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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

_____ CARLOS A. CALDERON,)	
)	
Petitioner,)	Civil Action No. 25-14827 (BRM)
v.)	
)	
PAM BONDI,)	HON. BRIAN R. MARTINOTTI
Attorney General of the)	
United States of America, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**PETITIONER’S BRIEF IN RESPONSE TO RESPONDENTS LETTER
REQUEST TO DISMISS PETITIONER’S HABEAS AS MOOT**

INTRODUCTION

The Petitioner, a 46-year-old-male alleged native and citizen of Venezuela, with extensive ties to the U.S, was detained by Respondents on August 15, 2026 and taken to the Elizabeth Detention Center. On August 21, 2025 he was moved out of the jurisdiction and transferred to Denver, Colorado. Prior to his transfer, while Petitioner was still here in New Jersey, he filed a habeas petition with the U.S. District Court to declare his detention unlawful and stay his removal outside of the New Jersey jurisdiction. The Petitioner has a final order of removal presumably as to Venezuela. In 2016, the Respondents had sought to remove him to Venezuela but were unable to because Venezuela does not believe he is a Venezuelan citizen. Petitioner had filed a habeas with

Madeline Cox Arleo, No. 17-362 and was ultimately released by ICE. Thus, Petitioner has been re-arrested and detained even though there is no proof that he can be removed to Venezuela. Prior to his removal from the U.S., Petitioner petitioned this Court for an order declaring his detention unlawful absent proof that the Respondents have obtained his travel documents.

On September 17, 2025, Respondents attempted to remove the Petitioner to Venezuela without a travel document. When he arrived in Venezuela, the Venezuelan customs agents accused Petitioner, who speaks fluent English, of being an American spy since he arrived without travel documents and threatened to detain him. The US ICE agent with him entered into a heated argument with the Venezuelan authorities and was forced to return with the Petitioner to the U.S. On his return trip, the US ICE agent, who was angry at not being able to have Venezuela take the Petitioner, threatened the Petitioner with sending him to El Salvador, Guantanamo, Cuba, Honduras or Mexico. The Petitioner is now in Mexico.

FACTS OF THE CASE

Petitioner, Carlos Andrea Calderon is a 46-year-old male, alleged native and citizen of Venezuela who has a final order of removal.

In 2016, the Respondents sought to remove the Petitioner based on this order of removal which presumptively was to Venezuela.

In 2016, the Petitioner filed a *pro se* habeas corpus petition challenging his detention and was ultimately released because Respondents were unable to remove him. Calderon v. Green, Civil Action NO: 17-362 (MCA). That habeas corpus petition was

dismissed by the court after he was released from ICE custody when ICE was unable to obtain a travel document to Venezuela.

On August 15, 2025, the Respondents again detained the Petitioner and took him to the Elizabeth Detention Center. Since then, he has been moved to Denver, Colorado and then an attempted removal to Venezuela without Venezuelan travel documents and then back at Port Isabella, Texas where Petitioner feared that Respondents would again attempt to remove him to a third country placing him in great danger.

On September 26, 2025, ICE transported the Petitioner, once again, this time to Mexico through the Tamaulipas section of the US/Mexican border. Petitioner was told that he would receive official assistance by the Mexican authorities upon arrival. However, when the Petitioner arrived in Mexico he was told that his name was not on any official list of the individuals being received by the Mexican authorities. Despite this, he was detained and transported further into Mexico without any documentation or legal explanation. The U.S. authorities handed the Petitioner over to the Mexican authorities without providing him with any identification, travel documents, or any paperwork confirming his legal status. He is currently in Mexico unable to prove his identity or nationality, and left without the protection of either government.

While in Mexico, the Petitioner was told that he was be taken to Tobasco but he was never dropped off there. During this process of transporting the Petitioner deeper into Mexico, one bus full of migrants disappeared and their current whereabouts is unknown. For approximately, three days the Petitioner was transported by bus across Mexico, escorted by Mexican military vehicles. The Mexican authorities took allof the Petitioner's money except 100 dollars.

