UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

VIVIAN G. SORIANO NETO, **Petitioner** **v.** **JOHNNY CHOATE, in his official capacity as Warden, Aurora ICE Processing Center; ERNESTO SANTACRUZ, in his official capacity as Acting Field Office Director, U.S. Immigration and Customs Enforcement; PATRICIA HYDE, Director ICE Boston Field Office; KRISTI NOEM, U.S. Secretary of Homeland Security; in their official capacities.** **Respondents**	**Civ. Case No. 1:25-cv-00425-MSM-AEM**

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

Respondents by and through their attorneys, Sara M. Bloom, Acting United States Attorney for the District of Rhode Island, and Ronald R. Gendron, Assistant United States Attorney, respectfully submit this Opposition to Petitioner Vivian G. Soriano Neto's ("Petitioner" or "SORIANO NETO") Petition for Writ of Habeas Corpus *Ad Prosequendum* or *Ad Testificandum* (the "Petition"). *ECF* Dkt. #1.

INTRODUCTION

Petitioner Soriano Neto is currently detained at an U.S. Immigration and Customs Enforcement ("ICE") Contract Detention Facility in Denver, Colorado pursuant to 8 U.S.C. §1225(b)(1). *See* Declaration of Assistant Field Office Director, Keith Chan ¶ 5, attached as Exhibit A. 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 Rhode Island when she filed this action on August 29th and had not been in custody in this District since March 11, 2025, the date of her arrest in Providence by ICE. *Id.*, ¶¶ 9-11.

Denial of this Petition, rather than transferring it to the U.S. District Court for the District of Colorado, is appropriate as the Petition is subject to dismissal on several bases. Specifically, Petitioner Soriano Neto detention is lawful under Section 1231(b), and district courts lack jurisdiction to enter the requested relief— Petitioner's release by ICE and her transfer by ICE back to this District solely to contest pending state court charges against her.

For these reasons, this Petition should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

The Petitioner is a native and citizen of Honduras. *See* Ex. A, ¶ 6. On or about October 25, 2017, Petitioner presented herself for admission at the Calexico Port of Entry. *Id.* at ¶ 7. She was found inadmissible to the United States by United States Border Patrol pursuant to 8 U.S.C.§1182(a)(7)(A)(i)(II) and subsequently placed into removal proceedings via the issuance of a Notice to Appear (NTA) dated November 7, 2017. *Id.* On or about November 15, 2017, Petitioner was released from ICE custody. *Id.* at ¶ 8. Providence Police Department on February 20, 2025, charged Petitioner with child sex-trafficking offenses. *See* Dkt. for Case No. 62-2025-01468, attached as Exhibit B. On or about March 11, 2025, ICE arrested and detained the Petitioner in Providence Rhode Island. *See* Ex. A, ¶ 9. On that same date, she was transferred to Cumberland County Jail in Maine where she remained in ICE custody until June 1, 2025. *Id.*, ¶ 10. On June 1, 2025, the Petitioner was transferred to an ICE Denver Contract Detention

Facility in Denver, Colorado - as part of a female detainee decompression mission - and has been detained there in ICE custody since that time. *Id.*, ¶ 11. She is in ICE custody pursuant to 8 U.S.C. §1225(b)(1). *Id.*, ¶ 5. Her immigration proceedings were transferred to the Aurora Immigration Court in Denver Colorado and remain pending. Petitioner's next hearing before an Immigration Judge is September 18, 2025. *Id.*, ¶ 12.

