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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAVID BUCKINGHAM, *Petitioner*, v. JOHN TSOUKARIS, *et al.*, *Respondents*.	HON. ESTHER SALAS Civil Action No. 25-14601 (ES)

ANSWER TO AMENDED HABEAS CORPUS PETITION

On the Brief:

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PRELIMINARY STATEMENT

On August 6, 2025, U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner pursuant to Immigration and Nationality Act ("INA") § 235(b)(2), 8 U.S.C. § 1225(b)(2), because he is an arriving alien who sought admission to the United States despite being inadmissible. Petitioner is a native and citizen of the United Kingdon. *See* Verified Habeas Corpus Petition ("Pet.") ¶ 11, ECF No. 1. Petitioner "was accorded lawful permanent residence on April 3, 2019, and . . . on October 4, 2022, he was convicted of wire fraud, in violation of 18 U.S.C. § 1343[.]" *Id*. ICE detained Petitioner at Elizabeth Contract Detention Facility, in Elizabeth, New Jersey, from August 8 until August 13, 2025.

On August 13, 2025, ICE transported Petitioner by airplane to the Alexandria Staging Facility in Louisiana. About twelve minutes before Petitioner arrived at the Staging Facility, Petitioner filed the initial petition in this action.

On August 29, 2025, Respondents responded to Petitioner's original habeas, asserting, among other things, that the Court lacked jurisdiction over the petition because Petitioner was no longer detained in New Jersey. ECF 12. Before the Court ruled on the initial petition, however, on September 7, 2025, Petitioner filed an Amended Habeas Corpus Petition. ECF 15. The Amended Petition asserts four claims: (1) a due process challenge to his detention under § 1225(b); (2) alleged noncompliance with agency regulations concerning individualized; (3) an Administrative Procedure Act ("APA") challenge to his detention under § 1225(b); and

(4) alleged deficiencies with the charging paperwork (i.e., the Notice to Appear ("NTA")).

Respondents reassert its position that the Court does not have jurisdiction and that Petitioner's claims fail on the merits. Furthermore, Petitioner's detention is mandatory under the INA because he is an "arriving alien" apprehended at a port of entry under § 1225(b). And the Court lacks jurisdiction over Petitioner's allegations concerning immigration regulations. Nonetheless, ICE adhered to all applicable policies. The Court accordingly should dismiss the Amended Petition.

BACKGROUND

Petitioner is a native and citizen of the United Kingdom who was admitted as a lawful permanent resident on April 3, 2019. *See* Declaration of Supervisory Detention and Deportation Officer Alexander Cabezas of ICE ERO Newark ("Cabezas Decl."), at ¶ 3, ECF 12-1.[1] On October 4, 2022, Petitioner was convicted for the offenses of wire fraud in violation of 18 U.S.C. § 1343 and willful failure to collect, account for, and pay over payroll taxes in violation of 26 U.S.C. § 7202. *Id*. at ¶ 4.

On August 6, 2025, after a trip abroad, Petitioner arrived at Newark International Airport ("EWR") and requested admission into the United States as a lawful permanent resident. *Id*. at ¶ 5. *See also* Pet. ¶ 9. ICE however, found Petitioner to be inadmissible to the United States pursuant to INA § 212(a)(2)(A)(i)(I), as an alien who has been convicted of a crime involving moral turpitude. Cabezas Decl. ¶

[1] Respondents filed the Cabezas Declaration in support of their Answer to the initial Petition. ECF 12-1.

5. ICE served Petitioner a Notice to Appear ("NTA") ordering Petitioner to appear at immigration court on August 26, 2025, and placed him into removal proceedings. *Id*. *See also* Pet. ¶ 10.

On August 8, 2025, ICE detained Petitioner at Elizabeth Contract Detention Facility in Elizabeth, New Jersey. Cabezas Decl. ¶ 6. Petitioner's counsel filed a bond re-determination request that day. Pet. ¶ 12. The Elizabeth Immigration Court scheduled the bond hearing for August 21, 2025. *Id*. at ¶ 13.

