IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARIO HERNANDEZ ESCALANTE, ***Petitioner*,** **v.** **KRISTI NOEM,** **In her official capacity as Secretary of Homeland Security,** **TODD M. LYONS,** **In his official capacity as Acting Director, Immigration and Customs Enforcement;** **NIKITA BAKER,** **In her official capacity as Field Director of ICE Baltimore Field Office,** ***Respondents*.**	**Case No: 1:25-CV-1799-PX** **OPPOSITION TO RESPONDENTS' MOTION TO DISMISS REGARDING JURISDICTION**

OPPOSITION TO RESPONDENTS' MOTION TO DISMISS REGARDING JURISDICTION

Petitioner, Mario Hernandez Escalante ("Mr. Hernandez"), files this opposition to Respondents' Motion to Dismiss his petition for a writ of *habeas corpus*. ECF 4. Respondents assert that this Court has no jurisdiction over Mr. Hernandez's petition, as he was moved out of the district by the time his attorney filed the petition, and therefore the case should have been filed in the Eastern District of Texas. However, exceptions to the immediate custodian rule should be applied under the circumstances described below, and this Court should retain jurisdiction over the merits of Mr. Hernandez's petition despite his transfer.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Mr. Hernandez is a citizen of El Salvador. On December 12, 2019, Immigration Judge

Karen Donoso-Stevens, sitting at the Arlington Immigration Court in Arlington, Virginia, ordered Mr. Herandez removed from the United States, but granted him deferral of removal under the U.N. Convention Against Torture ("CAT") as to El Salvador. ECF 1-2. Both Mr. Hernandez and the government waived appeal of the decision and Mr. Hernandez was released soon after. *Id.* ICE then placed Mr. Hernandez on an order of supervision pursuant to his CAT protection, allowing him to obtain work authorization while requiring him to periodically check in with ICE as required.

Respondents have recently imposed quotas on immigration arrests and detentions in the United States, escalating to require that ICE make 3,000 or more arrests every day to satisfy White House instructions. *See* Hesson and Cooke, *ICE's Tactics Draw Criticism as it Triples Daily Arrest Targets*, REUTERS (June 10, 2025), available at https://www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-daily-arrest-targets-2025-06-10/. These tactics have included arresting noncitizens who show up to immigration court and issuing a memorandum to immigration judges[1] to grant unilateral motions to dismiss removal proceedings to allow arrests and expedited removals of noncitizens, depriving them of trials in immigration court. *See* Julia Ainsley, *Trump Admin Tells Immigration Judges to Dismiss Cases in Tactic to Speed Up Arrests*, NBC NEWS (June 11, 2025), available at https://www.nbcnews.com/politics/national-security/trump-admin-tells-immigration-judges-dismiss-cases-tactic-speed-arrest-rcna212138. Such efforts have led to arrests in excess of available space in ICE custody, including people like Mr. Hernandez who cannot be lawfully removed to their native country.

At an annual check in earlier in 2025, ICE's Intensive Supervision Appearance Program

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[1] Immigration judges are part of the Executive Office for Immigration Review ("EOIR"), an agency under the Department of Justice. EOIR is not an independent agency, nor are the immigration judges members of the judiciary.

("ISAP") placed Mr. Hernandez on ankle monitoring.[2] On June 2, 2025, Mr. Hernandez received a call from ISAP that he needed to report to the Baltimore Field Office the next day. On June 3, Mr. Hernandez went with his U.S. citizen sister Alba to the office as required. *See also* ECF 6, Affidavit of Alba Gloria Hernandez Anguiano ("Alba Affidavit") at 1. Mr. Herandez was escorted into an office with approximately ten others who were then detained. Mr. Hernandez was told by an officer that he was detained so that he could be removed from the United States. To that end, Mr. Herandez was held in ICE custody at 31 Hopkins Plaza in Baltimore for two days.

While detained at 31 Hopkins Plaza, officers attempted to have Mr. Hernandez sign documents to inform the Salvadoran consulate of his deportation. Mr. Hernandez refused and reminded the officer of his protection under the CAT. After Mr. Hernandez maintained that he would not sign any documents without an attorney, Mr. Hernandez was permitted a phone call and he called his sister.

At approximately 11:00 a.m. on June 5, 2025, Alba hired Blessinger Legal, PLLC to represent Mr. Hernandez in petitioning this Court for his release from ICE custody. Alba Affidavit at 2. At 2:25 a.m. on June 6, 2025, undersigned counsel filed Mr. Herandez's petition. *See* ECF 1.

