



immediate custodian rule is the standard for establishing the proper forum for a habeas petition hearing, exceptions apply that allow a court to deviate from this general rule. 542 U.S. at 454. In fact, the Supreme Court specifically acknowledged that an exception applies, “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. In cases of that sort, habeas jurisdiction would be in the district court from whose territory the petitioner had been removed.” *Id.* In *Padilla*, the Supreme Court reasoned that because there was no indication that the Government refused to tell respondent’s lawyer where the respondent had been taken and the original petition demonstrated that the lawyer knew where the respondent was being held, no exceptions applied.

Here, unlike in *Padilla*, Petitioner’s attorney did not know where Petitioner was being held as demonstrated in the original petition. In the original petition, the extent of Petitioner’s lawyer knowledge regarding the Petitioner is confined to the fact that he was detained at O’Hare International Airport within the Area Port of Chicago upon his arrival and that “Respondents *may* have moved Petitioner to another facility in another State. Furthermore, as this Court noted during the emergency hearing on February 14, 2025 (“emergency hearing”), Petitioner’s counsel was unaware of Petitioner’s location of detention. In fact, even Respondents themselves did not know where Petitioner was being held or the identity of the custodian. These circumstances made it difficult for Petitioner’s counsel to determine the proper venue for filing the habeas petition at the time of filing. Under the exception recognized in *Padilla*, habeas jurisdiction lies with the district court from which the Petitioner was initially removed. Accordingly, because

Petitioner was initially detained and removed in Chicago, Illinois, this Court retains jurisdiction over this habeas petition.

Recent precedent from the Seventh Circuit reinforces this conclusion. In *In re Hall*, the court held that a district court does not lose jurisdiction over a properly filed § 2241 habeas petition simply because the petitioner is transferred to another facility. 988 F.3d 376, 378 (7th Cir. 2021). The court relied on *Ex parte Endo*, which established that when a habeas petitioner is moved after properly filing a petition, the original district court retains jurisdiction as long as a respondent with authority over the petitioner remains within the district. 323 U.S. 283 (1944). In *Hall*, the petitioner was transferred from Indiana to Florida while his habeas petition was pending. The court ruled that the transfer did not divest the Indiana district court of jurisdiction and issued a writ of mandamus ordering the case to be returned to Indiana.

Together, *Padilla* and *Hall* demonstrate that habeas jurisdiction remains with the original district court where the petitioner was first detained if the government's actions impede access to legal representation or appear to be a strategic effort to evade judicial oversight. The holdings in these cases support Petitioner's position that his transfer should not deprive this Court of jurisdiction, as his case was properly filed in the district from which he was removed, and a respondent with the authority to execute any court order remains within this Court's jurisdiction. Allowing Respondent to manipulate venue through strategic transfers would set a dangerous precedent, enabling the government to avoid judicial scrutiny simply by relocating detainees.

Respondent's intentional transfer to a detention facility in Wisconsin was a strategic move to circumvent the legal protections provided under Illinois law. Respondent asserts that the Illinois Trust Act, in combination with the Way Forward Act, prompted the transfer of Petitioner to detention facilities in Wisconsin as they limit cooperation with federal enforcement. Dkt. No.

10 ("Respondent's Supplement. Response"). More specifically, Respondent highlights that the Trust Act prohibits detention of individuals solely on the basis of any immigration detainer or civil immigration warrant." *Id.* Respondent explained to this Court at the emergency hearing that the Petitioner was first detained and held at O'Hare International Airport for over 24-hours; he was then transferred to Waukesha County Jail, a short-term holding facility in Wisconsin; and on the day of the emergency hearing, he was transferred to Dodge County Detention Center, an ICE long-term holding facility.

