ADAM GORDON
United States Attorney
SAMUEL W. BETTWY
Assistant U. S. Attorney
California State Bar No. 94918
Office of U.S. Attorney
880 Front Street, Room 6293
San Diego, California 92101-8893
619-546-7125 / 619-546-7751 (fax)

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

OMAR JOSE RINCON BOHORQUEZ, Petitioner, vs. WARDEN OF THE OTAY MESA DETENTION FACILITY; et al., Respondents.	Case No. 25cv1375 AGS MSB **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

I

SUMMARY OF ARGUMENT

On the face of his habeas petition, Petitioner is challenging only his prolonged custody without a bond hearing, and he is not challenging his removal or detention under the Alien Enemies Act (AEA). In that posture, the case should be dismissed for lack of subject matter jurisdiction, because Petitioner was not in ICE custody when he commenced this habeas action, which is a jurisdictional requirement under 28 U.S.C. § 2241. The Court should reject Petitioner's implied allegation that ICE maintains operational control over his detention. As set forth by the district court in *J.G.G. v. Trump*, -- F. Supp. 3d --, 2025 WL 1577811 (June 4, 2025 D.D.C.), such an allegation cannot

"overcome a sworn declaration from a knowledgeable government official attesting that . . . both 'detention' and 'ultimate disposition' of CECOT Plaintiffs 'are matters within the legal authority of El Salvador.'" *Id.* at *11 (quoting the redacted declaration of Michael G. Kozak, Senior Bureau Official for Western Hemisphere Affairs, U.S. Dep't of State) (Kozak Declaration).

In the alternative, and regardless of whether Petitioner is in constructive custody, the case should be dismissed or transferred to the Southern District of Texas, because Petitioner's custodian, when he was removed to El Salvador, was at the Webb County Detention Center in Laredo, Texas.

In the alternative, if the Court deems that Petitioner's habeas claim "necessarily impl[ies] the invalidity of [his] confinement and removal under the [Alien Enemies Act]." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025), *cited in* ECF No. 4 (June 4, 2025 Order), this case should be stayed pending the outcome of *J.G.G. v. Trump*, Civil Action No. 25-766 (JEB) (D.D.C.). On June 4, 2025, the district judge certified a class that includes Petitioner. *See J.G.G. v. Trump*, -- F. Supp. 3d --, 2025 WL 1577811 (June 4, 2025 D.D.C.). The Government appealed, however, and the district court's order granting class certification has been stayed pending appeal. *See J.G.G. v. Trump*, No. 25-5217, Doc. No. 2120161 (June 10, 2025 D.C. Cir.).

II

STATEMENT OF FACTS

Petitioner is a native and citizen of Venezuela. ECF No. 19 at 3:10; Ex. 1.[1]

On August 14, 2024, Petitioner applied for admission at the San Ysidro Port of Entry, declaring that he came to the United States for economic reasons and had no fear of returning to Venezuela. Ex. 5 (Form I-213).

Petitioner was placed in expedited removal proceedings and subsequently sought asylum. Exs. 1-3. On October 15, 2024, after a credible fear determination, Petitioner was

[1] The accompanying Exhibits are true copies of documents obtained from ICE counsel.

placed in removal proceedings before an Immigration Judge, charged with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Exs. 11-13.

On March 4, 2025, ICE counsel filed with the Immigration Court evidence that Petitioner was a member of the Venezuelan gang Tren de Aragua. Exs. 14-32. The evidence was served on Petitioner's counsel. Ex. 15.

On March 9, 2025, Petitioner was transferred from the Otay Mesa Detention Center to the Webb County Detention Center in Laredo, Texas. Ex. 34.

On March 14, 2025, the President issued a Proclamation, designating Tren de Aragua as a Foreign Terrorist Organization. *See* The White House, *Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua*, https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/. The proclamation directed "that all Alien Enemies described in section 1 of this proclamation are subject to immediate apprehension, detention, and removal." *Id.*, Sec. 3; *see also id.* Sec. 6.

