UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Pablo Jose Valles Chirinos, Petitioner, v. PATRICIA HYDE, Acting Director of Boston Field Office, United States Immigration and Customs Enforcement, et al., Respondents.	Civil Action No. 25-cv-11641-AK

RESPONDENTS' OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C § 2241

Respondents by and through their attorney, Leah B. Foley, United States Attorney for the District of Massachusetts, respectfully submit this response to the Petition for Writ of Habeas Corpus filed by Petitioner Pablo Jose Valles Chirinos ("Petitioner"). Doc. No. 1. Respondents respond to the Petition as contemplated by Rules 4 and 5 of the Federal Rules Governing Section 2254 cases and this Court's Order Concerning Stay of Transfer or Removal.[1] Doc. No. 10.

INTRODUCTION

Under binding precedent from the Supreme Court and the U.S. Court of Appeals for the First Circuit, this Court lacks habeas jurisdiction over this Petition because Petitioner was not in the District of Massachusetts when he filed this action seeking release from U.S. Immigration and Customs Enforcement ("ICE") custody. *See* Declaration of Assistant Field Office Director Keith

[1] *See* Rule 1(b) ("The district court may apply any or all of these rules to a habeas corpus petition…"); *Vieira v. Moniz*, No. CV 19-12577-PBS, 2020 WL 488552, at *1 n.1 (D. Mass. Jan. 30, 2020) (evaluating the Government's response and dismissing habeas petition under Section 2254 Rules).

Chan, attached as Exhibit 1. Instead, when he filed this Petition on June 5, 2025 at 7:40 PM, Petitioner was in ICE custody in Mississippi at the Adams County Detention Center in Natchez, Mississippi. *Id.*, ¶ 10. ICE transferred Petitioner, along with numerous other detainees, from Massachusetts at approximately 2:45 PM on June 5 to account for bed space constraints at Plymouth County Correctional Facility. *Id.*

In *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004), the Supreme Court made clear an individual challenging his detention through a habeas petition must file that petition in the district where she is detained and must name the custodian detaining her in such district as the respondent. The First Circuit, in *Vasquez v. Reno* has also concluded that a district court did not have jurisdiction over a habeas petition filed "in a jurisdiction where neither he nor his immediate custodian was physically present." 233 F.3d 688, 695 (1st Cir. 2000).

Because Petitioner was not in this district when he filed this action, and because no exceptions to the general rule set forth above exist, this Court lacks habeas jurisdiction to consider his Petition. *See, e.g.*, *Tham v. Adducci*, 319 F. Supp. 3d 574, 577 (D. Mass. 2018) (Holding that "jurisdiction lies in only one district: the district of confinement."); *Rombot v. Moniz*, 299 F. Supp. 3d 215, 218 (D. Mass. 2017) ("A district court may only grant a petitioner relief when the court is located in the 'district of confinement.'") (quoting *Padilla*, 542 U.S. at 443); *Kantengwa v. Brackett*, No. 19-CV-12566-NMG, 2020 WL 93955, at *1 (D. Mass. Jan. 7, 2020) ("Because the District of Massachusetts is not the district of [petitioner's] confinement, jurisdiction is lacking."); *Hernandez v. Lyons*, 1:19-cv-10519-DJC, ECF No. 18 (D. Mass. Oct. 11. 2019) (Allowing motion to dismiss as habeas petitioner "was not in the district when he filed or was pursuing this Petition as is required.").

As such, this Petition should be transferred to the Southern District of Mississippi as Petitioner was in ICE custody in Mississippi at the time the action was filed. *See Ozturk v. Trump*, No. 25-CV-10695-DJC, 2025 WL 1009445, at *10-11 (D. Mass. Apr. 4, 2025) (Transferring petition to the District of Vermont as petitioner was in that district when habeas petition was filed).

FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner's Immigration History, Arrest and Transfer from the District of Massachusetts.

