

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAYSON TIKUM MBABID,

Petitioner,

v.

NIKITA BAKER, Acting Director, U.S.
Immigration and Customs Enforcement
Baltimore Field Office, *et al.*

Respondents.

Case No. 8:25-cv-03505-MJM

REPLY MEMORANDUM IN
FURTHER SUPPORT OF MOTION TO DISMISS

Respondents, by and through undersigned counsel, pursuant to Rules 12(b)(1) and 12 (b)(6) of the Federal Rules of Civil Procedure hereby submit this Reply Memorandum in further support the Motion to Dismiss for Lack of Jurisdiction or Transfer, Supplement, and Motion to Dismiss for Failure to State a Claim (ECF 13, 14, 15).

INTRODUCTION

First, it is clear that Petitioner was not in Maryland at the time the Petition was filed, and the “unknown custodian” exception does not bring this case outside the jurisdictional rule that a habeas matter be filed in the district where he was detained at the time it was filed. ICE did not transfer Petitioner for some nefarious purpose, or to avoid the exercise of jurisdiction by this Court; the regular transfer of ICE detainees out of Maryland is required based on the limited holding space available, and Maryland law which effectively prohibits ICE from doing otherwise.

Second, even if the Court were authorized to exercise jurisdiction over this case, it should be dismissed, as ICE has statutory authority and discretion to re-detain and revoke an earlier decision to release an alien under 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1(c)(9) and return the

individual to detention, and this Court does not have the power to review such a decision. *See* 8 U.S.C. § 1226(e). Because that re-detention was discretionary under § 1226(b), Petitioner should seek review of that discretionary decision in the Immigration Court. Petitioner's attempt to suggest such relief would be futile is unavailing. The facts of this case differ substantially from those at issue in the *Maldonado* case cited by Petitioner, which did not involve re-detention based on violations of the conditions of release. In two very recent matters which did involve re-detention based on violations of conditions of release, both Judges Rubin and Hurson concluded that the petitioners who were re-detained by ICE based on ATD violations could and should seek relief in Immigration Court.

ARGUMENT

I. This Court Lacks Jurisdiction Over the Petition Filed While Petitioner Was En Route from Newark, New Jersey, to El Paso, Texas.

Petitioner was removed from Maryland on October 27, 2025, at 6:40 a.m., boarded a flight in Newark New Jersey just after 9:30 a.m., and was on that flight, which departed at 10:40 a.m. – *before the Habeas Petition was filed* at 11:04 a.m. Petitioner then continued to travel to El Paso, Texas, where he arrived at approximately 6:30 p.m. on October 27, 2025, and is currently detained. Exhibits 1, 6 - 11.

Petitioner acknowledges that the Supreme Court has clearly established rules which provide that a petition for habeas corpus must be filed in the district where the petitioner is confined. ECF 18-1 at 1, citing *Padilla*, 542 U.S. at 436-37, 447. However, he contends that one of the exceptions to this long-standing and clear rule should apply here and that his continued detention violates his constitutional rights and is redressable by this Court. ECF 18-1 at 3. This argument is not supported by the facts or law.

Petitioner urges this Court to apply the “unknown custodian” rule which permits a Court to exercise jurisdiction where the government fails to disclose a Petitioner’s location, and the Petitioner is therefore unable to name the proper custodian. ECF 18-1 at 3, citing *Suri v. Trump*, 2025 WL 1806692, *5 (4th Cir. July 1, 2025). However, Respondents have not argued dismissal based on failure to name the proper party or “custodian.” Rather, the motion filed by Respondents makes clear that under well-established precedent, a habeas matter cannot be maintained in a district which is not the “district of confinement” at the time the petition was filed.

Moreover, two different judges of this Court have found that under similar circumstances, the proper course was dismissal or transfer. In both, the Court recognized that ICE’s practice of transferring detainees out of Maryland is both well-known and unavoidable, and not for purposes of evasion, or jurisdiction shopping. *See* Opinions at Exhibits 13, 14.

In *Hernandez Escalante* Judge Xinis noted that there was “no convincing basis to depart from the immediate custodian rule” and as such “the Court lack[ed] the power to adjudicate the Petition.” *Hernandez Escalante v. Noem*, Case 1:25-cv-01799-PX, June 25, 2025, attached as Exhibit 13; citing *Rumsfeld v. Padilla*, 542 U.S. 426, 442-43 (2004). A similar conclusion was reached by Judge Boardman just two weeks ago in the *Urrea-Calderon* case. Exhibit 14. *Urrea-Calderon* had been booked out of ICE detention in Baltimore before the petition was filed and placed on a flight to Alexandria, Louisiana, and on to El Paso, Texas. The Petition was filed “while he was in transit from Louisiana to Texas.” Exhibit 13 at 4. Judge Boardman concluded that based on Maryland law that precludes long-term detention in Maryland “respondents do not appear to have been forum shopping when they removed *Urrea-Calderon* from Maryland and brought him to Texas.” *Id.* at 4. Since he was unequivocally *not in Maryland* when the petition was filed, and

was detained in the Western District of Texas, Judge Boardman concluded that the matter should be transferred to the Western District of Texas. *Id.* at 4-5.

