

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF New Jersey**

BABI KITELONGA
Petitioner,
v.
YOLANDA PITTMAN, *et al.*,
Respondents.

Hon. Claire C. Cecchi
Case No. 2:25-CV-12000-CCC

**PETITIONER’S REPLY AND OPPOSITION TO
RESPONDENT’S ANSWER AND PURPORTED MOTION TO DISMISS¹**

At all times, this Court must see the petition through a lens, acknowledging that “the very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Petitioner Babi Kitelonga (“Petitioner” or “Mr. Kitelonga”), is a citizen of the Democratic Republic of the Congo (“DRC”) who remains in U.S. Immigration and Customs Enforcement (“ICE”) custody, now at the Pine Prairie ICE Processing Center in Pine Prairie, Louisiana.² His detention continues despite the fact that on January 29, 2025, an Immigration Judge granted him deferral of removal under the Convention Against Torture (“CAT”), and the Department of Homeland Security (“DHS”) waived appeal. Moreover, as Respondents largely concede, his removal to an alternative third country has been demonstrated to be impossible with three potential countries already rejecting the request from the United States, and no further

¹ The Government’s response is styled as an Answer to Mr. Kitelonga’s petition, *see* ECF 11, but moves the court to dismiss or transfer the petition. Accordingly, Mr. Kitelonga treats it as a motion to dismiss.

² Mr. Kitelonga has remained at Pine Prairie ICE Processing Center pursuant to this Court’s order. *See* ECF 3.

potential country of removal identified. As more than 180 days have elapsed since his final order of removal, Mr. Kitelonga's removal from the United States is not likely to occur within the reasonably foreseeable future, and therefore his continued civil immigration detention is without lawful basis.

Setting aside that absent intervention by the judiciary Mr. Kitelonga will continue to be detained without any legal justification, *see generally Zadvydas v. Davis*, 533 U.S. 678 (2001), Respondents instead first seek dismissal of his habeas petition by alleging that Mr. Kitelonga has filed the instant petition in the incorrect district. Respondents allege that, because he was on an airplane at the time of filing his petition, the petition should have been filed in Louisiana where Mr. Kitelonga eventually landed. Moreover, Respondents claim Mr. Kitelonga should have named a warden as custodian, even though he was not detained at any facility at the time. But drawn out to its logical conclusion, Respondents would have this Court believe that between 10:15 a.m. and 3:00 p.m. EST on June 21, 2025, as many as 11 U.S. District Courts would have had exclusive jurisdiction over the petition, some only for mere minutes. The absurdity of that logical outcome necessitates a better understanding of the district of confinement rule and its established exceptions. *See e.g., Suri v. Trump*, 2025 WL 1806692 at *6 (4th Cir. July 1, 2025) (order denying motion to stay district court judgement finding jurisdiction and applying exceptions).

Alternatively, assuming jurisdiction in this Court, Respondents nevertheless seek dismissal on the mistaken belief that Mr. Kitelonga's removal is "reasonably foreseeable" because ICE may *one day* secure a third-country placement. *See* Resp. Br, ECF 11 at 14-15. Yet, as the Supreme Court held in *Zadvydas*, post-order detention under 8 U.S.C. § 1231(a)(6) is limited to the period "reasonably necessary" to effectuate removal. As Mr. Kitelonga cannot lawfully be removed to the DRC because of his protection under CAT, and because ICE has failed to secure removal to

three alternative countries and has failed to identify any alternative, Mr. Kitelonga can readily establish that his removal is not reasonably foreseeable. Indeed, in his declaration, Acting Assistant Field Office Director James Mullan concedes as much. *See* Mullan Decl., ECF 11-1 at ¶ 18 (“When a third country is identified, ICE-ERO will work expeditiously to remove Petitioner from the United States.”). Therefore, this Court should find that his detention has become arbitrary, prolonged, and unconstitutional.

FACTUAL BACKGROUND³

Detention and Custody Reviews

ICE has repeatedly issued “Decisions to Continue Detention,” citing flight risk and danger to the community. On April 25, 2025, ICE-ERO informed Petitioner that jurisdiction over custody determinations would be transferred to ICE Headquarters in Washington, D.C. if he was not removed or released within three months. On July 8, 2025, Petitioner received a personal interview for custody review with a Virginia ERO and a decision remains pending.

Transfer Between Detention Facilities

Since July 2024, Petitioner has been transferred multiple times: first to Western Virginia Regional Jail (Salem, VA), then Caroline Detention Facility (Bowling Green, VA), then Farmville Detention Center (Farmville, VA), then to Elizabeth Contract Detention Facility (Elizabeth, NJ), and then most recently to Pine Prairie ICE Processing Center in Louisiana. On June 20, 2025, ICE transported Mr. Kitelonga to Alexandria, Louisiana by way of Houston, Texas, after which he was driven to Pine Prairie and eventually booked into the Pine Prairie ICE Processing Center.

