IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Emmanuel Blankson Marfo, Petitioner, vs. KEVIN RAYCRAFT, Acting Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TODD BLANCHE, U.S. Attorney General, Respondents.	Case No. 26-cv-01293 JUDGE BENITA Y. PEARSON

PETITIONER'S BRIEF IN OPPOSITION TO THE DEPARTMENT OF HOMELAND SECURITY'S MOTION TO DISMISS

Petitioner respectfully opposes Respondents' Motion to Dismiss. Respondents' unilateral release of Mr. Marfo from physical custody does not moot this habeas action. Mr. Marfo remains subject to an Order of Supervision, mandatory ICE reporting, travel restrictions, and the continuing threat of re-detention and third-country removal. (ECF 11-1). Respondents have not withdrawn their position that Mr. Marfo may be removed to Sierra Leone, nor have they provided the process Petitioner seeks in this habeas action. Indeed, ICE has already scheduled Mr. Marfo for an ICE check-in on Monday, where he may again be detained. (ECF 11-1). Dismissal at this juncture would waste judicial resources, invite repetitive emergency litigation, and allow Respondents to

evade review by temporarily releasing Petitioner moments before this Court could adjudicate the already-briefed issues.

I. Petitioner's Release Does Not Moot the Habeas Petition Because Live Issues Remain Before the Court.

Respondents' mootness argument is premised on the incorrect assumption that this case concerned only Mr. Marfo's physical detention. Petitioner's habeas petition and request for preliminary injunctive relief challenge not only his detention, but also Respondents' attempt to remove him to Sierra Leone without meaningful notice, without an opportunity to be heard, and without compliance with the statutory framework governing third-country removal. Those issues remain unresolved.

While Respondents have released Mr. Marfo from jail, they have not rescinded their plan for third-country removal. Nor have they withdrawn their position that he may be removed to Sierra Leone or provided him an opportunity to present his country-specific fear-based claim. Respondents therefore have not afforded Petitioner the relief he seeks. The controversy remains live because this Court can still grant meaningful relief, including an order preventing re-detention, transfer, or removal pending adjudication of the habeas petition, or requiring constitutionally adequate process before any third-country removal.

Nor should Respondents be permitted to moot this action through unilateral action taken only after emergency litigation was underway and shortly before Petitioner intended to file his reply in support of preliminary relief. Respondents remain free, absent Court intervention, to re-detain Petitioner at his scheduled ICE check-in on Monday and again pursue third-country removal. (ECF 11-1). That risk is not speculative, it is built into the conditions of release that Respondents themselves imposed.

II. Petitioner Remains "In Custody" for Habeas Purposes.

Mr. Marfo also remains "in custody" for purposes of 28 U.S.C. § 2241. Habeas custody is not limited to physical incarceration. In *Jones v. Cunningham*, the Supreme Court explained that the habeas statute "does not attempt to mark the boundaries of 'custody'" and that courts look to the history and common-law use of habeas to determine whether a restraint on liberty is sufficient. 371 U.S. 236, 238 (1963). The Court held that a person released on parole remained "in custody" because he was subject to continuing restraints on liberty. *Id.* at 240–43.

The Sixth Circuit applies the same rule. In *In re McKinney*, the court explained that an individual is "in custody" for habeas purposes when he is either in actual physical custody or subject to "significant" post-release "restraints on [his] liberty" that are "not shared by the public generally." No. 15-4107, 2016 U.S. App. LEXIS 23722, at *6–7 (6th Cir. Aug. 8, 2016) (*citing Jones*, 371 U.S. at 238, 240, 242). Persons subject to post-release control satisfy the custody requirement. *Id.*

That is precisely the situation here. Mr. Marfo's release notification states that his release is subject to written conditions in his Order of Supervision, that he may be required to participate in an Alternatives to Detention program, including GPS monitoring, monthly reporting, and telephonic reporting, and that violation of those conditions may result in his return to ICE custody. (ECF 11-1). The notification further states that "[a]t any time, [he] may be taken back into ICE custody should [his] removal become practicable." (ECF 11-1). His Order of Supervision also restricts his travel, for instance, by prohibiting him from traveling outside Ohio for more than 48 hours without first notifying ICE and obtaining approval. (ECF 11-1). These restraints are not shared by the public generally. They are significant restrictions on liberty and are sufficient to satisfy § 2241's custody requirement.

Respondents' reliance on *Spencer*, *Leitao*, and *Wei-Dong Zheng* does not require dismissal. Those cases concern circumstances where release eliminated the custody or injury being challenged and left no live relief for the court to grant. Here, by contrast, Mr. Marfo remains subject to an Order of Supervision, mandatory ICE reporting, travel restrictions, and the express possibility of being returned to ICE custody if ICE determines that removal has become practicable. (ECF 11-1). Under *Jones* and Sixth Circuit authority applying Jones, those restraints are sufficient to satisfy the habeas "custody" requirement because they impose significant restraints on liberty not shared by the public generally. *Jones v. Cunningham*, 371 U.S. 236, 238, 240–43 (1963); *In re McKinney*, No. 15-4107, 2016 U.S. App. LEXIS 23722, at *6–7 (6th Cir. Aug. 8, 2016).

