

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NOU XIONG, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 4:25-CV-558-O

RESPONSE TO EMERGENCY MOTION TO TRANSFER VENUE

An emergency motion to transfer venue has been filed on behalf of petitioner “V.L.” in this immigration habeas matter. (ECF No. 20.) As discussed below, though, (a) this case was properly venued in the Northern District of Texas when it was filed, due to V.L.’s confinement here at that time, (b) V.L.’s post-filing transport to another district does not affect venue, which is determined as of the time of filing, and (c) V.L.’s proposed transferee district, the District of Guam, is not an available transferee district because this case could not have been brought there at the time it was filed. V.L.’s motion should be denied and, instead, for the reasons discussed in the government’s other filings, this case should be dismissed for lack of jurisdiction because V.L. is attempting to challenge the government’s execution of his order of removal, but is barred by 8 U.S.C. § 1252(g) from doing so in this Court—or in any other district court.

I. Background

V.L. is from Laos and is not a citizen of the United States. He was convicted of

attempted murder in California in 1998, and after serving prison time in California, he was placed in removal proceedings via a Notice to Appear, issued in 2018, that charged him with removability due to his aggravated felony conviction. (*See* ECF No. 11 at 6–11.) Later that same year, V.L. was in fact ordered removed by an immigration judge. (ECF No. 11 at 4–5.) These proceedings all occurred under the Immigration and Nationality Act (i.e., Title 8) and, notwithstanding the allegations in V.L.’s petition, his planned removal has nothing to do with the Alien Enemies Act (AEA) or the proclamation issued by President Trump earlier this year relating to the use of AEA removal authority in connection with members of the Venezuelan gang Tren de Aragua. (*See* ECF No. 11.)

This past weekend, the government was in the process of removing V.L. to Laos pursuant to the 2018 order of removal when V.L. filed his petition (on Sunday, May 25, 2025) alleging that he was being “summarily removed, disappeared, or subjected to extraordinary rendition” with “no due process,” allegedly under the AEA and Tren de Aragua Proclamation. (*See* ECF No. 1, ¶¶ 8, 17, 89–203.) With those allegations on file, the Court issued an order that same day directing that V.L. not be removed pending further order of the Court. (ECF No. 2.)

The government was thereafter notified of the case and of the Court’s initial order through an email sent by petitioner’s counsel to the Acting U.S. Attorney for the Northern District of Texas on the afternoon of Sunday, May 25, 2025 (at approximately

3:45 p.m. local Central time).¹ That email was within a couple hours forwarded to the undersigned, who saw it after dinner on that same Sunday evening and immediately reached out to personnel at the U.S. Department of Homeland Security (DHS) to ensure that DHS was made aware of the Court's requirement that V.L. not be removed from the United States. During this time, however, V.L. had already left the detention center where he was in custody, for transportation to the airport for his removal flight. That flight eventually transported him as far as Guam, en route to the ultimate planned removal destination of Laos.

Meanwhile, on Monday, May 26, 2025, the government made a filing in this Court to explain that V.L.'s removal was not related to the AEA as the petition suggested (nor was V.L. being removed to El Salvador), but instead that V.L. was subject to removal under Title 8 (i.e., the Immigration and Nationality Act) pursuant to the Title 8 order of removal issued against him in 2018. (*See* ECF No. 11.)

Simultaneously on Monday, May 26, 2025, with the relevant agency personnel now aware of the order not to remove V.L. pending further order of the Court, DHS made arrangements to take V.L. off the removal flight at a planned stop-over in Guam. V.L. was in fact taken off the flight in Guam on the afternoon/early evening of Monday, May 26, 2025 (in Fort Worth time), because although the government had by that time made its submission to this Court explaining that the AEA was not being used for the removal, the Court had not yet issued any further order, and the earlier order not to remove V.L.

¹ Petitioner's counsel also included on this email to the Acting U.S. Attorney the personal Gmail email address of an Assistant U.S. Attorney who has recently departed the office.

was still in place. Accordingly, V.L. was taken off the plane rather than being transported all the way to Laos where the planned removal would ultimately have been effected.

