UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Jayson Tikum MBABID, **Petitioner,** **v.** **NIKITA BAKER, Acting Director of the U.S. Immigration and Customs Enforcement Baltimore Field Office; MATTHEW ELLISTON, Deputy Assistant Director for Field Operations, Eastern Division, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAMELA BONDI, Attorney General of the United States, in their official capacities,** **Respondents.**	**Case No: 8:25-cv-3505**

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION AND MOTION TO DISMISS

Petitioner Jayson Mbabid, by and through undersigned counsel, files this reply to Respondents' Response and Motion to Dismiss. *See* ECF 13, 15. This Court should deny the Respondents' motion to dismiss and reject the Respondents' arguments for the reasons that follow.

LEGAL STANDARD

The question of proper location for filing a habeas corpus petition is understood as a question of either personal jurisdiction or venue. *Kanai v. McHugh*, 638 F.3d 251, 257-8 (4th Cir. 2011) (explaining that in *Rumsfeld v. Padilla* "a majority of the Supreme Court plainly rejected a subject-matter jurisdiction analysis"); *see also Fisher v. Unknown*, No. 23-7069, 2024 WL

5135610, at *1 (4th Cir. Dec. 17, 2024) (holding that the district court erred in dismissing a § 2241 habeas petition for lack of subject matter jurisdiction).[1] Under the Federal Rules of Civil Procedure when a plaintiff is responding to a motion to dismiss for lack of personal jurisdiction or improper venue without the benefit of an evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdiction. *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989). In determining whether a plaintiff has made this showing, the court must view the allegations and available evidence in the light most favorable to plaintiff. *Grayson v. Anderson*, 816 F.3d 262, 268 (4th Cir. 2016).

Here, Respondents' argue that this Court should dismiss Mr. Mbabid's habeas petition for lack of subject-matter jurisdiction. ECF 13, 13-1. Respondents' seek dismissal under the improper legal standard. Therefore, Respondents' motion to dismiss should be denied.

I. This Court has Jurisdiction to Hear Mr. Mbabid's Habeas Claims.

Venue is proper in the District of Maryland, and this Court has jurisdiction over Petitioner's habeas petition. In *Rumsfeld v. Padilla*, the Supreme Court established "default rules" in habeas cases which are derived from the habeas statute and serve to prevent forum shopping by petitioners. 542 U.S. 424, 434-35 (2004). These rules provide that the proper respondent for a habeas petition challenging physical confinement is the "warden of the facility where the prisoner is being held" at the time the petition is filed, and that the petition must be filed in the petitioner's district of confinement. *Padilla*, 542 U.S. at 436-37, 447. As the critical exceptions to the default habeas jurisdiction rules suggest, it cannot be that the government may detain a person, keep their counsel

[1] This Court may apply the Federal Rules of Civil Procedure in this case. *See* Fed. R. Civ. P. 81(a)(4) (FRCP applies to habeas proceedings "to the extent that the practice in those proceedings: (A) is not specified in federal statute . . . and (B) has previously conformed to the practice in civil actions."); *see also Wise v. Stansberry*, No. 2:10-cv-605, 2011 WL 6960815, *3 n.1 (E.D. Va. Dec. 22, 2011) (noting that while the Federal Rules of Civil Procedure do not necessarily apply to all habeas proceedings, the court had previously exercised its discretion to apply them to Section 2241 petitions). Respondents implicitly acknowledge this by bringing their motion under Fed. R. Civ. P. 12(b)(1).

and family from knowing where they are being held, look on as counsel files a habeas petition in the location they were known to be, move the detainee halfway across the country, end up in a venue of the government's selection, and then defeat the ability of the detainee to maintain their original habeas petition. Here, Respondents are attempting to circumvent recognized jurisdictional rules and prolong Mr. Mbabid's unconstitutional detention.

i. Venue is Proper in this District because the Immediate Custodian at the Time of the Filing the Habeas Petition was Unknown.