Nor is this case like *Wei-Dong Zheng*, where the court dismissed after release because the petitioner had received the relief sought and there was no continuing live controversy. Here, release from jail did not provide all requested relief. Petitioner still seeks protection from re-detention, transfer, and third-country removal without lawful process. Respondents have not withdrawn their position that Mr. Marfo may be removed to Sierra Leone, have not provided the process Petitioner seeks, and have scheduled him for an imminent ICE check-in. Respondents therefore remain able to resume the challenged conduct, and this Court can still grant meaningful relief.

To the extent Respondents argue that Petitioner must show collateral consequences, those consequences are concrete and ongoing. Mr. Marfo is subject to supervision conditions, travel restrictions, possible GPS monitoring, mandatory reporting, and the express threat of return to ICE custody. (ECF 11-1). He also remains under threat of the same third-country removal process challenged in this habeas action. These are not speculative or abstract injuries, they are present restraints and imminent threats that preserve a live case or controversy.

III. Dismissal Would Waste Judicial Resources and Invite Repetitive Emergency Litigation.

Dismissal is also unwarranted because the central issues have already been briefed and presented to this Court. The Court is already familiar with Mr. Marfo's case, the facts surrounding his detention, the proposed removal to Sierra Leone, the *D.V.D.* litigation, and the statutory and constitutional questions raised by Respondents' third-country removal efforts. If ICE re-detains Mr. Marfo at his Monday check-in, Petitioner would seek leave to amend or supplement the current habeas petition rather than file a new action raising the same issues before a different court.

Forcing Petitioner to file a new habeas petition if ICE re-detains him days after release would serve no meaningful purpose. It would duplicate the parties' work, waste judicial resources, and create precisely the type of emergency litigation this Court has already expended resources managing. The more efficient and equitable course is for this Court to retain jurisdiction, deny dismissal, and preserve its ability to grant meaningful relief if Respondents again detain, transfer, or attempt to remove Petitioner.

IV. Respondents' Release of Petitioner Is Voluntary Cessation and Does Not Moot the Case.

Respondents' release of Petitioner is best understood as voluntary cessation. A defendant cannot moot a case simply by temporarily stopping challenged conduct while retaining the ability to resume it. Here, Respondents released Mr. Marfo but continue to subject him to ICE supervision, have scheduled him for an imminent check-in, and have not withdrawn their position that he may be removed to Sierra Leone. Respondents therefore have not carried the heavy burden of showing that the challenged conduct cannot reasonably be expected to recur.

The timing reinforces the point. Respondents released Petitioner after emergency litigation had commenced and shortly before Petitioner was prepared to submit his reply in support of preliminary relief. They now seek dismissal while maintaining the ability to re-detain him almost

immediately. The Court should not permit Respondents to avoid judicial review through a temporary release that leaves Petitioner subject to the same restraints and the same threatened harm.

V. The Court Should Also Retain Jurisdiction Because Petitioner Remains a D.V.D. Class Member and the First Circuit's Decision Is Pending.

Dismissal is further inappropriate because Mr. Marfo remains a member of the certified *D.V.D.* class, and the First Circuit's decision in that case remains pending. The issues in *D.V.D.* directly concern DHS's third-country removal policy and the process owed before removal to a country not previously designated in the underlying proceedings. The First Circuit appeal was expedited and has already been briefed and argued, making a decision likely in the near future. Dismissing this petition now, while the same third-country removal issues remain live and while Mr. Marfo remains subject to ICE supervision and possible re-detention, would be premature.

At minimum, this Court should retain jurisdiction until after Mr. Marfo's Monday ICE check-in and until Respondents confirm that they will not re-detain, transfer, or remove him without notice to counsel and leave of Court. If Respondents re-detain him, Petitioner will seek leave to amend or supplement the existing petition so that this Court may adjudicate the dispute already before it.

CONCLUSION

For the foregoing reasons, Respondents' Motion to Dismiss should be denied. Alternatively, the Court should hold the motion in abeyance, retain jurisdiction, and order Respondents not to re-detain, transfer, or remove Petitioner pending further order of this Court, or at minimum without advance notice to Petitioner's counsel and the Court.

Dated: June 26, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Loc. R. 7.1(f), I certify that the foregoing Brief in Reply is seven (7) pages in length and within the page limits for an unassigned matter.

Dated: June 26, 2026

Respectfully submitted,

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