

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WIDMER JOSNEYDER AGELVIZ-
SANGUINO, et al.,

Plaintiff,

V.

KRISTI NOEM, Secretary of the
Department of Homeland Security, et al.,

Defendants.

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Civil Action 4:25-cv-02116

NOTICE

On May 19, 2025, the Court ordered Defendants to “[r]estore and help maintain attorney-client communication between Agelviz-Sanguino and his counsel[,]” and “[p]rovide Plaintiffs’ counsel with direct contact information for the facility holding Agelviz-Sanguino, including a designated point of contact responsible for ensuring compliance with this Order.” ECF No. 13.¹ Alternatively, “[i]f Defendants claim an inability to facilitate communication due to lack of control over El Salvadoran facilities,” the Defendants must “set forth in a declaration all efforts made to secure cooperation, including through diplomatic or contractual channels,” and “[d]isclose all agreements or arrangements with El Salvador (or any agency or sub-division otherwise involved) related to Agelviz-Sanguino’s detention, including any memoranda of understanding with, or funding ties to CECOT.” *Id.* Defendants cannot

¹ Defendants have not received confirmation of Agelviz-Sanguino's location from Salvadoran officials. The efforts to obtain this information are set forth in the Declaration filed May 20, 2025. The Department of State represents that, as of 5:00 p.m. today, the Embassy has not received a response to the request. Defendants are providing "all agreements or arrangements with El Salvador (or any agency or sub-division otherwise involved) related to Agelviz-Sanguino's detention" under seal in a filing made concurrently with this notice.

facilitate communication because the United States does not have custody or control of the aliens detained in El Salvador or over Salvadoran facilities. The sealed declaration and documents concurrently filed demonstrate as much and are responsive to the Court's order.

This goes to a fundamental flaw in this case: this Court lacks jurisdiction. As a result, the Court must vacate its orders and dismiss the case. The Supreme Court made clear that challenges to removal under the Alien Enemies Act "fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (per curiam). For habeas corpus, "jurisdiction lies in only one district: the district of confinement." *Id.* at 1005 (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)). That is decisively not this Court. Plaintiff has been in the custody of El Salvador for months.

Nor do Defendants have constructive custody of the Plaintiff. A person is "held 'in custody' by the United States when the *United States official* charged with his detention has 'the power to produce' him." *Munaf v. Geren*, 553 U.S. 674, 686 (2008) (emphasis added) (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). As the documents demonstrate, El Salvador maintains sole custody of the Plaintiff and Defendants have no ability to produce him. There is no agreement (much less a binding one) that grants Defendants the authority to produce the Plaintiff. Defendants would have to negotiate with a separate sovereign that retains the ability to refuse any requests. The same is true for establishing communications within CECOT. The facility is owned and operated by El Salvador, so Defendants cannot establish communications without engaging in diplomatic discussions.

Even if Defendants had constructive custody, however, this Court would still lack jurisdiction. The proper venue for habeas premised on constructive custody is the district

where the custodian resides. *See, e.g., Boumediene v. Bush*, 553 U.S. 553, 765 (2008) (venue against executive officials was DC); *Ex Parte Endo*, 323 U.S. 283, 306 (1944) (writ is directed to prisoner's "jailer"). All but one of the Defendants reside in DC. The only one who does not, Bret Bradford, is not plausibly the constructive custodian of a Plaintiff in El Salvador, as he certainly cannot "produce" the Plaintiff from CECOT. *See Guerra v. Meese*, 786 F.2d 414 (D.C. Cir. 1986) (Parole Commission is not custodian despite its power to release the petitioner).

Indeed, Plaintiff is a member of a putative class in *J.G.G. et al v. Trump et al*, 1:25-cv-00766-JEB (D.D.C.) claiming that jurisdiction for constructive custody is proper in D.D.C. for many of the same Defendants. ECF No. 102. When Chief Judge Boasberg asked Defendants if venue would be proper in D.C. if there was constructive custody (which there is not), Defendants agreed. Both cannot be true. So regardless of whether constructive custody exists, this Court still lacks jurisdiction. As the Supreme Court made clear, this Court must vacate its orders and dismiss the case immediately. *See J.G.G.*, 145 S. Ct. at 1005 (vacating TRO for lack of jurisdiction because Plaintiffs filed in the wrong district).

DATED: May 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 21, 2025, a true and correct copy of the foregoing was filed with the United States District Clerk for the Southern District of Texas and electronically served on all counsel of record via the District's ECF system.

s/ Jimmy A. Rodriguez
Jimmy A. Rodriguez
Assistant United States Attorney