Respondents' argue that this Court should strictly apply the immediate custodian rule, asserting that the immediate physical custodian of Mr. Jayson Mbabid is the proper one. However, when a detainee's location is unknown at the time a habeas petition is filed, "it is impossible to apply the . . . district of confinement rule[]." *Padilla*, 542 U.S. at 450 n.18. The Fourth Circuit recently found that "[a]n exception to the district of confinement rule must apply when, after reasonably diligent effort, the district in which the petitioner was confined could not have been determined." *Suri*, 785 F. Supp. 3d at 143–44. "[H]abeas jurisdictional rules must be based on discoverable facts regarding where a petitioner was and who was confining him." *Id.*

At the time Mr. Mbabid filed his habeas petition, his lawyer reasonably believed that he was still in Maryland. *See* Ex. A, Declaration of Alexis Turner-Lafving. His location was not ascertainable through the ICE detainee locator. Mr. Mbabid's location was listed as "Current Detention Facility: CALL Ice For Details" through some point between 12:34pm and 10:50pm on Monday, October 27. *Id.* Respondents did not make information pertaining to Mr. Mbabid's place of detention accessible until the morning of Tuesday, October 28th, five days after he was initially detained at the Silver Spring, Maryland ISAP office. *Id.*; ECF 13-12. Mr. Mbabid has been unable to provide any information to his family or his lawyer since October 25, 2025. Mr. Mbabid's

brother has not heard from him, and his lawyer has been unable to speak with him through a Virtual Attorney Visit because he is "in medical" at ERO El Paso Camp East Montana and "has not been cleared to return to his room." *See* Ex. C. The emails provide no estimate as to when Mr. Mbabid will be able to speak to counsel. *Id.*

In sum, because Mr. Mbabid's attorney could not have been aware that his immediate custodian or the district of confinement had changed at the time of filing, it is appropriate to apply the unknown custodian exception to find that this Court has jurisdiction over Mr. Mbabid's petition.

ii. Venue is proper in this District because there are Indications that the Government was not Forthcoming with Respect to the Identity of Mr. Mbabid's Custodian and Place of Detention.

Application of the default immediate custodian rule is inappropriate in this case in light of concerns articulated in the concurring opinion in *Rumsfeld v. Padilla.* Justice Kennedy, joined by Justice O'Connor, explained 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." *Rumsfeld v. Padilla*, 542 U.S. at 454 (Kennedy, J., concurring) (emphasis added).

Respondents' argue that they did not intend to hide Mr. Mbabid's location because a change of address form, ICE Form I-830E, was uploaded to the immigration court docketing system and because his location was updated in the online ICE detainee locator 5.5 hours after he arrived in El Paso, Texas and nearly 24 hours after his habeas petition was filed. ECF 13-1 at 6-7, 14 at 2.

Respondents' reliance on the submission of the Form I-830 to apprise counsel of his location is misplaced because Respondents' assume that habeas counsel represents Mr. Mbabid in his immigration proceedings and assume that the Form I-830E is reliable on its face. Respondents' argument that the ICE detainee locator was updated after Mr. Mbabid arrived in El Paso, Texas sidesteps the ultimate issue - that the ICE detainee locator showed "Current Detention Facility: Call ICE For Details" from the morning of October 24, 2025, through at least 12:33pm on October 27, 2025. *See* Ex. B.

Respondents' assertion regarding filing of a Form I-830E is premised on the unfounded assumption that habeas counsel also represented a petitioner in their immigration proceedings. The Immigration Court Practice Manual establishes clear guidelines for entering an appearance as counsel of record and the obligations of counsel. *See generally* Immigration Court Practice Manual Ch. 2.1(b), https://www.justice.gov/eoir/reference-materials/ic/chapter-2/1 (last accessed November 10, 2025) (herein after "ICPM"); 8 C.F.R. § 1003.17. First and foremost, an attorney must be authorized by the noncitizen to act as their representative. *Id.* Once an attorney enters their appearance in a noncitizens removal proceedings, they have an ongoing representation obligation unless and until an Immigration Judge grants a motion to withdraw or a motion to substitute counsel. ICPM 2.1(b)(2). When an individual is already represented by counsel, it is improper for another practitioner to enter their appearance solely to determine the contents of the court's records.