Petitioner is a native and citizen of Venezuela. Exh. 1, ¶ 6. ICE arrested Petitioner on May 27, 2025 and processed him for booking at the ERO Burlington Field Office before he was placed in custody at the Plymouth County Correctional Facility on May 29, 2025. *Id.*, ¶ 8. On June 5, 2025 Petitioner was transported from Plymouth County to an airfield in Bedford, Massachusetts along with numerous other ICE detainees. *Id.*, ¶ 11. This group of detainees were transferred from Massachusetts to account for the limited bed space at Plymouth County. *Id.* The flight upon which Petitioner was manifested departed at 2:45 PM on June 5. *Id.*, ¶ 10. The flight arrived in Alexandria, Louisiana at approximately 4:50 PM. *Id.* Petitioner was booked into the Adams County Detention Center located in Natchez, Mississippi later that day.[2] *Id.* Petitioner remains in ICE custody at this Detention Center. *Id.*

B. Petitioner's Habeas Petition.

Petitioner filed his Petition with this Court on June 5, 2025 at 7:40 PM. Doc. No. 1. Petitioner contends that venue is proper in this District because he resided and was arrested in Massachusetts and because he was detained at Plymouth County. *Id.*, ¶ 2. Petitioner asserts that

[2] Natchez, Mississippi is 73 miles from Alexandria, Louisiana and the drive time between the two locations appears to be approximately one hour and thirty minutes.

he "is being held without the opportunity for a bond hearing" and that such detention is unlawful under statute and the constitution. *Id.*, ¶¶ 15-19. He sets forth two counts in his Petition. First, he claims that his detention and possible removal from the United States cannot proceed under the statutory provision that allows for expedited removal, 8 U.S.C. § 1225, and therefore his detention violates the Fifth Amendment's Due Process Clause. *Id.*, ¶¶ 21-26. In his second cause of action, he claims that ICE's arrest of him after he appeared in state court violates the Administrative Procedure Act ("APA") because he believes ICE's statutory authority to conduct arrests "incorporates within it the common-law limitations on civil-arrest power, including the well-settled common-law rule that the government cannot civilly arrest victims, witnesses, and parties appearing in court." *Id.*, ¶ 32.[3] He asks this Court to order his release to remedy his alleged unlawful detention. *Id.*, PRAYER FOR RELIEF.

LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). As explained by the Supreme Court, "[w]ithout jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v.*

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[3] The First Circuit, in *Ryan v. U.S. Immigr. & Customs Enf't,* 974 F.3d 9, 33 (1st Cir. 2020), concluded that plaintiffs failed to show a likelihood of success on the merits on this same claim and that the "district court's contrary ruling was based on a material error of law and, thus [held] that it constitutes an abuse of discretion." The court reviewed case law and legal treatises to find that "the plaintiffs are unlikely to succeed in demonstrating a long-established and familiar common law rule barring courthouse arrests that can be presumed to have been incorporated into the INA's civil arrest authority." *Id.* at 28.

Citizens for a Better Environment, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 74 U.S. 506, 7 Wall. 506, 514, 19 L.Ed. 264 (1868)).

The petitioner bears the burden to establish entitlement to a writ of habeas corpus by proving that his custody violates the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) ("The burden of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner.").

ARGUMENT

Pursuant to the district of confinement rule set forth by the Supreme Court, this Court lacks habeas jurisdiction over this Petition because Petitioner was not detained in Massachusetts when he filed this action at 7:40 PM on June 5 as he had departed Massachusetts at approximately 2:45 PM earlier that day. This Court should transfer the Petition to the Southern District of Mississippi as Petitioner was in ICE custody in Mississippi at the time the action was filed.

A. The Immediate Custodian and District of Confinement Rules Apply to this Petition and Render this Court without Jurisdiction.