On August 13, 2025, ICE placed Petitioner on an ICE passenger jet bound for the Alexandria Staging Facility in Alexandria, Louisianna. Cabezas Decl. ¶ 7. The flight departed EWR at 12:00 p.m. and arrived in Richmond, Virginia at 12:55 p.m. *Id*. The flight then departed Richmond at 2:30 p.m. and arrived at the Alexandria Staging Facility at 3:55 p.m. CST / 4:55 p.m. EST. *Id*.

About twelve minutes before Petitioner arrived at Alexandria Staging Facility, Petitioner's counsel filed this Petition in the District of New Jersey at 4:43 p.m. *See* Doyne Decl., Exhibit B (Pacer Notification).

On August 14, 2025, ICE transferred Petitioner to the Adams County Correctional Center in Natchez, Mississippi, where he remains at the present time. *Id*. at ¶ 8.

On August 21, the Immigration Court denied Petitioner's request for a change in custody, finding it lacked jurisdiction over the request because Petitioner is an "arriving alien." *See* Declaration of Brooks E. Doyne ("Doyne Decl."), Exhibit A (Order of the Immigration Judge), ECF 12-2. On August 24, 2025, ICE informed the

Immigration Court that Petitioner was then being detained at the Adams County Detention Center in Mississippi. *See* Doyne Decl., Exhibit B (Notice to EOIR: Alien Address).

Petitioner's initial habeas petition alleged that his detention violated the Due Process Clause and the INA because any transfer outside of New Jersey would infringe his right to counsel. Pet. at 6-7, ECF 1. Petitioner also filed a motion for a temporary restraining order and/or preliminary injunction. ECF 2. On August 14, 2025, Petitioner filed a request for expedited consideration. ECF 7.

On August 15, 2025, the Court ordered the Respondents to file an answer to the petition and petitioner's motion. *See* ECF 8. On August 29, 2025, Respondents responded to Petitioner's original habeas petition. ECF 12. On September 7, 2025, Petitioner filed an Amended Habeas Corpus Petition. ECF 15.

As far as Petitioner's ongoing immigration proceedings, Petitioner had an immigration hearing on September 11, 2025. *See* Supplemental Declaration of Brooks E. Doyne ("Supp. Doyne Decl."), Exhibit A (Master Hearing Pleading). Petitioner also filed an application for cancellation of removal. *See* Supp. Doyne Decl., Exhibit B (Application for Cancellation of Removal). Petitioner is scheduled for an internet-based hearing on September 25, 2025. *See* Supp. Doyne Decl., Exhibit C (Hearing Notice).

LEGAL ARGUMENT

I. This Court Should Dismiss or Transfer the Petition Because it Lacks Jurisdiction Over the Petition

As a threshold matter, the Court should dismiss or transfer the Petition because it lacks jurisdiction over it for two reasons. First, the Petition filed suit in the wrong district. Second, the Petitioner does not name the proper custodian.

There are two components to habeas jurisdiction. The Petitioner must file the Petition in the district of confinement and name his 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).

As to the district of confinement, "jurisdiction lies in only one district: the district of confinement." *Padilla*, 542 U.S. at 443. It 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).[2]

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). 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 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.").

[2] 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 did numerous 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).

Applying these principles here, this Court should dismiss the Petition for lack of jurisdiction.[3] Petitioner is not confined in the District of New Jersey now, and he was not confined here when his counsel filed the Petition. Instead, he was 13 minutes from landing in the Western District of Louisiana, having departed from Richmond, Virginia. *See* Cabezas Decl. ¶ 7. Moreover, Petitioner's immediate custodian is now the Warden of the Adams County Correctional Center in Natchez, Mississippi, who is not a named respondent. As a result, the Petition does not name the proper custodian and was not filed in the district of confinement. This Court should dismiss the Petition for lack of habeas 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); *see also Ozturk v. Trump*, 779 F. Supp. 3d 462, 471 (D. Vt 2025) (citing the Supreme Court and noting that jurisdiction lies in only one district: the district of confinement.)