Here, Mr. Mbabid was already represented by counsel in his immigration court proceedings. *See* Ex. A, Declaration of Alexis Turner-Lafving. Mr. Mbabid's brother sought to obtain representation for Mr. Mbabid solely for the filing of a habeas petition. *Id.* It would have been inappropriate and outside the scope of representation for Mr. Mbabid's habeas attorney to

enter her appearance in his immigration proceedings solely to see what, if anything, the government had filed following his detention.

Form I-830's are inaccurate in providing location updates to counsel, even when habeas counsel also represents the petitioner in their immigration proceedings. In *Maldonado de Leon v. Baker*, a Form I-830 was uploaded to the immigration court docketing system on September 15, 2025, stating that he would be transferred to the Florence Staging Facility in Florence, Arizona. *Maldonado de Leon v. Baker*, 2025 WL 2968042 (D.Md. Oct. 21, 2025); Ex. F. Mr. Maldonado de Leon was moved to a staging facility in Louisiana four days later on September 15, 2025. *Id.* It wasn't until September 22, 2025, that Mr. Maldonado was moved to the location stated on the Form I-830E, **seven** days after the Form I-830E was transmitted to the immigration court. *Id.* The uploading of a Form I-830E to the online immigration court filing system is wholly and utterly insufficient to apprise a petitioner's counsel of their client's location for purposes of establishing venue for the filing of a habeas petition.

Here, as in *Maldonado de Leon*, the Form I-830E was uploaded more than 48 hours before Mr. Mbabid was moved. *See* ECF 13-7. The Form I-830E asserts that he would be moved on the day it was filed. *Id.* Mr. Mbabid was booked out of Baltimore ERO at 6:40am on October 27th and booked into El Paso ERO at 3:22am on October 28th. *See* ECF 13-10, 13-11. Even if Mr. Mbabid's habeas counsel was able to view the Form I-830E, it still would not have accurately apprised his counsel of his current physical location for purposes of filing the habeas, because he was not in fact in El Paso on October 25, 2025, as the Form I-830E states. Even though a Form I-830E was filed, it was both inaccurate and inaccessible to counsel. As such, the Form I-830E did not sufficiently apprise counsel of Mr. Mbabid's physical location for purposes of filing the habeas petition.

Respondents' also argue that because the ICE detainee locator was updated to reflect that Mr. Mbabid was in El Paso, Texas **5.5 hours after** he arrived there on October 28, 2025, there was "no intent to obscure his transfer." ECF 14 at 2. This misses the ultimate issue – that the Government was not forthcoming regarding Mr. Mbabid's immediate custodian and place of detention from the time he was taken into custody on October 23, 2025, until his location status was updated to reflect El Paso Camp East Montana on October 28, 2025. From 9:40am on October 24th through 12:33pm on October 27, 2025, the ICE detainee locator showed Mr. Mbabid's current detention facility as "Call ICE For Details." *See* Ex. B. Both Mr. Mbabid's initial habeas petition and his corrected habeas petition were filed during the time period where the ICE detainee locator showed "Call ICE For Details." ECF 1, 5. The initial habeas petition was filed at 9:01am on October 27, 2025, and his corrected habeas petition was filed at 11:04am on October 27, 2025. *Id.* Thus, Mr. Mbabid's immediate custodian and location of detention were **unclear for more than four days**. The unknown custodian exception is critical because a detainee must always have an available forum for a habeas petition, even if the government doesn't disclose their location.