As was the case in *Urrea-Calderon*, Petitioner Mbabid's counsel has argued that she endeavored to confirm her client's location before filing the Petition but was unable to do so. ECF 17, 18. However, these facts do not compel or justify the maintenance of this case in Maryland, when the Petitioner *clearly was not here at the time it was filed*. See *Urrea-Calderon* at Exhibit 14; *Y.G.H. v. Trump, et al.*, 787 F.Supp.3d 1097 (E.D.Cal. May 27, 2025). As the Court noted in the *Y.G.H.* case, counsel's inability to locate the detainee during transfer was insufficient to implicate the "unknown location" exception. While it was not known at the time, petitioner was not in California when the petition was filed and "[did] not point to any case in which a court applied his proposed 'unknown location' rule in the context of a detainee's relatively brief unknown location status *during a transfer between known detention locations*." 787 F. Supp. 3d at 1106-7. (emphasis added).¹ See also *Dvortsin v. Noem*, No. 25-CV-01741-NYW, 2025 WL 1751968, at *4 (D. Colo. June 12, 2025) (venue was proper in Western District of Texas since petitioners were indisputably in ICE custody in that district when the petition was filed, and that was the district of confinement noting that "it does not matter for this analysis that Ms. El Gamal and her children were in transit, and had not been booked into [the facility in Texas], at the moment the Petition was filed" and noting that court was skeptical that "unknown custodian" exception,

¹ Notably, the length of time petitioner was in transit in *Y.G.H.* is very similar to that here: *Y.G.H.*'s last known location on the day the petition was filed was California. *Id.* Early that morning, unbeknownst to his counsel, he had been transported to the airport where he boarded a flight at 9:10 a.m. (PDT), after a series of connecting flights arrived in Texas by 5:10 p.m. (PDT), and was booked in to ICE detention in Texas by 7:50 p.m. (PDT), the petition was filed at 7:32 p.m. (PDT); by mid-day on April 15, 2025. After the case had been docketed, but before the Court's initial scheduling conference, the ICE online detainee locator had been updated to show petitioner was being detained in Texas. *Id.* at 1101-2.

even if it applied, could be used to subvert the district of confinement rule); *Garcia Morao v. Noem*, No. 2:25-CV-00838-JNP, 2025 WL 2772181, at *1-2 (D. Utah Sept. 26, 2025) (transfer to Wyoming was proper since Petitioner had already been transported to Wyoming when the Petition and TRO were filed, noting that “the District of Utah lacks jurisdiction, and therefore lacks the authority to grant Mr. Garcia Morao the relief he seeks.”)

Here as in the cases cited above, Petitioner *was not* confined within the District of Maryland when he filed his Petition for Writ of Habeas Corpus, so this Court lacks subject-matter jurisdiction to effectuate any of the requested relief under 28 U.S.C. § 2241 and *Padilla*, 542 U.S. at 449-50. This Court should follow the examples of Judge Xinis in *Hernandez Escalante* and Judge Boardman did in *Urrea-Calderon*, and conclude as they did, that this case should be dismissed or transferred. Exhibits 13, 14.

II. Petitioner’s Re-Detention Is Within ICE’s Discretion, and Does not Violate his Constitutional Rights, and is Not Subject to Review by this Court.

As stated in Respondents’ Motion to Dismiss the Habeas Petition, even if this Court were to conclude that venue in Maryland is somehow proper, it should be dismissed. ECF 15. Respondents will not restate all the arguments presented in their motion again here, as they are well-supported and have not been adequately opposed by Petitioner.

In summary, 8 U.S.C. § 1225 does not control here, since Petitioner was placed in removal proceedings and issued a Notice based on §212(a)(6) of the INA and released and was then re-detained consistent with the discretion granted to ICE based on his violation of the terms of his release. This Court lacks jurisdiction to review regarding “the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e).

In addition, this case is vastly different from *Maldonado de Leon v. Baker*, 25-cv-3084-TDC, 2025 WL 2968042 (D.Md. Oct. 21, 2025). In *Maldonado*, the Petitioner *had never before*

been in any kind of removal proceedings and was arrested and detained under both 212(a)(6) and 212(a)(7) of the INA; Maldonado's attorney challenged ICE's conclusion that he was subject to mandatory detention without bond, given his many years of presence in the United States. Here, by stark contrast, Petitioner Mbabid was charged under INA § 212(a)(6)(A)(i), *was released* on ATD. His re-detention following numerous ATD violations is within the discretion of ICE, and he can seek relief via an IJ, as such, this matter bears absolutely no relationship to the facts or legal issues presented in *Maldonado*. Petitioner here he can and should seek relief in Immigration Court.

In the Opposition, Petitioner's counsel contends such relief would be futile. However, the government has recently made precisely this argument, in two cases – stating the government's position that the detainees had their release revoked, and were subject to discretionary detention, and therefore eligible for a bond hearing.

