



DHS did not hold him in custody at all. Friends, family, and counsel for Petitioner reached out directly to ICE, who could not confirm his whereabouts. After DHS became aware of this petition, the government represented to Petitioner's counsel that it held him in New Hampshire at the time of filing. The government then moved for the case to transfer to the District of New Hampshire, which Petitioner did not oppose.

## **II. ARGUMENT**

The United States District Court for the District of New Hampshire has jurisdiction over the instant Petition for Writ of Habeas Corpus.

Petitioner brings this action under 28 U.S.C. § 2241. “Writs of habeas corpus may be granted by . . . the district courts within their respective jurisdictions” when a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241. “Aliens in custody of federal immigration officials have traditionally been able to obtain review of immigration decisions by petitioning for a writ of habeas corpus under what is now § 2241.” *Goncalves v. Reno*, 144 F.3d 110, 120, 133 (1st Cir. 1998) (habeas jurisdiction permits a district court to review at least “pure issues of law concerning the applicability of statutory provisions” to immigration decisions).

### **1. Jurisdiction Is Proper Because the Government Held Petitioner in New Hampshire at the Time Counsel Filed this Action.**

The government claims that at the time Petitioner filed the instant petition in the District of Massachusetts, they detained him in New Hampshire. Whenever a civil action is filed in a court and that court finds there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the same time. *Alicea v. Machete Music*, 744 F.3d 773, 789 (1st Cir. 2014); 28 U.S.C. § 1631. The action or appeal shall proceed in the court to which it was transferred as if it

had been filed in that court on the date upon which it was actually filed in the previous court. *Id.* It is well established that courts may transfer petitions for habeas corpus under § 1631. *See Ozturk v. Trump*, 777 F.3d 26, 42 (D. Mass. 2025). Relevant equities include whether the petitioner acted in good faith and whether a transfer would “expedited review, thereby furthering the interest of justice.” *Ruiz v. Mukasey*, 552 F.3d 269, 276 (2d Cir. 2009) (quoting *Liriano*, 95 F.3d at 122).

As provided by statute, a habeas petition “shall allege the facts concerning the application’s commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, *if known*,” 28 U.S.C. § 2242 (emphasis added). 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. “Jurisdiction over the custodian is paramount because ‘[t]he 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) (alteration in original) (quoting *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 494-95 (1973)). Accordingly and not surprisingly, 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 Padilla*, 542 U.S. 426, 442-47. Congress added the limiting clause – ‘within their respective jurisdictions – to the habeas statute in 1867 to avert the ‘inconvenient [and]potentially embarrassing’ possibility that ‘every judge anywhere [could] issue the Great Writ on behalf of applicants far distantly removed from the courts whereon they sat. *Id.* at 442 (alterations in original) (quoting *Carbo v. United States*, 364 U.S. 611, 617 (1961)).

The Supreme Court noted an exception to this general rule regarding the immediate custody in *Ex parte Endo*, 323 U.S. 283 (1944), in which a Japanese-American citizen interned in California filed a § 2241 petition in the federal district court in the Northern District of California

to challenge her detention. *Id.* at 284-85; *Padilla*, 542 U.S. at 440. Endo had named her immediate custodian as California in her petition, but the government later transferred her to Utah. *Endo*, 323 at 285. The Supreme Court concluded that the subsequent transfer did not divest the Northern District of California of its jurisdiction. *Id.* at 304-06. Instead, “when the Government moves a habeas petitioner after she properly files a petition naming her 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 (characterizing Endo’s holding, and describing it as “important but limited”); *Williams v. Warden, FCI Berlin*, 2025 U.S. Dist. LEXIS 111500 (where a district court acquires initial jurisdiction over a § 2241 petition brought by a person in federal custody challenging his present physical confinement, the post-filing transfer of the petitioner out of the district does not destroy that jurisdiction so long as a person with the power to effectuate the petitioner’s release may be reached by service of process.).

In sum, Jurisdiction over a habeas petition is proper in the district court of the petitioner’s confinement *at the time of filing*. See *Rumsfeld v. Padilla*, 542 U.S. 426, 440 (2004). As provided by statute, here, the Petitioner filed the petition in the District of Massachusetts when he was in New Hampshire. In transferring his petition to the appropriate federal court, the petition acts on his immediate custodian as if it had been filed in the District of New Hampshire on the date it was filed in the District of Massachusetts. Because the law views the petition as filed in the District of New Hampshire on September 4, 2025, when Mr. Zuniga Barrera was in custody in New Hampshire, jurisdiction with this court is proper.

