

ALINA HABBA  
Acting United States Attorney  
Special Attorney  
ALEX SILAGI  
FRANCES BAJADA  
Assistant United States Attorneys  
970 Broad Street, Suite 700  
Newark, New Jersey 07102  
*Attorneys for Respondents*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

BABI KITELONGA,

*Petitioner,*

v.

YOLANDA PITTMAN, *et al.*,

*Respondents.*

Hon. Claire C. Cecchi

Civil Action No. 25-12000 (CCC)

---

**ANSWER TO PETITION FOR A WRIT OF HABEAS CORPUS  
UNDER 28 U.S.C. § 2241**

---

On the Brief:

Alex Silagi  
Frances Bajada  
Assistant United States Attorneys

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT ..... 1

BACKGROUND ..... 2

    I.    Petitioner’s Immigration and Criminal History ..... 2

        A.    Final Order of Removal and Detention ..... 3

        B.    Transfer from Virginia to Louisiana ..... 5

    II.   Habeas Petition and Procedural History ..... 6

LEGAL ARGUMENT ..... 7

    I.    This Court Lacks Jurisdiction Over the Petition ..... 7

    II.   Petitioner’s Removal Is Reasonably Foreseeable (Count 1) ..... 13

    III.  The Court Lacks Habeas Jurisdiction Over Petitioner’s Transfer Claim  
    (Count 2) ..... 15

    IV.  ICE Has Provided Individualized Custody Reviews (Count 3) ..... 17

CONCLUSION ..... 19

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Anariba v. Dir. Hudson Cnty. Corr. Ctr.</i> , 17 F.4th 434 (3d Cir. 2021) .....	7, 8
<i>Calla-Collado v. Att’y Gen.</i> , 663 F.3d 680 (3d Cir. 2011).....	17
<i>Dep’t of Homeland Sec. v. Thuraissigiam</i> , 140 S. Ct. 1959 (2020) .....	16
<i>Doe v. Garland</i> , 109 F.4th 1188 (9th Cir. 2024).....	7, 8
<i>Dvortsin v. Noem</i> , No. 25-1741, 2025 WL 1751968 (D. Colo. June 12, 2025).....	10, 12
<i>Eddine v. Chertoff</i> , No. 07-6117 (FSH), 2008 WL 630043 (D.N.J. Mar. 5, 2008) .....	8
<i>Edison C. F. v. Decker</i> , No. 20-15455, 2021 WL 1997386 (D.N.J. May 19, 2021).....	17
<i>Glover v. City of Philadelphia</i> , No. 24-1479, 2024 WL 3272912 (3d Cir. July 2, 2024) .....	9
<i>Khalil v. Joyce</i> , 771 F. Supp. 3d 268 (S.D.N.Y. 2025) .....	12
<i>Khalil v. Joyce</i> , No. 25-1963 (MEF), 777 F.Supp.3d 369 (D.N.J. Apr. 1, 2025) .....	9, 10
<i>Leamer v. Fauver</i> , 288 F.3d 532 (3d Cir. 2002).....	16
<i>Munaf v. Geren</i> , 553 U.S. 674 (2008) .....	16
<i>Munoz-Saucedo v. Pittman</i> , No. 25-2258 (CPO), --- F.Supp.3d ---- 2025 WL 1750346, (D.N.J. June 24, 2025)..	9, 10

*Ozturk v. Hyde*,  
 136 F.4th 382 (2d Cir. 2025) ..... 11

*Ozturk v. Trump*,  
 777 F. Supp. 3d 26 (D. Mass. 2025) ..... 12

*Ozturk v. Trump*,  
 779 F. Supp. 3d 462 (D. Vt 2025)..... 11

*Preiser v. Rodriguez*,  
 411 U.S. 475 (1973) ..... 16

*Reyna-Salgado v. Noem*,  
 No. 25-3138-JWL, 2025 WL 2550346 (D. Kan. Aug. 11, 2025) ..... 15

*Rumsfeld v. Padilla*,  
 542 U.S. 426 (2004) ..... 1, 7

*Scott v. Zickefoose*,  
 No. 12-782, 2012 WL 1232269 (D.N.J. Apr. 11, 2012) ..... 17

*Tadros v. Noem*,  
 No. 25-4108 (EP), 2025 WL 1678501 (D.N.J. June 13, 2025)..... 15

