UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAVID BUCKINGHAM

Petitioner,

v.

John TSOUKARIS, in his official capacity as Field Office Director of Newark, New Jersey, Immigration and Customs Enforcement; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and Pamela BONDI, Attorney General, U.S. Department of Justice, et al.

Respondents.

Case No. 25-14601 (ES)

REPLY TO RESPONDENT'S ANSWER TO AMENDED CORPUS PETITION

PRELIMINARY STATEMENT

Mr. David Buckingham became a lawful permanent resident on or about April 3, 2019. He received his residence status through marriage to his current wife, Leigh Buckingham. On October 4, 2022, less than five years after obtaining his residency, Mr. Buckingham was convicted of wire fraud in violation of 18 U.S.C. § 1343. ECF No. 15-1. Immigration and Customs Enforcement was alerted to his conviction and declined to pursue removability pursuant to 8 U.S.C. § 1229a and detention under 8 U.S.C. § 1226, stating that "no detainer will be issued and no further action will be taken by this office at this time." ECF No. 13-8. However, when Mr. Buckingham

returned from a brief trip to the United Kingdom to visit a sick relative, he was apprehended upon return by Customs and Border Protection ("CBP"), placing him into removal proceedings by issuing a Notice to Appear under 8 U.S.C. § 1229a after a CBP officer determined that Mr. Buckingham should not be treated as a lawful permanent resident, but rather an applicant for admission to the United States, because he was a "match to a US-VISIT watchlist hit for criminal history." ECF No. 15-1. After making a finding that Mr. Buckingham should not be treated as a lawful permanent resident, but rather as an applicant for admission, because he had "committed an offense identified in 8 U.S.C. § 1101(a)(13)(C)(v), unless since such offense the alien has been granted relief under section 8 U.S.C. § 1182(h) or § 1229b(a)," CBP had decided that Mr. Buckingham was not "clearly and beyond a doubt entitled to be admitted" under 8 U.S.C. § 1225(b)(2)(A), and regarded him as an applicant for admission subject to inspection under 8 U.S.C. § 1225(a)(3).

CBP issued two Notices to Appear ("NTAs"), one with a hearing date and time to be determined, and another with a date and time. ECF Nos. 13-3, 13-4. Both were filed with the Executive Office for Immigration Review ("EOIR"). The first NTA was filed on DATE. The second NTA was filed with the immigration court on August 20, 2025, about two weeks after he was transferred to ICE custody on August 8, charging Mr. Buckingham as an "arriving alien."

On August 13, 2025, Mr. Buckingham was transported outside of the Elizabeth Detention Center, in New Jersey, where his NTA ordered him to appear at the Elizabeth immigration court. Mr. Buckingham's final transfer destination was Adams County Detention Center in Natchez, Mississippi. However, the Petitioner did not know where he was being transferred, nor was his immigration lawyer informed of the transfer.

In response to Petitioner's initial habeas, Respondents moved to dismiss or transfer the petition because the Petitioner had "arrived at the Alexandria Staging Facility in Alexandria, Louisiana, at 3:55 p.m., where he was located when Petitioner filed this action." See ECF No. 12.

Respondents also submitted a declaration of Alexander Cabezas, a Supervisory Detention and Deportation Officer ("SDDO"), stating that the Petitioner arrived at the Alexandria Staging Facility at 3:55 p.m. and "arrived at the Alexandria Staging Facility in Alexandria, Louisiana at 3:55 p.m., where he was located when Petitioner filed this action." ECF No. 12-1.

On August 23, 2025, about ten days after the filing of the instant habeas petition, ICE filed a second Form I-830, Notice to EOIR, indicating that Mr. Buckingham would be released from custody under an "Order of Supervision." Petitioner was not released after that notification. ECF No. 13-5.

On September 28, 2025, ICE filed another Form I-830 dated September 24, 2025, Notice to EOIR, indicating that Mr. Buckingham would be released from custody under "Humanitarian Parole." See Exhibit A (Form I-830 entered by Deportation Officer D07304 I. Moss).

The Petitioner continues to be detained, despite two affirmative authorizations from ICE for him to be released from ICE custody. The Respondents filed an Answer to the Amended Petition. Respondents did not file a response to Petitioner's Emergency Motion for TRO (D.E. No. 19).

LEGAL ARGUMENT

I. THE COURT HAS JURISDICTION OVER THIS PETITION

The facts of this case give rise to an exception to the default habeas jurisdictional rules in that the default rule would prevent Mr. Buckingham's lawyer from accessing his whereabouts to exercise his petition right. See Rumsfeld v. Padilla, 542 U.S. 426, 441 (2004). This critical exception has been recognized in the Third Circuit, where this case arises, in Anariba v. Hudson County Correctional Center, 17 F.4th 434 (3d Cir. 2021). In that case, the Third Circuit permitted the petitioner to move forward with his claim even after he was moved from New Jersey, discussing that allowing transfers to defeat jurisdiction would invite government forum-shopping and delay. Id.