Unbeknownst to his attorneys, at some point Mr. Hernandez was able to speak again with Alba who informed him that she had retained Blessinger Legal to represent him in filing the petition for a writ of *habeas corpus*.[3] At that point, Mr. Hernandez had no knowledge of any effort

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[2] The following factual summary is supported, where not otherwise cited, by the attached Affidavit of Eva Chevez. Mr. Hernandez prepared an affidavit for this Court but due to his detention has been unable to sign. The affidavit has been read to him in Spanish and confirmed by Ms. Chevez as accurate. Undersigned counsel anticipates an identical affidavit signed by Mr. Hernandez and will file it with the Court as soon as possible.

[3] It is noteworthy that ICE detainee calls to family members are recorded and monitored by ICE.

or plan to transfer him anywhere else outside of Baltimore. Subsequent to speaking with Alba, Mr. Hernandez was told that he was being moved, but he was not told where. He asked to call his attorney, but that request was denied. He was given no explanation why he was being transferred.

According to ICE's recorded printout, at 3:15 p.m. on June 5, 2025, Mr. Hernandez was booked out of the Baltimore Hold Room. ECF 4-2 at 2. He was then transferred to IAH Secure Adult Detention Facility in Livingston, Texas and booked in at 9:00 p.m. It is not known whether this 9:00 p.m. time refers to Eastern or Central time zone, as Livingston, Texas is in Central time zone. However, in either case, ICE indicates that Mr. Hernandez was detained in Texas before 10:00 p.m. EST on June 5, 2025. Undersigned counsel filed the petition approximately four hours later, [4] after again confirming on the online ICE Detainee locator that Mr. Hernandez's detention was listed as Baltimore Hold Room. *See* ECF 1-1. Mr. Hernandez was not able to speak with his sister Alba until June 7, 2025, when she opened an account to pay for him to make phone calls from the new facility.

On June 9 or 10, an immigration officer in Texas again requested that Mr. Hernandez sign paperwork. The paperwork was in English so Mr. Hernandez didn't understand. He again refused to sign and told the officer that he had an order of protection under the CAT. The officer indicated that if he couldn't go to El Salvador then deportees usually go to Mexico. Mr. Hernandez informed the officer that his brother had been murdered in Mexico and it was not safe there for Mr. Hernandez. The officer indicated that Mr. Hernandez would be removed whether or not he signed.

On June 9, 2025, Respondents moved to dismiss this petition for lack of jurisdiction. ECF 4. On June 10, this Court held a status conference, set a briefing schedule, and extended its stay

[4] Mr. Hernandez does not dispute that he was physically in Texas before undersigned counsel filed the Petition at 2:25 a.m. on June 6, 2025.

order through June 23, 2025. Petitioner files this brief in response to the jurisdictional arguments raised in Respondents' motion to dismiss, and will file a reply to Respondents' opposition on the merits of the petition at ECF 10 on June 20, 2025.

LEGAL FRAMEWORK AND STATEMENT OF THE CASE

Respondents move to dismiss, pursuant to Rule 12(b)(1), asserting that this Court lacks subject matter jurisdiction over Mr. Hernandez's petition. *See* ECF 4-1. Under 28 U.S.C. § 2241, "[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." Respondents do not allege that this Court lacks personal jurisdiction over Mr. Hernandez, Respondents, or a person able to effectively release Mr. Hernandez if the Court so ordered. *See* ECF 4-1. Instead, Respondents allege that because Mr. Hernandez was detained in the Eastern District of Texas at 2:25 a.m. on June 6, 2025, that is the Court which must have jurisdiction. *Id.* Thus, the parties do not seem to dispute that a district court has the power to issue a writ of *habeas corpus* under the circumstances presented, only whether *this* Court has the power to issue one to Mr. Hernandez because he had been moved outside the District of Maryland by the time the petition was filed.