While Respondent correctly points out that Illinois no longer maintains long-term detention facilities, it does maintain an ICE short-term facility—Broadview Service Staging Area ("BSSA") in Broadview, Illinois. ICE's own internal policies prioritize transferring detainees to facilities that allow them to remain within their legal jurisdiction, particularly when they have local legal representation and pending immigration proceedings. **See Exhibit 1** ("ICE Internal Policies"). These policies also require ICE to notify attorneys of detainee transfers, providing the name, address, and telephone number of the facility. *Id.*

Here, Respondent failed to adhere to its own internal policies. Petitioner's ongoing immigration court proceedings in Illinois, his legal representation in the state, and the presence of an ICE short-term facility all weighed against his transfer to Waukesha County Jail. Instead, these factors favored transferring him to BSSA first. Under ICE's own internal policies, BSSA was the more appropriate short-term facility, ensuring that Petitioner's attorney would be promptly notified of his location. Even if BSSA was not a viable option for operational reasons, Respondent made no effort to notify the Petitioner's counsel of either transfers, despite knowledge that Petitioner was represented by legal counsel. Had ICE adhered to its own procedures, Petitioner's attorney could have filed this habeas petition under this Court's

jurisdiction without unnecessary delay or jurisdictional complications. Respondent's failure to follow these procedures deprived Petitioner of meaningful legal representation and further supports the conclusion that his transfer was designed to avoid Illinois jurisdiction.

Moreover, this Court has explicitly expressed concern that ICE's practice of transferring detainees between facilities can be used to evade judicial review and engage in forum shopping. See *Vidal-Martinez v. Prim*, No. 20 C 5099, 2020 U.S. Dist. LEXIS 205238, at \*13 (N.D. Ill. Nov. 3, 2020). The timing and manner of Petitioner's transfer suggest an effort to evade judicial scrutiny. As *Hall* established, even where an individual has been transferred, the original district court located where the Petitioner was detained retains jurisdiction when a respondent with the authority to effectuate a court order remains within the district. Please note that the Chicago Field Office oversees immigration enforcement in Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas. See U.S. *Immigration & Customs Enft, Chicago Field Office*, <https://www.ice.gov/field-office/chicago-field-office> (last visited Feb. 15, 2025). Given that ICE operates under the jurisdiction of Chicago and Petitioner was initially detained in this district, Illinois federal court remains the proper venue for this case. Furthermore, while evidence of prejudice resulting from the transfer is not required, it is evident here that Petitioner has been prejudiced, as the transfer has obstructed the protections afforded to Petitioner by Illinois Law. See *Hall*, 988 F.3d at 380.

Ultimately, Respondent's argument that this Court lacks jurisdiction is unavailing. The Supreme Court recognizes exceptions to the immediate custodian rule when government actions obstruct a petitioner's ability to seek habeas relief. Here, Respondent's transfer of Petitioner to Wisconsin was a deliberate effort to evade Illinois jurisdiction, violating ICE's policies, which prioritize keeping detainees where they have legal representation and ongoing proceedings. This

transfer deprived Petitioner of meaningful legal representation, as his counsel lacked pro hac vice authorization, and even Respondents could not initially identify his custodian. Requiring Petitioner to determine the proper respondent under these circumstances is both unjust and a violation of due process. Accordingly, this Court retains jurisdiction, and Respondent's attempt to manipulate venue should not be condoned.

## **II. Basis for Detention of Petitioner**

Respondent argues that under the Immigration and Nationality Act (INA), the Department of Homeland Security (DHS) has broad discretion to arrest and detain foreign nationals with pending removal proceedings, and in some cases, detention is mandatory. Dkt. No. 10. Additionally, Respondent contends that the recently enacted Laken Riley Act mandates DHS custody for individuals charged with theft or crimes involving bodily injury, which applies to Petitioner based on his rap sheet. *Id.*

Respondent's application of the mentioned regulations are improper. The Respondent highlights that the Attorney General *must* take into a custody any noncitizen who is considered a "criminal alien" under 8 U.S. Code §1226. Subsequently, respondent cites the newly enacted Laken Riley Act, and §1226(c)(1)(E)(ii), to justify that the grounds of the warrantless arrest of the Petitioner, reasoning that Petitioner falls within the definition of a "criminal alien." However, Respondents neglects a key condition of the Laken Riley Act. Under this bill, DHS must detain an individual who (1) is unlawfully present in the United States or did not possess the necessary documents when applying for admission; *and* (2) has been charged with, arrested for, convicted of, or admits to having committed acts that constitute the essential elements of burglary, theft, larceny, or shoplifting. Pub. Law No. 119-1. Accordingly, DHS must detain a person only if both conditions are met.