**2. Jurisdiction is Proper because the Government Moved Petitioner to Make it Difficult for Counsel to Know Where to File the Petition.**

Although the 5-4 majority in *Padilla* applied the general rule requiring a habeas petition challenging physical custody to be filed in the place of confinement, two members of that majority,

in a concurring opinion, suggested an exception to the general rule that is implicated here. Justice Kennedy (joined by Justice O'Connor) noted that an exception to filing a petition in the district of confinement 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." *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring). In such a case "habeas jurisdiction would be in the district court from whose territory the petitioner had been removed." *Id.* (Kennedy J., concurring). Although this exception was not adopted by the majority, because Justice Kennedy and Justice O'Connor's votes were "necessary to the formation of a majority," Justice Kennedy's opinion is at least "given particular weight," *Schmitz v. Zilveti*, 20 F.3d 1043, 1045 (9th Cir. 1994) (citing *Middlesex Mut. Ins. Co. v. Levine*, 675 F.2d 1197, 1200 (11th Cir. 1982)); see *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 594 (1st Cir. 1980) (relying upon a concurrence after noting that the author's opinion was needed to make a majority); *ANR Coal Co. v. Cogentrix of N.C., Inc.*, 173 F.3d 493, 499 n.3 (4th Cir. 1999) (observing that courts have given particular weight to a concurrence because the vote of each justice who joined that concurrence was "necessary to create a majority"). The facts here fit the exception Justice Kennedy outlines. The government withheld information about Mr. Zuniga Barrera's whereabouts in until it could ensure he was far away from his legal counsel and support system.

The First Circuit recognized a similar exception in *Vasquez v. Reno*. In "extraordinary circumstances", namely, if the government "spirited an alien from one site to another in an attempt to manipulate jurisdiction." *Vasquez v. Reno*, 233 F.3d 688, 696 (1st Cir. 2000). In this case, a resident of Massachusetts was arrested in Massachusetts and did not materialize in the ICE

Detainee Locator until the government had moved him to Winn Parish, Louisiana. It should not come as a surprise to the Court that the Western District of Louisiana, which exercises jurisdiction over Winn Parish, is a much more favorable jurisdiction for the government in this case. Here, as in *Vasquez*, the government sought to manipulate jurisdiction in transferring Petitioner to Louisiana. It would therefore be improper for this Court to incentivize Respondent's forum-shopping by ceding jurisdiction to the Western District of Louisiana.

**3. The Petitioner Should Be Transferred Back to New Hampshire from Louisiana to Facilitate the Fair and Expeditious Resolution of this Matter**

Transfer to Louisiana is not possible. Under all three transfer statutes, cases can only be transferred to places where they "could have been brought" (28 U.S.C. §§ 1631, 1406(a)) or "might have been brought" (28 U.S.C. § 1404(a)). That key phrase means "the situation which existed when suit was instituted." *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960). The government might argue that the phrase "'where it might have been brought' should be held to relate not only to the time of the bringing of the action, but also to the time of the transfer." *Id.* at 342. But long ago, the Supreme Court forcefully rejected that interpretation: that language cannot "be interpreted to mean . . . 'where it may now be rebrought, with defendants' consent.'" *Id.* at 342–43. By the plain terms of the transfer statutes, transfer to the Western District of Louisiana is improper because, at the time of filing, Mr. Zuniga Barerra could not have brought the petition there as he was not physically in Louisiana nor detained by a warden in Louisiana. He was, instead, in New Hampshire.

Because the case cannot be transferred to Louisiana, the Petitioner should be returned to New Hampshire to facilitate the resolution of this matter. In *Ozturk v. Trump*, the court found that the physical presence of the Petitioner in the jurisdiction would "allow the Court to conduct appropriate fact-finding including to support a bail hearing and would otherwise have no impact

on removal proceedings.” 779 F. Supp. 3d 462, 495 (D. Vt. 2025). Courts have the inherent authority to protect the integrity of its proceedings. *See Degen v. United States*, 517 U.S. 820, 823 (1996) (“Courts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities.”). As in *Ozturk*, the equities strongly favor Mr. Zuniga Barrera’s transfer from Louisiana to New Hampshire in expediting the resolution of this matter and providing him with ready access to legal services, all while doing nothing to prejudice the government’s removal proceedings. 779 F.3d at 496.

### **III. CONCLUSION**

The proper venue to litigate Mr. Zuniga Barrera’s habeas petition is the District of New Hampshire because the government held him in New Hampshire at the time he filed his petition. As a matter of law, his transferred petition from the District of Massachusetts is identical to him filing in the District of New Hampshire. Further transfer of this petition would reward jurisdiction manipulation by the Respondents who hold him in illegal detention. This Court should assume jurisdiction over the matter and order Petitioner’s transfer back to the district so that he may fully and fairly litigate his claim.

Respectfully submitted,

**Elvin Zuniga Barrera**

By and through his counsel,

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