



3. Petitioner filed a petition for a writ of Habeas Corpus with the Honorable Court on September 27, 2025 at 4.37 PM EST. *See Exhibit 1 to the instant Reply – Notice of Electronic Filing.* Petitioner claimed he was detained by ICE without cause and in violation of his constitutional rights to due process, invoking the breach of the Fifth Amendment. He requested, *inter alia*, the Honorable Court issue a stay on his transfer out of Massachusetts and order his immediate release.
4. On September 29, 2025, the Honorable Court issued an Order asking Respondents to respond to the Petition no later than October 13, 2025 and refraining from moving Respondent to another state without prior notification of the Court. *See ECF 3 – Order concerning service of Petition and stay of transfer or removal.*
5. In violation of the Court’s order of September 29, 2025, the Respondents moved the Petitioner again. He was transferred to Camp East Montana, El Paso, Texas, some 2400 miles away from his home. The Counsel’s best knowledge, Petitioner is still in this Texas detention facility.
6. On October 3, 2025, the Respondents filed a Status Report. *See ECF 7 – Status Report.* Here, Respondents stated that they sought the transfer of the case or the dismissal of the case, solely on basis of the lack of jurisdiction of this Honorable Court, since the Petitioner was allegedly outside Massachusetts at the time of the filing of the Habeas Petition. Respondents also enclosed an Affidavit from Officer Chan, detailing the movement of the Petitioner across state lines, ending up some 2400 miles from his home.
7. Despite being ordered by the Honorable Court to “answer or otherwise respond to the petition” (*See ECF 3 – Order concerning service of Petition and stay of transfer or removal, at 2.*), Respondents chose to respond only in part to the Habeas Petition. Thus, in

their opposition, Respondents only tried to rebuke or otherwise respond to the section pertaining to Jurisdiction included in the Petitioner's Petition for a Writ of Habeas Corpus, *i.e. ECF 1 – Petition for a Writ of Habeas Corpus, at 2*. Respondents did not in any way “answer or otherwise respond” to other parts of the Petition. Chiefly, Respondents did not in any way respond to or challenge the Sections of the Petition arguing that Petitioner's detention violated the Fifth Amendment right to due process, that he was detained without hearing in a constitutionally impermissible manner and that this court should order his immediate release.

8. On October 14, 2025, The Honorable Court ordered the Petitioner to move to dismiss the case, transfer to another court of competent jurisdiction, or file a reply to Respondents' Response/Answer as to Respondents' argument that The Honorable Court lacked jurisdiction. In compliance with the Court's Order, the Petitioner is filing the instant Reply, within the Court-imposed deadline.

## **II. LEGAL STANDARD**

9. Allegations made by the Petitioner thought the Petition or complaint need to be denied by the Respondents. The denial must be fairly responding to the substance of the allegation. The failure to deny an allegation by Respondents necessarily results in admission if a) allegation does not pertain to amount of the damages, b) a response from Respondents is required, and c) allegation is not denied. *See Federal Rules of Civil Procedure, Rule 8 b) 2) and 6)*.
10. As it pertains to Habeas Corpus Petitions, Respondents must reply when ordered by a judge to do so. Further, Respondents' answer must address the allegations in the motion. *See Rules governing Section 2254 Cases and Section 2255 Proceedings, Rule 5, a) and b)*. *See also 28 U.S. Code § 2243*.

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (a) (habeas corpus) and 28 U.S.C. § 1331 (federal question).
12. The proper venue also lies with this court, particularly under *Suri v. Trump*, No. 1:25-cv-00480 (E.D. Va. filed Mar. 18, 2025). *Ex parte Endo*, 323 U.S. 283 (1944), forecloses divestiture by subsequent transfer. Courts in this District have repeatedly exercised continuing jurisdiction even after ICE transfers a detainee. *Brito v. Moniz*, No. 19-11314-WGY, 2021 WL 2401006, at 5 (*D. Mass. June 11, 2021*).