Petitioner filed her Petition on August 29, 2025 seeking a writ of habeas corpus ad prosequendum or ad testificandum, pursuant to 28 U.S.C. § 2241(c)(5), directing the custodian of the Aurora Processing Center to transfer her to Rhode Island "so that she can be present for and assist with her defense in Superior Court in Providence County in the State of Rhode Island, for her criminal court appearance, currently scheduled for October 17, 2025 at 9:00 AM and thereafter all phases of her case including trial on pending trafficking and indecent solicitation charges." *ECF* Dkt. # 1, ¶ 1. Petitioner claims this Court has jurisdiction and that venue is proper in Rhode Island, despite Petitioner's detention in Colorado, because of the pending state criminal charges in Rhode Island. *Id.*, ¶¶ 3-4. Petitioner urges this Court under 28 U.S.C. §2241(c)(5) to "issue such a writ purely to facilitate Ms. Soriano Neto's ability to prepare, defend and appear for [state] criminal proceedings," despite the absence of any state prosecutor's request for a writ of habeas corpus, state court trial date certain, or pending federal criminal charges lodged against her in this district. Not only does Petitioner request that ICE – rather than Rhode Island state authorities – transport her back to Rhode Island from Colorado "in time for her October 17, 2025 criminal preliminary hearing and all subsequent criminal proceedings," but also demands Petitioner's "release pursuant to the Rhode Island District Court, grant of bail, pending resolution of her

Rhode Island case," in direct contravention of an Immigration Judge's detention order. *ECF* Dkt. # 1, p. 10.

STATUTORY AND REGULATORY PROVISIONS AT ISSUE

Congress has provided a statutory process to allow aliens to file applications for relief from detention and removal in immigration courts and then seek review of such decisions before the Board of Immigration Appeals ("BIA"), subject to judicial review by courts of appeals. Removal proceedings are initiated with the issuance of a NTA with the Immigration Court that has jurisdiction over the location of the individual. *See* 8 U.S.C. § 1229; 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court" by ICE.). Once an NTA is filed with the Immigration Court, the Immigration Judge "shall conduct proceedings for deciding the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1). Such proceeding "shall be the sole and exclusive procedure for determining whether an alien may be ... removed from the United States." *Id.* § 1229a(a)(3).

The statutory scheme restricts the availability and scope of judicial review of detention and removal orders. The statute provides that review of all questions "of law and fact ... arising from any action taken or proceeding brought to remove an alien" shall be available only through a PFR in the appropriate court of appeals. *Id.* § 1252(b)(9). An alien has further administrative avenues for review and to challenge detention and removal orders – including motions to reopen, motions to reconsider. *See generally* 8 U.S.C. § 1229a(c)(6)-(7); 8 C.F.R. §§ 1003.2, 1003.23. Custody determinations made by Department of Homeland Security are subject to review by

Immigration Judges, and decisions of Immigration Judges on such matters are appealable to the Board of Immigration Appeals ("BIA").

STANDARD OF REVIEW

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. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress had separately stripped the court of jurisdiction to hear the claim.

To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that her custody is in violation of 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."); *Farrell v. Lanagan*, 166 F.2d 845, 847 (1st Cir. 1948) ("The burden of proof is on the petitioner to establish denial of his constitutional rights. The court must be convinced by a preponderance of evidence.").

ARGUMENT

Pursuant to the immediate custodian and district of confinement rules set forth by the Supreme Court, this Court lacks habeas jurisdiction over this Petition because Petitioner was not detained in Rhode Island when she filed this action on August 29, 2025. Denial and dismissal of this Petition, rather than transfer to the U.S. District Court for the District of Colorado, is appropriate because the Petition suffers numerous other defects and therefore the interest of justice does not counsel transfer.

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 v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000) (quoting *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 494-95 (1973)). As explained recently by another District Court in this Circuit, "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." *See Ozturk v. Trump*, No. 25-CV-10695-DJC, 2025 WL 1009445, at *4 (D. Mass. Apr. 4, 2025).

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." *Rumsfeld v. Padilla*, 542 U.S. 426, 339 (2004). *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. 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.[1]

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 General is neither the custodian of such an alien in the requisite sense nor the proper respondent to a habeas petition."[2] *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.*

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[1] 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 her habeas petition with this Court because she was not detained in Rhode Island when it was filed.

[2] 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.

