



enforce its prior order. This Court has jurisdiction, and it should find that Luciano's unprosecuted arrests along with a pending charge that may still be dismissed, fail to establish clear and convincing evidence of danger or flight risk.

## ARGUMENT

### **I. The Court has jurisdiction to enforce its order requiring Mr. Luciano's release.**

The government, citing *Padilla v. Rumsfeld*, 542 U.S. 426, 443 (2004), argues that jurisdiction is limited to the detainee's place of confinement. Resp. Opp. at 8-10. This argument contravenes Third Circuit and Supreme Court precedent by conflating the question of which court has jurisdiction when a case is initially filed with the question of whether a court that properly had jurisdiction at the outset retains jurisdiction when the detainee is later imprisoned in a different district.

Here, there is no dispute that this Court had jurisdiction when the petition was filed because Luciano was detained at York County Prison. Despite quoting *Padilla*, the government fails to mention *Padilla's* holding that "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." 526 U.S. at 443; accord *Anariba v. Dir. Hudson Cty. Corr. Ctr.*, 17 F.4th 434, 446-47 (3d Cir. 2021) (finding that the detainee's move to a prison in another district did not deprive the habeas court of jurisdiction). Numerous district courts within the Third Circuit have

reached the same conclusion. *See, e.g., Khalil v. Joyce*, ---F. Supp. 3d---, 2025 WL 972959, \*23 (D.N.J. Apr. 1, 2025) (“And the district courts of this Circuit have treated the matter as done and settled: a habeas court with jurisdiction does not lose it because the detainee has been moved out of the district.” (and citing numerous cases)). This is fatal to the government’s argument.

The government implies that the result is somehow different here because Luciano was initially released following this Court’s order and the case was closed. Resp. Opp. 9-10. *Anariba* directly forecloses this argument. That case also had ended when the petitioner was moved. In *Anariba*, the district court entered an order dismissing the habeas petition, and the government then transferred the petitioner to Louisiana. 17 F.4th at 436, 446. The Third Circuit specifically rejected the government’s argument that because the habeas petition had been dismissed, the district court in New Jersey lost jurisdiction. *Id.* at 447. In fact, the Court emphasized that its holding “allowing a district court to retain jurisdiction for *all* post-filing proceedings” would “minimize incentives for Government abuse” by preventing the government from shifting the legal goalposts by moving a detainee to a more favorable jurisdiction. *Id.* at 448. In short, the fact that the district court dismissed the habeas petition and closed the case was immaterial, and the district court retained jurisdiction even after dismissal and the petitioner’s transfer to a different district. *Id.*

Similarly, in *Guerrero Sanchez v. Sabol*, No. 1:15-CV-02423, 2019 WL 1977922, \*5-6 & n.14 (M.D. Pa. May 3, 2019), the district court held that it had jurisdiction over

a motion to enforce its release order after a petitioner who was released from detention was arrested and re-detained in a different district. The petitioner, like Luciano here, filed a prolonged detention habeas and there, as here, the district court ordered the petitioner's release. *Id.* at \*2-3. The petitioner was subsequently released on an order of supervision. *Id.* at \*6. Sometime later, he was arrested on criminal charges in Texas and then detained in "ERO Houston custody" by ICE in Houston, Texas. *Id.* The petitioner then filed a motion to enforce in the Middle District of Pennsylvania, arguing that his re-detention violated the court's prior release order. *Id.* at \*6. The court found that it "retains jurisdiction over this habeas petition and has the authority to enforce its own orders" because the petitioner's subsequent re-detention outside the Middle District did not deprive it of jurisdiction. *Id.* at \*6 n.14.

This case is virtually identical to *Gurrero Sanchez*. As in *Guerrero Sanchez*, the this Court ordered release, and Luciano was released from detention. As in *Guerrero Sanchez*, Luciano was subsequently arrested and re-detained outside of the Middle District in arguable violation of this Court's release order and has filed a motion to enforce that order. Just as the *Guerrero Sanchez* court possessed jurisdiction over the motion to enforce, this Court possesses jurisdiction over Luciano's motion to enforce.