For the foregoing reasons, venue is proper in the District of Maryland, and this Court has jurisdiction over Petitioner's habeas petition.[2]

II. Respondents' Misunderstand Matter of Yajure Hurtado and Petitioner's Ability to Obtain a Bond.

On September 5, 2025, the Board of Immigration Appeals, the appellate body that binds all immigration courts nationwide, issued a published decision in *Matter of Yajure Hurtado*. There, the Board departed from three decades of statutory interpretation in holding that all noncitizens

[2] If the Court finds that it does not have jurisdiction over Mr. Mbabid's petition, it should exercise its discretion to transfer the case rather than dismissing it because it is "in the interest of justice." 28 U.S.C. § 1631.

who entered the United States without admission or parole are subject to mandatory detention under § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). On Mr. Mbabid's Notice to Appear it states that he is "an alien present in the United States who has not been admitted or paroled." *See* 13-3 at 1.

Despite the fact that Respondents' concede that Mr. Mbabid should be found to be detained under 8 U.S.C. § 1226, not §1225, and thus eligible to receive a bond hearing, absent an order from this Court, an Immigration Judge would find that Mr. Mbabid is being detained under 8 U.S.C. § 1225(b)(2) solely because his NTA states that he entered the United States without admission or parole.[3] ECF 15 at 6-7. An Immigration Judge would subsequently determine that they do not have the authority to issue Mr. Mbabid a bond. Respondents' contend that the proper avenue for relief would be for Mr. Mbabid to request a bond hearing. ECF 15-1 at 11-12. Immigration Courts have been upholding the unlawful mandatory detention scheme as they are bound by the Board of Immigration Appeal's decision in *Matter of Yajure Hurtado*. 29 I&N Dec. at 219 (holding that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under § 1225(b)(2), not § 1226(a)). Put simply, forcing Petitioner into a bond hearing before the same tribunal that is unquestioningly violating noncitizens' due process rights on a daily basis is not, in fact, a remedy for the due process violation Petitioner faces. It would be futile for Mr. Mbabid to request a bond hearing because the administrative agency has predetermined the issue and bound itself and all Immigration Judges to follow its authority on this matter.[4]

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[3] Respondents' improperly assert that a noncitizen who is charged on their NTA as being removable under INA § 212(a)(7) / 8 U.S.C. § 1182(a)(7) would be subject to mandatory detention under 8 U.S.C. § 1225. This is inaccurate and an oversimplification of a complex legal issue. The Court need not reach this issue in rendering a decision in this case.

[4] Respondents' misunderstand Immigration Court proceedings. The fact that Petitioner is scheduled for a master calendar hearing is separate and apart from being scheduled for a bond hearing. Bond proceedings are separate and

Petitioner's only remedy is by way of this action. Without an order from this Court finding that Petitioner is being detained subject to 8 U.S.C. § 1226(a), a request for a bond hearing would be futile.

III. Mr. Mbabid's Detention Violates his Constitutional Due Process Rights.

Respondents' assert that Mr. Mbabid's liberty interest is weaker than the government's interest in immigration enforcement. ECF 15-1 at 9-10. Respondents' characterization of Mr. Mbabid's claim of harm caused by his unlawful detention grossly minimizes his suffering. Respondents are subjecting Mr. Mbabid to arbitrary restraint on his bodily freedom because the Respondents have misclassified him as subject to the no-bond detention scheme of § 1225(b)(2). This unequivocally violates his substantiative due process rights. *See Hasan v. Crawford*, 2025 WL 268225, at *11 (E.D. Va. Sept. 19, 2025) (finding that Petitioner's substantive due process rights were implicated where the DHS's use of the automatic stay provision resulted in arbitrary detention); *J.U. v. Maldonado*, 2025 WL 2772765, at *9 (D.N.Y. Sept 26, 2025) (finding due process violation where the government was unlawfully holding petitioner subject to mandatory detention).