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 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 "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 Circuit routinely find jurisdiction wanting over habeas petitions that are filed by ICE detainees who are detained outside of the District. *See e.g. Costa v. Lyons,* No. 25-CV-11732-DJC, 2025 WL 1695940, at *1 (D. Mass. June 17, 2025) ("The Court lacks habeas jurisdiction over this action because Costa was not within the territorial jurisdiction of this Court when he filed the Petition."); *Ozturk,* 2025 WL 1009445 at *10-11 (Transferring case to Vermont "because Ozturk was confined overnight in Vermont when the Petition was filed"); *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.");

Tham v. Adducci, 319 F. Supp. 3d 574, 577 (D. Mass. 2018) ("jurisdiction lies in only one district: the district of confinement."). Because Petitioner was transferred from Rhode Island long before she filed her Petition, this Court never acquired jurisdiction and therefore "ought not to ... act[] on the merits" of the Petition. *Vasquez*, 233 F.3d at 697.

As noted in *Padilla*, 542 U.S. at 435, the "immediate custodian rule" requires that the proper respondent to a habeas petition is "the person who has custody over [the petitioner]." 28 U.S.C. § 2242; *see also* § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."). Additionally, courts may only grant habeas relief "within their respective jurisdictions." 28 U.S.C. § 2241(a). In other words, the court issuing the writ must generally "have jurisdiction over the custodian." *Id.* at 442 (quotation omitted). Here, although Petitioner appropriately named the director of the Aurora facility in which she is being detained as her custodian, this Court has no jurisdiction over that custodian, obviously, since the facility is in Colorado, not Rhode Island.

The First Circuit has acknowledged, however, there could be "extraordinary circumstances" despite lack of *in personam* jurisdiction over the actual custodian wherein a District Court could retain jurisdiction over a habeas petition involving an extra-territorial custodian. *Vasquez*, 233 F.3d at 696. For example, when evidence exists showing that ICE "spirited an alien from one site to another in an attempt to manipulate jurisdiction," the Court 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 her arrest on March 11, 2025, and transfer to Maine on that date, and subsequently Colorado, 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 was detained in Maine from March 11, 2025, to June 1, 2025, when she transferred to her current detention facility "as part of a female detainee decompression mission." Ex. A, ¶ 11. Despite being in Maine for nearly three months, and in Colorado for in excess of three months, Petitioner only now files her habeas petition in a District in which she has *not* been detained for over one-half year. Plainly, she was not "spirited ... from one site to another in an attempt to manipulate jurisdiction." *Vasquez*, 233 F.3d at 696. *See also Chirinos v. Hyde*, 1:25-cv-11641-AK, Doc. No. 13 (D. Mass. July 7, 2025) (Finding no exception applied to ground jurisdiction in district of Massachusetts as "Chirinos remained in custody in Massachusetts for more than a week before he was transferred,

during which a habeas petition could have been filed."). Again, as the First Circuit has counseled "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." *Vasquez*, 233 F.3d at 691. Otherwise, "allowing alien habeas petitioners to name the Attorney General ... will encourage rampant forum shopping." *Id.* at 694. Although Petitioner properly named her custodian, she has chosen to file her petition in a judicial district with no personal jurisdiction over that custodian.

For these reasons, dismissal of this Petition is proper as it was filed in Rhode Island long after Petitioner departed the district and because it names a custodian over whom this Court has no jurisdiction.

B. Based on Facts as Alleged by Petitioner, ICE's Detention and Placement of Petitioner is Lawful and Not Appropriate for Habeas Review.

Even assuming, arguendo, that this Court found it had jurisdiction to entertain Soriano Neto's petition, her petition fails on its merits. She asks this Court to order ICE to transfer her from her current detention facility in Aurora, Colorado, to Rhode Island and release her on or before October 17, 2025, so that she may be present in Rhode Island for a pre-arraignment conference scheduled for that date "and all subsequent criminal proceedings." *ECF* Dkt. #1, p. 10. It does not appear that the state District Court ever issued a writ of habeas corpus requiring that the R.I. Sheriff's Department arrange for Petitioner's presence at her October 17, 2025, pre-arraignment conference, nor did petitioner ever seek one in the state court in which she is charged.