*Trump v. J.G.G.*,  
 145 S. Ct. 1003 (2025) ..... 8, 9

*United States v. Poole*,  
 531 F.3d 263 (4th Cir. 2008) ..... 7

*Wales v. Whitney*,  
 114 U.S. 564 (1885) ..... 8

*Y.G.H. v. Trump*,  
 No. 25-435, 2025 WL 1519250 (E.D. Cal. May 27, 2025) ..... 12

*Zadvydas v. Davis*,  
 533 U.S. 678 (2001) ..... 1, 13, 14

*Zapata v. United States*,  
 264 F. App'x 242 (3d Cir. 2008) ..... 16

**Statutes**

8 U.S.C. § 1227(a)(2)(A)(iii) ..... 1, 3

8 U.S.C. § 1231..... 13

8 U.S.C. § 1231(a)(1)(A) ..... 13

8 U.S.C. § 1231(a)(2) ..... 13

8 U.S.C. § 1231(a)(6) ..... 1, 3, 6, 13

28 U.S.C. § 2241 ..... 8, 16

28 U.S.C. § 2241(c)(3) ..... 16

Virginia Code § 18.2-58 ..... 2

Virginia Code § 18.2-51 ..... 3

Virginia Code § 18.2-53.1 ..... 3

Virginia Code § 18.2-422 ..... 3

Virginia Code § 18.2-48(i) ..... 2

**Regulations**

8 C.F.R. § 241.4 ..... 2, 19, 20

8 C.F.R. § 241.4(e) ..... 4

8 C.F.R. § 241.4(f) ..... 4

8 C.F.R. § 241.4(f)(5) ..... 19

8 C.F.R. § 241.4(f)(7) ..... 19

8 C.F.R. § 241.4(f)(8)(iii) ..... 19

8 C.F.R. § 241.4(g) ..... 4

8 C.F.R. § 241.4(k)(1) ..... 19

8 C.F.R. § 241.4(k)(2) ..... 19

8 C.F.R. § 241.4(k)(2)(iii) ..... 19

8 C.F.R. § 241.4(h)(2) ..... 19

8 C.F.R. § 241.4(i)(3) ..... 19

**PRELIMINARY STATEMENT**

Petitioner is a native and citizen of the Democratic Republic of the Congo who was admitted to the United States as a refugee on November 30, 2004. On January 14, 2008, Petitioner was convicted of several aggravated felonies in Virginia and sentenced to 20 years in prison. Following his release from Virginia state custody on July 1, 2024, U.S. Immigration and Customs Enforcement (“ICE”) took Petitioner into custody and initiated removal proceedings based upon his aggravated felonies pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii).

On January 29, 2025, an Immigration Judge ordered Petitioner removed under § 1227(a)(2)(A)(iii) but granted deferral of removal to Congo. Petitioner’s removal order became administratively final on January 29, 2025.

On June 20, 2025, Petitioner filed this habeas action seeking immediate release from detention. Petitioner argues that his “continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable.” Petition for a Writ of Habeas Corpus, ECF No. 1, at 2. The Court should dismiss the Petition for several reasons.

As a threshold matter, the Court does not have jurisdiction over the habeas action because the Petition was not filed in the district of confinement and names the incorrect custodian. The Petition was filed in the District of New Jersey at the time Petitioner was on board a plane, nine minutes from landing at Alexandria International Airport in Alexandria, Louisiana. *See Rumsfeld v. Padilla*, 542 U.S.

426, 443 (2004) (“The general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”). Accordingly, the Court should dismiss the Petition or transfer the habeas action to the Western District of Louisiana.

Further, if the Court assumes jurisdiction over the action, it should still deny the claims because Petitioner is lawfully detained under § 1231(a)(6), while the U.S. Department of Homeland Security (“DHS”) actively pursues his removal to a third country. During detention, Petitioner has received due process, including periodic custody reviews in accordance with 8 C.F.R. § 241.4. And the Court lacks habeas jurisdiction over Petitioner’s challenge to his transfers from one facility to another.

For these reasons, the Court should dismiss this action.

## **BACKGROUND**

### **I. Petitioner’s Immigration and Criminal History**

Petitioner is a native and citizen of the Democratic Republic of the Congo who was admitted to the United States as a refugee on November 30, 2004. James Mullan Declaration (“Mullans Decl.”) ¶ 3, Ex. A (Notice to Appear); Petition for a Writ of Habeas Corpus (“Pet.”), ECF No. 1, ¶¶ 27-29. On January 8, 2008, Petitioner was convicted in the Commonwealth of Virginia of:

- two counts of robbery in violation of Virginia Code § 18.2-58;
- two counts of abduction with intent to extort money or pecuniary benefit in violation of Virginia Code § 18.2-48(i);
- one count of malicious wounding in violation of Virginia Code § 18.2-51;

- five counts of use of a firearm in the commission of a felony in violation of Virginia Code § 18.2-53.1; and
- one count of wearing a mask in public in violation of Virginia Code § 18.2-422.