Under 28 U.S.C. § 2243, "[t]he writ, or order to show cause shall be directed to the person having custody of the person detained. . . Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained." In the ordinary case,[5] the "immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Moreover, "the traditional rule has always been that the Great Writ is

[5] There is no dispute that Mr. Hernandez is held by ICE, and therefore "is in custody under or by color of the authority of the United States." 28 U.S.C. § 2241(c)(1).

issuable only in the district of confinement." *Id.* at 442 (internal quotation omitted). Thus, courts typically "look to the place where the petitioner was confined when the petition was filed." *Suri v. Trump*, 2025 U.S. Dist. LEXIS 86877, *16 (E.D.Va. May 6, 2025) (citing *United States v. Little*, 392 F.3d 671, 680 (4th Cir. 2004) (discussing venue for an individual in criminal confinement)). However, this presumption is not without exception. "Where the default rules of habeas jurisdiction have proved untenable, the Supreme Court and Fourth Circuit have recognized exceptions to these default rules." *Id.* (citations omitted).

ARGUMENT

Mr. Hernandez does not dispute the timeline presented in Respondents' exhibit at ECF 4-2, and it is largely confirmed by Mr. Hernandez's accounting of events. Mr. Hernandez also agrees that in the ordinary case, were he to file today, he would most likely be required to file in the Eastern District of Texas. But contrary to Respondents' assertions, this is not the end of the inquiry because there are recognized exceptions to the venue rules, which should apply in this case where Mr. Hernandez was transferred without information or being able to contact his attorney. Outlining these exceptions, the concurrence in *Padilla* is instructive and should guide this court. While he joined in the Court's judgement, Justice Kennedy wrote separately to

> acknowledge an exception if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention. In cases of that sort, habeas jurisdiction would be in the district court from whose territory the petitioner had been removed. In this case, if the Government had removed Padilla from the Southern District of New York but refused to tell his lawyer where he had been taken, the District Court would have had jurisdiction over the petition. Or, if the Government did inform the lawyer where a prisoner was being taken but kept moving him so a filing could not catch up to the prisoner, again, in my view, habeas jurisdiction would lie in the district or districts *from which he had been removed*."

Padilla, 542 U.S. at 454 (Kennedy. J., concurring in the judgement) (emphasis added).

Justice Kennedy's concurrence cannot be ignored as mere *dicta* because he was the deciding vote in *Padilla*,[6] such that were circumstances like Mr. Hernandez's to have been presented, the concurrence indicates he likely would have sided with the dissent and recognized clear exceptions to the immediate custodian and territorial jurisdiction rules. *Id.*; *see also id.* at 458-59 (Stevens, J., dissenting) ("It is reasonable to assume that if the Government had given Newman, who was then representing respondent in an adversary proceeding, notice of its intent to ask the District Court to vacate the outstanding material witness warrant and transfer custody to the Department of Defense, Newman would have filed the habeas petition then and there, rather than waiting two days.").

As Mr. Hernandez acknowledges, the rules which govern jurisdiction and venue in habeas cases are usually bright line in the ordinary case, but subject to well-acknowledged exceptions in the extraordinary case. Ultimately what matters is whether this Court has "power to produce the body of [Mr. Hernandez] before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." *Padilla*, 542 U.S. at 435 (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)); *Ex Parte Mitsuye Endo*, 323 U.S. 283, 305 (1944) ("the District Court has jurisdiction to act unless the physical presence of [Ms. Endo] in that district is essential."). Because this Court has that power, and because the exceptions to the ordinary venue rules apply, this Court is the proper forum to hear the merits of Mr. Hernandez's claim that he is unlawfully held in civil immigration custody and should be immediately released.

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[6] Justice Sandra Day O'Connor joined the majority opinion in *Padilla*, but also joined Justice Kennedy's concurrence, suggesting that were Mr. Hernandez's facts presented in lieu of Padilla's, the Supreme Court might have adopted the dissent's opinion 6-3.

I. THE IMMEDIATE CUSTODIAN RULE DOES NOT APPLY WHEN THE IMMEDIATE CUSTODIAN CANNOT BE KNOWN OR WAS NOT DISCLOSED.

"When the default rules of habeas jurisdiction have proved untenable, the Supreme Court and Fourth Circuit have recognized exceptions to these default rules." *Suri*, 2025 U.S. Dist. LEXIS 86877 at *16 (citing, *inter alia*, *Braden*, 410 U.S. at 499 and *U.S. v. Moussaoui*, 382 F.3d 453, 465 (4th Cir. 2004)). Thus, when circumstances warrant a departure from the ordinary rules, "the very nature of the writ of habeas corpus demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Suri*, 2025 U.S. Dist. LEXIS 86877 at *18. This is particularly notable in immigration cases in which "non-citizen detainees may be moved more frequently than those who are criminally incarcerated." *Id.* at *22.