³ A thorough factual background of the immigration proceedings and other relevant history is laid out in Mr. Kitelonga’s petition.

LEGAL STANDARD

Whether this Court has jurisdiction over Mr. Kitelonga's petition requires an analysis of personal jurisdiction. *Kanai v. McHugh*, 638 F.3d 251, 258 (4th Cir. 2011). Under the Federal Rules of Civil Procedure, when a plaintiff is responding to a motion to dismiss for lack of personal jurisdiction or improper venue without the benefit of an evidentiary hearing,⁴ the plaintiff need only make a *prima facie* showing of jurisdiction. *Metcalf v. Renaissance Marine, Inc.*, 566 F.3d 324, 330 (3d Cir. 2009) ("If the district court does not hold an evidentiary hearing, the plaintiff[] need only establish a *prima facie* case of personal jurisdiction."). In determining whether a plaintiff has made this showing, the court must view the allegations and available evidence in the light most favorable to plaintiff. *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 457 (3d Cir. 2003); *Grayson v. Anderson*, 816 F.3d 262, 268 (4th Cir. 2016).

ARGUMENT

I. VENUE AND JURISDICTION ARE PROPER IN THE DISTRICT OF NEW JERSEY

Venue is proper in the District of New Jersey and this Court has jurisdiction over Petitioner's habeas petition and complaint. First, it must be acknowledged that habeas corpus is an equitable, and therefore exceedingly "adaptable" remedy. *See Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Moreover, historically "the common-law habeas court's role was most extensive in cases of pretrial and noncriminal detention, where there had been little or no previous judicial review of the cause for detention." *Id.* at 780. Civil immigration detention is such a circumstance.

Mr. Kitelonga acknowledges that in the ordinary case, the default habeas jurisdictional rules in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) clearly govern. And were Mr. Kitelonga

⁴ Given the availability of a sworn affidavit from Respondents and no request to hold an evidentiary hearing, Mr. Kitelonga avers that he can make his *prima facie* showing that this Court has personal jurisdiction over the petition.

processed into Pine Prairie ICE Processing Facility by 2:06 p.m. on June 21, 2025, the Western District of Louisiana would no doubt be the district of confinement. *Id.* But as the exceptions suggest, it simply cannot follow that Mr. Kitelonga, while aboard a plane on his way to Louisiana (and possibly within the airspace of the Western District of Louisiana), must necessarily bring his petition in that district. Indeed, between 10:15 a.m. and 3:06 p.m. EST, Mr. Kitelonga likely flew through the District of New Jersey, the Eastern District of Pennsylvania, the District of Maryland, the Western District of Virginia, the District of West Virginia, the Eastern District of Tennessee, the Northern District of Alabama, the Northern District of Mississippi, the Western District of Louisiana, and the Eastern District of Texas, before then returning again to the Western District of Louisiana.

Without any knowledge of his transfer, neither Mr. Kitelonga or his attorneys could have been reasonably expected to know the proper forum at any given time, largely because it would be impossible to determine if it is based on the airspace where the plane was at the time of filing. Rather, the Court must acknowledge that the factual circumstances of this case, the historical difference in technology of transportation, and the routine transfers of civil immigration detainees to and through several districts of confinement on any given day make the district of confinement rule occasionally impossible to follow, as was here. And for that reason, the Supreme Court acknowledges specific exceptions this Court should follow here.

Specifically, “in cases where the petitioner ‘is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules.’” *Rumsfeld*, 542 U.S. at 450 n.18; *Ozturk v. Hyde*, 136 F.4th 382, 392 (2d Cir. 2025). As in *Munoz-Saucedo v. Pittman*, Respondents here cannot legitimately “dispute that counsel did not know and could not find out who Petitioner’s immediate custodian was when his petition was

filed,” __F.Supp.3d ___, 2025 WL 1750346 at *3 (D.N.J. June 24, 2025). Such circumstances are “precisely the type of circumstance that gave rise to the need for the unknown custodian exception.” *Id.* Thus, as noted above, without an exception, strict application to the immediate custodian and district of confinement rules—which included as many as 11 district courts over the course of three hours, likely “rendered any attempt to seek habeas relief during transit *impossible*[.]” *Id.* at *4 (emphasis added).

By contrast, as has been routinely held, under the exceptions to the traditional rules the last known location—in this case, the District of New Jersey—is the proper district in which to bring the petition. *Munoz-Saucedo*, 2025 WL 1750346 at *4; *Demjanjuk v. Meese*, 784 F.2d 1114, 1116 (D.C. Cir. 1986); XXXX. Lest it be argued, Texas is also not the last known district. *See e.g. Rivera Zumba v. Bondi*, 2025 WL 2476524 at *6 (D.N.J. Aug. 28, 2025) (“Petitioner was not checked in at any facility where a custodian could be found to put on the caption; respondents have never identified who that custodian was or could have been; and the information on where she was certainly was not available to either petitioner or her attorney until after the fact.”).