### **III. ARGUMENT**

13. Petitioner filed a petition for a writ of Habeas Corpus with the Honorable Court on September 27, 2025 at 4:37 PM EST. *See Exhibit 1 to the instant Reply – Notice of Electronic Filing*. Petitioner claimed he was detained by ICE without cause and in violation of his constitutional rights to due process, invoking the breach of the Fifth Amendment. He requested, *inter alia*, the Honorable Court issue a stay on his transfer out of Massachusetts and order his immediate release. **Petitioner rejects de plano any voluntary dismissal of the case as he wants to vindicate his right with the Habeas Petition.**

### **JURISDICTION**

14. Respondents did not challenge that this Court retains subject-matter jurisdiction. The only argument put forward by the Respondents in this case is that this court lacks jurisdiction since Respondent was not in Massachusetts at the time of the filing, but rather in the state of New York. And, Respondents claim that the US District Court for the Western District of Texas may serve as proper since Petitioner is currently detained in El Paso, Texas.
15. Jurisdiction attaches when a proper respondent the custodian in this District was served while Petitioner was detained here. *Ex parte Endo*, 323 U.S. 283 (1944), forecloses

divestiture by subsequent transfer. Courts in this District have repeatedly exercised continuing jurisdiction even after ICE transfers a detainee. *Brito v. Moniz*, No. 19-11314-WGY, 2021 WL 2401006, at 5 (*D. Mass. June 11, 2021*).

16. When a petitioner is physically detained, the district of confinement is the location of both the habeas petitioner and the immediate custodian. However, this rule, contrary to Respondents' claims, is not without exception. Indeed, exceptions are warranted. Chiefly when the Government "spirited an alien from one site to another in an attempt to manipulate jurisdiction". *See Vasques v. Reno* 233 F.3d 688 (1st Cir. 2000).
  
17. It is worth noting that the Respondents moved Petitioner from MA to NY within hours of his apprehension on September 26, 2025, per Respondents own admission. *See ECF 8 – Respondents' Opposition to Petition for a Writ of Habeas Corpus, at 1.*
  
18. He was then moved, pursuant to the Respondents, on September 29, 2025, to a detention facility in El Paso Texas, where he is currently being detained. This transfer was in violation of this Courts Order imposing a stay or transfer and removal.
  
19. Therefore, Respondent respectfully contends the following:
  - a) Government's purpose in removing Petitioner were to make it difficult for his counsel to know where the habeas petition should be filed, or, in the alternative, the Government was not forthcoming with respect to the identity of the custodian and the place of detention.
  - b) Petitioner's detention in the state of New York was rather brief and transitory and, in any event, is not warranting jurisdiction to the detriment of the District of Massachusetts
  - c) Petitioner's detention in the Western District of Texas was in violation of the Court's order and, in any event, is not warranting jurisdiction to the detriment of the District of Massachusetts, nor to that of the Wester District of New York.

20. **Government's purpose in removing Petitioner.** Petitioner was moved out of Massachusetts on the same day of the arrest, on September 26, 2025. Within hours. He was moved out of state, to Batavia NY. Then, he was moved across the country to El Paso, Texas.
21. Indeed, the initial transfer, from MA to NY was done with the speed of light. In doing so, ICE departing from its own normative standards, in violation of Petitioners procedural rights.
22. Indeed, ICE must ensure that all detainee transfers will be based on a "thorough and systemic review of the most current information available". *See ICE Policy 11022.1: Detainee Transfers, Point (2)*.
23. Petitioner opines that such hasty transfer, within a matter of hours, is incompatible with a "thorough and systemic review" of the Petitioner's case in order to make a proper determination for his out-of-state transfer to NY.
24. Respondents provided no justification for the transfer from MA to NY. However, in the case of the transfer from NY to TX, Respondents argued that it was necessary due to "optimizing bedspace management". There, his initial transfer, from MA to NY, has no justification at all. It was as fast as it was unjustified.
25. Furthermore, the ICE policies mandate as a general rule that, unless it is deemed necessary, detainees be not moved outside the Area of Responsibility (AOR), when they have immediate family within the AOR. *See ICE Policy 11022.1: Detainee Transfers, Point 5.2 (1) (a)*. Here, Petitioner had two minor children and a wife in the Commonwealth of Massachusetts. *See Exhibit 2 – Birth Certificates of Victor Hugo Malaquias de Oliveira and Thomas Muller Malaquias de Oliveira. See also Marriage Certificate*. This is yet another violation of the ICE Policies.