This District has held that the Court retains jurisdiction even when the petitioner has been

moved outside of the District of New Jersey at the time of the habeas filing. See Munoz-Saucedo v. Pittman, No. 25-2258 (CPO), — F. Supp. 3d —, 2025 WL 1750346 (D.N.J. June 24, 2025). In that case, the Court found it had jurisdiction because ICE described the petitioner's whereabouts only generally when the habeas petition was filed. Id. In this case, ICE similarly represents "general" information about Petitioner's whereabouts, when it should be in the best position to articulate precisely where the Petitioner was. For example, in Mr. Alexander Cabezas' declaration, he initially mentioned times without any indication of what time zone they were in. See ECF No. 12-1 ¶ 7 ("The flight departed Newark International Airport at 12:00 p.m. and arrived in Richmond, Virginia at 12:55 p.m. The flight departed Richmond at 2:30 p.m. and arrived at the Alexandria Staging Facility at 3:55 p.m."). The declaration doesn't state what time the Petitioner departed the Elizabeth Detention Center. See ECF No. 12-1 ¶ 7 ("On August 13, 2025, Petitioner was placed on an ICE passenger jet bound for the Alexandria Staging Facility in Alexandria, Louisiana."). Also absent from Mr. Cabezas' declaration is the location of the Petitioner at the time the instant petition was filed. In fact, in their initial Answer to Habeas Corpus Petition and Request for Expedited Consideration, Respondents stated that the Petitioner has "arrived" at the Alexandria Staging Facility in Alexandria, Louisiana, at 3:55 p.m., "where he was located when Petitioner filed this action." See ECF No. 12 at 1. Now, Respondents state through their argument that the Petitioner was about "twelve minutes," or "thirteen minutes," from landing in Alexandria, Louisiana. ECF No. 21 at 1, 3. Like the facts in Munoz-Saucedo, there is no specific indication of where the Petitioner was located at 4:43 p.m. ET on August 13, 2025.

Nonetheless, Respondents argue that the facts of this case bring it more squarely within another District Court's decision in Ozturk v. Hyde, 136 F.4th 382 (2d Cir. 2025). Petitioner disagrees. In that case, the petitioner "had already been driven across state lines to Vermont." *Id.* Here, by contrast, the parties agree that the Petitioner was in flight. His exact location, however,

remains unknown. A strict application of the district of confinement rule would render habeas effectively unreviewable, allowing the government to defeat jurisdiction. *See Rumsfeld v. Padilla*, 542 U.S. 426, 447 n.16 (2004).

II. THE RESPONDENTS HAVE INDICATED ON TWO OCCASIONS THAT THEY WOULD RELEASE THE PETITIONER AND YET, HE REMAINS DETAINED.

ICE has issued Form I-830, a Change in Custody, Notice to EOIR: Alien Address, on two occasions. On August 23, 2025, about ten days after the filing of the instant habeas petition, ICE filed a Form I-830, indicating "Order of Supervision." ECF No. 13-5. On September 29, 2025, ICE filed another Change in Custody, Notice to EOIR: Alien Address, indicating "Humanitarian Parole." The Petitioner remains detained.

Under 8 C.F.R. § 1003.19(g), DHS must promptly notify the Immigration Court in writing of any change in a respondent's custody location or status and provide the current fixed street address. EOIR implements this requirement through Form I-830, which the Department of Justice and ICE policy expressly use for custody/location updates to EOIR. See EOIR PM § 9.1(1); EOIR Memos (I-830 electronic filing); ICE Policy 11022.1 (Detainee Transfers); and EOIR OOD PM 25-31 (clerical transfers upon I-830).

When DHS grants parole, it is exercising statutory authority pursuant to 8 U.S.C. § 1182(d)(5)(A), implemented by 8 C.F.R. § 212.5. The regulation specifies the officials who may grant parole and governs its issuance and conditions. Once parole is granted, continued civil detention is unlawful.

Under the *Accardi* doctrine, agencies must follow their own regulations and binding policies. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Failure to do so renders detention arbitrary, capricious, and unlawful.

Courts have repeatedly enjoined DHS when it flouts its own parole regime, requiring the

agency to adhere to parole standards or provide individualized, record-based reasons consistent with its own directives. *See Damus v. Nielsen* (D.D.C. 2018) (class-wide relief where ICE denied parole in violation of its own Parole Directive 11002.1).

Separate and apart from the detention issues at the time of the Petitioner's entry at Newark International Airport, which have been articulated previously, ICE has, on two occasions, demonstrated its intention to release the Petitioner. First, it was through an order of supervised release, and now through humanitarian parole. Continued detention in the face of an issued release determination is arbitrary and capricious, violates *Accardi*, and denies due process.

Petitioner respectfully requests that this Court: (1) order Respondents to effectuate Petitioner's release within 24 hours under the most recent custody decision (humanitarian parole), or, alternatively, show cause with sworn, record-based reasons for a lawful revocation under 8 C.F.R. § 212.5; (2) compel immediate filing of an updated I-830 reflecting release and address, as required by 8 C.F.R. § 1003.19(g); and (3) enjoin any transfer or re-detention inconsistent with the agency's written determinations absent a new, compliant decision and contemporaneous notice to EOIR and counsel.

III. RESPONDENTS' TRANSFER GOES AGAINST THE AGENCY'S POLICY

Under ICE Directive 11022.1, titled Detainee Transfers, transfer determinations must minimize, to the extent possible, detainee transfers outside the area of responsibility and provide cost savings to the agency. The Directive specifically states that ICE will not transfer a detainee when there is documentation to support that the detainee has immediate family within the area of responsibility, an attorney of record, pending or on-going removal proceedings, where a bond has been granted or scheduled.

In this case, the Petitioner, a lawful permanent resident living in New Jersey, was transferred despite meeting many of the factors articulated in the Directive. When ICE ignores its

own policy, the resulting custody becomes unlawful. Petitioner asserts that agencies must follow their own rules under Accardi. Further, Petitioner's continued detention is arbitrary and capricious because it is not in accordance with the law. And further, the Petitioner's due process rights and the Fifth Amendment's basic fairness guarantees have been violated.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court order his release in accordance with an already approved humanitarian parole.

Petitioner also respectfully moves the Court to treat Petitioner's pending emergency motion as unopposed, or alternatively, requests an Order to Show Cause directing the Government to explain its non-compliance.

Respectfully Submitted,

/s/Veronica Cardenas

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