ties to any country other country than the country he cannot safely return to. Except for the conversation during the initial interview when Mr. Munoz was asked to identify five countries of removal, no one ever explained to him that he was required to continue to ask random countries to issue him travel documents. Moreover, the regulations and Policy required ICE to afford Mr. Munoz "an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4; Chapter 17, DDOFM, at 104; *see also* Resp. at 5 (acknowledging the need for an informal interview). Mr. Munoz

did not receive this interview. TRO Mot., Exh. A; *see Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (finding ICE's failure to provide an informal interview upon supervision revocation to constitute a violation of the agency's regulations and policy). Therefore, this case involves exactly the arbitrary and capricious behavior the APA intends to prevent.

2. The lack of notice of his supervision requirements also violated Mr. Munoz's due process rights.

Due process requires notice that is "reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action," and the "means employed must be such as one desirous of actually informing the [party] might reasonably adopt to accomplish it." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-315 (1950). The order of supervision issued to Mr. Munoz did not adequately put him on notice that he would be re-detained for failing to make requests to random, unspecified countries. Respondents submit that the condition of supervised release requiring him to "make good faith efforts to secure a travel document" constituted adequate notice of his obligation to communicate with the embassies or consulates of *alternate* countries and fault him for not seeking clarification of the conditions of supervision. Resp. at 27-29. However, no reasonable person would find the notice that Mr. Munoz received to be constitutionally adequate under the circumstances and in the context of applicable laws. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (noting that due process is

"flexible and calls for such procedural protections as the particular situation demands").

Respondents assert that Mr. Munoz's duty to reach out to the authorities of third countries stems from 8 C.F.R. § 241.5(a)(2), which permits them to impose a supervision condition requiring the noncitizen to "continue efforts to obtain a travel document and assist the Service in obtaining a travel document." Resp. at 29. However, the regulation does not refer to any third or alternative countries. The corresponding advisory in Mr. Munoz's order of supervision similarly did not mention "alternate" or "third" countries. Pet., Ex. 5 (Doc. No. 1-7). For the first time, the word "alternate" appeared in the notice of the supervision revocation received by Mr. Munoz minutes before his detention. Pet., Ex. 6 (Doc. No. 1-8). The revocation notice claims that Mr. Munoz was properly instructed on March 28, 2024. *Id.* SDDO Cabezas stated in communication with Mr. Munoz's counsel that these instructions were given to Mr. Munoz orally. Pet., Ex. 7 (Doc. No. 1-9), at 3. However, Mr. Munoz has a different recollection of his interaction with the deportation officer during the March 28, 2024 check-in and does not believe they discussed third-country travel documents at all. TRO Mot., Exh. A, at ¶ 11.

Significantly, the regulations require the immigration judge and the DHS to designate the countries of removal throughout the removal process. The immigration judge designates the country or countries of removal during removal proceedings. 8

C.F.R. § 1240.12; *see also Aden v. Nielsen*, 409 F. Supp. 3d 998, 1008 (W.D. Wash. 2019) ("[T]he regulations specifically require the IJ to designate a removal country during removal proceedings, and courts have instructed IJs to do so in accordance with § 1231(b)(2)."). The statute and regulations further give the DHS discretion to designate a country of removal after the order is issued. 8 U.S.C. § 1231(b); 8 C.F.R. § 1240.12(d); *Aden*, 409 F. Supp. 3d at 1009. However, that authority is restricted as a noncitizen must be given a reasonable opportunity to raise and pursue his claim for withholding of deportation. *See* 8 U.S.C. § 1231(b)(3); *D.V.D.*, 2025 WL 1142968, at *22. Therefore, the law does not make the noncitizen responsible for identifying the place of deportation in the first instance.