In contrast to the holdings in both *Anariba* and *Guerrero Sanchez*, the government does not cite a single case finding that a habeas lacks jurisdiction to enforce its order in these circumstances. And that makes sense, because the government's position would encourage the kind of gamesmanship that the *Anariba*

court sought to prevent. Under the government's view, if a district court issues a release order, the government could release the petitioner and then re-arrest him a week (or even a day) later, place him in a detention center outside the district, and then argue that the district court lacks jurisdiction to enforce its release order. *Cf. Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017) (finding, in the context of re-arrest of noncitizen minors, "[i]f DHS could, the day after a minor was released to a parent or other sponsor, arrest the minor on the same basis and restart the process, the TVPRA's instruction to place the minor in the least restrictive setting would mean little"). Simply put, the government's view makes a release order valid for a single moment in time, after which ICE could exercise unfettered authority to re-arrest any petitioner. This would render the release order a dead letter.

Moreover, the government's argument that Luciano's re-detention is completely new and requires a new habeas petition is belied by its own argument in support of detention. The government argues that Luciano "is subject to mandatory detention pursuant to § 1226(c)(1)(A) because he has a felony drug conviction" from 2016. Resp. Opp. at 14. But this is the precise conviction that gave rise to Luciano's habeas petition in 2020, and the conviction that this Court specifically held could not authorize ongoing detention under the Constitution. Doc. 36. This shows that the government's actions directly implicate this Court's prior order, and the government has simply extended Luciano's detention based on the same grounds that this Court

originally found constitutionally deficient. Thus, this Court retains jurisdiction to enforce that order and require Luciano's release.

The government acknowledges that both the Third Circuit and courts in this district have held that there is broad jurisdiction to enforce their prior orders, but asserts that those cases involved conditional orders. Resp. Opp. at 9-10. This is a distinction without a difference. It makes little sense to say that a court has authority to enforce a conditional order but not one that has become a final order. *See Guerrero Sanchez*, 2019 WL 1977922 at \*6 n.14 (finding jurisdiction to address motion to enforce a release order); *see also Anariba*, 17 F.4th at 444-48 (finding that district court retained jurisdiction following final order dismissing petition). Nor is there any legally significant difference that would dictate a different jurisdictional rule. Conditional orders are final orders for purposes of appellate jurisdiction. *See Gibbs v. Frank*, 500 F.3d 202, 205 (3d Cir. 2007); *Hull v. Freeman*, 932 F.2d 159, 163 (3d Cir. 1991), *overruling on other grounds recognized by Caswell v. Ryan*, 953 F.2d 853, 859 (3d Cir. 1992)). Thus, if courts retain jurisdiction to enforce conditional orders, they also retain jurisdiction to enforce final orders that are subsequently violated. This is consistent with principles recognizing broad habeas corpus jurisdiction to ensure that parties do not thwart a court's order. *See Griffin v. County School Board*, 377 U.S. 218 (1964) (ordering additional relief although defendants technically complied with the court's order); *Gall v. Scroggy*, 603 F.3d 346, 352 (6th Cir. 2010) (“[B]ecause a federal court

always retains jurisdiction to enforce its lawful judgments, including habeas judgments, the court has the authority to see that its judgment is fully effectuated.”).

Federal courts have a “virtually unflagging obligation” to exercise jurisdiction. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). The Third Circuit has made clear that neither closure of a habeas petition nor the movement of the petitioner to a different district deprives a court of jurisdiction. This court has jurisdiction to enforce its prior order granting Luciano’s release.