Petitioner filed the Petition pursuant to 28 U.S.C. § 2241 which provides in relevant part that "[w]rits of habeas corpus may be granted by … the district courts within their respective jurisdictions" where a petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. A writ of habeas corpus granted by a district court "shall be directed to the person having custody of the person detained." 28 U.S.C. § 2243. A district court therefore must have jurisdiction over the custodian because the "writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody." *Vasquez*, 233 F.3d at 690 (quoting *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 494-95 (1973)). As explained by another session of this Court

recently, "as a general rule, a petitioner must file a habeas petition in the district in which they are confined and must name as a respondent the petitioner's immediate custodian." *Ozturk*, 2025 WL 1009445, at *4.

The Supreme Court explained that when considering "challenges to present physical confinement … the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Padilla*, 542 U.S. at 439. *Padilla* involved a habeas petition filed by a U.S. citizen who was initially detained in the Southern District of New York but then transferred to South Carolina. *Id.* at 431. After Mr. Padilla was transferred, he filed a petition in SDNY, naming President Bush and Secretary Rumsfeld as respondents. *Id.* at 432. The Court confronted the "question whether the Southern District has jurisdiction over Padilla's habeas petition" which required two determinations: "First, who is the proper respondent to the petition? And second, does the Southern District have jurisdiction over him or her?" *Id.* at 434.

Answering the first question, the Supreme Court explained that the habeas statute "provides that the proper respondent to a habeas petition is 'the person who has custody over [the petitioner].'" *Id.* (quoting 22 U.S.C. § 2242). The Court stated that "there is generally only one proper respondent to a given prisoner's habeas petition," the immediate custodian who has "the ability to produce the prisoner's body before the habeas court." *Id.* The Court applied its "longstanding" rules – known as the "district of confinement" and "immediate custodian" rules – and explained that in a challenge to present physical confinement, "the proper respondent is the warden of the facility where the prisoner is held, not the Attorney General or some other remote supervisory official." *Id.* at 435. The Court acknowledged that while Mr. Padilla's detention was "undeniably unique in many respects, it is at bottom a simple challenge to physical custody imposed by the Executive…." *Id.* at 441. Without evidence that "there was any attempt to

manipulate" his transfer or that government was hiding his location, the Court explained that his "detention is thus not unique in any way that would provide arguable basis for a departure from the immediate custodian rule." *Id.* at 441-42.

As to the question of the proper district court to consider the petition, the Court affirmed the applicability of the traditional rule "that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement." *Id.* at 443. Because Mr. Padilla was moved from the Southern District of New York before the petition was filed, "the Southern District never acquired jurisdiction over Padilla's petition.". *Id.* at 441-42.[4] In summary, the *Padilla* Court explained that whenever a "habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement." *Id.* at 447.

Four years prior to the *Padilla* decision, the First Circuit in *Vasquez* held that a habeas petitioner challenging his immigration detention must file his petition in the district of confinement and must name his immediate custodian in that district as the respondent. *Vasquez*, 233 F.3d at 696. The First Circuit rejected the argument that a supervisory official such as the Attorney General was the proper respondent, holding that "as a general rule, the Attorney

[4] As such, the *Padilla* Court distinguished the factual circumstances before the Court from those at issue in *Ex parte Endo,* 323 U.S. 283 (1944) where the Supreme Court had created an exception to its general rule for cases in which the petitioner properly filed the habeas petition against the immediate custodian and thereafter was transferred outside the district court's territorial jurisdiction. Here, as in *Padilla*, *Endo* is not applicable because Petitioner never properly filed his habeas petition with this Court because he was not detained in Massachusetts when it was filed.

General is neither the custodian of such an alien in the requisite sense nor the proper respondent to a habeas petition."[5] *Id.* at 689.