As the majority acknowledged in *Padilla*, "[w]hen . . . a prisoner 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 449-50 n.18 (citing favorably to *Demjanjuk v. Meese*, 784 F.2d 1114, 1115-16 (D.C. Cir. 1986) ("Demjanjuk is in the custody of a United States Marshal, in a confidential location. This means that petitioner's attorneys cannot be expected to file in the jurisdiction where petitioner is held.")). Such circumstances have been generally called the "unknown custodian exception."

The Fourth Circuit explicitly recognized this exception in *Moussaoui*. There, in a criminal prosecution of Zacarias Moussaoui, an alleged[7] conspirator in the September 11, 2001 terrorist attacks. 382 F.3d at 457. In his defense, Moussaoui sought to call as witnesses several other alleged terrorists in U.S. military custody. The district court entered a writ of *habeas corpus ad*

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[7] In May 2006, Moussaoui was ultimately convicted by a jury and sentenced to life in prison.

testificandum to produce the witnesses, and the government made an interlocutory appeal. *Id.* at 458. The government argued that the compulsory process clause of the Sixth Amendment was inapplicable to produce enemy combatant witnesses outside the boundaries of the United States. *Id.* at 463. The Fourth Circuit affirmed the writ, concluding that "we are concerned not with the ability of the district court to issue a subpoena to the witnesses, but rather with its power to issue a writ of habeas corpus *ad testificandum* ('testimonial writ') to the witnesses" custodian. . . Therefore, the relevant question is not whether the district court can serve the *witnesses*, but rather whether the court can serve the *custodian*. *Id.* at 464 (emphasis in original). Turning to that question—also raised here—the Fourth Circuit cited the ordinary venue rules, but cited for that exceptional case to *Demjanjuk* and Footnote 18 of *Padilla*, concluding that the Secretary of Defense "is [the witnesses] ultimate custodian" and therefore a proper recipient of the writ. *Id.* at 465.

The facts at issue in Mr. Hernandez's case warrant applying the unknown custodian exception. Critically, DHS re-detained Mr. Hernandez four and a half years after an immigration judge granted him protection under the Convention Against Torture, and after he had regularly reported for ICE check-ins in Maryland. Yet, once in detention, DHS officers did not tell him where he was going to be transferred or what third country had accepted his removal (the only legal justification for re-detaining him). He then obtained counsel and spoke with his sister, none of whom knew of his transfer prior to June 7, 2025. Thus, absent any indication at the time of filing the petition that he was not under the control of Respondent Nikita Baker in the District of Maryland, the Secretary of Homeland Security was (and remains) the ultimate custodian of Mr. Hernandez. *See Suri*, U.S. Dist. LEXIS 86877 at * 24; *Moussaoui*, 382 F.2d at 465.

This conclusion is analogous to the facts in *Suri*, which reflect diligent effort to properly

file the petition without access to accurate information about the Petitioner (including information which was affirmatively prevented from disclosure):

> Petitioner's counsel, the individual tasked with filing the petition in the proper jurisdiction and naming the proper respondents, had no indication that Petitioner had been moved to Louisiana. The NTA does not reference Louisiana. Petitioner was not told by any officer that he was going to Louisiana. Even if ICE officers provided Petitioner with accurate updates of where he was being moved, Petitioner was not permitted to contact his wife until the evening of March 19, after his petition was already filed. Effectively, at the time the petition was filed, Petitioner was detained in an unknown location by an unknown custodian.

Suri, U.S. Dist. LEXIS 86877 at *26.

Here, at the time the petition was filed, Mr. Hernandez had been refused the opportunity to call his family or attorney to apprise them of his transfer (either that it was imminent or that it had happened) until two days after it happened. At the time the petition was filed, the ICE locator indicated that Mr. Hernandez remained in the District of Maryland. Thus, the unknown custodian exception must apply to allow Mr. Hernandez to file "in the district or districts from which he had been removed." *Padilla*, 542 U.S. at 454 (Kennedy. J., concurring).

Requiring Mr. Hernandez to file in the Eastern District of Texas (or otherwise transferring the case there) would obviate the Supreme Court's opinion in *Endo*, allowing the district court with proper jurisdiction to retain it despite transfer outside the district as long as it may continue to direct the writ to a person under its personal jurisdiction who has the legal authority to release the petition. 323 U.S. at 306; *Padilla*, 542 U.S. at 441. As Judge Giles acknowledged in *Suri*, a strict adherence to this rule would allow Respondents to "withhold the location of an individual, wait to see if and where a petition is filed, then disclose their custodian or location, and claim the court in which the petition was filed is divested of jurisdiction. This result would defeat the purpose of the great writ." 2025 U.S. Dist. LEXIS 86877 at *30.