Mullan Decl., Ex. B (JOC), ¶ 4; Pet. ¶ 30. On April 15, 2008, Petitioner was sentenced to twenty years in prison. *Id.*

On July 1, 2024, following his release from Virginia State custody, U.S. Immigration and Customs Enforcement (“ICE”) took Petitioner into custody and served him with a Notice to Appear charging him with removability under 8 U.S.C. § 1227(a)(2)(A)(iii), Immigration and Nationality Act § 237(a)(2)(A)(iii), as an alien who was convicted of three qualifying aggravated felonies after admission. Pet. ¶ 33; Notice to Appeal; Mullan Decl. ¶ 5.

#### **A. Final Order of Removal and Detention**

On January 29, 2025, an Immigration Judge found Petitioner removable as charged under § 1227(a)(2)(A)(iii), but granted him “Deferral of Removal under the Convention Against Torture” prohibiting his removal to the Democratic Republic of the Congo. *Id.* ¶ 34, Jan. 29, 2025 IJ Order, ECF 1-2; Mullan Decl. ¶ 7. The order of removal became final that same day, because Petitioner and the U.S. Department of Homeland Security (“DHS”) waived their right to appeal the Immigration Judge’s decision. *Id.* ¶ 34; Jan. 29, 2025 IJ Order. Petitioner has been detained pursuant to 8 U.S.C. § 1231(a)(6), while DHS works to execute his final removal order to a third country. *See* Mullan Decl. ¶ 7; Pet. ¶ 40.

On February 14, 2025, U.S. Immigration and Customs Enforcement and Removal Operations (“ICE-ERO”) requested that the Republic of Chad, Republic of Madagascar, and Republic of South Africa accept Petitioner for removal. Mullan Decl. ¶ 8. Madagascar denied admission to Petitioner on April 11, 2025, Chad denied admission on June 6, 2025, and South Africa denied admission on July 8, 2025. Mullan Decl. ¶¶ 10, 12, 16, *see* Pet. n. 4. On July 29, 2025, DHS requested that the U.S. Department of State and the Homeland Security Advisory Council assist with identifying a third country for removal. Mullan Decl. ¶ 18. According to ICE, once a third country is identified, DHS will work expeditiously to remove Petitioner. *Id.*

In the meantime, on April 25, 2025, ICE-ERO issued a “Decision to Continue Detention” informing Petitioner that, after a review of his January 23, 2025 submission, his file, and the factors provided in 8 C.F.R § 241.4(e), (f), and (g), he would remain in custody while his removal was pending, because he poses a significant risk of flight and his “criminal history suggests that [he] would pose a danger to the community.” Apr. 25, 2025 Decision to Continue Detention, ECF 1-3; Pet. ¶ 35. The Decision further provided:

If you have not been released or removed from the United States at the expiration of the three-month period after this 90-day review, jurisdiction of the custody decision in your case will be transferred to the ICE Headquarters (ERO Removal Division) . . . [in] Washington D.C. . . . The ERO Removal Division will thereafter conduct a custody review and will make a determination regarding whether you will continue to be detained pending removal or may be released.

Apr. 25, 2025 Decision to Continue Detention; Mullan Decl. ¶ 11; Pet. ¶ 35. Petitioner was informed that he would be “afforded a personal interview,” at which he could be

accompanied by a representative of his choice, and he could submit additional documentation in support of his release. *Id.* Jurisdiction of the custody decision was transferred to ICE Headquarters, ERO Removal Division, see Pet. ¶ 35; Mullan Decl. ¶ 18, and Petitioner was interviewed on July 8, 2025. Mullan Decl. ¶ 18. A custody decision is pending with ICE-ERO Headquarters, pursuant to § 241.4. Mullan Decl. ¶ 18.

### **B. Transfer from Virginia to Louisiana**

Following his release from Virginia State custody on July 1, 2024, DHS detained Petitioner at the Western Virginia Regional Jail in Salem, Virginia. Mullan Decl. ¶ 6. On July 3, 2024, DHS transferred Petitioner to the Caroline Detention Facility in Bowling Green, Virginia where he remained until March 15, 2025. Mullan Decl. ¶¶ 6, 9. On March 15, 2025, DHS transferred Petitioner to the Farmville Detention Center in Farmville, Virginia. Pet. ¶ 38; Mullan Decl. ¶ 9.