In *Vasquez*, an alien was detained in Massachusetts before transfer to Louisiana. *Id.* at 690. The petitioner filed in the District of Massachusetts, naming as respondents the Attorney General, the Commissioner of the Immigration and Nationality Service ("INS"), and the district director of the INS's Boston office. *Id.* He did not name, however, the INS official who maintained his custody in Louisiana. *Id.* The First Circuit held that the district court erred in exercising jurisdiction because the petitioner was not detained in Massachusetts when he filed and due "to the petitioner's failure to name his true custodian (the INS district director for Louisiana) as the respondent to his petition." *Id.* The Court distinguished the Supreme Court's decision in *Endo*, explaining that such petition was "properly-filed," unlike Mr. Vasquez's petition which was filed "in a jurisdiction where neither he nor his immediate custodian was physically present." *Id.* at 695.

The First Circuit explained that "Congress has stipulated that a writ of habeas corpus granted by a district court 'shall be directed to the person having custody of the person detained.'" *Id.* (quoting 28 U.S.C. § 2243). Per the Court, "[t]his means, of course, that the court issuing the writ must have personal jurisdiction over the person who holds the petitioner in custody." *Id.* at 690. As it specifically concerned aliens in immigration detention, the Court found that, as in in the prison context, the proper respondent is not a supervisory official such as the Attorney General or the head of an agency, but the immediate custodian of the alien, *i.e.* the individual "who holds the petitioner in custody." *Id.* at 691. As such, the First Circuit held that

[5] At the time of the *Vasquez* decision, immigration detainees were held by the Immigration and Naturalization Service which was part of the U.S. Department of Justice.

"an alien who seeks a writ of habeas corpus contesting the legality of his detention by [ICE] normally must name as the respondent his immediate custodian, that is, the individual having day-to-day control over the facility in which he is being detained." *Id.* Otherwise, "allowing alien habeas petitioners to name the Attorney General ... will encourage rampant forum shopping." *Id.* at 694.

Courts within this District routinely find jurisdiction wanting over habeas petitions that are filed by ICE detainees outside of Massachusetts. *See Kantengwa*, No. 19-CV-12566-NMG, 2020 WL 93955, at *1 ("Because the District of Massachusetts is not the district of [petitioner's] confinement, jurisdiction is lacking."); *Tham*, 319 F. Supp. 3d at 577 ("jurisdiction lies in only one district: the district of confinement."); *Rombot,* 299 F. Supp. 3d at 218 ("A district court may only grant a petitioner relief when the court is located in the 'district of confinement.'") (quoting *Padilla*, 542 U.S. at 443).

Because Petitioner was not detained in Massachusetts when he filed his Petition, this Court lacks jurisdiction over this matter. Given this Court lacks habeas jurisdiction under the above rules, the proper course is for this Court to dismiss the action or transfer it to the district of confinement at the time the Petition was filed.

1. **Petitioner failed to name his immediate custodian.**

Traditionally, courts within this district routinely hold that they lack jurisdiction over a habeas petition if the alien names improper respondents such as supervisory officials like the ICE Boston Field Office Director ("FOD"), even if this individual provides oversite throughout the New England region. For example, in *Duy Tho Hy v. Gillen*, 588 F. Supp. 2d 122, 124-25 (D. Mass. 2008), the Court held that the ICE FOD was not a proper party, explaining that "[b]ecause the petitioner's *immediate* custodian is the only proper respondent, a supervisory officer of any

kind, ... is not a proper party." *Id.* at 125 (emphasis in original). More recently, the Court rejected an argument that ICE Boston's FOD had "total control" over the petitioner and therefore was a proper respondent, finding such claim "unavailing" in *Tham.* 319 F. Supp. 3d at 576-577.