On the following day, March 15, 2025, Petitioner was removed from the United States to El Salvador via Harlingen, Texas, Ex. 33, pursuant to the Alien Enemies Act, 50 U.S.C. §§ 21, et seq. *See also Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025) (staying the district court's stay of removal of aliens to third countries); *Trump v. CASA, Inc.*, No. 24A884, 2025 WL 1773631, at *13 (June 27, 2025) ("Nothing like a universal injunction was available at the founding, or for that matter, for more than a century thereafter. Thus, under the Judiciary Act, federal courts lack authority to issue them.").

On March 28, 2025, ICE moved to dismiss the removal proceedings as moot since Petitioner had been removed from the United States, and on May 22, 2025, the IJ granted the motion to dismiss. Exs. 35-36.

On May 30, 2025, Petitioner commenced this habeas action, seeking a bond hearing. Pet., para. 2.

On June 4, 2025, Judge Boasberg granted the plaintiffs' motion for class certification in the *J.G.G.* case, defining the following class:

> All noncitizens removed from U.S. custody and transferred to the Terrorism Confinement Center (CECOT) in El Salvador on March 15 and 16, 2025, pursuant solely to the Presidential Proclamation entitled, "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua."

J.G.G., 2025 WL 1577811, at *29.

The Government appealed, and on June 10, 2025, the D.C. Circuit granted a stay of the district court's order granting class certification. *See J.G.G. v. Trump*, No. 25-5217, Doc. No. 2120161 (June 10, 2025 D.C. Cir.) ("those portions of the district court's order entered on June 4, 2025, granting in part appellees' motion for a preliminary injunction, granting in part their motion for class certification, and ordering appellants to file a notice by June 11, 2025, be administratively stayed pending further order of the court.").

III

ARGUMENT

A. LACK OF CUSTODY

In its June 4, 2025 Order, this Court appears to infer that Petitioner is challenging the lawfulness of his removal and/or custody under the AEA, *see* ECF No. 4, but in the case cited by the Court, the petitioners were expressly seeking "equitable relief against the implementation of the Proclamation and against their removal under the AEA." *Trump v. J.G.G.*, 145 S. Ct. at 1005. Here, Petitioner alleges only that he was removed pursuant to the AEA, Pet, para. 1, but never mentions the AEA again in his petition. He chose instead to challenge only the lawfulness of his prolonged detention without a bond hearing.

On the face of the habeas petition, therefore, the case should be dismissed, because Petitioner was not in ICE custody when he commenced this case on May 30, 2025. "The text of the statute makes clear, and the Supreme Court has confirmed, that "custody" is a jurisdictional prerequisite to habeas review under § 2241(c)(3)." *Wilson v. Belleque*, 554 F.3d 816, 821 (9th Cir. 2009).

Petitioner implies that, even though he was removed to El Salvador under the AEA, he remains in the constructive custody of ICE. On June 4, 2025, in *J.G.G.*, the district court held: "While it is a close question, the current record does not support Plaintiffs' assertion that they are in the constructive custody of the United States." *J.G.G. v. Trump*, 2025 WL 1577811, at *11. The district court referred to the redacted declaration of a U.S. Secretary of State official, stating:

> Sealed portions of that declaration shed further light on the diplomatic arrangement between the United States and El Salvador, as do the sealed exhibits that the Government has concurrently filed. They appear to show that, while the United States and El Salvador have struck a diplomatic bargain *vis-à-vis* the detainees, the ongoing detention of the CECOT Class is not solely at the "behest" of the United States, nor is El Salvador "indifferent" to their detention. Rather, the picture that emerges from the current record is that El Salvador has chosen — in negotiation with the United States and for reasons far outside the ken of a federal district court — to detain Plaintiffs at CECOT, and it can choose to release them as well.

Id. at *11 (quoting *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 68 (D.D.C. 2004)).

Given a lack of actual or constructive custody and given Petitioner's apparent decision not to challenge the lawfulness of his removal or detention under the AEA, this case should be dismissed for lack of subject matter jurisdiction.

