

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RUBEN LUCIANO-JIMENEZ)	
)	
Petitioner,)	Case No.: 3:20-cv-2384-MEM
v.)	
)	(Judge Mannion)
ADAM OGLE, Warden, et al.)	
)	
Respondents.)	
)	

**PETITIONER’S BRIEF IN SUPPORT OF THE MOTION TO ENFORCE THIS COURT’S
ORDER REQUIRING PETITIONER’S RELEASE FROM DETENTION**

In direct violation of this Court’s order requiring Petitioner Ruben Luciano-Jimenez’s (“Luciano”) release from continued detention under the Due Process Clause (Doc. 36), Respondents have re-detained Mr. Luciano without providing any evidence, let alone clear and convincing evidence, that he presents a current danger or flight risk. Even if Respondents intend to present such evidence, the Due Process Clause entitles Mr. Luciano to notice and an opportunity to be heard prior to being detained.

By re-detaining Mr. Luciano, Respondents are subjecting him to the same constitutional violation that he faced originally and are violating this Court’s ruling ordering him released. Even after undersigned counsel informed Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS) attorneys representing ICE of this Court’s decision in this case, ICE refused to release

Mr. Luciano and refused to provide any evidence to support its decision to detain him. This Court has jurisdiction and should order Mr. Luciano's immediate release. Additionally, if Respondents seek to re-detain Mr. Luciano-Jimenez in the future, this Court should order that the Due Process Clause requires Respondents to provide Mr. Luciano with pre-detention notice and a hearing at which the government bears the burden of proof by clear and convincing evidence.

Undersigned counsel contacted opposing counsel regarding this motion, but has not received a response.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

After being detained for more than two-and-a-half years during the pendency of his immigration proceedings, Mr. Luciano sought and obtained a writ of habeas corpus from this Court, in which this Court held that Mr. Luciano's continued detention violated the Due Process Clause because the government failed to show by clear and convincing evidence that he presented a current danger or flight risk. (Doc. 36; Doc. 33). It ordered that Mr. Mr. Luciano "be **RELEASED** subject to the conditions imposed by this supervised release in the Southern District of New York, immediately." Doc. 36 at 3.

A. Mr. Luciano's underlying immigration case.

The facts of Mr. Luciano's underlying immigration case are set forth in detail in his habeas petition, Doc. 1 (Petition). Those facts are briefly summarized here.

Mr. Luciano has lived in this country for more than ten years. Doc. 1, ¶ 18. He fled to the United States from the Dominican Republic following an attack on his life that left him nearly dead. *Id.* In 2009, he reported ██████████ to the police. In retaliation, several individuals affiliated with ██████████ stabbed and shot Luciano and left him for dead. *Id.* Since fleeing to the United States on fear for his life, Mr. Luciano has been granted withholding of removal once, and relief under the Convention Against Torture (CAT) twice. Those rulings were subsequently rescinded or remanded by the Board of Immigration Appeals (BIA), and his case remains pending following a remand from the U.S. Court of Appeals for the Third Circuit. Doc. 1, ¶¶ 28-29. Mr. Luciano's-Jimenez's merits hearing on his immigration claims is currently scheduled for February 25, 2026. *See* Scheduling Order, Ex. 1.

Two years after receiving withholding of removal, Mr. Luciano was arrested and pleaded guilty to conspiracy to possess with intent to distribute heroin. Doc. 1, ¶ 20. After cooperating with prosecutors in connection with the prosecution of his co-defendant, Mr. Luciano pleaded guilty and was sentenced to 24 months incarceration plus three years of supervised release. Brief in Support of Motion to Enforce (Doc. 20), Ex. B at 30-36.

Following the conviction, the Immigration Court terminated Luciano's withholding of removal due to the criminal conviction, and the case was reopened to address his claim for deferral of removal under the U.N. Convention Against Torture (CAT). That case is still ongoing. *See* Ex. 1.