Other sessions of this Court similarly routinely hold that supervisory officials are not proper respondents to a habeas action. *See e.g., McPherson v. Holder*, No. 14-CV-30207-MGM, 2015 WL 12861171, at *2 (D. Mass. Mar. 4, 2015) (Explaining that "regardless of where petitioner was detained at the time of filing, under First Circuit jurisprudence, Attorney General Eric Holder does not have day-to-day control over the facility where the petitioner is held. Thus, petitioner has not named the proper respondent, and on this basis alone, the petition may be dismissed without prejudice to its refiling with the correct respondent."); *Pen v. Sessions*, No. CV 17-10626-NMG, 2017 WL 2312822, at *1–2 (D. Mass. May 25, 2017) (Holding that "the proper respondent is the warden of the institution where Pen was confined when the petition was filed. ... The other persons identified as respondents are not proper parties to this action."); *Faulkner v. US. Immigr. & Naturalization,* No. CV 22-12122-WGY, 2023 WL 3868437, at *2 (D. Mass. June 7, 2023) (Holding that "the proper respondent is the warden of the institution where Faulkner was confined when the petition was filed. Because Faulkner is [in Maryland], the proper respondent is the warden at this Maryland facility."); *Kantengwa*, 2020 WL 93955 at *1 ("Because Kantengwa was at the Strafford County Detention Center at the time she filed her petition (and remains there still), the proper respondent is Warden Brackett. The other persons identified as respondents are not proper parties to this action.").

The First Circuit did acknowledge, however, that there could be "extraordinary circumstances" in which an official with supervisory control could be named as the respondent for an ICE detainee's habeas petition. *Vasquez*, 233 F.3d at 696. The court cited *Demjanjuk v.*

Meese, 784 F.2d 1114, 1116 (D.C. Cir. 1986) for one such possible exception where a supervisory official was appropriately named when the custodian of the petitioner was unknown at the time that the petition is filed. *Id.* The First Circuit also contemplated an exception could exist when ICE "spirited an alien from one site to another in an attempt to manipulate jurisdiction" and explained that a petitioner would need to "marshal[] facts suggesting furtiveness" or make a "showing of the elements necessary to demonstrate bad faith" for this exception to apply. *Id.*

In *Ozturk*, this court confronted a situation in which ICE arrested a habeas petitioner and transferred her from Massachusetts within hours of the arrest, first to Vermont where she was present when her habeas petition was filed, and then the next morning to Louisiana. 2025 WL 1009445, at *8-10. The court found an exception to the immediate custodian rule applied based upon the "irregularity of the arrest, detention, and processing ... coupled with the failure to disclose Ozturk's whereabouts even after the government was aware that she had counsel and the Petition was filed in this Court." *Id.* at *9. The court also found that the unknown custodian exception applied because the petition was filed when Ozturk was in transit and "counsel for Ozturk could not have known to name her client's immediate custodian in Vermont, her location at the time the Petition was filed." *Id.* at *10.

Here, Petitioner cannot demonstrate that the course of events surrounding his arrest on May 27, 2025 and his transfer from Massachusetts on June 5, 2025 rise to the level of "furtiveness" or "bad faith" as contemplated by the First Circuit in *Vasquez* or as confronted by this Court in *Ozturk*. Petitioner had nine days to file his Petition challenging his detention with this Court after he was arrested on May 27 before his eventual transfer from Massachusetts. Plainly, he was not "spirited ... from one site to another in an attempt to manipulate

jurisdiction." *Vasquez,* 233 F.3d at 696. Instead, he was transferred, along with numerous other detainees, for operational necessity due to bed space constraints at Plymouth County.

Other courts have confronted comparable circumstances in which a petition was filed outside the district of confinement during transit between locations and have rejected arguments seeking exception to the immediate custodian and district of confinement rules. For example, in *Ruvira-Garcia v. Guadian*, the court explained that there were "two big problems" with petitioner's request that the court order her return to Illinois: "Petitioner filed against the wrong people, in the wrong place." No. 1:20-CV-2179, 2020 WL 1983875, at *1 (N.D. Ill. Apr. 17, 2020). The petitioner in that case was not in Illinois when she filed her petition, "she apparently was en route between Texas and Oklahoma" and therefore the court found that this "isn't a case where the petitioner was here at the moment of filing, and then left. She hasn't been in [Illinois] at any point since this case started." *Id.*, at *3. Even if it was "unclear whether the authorities in Texas, or the authorities in Oklahoma, had custody over her at the moment of filing," "if the choice is between Texas and Oklahoma, Illinois is the wrong answer." *Id.* The court found it lacked jurisdiction but explained that "the continued detention of [p]etitioner by the Executive Branch is not immune from challenge … [p]etitioner simply can't challenge her detention [in Illinois], as Congress made clear." *Id.*