B. NAMED WRONG CUSTODIAN; SUED IN THE WRONG DISTRICT

In the alternative, and regardless of whether Petitioner is challenging his detention or removal under the AEA, the case should be dismissed or transferred for failure to sue the correct custodian in the proper district, which is the Southern District of Texas. When he was removed to El Salvador under the AEA, Petitioner's custodian was the warden of Webb County Detention Center in Laredo, Texas.

A habeas petitioner must name his immediate custodian as the respondent. In the similar case of *E.D.Q.C. v. Warden, Stewart Det. Ctr.*, No. 4:25-CV-50-CDL-AGH, 2025 WL 1575609, at *1 (M.D. Ga. June 3, 2025), the district court referred to this rule when it found that it had habeas jurisdiction: "At the time Petitioner—a Venezuelan citizen—filed his petition, he was detained at Stewart Detention Center ("SDC") in Lumpkin, Georgia,

which is within the jurisdiction of the Court." *See also Gherebi v. Bush*, 374 F.3d 727, 739 (9th Cir. 2004) ("an American citizen detained within the United States must name his immediate custodian as the respondent in a habeas petition"); *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (A custodian "is the person having a day-to-day control over the prisoner. That person is the only one who can produce 'the body' of the petitioner") (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir. 1986). As the Supreme Court explained in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004): "[F]or core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement." *Id.* at 443, *quoted in Doe v. Garland*, 109 F.4th 1188, 1192 (9th Cir. 2024) ("The *Padilla* district of confinement and immediate custodian rules are firmly entrenched in the law of this and other circuits.").

Failure to name the proper respondent is grounds for dismissal of the habeas petition. *See Schlanger v. Seamans*, 401 U.S. 487, 491 (1971) (citing *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994) (Generally, "[f]ailure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction"). In the alternative, the case should be transferred to the Southern District of Texas with a properly named custodian as a respondent. *See, e.g., Al-Amin v. Davis*, No. 12-CV-01197-BNB, 2012 WL 1698175, at *3 (D. Colo. May 15, 2012) ("the Court finds that it is appropriate and in the interest of justice to transfer this [habeas] action to a federal district court in Georgia."). *See also* CoreCivic, Webb County Detention Center, https://www.corecivic.com/facilities/webb-county-detention-facility (Mario Garcia, Warden).

C. IN THE ALTERNATIVE, THE CASE SHOULD BE STAYED

In the alternative, if it is deemed or inferred that Petitioner is challenging the legality of his detention or removal under the AEA, this case should be stayed pending the outcome of the Government's appeal in the *J.G.G.* case. Petitioner falls within the class description in that case, and if the certification is upheld, he will not be able to pursue an individual habeas claim raising the same challenges that are being litigated by the class in *J.G.G.*,

namely the lawfulness of his removal to, and detention in, El Salvador under the AEA. *See Crawford v. Bell*, 599 F.2d 890, 892–93 (9th Cir. 1979) (finding that a member of a pending class action for equitable relief may not maintain a separate, individual suit for relief that is also sought by the class but may pursue only equitable relief that "goes beyond" the class action); *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (5th Cir. 1991) (en banc) ("Individual suits for injunctive and equitable relief from alleged unconstitutional prison conditions cannot be brought where there is an existing class action."); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc) ("Individual members of the class and other prisoners may assert any equitable or declaratory claims they have, but they must do so by urging further action through the class representative and attorney, including contempt proceedings, or by intervention in the class action.").

In the alternative to dismissing or transferring this case, it should be stayed pending outcome of the Government's appeal in the *J.G.G.* case on the issue of whether the district court's class certification should be upheld.

IV

CONCLUSION

For the reasons set forth above, the petition should be denied or transferred to the Southern District of Texas or, in the alternative, stayed pending the D.C. Circuit's review of the D.C. District Court's class certification in the *J.G.G.* case.

DATED: July 2, 2025

ADAM GORDON
United States Attorney

s/ *Samuel W. Bettwy*
SAMUEL W. BETTWY
Assistant U.S. Attorney

Attorneys for Respondents