On June 20, 2025, according to Acting Field Office Director James Mullan, ICE-ERO moved Petitioner out of Farmville Detention Center based on operational needs in order to facilitate his removal from the United States. Mullan Decl. ¶ 15. That day, DHS booked Petitioner into the Elizabeth Contract Detention Facility (“ECDF”) in Elizabeth, New Jersey. Mullan Decl. ¶ 13. Later that day, Petitioner was booked out of ECDF and departed on a flight at 10:15 a.m. from Newark Liberty International Airport headed to George Bush Intercontinental Airport (“IAH”) in Houston, Texas. *Id.* ¶ 13. The plane arrived at IAH at 12:30 p.m., and Petitioner remained at IAH until 1:15 p.m. when he departed on a flight to Alexandria

International Airport (“AEX”) in Alexandria, Louisiana. *Id.* ¶ 13. He arrived at AEX at 2:15 p.m. and was driven to Pine Prairie ICE Processing Center in Pine Prairie, Louisiana, where he is currently detained. *Id.* ¶¶ 13-14.

## **II. Habeas Petition and Procedural History**

At 3:06 p.m. on June 20, 2025, counsel for Petitioner attempted to file the Petition, which he filed later that day, asserting three claims for relief. First, Petitioner claims that his continued detention violates § 1231(a)(6), and he must be immediately released, because his removal is not reasonably foreseeable. Pet. ¶¶ 52, 53. Second, he claims that in violation of the Administrative Procedure Act, ICE has failed to follow ICE Directive 11022.1 which sets notice procedures for transfers from one detention facility to another. Pet. ¶¶ 22, 24, 56. Petitioner argues that under Directive 11022.1, ICE should be prohibited from transferring him from New Jersey or ordered to transfer him back to Virginia where he has family and immigration counsel. *Id.* ¶¶ 28, 37, 56-57; Pet. at 18; Decision to Continue Detention at 3. Finally, Petitioner claims that “ICE has violated [his] due process rights by denying him an individualized custody review to which he is entitled under ICE policy.” *Id.* ¶ 59. Petitioner asks this Court to conduct its own review of his detention or order ICE to review his detention under Directive 11022.1. *Id.* ¶ 60. Petitioner requests that this Court assume jurisdiction over the Petition, order his immediate release, prohibit his transfer from New Jersey, and prohibit his removal from the United States. Pet., Prayer for Relief.

On June 21, 2025, the Court held an emergent conference and entered an order prohibiting ICE from transferring or removing Petitioner from Pine Prairie ICE Processing Center, preserving the status quo until further order of the Court. Jun. 21, 2025 Order, ECF 3, Jun. 21, 2025 Minute Entry. On June 27, 2025, the Court directed the Clerk to serve the Petition and the June 21, 2025 Order on Respondents, and ordered Respondents to file a response to the Petition by August 11, 2025. ECF 4. Respondents received three extensions of their response deadline, ECF 6, 8, 10, and now submit this Answer to the Petition.

### **LEGAL ARGUMENT**

#### **I. This Court Lacks Jurisdiction Over the Petition**

As a threshold matter, the Court lacks jurisdiction over the Petition because it was not filed in the district of confinement and names the incorrect custodian.

There are two components to habeas jurisdiction. The Petitioner must file the Petition in the district of confinement and name her immediate custodian. *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 441 (3d Cir. 2021) (requiring petitioner to “name his warden as respondent and file the petition in the district of confinement”) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)). “The *Padilla* district of confinement and immediate custodian rules are firmly entrenched in the law of this and other circuits.” *Doe v. Garland*, 109 F.4th 1188, 1192 (9th Cir. 2024) (collecting cases).

With respect to the former, the Supreme Court has made clear that “jurisdiction lies in only one district: the district of confinement.” *Padilla*, 542 U.S. at 443. This rule is “synonymous with the district court that has territorial jurisdiction

over the proper respondent.” *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 445 (3d Cir. 2021) (quoting *United States v. Poole*, 531 F.3d 263, 273 (4th Cir. 2008)). Put differently, “the only federal court that can properly entertain a habeas petition is one located in the ‘district in which the applicant is held[.]’” *Doe v. Garland*, 109 F.4th 1188, 1198 (9th Cir. 2024) (quoting 28 U.S.C. § 2242).