In another case, while recognizing that transfers of an ICE detainee between states presented "unusual logistical circumstances," the court explained that "it is not this Court's duty to ascertain or identify an Arizona official who would be correctly named as a respondent in this case" and concluded that "there is no recognized exception to the immediate custodian rule for inconvenience or exigent circumstances." *Fuentes v. Choate*, No. 24-CV-01377-NYW, 2024 WL 2978285, at *9-10 (D. Colo. June 13, 2024).

It is possible that Petitioner and his counsel may not have been aware of his exact location or the name of his immediate custodian when the Petition was filed at 7:40 PM on June 5.[6] As such, while there was no furtiveness or bad faith on ICE's part in his transfer from the district, and while Petitioner certainly could have filed his Petition to challenge his detention sooner than June 5, this Court conceivably could determine that Petitioner's naming of supervisory officials does not render this Petitioner subject to dismissal on that basis alone and instead find it appropriate to transfer the Petition to the district of confinement. *See also, Y.G.H v. Trump*, No. 1:25-CV-00435-KES-SKO, 2025 WL 1519250, at *6 (E.D. Cal. May 27, 2025) ("At the time Y.G.H.'s counsel filed the Petition, counsel could not and did not know the identity of Petitioner's immediate custodian, despite reasonable efforts to obtain that information. The Petition therefore appropriately named the Secretary of the Department of Homeland Security and the Acting Director of ICE as respondents."); *Khalil v. Joyce*, No. 25-CV-01963 (MEF)(MAH), 2025 WL 972959, at *31 (D.N.J. Apr. 1, 2025), *motion to certify appeal granted*, No. 25-CV-01963 (MEF) (MAH), 2025 WL 1019658 (D.N.J. Apr. 4, 2025) (Immediate custodian was "virtually unknowable" and therefore finding Secretary of Homeland Security appropriately named as respondent.").

Even if the naming of supervisory officials as respondents to this action is deemed permissible, this Court nonetheless lacks jurisdiction over the Petition because Petitioner definitively was not in Massachusetts at the time he filed. *Ozturk*, 2025 WL 1009445 at *10 (Explaining that "whatever the analytical overlap between this [place-of-confinement] general

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[6] The Petition is devoid of details as to what information was known by counsel at the time he filed the Petition, aside from a statement that "[a]s of this writing, Mr. Valles Chirinos may be in transit." Doc. No. 1, ¶ 20.

rule and the immediate-custodian rule may be, the Court must address both rules in determining its jurisdiction.").

2. <u>Petitioner failed to file in the district of confinement.</u>

Under the district of confinement rule, as Petitioner was not detained in Massachusetts when he filed his Petition, this Court lacks jurisdiction over this action. For a district court to have jurisdiction over a habeas petition, the individual holding custody must be "within [the court's] respective jurisdiction[]." *Padilla*, 542 U.S. at 442 (quoting 28 U.S.C. § 2241(a)); *Vasquez*, 233 F.3d at 690 (Explaining "that the court issuing the writ must have personal jurisdiction over the person who holds the petitioner in custody."). As the Supreme Court has made clear, that means the petition must be heard by the court that sits in the district of confinement when the petition is filed. *Padilla*, 542 U.S. at 443.