Significantly, no trial date has been set in Petitioner's state court case.[3] Petitioner's presence in this District is not required for testimony in any pending federal or state criminal or civil matter, and Petitioner has no federal criminal charges pending against her in this district. In sum, Petitioner is not using 28 U.S.C § 2241 to seek relief from *unlawful* custody. Rather, Petitioner seeks to employ habeas as a mechanism by which to vitiate the lawful detention order of ICE officials which was litigated by Petitioner, decided by an Immigration Judge, and sustained on appellate review. Further, Petitioner also impermissibly beseeches this Court to interfere with ICE's determination regarding the placement of its detainees and return her to Rhode Island where it will be more convenient for Petitioner's criminal and immigration attorneys to represent her. *See ECF* Dkt. #1, ¶¶ 17-18.[4]

Petitioner's requested relief cannot be obtained through habeas because the relief sought is outside the scope of habeas. A court may grant a writ of habeas corpus to a petitioner who demonstrates his or her detention is in violation of the constitution or federal law. 28 U.S.C. § 2241. The petitioner must prove illegal detention by a preponderance of the evidence. *See Aditya W.H. v. Trump*, 2025 WL 1420131, at *7 (D. Minn. 2025) (collecting authority). Indeed, "Habeas is at its core a remedy for unlawful

[3] Indeed, Petitioner has only been charged by way of complaint in the R.I. District Court in case number 62-2025-01468. The complaint, charging her with felony offenses of Indecent Solicitation of a Child and Trafficking of a Minor, has now ripened into an Information and been assigned a Superior Court number, P2-2025-3276B, docket attached as Exhibit C, but she has yet to be arraigned in Superior Court. Her pre-arraignment conference on the matter is now scheduled for December 11, 2025. *Id.*

[4] Attorney Salazar Tohme's Declaration is devoid of any mention of having moved for a change of venue for Petitioner's upcoming immigration hearing.

executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). The writ of habeas corpus and its protections are "strongest" when reviewing "the legality of Executive detention." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). Therefore, the traditional function of the writ is to seek one's release from unlawful detention. *Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959, 1969 (2020) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). As the Supreme Court has held, relief other than "simple release" is not available in a habeas action. *See id.* at 1970–71 ("Claims so far outside the core of habeas may not be pursued through habeas.") (internal quotations and citations omitted). *See also Moore v. Wall*, No. 10-049 ML, 2010 WL 668286, at *2 (D.R.I. Feb. 24, 2010) ("[A] writ of habeas corpus is only properly available to prisoners who are challenging the constitutional validity of their confinement in prison and requesting immediate or future release from confinement.").

Here, in addition to release, Petitioner seeks an order compelling ICE to return her to Rhode Island. As noted above, this is not the type of relief that the Supreme Court found to be subject to habeas review. *Id.*, at 1970 (holding that the relief sought, which did not include release, fell "outside the scope of the common-law habeas writ"). In reversing the Ninth Circuit's decision, the Supreme Court concluded in *Thuraissigiam* that the petitioner did not seek "simple release," and if he had sought proper habeas relief, it would take the form of release "in the cabin of a plane bound for [the designated country]." *Id.* Other circuits have followed this principle. *See, e.g., Tazu v. AG United States*, 975 F.3d 292, 300 (3d Cir. 2020) ("And Tazu's constitutional right to habeas likely guarantees him no more than the relief he hopes to avoid—release into 'the cabin of a plane bound for Bangladesh.'") (brackets omitted); *E.F.L. v. Prim*, 986

F.3d 959, 965-66 (2nd Cir. 2021) (holding that a petitioner could not invoke an alleged Suspension violation when a petition does not contest the lawfulness of restraint or seek release from custody); *Rauda v. Jennings*, 55 F.4th 773, 780 (9th Cir. 2022) (same as *E.F.L.*).

While 28 U.S.C. § 2241(c)(5) authorizes district courts to issue a writ of habeas corpus when necessary to bring a prisoner into court to testify or for trial, Petitioner cites no case law where this statute has been used by a district court to order transfer of an individual to appear in state court, rather than federal court. In *Carbo v. United States*, 364 U.S. 611, 612 (1961), cited by Petitioner, the Supreme Court held that a U.S. District Court in California had jurisdiction to issue a "writ of habeas corpus ad prosequendum directing a New York City prison official to deliver petitioner, a prisoner of that City, to California for trial on an indictment pending" in the federal court. While a district court can issue a writ of habeas corpus ad prosequendum to state officials to mandate a detainee appear in federal district court, there is no support for the proposition that a district court can order federal officials to transfer a detainee to appear in state court.