Nor is it permissible to conclude that the circumstance is remedied through the eventual availability of a forum in Louisiana. Rather, because of the extraordinary nature of habeas, there can be “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.” *Khalil v. Joyce*, 777 F. Supp. 3d 369, 410 (D.N.J. 2025) (“there is no gap in the fabric of habeas”).

Second, the unknown custodian exception applies here. Plainly, it seems incongruous for Respondents to allege that Mr. Kitelonga should have named the warden of the Pine Prairie ICE Processing Center in his petition, when Mr. Kitelonga was not even at the Pine Prairie ICE Processing Center at the time he filed. Indeed, as Respondents acknowledge, as of 3:06 p.m. EST

when he filed, Mr. Kitelonga was on board a flight which was still in the air. Who then was his immediate custodian? The pilots? The ICE officers who accompanied the flight? The district director of each area on the ground over which the airplane passed? *See e.g., supra* (considering the absurdity of the district of confinement being the district over which the plane was flying).

Rather, at the time he filed, Mr. Kitelonga was certainly not in the custody of any warden, and Respondents named in the petition certainly held ultimate authority over him and his transfer. As is apparent in their response, Respondents at least implicitly acknowledge that Mr. Mullan in the Eastern District of Virginia and ICE Headquarters in Washington, D.C. are in control of Mr. Kitelonga's custody. *See* Mullan Decl., ECF 11-1 at ¶ 17 (“The custody decision is pending with ICE-ERO Headquarters, Removal and International Operations.”). But the rule from *Padilla* simply does not require Mr. Kitelonga to include as Respondent the officer in charge on board the flight. *See Munoz-Saucedo*, 2025 WL 1750346 at *2 (“In such circumstances, the naming of a more remote custodian—such as the Secretary of Homeland Security—satisfies the statutory requirements.” (quotation omitted)).

Respondents may counter that this line of inquiry is facetious at best, but the absurdity of Respondents position is the result of logical application of a strict adherence to the rule under these rare circumstances. Plainly, all parties agree that as of the time of filing, Mr. Kitelonga was not in a detention facility and there was no warden on the plane in the air. Thus, he was not in the custody of *any* warden or detained at any facility, and was not clearly within any district. That is to say, there was certainly no way for Mr. Kitelonga or his counsel to know where he was, and indeed, little cause to believe that even Respondents knew or still know for certain where he was at the time. This is exactly why the unknown custodian exception exists, that “if the government moves a detainee from a district and their attorney cannot discover their location with reasonable inquiry,

that attorney must be able to file a habeas petition in the detainee's last-known location against their ultimate custodian.” *Suri*, 2025 WL 1806692 at *6.

Here, even approximately an hour after he filed his petition, at 4:18 p.m. EST on June 20, 2025, the ICE Locator continued to show Mr. Kitelonga was detained in New Jersey. *See attached Exh. A*. Thus, consistent with the reasoning in *Munoz-Saucedo* and *Suri*, this Court should find it has jurisdiction over Mr. Kitelonga’s petition. *See Suri*, 2025 WL 1806692 at *5 (“Under those circumstances, no diligent attorney could have known that Suri was in Louisiana at the time his attorney filed the petition.” (quotation omitted)).

II. MR. KITELONGA’S DETENTION IS UNCONSTITUTIONALLY PROLONGED ABSENT A SIGNIFICANT LIKELIHOOD OF REMOVAL WITHIN THE REASONABLY FORESEEABLE FUTURE.

Under *Zadvydas*, a noncitizen challenging post-removal-order detention must provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. To prevent indefinite detention, which violates constitutional due process, the Court set a “presumptively reasonable period of detention” at six months. *Id.* The Court was clear that after six months the equities change: “After this six-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.” *Id.* The Court also cautioned that “for detention to remain reasonable, as the period of prior post removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Id.* In other words, after six months the government needs much more specific evidence of imminent removal, and unless removal is “practically attainable,” the noncitizen must be released” or “continued detention would violate

his liberty interest to be free from civil detention. *Id.* at 690 (*quoting Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

Here, Mr. Kitelonga has been in ICE custody since July 1, 2024, and has remained detained for more than fifteen months despite the fact that on January 29, 2025, an Immigration Judge granted him deferral of removal under CAT, prohibiting his removal to the DRC. Both parties waived appeal, making the order final the same day. Since that time, his detention has persisted under the authority of 8 U.S.C. § 1231(a)(6), squarely encompassed by *Zadvydas*.