Courts within this district routinely find that they do not have habeas jurisdiction when a petition is filed by a detainee outside Massachusetts. *See Ozturk,* 2025 WL 1009445 at *10-11 (Transferring case to Vermont "because Ozturk was confined overnight in Vermont when the Petition was filed"); *Rombot*, 299 F. Supp. 3d at 218 ("A district court may only grant a petitioner relief when the court is located in the 'district of confinement.'") (quoting *Padilla*, 542 U.S. at 443); *Tham*, 319 F. Supp. 3d at 577 ("jurisdiction lies in only one district: the district of confinement."); *Kantengwa*, 2020 WL 93955, at *2 ("Because the District of Massachusetts is not the district of Kantengwa's confinement, jurisdiction is lacking."); *Aitcheson v. Holder*, No. CV 15-11123-NMG, 2015 WL 10434871, at *2 (D. Mass. Dec. 31, 2015) (Finding no jurisdiction over a habeas petition filed by a petitioner when in the District, but who was moved to Alabama shortly after such filing because "1) [Massachusetts] is no longer petitioner's district

of confinement and 2) only a respondent at the Detention Center in Alabama could bring the petitioner before a habeas court.").

In *Padilla*, two members of the majority that applied the general rule requiring a habeas petition be filed in the district of confinement, in a concurring opinion, suggested an exception to the general rule. 542 U.S. at 454. Justice Kennedy (joined by Justice O'Connor) suggested an exception might be warranted "if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention." *Id.* In such case, "habeas jurisdiction would be in the district court from whose territory the petitioner had been removed." *Id.*

As this Court recently recognized in *Ozturk* in declining to exercise jurisdiction over a petition which was filed when the petitioner was in Vermont, "no court has yet relied upon the *Padilla* concurrence as the basis for jurisdiction." 2025 WL 1009445 at *10. This Court should also decline to take jurisdiction over this Petition because Petitioner does not identify facts fitting this case into Justice Kennedy's proposed exception, even assuming such exception could be applied. Again, the purpose of Petitioner's transfer was to alleviate bed space constraints at Plymouth County, not to make it difficult for his lawyer to know where the Petition should be filed. Petitioner's attorney had nine days to file the Petition in this District while Petitioner was in ICE custody in Massachusetts. Similarly, there are no allegations that ICE was not forthcoming as to Petitioner's custodian and place of detention after transfer—ICE's detainee locator system reflected his custody location at Adams County Detention Center by the morning of June 6, less than 24 hours after he was transferred from Massachusetts. Petitioner's counsel does not claim otherwise.

Because Petitioner was transferred from Massachusetts before he filed his Petition, this Court never acquired jurisdiction and therefore "out not to ... act[] on the merits" of the Petition. *Vasquez*, 233 F.3d at 697. Instead, as the Court did in *Ozturk*, transfer to the district in which Petitioner was in custody when he filed the Petition is appropriate under 28 U.S.C. §§ 1406(a) and 1631. 2025 WL 1009445 at *10-11. *See also Khalil,* 2025 WL 972959, at *35 (Transfer of case from Southern District of New Yok to New Jersey because petitioner was detained in that district at time Petition was filed was appropriate); *Y.G.H.*, 2025 WL 1519250 at *6-7 (Declining to adopt Justice Kennedy's proposed exception in *Padilla* even though petitioner was in transit at time petition was filed as petitioner's counsel became aware of his new location the next day and no additional transfers occurred. In such situation, transfer to the district where petitioner was in custody would be appropriate.)

CONCLUSION

For these reasons, this Court lacks jurisdiction over the Petition and therefore cannot consider Petitioner's claims as to unlawful arrest and detention. Respondents do not oppose, however, transfer of this Petition to the Southern District of Mississippi, the district of Petitioner's confinement at the time the Petition was filed.

Respectfully submitted,

LEAH B. FOLEY
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Dated: June 11, 2025

By: /s/ Mark Sauter

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CERTIFICATE OF SERVICE

I, Mark Sauter, Assistant United States Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: June 11, 2025 By: */s/ Mark Sauter*
Mark Sauter
Assistant United States Attorney