II. THE TERRIRORIAL JURISDICTION RULE DOES NOT APPLY WHEN THE LOCATION OF THE PETIITONER CANNOT BE KNOWN.

The territorial jurisdiction rule, also called the district of confinement rule, has similar exceptions. The rule interprets 28 U.S.C. § 2241, specifically the language "within their respective jurisdictions," to require a petitioner to bring the case within the district he is actually being held. However, the list of circumstances in which jurisdiction vests with a district different than the location of the petition is long, and in fact this has become fairly common. And for the same and similar reasons as those for the unknown custodian rule, such exceptions must be applied where the location of the petition cannot be known.

This exception to the general rule was also acknowledged by the *Padilla* court for when the location of the petition was unknown at the time of filing. *See* 542 U.S. at 449-50 n.18. But the exception is far greater than just when the location is unknown. As the Supreme Court has acknowledged, the rule exists because "Congress' paramount concern was the 'risk and expense attendant to the production of prisoners from remote sections, perhaps thousands of miles from the District Court that issued the writ. The opportunities for escape afforded by travel, the cost of transportation, the administrative burden of such an undertaking negate such a purpose.'" *Braden*, 410 U.S. at 496 (quoting *Ahrens v. Clark*, 335 U.S. 188, 191 (1948)). But 25 years after *Ahrens*, the *Braden* Court acknowledged legislative and practical changes that necessitate a more flexible rule. 410 U.S. at 497 (noting that a habeas petition challenging a criminal conviction is filed in the sentencing court rather than the district of confinement and district courts may still exercise jurisdiction over the habeas petition of U.S. citizens detained abroad).

In the context of immigration detention, "[a]n exception to the district of confinement rule must apply when, after reasonably diligent effort, the district in which the petitioner was confined could not have been determined." *Suri*, 2025 U.S. Dist. LEXIS 86877 at *31. "[H]abeas jurisdictional rules must be based on discoverable facts regarding where a petitioner was and who was confining him. Otherwise, courts are

left to grapple with jurisdictional questions, manufactured or not, instead of focusing on the merits of the petition. Moreover, limiting the facts to those that could be discovered by diligent counsel constrains the ability of either side to engage in impermissible forum shopping." *Id.* at 32; *see also* Section IV, *infra*. Here, DHS did not inform Mr. Hernandez where he would be transferred, did not let him contact his attorney prior to his transfer, and did not update the ICE detainee locator immediately, resulting in that website listing his detention as Maryland at the time of filing of this habeas petition. As with the unknown custodian rule, because the district of confinement could not be determined at the time of filing (or was purposefully hidden from Petitioner's attorneys), jurisdiction should appropriately lie "in the district or districts from which [Mr. Hernandez] had been removed." *Padilla*, 542 U.S. at 454 (Kennedy. J., concurring).

III. THE SPECIFIC RELIEF SOUGHT IN THIS CASE COUNSELS THAT THIS COURT ASSERT JURISDICTION OVER THE PETITION.

As noted above, at the instruction of the Court, the parties are to cross-brief jurisdiction and the merits separately. Mr. Hernandez has sought to limit this brief only to the question of jurisdiction. However, the Court should note that the specific relief sought and background facts of his detention further counsel that this Court assert jurisdiction over the petition.

Specifically, in other cases challenging due process violations in immigration custody, such cases ordinarily arise in the context of a noncitizen subject to detention during ongoing removal proceedings. These cases challenge a lack of *procedure* which deprives a noncitizen of liberty, and ordinarily seek to have the Court order a bond hearing to be held to determine the reasonableness of the ongoing detention. *See e.g. Portillo v. Hott*, 322 F.Supp.3d 698 (2018) (applying balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976) required noncitizen subject to mandatory detention receive a bond hearing). Mr. Hernandez, however, is held beyond the removal period authorized by statute, which expired more than four years ago. *See* 8 U.S.C.

§ 1231(a)(1)(B); ECF 1 at ¶ 36 ("For Mr. Hernandez, that period of time began to run on December 12, 2019 and lasted for 90 days until March 11, 2020."). Thus, he does not seek a bond hearing or any curative process, but rather seeks his immediate release from unlawful custody.