While Respondent highlights the relevancy of the second condition, it fails to establish the first condition. Under this act, the individual must either be unlawfully present in the United States, *or* improperly documented, neither of which are true in this instance case. As the record indicates, Petitioner had lawfully entered the country via an immigration visa as a petitioner of his father's Petition by Alien Entrepreneur. Dkt. No. 1. Similarly, Petitioner has lawfully remained in the country for over ten years as a lawful conditional permanent resident ("CPR"), for duration of his pending immigration proceedings. Ex. 2. ("CPR Card"). Contrary to Respondents assertions, Petitioner maintains a formal legal status and the legal basis to remain in the U.S., which precludes him from mandatory detention as defined by the Laken Riley Act. Furthermore, Petitioner has not been convicted of any crime listed under the Laken Riley Act.

Alternatively, Respondent cites § 1226(c)(1)(E)(ii), which incorporates the second prong of the Laken Riley Act. However, like the Laken Riley Act, mandatory detention under this provision applies only if the individual is also deemed inadmissible under paragraphs (6)(A), (6)(C), or (7) of 8 U.S.C. § 1182. None of these grounds apply here, as there is no evidence that Petitioner ever entered or remained in the United States without authorization, or that he sought any such benefits through fraud or misrepresentation. *See* 8 U.S.C. § 1182(6)(A), (6)(C). Moreover, at the time of his application for admission, Petitioner possessed a valid, unexpired entry document issued by USCIS. *See* 8 U.S.C. § 1182(7); Ex. 2. Accordingly, mandatory detention under this statute does not apply, and Respondent lacks a proper legal basis for Petitioner's warrantless detention.

Still, Respondents assert that the Attorney General maintains discretion to arrest and detain foreign nationals in removal proceedings. *Galan-Reyes v. Acoff*, 460 F. Supp. 3d 719, 722 (S.D. Ill. 2020; *See Jennings v. Rodriguez*, 138 S. Ct. 830, 851-52, 200 L. Ed. 2d 122. Federal



courts have consistently recognized that they could consider individualized challenges to the constitutionality of immigration detention. Detainees are entitled to procedural due process protections against restraints on their liberty, and the government must justify continued confinement with clear and convincing evidence that the detainee is either a flight risk or a danger to the community. *Galan-Reyes*, 460 F. Supp. 3d at 722-23 (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Zadydas v. Davis*, 533 U.S. 678, 690 (2001)). Further, courts possess inherent authority to grant bail to detainees in habeas corpus proceedings. *Galan-Reyes*, 460 F. Supp. 3d at 722 (citing *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985)).

Here, Respondents failed to establish by clear and convincing evidence that the Petitioner is either a flight risk or poses a danger to the community. While Respondent does not argue that Petitioner is a flight risk, Petitioner's strong family ties, stable occupation, educational commitments, and established residence in both Illinois demonstrate his deep roots in the community. Furthermore, his continued presence in the country throughout the entire period under the same CPR conditions further indicates that he is unlikely to flee. *See Galan-Reyes*, 460 F. Supp. 3d at 723 (finding that the detainee was not a flight risk due to his strong family ties, stable residence, and interest in obtaining legal permission to remain in the country with his family). Alternatively, the Respondent does loosely argue that Petitioner poses a danger to the public by referencing his rap sheet and broadly highlighting the relevance of the acts he had been charged with to these new enacted law. Specifically, Respondent references Petitioner's misdemeanor charge involving "bodily harm to another person," for which judgment was withheld. Additionally, Petitioner's rap sheet includes a misdemeanor charge for trespass to vehicles that was dismissed. These charges do not equate to a criminal conviction at this time such that they would justify by clear and convincing evidence that the Petitioner poses a danger.



*See Galan-Reyes*, 460 F. Supp. 3d at 723 (reasoning that detainee's singular criminal conviction for a misdemeanor that resulted in a 64-day jail sentence was not sufficient to establish that he posed a danger to the public if released).