That Petitioner was a few minutes from the facility in Louisiana, instead of "booked into" the facility, does not change the result. *Cf.* Am. Pet. ¶ 20 (claiming District of New Jersey has jurisdiction because Petitioner "had not yet arrived or was booked into any other jurisdiction."). Indeed, the facts here mirrors those in *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025). 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

[3] Alternatively, the Court should transfer the Petition to the Western District of Louisiana, where he was at the time Petitioner filed, or to the Southern District of Mississippi, where ICE is currently detaining Petitioner.

case that petitioner was "in transit" in Vermont at that time. Namely, the petitioner filed the petition about 30 minutes before arriving at an ICE field office in Vermont. *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).

Recently, another District Court reached the same conclusion. In *Dvortsin v. Noem*, the District of Colorado found 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.*, and thus petitioner's physical location is what mattered for the purpose of the "district of confinement" rule, even when the detainee is in transit.

In the interest of candor, Respondents identify two decisions in this District that would favor Petitioner's argument. In *Munoz-Saucedo*, the Court rejected the respondents' arguments that the District of New Jersey was not the district of

confinement when the petitioner was on a plane at Newark Internation Airport. *Munoz-Saucedo v. Pittman*, No. 25-2258 (CPO), --- F.Supp.3d ---- 2025 WL 1750346, (D.N.J. June 24, 2025). The Court found it had jurisdiction because ICE did not demonstrate that Petitioner was located outside of the District of New Jersey at the time of filing. 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.

Moreover, in *Rivera Zumba*, the Court found it had jurisdiction when the petitioner was at a stopover airport in another district. *Rivera Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2476524, at *7 (D.N.J. Aug. 28, 2025). There, the petitioner filed the petition in the District of New Jersey when the petitioner was in Maryland. *Id.* But, the Court held, petitioner was merely at an airport in Maryland for about 70 minutes, where no one was her custodian, and she had not yet reached the detention center in California. *Id.* Unlike that case, here, Petitioner was in the district of confinement (the Western District of Louisiana) just minutes away from a detention center when this petition was filed. Thus, this case is far more like *Ozturk* than *Munoz-Saucedo* or *Rivera Zumba*.

II. Petitioner's Detention is Lawful and Not Prolonged

Even if this Court has jurisdiction over the Amended Petition, it should fail on the merits. In Count One, Petitioner argues that his detention violates his due process rights because his detention "is wholly unjustified." Am. Pet. ¶¶ 44. Count Three argues essentially the same thing, claiming his detention serves no legitimate purpose. *Id.* ¶ 53. These claims fail because Petitioner is subject to mandatory detention under the INA given that he is an "applicant for admission" under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Furthermore, Petitioner's detention has not impeded his ability to fully participated in immigration proceedings.

"The power to admit or exclude [non-citizens] is a sovereign prerogative." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And "the Constitution gives 'the political department of the government' plenary authority to decide which [non-citizens] to admit." *Id.* (emphasis added) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). "[A] concomitant of that power is the power to set the procedures to be followed in determining whether a[] [non-citizen] should be admitted." *Id.*; see *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

A noncitizen "who has not been admitted or who arrives in the United States" is considered an "applicant for admission" under the INA. 8 U.S.C. § 1225(a)(1). All "[a]pplicants for admission must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law."

Jennings, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Id.* at 287. "Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens." *Id.* Immigration officials also have the discretion to permit an applicant for admission to withdraw an application and depart the United States immediately. 8 U.S.C. § 1225(a)(4).

Under § 1225(b)(1), applicants for admission who are "arriving" or fall into certain other categories are subject to expedited removal. In general, an immigration officer who finds the applicant inadmissible "shall order" removal without further hearing. § 1225(b)(1)(A)(i). If the applicant announces an intention to apply for asylum or expresses a fear of persecution, expedited removal is postponed pending further proceedings on the asylum application. *Id.* § 1225(b)(1)(B). However, the applicant "shall be detained" throughout this process. *Id.* § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.").