As to the immediate custodian, “the default rule” is “that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official,” *Padilla*, 542 U.S. at 435; that is, the person who has “immediate custody” of the petitioner, *id.* at 434-35 (citing *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). The proper respondent is, in other words, the “person who has the *immediate custody* of the party detained, with the power to produce the body of such party before the court or judge[.]” *Id.* at 435 (emphasis in original).

The Supreme Court recently reiterated these principles in the immigration context akin to the one here. *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-06 (2025) (per curiam).<sup>1</sup> In *J.G.G.*, a group of Venezuelan nationals in immigration detention filed suit in the U.S. District Court for the District of Columbia, seeking relief against their removal. *See id.* at 1005. Because “jurisdiction lies in only one district: the district of

---

<sup>1</sup> Although *Padilla* addressed a habeas petition in the prisoner context, the Third Circuit has applied the “district of confinement” and “immediate custodian” rules in the immigration context. *See Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444 (3d Cir. 2021) (“Whenever a § 2241 habeas petitioner seeks to challenge present physical custody within the United States, he [or she] should name his [or her] warden as respondent and file the petition in the district of confinement” (citation omitted)). So have courts within this District. *See, e.g., Eddine v. Chertoff*, No. 07-6117 (FSH), 2008 WL 630043, at \*2 (D.N.J. Mar. 5, 2008).

confinement,” the Supreme Court concluded that the plaintiffs were not likely to succeed on the merits of their claims in the District of Columbia because the plaintiffs in that case were “confined in Texas.” *Id.* at 1005-06; *see also id.* at 1006 (holding that proper venue for core immigration habeas petition “lies in the district of confinement.”).

Applying these principles here, this Court should dismiss the Petition for lack of jurisdiction.<sup>2</sup> Petitioner is not confined in New Jersey now, and he was not confined here when his attorney filed the Petition. Instead, at the time the Petition was filed, Petitioner was on board a plane nine minutes from landing at Alexandria International Airport in Alexandria, Louisiana. *See* Mullan Decl. ¶ 13 (Petition filed at 3:06 p.m., and Petitioner landed at Alexandria International Airport at 2:15 p.m.). Moreover, Petitioner’s immediate custodian is now the Warden of the Pine Prairie ICE Processing Center in Pine Prairie, Louisiana, *Id.* ¶ 14, not the Warden of ECDF. As a result, the Petition does not name the proper custodian and was not filed in the district of confinement, and this Court should dismiss the Petition for lack of jurisdiction. *See, e.g., Glover v. City of Philadelphia*, No. 24-1479, 2024 WL 3272912, at \*1 (3d Cir. July 2, 2024) (affirming dismissal for lack of habeas jurisdiction because the petitioner was not in custody).

---

<sup>2</sup> Alternatively, the Court should transfer this habeas action to the Western District of Louisiana, because Petitioner was in transit to Pine Prairie ICE Processing Center in Pine Prairie, Louisiana, and where he is currently detained, at the time the Petition was filed. Mullan Decl. ¶¶ 13-14.

The recent decisions in *Khalil v. Joyce*, No. 25-1963 (MEF), 777 F.Supp.3d 369 (D.N.J. Apr. 1, 2025) and *Munoz-Saucedo v. Pittman*, No. 25-2258 (CPO), --- F.Supp.3d ---- 2025 WL 1750346, (D.N.J. June 24, 2025), support Respondents' position that this Court lacks jurisdiction over the Petition. In *Khalil*, the petitioner filed the habeas petition in the U.S. District Court for the Southern District of New York when he was detained in New Jersey. The Southern District of New York transferred the habeas action to the District New Jersey because the petitioner was detained in New Jersey at the time the petition was improperly filed in the Southern District of New York. *See Khalil*, 777 F.Supp.3d at 410. *Khalil* thus stands for the proposition that the district of confinement is the district in which the petitioner was located at the time the petition was filed. Here, Petitioner was located in the Western District of Louisiana at the time his attorney filed the Petition. *See Mullan Decl.* ¶ 13. *See Dvortsin v. Noem*, No. 25-1741, 2025 WL 1751968, at \*5 (D. Colo. June 12, 2025) (finding district of confinement was location where petitioner was in transit to detention facility).

Similarly, in *Munoz-Saucedo*, the Court found it had jurisdiction because ICE did not demonstrate that Petitioner was located outside of New Jersey at the time the petition was filed. That is, ICE described petitioner's whereabouts only generally when his counsel filed the petition in New Jersey at 5:40 p.m. ICE represented that at 3:55 p.m. petitioner "was on a flight to Texas," arrived in Texas at some unstated time, and was "booked into custody" in Texas the next day, April 3, 2025. *Munoz-Saucedo*, 2025 WL 1750346, at \*2. No fact indicated where petitioner was located at

5:40 p.m.—e.g., he could have been waiting on the tarmac in New Jersey, in the air midflight, and so on. Absent any clear chronology and location, the Court did not find that another district confined the petitioner.