26. Indeed, as mentioned above, the transfer of the Petitioner by the Respondents was as fast as it was unjustified. At least prima facie, because it was not entirely unproductive. To the contrary. The transfer aimed and achieved at least two goals: a) *prevent counsel* from knowing where Petitioner was located and trying thus to prevent adequate filing of the Habeas Petition in the District of Massachusetts and b) *engage in forum shopping* and remove Petitioner from the reach of the 1 Circuit legal protections as it pertains to the burden of proof in subsequent bond proceedings.
27. *As to the former*, information on these transfers was very scarce and usually available post factum. Such frequent and unjustifiable transfers put great hardship on the defense of the case. Chiefly, it was particularly cumbersome to establish the whereabouts of the Petitioner. This led to substantial strain on the communication between Petitioner and his Counsel.
28. Counsel has been in a constant uphill battle to have adequate communication with his client in order to properly exercise his right to defend his case. As such, after every transfer, we had to figure out the new location, then initiate communication with the facility to schedule confidential calls with our client. Generally, by the time such undertakings were attempted, the Petitioner was moved again.
29. Nonetheless, Counsel diligently filed the Habeas Corpus Petition. Petitioner concurs with Respondents claim that Petitioner's Counsel was unaware of the Petitioner's whereabouts when the claim was filed. *See ECF 8 – Respondents' Opposition to Petition for a Writ of Habeas Corpus, at 4.* However, ways part when we assess how this state of affairs came to be and also insofar as it pertains to the legal effects of said state of affairs.
30. As shown above, this state of affairs is imputable to the Respondents decision to perform a hasty and unlawful initial transfer, in violation of their own policies. Such transfer aimed and achieved that Petitioner's Counsel was not able to know the fact that Petitioner had been transferred out of state.

31. Insofar as it pertains to the effects, we argue *in extenso* below that the rather than depriving the Court of jurisdiction, the hasty and unlawful transfer constitutes one of the main reasons for establishing this Court's jurisdiction over the case.
32. *As to the latter*, the Respondents elude through this transfer the more stringent requirements imposed on them in the 1 Circuit. As a consequence, the Government no longer bears the burden of proving with clear and convincing evidence in immigration court that Petitioner is a danger to the community and poses a flight risk.
33. **The Western District of New York does not warrant jurisdiction to the detriment of the District of Massachusetts.** Petitioner was hastily and briefly moved to Batavia in the state of New York. Respondents state that Petitioner only spent two days in Batavia, NY. *See ECF 8 – Respondents' Opposition to Petition for a Writ of Habeas Corpus, at 1.*
34. Nonetheless, Respondents opine this is the crux of the instant case. The Honorable Court may very observe that this case belongs in NY. And, at least *prima facie*, it may. At a glance it does. Under legal scrutiny it does not.
35. Here, we kindly point out the case of *Suri v. Trump* with disposed of this very scenario. *See Suri v. Trump*, No. 1:25-cv-00480 (E.D. Va. filed Mar. 18, 2025). There too, the Petitioner was moved across state lines in a rapid operation and ended up in a facility which was thousands of miles away from Petitioner's home and from the place of arrest. And just like in the instant case, the Respondents moved to dismiss the case or to have it transferred to the Northern District of Texas, the location where the Petitioner was being held at the time. This shows a copycat resemblance between the two cases. It also speaks as to the patterns ICE uses in managing these cases.
36. We quote one of the most relevant paragraphs of the *Suri* Court holding, as we find it to provide an abundantly clear picture of the manner we believe this case must be decide:

Although it recognized that habeas petitions generally must be filed in the district of confinement, it found persuasive a 2004 concurrence from Justice Kennedy in which he wrote that if

there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention . . . habeas jurisdiction would be in the district court from whose territory the petitioner had been removed.


7 Id. at \*5 (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 454 (2004) (Kennedy, J., concurring)).

37. Indeed, here too, the same solution is the most equitable. This Court cannot turn a blind eye to the fact that Petitioner was essentially moved out the Commonwealth with incredible speed and in violation of ICE's own policies. Nor can this Court ignore the fact that despite the generous 2-week deadline the Respondents were provided with, they failed to justify in any way the initially transfer.

38. Again, following the rationale of the Suri Court, we show that the District of Massachusetts holds the greatest weight in retaining jurisdiction. Again, quoting the Suri Court:

“The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). So, if the government moves a detainee from a district and their attorney cannot discover their location with reasonable inquiry, that attorney must be able to file a habeas petition in the detainee's last-known location against their ultimate custodian. Otherwise, that detainee would lack the ability to seek habeas relief as long as the government kept their location and custodian a secret, thus granting “the political branches . . . the power to switch the Constitution on or off at will,” “leading to a regime in which . . . the President, not th[e Supreme] Court, say[s] ‘what the law is.’” *Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

39. Here too, no reasonable inquiry could establish the whereabouts of the Petitioner. Counsel acted diligently and filed the Petition with great speed, but as the Respondents also admit “Admittedly, though, opposing counsel may have been unaware of Petitioner's whereabouts at the time of the filing”. See *ECF 8 – Respondents' Opposition to Petition for a Writ of Habeas Corpus, at 4*.