Subject to certain exceptions not applicable here, § 1225(b)(2)(A) applies to all other applicants for admission. Such applicants "shall be detained" pending a standard removal proceeding unless the immigration officer determines that the applicant is "clearly and beyond a doubt entitled to be admitted." § 1225(b)(2).

Although detention under § 1225(b) is mandatory, it is not indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of

time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue until immigration officers have finished 'consider[ing]' the application for asylum or until removal proceedings have concluded." *Id.* (internal citation omitted). "Once those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297.

Further, while section 1225(b) does not provide for bond hearings, *see id.* at 297–303, it does contain "a specific provision authorizing release from . . . detention": The Secretary of Homeland Security "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)).[4] "[S]uch parole," however, "shall not be regarded as an admission of the alien." 8 U.S.C. § 1182(d)(5)(A); *see* 8 C.F.R. § 1001.1(q). When the DHS Secretary determines that "the purposes of [the] parole . . . have been served[,] the alien shall . . . return or be returned to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A). After that, the noncitizen's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

By its plain text, § 1225(b) requires ICE to detain two types of "applicants for admission"—those who have "arrived in the United States" and those "who ha[ve] not been admitted." 8 U.S.C. § 1225(a)(1). "[A]rrive[d] in the United States" means the

[4] "That express exception to detention implies that there are no other circumstances under which aliens detained under § 1225(b) may be released." *Id.* (citing A. Scalia & B. Garner, Reading Law 107 (2012) ("Negative–Implication Canon[:] The expression of one thing implies the exclusion of others (expressio unius est exclusio alterius)"). "That negative implication precludes the sort of implicit time limit on detention that we found in *Zadvydas*." *Id.*

noncitizen has just entered the country—such as Petitioner did at the airport or at the U.S. border—or did so very recently. *See DHS v. Thuraissigiam*, 591 U.S. 103, 139, (2020). Noncitizens "have not been admitted" if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission").

Here, when Petitioner presented for admission to the United States at the port of entry (i.e., Newark International Airport), Petitioner was immediately detained and classified as an "arriving alien." *See* 8 C.F.R. § 1001.1(q) ("The term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry."). "Because he was never admitted into the United States, he is an inadmissible arriving alien and his detention is controlled by 8 U.S.C. § 1225(b)." *See Pulatov v. Lowe*, No. 18-934, 2019 WL 2643076, at *2 (M.D. Pa. June 27, 2019). Because detention under § 1225(b) is mandatory, Petitioner's argument that his detention is unjustified must fail.

Moreover, the current length of Petitioner's detainment is reasonable and comports with the INA and the Due Process Clause. Although the Due Process Clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), some amount of detention is permissible, *Demore v. Kim*, 538 U.S. 510, 511 (2003). To that end, Petitioner's detention is presumptively reasonable if it does not exceed six months. *Zadvydas*, 533 U.S. at 701. Here, ICE detained Petitioner on August 8, 2025, approximately 48 days ago. *See* Cabezas Decl. ¶ 5. Petitioner's detention is accordingly reasonable. *See Pena,* 2025 WL 2108913, at *2–3 (holding detention of 17

days comported with due process). Furthermore, Petitioner can request release on parole under § 1225, 8 U.S.C. § 1182(d)(5)(A), and thus he has not exhausted his administrative remedies. For these reasons, the Court should dismiss Petitioner's due process challenge to his detention.

III. Petitioner Fails to Show an *Accardi* Violation

In Count Two, Petitioner argues that ICE has failed to comply with its own regulations, citing to *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), which holds that agencies must follow their own policies. The Court lacks jurisdiction over this claim.

First, Petitioner argues that ICE allegedly rubber-stamp denied his request for parole under 8 U.S.C. § 1182(d)(5)(A). Am. Pet. ¶¶ 38, 50-51. The Court lacks jurisdiction over this claim because it asks the Court to review the agency's discretionary parole decision. That is, the INA grants ICE the sole discretionary authority to temporarily release on parole. *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). Federal courts lack jurisdiction "to review the . . . exercise of discretion in decisions to grant or deny parole." *Ashish v. Att'y Gen. of U.S.*, 490 F. App'x 486, 487 (3d Cir. 2013). As such, Petitioner's speculative allegation that ICE did not properly evaluate Petitioner's parole request is not reviewable in a habeas action.