There is no statutory basis to conclude that the removal period for Mr. Hernandez restarted upon his detention on June 3, which runs only from the date of the immigration court's order of removal. 8 U.S.C. § 1231(a). This fact appears conceded by Respondents. *See* ECF 10 at 11. Thus, absent a showing that Mr. Hernandez was likely to be removed to another country in the reasonably foreseeable future, Mr. Hernandez's detention under 8 U.S.C. § 1231(a)(6) violated his right to due process the moment he was taken back into custody on June 3, 2025. That unlawful act occurred in Maryland and therefore this District has an important interest in his petition.

Moreover, Mr. Hernandez's connection to Maryland should be considered by this Court when deciding its jurisdiction:

> In this case, Petitioner resides in this District, he was arrested in this District, and he was originally detained in this District. The last time Petitioner was permitted to speak to his wife, the only information he had was that he would be detained in this District. Petitioner's counsel worked diligently in less than twenty hours and filed the petition in this District based on the only information that was available to him—that his client was detained in this District. . . This is not the forum shopping that habeas jurisprudence seeks to prevent.

Suri, 2025 U.S. Dist. LEXIS 86877 * 33

Mr. Hernandez will address the remainder of Respondents' opposition on the merits in his subsequent brief, but the connection between Respondent and the District of Maryland, combined with the illegality of his detention on June 3, 2025, counsel that this Court has jurisdiction over the petition.

IV. AN EXCEPTION TO TRADITIONAL JURISDICTIONAL RULES EXISTS WHERE THE GOVERNMENT HAS ENGAGED IN FORUM SHOPPING.

As opposed to the specter of forum shopping that the traditional rules protect against—that of forum shopping by the petitioner—this case presents the growing concern of forum shopping by Respondents. Mr. Hernandez must concede that—*if* he were lawfully detained (which he is not)—the Department of Homeland Security may detain noncitizens anywhere in the U.S. *See generally* 8 U.S.C. § 1231(g). However, the circumstances surrounding Mr. Hernandez's hurried transfer to Texas absent any other rationale suggests that Respondents engaged in forum shopping in an attempt to deprive this Court of jurisdiction over Mr. Hernandez's petition.

Initially, Mr. Hernandez acknowledges that the Baltimore Hold Rooms are not in a long term facility. *See* Williams & Zawodny, *'It's Scary Right Now': ICE Holds Detainees for Days in Bedless Baltimore Cells*, BALTIMORE BANNER (March 14, 2025), available at https://www.thebaltimorebanner.com/politics-power/state-government/ice-baltimore-trump-immigration-deportation-detention-WNRGQUGLTVHD3MBFV4QUMEKDYM/; *see e.g. D.N.N. et al. v. Baker et al.*, 1:25-CV-1613 (D.Md.) (ongoing class litigation challenging conditions of confinement in the Baltimore Hold Rooms). However, this does not negate the illegality of his detention the moment he was taken into custody on June 3—that is to say, the alleged necessity of transferring Mr. Hernandez due to any claim of limited bed space is immaterial because Mr. Hernandez should never have been taken into custody in the first place.

Second, even assuming his detention was lawful, there is no basis to conclude that detention at a facility other than in the Eastern District of Texas was not possible. Indeed, detainees arrested in Maryland are routinely transferred to closer facilities like Moshannon Valley Processing Center, Farmville Detention Center, or Caroline Detention Facility. In fact, there are dozens of ICE detention facilities that are closer than Livingston, Texas, which is nearly 1400

miles from Baltimore. This includes at least five facilities within only 400 miles of Baltimore that hold hundreds of detainees every day: Moshannon Valley, Farmville, and Caroline, plus Buffalo Federal Detention Facility in Batavia, New York and Wyatt Detention Facility in Central Falls, Rhode Island. Absent any evidence from Respondents, Mr. Hernandez avers that at least one or all had available beds on June 5, 2025.

Third, Respondents' motion to dismiss included printouts of ICE's file on Mr. Hernandez. *See* ECF 4-2. The only lawful basis for Mr. Hernandez to be detained is evidence that Mr. Hernandez will be removed from the United States in the reasonably foreseeable future. *See Zadvydas v. Davis*, 533 U.S. 678, 672-73 (2001). Respondents' motion to dismiss was filed more than a week ago, and notably absent from its filing and from the past week of litigation, is any evidence that the government had the necessary basis to conclude it could remove Mr. Hernandez when it took him into custody on June 3. Indeed, the Court should acknowledge that the legal authority to detain Mr. Hernandez is even redacted from ECF 4-2. *See* ECF 4-2 at 1 ("Detention Classification: [REDACTED]").