40. Therefore, Counsel filed in the District of the Detainee's last known location, which was Massachusetts.
41. Petitioner has very substantial connection to the Commonwealth of Massachusetts and slim to none to the states of New York and Texas. Indeed, Petitioner has a wife and two minor children in Massachusetts. B. *See Exhibit 2 – Birth Certificates of Victor Hugo Malaquias de Oliveira and Thomas Muller Malaquias de Oliveira and Marriage Certificate.*
42. The Petitioner has worked for almost two decades in MA. As evidence shows, in 2012 he was assigned an Individual Taxpayer Identification Number by the IRS. In 2020, he opened his own company –  *See Exhibit 3 – ITIN Assignment and Bravo Handyman Incorporation Documents.*
43. Further, Petitioner is a highly valued member of the community. His extremely valuable contribution is recognized by John Paul Moran, a well-known member of the community, former nominee to the US Congress in Massachusetts. *See Exhibit 4 – Letters of support.*
44. Since 2014, Petitioner is a disciple in the Church of Brazilian Assembly of God in Lowell. Reverend Hugo Carlos Silva attested to the awarding of said discipleship. *See Exhibit 4 – Letters of support.*
45. Lastly, Petitioner states jurisdiction remains with Massachusetts. We opine the Petitioner's ultimate custodian is the Secretary of the Department of the Homeland Security. The ultimate custodian can stand before this court as it has a substantial presence and conducts substantial business in the Commonwealth. *See Suri v. Trump*, No. 1:25-cv-00480 (E.D. Va. filed Mar. 18, 2025), and also *Vasquez v. Reno*, 233 F.3d 688, 694 (1st Cir. 2000).

46. **The Western District of Texas does not warrant jurisdiction to the detriment of the District of Massachusetts or the Western District of New York.** Indeed, of the three districts, the Western District of Texas is in the most precarious of positions.
47. Petitioner rejects *de plano* any transfer of this case to the Western District of Texas. Indeed, Petitioner opines that his transfer to Texas was in fact in violation of the Court's order of September 29, 2025.
48. The Respondents justified this transfer with the fact that they needed to optimize bedspace. This argument is unsupported. Indeed, it is a well-known principle of law in the United States that statements and arguments by counsel do not constitute evidence. The only piece of evidence submitted by the Respondents, i.e. the Affidavit by Officer Chan, does not support this statement in any way. Thus, there is no factual basis for the statement since there is no supporting evidence.
49. Further, reverting to ICE policies, this mandates that communication be established as such that receiving field offices provide sending field offices daily information regarding available bed space. *See ICE Policy 11022.1: Detainee Transfers, Point 5.4 (1) (a)*. Thus, such information is available to Respondents and, along with the daily charts of the detainees held in each facility (i.e. Batavia and El Paso) could have served to support opposing counsel's assertion. Thus, despite the existence of relevant and readily available evidence, Respondents failed to provide any support to justify the transfer from NY to TX.
50. Lastly, the Government's own "operational needs" cannot defeat habeas review where jurisdiction was properly invoked. Consistent with *Ex parte Endo*, 323 U.S. 283, 304–06 (1944), courts have long held that the government may not divest jurisdiction by transferring a detainee after a habeas petition has been filed. *See also Al-Marri v. Rumsfeld*, 360 F.3d 707, 708–09 (7th Cir. 2004) (applying *Endo* to uphold jurisdiction notwithstanding transfer. Respondents declared that they are not opposed to the transfer to the Western District of Texas. Petitioner respectfully opposes any transfer to any state, least of all Texas, and contends jurisdiction must remain with the US District Court for the District of Massachusetts and, only in the very last instance, in NY.

## MERITS

51. First and foremost, by means of incorporation, Petitioner reiterates, *in toto*, his arguments on the merits of the case included in the Petition for a Writ of Habeas Corpus ECF – 1, filed with the Honorable Court on September 27, 2025.