In *Vigil v. Noem* – the parties briefed this issue, and Judge Rubin held a hearing, after which she entered an order dismissing the habeas petition based on the government's representation that §1226 was controlling, and that a bond hearing was available. *See* Exhibit 16.

The issue was addressed again in *Chaves de Vasquez v. Noem*, where the Petitioner filed a Habeas Petition and Motion for Temporary Restraining Order on November 7, 2025. After hearing argument on the TRO during a telephonic hearing, the Court denied the TRO based on the government's representation regarding the fact that Petitioner's detention was controlled by §1226. Exhibit 17. After that hearing, the detainee's attorney filed a motion for a bond hearing with a Maryland IJ *which was granted, and the bond hearing was set for November 14, 2025*. *See* Exhibit 18, Order approving status report. Counsel has since learned that a bond hearing was held with an IJ in Hyattsville on November 14, 2025, and that bond was denied based on concerns about the Petitioner's flight risk, in light of the numerous documented ATD violations.

The records from these other two cases clearly demonstrate that contrary to the argument presented by Petitioner's counsel, a custody redetermination is available and *would not be futile*. Moreover, the record reflects that counsel has taken no action to even apply for any such relief through the Immigration Court. For these reasons, and those set forth in the previous filings at ECF 13, 14 and 15, the Court should dismiss this case.

CONCLUSION

Based on the foregoing, Respondents respectfully request that the Court dismiss the above-captioned case for lack of subject-matter jurisdiction or transfer the case to the Western District of Texas, where Petitioner is being detained. In the alternative, dismissal for failure to state a claim is warranted, as Petitioner is not entitled to the Habeas relief he seeks.

November 16, 2025

Respectfully submitted,

Kelly O. Hayes
United States Attorney

By: /s/ Ariana Wright Arnold
Ariana Wright Arnold (Bar No. 23000)
Assistant United States Attorney
36 South Charles Street, 4th Floor
Baltimore, Maryland 21201
(410) 209-4813
(410) 962-2310 (fax)
ariana.arnold@usdoj.gov

Respondents' Exhibits to Response to Habeas Petition & Motion to Dismiss

Exhibits 1 – 14 are at ECF 13, Exhibit 15 are filed at ECF 14, Exhibit 16 was filed at ECF 15

Exhibits 17 and 18 are Attached to this filing

Exhibit	Date	Description
1.	11/03/2025	Declaration of Joseph Burki
2.	09/12/2024	Notice to Appear in Removal Proceedings in Calexico, CA
3.	12/02/2024	I-589 Asylum Application (without all attachments)
4.	10/23/2025	Warrant of Arrest of Alien, Baltimore, MD
5.	10/23/2025	ADT Violations, December 2024 through June 2025
6.	10/25/2025	Notice to EOIR (Immigration Court), of Alien Address, uploaded 10/25/2025 at 1:28 am (EDT) showing transfer to El Paso
7.	10/27/2025	Flight detail for Flight from Newark, New Jersey (EWR) to Alexandria, Louisiana (AEX), departing New Jersey at 10:40 a.m. (EST), arriving in Louisiana at 1:10 p.m. (CEN)
8.	10/27/2025	Flight detail for Flight from Alexandria, Louisiana (AEX) to El Paso, Texas (EPO), departing Louisiana at 5:30 p.m. (CEN), arriving in Texas at 6:30 p.m. (MDT)
9.	10/27/2025	Detention Details: Book In/Out showing Baltimore Book in 10/23 at 10:25 a.m., Book out 10/27 at 6:40 a.m. for transfer to El Paso
10.	10/28/2025	Detention Details: Book In/Out showing El Paso Book in 10/28 at 3:22 a.m. at ERO El Paso Camp East Montana
11.	10/28/2025	ICE Locator Screen Shot from 10:58 a.m., showing Mbabid was being detained in El Paso, Texas
12.	10/29/2025	EOIR Automated Case Information Screen Shot showing Master Calander Hearing set for December 2025
13.	06/25/2025	<i>Hernandez Escalante v. Noem et al.</i> , Case 1:25-cv-01799-PX, Opinion at ECF 18, June 25, 2025
14.	11/03/2025	<i>Urrea-Calderon v. Noem et al.</i> , 8:25-cv-03549-DLB, Opinion at ECF 11, November 3, 2025
15.	11/04/2025	ICE Locator website: "About the Detainee Locator / FAQs" Printed 11/4/2025
16.	11/04/2025	<i>Garcia Vigil v. Noem, et al.</i> , Case 1:25-cv-03329-JRR Order at ECF 18, November 4, 2025
17.	11/07/2025	<i>Chaves de Vasquez v. Noem, 25-cv-03657-BAH/SAG</i> Order Denying TRO at ECF 7, November 7, 2025
18.	11/13/2025	<i>Chaves de Vasquez v. Noem, 25-cv-03657-BAH/SAG</i> Order Approving Status Report at ECF 9, November 13, 2025