Indeed, the revocation notice states that Mr. Munoz purportedly was given the following instructions: "On March 28, 2024, you were instructed to provide written copies of request to Embassies or Consulates regarding travel document requests or permission from a *designated* country willing to accept your admittance upon your removal from the United States." TRO Mot., Exh. 4. The only designated country in this case was Mexico, the country to which the immigration judge prohibited Mr. Munoz's removal. TRO Mot., Exh. 4. No other country was ever designated either by the immigration judge or ICE. In fact, ICE has yet to identify the country of potential removal.

Therefore, it was more than reasonable for Mr. Munoz to view the supervision condition requiring him to "continue efforts to obtain a travel document and assist the Service in obtaining a travel document" as a requirement to cooperate with ICE if and when it identifies a safe third country. Indeed, at least one court has upheld this condition based on its relationship to the government's interest in securing removal to the noncitizen's country of origin, not based on an unfounded belief that the noncitizen would obtain permission to be removed to an unspecified third country. *Lawrence v. Gonzales*, No. 12 CIV. 4076 KBF, 2013 WL 1736529, at *4 (S.D.N.Y. Apr. 19, 2013). Respondents' reading of the condition to require an indefinite number of futile requests is unreasonable and was not clearly communicated to Mr. Munoz in advance.

In sum, Respondents violated Mr. Munoz's due process rights when they revoked his supervision because the notice he received about this condition was not "reasonably calculated, under all the circumstances, to appraise [him of the supervision requirements]." *Mullane*, 339 U.S. at 315; *Rombot*, 296 F. Supp. 3d at 388 (concluding that ICE violated the Due Process Clause of the Fifth Amendment when it detained a noncitizen who had been released pending his removal, where the noncitizen did not violate any condition of his release and he was not given an opportunity to prepare for an orderly departure, as specifically provided in his

release notification, but rather he was placed in shackles, without advance notice, a hearing, or an interview).

II. The Court Should Grant Emergency Relief

For the reasons discussed above, the Court should grant Mr. Munoz's habeas petition on the merits and order his release. In the alternative, it should grant a temporary restraining order or preliminary injunction and order his release while it further considers the petition. *See generally* TRO Mot. Otherwise, Mr. Munoz will suffer the irreparable harm of continued unlawful detention, as well as possible medical harm.

A. Mr. Munoz has shown a likelihood of success on the merits.

A grant of emergency relief requires a petitioner to show a likelihood of success on the merits. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). How strong the claims need to be depends on "the balance of the harms" and how much "net harm an injunction can prevent." *Durel B. v. Decker*, 455 F. Supp. 3d 99, 106 (D.N.J. 2020) (quoting *Reilly*, 858 F.3d at 179). For all the reasons discussed above, Mr. Munoz is likely to succeed on the merits of his petition.

B. Mr. Munoz is suffering irreparable harm in ICE detention.

A court must also find that the party seeking relief will more likely than not suffer irreparable harm in the absence of such relief. *Reilly*, 858 F.3d at 179. Every day that Mr. Munoz remains detained in ICE custody for no reason, in violation of

the authorizing statute and the Constitution, is a day that he will never get back and will never be compensated for. TRO Mot. at 13-14; *see Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action."); *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484–85 (3d Cir. 2000) (describing irreparable injury as harm that cannot be adequately compensated after the fact). As the time stretches on he is unable to work or pay his bills and risks losing his apartment and suffering other long term consequences.

Respondents' argument that Mr. Munoz is not suffering irreparable harm repeats their arguments on the merits. Resp. at 34. Again, they mischaracterize the facts in an attempt to justify Mr. Munoz's needless detention. Mr. Munoz did not "file[] any applications for relief from removal" after his release in 2023 because he had already gone through removal proceedings and was granted relief—withholding of removal. Pet., Ex. 4; *cf.* Resp. at 34. That relief entitles him to remain in the United States unless and until a safe third country of removal becomes available. *See D.V.D.*, 2025 WL 1142968, at *2-3. There was nothing he could do to "assist his orderly departure" because there is no country that will take him, certainly not at his request. *Cf.* Resp. at 34. This remains true after more than a month in detention. Mr. Munoz is not responsible for his current detention, nor is there any immediate likelihood of his removal now that he is detained.