On September 29, 2025, the Petitioner arrived in Palenque, Chiapas, Mexico where he was allowed off the bus without any official documentation or assistance. Since his arrival in Palenque, the Petitioner has been hiding due to the extreme danger in the area. The region is heavily controlled by organized criminal groups including major drug cartels, who regularly kidnap, extort, and murder migrants. He has heard that the woman migrants that are kidnapped by the cartels are forced to work as prostitutes in the brothels and the men are forced to work as mules carrying drugs for the cartels. As an individual without identification the Petitioner fears that he is highest risk because he cannot report crimes or seek the assistance of the authorities. The Petitioner regularly hears gunfire where he is staying, often around 5am which he believes is cartel activity. Strangers have approached him asking him who he is and what he is doing there and he is being watched and fears being targeted and subjected to harm including kidnapping and extortion.

Without identification the Petitioner cannot legally work, rent a room, or travel safely. He also cannot approach immigration officials without risking being arrested, beaten or robbed or handed over to the cartels. The Petitioner believes that the US authorities paid the Mexican authorities to take custody over him and to transport him to the Mexican/Guatemalan border in a dangerous area where he cannot leave or travel from due to heavy cartel activity. The Petitioner is effectively trapped in Mexico without any proper documentations or status in Mexico.

LEGAL ARGUMENT

I. PETITIONER'S CASE IS NOT MOOT AND THIS COURT HAS JURISDICTION TO HEAR MR. CALDERON'S HABEAS PETITION.

Respondents argue in their letter brief filed on October 2, 2025 that the because the Petitioner was removed from the United States to Mexico that his habeas action

challenging his detention is moot and that the Court lacks jurisdiction over the amended Petition. Petitioner submits that this case is not moot and that the Court continues to possess jurisdiction to consider Mr. Calderon's habeas petition because he is still under the constructive detention of the Respondents and that there are remaining collateral consequences that would require an adjudication of his habeas complaint by this Court.

The facts in this case, as detailed above, are alarming. The Respondents, who form part of the Executive government of the U.S., had been unable to remove the Respondent, who had lived in the U.S. for many years and is married to a U.S. citizen, to Venezuela. So in addition to placing the Petitioner's life in danger by seeking to remove him, without travel documents to Venezuela, where he was accused of being a US spy, the Respondents have now taken it upon themselves to contract Mexican officials to take the Petitioner deep into cartel territory near Chiapas, Mexico where he is holed up in a motel, without documentation and fearing for his life should he step out and face, abduction, torture or worse. Petitioner submits, through undersigned counsel, that under these circumstances, this Court should not dismiss this petition as moot but, rather, should retain jurisdiction over this matter and engage in a thorough examination of the legality of Respondents' actions and question how is it possible that the Respondents, representatives of a country that has stood for the steadfast principle of the rule of law could possibly engage in these unlawful acts and attempt to avoid judicial review.

First, in terms of jurisdiction, Petitioner respectfully submits that the Respondents cannot evade jurisdiction solely because they have farmed out Petitioner's detention to the Mexican authorities and, in any case, serious collateral consequences attach similar to have a detainer or such. See Abu Ali v. Ashcroft, 350 F. Supp. 2d 28, 2004 U.S. Dist.

LEXIS 25239 (D.D.C. 2004). In Abu Ali v. Ashcroft, a U.S. citizen University student studying in Saudi Arabia challenged his detention (and possible torture) by the Saudis at the bequest and under the supervision of the US authorities. Id. In response to a motion to dismiss by the US government in this case where the issue was whether the US may avoid habeas jurisdiction by the federal courts by enlisting a foreign ally as an intermediary to detain a US citizen, the DC district court determined that factual allegations must be taken as true and all reasonable inferences should be drawn in petitioner's favor. Id. at 32.

