

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

MARIO HERNANDEZ ESCALANTE,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No.: 25-cv-1799-PX

**REPLY IN RESPONSE TO PETITIONER'S OPPOSITION TO  
RESPONDENTS' MOTION TO DISMISS REGARDING JURISDICTION**

Respondents, by undersigned counsel, submits this Reply in Response to Petitioner's Opposition to Respondents' Motion to Dismiss Regarding Jurisdiction. As explained in Respondents' opening brief (ECF No. 4) ("Motion to Dismiss"), Petitioner's Petition (ECF No. 1) should be dismissed because Petitioner was not physically confined within the District of Maryland when the Petition was filed. In response to Petitioner's Opposition to Respondents' Motion to Dismiss (ECF No. 11) and in further support of their Motion to Dismiss (ECF No. 4), Respondents state the following.

**I. The "immediate confinement" and "district of confinement" rules apply to this Petition and leave this Court without jurisdiction.**

A petition for writ of habeas corpus brought under 28 U.S.C. § 2241 challenging the petitioner's detention must be brought against the "immediate custodian" and filed in the district in which the petitioner is detained. *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004). And, notwithstanding Petitioner's arguments to the contrary, the facts in this case do not support the application of any of the recognized exceptions to the "immediate custodian" or "territorial jurisdiction" rules.

Under *Padilla*, *Demjanjuk v. Meese*, 784 F.2d 1114 (D.C. Cir. 1986), and *United States v. Moussaoui*, 382 F.3d 453 (4th Cir. 2004), Petitioner argues that the “immediate custodian” rule and the “territorial jurisdiction” rule do not apply because “DHS officers did not tell him where he was going to be transferred or what third country had accepted his removal.” Opp’n at 9 (ECF No. 11). Fundamentally, Petitioner misunderstands two critical aspects of the exceptions to the “immediate custodian” rule and the “territorial jurisdiction” rule: (1) they do not turn on Petitioner’s or counsel’s subjective claims of knowledge (or lack thereof); and (2) the exceptions do not apply where the district of confinement *is* known.

By way of background, the “unknown custodian” exception is a very narrow exception to the “immediate custodian” rule and applies only when a petitioner is held in “an *undisclosed location* by an unknown custodian,” and where “it is *impossible* to apply the immediate custodian and district of confinement rules.” *Padilla*, 542 U.S. at 450 n.18 (emphasis added) (distinguishing *Demjanjuk*, 784 F.2d at 1115-16). The *Demjanjuk* opinion, which was distinguished (without disapproval) by the *Padilla* majority, indicated that the “unknown custodian” rule would apply where a petitioner is held “in a confidential location” and it would be “impracticable to require the attorneys to file in every jurisdiction, and it would be inappropriate to order the whereabouts of the petitioner made public.” *Demjanjuk*, 784 F.2d at 1115-16. Given these circumstances, the *Demjanjuk* court found habeas jurisdiction proper in the D.C. Circuit because “short of concluding that *Demjanjuk*’s application must be considered by a Supreme Court justice, . . . it is appropriate, *in these very limited and special circumstances*, to treat the Attorney General of the United States as the custodian.” *Id.* at 1116 (emphasis added). But important to *Demjanjuk* was the fact that no other jurisdiction appeared *more* appropriate to the court at the time of its decision on the merits. *Id.* However, if the district of confinement *becomes* known after filing, the narrow “unknown

custodian” exception dissipates: “should it become known that petitioner is held in a jurisdiction other than this one, a judge of this circuit would be divested of jurisdiction.” *Id.*

In *Moussaoui*, the Fourth Circuit considered the matter of a September 11, 2001, conspirator who filed writs of habeas corpus *ad testificandum* seeking to depose certain members of al-Qaeda whom the United States had captured abroad. 382 F.3d at 458. Those witnesses were held at undisclosed locations in military custody abroad and given that the court could not determine their actual location (which was overseas regardless), the *Moussaoui* court applied *Demjanjuk* to deem the Secretary of Defense as the proper respondent under the “ultimate custodian” alternative. *Id.* at 465. But in the end, this was irrelevant to *Moussaoui*’s holding, which was that the testimonial writ was proper in the district where the underlying criminal proceedings were located, rendering the “immediate custodian” question unnecessary to resolve. *Id.* (noting it was not “necessary for the writ to be served upon the witnesses’ immediate custodian, who is in a foreign country” because the testimonial writ “existed for the purpose of bringing a [witness] into a jurisdiction” and was therefore not territorially limited).