The conditions of Mr. Munoz's confinement further exacerbate the harm he is suffering while detained at the El Paso Service Processing Center. Mr. Munoz is HIV positive and therefore needs consistent medical care. Mem. of Law at 14. Yet the detention facilities in El Paso have been documented to lack adequate medical staff.[4] In fact, a detainee at the facility died in custody on April 16.[5] Therefore, Mr. Munoz's ongoing unconstitutional detention risks causing severe medical harm that exacerbates the deprivation of liberty he is experiencing.

C. The balance of the equities and the public interest favor Mr. Munoz's release

Respondents and the public have no interest in Mr. Munoz's continued illegal detention. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) (noting the "public interest in preventing [noncitizens] from being wrongfully removed"); *K.A. ex rel. Ayers v. Pocono Mountain School Dist.*, 710 F.3d 99, 114 (3d Cir. 2013) (stating that the "enforcement of an unconstitutional law vindicates no public interest"). While Respondents invoke the government's interest in the prompt execution of removal orders, Resp. at 35, again, there is no evidence that ICE is actually planning to

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[4] Melissa Vega et al., The Pains and Profits of Immigrant Imprisonment: Migrant Testimonies from ICE Detention Centers in the ICE El Paso Field Office (November 2020), at 31, *available at* https://deptofgov.nmsu.edu/AVID-NSF-REU-Report-Final-Version-25-November-2020.pdf.

[5] Mike Ludwig, *Three People Die in ICE Custody in April as Conditions Worsen in Immigration Jails*, Truthout (May 4, 2025), https://truthout.org/articles/3-people-die-in-ice-custody-in-april-as-conditions-worsen-in-immigration-jails/.

remove Mr. Munoz in the near future. Resp. at 30. His detention therefore does not serve the purpose of facilitating his removal or any other valid purpose and is not in the public interest. *See Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (describing the government's interest "in minimizing the enormous impact of incarceration in cases where it serves no purpose," particularly given the cost to taxpayers).

III. No Bond Is Required Because Respondents Will Not Lose Money By Releasing Defendant

Under Rule 65(c), courts need not set a bond when issuing a temporary restraining order or preliminary injunction if the injunction "raises no risk of monetary loss to the defendant." *Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010). In noncommercial cases, courts "consider the possible loss to the enjoined party together with the hardship that a bond requirement would impose on the applicant," and particularly the impact that a bond requirement would have on the enforcement of federal rights. *Temple Univ. v. White*, 941 F.2d 201, 220 (3d Cir. 1991).

Mr. Munoz is an individual noncitizen represented pro bono by a legal services organization, who has already been detained and unable to work for over a month. Imposing a bond requirement would cause him significant hardship and negatively impact his ability to vindicate his right to liberty. *See White*, 941 F.2d at

220. On the other side, Respondents do not stand to suffer any monetary loss by releasing Mr. Munoz. Rather, they will save approximately $134 per day by releasing him and permitting him to resume non-custodial supervision. *See Velasco Lopez*, 978 F.3d at 854 n.11. Notably, they do not allege what "costs and damages" they expect to sustain to warrant a bond under Rule 65(c). Resp. at 36. Therefore, the Court should not set a bond if it issues preliminary injunctive relief.

CONCLUSION

For the foregoing reasons, Mr. Munoz respectfully requests that the Court grant his petition for writ of habeas corpus or, in the alternative, issue a temporary restraining order or preliminary injunction ordering his immediate relief pending further proceedings.

Dated: May 5, 2025

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

HORACIO MUNOZ-SAUCEDO, Petitioner, v. YOLANDA PITTMAN, et al., Respondents.	CASE NO: 1:25-CV-2258 (O'Hearn, J.) ELECTRONICALLY FILED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on May 5, 2025, she served a copy of the attached

REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS AND OPPOSITION TO MOTION FOR TRO

and the attached exhibits, by electronic service pursuant to Local Rule 5.2 to the following individuals:

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