B. Mr. Luciano's prolonged immigration detention and ensuing habeas corpus petition.

The events giving rise to the underlying habeas corpus petition began on October 5, 2018 when Mr. Luciano completed his criminal sentence and was transferred to ICE custody. On December 18, 2020, after more than two years in immigration detention, he filed a petition for a writ of habeas corpus alleging that his prolonged detention was unconstitutional and seeking an individualized bond hearing at which he should be released from detention unless the government can prove by clear and convincing evidence that he is a current danger or flight risk. Doc. 1. He and the government jointly stipulated that he should receive a bond hearing before the Immigration Court. Doc. 9 (stipulation). The parties agreed that the Immigration Judge (IJ) must make an “individualized inquiry” into whether detention remains necessary, and that the government bears the burden of justifying ongoing detention “by clear and convincing evidence.” *Id.* Then-Chief Magistrate Judge Mehalchick¹ then issued a Report and Recommendation recommending this Court grant the writ of habeas corpus to the extent it seeks a bond hearing before an Immigration Judge, and incorporating the provisions of the stipulation. Doc. 12 (R&R). The Report and Recommendation further stated that the Petitioner retains the right to request this Court to enforce its order if the bond hearing does not comply with the court’s

¹ At the time of this action, Judge Mehalchick was the Chief Magistrate Judge for the Middle District of Pennsylvania. Judge Mehalchick was subsequently nominated and confirmed as a U.S. District Judge for the Middle District of Pennsylvania.

requirements, and stated that the stipulation does not deprive the Court of jurisdiction to enforce its order. *Id.*, ¶¶ 4-5. The District Court adopted the Report and Recommendation in its entirety and granted the writ of habeas corpus to the extent it sought a bond hearing before the Immigration Judge in compliance with the above-mentioned conditions. Doc. 15 (Dist. Ct. Order).

The bond hearing occurred on March 25, 2021. Mr. Luciano presented extensive evidence that he was no longer a danger or flight risk in light of his current conduct, the passage of time since his criminal conviction, and other evidence. *See* Brief in Support of Motion to Enforce (Doc. 20), Exs. B-E. Nonetheless, the IJ denied bond and ordered detention to continue indefinitely, concluding that he was a danger to the community because of his prior drug conviction that gave rise to his detention. *Id.* Ex. A. Petitioner then filed a Motion to Enforce on the ground that the Immigration Court's bond hearing was not sufficiently Individualized and thus did not comport with due process or the requirements of the District Court's habeas order. Docs. 19-20.

Judge Mehalchick issued a Report and Recommendation concluding that Mr. Luciano's bond hearing "did not meet the Due Process requirements of the United States Constitution" because it relied solely on Mr. Luciano's prior conviction and did not conduct an individualized assessment of whether Mr. Luciano presents a current danger or flight risk. Report and Recommendation (Doc. 24), at 6. She then conducted her own bond hearing at which the parties presented evidence and

testimony. Docs. 27-29. Following the hearing, Petitioner learned that Respondents may seek to transfer him to a detention center outside of the Middle District of Pennsylvania. Judge Mehalchick enjoined ICE from transferring Petitioner outside of the district while the decision on the bond hearing remained pending, but otherwise retained ICE's discretion to decide Petitioner's location. Doc. 34 at 3-4.

Judge Mehalchick also issued a Report and Recommendation recommending Mr. Luciano's immediate release while his immigration proceedings continue subject to the conditions of supervised release imposed by the Southern District of New York as part of his criminal sentence. Doc. 33 at 4. Judge Mehalchick concluded that Mr. Luciano's continued detention violated the Due Process Clause as the government failed to meet its burden of proof "to establish through clear and convincing evidence that Petitioner is a threat to the community if he should be released and that continued detention is necessary." *Id.* at 2-3. On July 6, 2021, this Court adopted the Report and Recommendation in its entirety and ordered that Mr. Luciano "be **RELEASED** subject to the conditions imposed by this supervised release in the Southern District of New York, immediately." Doc. 36 at 3.

C. Respondents' Re-Detention of Mr. Luciano

Respondents initially complied with this Court's order. Mr. Luciano was released from detention, and he returned to New York where he made contact with his probation officers and completed his three years of supervised release. In addition, he met with doctors and established a mental health treatment plan to help him

address his previously untreated depression and PTSD arising from childhood trauma and the attacks on life in the Dominican Republic that forced him to flee to the United States. *See* Petitioner’s Treatment Plan, Ex. 2. Although he has experienced some arrests since his release, all those charges have been adjourned, dismissed or otherwise not gone forward, with the exception of one pending case charging him with a third-degree misdemeanor—charges that also may be eventually adjourned or dismissed. Mr. Luciano has no criminal convictions since his release in 2021.