Under *Demjanjuk* and *Moussaoui*, Petitioner argues that the “unknown custodian” rule applies here. He is mistaken. First, the “unknown custodian” exception is not unilaterally invocable by petitioners to secure their choice of forum based on subjective claims of confusion, lack of knowledge, or misinformation. Petitioner argues that habeas jurisdiction is proper in this district because he was unable to call his family or his attorney “until two days after it happened,” and the “ICE locator indicated that [he] remained in the District of Maryland.” Opp’n at 10 (ECF No. 11). To Petitioner for these reasons alone, the “unknown custodian exception must apply.” *Id.*

As an initial matter, the facts are more nuanced than as summarized in the quote above. Per the Affidavit of Eva Chavez, which contains Petitioner's proffered sworn testimony, Petitioner states:

I went with Mario to the Baltimore Field Office for the newly scheduled check-in appointments at approximately 8:00 am [on June 3] . . . . While I was in the bathroom, I heard someone say everyone was being detained . . . . ICE officers had escorted Mario and the other people away . . . . After the [Baltimore immigration] officer realized I would not sign anything, he allowed me to make a phone call, and I called my sister Alba. I informed Alba that I was detained by immigration. My sister told me she would seek legal help. I was able to speak with her again, and that is when she informed me that she had hired my legal representative, Blessinger Legal PLLC, on or about June 5, 2025.

Chavez Aff. at 2 (ECF No. 11-1). First and foremost, Petitioner's sister knew as of June 3, 2025, that her brother was detained in the Baltimore holding room at the Fallon Federal Building at 31 Hopkins Plaza. He was detained there from June 3 to June 5, 2025. Decl. of Joseph Burki ¶¶ 11-12, attached as Ex. 1. Petitioner was offered a telephone call, but did not recall the telephone number and did not elect to make a call. *Id.* ¶ 9. Records do not indicate that Petitioner was denied the opportunity to make a phone call to his attorney. *Id.* ¶ 10. Later, on June 5, 2025, Petitioner was transferred to Livingston, Texas. According to Petitioner, he "arrived late at night" on June 5, 2025. Then, he reports, "[w]hile in Texas, I tried to contact my sister on or about June 6, 2025, but I was able to talk to her again on or about June 7, 2025." *Id.* In other words, Petitioner spoke to his sister twice on June 5, 2025. During the first call, Petitioner's sister said she would seek legal help. During the second call, Petitioner's sister reported that she had hired attorneys. Petitioner was transferred to Texas later that day and arrived in Texas "late at night." The very next day, June 6, 2025, Petitioner "tried to contact" his sister but, through no apparent fault of ICE, was unable to reach her. To be clear, Petitioner was not "unable to call" his family or his attorney; rather, he was

unable to *reach* his family and did not know his attorney's phone number. And there is no indication that he tried to contact his attorneys, the identity of which had been provided to him by his sister on June 5, 2025. Burki Decl. ¶ 10, Ex. 1.

Moreover, the Supreme Court in *Padilla* directly addressed and rejected Petitioner's theories. 542 U.S. at 448. In *Padilla*, the Supreme Court made abundantly clear that the "unknown custodian" exception is not an *equitable* doctrine, and rejected Petitioner's premise that courts can "pretend that [a petitioner] and his immediate custodian were present in the [] District at the time counsel filed the instant habeas petition, thus rendering jurisdiction proper." *Id.* The *Padilla* Court also rejected Petitioner's argument here: that "the facts available to [counsel] at the time of filing" govern and "the facts as they actually existed at the time of filing should not matter." *Id.* at 449 n.17. The Court should not accept what *Padilla* rejected just to maintain Petitioner's choice of forum.

Contrary to Petitioner's baseline assumption, the exception looks at whether the *court* can determine who the custodian is. In *Demjanjuk*, the petitioner was held at "a confidential location" and the Court found it "inappropriate to order the whereabouts of the petitioner made public[.]" but "[s]hould it become known that petitioner is held in a jurisdiction other than this one, a judge of this circuit would be divested of jurisdiction." *Demjanjuk*, 784 F.2d at 1116. In *Moussaoui*, the captured al-Qaeda operatives were being held by the military in a foreign country. *Moussaoui*, 382 F.3d at 465. The actual district of confinement for *Demjanjuk* was unknowable to Chief Judge Bork, while in *Moussaoui*, as noted *supra*, there was no district of confinement, which was beside the point where the district of proceedings could issue the testimonial writ regardless.