Most importantly, reaching the ultimate issue in the case, the Abu Ali court stated in no uncertain terms that Respondents cannot enlist a foreign government to avoid habeas jurisdiction by stating: “[t]o briefly summarize its conclusions here, however, the Court holds that the United States may not avoid the habeas jurisdiction of the federal courts by enlisting a foreign ally as an intermediary to detain the citizen.” Id. at 41.

In response to this maxim, the US government in Abu Ali invoked the “implicit territorial limitation” of the habeas writ to which the Court in that case recognized an exception citing to Braden v. 30th Judicial Circuit Court of Ky, 410 U.S. 484, 498, 35 L. Ed. 2d 443, 93 S. Ct. 1123 (1973)(allowing US citizen overseas to challenge legality of detention in habeas notwithstanding immediate custodian and district of confinement rules). Relying on this and other case, the Abu Ali court explained that “the writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody” a district acts “within its respective jurisdiction within the meaning of Section 2241 as long as the custodian can be reached by service of process.” Id. at 43.

The second issue is the issue of custody which the Respondents will surely bring up and allege that the Petitioner has been “released” into Mexico. For the requirement of “custody” under the habeas writ the Supreme Court has liberally construed the “in custody” requirement for purposes of the federal habeas statute. *Id.* at 50 citing Maleng 490 U.S. at 492 and Peyton v. Rowe, 391 U.S. 54, 64, 20 L. Ed. 2d 426, 88 S. Ct. 1549 (1968)(holding that the “in custody” requirement of the habeas statute ‘should be liberally construed because of the remedial goals of the statute). See also Hensley, 411 U.S. at 350 (“The custody requirement of the habeas corpus statute is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty.”). In addition, Section 2241(c)(1) expressly expands habeas jurisdiction to any petition who is “in custody under or by color of the authority of the United States” and not just those strictly in the custody of the United States. 28 USC Section 2241(c)(3) is even broader and encompasses those individuals who are “in custody” and without limitation of “the authority of the United States”—so long as the custody is a violation of the Constitution or laws or treaties of the U.S. Thus, while there must be some involvement of the United States the in custody requirement does not actually require actual physical custody and can expand to instances where there is “constructive” custody. See LoBue v. Christopher, 317 U.S. App. D.C. 277, 82 F.3d 1081, 1082 (D.C. Cir. 1996)(individual released on bail was “in constructive custody” of US Marshalls and could challenge federal extradition statute through habeas).

The Sixth Circuit has explained constructive custody for purposes of habeas as:

In order to maintain a habeas corpus action, the petition must be “in custody.” His custody must be the result of the respondent’s action from which he seeks habeas corpus relief. However, the Supreme Court has given the custody requirement a liberal construction, and it is not necessary that the petitioner be in physical control of

the respondent. It is enough that the imprisoning sovereign is the respondent's agent; that his liberty is restrained by the respondent's parole conditions or that he can point to some continuing collateral disability which is the result of the respondent's action."

Steinberg v. Police Court of Albany, N.Y., 610 F.2d 449, 452 (6th Cir. 1979). In fact, the Court in Abu Ali v. Ashcroft presents other instances of constructive custody such as when a person is subject to a detainer or where the petitioner is on parole or probation or is restrained by conditions imposed by the respondent officials and other instances where the petitioner is not in the physical custody of the Respondents but rather in the physical control of some other entity, *or not even if the physical control of any entity at all*. Id. at 56 (Nevertheless, in all of these decisions, the petitioner was found to be in the actual or constructive custody of the respondent within the meaning of the habeas statute because the respondent was responsible for significant restraints on the petitioner's liberty) citing Hensley, 411 U.S. at 351 ("The custody requirement of the habeas corpus is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty). Thus, based on the above-expansive notion of actual or constructive custody caused by the Respondents, this Court should consider that the Petitioner finds himself in the constructive custody of the Respondents and its agents given the set of facts in this case and given that the Petitioner finds himself in these circumstances that severely limit and restrain his liberty. Surely, the Respondents are responsible for this significant restraint on the Petitioner's liberty and cannot wash their hands of any responsibility before this Court simply by paying Mexican agents to take the Petitioner to a dangerous middle of nowhere with no ID or no status. If so then, why hold habeas corpus hearings or even have a habeas corpus statute if the U.S. Executive branch can pay the Mexican military or