Mr. Luciano’s freedom came to an abrupt end around June 19, 2025 when ICE arrested and re-detained him. Mr. Luciano was first held at 26 Federal Plaza in New York, a holding pen that “has become overcrowded,” with reportedly “unsanitary conditions” and where detainees are forced to sleep on the floor.² He is currently incarcerated at Orange County Correctional Facility in Goshen, New York. *See* ICE Detainee Locator, Ex. 3. Mr. Luciano reported to family members that officers have hit him during this time. Frankel Decl. Ex. 4, ¶ 7.

Upon learning of Mr. Luciano’s re-detention, counsel contacted the DHS Office of the Principal Legal Advisor (OPLA) and ICE to inform them about this habeas matter, provide a copy of this Court’s release order and request any evidence pertaining to the re-detention. Frankel Decl. Ex. 4, ¶ 3. Even after receiving this order

² Luis Ferré-Sadurni, *What’s Inside a 10th Floor ICE Office? New York Democrats Want to Know*, N.Y. Times, June 20, 2025, <https://www.nytimes.com/2025/06/20/nyregion/ny-democrats-access-26-federal-plaza-noem.html>.

ICE told counsel summarily that Mr. Luciano is “amenable to detention.” *Id.*, ¶ 5.

ICE refused to provide counsel with any documentation or evidence that it was relying upon to support Mr. Luciano’s continued detention. *Id.*, ¶ 6.

STATEMENT OF THE QUESTION INVOLVED

This Court previously ordered Petitioner released from detention on the ground that the government could not show that he was a danger or a flight risk. Respondents have re-detained Petitioner without providing this Court or the parties any evidence that Petitioner is a current danger or flight risk. Should this Court hold that Petitioner’s re-detention violates the Court’s prior release order and order Petitioner released from detention?

ARGUMENT

I. The Court has jurisdiction to enforce its order requiring Mr. Luciano’s release.

As a preliminary matter, this Court has jurisdiction to enforce its release order. District Courts have continuing jurisdiction to ensure compliance with their writs. *Gibbs v. Frank*, 500 F.3d 202, 205 (3d Cir. 2007) (holding that a District Court had continuing habeas jurisdiction over the petitioner’s application for release from confinement). In its Report and Recommendation on Mr. Luciano’s prior motion to enforce, this Court explained that “district courts have continuing jurisdiction to address noncompliance with writs of habeas corpus.” Doc. 24 at 2 n.1 (quoting *Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, *2 (M.D. Pa. Aug. 6, 2020).

The Third Circuit has held that the court's jurisdiction to grant relief continues even if the petitioner is subsequently detained outside the district and the case was previously closed. *Anariba v. Dir., Hudson Cty. Corr. Center*, 17 F.3d 434, 444-48 (3d Cir. 2021). In *Anariba*, the noncitizen detainee filed a habeas petition in the District of New Jersey when he was detained at the Hudson County Correctional Center, located within that district. *Id.* at 437. The district court dismissed the petition without prejudice and the government then transferred the petitioner to a detention center in Louisiana. *Id.* at 437-38. Six months later, the petitioner moved to reopen his habeas proceeding in the District of New Jersey. *Id.* at 438.

On appeal, the Third Circuit found that the District of New Jersey possessed jurisdiction, finding that neither the court's prior dismissal of the petition nor the petitioner's transfer outside New Jersey deprived the court of jurisdiction. *Id.* at 440-48. First, the court determined that the noncitizen's motion was a proper motion because it simply sought to pursue claims from the original petition and did not present any new claims or challenge the federal court's earlier ruling. *Id.* at 440-44. Second, the court held that because the district court had jurisdiction at the time the petition was filed, "the district court retained jurisdiction" even after the petitioner was moved out of that district. *Id.* at 446.