Indeed, Petitioner’s transfer from Virginia and eventually to Louisiana mirrors the facts in *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025), the main case upon which *Munoz-Saucedo* relied. In *Ozturk*, the petitioner filed her petition in Massachusetts at 10 p.m. on March 25, 2025. *Id.* at 390. Her counsel did not know petitioner’s whereabouts when he filed, but ICE later disclosed during the habeas case that petitioner was “in transit” in Vermont at that time. Namely, the petitioner had arrived at an ICE field office in Vermont about 30 minutes after filing the petition. *Id.* at 390-91; *see also id.* at 391 (“It is now undisputed that at that time [*i.e.*, 10 p.m.], Öztürk was not in the District of Massachusetts—she was already in Vermont.”); *see also Ozturk v. Trump*, 779 F. Supp. 3d 462, 471 (D. Vt 2025) (noting petitioner “was in Vermont en route” to field office when petition filed). Accordingly, the Court stated,

The Supreme Court has made clear ‘the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.’ At the time the petition was filed, that “one district” was the District of Vermont, where Öztürk was in transit to an ICE facility for the night. Vermont is therefore the only district in which the petition could have been brought at the time it was filed[.]

*Id.* at 391 (internal citations omitted).

Importantly, *Ozturk* was not at an ICE facility when her counsel filed the petition, her counsel did not know where she was when he filed (he learned of it the next day when she was in detention in Louisiana), and she was only in Vermont as a

temporary stopover to her final destination: a correctional facility in Louisiana. *See id.* at 387-89, 391.

The District of Colorado recently reached the same conclusion. In *Dvortsin v. Noem*, the Court found that it lacked jurisdiction over a habeas petition filed by petitioners who had left the district and “were in transit” to another facility in Texas. No. 25-1741, 2025 WL 1751968, at \*4 (D. Colo. June 12, 2025) (citing *Ozturk*’s holding that petitioner “was in transit through [the District of Vermont] at the moment her counsel filed a habeas petition). The Court found that “it did not matter” that petitioners “had not been booked into [the Texas detention center] when the Petition was filed,” *id.*, which seems to suggest that the petitioner’s physical location is what matters for the purpose of the “district of confinement” rule, even when the detainee is in transit.

Further, the Court in *Ozturk* rejected the claim, which petitioner seems to make here, that, when an alien is in transit and her counsel does not know where she is, “habeas jurisdiction would lie in the district or districts from which the detainee had been removed.” *Ozturk v. Trump*, 777 F. Supp. 3d 26, 42 (D. Mass. 2025) (quoting *Padilla*, 542 U.S. at 454 (Kennedy, J, concurring)). The Court noted that the *Padilla* majority did not adopt Justice Kennedy’s concurrence and that “no court has yet relied upon the *Padilla* concurrence as the basis for jurisdiction.” *Id.* (citing *Khalil v. Joyce*, 771 F. Supp. 3d 268, 273 (S.D.N.Y. 2025)). *Ozturk* thus supports the position that the key for the “district of confinement” is petitioner’s physical location, not whether petitioner’s counsel knows that location at the moment he files the petition.

A recent case from the Eastern District of California also supports Respondents' position here. In *Y.G.H. v. Trump*, No. 25-435, 2025 WL 1519250, at \*7 (E.D. Cal. May 27, 2025), the Court rejected the petitioner's "proposed 'unknown location' rule in the context of a detainee's relatively brief unknown location status during a transfer between known detention locations." For these reasons, the Court should dismiss the petition for lack of habeas jurisdiction.

## **II. Petitioner's Removal Is Reasonably Foreseeable (Count 1)**

Even if the Court has jurisdiction over this petition, the Court should dismiss it on the merits. Petitioner's detention is governed by 8 U.S.C. § 1231, which permits the detention of noncitizens who have been "ordered removed." 8 U.S.C. 1231(a)(1)(A). Section 1231 provides that the government "shall" detain noncitizens during the 90-day removal period, 8 U.S.C. 1231(a)(2), and that it "may" detain them after that period, 8 U.S.C. 1231(a)(6). Because Petitioner's order of removal became final almost nine months ago on January 29, 2025, and the government has detained him for that entire time, his detention must fall under § 1231(a)(6).