the Mexican cartel to disappear Petitioner into cartel territory as soon as they dare challenge the legality of their U.S. detention. To permit such actions would erode the rule of law terribly and eliminate the Great Writ and turn the U.S. into a country no better than a banana republic. There should be sufficient closeness between the Respondents' actions and the actions of the Mexican authorities in taking the Petitioner to cartel territory and leaving him there without documentation where he is immobilized so that the actions of the latter may be treated as that of the Respondents. This Court should not deny jurisdiction simply because Respondent chose to act through an intermediary. As such, there should at the very least be a colorable claim that Mr. Calderon is being held in "violation of the Constitution, laws, or treaties of the United States." See Enwonwu v. Joyce, 2025 U.S. Dist. LEXIS 134053; 2025 LX 283689; 2025 WL 1939900 (D. Maine July 15, 2025)(District finding that a Nigerian's who raised a post-removal claim under Zadvydas and was actually removed to Nigeria can raise the possibility that the government delegated his pre-removal detention to a foreign country and therefore remains in "constructive U.S. custody and ordering federal respondents to file a supplemental declaration attesting to whether the U.S. retains constructive custody over alien notwithstanding his removal)

Finally, no other doctrines or principles should apply in this case to prohibit jurisdiction. The Petitioner was living in the U.S., married to a U.S. citizen and fully covered by the U.S. Constitution, the habeas corpus statute and all laws that protect individuals residing in the U.S. The facts are simple. The U.S. government illegally arrested the Petitioner and sought to remove him to Venezuela and seeing that this was futile instead chose to unlawfully use agents  to take him and

deposit him in Chiapas, Mexico deep in cartel territory with no identification, no money, and no legal status to remain there all while exposing him to grave danger and almost certain torture. Fearing for his safety, the Petitioner is unable to move, his liberty restricted. There is nothing that should preclude this Court from inquiring into the illegality of the Respondent's actions either through the Act of State doctrine, Separation of Powers, or Political Question since this is simply a question of Respondents using agents from a foreign country to continue to restrict Petitioner's freedom. See Smith v. Reagan, 844 F.2d 195, 198 (4th Cir. 1988)(Not every suit that touches on foreign relations is beyond judicial cognizance).

Given that the Petitioner has alleged and presented evidence that his continued constructive detention is illegal and has identified sufficiently facts which would lead the Court to make a judicial determination on the legality of the Respondents' actions in order to make efforts to facilitate his return to the United States where he should be released, this court should assert jurisdiction. After all, he did file his habeas and requested restraints on his transfer outside of this jurisdiction without proper travel documents precisely because he alleges that he would be subject to illegal and inhuman treatment and would be rendered to another sovereign state (supposedly outside of this court's habeas jurisdiction). See D.A. v. Noem, 2025 U.S. Dist. LEXIS 180319; 2025 LX 352054; ___ F. Supp.3d __; 2025 WL 2646888 (D.D.C. September 15, 2025)(District Judge Chutkan finding that five Nigerians and one Gambian who were granted withholding could not challenge their unlawful removal to Ghana, a third country in which they had no ties and which would ultimately remove them to Nigeria, did not possess jurisdiction under the All Writs Act in case where the action appears to have been