This case is analogous to *Anariba*. First, it is undisputed that this Court had jurisdiction over the petition when it was filed because Mr. Luciano was detained at that time at York County Prison within this district. Thus, the district court retains

jurisdiction over his motion to enforce its prior orders even though he is now confined outside the district. Second, like the petitioner in *Anariba*, Mr. Luciano is not raising any new claims that would constitute a new habeas petition. He simply seeks to require Respondents to comply with this court's prior order requiring his release. Nor is he seeking to "attack[] the federal court's previously resolution of a claim on the merits." *Anariba*, 17 F.4th at 442. Just the opposite. He is seeking compliance with this Court's prior order, and district courts possess broad jurisdiction to address noncompliance with a writ. It makes no difference if the noncompliance occurs before the petitioner is released—as when this Court found that the IJ's bond hearing did not satisfy due process—or after the petitioner is released and then re-detained in violation of the writ. This Court has jurisdiction to enforce its prior release order.

II. Respondents violated this Court's release order by re-detaining Mr. Luciano.

Respondents have violated this Court's release order. This Court ordered that Mr. Luciano be released from detention, subject to his conditions of supervised release in the Southern District of New York. Doc. 36. In making that order, this Court determined that Mr. Luciano's continued detention was unconstitutional because the government failed to show by clear and convincing evidence that Mr. Luciano was currently a danger or a flight risk. *See id.*; *see also German Santos v. Warden, Pike County Corr. Facility*, 965 F.3d 203, 213-14 (3d Cir. 2020) (finding that the Due

Process Clause requires the government to present clear and convincing evidence to justify continued detention).

Notwithstanding this order, Respondents have re-detained Mr. Luciano at Orange County Correctional Facility, a state prison. Given this Court's prior order that Mr. Luciano is not a danger or a flight risk, Respondents have no basis for re-detaining him. Re-detaining Mr. Luciano simply exposes him to the same constitutional deprivation of liberty that required his release in 2021. This Court's order would have little value if Respondents could simply wait for a petitioner to be released, and then grab him and re-detain him without providing any justification or evidentiary basis.

Here, Respondents have not provided Mr. Luciano or this Court with any evidence, let alone clear and convincing evidence, justifying detention. ICE's bald assertion that Mr. Luciano "is amenable to detention" is insufficient, and ICE has refused to provide Mr. Luciano's counsel with any legal ground for detention or any evidence on which its re-detention was based. Frankel Decl., Ex. 4, ¶¶ 5-6.

To the extent that Respondents wish to re-detain Mr. Luciano, they can do so only if they demonstrate changed circumstances that would establish by clear and convincing evidence that detention is appropriate. *See Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (finding that re-detention violated due process and ordering release where the government failed to sufficiently demonstrate changed circumstances); *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA

1981) (“[W]here a previous bond determination has been made by an IJ, no change should be made by a District Director absent a change of circumstance.”).

Moreover, any new evidence must demonstrate a sufficient change in circumstances that would establish dangerousness or flight risk by clear and convincing evidence. Arrests standing alone, without any evidence of the underlying conduct or an ensuing conviction, will not suffice. *Chavez-Rivas v. Olsen*, 207 F. Supp. 2d 326, 340 (D.N.J. 2002) (“[C]ontinued detention based on the fact that an alien had been arrested, without any proof that an alien in fact committed the underlying offense, would be no better than the ‘grudging and perfunctory’ review condemned in *Ngo [v. INS]*, 192 F.3d 390, 398 (3d Cir. 1999)] as inadequate to satisfy substantive due process.”). This Court has previously found that an arrest, without a conviction or evidence relating to the underlying conduct, could not justify Mr. Luciano’s ongoing detention. Doc. 24 at 5 n.2 (“The Immigration Judge was not permitted to use Petitioner’s 2016 drug arrest without discussing evidence of the underlying conduct.” (citing *Chavez-Rivas*, 207 F. Supp. 2d at 340)).

