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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

NOU XIONG next friend for V.L.; V.L., on his own behalf and on behalf of all others similarly situated *Petitioner-Plaintiff,* vs. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Respondents-Defendants.*	Case No.: 4:25-cv-558-O **PETITIONER-PLAINTIFF'S RESPONSE TO JURISDICTIONAL ISSUES RAISED BY RESPONDENTS-DEFENDANTS**

PETITIONER-PLAINTIFF'S RESPONSE TO JURISDICTIONAL ISSUES RAISED BY RESPONDENTS-DEFENDANTS

INTRODUCTION

This brief exists to satisfy the Court's direction that Petitioner-Plaintiff ("Petitioner") respond to the jurisdictional concerns raised by Respondents-Defendants ("Respondents"). Petitioner agrees with the Government, in theory, that the jurisdiction of this matter is now closed, but for different reasons as described herein and he has already moved this court to transfer venue or else dismiss this case without prejudice. Specifically, this Court ought not to and is prohibited from issuing an opinion beyond the matter of jurisdiction and venue as it would be an impermissible advisory statement.

ARGUMENT

In their response to Petitioner-Plaintiff's application for temporary restraining order, the Government expressed its belief that the mere allegation of a Title 8 removal pursuant the Immigration & Nationality Act, especially when there is a criminal history, entirely forecloses habeas jurisdiction here. Yet, this runs aground the notice and an opportunity to be heard mandated by the due process clauses of the U.S. Constitution as upheld in *A.A.R.P.* in this District. A.A.R.P. v. Trump, No. 24A1007, slip op. (2025). The reality is, even a duly issued removal order and evidence of criminal history, which was not clearly submitted here, does not give the Respondents license to do anything to Petitioner.

Notice of legally compliant process was not given to Petitioner and is mandated to allow Petitioner to challenge non-legally-compliant removals including removals that violate federal law including treaty obligations. Here, Petitioner sought to challenge his removal to Laos as a place he cannot be legally removed to for two reasons: (1) he is likely to be killed, detained, tortured, or otherwise harmed in Laos due to his family's decision to be loyal to the United States; and (2) because the apparent acceptance of removed immigrants like Petitioner was accomplished through extortion, duress, fraud, and force that violated Laotian sovereignty in

violation of *Biden v. Texas* and *Curtiss-Wright*. ECF 1 at 19, 39; *see* Biden v. Texas, 597 U.S. 785, 806 (2022); United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936). Under these circumstances, if Petitioner is not given notice and an opportunity to be heard then as long as Respondent's merely allege a Title 8 removal is underway, *no* Petitioner would be required to have notice and an opportunity to be heard before they are "removed" which may include unlawful executions, stranding on desert islands, torture, disappearance or extraordinary rendition, or indefinite detention at the black site prisons in Guantanamo Bay, CECOT in El Salvador, or in ICE detention within the United States. This would be a dangerous functional violation of the Suspension Clause explicitly precluded by *Boumediene v. Bush*. Boumediene v. Bush, 553 U.S. 723, 771 (2008) ("We hold that Art. I, § 9, cl. 2, of the Constitution has full effect at Guantanamo Bay.").

HABEAS CORPUS JURISDICTION IS NOW CLOSED

Habeas corpus jurisdiction to challenge a suspension of habeas corpus, as asserted here, extends as far as the critical factor test of *Johnson v. Eisentrager* as extended in *Boumediene v. Bush* will allow. The critical factors of *Eisentrager* functionally extended and modified by *Boumediene* include that the petitioner "(a) is an enemy alien; (b) has never been or resided in the United States; (c) was captured outside of our territory and there held in military custody as a prisoner of war; (d) was tried and convicted by a Military Commission sitting outside the United States; (e) for offenses against laws of war committed outside the United States; (f) and is at all times imprisoned outside the United States." *Boumediene*, 553 U.S. at 766 (quoting Johnson v. Eisentrager, 339 U.S. 763, 777 (1950)). *Boumediene* added three more factors: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Id.* This critical factor test requires

that the Government satisfy all the critical factors before jurisdiction can be closed in a particular habeas case to challenge a suspension.

Specifically, the Government alleges that Petitioner is not an enemy alien, and therefore the Court's analysis regarding jurisdiction can end there. Under *Eisentrager*, Petitioner has jurisdiction to challenge a suspension of the writ here. He also satisfies b, c, d, e, and f of the *Eisentrager* factors, and all three of the *Boumediene* factors. The critical factor test established in *Eisentrager* say that the presence of any one factor will satisfy jurisdiction. Moreover, *Boumediene* adopted a functional approach that denies formalistic bases for denying jurisdiction to hear habeas corpus writs, mandating that the function of the writ—which is to allow petitioners to challenge unconstitutional and unlawful detention—to be extended. *Boumediene* also clarified that where venue is wrong, as here, the Government can and should move venue to the proper Court. *Boumediene*, 553 U.S. at 746 ("The broad historical narrative of the writ and its function is central to our analysis."); *see id.* 764 (applying "a functional approach").