**II. Luciano’s re-detention in the absence of clear and convincing evidence that he is a danger or a flight risk violates this Court’s release order.**

This Court previously determined that Luciano could be detained only if the government demonstrated clear and convincing evidence that he presents a current danger or flight risk, and then ordered Luciano released from confinement because it found that his 2016 drug conviction giving rise to mandatory detention did not meet that standard. Doc. 36; Doc. 33 at 2-3; Doc. 24 at 4. Although the government asserts that Luciano’s detention is consistent with this Court’s order, it never argues—anywhere its response—that Luciano is a current danger or flight risk. Resp. Opp. 11-15. Given this Court’s ruling that Luciano cannot be detained absent clear evidence of danger or flight risk, this alone demonstrates that the government has violated this Court’s release order. Rather, the government’s arguments all focus on the legality of Luciano’s *initial* detention, rather than re-detention, as if this Court’s prior release order is wholly irrelevant. That is improper.

The government appears to argue that Luciano is subject to mandatory detention by virtue of the 2016 drug conviction that gave rise to his initial mandatory detention and that was the subject of this habeas proceeding. Resp. Opp. 14 (asserting that Luciano “subject to mandatory detention” primarily because “he has a felony drug conviction”). But that conviction is what triggered his initial 30+ months of detention and the precise conviction that this Court already found did not constitute clear and convincing evidence of danger or flight risk. If that conviction could not justify his ongoing detention, then the government cannot recycle it to try and justify renewed detention. Doing so would make the court’s release order meaningless and enable the government re-arrest someone at any time and for any reason. *See Guillermo M.R. v. Kaiser*, ---F. Supp. 3d---, 2025 WL1983677, \*8 (N.D. Cal. July 17, 2025) (rejecting the government’s argument because it “would permit ICE to regularly re-detain individuals released by an IJ on bond over ICE’s objections, pursuant to Section 1231(a)(6), even if the re-detention occurred within days of their release and without any material change in circumstances”). In related contexts, courts have rejected this precise argument. *See, e.g., Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at \*13 (S.D.N.Y. June 12, 2018) (finding that allowing noncitizens to be rearrested on “the same basis on which they were detained in the first place” would be in direct conflict with “constitutional due process and common sense”); *Saravia*, 280 F. Supp. 3d at 1197 (finding that re-arresting a non-citizen “on the same basis” as the initial detention was impermissible) (citing *United States v. Kordosky*, No.

88-CR-52-C, 1988 WL 238041, at \*7 n.14 (W.D. Wis. Sept. 12, 1988) (“the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment”).

In arguing that § 1226(c) permits detention, the government once again conflates an initial detention decision with re-detention following release. *See Guillermo M.R.*, 2025 WL 1983677 at \*6-7 (distinguishing between initial detention and re-detention and stating that “[t]his Court has been unable to identify any other context in which government agents could permissibly take someone who had been released by a judge, lock up that person, and have no hearing either beforehand or promptly thereafter”). Although individuals with specified convictions are subject to mandatory detention under § 1226(c), once that detention becomes unconstitutionally prolonged and they are released, those individuals cannot be re-arrested absent changed circumstances. Pet. Br. (Doc. 41) at 11-12 (citing cases). And as a matter of due process, Luciano is entitled to a pre-detention hearing at which the government must show changed circumstances by clear and convincing evidence that establish danger and flight risk. *Id.* at 13-17; *accord Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, \*8 (E.D. Cal. July 11, 2025) (holding that “the Due Process Clause requires a *pre-deprivation* bond hearing where the government bears the burden of proving by clear and convincing evidence that petitioner is a flight risk or danger to the community” (emphasis added)). The government does not cite a single case contradicting this point about the standards for re-arrest. The cases the government

cites, Resp. Opp. 14, all concern initial detention rather than re-detention following a finding that the petitioner is entitled to release because he is neither a danger nor a flight risk. None concern a re-detention case like the present one, and none stand for the proposition that a conviction found constitutionally inadequate to justify detention can be used again to re-arrest an individual.