Moreover, Respondent improperly links Petitioner's past actions to the newly enacted law. Respondent asserts that the new law mandates the Attorney General to detain foreign nationals charged with crimes resulting in "serious bodily injury to another person" and attempts to justify Petitioner's detention by citing a past arrest for a crime involving "bodily injury to another person." However, the statutory language clearly establishes "serious bodily injury" as the evidentiary threshold. Given the heightened standard required, Petitioner's referenced past act fails to meet this threshold and does not justify mandatory detention. Similarly, Respondent improperly asserts that Petitioner's past acts involve "larceny." Petitioner presumes that is a reference to the misdemeanor charge for trespass, based upon Petitioner's rap sheet referenced. Again, the statutory language clearly establishes "acts which constitute the essential elements of any . . . larceny" as the evidentiary threshold. Larceny requires the wrongful taking and carrying away of another's property with felonious intent to permanently deprive the owner of possession at the time of the taking. *See Schaul v. Ludwig (In re Ludwig)*, 527 B.R. 614. While larceny may involve trespass, showing of trespass alone is not sufficient to establish larceny. *See Hanish v. United States*, 227 F. 584. Furthermore, the statutory language explicitly excludes trespassing from the list of offenses triggering mandatory detention, reflecting legislative intent that trespass does not meet the evidentiary threshold for such detention. This exclusion further underscores that trespass alone fails to establish, by clear and convincing evidence, that Petitioner poses a danger. Consequently, Respondent has failed to establish a lawful basis for Petitioner's detention, and his continued confinement under these circumstances constitutes an unjustified deprivation

of liberty that serves no legitimate government interest. Thus, Petitioner's immediate release is proper.

### **III. Public Policy**

The Supreme Court has recognized while the Attorney General (Department of Homeland Security) is giving discretion to detain an alien in pending removal proceedings, this power is not unlimited. *Zadvydas*, 533 U.S. at 697. Under 8 U.S.C. § 1357(a)(2), ICE officers, acting under the DHS's authority, may arrest a noncitizen without a warrant if they have probable cause to believe the individual is unlawfully present in the U.S. or is likely to flee before a warrant can be secured. There are no indications to suggest that the Petitioner was a flight risk, nor the did the Respondent make this argue. Moreover, Respondent arrested the Petitioner without probable cause. As this Court observed during the emergency hearing, Respondents lacked a clear legal basis for Petitioner's arrest. Instead, Respondents vaguely cited unspecified directives and policies to justify Petitioner's denial of entry at the Port of Chicago and subsequent detention. Moreover, as stated in the Declaration of Joseph Chaves, CBP deemed Petitioner ineligible for release on immigration parole solely due to a pending court date based on removal charges—an insufficient justification that lacks independent statutory authority. The record confirms that at the time of Petitioner's arrest and for three days thereafter, Respondent had no legal foundation for his detention. Furthermore, Petitioner was entering the country with the explicit permission of the DHS. Exhibit B of the Complaint.

This is particularly troubling given that Petitioner had lived under the same conditions for over a decade without ever being subjected to such restrictions. Such arbitrary enforcement undermines fundamental principles of fairness and predictability, making it impossible for individuals to understand and assert their rights when the government itself fails to define the

applicable law. This concern highlights the necessity to maintaining predictability and fairness through clearly defined precedents and regulations, ensuring that individuals and officials can anticipate the legal consequences of their actions with reasonable certainty. While Fourth and Fifth Amendment protections may be limited in the context of immigration detention, public policy demands that probable cause serve as a safeguard against government overreach and the unchecked exercise of power. Here, the DHS, acting through ICE, unlawfully detained a Conditional Permanent Resident without legal cause, relying instead on arbitrary directives and vague policies—an abuse of authority that cannot be justified.

### **CONCLUSION**

In conclusion, Respondent's jurisdictional argument is unpersuasive, as the Supreme Court and Seventh Circuit recognize exceptions to the immediate custodian rule when government actions obstruct habeas relief. Petitioner's transfer to Wisconsin was a strategic maneuver to evade Illinois jurisdiction, violating ICE's policies and depriving him of meaningful legal representation. Additionally, Respondent's reliance on the Laken Riley Act and INA provisions is misplaced, as Petitioner does not meet the criteria for mandatory detention, and Respondent has failed to establish by clear and convincing evidence that he is a flight risk or a danger to the community. Given the absence of a lawful basis for his detention and the public policy concerns raised by Respondent's arbitrary actions, Petitioner's continued confinement is unjustified, and his immediate release is warranted.

Accordingly, Petitioner respectfully requests that this Court to grant this Emergency Motion for Immediate Release.

Respectfully submitted,

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