52. Petitioner contends that he was unlawfully and unconstitutionally detained by ICE on September 26, 2025. Petitioner was not adequately informed of the reasons and the legality of the detention. He was not properly provided an opportunity to be heard during a bond hearing. He contends his continued detention is in violation of his due process rights.

53. Petitioner alleges his right to due process under the Fifth Amendment was violated.

54. As shown above, none of these allegations was addressed by the Respondents in any way in their Opposition. Thus, we must revert to the Rules of Civil Procedure to assess what are the legal effects of such failure.

55. In order for a failure to deny allegations to turn into an admission, three conditions must be met cumulatively:

- a) allegation does not pertain to amount of the damages,
- b) a response from Respondents is required, and
- c) allegation is not denied.

*See Federal Rules of Civil Procedure, Rule 8 b) 2) and 6).*

56. In the instant case, none of the allegations presented in the Habeas Petition that we claim went unanswered and thus not denied, pertains to any monetary damages. Further, Petitioner made no claim as to monetary compensation as a form of relief – remedy at law.

The first condition is thus met, since the crux of the Petitioner's unanswered claim is that he contends that he was unlawfully and unconstitutionally detained by ICE.

57. As to the second condition, insofar as it pertains to Habeas Corpus Petitions, Respondents must reply when ordered by a judge to do so. Further, Respondents' answer must address the allegations in the motion. *See Rules governing Section 2254 Cases and Section 2255 Proceedings, Rule 5, a) and b).* *See also 28 U.S. Code § 2243.*

58. In the instant case, the Respondents were specifically ordered by the Honorable Court to "answer or otherwise respond to the petition" (*See ECF 3 – Order concerning service of Petition and stay of transfer or removal, at 2.*). Thus, the second condition was met, since the Respondents were given clear instructions by the Court to answer to the Habeas Petition.

59. The last condition was also met. Respondents chose to respond only in part to the Habeas Petition. Thus, in their opposition, Respondents only tried to rebuke or otherwise respond to the section pertaining to Jurisdiction included in the Petitioner's Petition for a Writ of Habeas Corpus, *i.e. ECF 1 – Petition for a Writ of Habeas Corpus, at 2.* Respondents did not in any way "answer or otherwise respond" to other parts of the Petition. Chiefly, Respondents did not in any way respond to or challenge the Sections of the Petition arguing that Petitioner's detention violated the Fifth Amendment right to due process, that he was detained without hearing in a constitutionally impermissible manner and that this court should order his immediate release.

60. Thus, Petitioner contends that Respondents successfully disputed the Court's jurisdiction. Therefore, the issue of jurisdiction we deed as being properly answered by Respondents. However, the main allegations, chiefly pertaining to the fact that Petitioner contends he was unlawfully and unconstitutionally detained by ICE, was not answered in any way.

61. To conclude on this matter, petitioner opines that through their failure, Respondents admitted to all allegations made by Petition in his Petition for the Writ of Habeas Corpus with the exception of jurisdiction.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

##### **Violation of Fifth Amendment Right to Due Process**

62. On information and belief, Petitioner is currently being arrested and detained in the District of Massachusetts by federal agents without cause and in violation of his constitutional rights to due process of law.

#### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter
2. Order that Petitioner be transferred back to Massachusetts no later than one week from the Court's Order
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment
4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately
5. Grant any further relief this Court deems just and proper.

Respectfully submitted,

**/s/ Marian Costica Mandache**

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*Counsel for Petitioner*

Dated: October 20, 2025

Enclosed to the instant Reply:

- A. *Exhibit 1 to the instant Reply – Notice of Electronic Filing.*
- B. *Exhibit 2 – Birth Certificates of Victor Hugo Malaquias de Oliveira and Thomas Muller Malaquias de Oliveira and Marriage Certificate.*
- C. *Exhibit 3 – ITIN Assignment and  Incorporation Documents*
- D. *Exhibit 4 – Letters of support*
- E. *ICE Policy 11022.1: Detainee Transfers*

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner Claudio Pedroso de Oliveira, and I submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 20th day of October 2025.

*/s/ Marian Costica Mandache*  
Marian C Mandache, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2025, I served a true and correct copy of the foregoing Reply to Respondents' Opposition upon the Respondents on file by first-class mail, postage prepaid, and/or by electronic filing through the Court's CM/ECF, PACER system.

*/s/ Marian Costica Mandache*  
Marian C Mandache, Esq.