Although the government references Luciano's rap sheet showing four arrests since his release, Resp. Opp. 13, it never asserts that those arrests constitute clear and convincing evidence of danger or flight risk. That is because they do not. In the sentencing context, the Third Circuit has held that "a bare arrest record" cannot be used to support a sentence enhancement because the arrest record, without more, does not constitute adequate proof of criminal activity. *United States v. Berry*, 553 F.3d 273, 284 (3d Cir. 2009) (agreeing with other circuits that "a sentencing court cannot base sentencing decisions on a bare arrest record"). The Court has further reinforced that it is error for a sentencing court to consider "prior arrests that did not lead to conviction." *United States v. Mateo-Medina*, 845 F.3d 546, 552 (3d Cir. 2017). The Court reasoned that arrests are distinguishable from guilt and that inferring guilty conduct from an arrest amounts to improper speculation. *Berry*, 553 F.3d at 284.

The immigration detention context is no different. As previously explained, this Court already found that it could not consider prior arrests without sufficient evidence of underlying criminal conduct, and other courts have held similarly. Pet. Br., Doc. 41, at 12-13; accord *Walker v. Lowe*, No. 4:15-CV-0887, 2016 WL 4077269, \*2

(M.D. Pa. Aug. 1, 2016) (finding that petitioner's arrest and pending charge for theft of a television did not establish that petitioner was a danger to the community). If anything, immigration detention is more stringent, as sentencing only requires proof by a preponderance of the evidence, *Berry*, 553 F.3d at 280, whereas the standard for prolonged immigration detention is clear and convincing evidence, *German Santos v. Warden, Pike County Corr. Facility*, 965 F.3d 203, 213-14 (3d Cir. 2020).

Here, the record evidence is little more than a bare arrest record and does not establish clear and convincing evidence that Luciano is a danger or a flight risk. The government references four arrests. Resp. Opp. at 5-6. The government provides no information for three arrests beyond the bare arrest record, which is exactly what the Third Circuit has found insufficient. Moreover, all the charges were either dismissed or reduced to a single municipal ordinance violation. The rap sheet shows that the May 4, 2024 arrest charges were adjourned in contemplation of dismissal. Doc. 41-5 at 10, 15-17, Doc. 42-8 at 7, 10-12. The December 6, 2023 arrest charges in Yorktown, NY were also adjourned in contemplation of dismissal after video evidence exculpated Luciano. *See* Kerrin Weiner Letter of Affirmation and Yorktown Certificate of Disposition, attached as Ex. 1. These "prior arrests that did not lead to conviction" are not probative evidence of dangerousness. *Mateo-Medina*, 845 F.3d at 552. The March 7, 2023 Paramus, NJ arrest charges also were dropped, and Luciano pleaded guilty to a single municipal ordinance noise infraction. *See* Paramus Certificate

of Disposition, attached as Ex. 2.<sup>1</sup> A municipal noise infraction is not indicative of dangerousness and cannot justify ongoing detention.

The fourth arrest on a misdemeanor charge is still pending and the charges may be dismissed as soon as the petitioner's next hearing on July 28, 2025. The purported evidence in conjunction with this arrest also is insufficient. The government submitted only a hearsay affidavit from the arresting officer describing what the accuser reported, allegations that Luciano vigorously disputes. Doc. 42-8. This is a far cry from the kind of evidence deemed sufficient to infer dangerousness. *See, e.g., Berry*, 553 F.3d at 283 (citing *United States v. Torres*, 977 F.2d 321 (7th Cir. 1992), in which both an investigating police officer and an eyewitness appeared in court and testified in open court about the facts giving rise to a prior arrest). This pending charge, lacking in proof and as yet unadjudicated, cannot justify detention. *See United States v. Joshua*, 40 F.3d 948, 952-53 (8th Cir. 1994) (finding that the sentencing court could not consider "pending charges unless the conduct underlying those charges is admitted"); *Walker*, 2016 WL 4077269 at \*2 (finding that detainee's arrest and pending charge for theft of a television after release from custody did not demonstrate dangerousness justifying re-detention).

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<sup>1</sup> The municipal ordinance is titled "Unlawful Noises" and states: "It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the Borough." Paramus Municipal Code § 309-2.