As to Mr. Kitelonga's initial burden, the immigration court's grant of protection under CAT conclusively prohibits removal to the DRC. Respondents do not dispute this. Mullan Decl., ECF 11-1 at ¶ 7. Thus, the only theoretical avenue for removal is to a third country which would willingly accept Mr. Kitelonga. Yet as Mr. Kitelonga is not a national or resident of any country other than the DRC, and has no legal, familial, or residential ties outside the United States, Respondents' attempts at a third country removal have demonstrably failed. Indeed, as Mr. Mullan must concede, Chad, Madagascar, and South Africa have refused to accept Mr. Kitelonga—which were the only three countries to which Respondents claim to have sent a request. *See* Mullan Decl., ECF 11-1 at ¶¶ 8, 10, 12, and 16.

All that is left, then, is Respondents' half-hearted claim that as of more than two months ago on “July 29, 2025, a request was made to the U.S. Department of State, DHS, and the Homeland Security Advisory Council to find a third country to remove the Petitioner.” *Id.* at ¶ 18. And all that Respondents now allege is merely that “[w]hen a third country is identified, ICE-ERO will work expeditiously to remove Petitioner from the United States.” *Id.* There is thus no evidence that Mr. Kitelonga is likely to be removed at any time, much less within the reasonably foreseeable future. *See Munoz-Saucedo*, 2025 WL 1750346 at *7 (“Petitioner has alleged that he

cannot be removed to his country of origin, that removing similarly situated individuals has been historically rare, that ICE tried and failed to find a third country willing to accept him during the initial 90-day detention period, and that there is presently no country in the world willing to accept him.”); *see also id.* (relying on *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021), for its citation to studies that only 1.6% of individuals granted withholding were ever removed to a third country)).

Given that Mr. Kitelonga met his initial burden, and Respondents have failed to meet their corresponding burden to show that Mr. Kitelonga’s removal is practically attainable in the reasonably foreseeable future, it is unclear why Mr. Kitelonga remains imprisoned but for Respondents’ delay until the judiciary intervenes. Regardless, it is clear that removal is not “practically attainable” at this time, *Zadvydas*, 533 U.S. at 690, and that continued detention is thus without lawful authority absent a violation of the Constitution. Without a prospect of removal, Mr. Kitelonga’s further detention has become punitive and unconstitutional, and he should be immediately released. *Zadvydas*, 533 U.S. at 699-700 (if “continued detention is unreasonable and no longer authorized by statute ... the alien’s release may and should be conditioned on any of the various forms of supervised release....”).

III. FURTHER NOTES ON COUNTS II AND III.

Respondents further challenge Counts II and III of Mr. Kitelonga’s petition, which each allege respectively that Mr. Kitelonga should not be transferred outside the District of New Jersey and has not received the custody review required by regulation. Mr. Kitelonga concedes that Count II is moot, accepting the Court’s decision to maintain the status quo and prevent his further transfer from Pine Prairie, Louisiana. *See* ECF 3. Mr. Kitelonga further concedes that Respondents have

at least held a custody review interview, though a decision from that interview has been extraordinarily delayed. *See* Mullan Decl., ECF 11-1 at ¶ 17.

CONCLUSION

For the foregoing reasons, this Court has jurisdiction to adjudicate Mr. Kitelonga's habeas petition. As the District of New Jersey recognized in *Munoz-Saucedo*, habeas jurisdiction cannot be extinguished by ICE's transfer tactics, and higher-level officials are proper respondents where the petitioner's immediate custodian is unknown. In such cases, Mr. Kitelonga is entitled to file his petition in the last known location he was detained, and this Court correspondingly has jurisdiction over such a petition.

Moreover, Mr. Kitelonga has been detained well beyond the presumptively reasonable period constitutionally permissible under *Zadvydas v. Davis*, 533 U.S. 678 (2001), despite the fact that his removal to the DRC is legally barred and the Government's repeated efforts to secure third-country removal have failed. Respondents impliedly concede that his removal is not imminent, and no country has agreed to accept him. Under these circumstances, his continued detention has clearly become arbitrary, unlawful, and violates the Constitutional limits on prolonged civil detention under 8 U.S.C. § 1231(a)(6). Accordingly, Respondents' Motion to Dismiss should be denied, and the Court should order Mr. Kitelonga's immediate release.

Dated: October 2, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

On October 2, 2025, counsel for Petitioner caused a true and correct copy of the foregoing Opposition to be filed with the Clerk of the Court for the U.S. District Court for the District of New Jersey via CM/ECF, which will send a notice of this filing to all participants in this case, including counsel for Respondents.

Date: October 2, 2025

Respectfully Submitted,

/s/ Joseph Moravec
JOSEPH MORAVEC

Counsel for Petitioner