Here, by contrast, the custodian and the district of confinement *are known*. In fact, Petitioner acknowledges that he was physically in Texas before his attorneys filed the Petition.

Opp'n at 4 n.4 (ECF No. 11). Petitioner's location has never been confidential, unlike in *Demjanjuk*, and there is an actual district of confinement, unlike in *Moussaoui*. Petitioner knew where he was before he was transferred – in Baltimore. Petitioner knew where he was once he arrived at his new location – in Livingston, Texas. The only time Petitioner did not know where he was while he was in transit, for a period of only less than six hours, on June 5, 2025, from 3:15 p.m. to 9:00 p.m., or, as Petitioner put it, “late at night.” Chavez Aff. at 2 (ECF No. 11-1). And, according to his proffered testimony, he was permitted to call his sister the very next day but was unable to reach her, by no apparent fault of ICE. *Id.*

In addition, it is worth noting *Ex Parte Mitsuye Endo*, 323 U.S. 283 (1944) does not help Petitioner. As explained in *Padilla*, “*Endo* stands for the important but limited proposition that when the Government moves a habeas petitioner after [he] properly files a petition naming [his] immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release[.]” *Padilla*, 542 U.S. at 441. However, the Supreme Court explained, “*Endo*'s holding does not help respondents... [who were] moved from New York to South Carolina before his lawyer filed a habeas petition on his behalf” because “[u]nlike the District Court in *Endo*, . . . the Southern District [of New York] never acquired jurisdiction over *Padilla*'s petition.” *Id.* Such is the case here. *Endo* does not help Petitioner because he was moved to Texas before the Petition was filed, and consequently, this Court never acquired jurisdiction over the Petition, because no Petition was ever “properly filed” in this District.

Petitioner further remarks that the Secretary of the Department of Homeland Security “was (and remains) the ultimate custodian” of Petitioners, suggesting that that confers jurisdiction in this Court. Opp'n at 9 (ECF No. 11). However, in habeas “challenges to present physical

confinement, the [Fourth Circuit] holds that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Doe v. Shenandoah Valley Juvenile Ctr. Comm’n*, 985 F.3d 327, 336 n.10 (4th Cir. 2021). The possibility of serving the “ultimate custodian” in lieu of the immediate custodian only comes into play for the Great Writ when “the immediate custodian is unknown.” *Moussaoui*, 382 F.3d at 465. Were it otherwise, petitioners challenging their immigration detention could file in any district. As such, Petitioner must show the narrow “unknown custodian” exception applies in the first place, and as explained above, he has not made that showing.

Finally, this case is easily distinguishable from *Suri v. Trump*, No. 25-cv-480, 2025 WL 1310745 (E.D. Va. May 6, 2025). In that case, the petitioner was arrested between 9:20 and 9:30 p.m. on March 17, 2025. *Suri*, 2025 WL 1310745, at \*1. Within hours of his arrest, the petitioner was moved four times within the Commonwealth of Virginia. *Id.* After observing that the detention facilities in Virginia were operating at high capacity, ICE determined that the petitioner would be housed at Prairieland Detention Center in the Northern District of Texas. *Id.* at \*3. Then, in the early afternoon on March 18, 2025, the petitioner was boarded on a flight to Alexandria, Louisiana, where he was housed for three nights.<sup>1</sup> *Id.* at \*3-4. On March 20, 2025, the petitioner was told he was being transferred to New York. *Id.* at \*4. The following day, on March 21, 2025, he was told he instead was being driven to Texas. *Id.* Later that day, he arrived at the Prairieland Detention Center in Texas. *Id.*

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<sup>1</sup> The petitioner’s petition was filed on March 18, 2025, at 5:59 p.m., while the petitioner was physically located in Louisiana. *Suri*, 2025 WL 1310745, at \*3.

The facts in this case are in sharp contrast to those in *Suri*. Petitioner was detained in Maryland from June 3-5, 2025. He was never moved within the State of Maryland. He then was directly transferred to an ICE detention facility in Texas, where he remains.

Based on the foregoing, the Court should recognize and apply the immediate custodian rule as well as the territorial jurisdiction rule, decline to exercise jurisdiction over this case, and dismiss this case or transfer<sup>2</sup> this case to the Eastern District of Texas.