Every day spent in detention is an affront to Mr. Mbabid's constitutional rights, considering that Respondents are subjecting him to an unlawful mandatory detention schema that courts nationwide have wholly and soundly rejected and that was previously unobserved in the decades of custody redetermination practice. These harms are not speculative, and the Respondents' attempts to minimize them are unavailing and indicative of their lack of concern for the Constitution. They are also indicative of his detention being done for punishment purposes.

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distinct from master calendar hearings. The Record of Proceedings for a bond hearing is "separate and apart from other Records of Proceedings." ICPM 9.3(e).

Further, while the government does have an interest in immigration enforcement, there is no reason to conclude that the discretionary detention scheme of § 1226(a) does not properly serve this interest. *See Hasan*, 2025 WL 2682255, at *4. Mr. Mbabid has been physically present in the United States since his entry in 2024 and has every incentive to pursue relief from removal in immigration court, as he has a pending application for asylum and withholding of removal. Indeed, the government's actions raise the question of "'whether the detention is not to facilitate deportation, or to protect against the risk of flight or dangerousness, but to incarcerate for other reasons.'" *Id.* at *13 (quoting *Herrera*, —— F.Supp.3d at ——, 2025 WL 2581792 (quoting *Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring)). Failing to attend two virtual ICE check-in visits and a biometrics appointment is not indicative of intent to evade immigration enforcement. Rather, Mr. Mbabid was scheduled for an individual hearing, or merits hearing, on his asylum application at the time he was detained. *See* Ex. E. Moreover, Mr. Mbabid has been unable to speak with his habeas counsel while detained because he has been "in the medical unit" and not cleared for a virtual attorney visit. *See* Ex. C. Thus, continued detention violates Mr. Mbabid's due process rights and his right to Counsel.

Respondents' argue that this Court lacks jurisdiction to review ICE's decision to revoke Mr. Mbabid's parole. ECF 15-1 at 10-11. Mr. Mbabid is not challenging that his re-detention is unconstitutional, but rather that his misclassification as a no-bond detainee under 8 U.S.C. § 1225(b)(2), therefore subjecting him to mandatory detention constitutes cruel and unusual punishment under the Eighth Amendment. Pet. at ¶ 72-75.

IV. The Only Remedy for Unlawful Detention is Immediate Release.

Finally, Respondents argue that the only relief Mr. Mbabid should be granted is a bond hearing pursuant to the usual procedures. ECF 15-1 at 11-12. However, this remedy is grossly

inadequate. First, as explained previously, even if Mr. Mbabid requested a bond hearing, an Immigration Judge would find that they lacked jurisdiction to issue him a bond based on Matter of Yajure Hurtado. Second, the purpose of habeas corpus is to request release from unlawful detention, not just an opportunity to request release. Respondents' suggested relief is therefore illogical.

Petitioner maintains that immediate release is the only option that would remedy the harm that he has suffered and ensure that his due process rights are protected. A habeas court has "the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (noting that at "common-law habeas corpus was, above all, an adaptable remedy"). Here, this court should order immediate release if it finds that Petitioner's no-bond detention violates his constitutional rights.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court assume jurisdiction over this matter, deny Respondents' motion to dismiss, declare that the Respondents' actions violate Petitioner's constitutional rights, and order the relief requested in his habeas petition.

Respectfully submitted,

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Petitioner's Exhibits in Support of Reply to Respondents' Opposition and Motion to Dismiss

A	Declaration of Alexis Turner-Lafving
B	ICE Detainee Locator search results for Mr. Mbabid from 9:40am on October 24th through 10:50pm on October 27th.
C	Emails exchanged with ERO El Paso Camp East Montana
D	Email sent to Baltimore ERO Field Office
E	EOIR Automated Case Information results for Mr. Mbabid showing that he was scheduled for an Individual Hearing on May 14, 2026, at the Hyattsville Immigration Court
F	*Maldonado de Leon v. Baker*, 2025 WL 2968042 (D.Md. Oct. 21, 2025) Opinion at ECF 47, October 21, 2025