Petitioner argues that his nine-month detention under § 1231(a)(6) is unreasonably prolonged. Pet. ¶¶ 52-53. Section 1231(a)(6) does not expressly say how long detention may continue after the 90-day removal period. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court interpreted the statute to include an "implicit limitation": detention beyond the removal period may last only for "a period reasonably necessary to bring about" removal. *Id.* at 689. The Court identified six months of detention (including the 90-day removal period) as presumptively

reasonable. *Id.* Thereafter, if a noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must rebut the showing:

After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

*Id.* at 701.

Here, because Petitioner’s detention exceeds the six-month presumptively reasonable time frame, he has the burden to demonstrate that his removal is not significantly likely in the reasonably foreseeable future. But even assuming Petitioner could make that showing—which ICE does not concede—ICE has responded with evidence sufficient to rebut it. Petitioner has deferred removal to the Democratic Republic of Congo, which prohibits ICE from removing him there. *Id.* ¶ 34, Jan. 29, 2025 IJ Order, ECF 1-2; Mullan Decl. ¶ 7. As explained above, ICE has made unsuccessful attempts to have Petitioner accepted by other African nations: Chad, Madagascar, and South Africa. Mullan Decl. ¶ 8. Those countries denied ICE requests, with the latest denial coming from South African on July 8, 2025. Mullan Decl. ¶¶ 10, 12, 16, see Pet. n. 4. Soon thereafter, on July 29, DHS requested that the U.S. Department of State, and the Homeland Security Advisory Council identify a third country for removal. Mullan Decl. ¶ 18. These efforts show that ICE has worked

throughout Petitioner’s post-final-order detention working to remove him to a third country. *See Reyna-Salgado v. Noem*, No. 25-3138-JWL, 2025 WL 2550346, at \*1 (D. Kan. Aug. 11, 2025) (rejecting petitioner’s argument “that detention beyond the six-month mark would not be reasonable because removal is not likely in the near future, based on the fact that petitioner’s removal to a third country has not yet been accomplished (despite failed attempts by the government to remove petitioner to three alternative countries”); *but see Tadros v. Noem*, No. 25-4108 (EP), 2025 WL 1678501, at \*3 (D.N.J. June 13, 2025) (finding removal of noncitizen not reasonably foreseeable because government could not secure third-country removal for 15 years and only evidence of ongoing efforts to remove him was general statement that such efforts were being made).

### **III. The Court Lacks Habeas Jurisdiction Over Petitioner’s Transfer (Count 2)**

Petitioner next argues that “ICE has deviated from its own policy in continuing in transfer Petitioner after he was granted immigration relief [on January 29, 2025], without determining whether exceptional circumstances warrant his continued detention.” Pet. ¶ 56; *see also id.* ¶ 34 (noting date immigration court granted relief from removal to Congo).

Petitioner points to ICE Policy 11022.1, titled “Detainee Transfers.” *Id.* ¶¶ 24-26. *See also* ICE, *Policy 11022.1: Detainee Transfers*, available at <https://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf> (Jan. 4, 2012). The Policy states, in essence, that ICE must provide notice to a noncitizen and his or her counsel if ICE, in its discretion, determines that transfer out of the ICE

area of responsibility is necessary. *See* Policy 11022.1 at 2-4. This notification must occur on the date of transfer (and no later than 24 hours after transfer). *Id.* at 4. The Policy concludes by stating it is “an internally policy statement” that “is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.” *Id.* at 14.

As a threshold matter, the Court lacks habeas jurisdiction to review challenges to ICE’s decision to house a noncitizen in one facility or another. *See* 28 U.S.C. § 2241 grants federal courts jurisdiction over allegations that a petitioner (including an immigration detainee) “is in custody in violation of the Constitution or laws or treaties of the United States.” § 2241(c)(3); *see also* *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“Habeas is at its core a remedy for unlawful executive detention.”). The traditional function of the writ is to seek one’s release from unlawful detention. *Thuraissigiam*, 140 S. Ct. at 1969 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). As the Supreme Court has held, relief other than “simple release” is not available in a habeas action. *See* *Thuraissigiam*, 140 S. Ct. at 1970–71 (“Claims so far outside the core of habeas may not be pursued through habeas.”) (internal quotations and citations omitted). Put differently, federal habeas relief is generally limited to an alleged deprivation of rights that “necessarily impacts the fact or length of detention.” *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002).