**II. The relief sought in this case is irrelevant to the Court's consideration of whether jurisdiction and/or venue is proper in this District.**

In Part III of Petitioner's Argument, Opp'n at 12-13 (ECF No. 11), Petitioner conflates the merits of the case with the jurisdictional and venue issues presented by Respondents' Motion to Dismiss for Lack of Subject-Matter Jurisdiction. He maintains that, because Petitioner is from Maryland and was arrested in Maryland, and because Petitioner is challenging the propriety of his detention, this Court should exercise jurisdiction over the case. *Id.* at 13. This argument is misplaced because its persuasiveness relies on the Court assuming that Petitioner's arrest and detention were and are unlawful, which is not the standard on a jurisdictional motion. *Compare* Fed. R. Civ. P. 12(b)(1) *with* Fed. R. Civ. P. 12(b)(6). To be clear, Respondents do not concede that Petitioner's arrest and detention were and are unlawful. Although they agree that the statutory "removal period" found in 8 U.S.C. § 1231(a)(1)(A) is 90 days, and that 90-day period has run in this case, Petitioner's detention for purposes of effectuating his removal nevertheless is permissible

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<sup>2</sup> Respondents acknowledge that they filed a motion to dismiss, not a motion to transfer this case to the Eastern District of Texas. However, Respondents' position is that the Eastern District of Texas has subject-matter jurisdiction over the case and venue is proper there. Respondents, therefore, would consent to the transfer of this case to the Eastern District of Texas in lieu of dismissal.

under to 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). *See* Respondents' Opp'n to Petitioner's Pet. at 11-14 (ECF No. 10).

In any event, the alleged wrongdoing and relief sought actually favors the Eastern District of Texas assuming jurisdiction and venue over this case. It is undisputed that Petitioner currently is within the Eastern District of Texas. Therefore, the United States District Court for the Eastern District of Texas – not this Court – is in the best position to direct (or abstain from directing) ICE's detention of Petitioner and the parameters and requirements of that detention within that District.

**III. ICE did not engage in forum shopping by transferring Petitioner to the Eastern District of Texas.**

Petitioner accuses Respondents of forum shopping without any basis – and, as he puts it, without any “direct evidence of forum shopping.” Opp'n at 17 (ECF No. 17). First, he argues that ICE engaged in forum shopping because Petitioner's transfer to Texas lacks any other rationale. *Id.* at 14. Like he acknowledges in the following paragraph, however, ICE was required to transfer Petitioner out of Baltimore because the Baltimore detention facility is a holding cell and there otherwise are no ICE detention facilities in Maryland. *Id.*; Burki Decl. ¶¶ 13-14, Ex. 1. Petitioner's additional remark that the alleged necessity of transferring Petitioner is immaterial because Petitioner should not have been detained in the first place, Opp'n at 14 (ECF No. 17), is circular, nonsensical, and otherwise irrelevant.

Second, Petitioner takes issue with the decision to transfer Petitioner to Texas in lieu of a closer detention center. His argument not only attempts to put a duty on ICE – that does not exist – to house detainees within a certain distance of their arrest, but it also is based entirely on the assumption that the decision to transfer Petitioner to Texas was made in bad faith and pure speculation that any of the closer detention facilities had space for Petitioner. *See* Burki Decl. ¶¶ 15-16, Ex. 1. This argument also ignores the fact that Texas has more ICE detention facilities than

all of the states from Virginia to Maine combined. Detention Facilities, <https://www.ice.gov/detention-facilities> (last visited June 19, 2025).

Third, Petitioner again conflates the merits of the Petition with Respondents' Motion to Dismiss for Lack of Subject-Matter jurisdiction. Respondents already responded to the Petition. Petitioner also incorrectly assumes that the "Detention Classification" on his Detention Details (ECF No. 4-2), which Respondents redacted to protect Petitioner's privacy, reveals the legal authority to detain him. "Detention classification" refers to Petitioner's security classification.

In sum, Respondents did not transfer Petitioner to Texas in an effort to forum shop, and Petitioner has presented no facts to suggest otherwise. Respondents' Motion to Dismiss, therefore, should be granted.

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For the reasons stated in Respondents' Motion to Dismiss for Lack of Subject-Matter Jurisdiction, and for the reasons stated above, Respondents respectfully request that the Court grant their Motion to Dismiss and dismiss this case. In the alternative, Respondents request that the Court transfer the case to the United States District Court for the Eastern District of Texas.

Respectfully submitted,

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