With its earlier filing tonight on the merits, Respondents provide a document purporting to be a Notice of Revocation of Release for Mr. Hernandez. *See* ECF 10-1. However, the Court should note that the document is unsigned, has no certificate of service or any indication that it was actually provided to Mr. Hernandez, and contains only a cursory note that Mr. Hernandez's "case is under current review by Mexico for the issuance of a travel document." Mr. Hernandez will address this document more fully in his responsive brief, but the unsigned document does not satisfy Respondent's burden to show that Mr. Hernandez will be removed to Mexico in the reasonably foreseeable future. *Zadvaydas v. Davis*, 533 U.S. 678, 701 (2001); *see e.g. Tadros v. Noem*, No. 25-CV-4198 (EP) at 7 (D.N.J. June 13, 2025) (unpublished) ("Respondents' sole

statement that 'ICE has been making efforts to facilitate Petitioner's removal to a country other than Egypt' is insufficient to rebut the presumption established by Tadros.").

Fourth, as evidenced by the fact that Mr. Hernandez was asked to sign documents ostensibly permitting his removal from the United States in both Baltimore and in Livingston, and given the limited filing at ECF 10-1, the government clearly does not now possess an agreement from a third country to accept Mr. Hernandez even after more than four years of potential effort to do so. Certainly, if Respondents had such an agreement, they would have presented it to the Court with the same speed with which they responded to the Petition.

Thus, the following picture forms regarding the facts of how Mr. Hernandez came to be detained in Texas. Mr. Hernandez is a citizen of El Salvador and cannot lawfully be removed to that country. After more than four years outside immigration custody, he was suddenly taken into custody on June 3 without any real basis that he would be removed to a country other than El Salvador within the reasonably foreseeable future. While detained, he spoke with a family member to try to obtain legal counsel. He spoke on the phone with his family during which he was told his family was hiring legal counsel to file a habeas petition for him to be released. These calls were recorded and monitored by ICE. Early on June 5, Mr. Hernandez's family retained legal counsel to bring this action. Within a few hours, he was transferred out of the Baltimore Hold Room and flown nearly 1400 miles to the Eastern District of Texas and the U.S. Court of Appeals for the Fifth Circuit—arguably the most conservative circuit in the country for immigration litigation. There were more convenient, closer detention facilities available for his transfer. And during his transfer, he was actively prevented from contacting his family or lawyer to inform them of his transfer. These facts suggest a deliberate effort by Respondents to choose the Eastern District of Texas as a forum for litigation.

To be clear, Mr. Hernandez does not have direct evidence of forum shopping by Respondents, only a set of facts with no articulable explanation besides forum shopping. But absent an evidentiary hearing on whether the government has engaged in forum shopping, this Court must accept the facts in a light most favorable to Mr. Hernandez. *See Grayson v. Anderson*, 816 F.3d 262, 268 (4th Cir. 2016) ("When determining whether a plaintiff has made the requisite *prima facie* showing [of personal jurisdiction], the court must take the allegations and available evidence relating to personal jurisdiction in the light most favorable to the plaintiff."). Thus, until the government can offer evidence to rebut the above showing that Mr. Hernandez was denied access to his attorney and hurriedly transferred to Texas, the Court should not ratify Respondents attempt at forum shopping. *See J.G.G. v. Trump*, 145 S. Ct. 1003, 1015 (Apr. 7, 2025) (Sotomayor, J., dissenting) (noting the government's preference for habeas litigation over class action litigation is "especially so because the Government can transfer detainees to particular locations in an attempt to secure a more hospitable judicial forum."); *Suri*, 2025 U.S. Dist. LEXIS 86877 at *43 ("The Court declines to transfer Dr. Khan Suri's petition to the Western District of Louisiana for the additional reason that doing so would ratify an attempt at forum shopping. . . Just as a habeas petitioner should not be permitted to forum shop, neither should the United States Government.").

CONCLUSION

For all those reasons outlined above and to prevent further forum shopping by the Government in similar cases, this Court should find that it has subject matter jurisdiction over Mr. Hernandez's petition.

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Respectfully submitted,

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