filed after the aliens were removed from the U.S.). In fact, the D.A. v. Noem case cites to several cases where the U.S. government has sought to take aliens who have resided and presumably enjoyed U.S. Constitutional rights, outside of the U.S. using agents to take action that presumably Respondents could not lawfully engage in. Specifically mentioned are: A.A.R.P. v. Trump, 145 S. Ct. 1364, 221 L. Ed. 765 (2025)(Supreme Court intervening in removal of aliens who were not afforded the right to challenge under the alien Enemies act); L.G.M.L. v. Noem, No. 25-cv-2942 (D.D.C. 2025)(Issuance of restraining order by D.C. district court for 76 Guatemalan children from immediately removing them and bypassing procedures for the Trafficking Victims Protection act (“TVPRA”); Kettlewell v. Noem, 25-cv-491 (D. Ariz. 2025)(district court issuing TRO where the government attempted to immediately deport 53 Guatemalan and 12 Honduran children on short notice and without removal orders); Noem v. Abrego Garcia, 145 S. Ct. 1017, 221 L. Ed. 2d 655 (2025)(Supreme Court ordering the facilitation of the return from El Salvador of an alien living in the US granted withholding of removal as to El Salvador); Melgar-Salmeron v. Bondi, No. 23-7792 (2d Cir. 2025)(Second Circuit ordering the government to facilitate the return to the United States of alien granted a stay of removal and deported to El Salvador anyway); J.G.G. v. Trump, 2025 U.S. App. LEXIS 20046; 2025 LX 360092; ___ F. 4th ___; 2025 WL 2264614 (D.D.C. August 7, 2025)(vacating criminal contempt against Executive Branch employees for willfully disobeying district judge where there was no underlying jurisdiction).

This case should send be a cause for alarm. What the Respondents have done in this case in rendering Mr. Calderon, a presumed stateless ethnic Venezuelan, t 

 to be taken to them middle of cartel territory and dumped off with no id, no legal

status, where if he dares to venture outside he will be harmed and subject to abuse, mistreatment and torture, is unconscionable and should be construed as constructive detention and a serious collateral consequence and impairment of his right to liberty. Moreover, such a move by Respondents reflects the state of the erosion of the rule of law and dilution if not total elimination of basic constitutional and “inalienable” rights that are apparently applicable to all persons in the U.S. To say that a court lacks jurisdiction is to make alienable these cherished rights simply by permitting Respondents to contract out their detention authority and take their illegal actions presumably outside of this court’s jurisdiction. Habeas corpus jurisdiction would be meaningless if a U.S. person can be detained and rendered to another state under these circumstances. It is truly incredible what is happening in the U.S. Petitioner pleads with the District Court to preserve its jurisdiction and order the Respondents to provide the Petitioner with a parole document that will allow him to return to the U.S. to be released until when the Respondents are actually able to obtain a travel document to Venezuela and to notify and presumably afford the Petitioner the right to seek protection from any country that the Respondents seek to remove him to. See E.D.Q.C. v. Warden, Stewart Det. Ctr., 2025 U.S. Dist. LEXIS 104781; 121 Fed. R. Serv. 3d (1992); 2025 LX 164634; ___ F. Supp. 3d ___; 2025 WL 1575609 (D. Georgia, June 3, 2025)(Finding case not moot where Venezuelan removed to El Salvador and stating that collateral and continuing disability consequences are present a” and that the “Government can-and does nd stating that requiring an alien’s return is “not a novel order return wrongfully removed migrants as a matter of course”) citing Niken v. Holder, 556 U.S. 418, 435, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009).

CONCLUSION

In conclusion, the rule of law is the only thing that has historically separated the United States from other countries. If we fail to follow the rule of law and permit the Respondents to delegate their unlawful detention to a third party, such capitulation will have long-lasting effects on our laws and constitution because there is nothing to stop the Executive from doing the same to a U.S. citizen under another context. Accordingly, the Petitioner respectfully requests an Order from this Court restricting the Respondents from further detaining either actually or constructively and to facilitate his return to the United States.

Dated: October 16, 2025

s/ Regis Fernandez
Regis Fernandez, Esq.