Critically, however, this case took a turn that *Boumediene* and *Eisentrager* could not have foreseen. In this case, the Court did not successfully keep jurisdiction over the custodians of Petitioner, which were in the Northern District of Texas. ECF 2, 14. The Court had the power on its face to preclude Petitioner's removal outside of the Northern District of Texas to maintain venue, but either lacked the functional capacity or will to maintain jurisdiction through orders. *Id.* Now, due to Respondents' willful removal of Petitioner to Guam, where he is now detained by parties not named in his petition here, this Court no longer has jurisdiction or venue. ECF 20. Petitioner does not and will not amend his petition to extend this Court's jurisdiction over out-of-venue parties not within the Northern District of Texas, because suing those parties in the Northern District of Texas would be the wrong venue as defined by the law. *Id.*

Habeas corpus jurisdiction arises from the custodian not the detainee. Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 499, n.15 (1973). The writ is literally served on the custodian, and directs the custodian to release a detainee. Thus, the jurisdictional question relevant here is whether there is a custodian named in the petition immediately before the Northern District of Texas upon which the Court can serve a writ of habeas corpus. No custodian is named.

The only custodian parties named in the instant petition are constructively detaining Petitioner in Guam and are sued in connection to and derived from the actual, immediate custodians which were alternately and transiently Respondents Jimmy Johnson and Marcello Villegas. ECF 1. Petitioner's removal from the Northern District of Texas destroyed this petition's jurisdiction over these Respondents and Respondent Josh Johnson. ECF 20. His actual and immediate custodians are not named in the instant petition, and could not have been named. ECF 1. The result is that jurisdiction is now destroyed and this Court must dismiss this matter for lack of jurisdiction without prejudice so that Petitioner can pursue his rights in the correct venue. ECF 20.

Petitioner's removal to Guam was against the spirit of this Court's order and was accomplished over the motions and arguments of Petitioner to the contrary. Petitioner duly moved and argued that the Northern District of Texas assert its power to maintain venue and jurisdiction here. ECF 2, 3, 8, 9, 12, 13, 15. The Northern District of Texas responded by cancelling its order and questioning its own power and jurisdiction in the face of an executive arrogating unbounded king-like powers to itself for the first time in U.S. history. ECF 14. It is the essence of habeas corpus to check such a claim of powers, and now that the Court failed to uphold the function of the writ as required under *Boumediene*, the function has changed and requires this Court to allow those Courts who properly assert and maintain their venue over Petitioner's present, actual and immediate custodians to speak and decide. *See, e.g.*,

Chambers v. Florida, 309 U.S. 227, 237 (1940) (noting habeas corpus is an "assurance against ancient evils").

This Court has no jurisdiction or power to impose itself upon the District of Guam, and neither does the Fifth Circuit Court of Appeal. Respondents have chosen to move Petitioner to Guam, where venue and jurisdiction now lies. Petitioner has now filed habeas corpus against his custodians in Guam where he has received an emergency order that properly maintains venue in Guam until the matter can be adjudicated. Xiong v. Borja, 1:25-cv-00026. That petition does not contain any Respondent sued in the Northern District of Texas, as the Petitioner awaits the decision of this Court regarding whether Petitioner's venue will transfer to Guam or whether he will be required to petition without suing several of the Respondents in the Texas case.

Should this Court deny transfer of venue and assert jurisdiction to speak on Petitioner's matter, it will be violating the fundamental prohibition against issuing advisory statements—which are entirely dicta and do not legally control. This tradition traces back to the Neutrality Crisis cited fully in the petition where President Washington attempted to convene the U.S. Supreme Court to answer questions about the machinations of Citizen Genet. The Supreme Court's unanimous response was to deny the President his council and to wait until a proper case or controversy arose, at which point the Supreme Court did assert its due powers. The Jay Court's response was expressly cited in Justice Frankfurter's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 614 (1952) (Frankfurter, J., concurring) (quoting Letter from Supreme Court to George Washington (Aug. 8, 1793)). As such, Justice Frankfurter's gloss that life provides to the constitution is a mandate that this Court not speak as to that gloss or else it might unreasonably and without lawful justification transgress Jay Court principle and violate the text, history and tradition

our nation has followed since its founding by providing glosses it is explicitly precluded from making. *Id.* at 612 (Frankfurter, J., concurring).

CONCLUSION

For lack of jurisdiction and venue, this Court should grant Petitioner's motion to transfer venue or in the alternative to dismiss this case without prejudice.

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/s/ Joshua J. Schroeder
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