Shortly thereafter, the Court issued its order denying V.L.'s application for a temporary restraining order, and as part of that order, the Court explained that the government "may effectuate Petitioner's and proposed class members' removals pursuant to the INA." (ECF No. 14 at 4.) This had the effect of extinguishing the prior order not to remove V.L. pending further order of the Court, because now there was a further order, and it said that removal under Title 8 authority was permissible. As noted above, however, V.L. had already been taken off the removal flight in Guam, and at this time he remains in Guam in DHS custody, while DHS is attempting to make arrangements to carry out his planned removal to Laos under Title 8 authority.

Based on V.L.'s current presence in Guam, he has most recently filed an emergency motion to transfer venue, in which he asserts that venue for his petition is now "wrong" in the Northern District of Texas because of the fact that he is currently detained in Guam. (ECF No. 20 at 2.) V.L. requests that this case be transferred to the District of Guam. (ECF No. 20 at 5.)

II. Argument and Authorities

There is no dispute that after this case was filed, V.L. was transported out of the DHS facility where he was being held in the Northern District of Texas at the time of filing, and that he is presently in Guam (having been taken off his removal flight there due to this Court's now-superseded initial order in the case). From these facts, V.L.

argues (1) that the Northern District of Texas is “now ‘the wrong . . . district’ for [his] habeas corpus writ, because [he] is not confined in the Northern District of Texas” at this time, (ECF No. 20 at 2), and (2) that under 28 U.S.C. § 1406, the case therefore can and should be transferred to Guam, (ECF No. 20 at 1; ECF No. 20-1 at 3). But as explained below, V.L. is wrong on both counts, and his motion to transfer should be denied.

First, V.L.’s post-filing transport to Guam did not render venue improper in the Northern District of Texas. As the Fifth Circuit has explained, “‘venue [is] determined at the outset of litigation and [is] not affected by subsequent events.’” *Moler v. Wells*, 18 F.4th 162, 166 n.7 (5th Cir. 2021) (quoting *Smilde v. Snow*, 73 F. App’x 24, 26 (5th Cir. 2003) (brackets in original), and citing *Exxon Corp. v. FTC*, 588 F.2d 895, 899 (3d Cir. 1978) (holding that “venue is determined at the outset of the litigation”)). “The court is to determine whether venue properly existed at the time the plaintiff’s complaint was filed.” *Nutrition Physiology Corp. v. Enviros Ltd.*, 87 F. Supp. 2d 648, 652 (N.D. Tex. 2000) (citing *Hoffman v. Blaski*, 363 U.S. 335, 342–44 (1960)). And indeed, in this case, V.L. specifically pleaded in his petition—correctly—that “[v]enue is proper in this District . . . because at the time of filing the Petitioners were detained in the Respondents’ custody within the Northern District of Texas.” (ECF No. 1, ¶ 25.) It is therefore uncontested and conceded by V.L. that proper venue existed when this suit was initiated, and that is the dispositive (and only) time when venue is assessed—“at the time of filing,” as V.L.’s petition stated. (ECF No. 1, ¶ 25.)

Additionally, given the above principles it should not come as a surprise that when a habeas petitioner files a petition in the district of his confinement, but then is

transported to a place of confinement in some other district, that does not affect the court's authority to hear the case: "It is well established that jurisdiction^[2] over the petitioner attaches with the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change." *Smith v. Fleming*, No. 4:02-CV-440-Y, 2002 WL 31114021, at *2 (N.D. Tex. Sept. 20, 2002) (citing *McClure v. Hopper*, 577 F.2d 938, 939–40 (5th Cir. 1978)). In this regard, V.L.'s quotation of the Supreme Court's statement in the recent *J.G.G.* decision that "venue lies in the district of confinement" does not support his motion, but rather confirms that venue is proper in the Northern District of Texas because of V.L.'s presence here when the suit was filed. (See ECF No. 20-1 at 3 (citing *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025)).) The petitioners in *J.G.G.* were similarly all present in Texas at the time their suit was filed, which prompted the Supreme Court to hold that the district of confinement in Texas, rather than the District of Columbia, was the appropriate location for their suit. See *J.G.G.*, 145 S. Ct. at 1006.³ And as specifically relevant to the motion now before this Court that relates to a post-filing change in the place of the petitioner's confinement, V.L. identifies nothing in *J.G.G.* altering the longstanding rule that venue is determined

² The phrase "jurisdiction" (or "habeas jurisdiction") is often used to refer to concepts relating to the proper place for filing a habeas petition and the proper respondent—which are generally the district of confinement and the petitioner's immediate custodian, respectively—but there is some indication that these are not really matters of subject-matter jurisdiction but rather in the nature of personal jurisdiction and venue. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451 (2004) (Kennedy, J., concurring); *Mahmood v. Nielsen*, 312 F. Supp. 3d 417, 423 (S.D.N.Y. 2018); see also *Steel Co. v. Citizens for a Better Env't.*, 523 U.S. 83, 90 (1998) ("Jurisdiction," it has been observed, is a word of many, too many, meanings." (internal quotation marks and citation omitted).)