The two out-of-circuit cases the government cites are not to the contrary. Resp. Opp. 13. In *Reyes v. King*, the court looked to the defendant's conviction, a "guilty plea for disorderly conduct," rather than an arrest, in upholding the Board of Immigration Appeals' finding. No. 19 Civ. 8674, 2021 WL 3727614, \*8 (S.D.N.Y. Aug. 20, 2021). In finding that the BIA did not err in determining the petitioner had committed a domestic violence offense, the court stated that the BIA did not need to consider the fact of arrest, but could have reached that conclusion based solely on "Petitioner's guilty plea." *Id.* The government's citation to *United States v. Cisneros*, No. 19-cr-0020080-RS-5, 2021 WL 5908407 \*4 (N.D. Cal. Dec. 14, 2021) is inapposite because it concerned whether the defendant's Fourth Amendment rights were violated by a re-arrest, not the legality of an immigration detention. *Id.* More importantly, neither case is within the Third Circuit and neither is consistent with Third Circuit law that a bare arrest record is not probative evidence.

Finally, even if arrests could be considered when the government presents sufficient evidence that the petitioner is guilty of dangerous conduct (which it has not done here), Luciano is still entitled to a pre-detention hearing where the government must show that any arrests demonstrate dangerousness, and where Luciano can rebut any evidence the government presents. Luciano has been detained a month, on top of the more than 30 months he already endured in immigration detention, without any

opportunity for any hearing before a neutral decision-maker.<sup>2</sup> Accordingly, he should be released, and then the government can have the opportunity to come forward and prove changed circumstances by clear and convincing evidence.

This case demonstrates why the right to a pre-detention hearing is such a necessary part of due process. The government has never said that Luciano is a danger or a flight risk. It has submitted little more than a bare arrest record. The government should not be permitted to re-arrest someone first, subject them to the extreme harm of detention, and then try to justify it later. There is no disagreement about “the irreparable harms imposed on anyone subject to immigration detention (or other forms of imprisonment).” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Luciano, who suffers from PTSD and depression, has endured significant

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<sup>2</sup> The government’s suggestion that Luciano’s detention “has only reached 19 days” as of the date of filing is incorrect and again improperly conflates initial detention with re-detention. Resp. Opp. 15. The government’s re-arrest of Luciano does not erase the previous 30+ months he spent in detention before this Court ordered his release. This is just another attempt by the government to say that once a Petitioner is ordered released, the government may re-arrest him at any time without regard for the court’s prior order. The government cites no authority for this assertion, and courts have rejected it. *See Saravia*, 280 F.3d at 1197 (finding that the government could not release an minor, wait for the minor to turn 18, and then re-arrest the minor and “restart the process”); *Walker*, 2016 WL 4077269, \*2 (finding that the petitioner’s release and then subsequent re-detention did not restart the clock and finding that petitioner’s total detention exceeded three years notwithstanding the intervening period of release prior to re-arrest); *cf. Tadros v. Noem*, No. 25cv4108 (EP), 2025 WL 1678501, \*3 (D.N.J. June 13, 2025) (finding that the 180 period for allowing detention pending removal does not automatically start on the latest date of detention but can also include time on release where the government was unable to effectuate removal); *Munoz-Saucedo v. Pittman*, ---F. Supp. 3d---, 2025 WL 1750346, \*4-8 (D.N.J. June 24, 2025) (same).

physical and mental health challenges in prison, as shown by the more than 150 pages of medical records that he has accumulated in less than one month. *See* Psychological Evaluation, attached as Ex. C (showing symptoms consistent with PTSD); Medical Records, attached as Ex. D. He will continue to suffer every day he stays in detention. If the government wants to try and meet its burden to justify re-detention, it may do so. But it must release him first and provide a pre-deprivation hearing before detaining him. Requiring him to endure ongoing detention after this Court already previously ordered his release is inconsistent with due process.

#### 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,

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**MOTION EXHIBIT LIST**

Exhibit A – Yorktown, NY Affirmation of Dismissal and Certificate of Disposition

Exhibit B – Paramus, NJ Certificate of Disposition

Exhibit C – Petitioner’s Psychological Evaluation

Exhibit D – Petitioner’s Medical Records in Detention

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 18, 2025, I filed a copy of the foregoing Reply 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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