Soriano Neto's Petition and supporting declarations do not establish unlawful custody that would permit habeas relief. At the outset, it should be noted that Petitioner's pending state court charges have nothing to do with the legal basis for her detention. The Petitioner initially came to the attention of ICE on October 25, 2017, when she presented herself for admission at the Calexico Port of Entry. Prior to her current detention, Petitioner was already placed into removal proceedings via the 2017 NTA. The assertions in her Petition that "she is detained because of charges she cannot

contest due to that very detention," *ECF* Dkt. #1, ¶ 3, and "but for these state charges, Vivian would not have been picked up and detained by ICE and placed into expedited detained proceedings." *ECF* Dkt. #1-1, ¶ 15. There is no question that Vivian's arrest on state charges alerted ICE to her crimes and alien status, but Petitioner is not *detained* under statutory provisions allowing alien detention for arrest or conviction of certain crimes. Rather, as the "MEMORANDUM CONCERNING THE APRIL 3, 2025 DECISION OF THE IMMIGRATION JUDGE" (attached as Exhibit D) notes, Petitioner was detained by DHS as an "arriving alien,"[5] a detention status unrelated to her pending criminal charges.[6] Indeed, had Petitioner come to ICE's attention in any other way – a routine traffic stop, for example – even if she had no criminal record or pending charges, the same statutory basis could have been employed to detain Petitioner. Petitioner, represented by counsel, did not contest her status as an arriving alien, but rather claimed that her grant of Special Immigrant Juvenile status functioned as parole which would have allowed the Immigration Judge to redetermine DHS's custody decision. *Id.* at 2. The Immigration Judge found, however, that Petitioner's

[5] 8 C.F.R. 1001.1(q) provides:

> The term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means .... An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.

[6] The fact that Petitioner was previously released by ICE following her initial apprehension in 2017 also has no bearing on the analysis. "Plaintiff's parole into the United States made her, like a great many others, the beneficiary of an especially lax, long-term policy of catch and release at the border. Lax because she was supposed to be immediately removed under the Nation's immigration law. 8 U.S.C. § 1225(b)(2)(A)." *Rodrigues De Oliveira v. Joyce*; 2025 WL 1826118, p. 1, (U.S Dist. Ct. Maine July 2, 2025)

Special Immigrant Juvenile status was not the legal equivalent of parole and, consequently, as an arriving alien, the Immigration Judge lacked jurisdiction to redetermine Soriano Neto's detention pursuant to 8 C.F.R. § 1003.19(h)(2)(i)(B).. *Id.* Petitioner appealed the decision of the Immigration Judge, and that decision was affirmed by the Board of Immigration Appeals. *Id.*

Petitioner did not appeal the decision of the Board of Immigration Appeals or otherwise attack the *lawfulness or constitutionality* of the Board's – or the Immigration Judge's – decisions by way of habeas petition filed in the judicial district in which she was housed at the time the decisions were rendered.

Consequently, Petitioner has failed to show, by any standard, that she is being unlawfully detained and thus entitled to habeas relief. Her grievances concerning her state court matter are collateral consequences of her ICE detention, but do not in any way render "unlawful" the actual basis for her detention. Even if Petitioner's pending state charges were dismissed, it would not affect her eligibility for release and for bond.