On the other hand, “a district court does not have jurisdiction over a habeas corpus challenge” to a transfer between detention facilities. *See* *Zapata v. United*

*States*, 264 F. App'x 242, 243–44 (3d Cir. 2008). That is because a transfer between facilities, “regardless of their geographical location or security levels, cannot affect the fact or the length of” detention. *Scott v. Zickefoose*, No. 12-782, 2012 WL 1232269, at \*2 (D.N.J. Apr. 11, 2012). Moreover, “Congress has provided the Government with considerable discretion in determining where to detain aliens pending removal or the outcome of removal proceedings.” *Edison C. F. v. Decker*, No. 20-15455, 2021 WL 1997386, at \*6 (D.N.J. May 19, 2021) (citing 8 U.S.C. § 1231(g)(1) and *Calla-Collado v. Att’y Gen.*, 663 F.3d 680, 685 (3d Cir. 2011)).

Accordingly, “[s]everal courts in this District have therefore found that this Court lacks jurisdiction to enjoin a transfer in an immigration habeas matter.” *See Edison*, 2021 WL 1997386, at \*6 (collecting cases). Many other courts have found no jurisdiction in the related context of claims to enjoin transfers between prison facilities. *Scott*, 2012 WL 1232269, at \*2 (collecting cases). This case presents an even stronger argument against jurisdiction because the ICE Policy grants ICE substantial discretion to determine whether a transfer is necessary and when to perform the transfer. That discretion, in addition to the fact that habeas jurisdiction does not extend to disputes about transfers, establishes that the Court lacks jurisdiction over Count 2.

#### **IV. ICE Has Provided Individualized Custody Reviews (Count 3)**

Lastly, Petitioner argues that “ICE has violated Petitioner’s due process rights by denying him an individualized custody review to which he is entitled under ICE policy.” Pet. ¶ 59. Petitioner does not identify any policy expressly, but he refers to

various memoranda issued by ICE over the past three decades. *See id.* ¶¶ 22-23. As best we can tell, none of the memoranda require ICE to grant Petitioner an individualized custody review. For example, one of the supposed “policies” quoted by Petitioner in Paragraph 22 appears to be a February 2004 guidance document concerning ICE’s discretion to release noncitizens while ICE appeals an immigration judge’s grant of asylum or other relief. *See ICE, Detention Policy Where an Immigration Judge Has Granted Asylum and ICE has Appealed* (Feb. 20, 2004), [https://www.ice.gov/doclib/foia/policy/memoDetPolicyAsylumICEAppealed\\_02.20.2004.pdf](https://www.ice.gov/doclib/foia/policy/memoDetPolicyAsylumICEAppealed_02.20.2004.pdf). This document neither requires release nor requires an individualized custody review.

Instead, Petitioner may be referring to ICE regulations concerning the discretionary decision to detain noncitizens beyond the removal period: 8 C.F.R. § 241.4. An ICE field office ordinarily conducts a custody review before the conclusion of the removal period, and a review panel at ICE headquarters conducts a further review at six months of detention. 8 C.F.R. 241.4(k)(1) and (2). Thereafter, the review panel conducts a further review each year, or sooner if there has been “a material change in circumstances since the last annual review.” 8 C.F.R. 241.4(k)(2)(iii). During those reviews, ICE considers both “[f]avorable factors” (such as “close relatives residing here lawfully”) and unfavorable factors (such as “flight risk” and danger of “future criminal activity”). 8 C.F.R. 241.4(f)(5), (7), and (8)(iii). The noncitizen may submit evidence, use an attorney or other representative, and, if appropriate, seek a government-provided translator. 8 C.F.R. § 241.4(h)(2) and (i)(3).

ICE has followed those requirements here. As explained above, on April 25, 2025, ICE-ERO made a custody determination during the 90-day removal period, finding continued detention necessary because Petitioner poses a significant risk of flight and his “criminal history suggests that [he] would pose a danger to the community.” Apr. 25, 2025 Decision to Continue Detention, ECF 1-3; Mullan Decl. ¶ 11. Less than three months later, on July 8, 2025, ICE interviewed for its second custody determination. Mullan Decl. ¶ 18. That decision is pending. Mullan Decl. ¶ 18. Accordingly, ICE has satisfied Petitioner’s procedural requirements for custody reviews under 8 C.F.R. § 214.4.

**CONCLUSION**

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

By: s/Frances Bajada  
FRANCES BAJADA

s/Alex Silagi  
ALEX SILAGI  
Assistant United States Attorneys  
*Attorneys for Respondents*

Dated: September 22, 2025