

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

ELVIN ZUNIGA BARRERA,)	
)	
Petitioner,)	No. 1:25-cv-349-JL
)	
v.)	
)	
PATRICIA HYDE, Field Office Director,)	
MICHAEL KROL, HSI New England Special)	
Agent in Charge, and TODD LYONS, Acting)	
Director U.S. Immigrations and Customs)	
Enforcement, KRISTI NOEM, U.S. Secretary)	
of Homeland Security, PAMELA BONDI,)	
U.S. Attorney General, DONALD TRUMP, President)	
of the US)	
)	
Respondents.)	

RESPONDENTS’ MEMORANDUM REGARDING JURISDICTION

Petitioner Elvin Zuniga Barrera (“Barrera” or “Petitioner”) was arrested by immigration authorities in the District of Massachusetts on September 4, 2025. Shortly after his arrest, Barrera was transported by car to an airport in New Hampshire, where he was placed on an airplane bound for Batavia, New York. Barrera’s plane departed New Hampshire at 6:20 p.m. on September 4, 2025, and arrived in New York the same evening. Several days later, Barrera was transferred again from New York to Louisiana. The specific timeline of relevant events is set forth in a filing (DN 7) in the District of Massachusetts case number 1:25-cv-00349, attached hereto as Exhibit 1.

Barrera’s counsel filed a habeas petition on his behalf in the District of Massachusetts at 5:51 p.m. on September 4, 2025. *See* Exh. 1 at 2. At the time of this filing, unbeknownst to counsel, Barrera was no longer in Massachusetts, but was on a plane in New Hampshire awaiting transport to New York. *Id.* That plane took off approximately 30 minutes after Barrera’s petition

was filed in the District of Massachusetts. *Id.*

At the time that Barrera's petition was filed, counsel was unaware of Barrera's whereabouts. It was several days before ICE's online database reflected where Barrera was detained. Though counsel couldn't have known at the time of filing, it appears undisputed now that Massachusetts lacked jurisdiction over Barrera's petition because, at the moment of filing, Barrera was not confined in Massachusetts and his immediate custodian was not located in Massachusetts.

Having determined that Barrera was no longer in Massachusetts, counsel for Respondents in Massachusetts filed a motion on September 12, 2025, seeking to transfer Barrera's petition to the District of New Hampshire. *See* Exh. 1. Though Barrera had long since been transferred out of New Hampshire by that time, the motion was premised on Barrera's presence in New Hampshire at the moment that his petition was filed in Massachusetts and relied on *Ozturk v. Trump*, 777 F. Supp. 3d 26 (D. Mass. 2025), a case factually similar to the instant case. In *Ozturk*, the district court, over the government's objection, transferred a habeas petition that was filed in Massachusetts to the District of Vermont—even though the petitioner was no longer confined in Vermont—because Vermont was where the petitioner was confined when the habeas petition was filed. *Id.*

Undersigned counsel notes that this Court is not bound by *Ozturk* and submits that *Ozturk* was wrongly decided. Undersigned counsel submits that a straightforward reading of *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) suggests that this Court lacks jurisdiction over Barrera and his immediate custodian, who are presently both located in Oakdale, Louisiana. That said, undersigned counsel understands why, in light of the *Ozturk* decision out of D. Mass., counsel in D. Mass. took the position that the petition should be transferred to New Hampshire.

Accordingly, based on the record of proceedings in the District of Massachusetts, and without conceding that jurisdiction in New Hampshire is proper, Respondents agree that they will voluntarily transport Barrera to the District of New Hampshire in light of the assented-to motion to transfer filed in the District of Massachusetts. *See* Exh. 1. Once Barrera is present and confined in this district, the jurisdictional issue will be moot and this Court can entertain Barrera's petition.

CONCLUSION

For the above reasons, the Court should decline to enter any order at this time as Respondents have agreed to voluntarily transport Petitioner to the District of New Hampshire. Once Petitioner is in New Hampshire, the parties can file a status report with the Court. Because Petitioner will then be confined in this district, the jurisdictional issue will be moot and the Court may then entertain Barrera's petition.

Respectfully submitted,

Erin Creegan
United States Attorney

/s/ Kasey Weiland
Assistant U.S. Attorney
NH Bar # 272495
53 Pleasant Street, 4th Floor
Concord, New Hampshire 03301
(603) 225-1552
kasey.weiland2@usdoj.gov

Dated: September 19, 2025