Second, Petitioner argues ICE did not follow its regulations when "by information and belief . . . the arresting officer also conducted Petitioner's rights advisals." Am. Pet. ¶ 52. Petitioner claims that this violates 8 C.F.R. § 287.3(a). The argument fails for two reasons. For one, the Court lacks jurisdiction over it because

this alleged action is not something over which courts have habeas jurisdiction because it does not concern release for custody. "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Therefore, the function of the writ is to seek one's release from unlawful detention. *Dep't of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959, 1969 (2020) (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."). To that end, courts routinely recognize that noncompliance with § 287.3(a) would not warrant release. *See, e.g.*, *Martinez Camargo v. I.N.S.*, 282 F.3d 487, 492 (7th Cir. 2002) (rejecting challenge to arrest under § 287.3(a) and noting "where an administrative regulatory violation does not adversely affect a petitioner's substantive rights an exclusionary remedy is not available"); *Arias v. Rogers*, 676 F.2d 1139, 1143 (7th Cir. 1982) (discussing regulation and noting "[i]t is of course possible that the detention might be legal although the arrest was not. In the criminal law, if there is probable cause to hold an accused he cannot gain his freedom by showing that the arrest was illegal, although he may be able to suppress at his trial evidence seized as an incident to his arrest.").

Moreover, no violation of the regulation occurred in any event. Section 287.3(a) does not require two separate officers; it says that, if circumstances require it, the same officer may arrest the noncitizen and advise them of their rights. *See id.* ("If no other qualified officer is readily available and the taking of the alien before another

officer would entail unnecessary delay, the arresting officer, if the conduct of such examination is a part of the duties assigned to him or her, may examine the alien."). Taking Petitioner's argument "on information and belief" that the same person arrested him and advised him of his rights, that would be consistent with the regulation.

Lastly, Petitioner argues that his NTA did not comply with 8 C.F.R. § 239.1 because it allegedly has a faulty certificate of service. Am. Pet. ¶ 53. He also argues—in Count Four—that this faulty certificate violates his due process rights. *Id.* at ¶ 63. For the same reasons just explained, the Court lacks jurisdiction over this claim because it does not challenge his detention under § 1225(b). Technical defects in the NTA do not invalidate the removal proceeding or the noncitizen's constitutional rights when, as here, the defect did not deprive the noncitizen of reasonable notice of the immigration violations against him. *See Haider v. Gonzales*, 438 F.3d 902, 908 (8th Cir. 2006) (rejecting § 239.1 violation argument and stating "due process is satisfied so long as the method of notice is conducted in a manner reasonably calculated to ensure that notice reaches the alien").[5]

Accordingly, the Court lacks jurisdiction over Petitioner's Accardi arguments.

[5] Petitioner also appears to argue that, because a random note to "order of supervision" in a form notifying the immigration court of his new detention location, ICE somehow conceded that he should be released from detention. Am. Pet. ¶ 30. As Petitioner admits, the officer who prepared the form did not know why that erroneous notation was there, and ICE did not agree to release Petitioner on supervision. *Id.*

IV. Petitioner Cannot Challenge Transfer

In Count Four, Petitioner argues that the transfers out of New Jersey "prevented [him] from challenging this jurisdiction before the Immigration Judge at his scheduled bond hearing[.]" Am. Pet. ¶ 61. But Petitioner has ongoing immigration proceedings where he has had the opportunity to raise these arguments, including filing an application for cancellation of removal, *see* Supp. Doyne Decl., Exhibit B (Application for Cancellation of Removal), and a hearing on September 25, 2025, *see* Supp. Doyne Decl., Exhibit C (Hearing Notice).

And to the extent Petitioner challenges ICE's decision to transfer him, the Court would lack jurisdiction over that claim, as well because "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)).

CONCLUSION

For the foregoing reasons, the Court should deny the Amended Petition for Habeas Corpus.

Respectfully submitted,

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