Here, Respondents have provided no information showing changed circumstances and refused to provide such information when asked. Because Respondents bear the burden of proof, their refusal to provide evidence should be fatal to their attempt to re-detain Mr. Luciano. But on top of that, Mr. Luciano’s rap sheet shows that detention is not warranted. *See* Rap Sheet, Ex. 5. Mr. Luciano has zero criminal convictions since his release in 2021. Although he has been arrested, his

prior charges have all been adjourned, dismissed or otherwise have not gone forward, except for a single case charging him with a third-degree misdemeanor (which may also be ultimately adjourned or dismissed). *See id.* at 1-3. Adjourned and dismissed charges are not probative evidence, let alone clear and convincing evidence, of dangerousness or flight risk. *See also United States v. Abrego Garcia*, ---F. Supp. 3d---, 2025 WL 1727738, *21 (M.D. Tenn. June 22, 2025) (citing case law for the proposition that “pending criminal charges carry little weight” in assessing criminal bail under the Bail Reform Act). Accordingly, Respondents have violated this Court’s release order.

This Court should enforce its order and require Respondents to release Mr. Luciano.

III. If Respondents wish to re-detain Mr. Luciano, he must be provided with pre-deprivation notice and a hearing.

If Respondents wish to re-detain Mr. Luciano, they may do so only by comporting with the requirements of due process. As a matter of due process, Mr. Luciano is entitled to notice and a hearing before a neutral decisionmaker prior to being detained. Here, Mr. Luciano has received no hearing at all, let alone a pre-deprivation hearing. This Court should order that if Respondents wish to re-detain Mr. Luciano, he must be provided with notice and a hearing prior to being detained.

The fundamental tenet of due process is the right to notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Various courts have held that a previously released noncitizen cannot be re-detained absent notice and an opportunity for a hearing to address whether the government has demonstrated changed circumstances. *See, e.g., Valdez*, 2025 WL 1707737 at *4 (“Respondents’ ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.”); *Villata Salzar v. Robbins*, No. 2:25-cv-05473-VBF-MAR (C.D. Cal. June 18, 2025) (granting TRO, holding that due process entitled the petitioner to a pre-detention hearing where the government must show changed circumstances, and ordering the petitioner’s release); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968-69 (N.D. Cal. 2019) (explaining that while “[u]nder 8 U.S.C. § 1226(b) and 8 C.F.R. 242.2(c), the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that individual has previously been released,” re-arresting noncitizen without a hearing before an IJ to determine whether there has been a material change of circumstances violates due process); *Lopez v. Sessions*, No. 18-cv-4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) (“Petitioner’s re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.”); *see also Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020) (concluding that due process requires the government to provide class of Cambodian nationals with written notice

before re-detaining them); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1194 (N.D. Cal. 2017) (“[D]ue process requires the government to give the minor a prompt hearing before an IJ or other neutral decisionmaker, where the government must set forth the basis for its decision to rearrest the minor . . .”), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

Whether an individual is entitled to a pre-deprivation hearing requires balancing the strength of the private interest involved, the risk of erroneous deprivation, and the administrative burdens on the government. *Mathews*, 424 U.S. at 335. All three factors favor Mr. Luciano.

First, “the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *accord Addington v. Texas*, 441 U.S. 418, 425 (1979) (“civil commitment for any purpose constitutes a significant deprivation of liberty”). This interest is so strong that the Supreme Court has required pre-detention hearings for probation revocation, finding that “[e]ven though the revocation of parole is not a part of the criminal prosecution.” *United States v. Scarpelli*, 411 U.S. 778, 781 (1973). Mr. Luciano’s interest here is extremely strong, especially since he is being held “in the Orange County Correctional Facility . . . alongside criminally charged defendants and those serving criminal sentences.” *Velasco Lopez*, 978 F.3d at 851; *see also German Santos*, 965 F.3d at 212-13 (finding that the fact that the noncitizen “has been detained alongside

convicted criminals” in conditions “indistinguishable from criminal punishment” heightened the unreasonableness of ongoing detention). He has told family members that he is being hit by officers there. Frankel Aff., Ex. 4, ¶ 7. Prior to being housed at Orange County, he was held at 26 Federal Plaza in Manhattan, which has been reported as overcrowded and unsanitary. *See Ferré-Sarduni, supra*.

Second, the risk of erroneous deprivation is significant. ICE is not a neutral decision maker but a law enforcement agency. It has not provided any evidence to support its actions and has refused to disclose the basis for detention or any supporting evidence to Mr. Luciano’s counsel. Frankel Decl., Ex. 4, ¶¶ 5-6. Especially considering that this Court previously determined that Mr. Luciano is neither a flight risk nor a danger and should not be detained, ICE’s decision otherwise without any supporting evidence creates a heightened risk of error. *See Lopez*, 2018 WL 2932726, at *11 (holding that the re-detention of an individual previously determined not to be a danger or a flight risk “in the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest.”).

