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October 1, 2026

**VIA CM/ECF**
Hon. Anthony J. Brindisi
U.S. District Judge
Alexander Pirnie Federal Bldg. and U.S. Courthouse
10 Broad Street
Utica, NY 13501

RE: *Reyes Diaz v. Sukmanowski, et al.*
Civil Action No. 9:26-cv-01859 (AJB)

Dear Judge Brindisi:

I represent the Federal Respondents in the above-captioned petition for an emergency writ of habeas corpus. Petitioner affirmatively acknowledges that he is not in the physical custody of U.S. Immigration and Customs Enforcement ("ICE") and is not presently detained in any facility operated or controlled by the Department of Homeland Security ("DHS").[1] *See* Dkt. 1.

In light of this concession, Respondents respectfully request permission to withdraw the Letter Request/Motion filed (Dkt. 4), which sought advance authorization—prior to service of the Petition—to permit Petitioner's transfer, including to the Western District of New York. Because Petitioner is not detained, the request is now moot.

Additionally, the Respondents request that the Court hold the deadline for its response to Petitioner's Emergency Petition for a Writ of Habeas Corpus in abeyance until the Court has issued a Decision and Order regarding whether *sua sponte* dismissal for lack of jurisdiction is appropriate under these circumstances.

Although Respondents stand ready to comply with the Court's Text Order (Dkt. No. 2) and submit a comprehensive response, Respondents respectfully submit that *sua sponte* dismissal of the Petition for lack of habeas jurisdiction is warranted at this time because Petitioner concedes he is not in custody. *See, e.g.*, *Zhabbor Aliev v. Kristi Noem,* No. 6:26-cv-06165-MAV (W.D.N.Y.).

Federal habeas jurisdiction under 28 U.S.C. § 2241 requires that a petitioner be "in custody" under the authority of the Respondent at the time of filing. *Id.*; *See also* 28 U.S.C. § 2241. Petitioner's own pleading demonstrates that this jurisdictional prerequisite is not met. *See* Dkt. 1 at 1, 6.

[1] Petitioner characterizes this as "immigration jail". *See* Dkt. No. 1 at 1, 6.

In *Zhabbor Aliev v. Kristi Noem*, No. 6:26-cv-06165-MAV, the district court—considering a petition filed by the same counsel representing Petitioner here—dismissed a materially similar § 2241 petition *sua sponte*, before requiring a response from the government. There, the petitioner conceded that he was not in custody and alleged only that detention was imminent and might occur at a future ICE check-in. As in the present case, the petitioner argued that despite not being physically detained, he was "in the custody" of Respondents for habeas purposes because ICE required the petitioner to report for scheduled check-in appointments and that his re-detainment was imminent. *See Zhabbor Aliev*, No. 6:26-cv-06165-MAV, Dkt. 4.

Judge Vacca rejected that argument, holding that speculative, future detention is insufficient to satisfy § 2241's custody requirement. *See id.* at 7. The court further found that because the petitioner did not challenge the terms of his current release—and instead sought to continue under those conditions while preventing any future physical custody—the court lacked jurisdiction. The petition was dismissed *sua sponte* without prejudice.

Petitioner here advances the same theory and the same posture. As in *Aliev*, he does not contest any present restraint on his liberty, but seeks only to preempt the possibility of being detained at a future ICE appointment. Under *Aliev*, such allegations do not satisfy § 2241's custody requirement, and this Court likewise lacks jurisdiction over his petition. The *Aliev* court additionally found that the petitioner's claims for relief were not ripe and therefore did not present a live "case or controversy" under Article III of the Constitution. *See id.* at 8.

Based on the foregoing, Respondents respectfully request leave to withdraw the letter request for advance authorization to transfer Petitioner (Dkt. 4), and to hold Respondent's deadline for its response to Petitioner's Emergency Petition for a Writ of Habeas Corpus in abeyance while the Court considers dismissal of the Petition *sua sponte* for lack of jurisdiction without further briefing from the government, as in *Aliev*. Should the Court be inclined to deny the request to hold Respondent's response deadline in abeyance pending consideration of *sua sponte* dismissal, Respondents will respond to the Petition in the ordinary course.

Thank you for your consideration of this request.

Respectfully Submitted,

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Attorney General

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By: *s/ Alexis M. Osborne*

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