

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOSE CASTRO-CRUZ,

Petitioner,

v.

DAVID VENTURELLA, Acting Director,
United States Immigration and Customs
Enforcement; MARKWAYNE MULLIN,
Secretary of Homeland Security; TODD
BLANCHE, Acting United States Attorney
General; JOHN RIFE, Field Office
Director, Philadelphia Field Office, United
States Immigration and Customs
Enforcement; *in their official capacities*,

Respondents.

Civ. Act. No.: 1:26-cv-00062
Hon. Thomas S. Kleeh

REPLY IN SUPPORT OF MOTION FOR WRIT OF HABEAS CORPUS
AD TESTIFICANDUM FOR PETITIONER¹

NOW COMES the Petitioner, Jose Castro-Cruz, by and through counsel, and hereby replies in support of his Motion for Writ of Habeas Corpus *Ad Testificandum* (ECF No. 15).

The plain text of 28 U.S.C. § 2243 is clear: “Unless the application for the writ and the return present *only* issues of law the person to whom the writ is directed shall be required to produce at the hearing the *body* of the person detained.” (Emphasis added).

Respondents assert that the Petition involves issues of law, which is undoubtedly true. However, 28 U.S.C. § 2243 mandates production of the person detained “[u]nless the application for the writ and the return present *only* issues of law.” (Emphasis added). While it is unclear what

¹ Pursuant to Fed. R. Civ. P. 25(d), David Venturella is automatically substituted for Todd Lyons as a Respondent following Mr. Lyons’ resignation.

facts may be alleged and/or disputed by Respondents in their return, the Amended Petition includes material factual allegations including but not limited to the following:

- That Petitioner has no criminal history and substantial community ties. *See Verified Amended Petition for a Writ of Habeas Corpus Pursuant to § 2241* (ECF No. 3) (hereinafter “*Petition*”), ¶ 14.²
- That Petitioner was arrested absent any individualized custody determination. *See Petition* at ¶ 16.
- That Petitioner was arrested in the absence of a valid, signed warrant or warrantless arrest authority and that no Notice to Appear had been issued at the time of arrest. *See Petition* at ¶ 37.

Respondents gesture towards a jurisdictional objection to the Petition because Petitioner is currently detained at the Moshannon Valley Processing Center in Pennsylvania. *But see, e.g., Bekuradze v. Adams*, Civil Action No. 5:26-CV-18, ECF No. 10, p. 2 (N.D.W. Va. Mar. 2, 2026) (Bailey, J.). (retaining jurisdiction over habeas petition notwithstanding petitioner’s transfer to

² These factual allegations may bear on the appropriateness of immediate release as a remedy. *See, e.g., Briceno Solano v. Mason*, 818 F.Supp.3d 802, 833-34 (S.D.W. Va. 2026) (Johnston, J.) (noting that Petitioner “poses no apparent danger to the community” and has “never missed a hearing for his previous deportation proceeding” while conducting due process analysis pursuant to *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *Larrazabal-Gonzalez v. Mason*, 818 F.Supp.3d 784, 801-02 (S.D.W. Va. 2026) (Goodwin, J.) (ordering immediate release when the Government did not present evidence that Petitioner was a flight risk or danger to community); *Flores v. Aldridge*, Civil Action No. 3:26-0088, 2026 WL 447167, at *1-2 (S.D.W. Va. Feb. 17, 2026) (Chambers, J.) (same); *Umarov v. Mason*, No. 2:26-cv-00081, 2026 WL 381614, at *6 (S.D.W. Va. Feb. 11, 2026) (Berger, J.) (same); *Cabreja Bueno v. O’Neill*, No. 26-304, 2026 WL 413315, *7-8 (E.D. Pa. Feb. 13, 2026) (conducting due process analysis pursuant to *Mathews* and concluding that “[b]ecause Mr. Cabreja does not appear to be a danger to the community nor a flight risk, and is being unlawfully and unconstitutionally detained,” immediate release was appropriate); *Gonzalez Centeno v. Lowe*, No. 3:25cv2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (conducting due process analysis pursuant to *Mathews* and ordering petitioner released from custody when the government did not provide “any information suggesting that Gonzalez Centeno is a flight risk or a danger to the community”).

Moshannon Valley Processing Center after petition was filed). As alleged in the Petition, Petitioner's location at the time of the initial filing was unknown, triggering application of the unknown custodian exception to the default habeas venue rule. *Petition* at ¶ 7. And to the extent Respondents press a jurisdictional objection of this sort at the hearing, that will itself raise questions of fact, including Petitioner's location and custodian as of the time the Petition was initially filed.

Further, Respondents' offer to facilitate a virtual appearance does not satisfy 28 U.S.C. § 2243's requirement that "the *body* of the person detained" must be produced at the hearing by the person to whom the writ is directed. (Emphasis added).

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that this Court grant his Motion for Writ of Habeas Corpus *Ad Testificandum*.

Dated: June 18, 2026

**Respectfully submitted,
COUNSEL FOR PETITIONER**

/s/ Jonathan Sidney

Jonathan Sidney
Admitted *Pro Hac Vice*
Colorado Bar No. 52463
Ohio Bar No. 0100561
P.O. Box 97
Forest Hill, WV
Phone: (681) 335-0074
jsidney@climatedefenseproject.org

/s/ Sarah K. Brown

Sarah K. Brown (WVSB #10845)
Mountain State Justice, Inc.
1217 Quarrier St.
Charleston, WV 25301
Phone: (304) 344-3144
sarah@msjlaw.org