³ See also Class Action Complaint and Petition for Writ of Habeas Corpus ¶¶ 9–13, *J.G.G. v. Trump*, No. 1:25-CV-766 (D.D.C. Mar. 15, 2025) (specifying that all five named petitioners in *J.G.G.* were detained at the El Valle Detention Center in Texas at the time of filing).

as of the time of filing, and is not affected by post-filing events.

Second, even assuming that venue were somehow destroyed in this district by the post-filing transport of V.L. to Guam (which it was not), V.L. is in any event wrong that this case could therefore be transferred to the District of Guam. As authority for a transfer, V.L. relies on 28 U.S.C. § 1406(a),⁴ which states that “[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division *in which it could have been brought*.” (ECF No. 20-1 at 3 (quoting 28 U.S.C. § 1406(a) (emphasis added).) As an initial matter, the precondition in § 1406(a) that the case be one “laying venue in the wrong division or district” is not satisfied here because, as discussed above, venue is proper in this district, since venue is determined as of the time of filing. For this reason alone, no transfer under § 1406(a) would be available.

But in any event, with regard to V.L.’s request for the transfer to be to the District of Guam, the “could have been brought” language in § 1406(a) requires consideration of whether venue was proper in the proposed transferee district at that time the case was originally filed—not at some later date. *See Ali v. DHS/ICE/Dep’t of Justice*, No. 19 Civ. 8645 (LGS), 2020 WL 3057383, at *2–3 (S.D.N.Y. June 9, 2020) (transferring an immigration detainee’s habeas petition under § 1406(a) to Alabama, where the detainee was confined in Alabama, rather than New York, at the time the case was filed; “[j]urisdiction is determined by the location of Petitioner’s detention at the time of

⁴ Additionally, V.L. cites 28 U.S.C. § 1406(c), which specifies that the District Court of Guam is considered a “district court” for purposes of § 1406.

filing”); *Lagunas v. Decker*, No. 21 Civ. 193 (LGS), 2021 WL 164100, at *1 (S.D.N.Y. Jan. 15, 2021) (same where the immigration detainee was in custody in New Jersey at the time of filing but filed in New York); *see also Phillips v. Ill. Cent. Gulf R.R.*, 874 F.2d 984, 988 (5th Cir. 1989) (“The curative effects of [§] 1406(a) . . . were intended to apply only in those circumstances where the action would have been timely filed in the transferee court *at the time of filing in the transferor court.*” (emphasis added)); *PKG Contracting, Inc. v. Smith & Loveless, Inc.*, No. 19-4067, 2020 WL 906760, at *10 (D.S.D. Feb. 25, 2020) (explaining that a § 1406(a) transfer “is not warranted under the record before the Court because there has been no prima facie showing that the District of Kansas [the proposed transferee district] is a district or division in which this case could have been brought against MNX *at the time of filing*” (emphasis added)).

And here, V.L. makes no argument that the District of Guam would have been a proper venue for his petition *at the time it was filed*, on Sunday, May 25, 2025. Instead, V.L. was at that time in custody at a DHS facility in the Northern District of Texas, as his own petition confirmed. (ECF No. 1, ¶¶ 2, 25.) Accordingly, for all the reasons discussed above, venue was proper in the Northern District of Texas at the time this case was filed—and in fact the Northern District of Texas was the *only* proper venue—and the case could not have been properly venued in the District of Guam at that time. Therefore, the case cannot be transferred there under § 1406(a). Moreover, for all the reasons discussed above, it would also not be appropriate to dismiss this case for improper venue (as V.L. briefly suggests in the body of his motion papers) because venue in fact is proper here—although as the government has elsewhere noted, a dismissal for lack of subject-

matter jurisdiction on the basis of the 8 U.S.C. 1252(g) bar would be appropriate.

III. Conclusion

V.L.'s motion to transfer venue should be denied.

Respectfully submitted,

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Certificate of Service

On May 29, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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