Moreover, Petitioner's request to have this Court supplant ICE's decision on where to house its detainees is also without legal basis. Congress provided ICE with discretion as to the detention location of individuals within its custody. Per 8 U.S.C. § 1231(g)(1), ICE "shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." *See Edison C. F. v. Decker*, No. CV 20-15455 (SRC), 2021 WL 1997386, at *6 (D.N.J. May 19, 2021) (Acknowledging that "Congress has provided the Government with considerable discretion in determining where to detain aliens pending removal or the outcome of removal proceedings."). Here, ICE arranged for Petitioner's detention in Colorado, and this placement fully comports with

statute and the Constitution. *See Avramenkov v. I.N.S.*, 99 F. Supp. 2d 210, 214 (D. Conn. 2000) (Holding that a transfer "does not constitute a violation of plaintiff's due process or statutory rights" and that ICE "is not obligated to detain aliens where their ability to obtain representation and to present witnesses is at its greatest.").

Additionally, this Court lacks jurisdiction to second-guess ICE's detention decision or to order ICE to detain Petitioner at a different facility. *See also Guangzu Zheng v. Decker*, No. 14CV4663 MHD, 2014 WL 7190993, at *15-16 (S.D.N.Y. Dec. 12, 2014), *aff'd*, 618 F. App'x 26 (2d Cir. 2015) (Court lacked jurisdiction over the location of an ICE detainee as that is a discretionary decision that is barred from judicial review); *P.M. v. Joyce*, No. 22-CV-6321 (VEC), 2023 WL 2401458, at *5 (S.D.N.Y. Mar. 8, 2023) ("The Court does not have jurisdiction to review [ICE's] discretionary authority to transfer detainees."); *Mathurin v. Barr*, No. 6:19-CV-06885-FPG, 2020 WL 9257062, at *11 (W.D.N.Y. Apr. 15, 2020) ("Courts accordingly have held that they lack jurisdiction to restrict [ICE's] decisions about whether and where to transfer aliens between facilities."); *Avramenkov*, 99 F. Supp. 2d at 214 (Explaining that "the court has no jurisdiction to review [ICE's] decision to transfer an alien from one locale to another to commence removal proceedings.").

Finally, to the extent Petitioner seeks to compel ICE to transfer her back to Rhode Island, such requests are beyond the extent of habeas relief. Writs of habeas corpus can be used only to request release from custody. *Wilkinson v. Dotson*, 544 U.S. 74, 78, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005). They are not appropriate vehicles to challenge the circumstances of confinement, *Muhammad v. Close*, 540 U.S. 749, 750, 124 S.Ct. 1303, 158 L.Ed.2d 32 (2004), including a prisoner's location of custody, *see Dowey v. Maine*, No.

2:15-CV-138-NT, 2015 WL 6123530, at *6 (D. Me. Oct. 16, 2015), to command a government agency to act, *see LeBlanc v. Rhode Island*, No. CA 10-489 ML, 2011 WL 1790824, at *4 (D.R.I. Apr. 29, 2011), *report and recommendation adopted*, No. CA 10-489 ML, 2011 WL 1790813 (D.R.I. May 10, 2011), or to review ICE decisions to initiate expedited removal or to determine whether a credible fear is present, *see* 8 U.S.C. § 1252 (a)(2)(A)(iii) (abstracting the review of ICE decisions to initiate expedited removal or determine whether a credible fear exists from the jurisdiction of federal courts). Because any claim that petitioner is entitled to release from detention or transfer to Rhode Island is unavailing, her petition for writ of habeas corpus must be denied. Such order would also interfere with Petitioner's removal proceedings which are currently venued at the Aurora Immigration Court.

CONCLUSION

Because Petitioner has 1) filed her habeas petition in a judicial district that lacks jurisdiction to entertain it 2) failed to prove that her current detention is unlawful under the laws or Constitution of the United States, 3) impermissibly seeks the Court's intervention in DHS's detention determinations, 4) impermissibly seeks the Court's intervention in DHS's detainee-placement determinations, Respondents respectfully requests this Court deny Petitioner's request for a writ of habeas corpus ad prosequendum or ad testificandum.

Respectfully Submitted,
UNITED STATES OF AMERICA
By its attorneys,

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CERTIFICATE OF SERVICE

I, hereby certify that on this 11th day of September 2025, I caused the within document to be electronically filed with the United States District Court for the District of Rhode Island, using the CM/ECF System.

RONALD R. GENDRON
Assistant U.S. Attorney