Third, the proposed procedures—namely, that ICE provide notice of intent to re-detain and a pre-detention hearing at which the government bears the burden of proof—do not meaningfully prejudice the government’s interest in mitigating danger and risk of flight during removal proceedings. Indeed, the government’s interest supports notice and a hearing prior to re-detention because the government has an interest in “minimizing the enormous impact of incarceration in cases where it serves

no purpose.” *Velasco Lopez*, 978 F.3d at 855; *see also, Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (noting that “limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention”). Additionally, “unnecessary detention imposes substantial societal costs . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). In this case, the government would not have been prejudiced by providing notice and a hearing to justify proposed re-detention for Mr. Luciano, who had already been determined not to be a danger or a flight risk by this Court.

Accordingly, this Court should order Mr. Luciano released, and order that if the government wants to re-detain him, he must provided with notice and a hearing before any detention can occur.

IV. This Court should enjoin Respondents from transferring Mr. Luciano while it adjudicates this motion.

Finally, this Court should enjoin Respondents from transferring Mr. Luciano while it adjudicates this motion. To be sure, this Court will retain jurisdiction

regardless of where Mr. Luciano is held. *See* Point I, *infra*. This Court additionally possesses jurisdiction to prohibit or overturn detainee transfers. *Reyna as next friend of J.F.G. v. Hoff*, 921 F.3d 204, 208-10 (4th Cir. 2019); *Aguilar v. U.S. Immigration and Customs Enforcement*, 510 F.3d 1, 19-21 (1st Cir. 2007). Indeed, previously in this case, when ICE proposed transferring Mr. Luciano after this Court conducted its bond hearing, this Court temporarily enjoined Respondents from transferring Mr. Luciano outside the district while its decision was pending. Doc. 34 at 3-4.

Here, ICE may attempt to transfer Mr. Luciano to a jurisdiction it finds more favorable. *See, e.g.,* Jessica Rofé, *Peripheral Detention, Transfer, and Access to the Courts*, 122 Mich. L. Rev. 867 (2024) (documenting and critiquing ICE’s practice of transferring habeas petitioners to make it harder for courts to exercise jurisdiction). The Third Circuit has warned that the government could engage in forum shopping and “willingly transfer an ICE detainee seeking habeas relief from continued detention to a jurisdiction that is more amenable to the Government’s position, or the Government could transfer an ICE detainee for the purpose of intentionally introducing complicated jurisdictional defects to delay the merits review of already lengthy § 2241 claims.” *Anariba*, 17 F.4th at 447.

Thus, this Court should temporarily enjoin Respondents from transferring Mr. Luciano while it rules on this motion. A temporary prohibition on transfer would respect the government’s general discretion to determine a detainee’s location while also preserving the ability to expeditiously resolve this matter.

CONCLUSION

For the foregoing reasons, Mr. Luciano respectfully requests that this Court grant his motion to enforce the Court's July 6, 2021 order requiring his release from detention, order that Petitioner be released from custody, and order that Respondents cannot detain Mr. Luciano in the future unless he first receives pre-detention notice and a hearing.

Respectfully submitted,

/s/ Richard H. Frankel

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MOTION EXHIBIT LIST

- Exhibit 1 – Order Scheduling Petitioner's Immigration Hearing for February 25, 2026
- Exhibit 2 – Petitioner's Mental Health Treatment Plan
- Exhibit 3 – ICE Detainee Locator showing that Petitioner is detained at the Orange County Correctional Facility
- Exhibit 4 – Declaration of Richard H. Frankel
- Exhibit 5 – Petitioner's Rap Sheet

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.8(b)(2), I hereby certify that the foregoing brief in support of Petitioner's Motion to Enforce contains 4,484 words as measured by Microsoft Word's word count function.

/s/ Richard Frankel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2025, I filed a copy of the foregoing Accompanying Brief in Support of Motion to Enforce using the Court's CM/ECF system, which will serve a copy on opposing parties.

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