UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAN ALBERTO GIMENEZ GONZALEZ, Petitioner, v. SAM OLSON, in his official capacity as Field Office Director of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, *et al.*, Respondents.	)	No. 25 C 11073 Judge Blakey

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Willian Alberto Gimenez Gonzalez has filed a habeas corpus petition asking for this court to, *inter alia*, compel the respondents to release him from custody, or provide him with a bond hearing, and "[d]eclare that transfer of Petitioner outside of . . . the state of Illinois violates the Due Process Clause of the Fifth Amendment[.]" Dkt. 1 ("Petition" or "Pet.") at 12 (Prayer for Relief). To that end, petitioner has also filed a motion for both a temporary restraining order ("TRO") and a preliminary injunction to enjoin:

> Respondents, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them from any transfer out of Northlake Correctional Facility, located at 1805 West 32nd St., Baldwin, Michigan, 49304 to any other detention facility or outside the jurisdiction of the United States. Petitioner further prays that the Court Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or that this Court provide him a bail hearing pursuant to pending resolution of his petition for *habeas corpus* within fourteen days.

Dkt. 10 at 8 ("Pet'r Mot.").

But for decades, it has been the law within the Seventh Circuit that the appropriate respondent to a petition for habeas corpus is the petitioner's *immediate* custodian. *See Kholyavskiy v. Achim*, 443 F.3d 946, 953 (7th Cir. 2006); *Moore v. Olson*, 368 F.3d 757, 758 (7th Cir. 2004); *al-Marri v. Rumsfeld*, 360 F.3d 707, 709 (7th Cir. 2004); *see also Asolo v. Prim*, No. 21 C 50059, 2021 WL 3472635, at *2 n.1 (N.D. Ill. Aug. 6, 2021). The petition here names six persons as respondents, but none is petitioner's immediate custodian. See Pet'r Mot. at 1 ("At present [sic] is detained at Northlake Correctional Facility, located at 1805 West 32nd St., Baldwin, Michigan, 49304."). Nor were *any* of the respondents his immediate custodian when the Petition was filed on September 14, 2025. *See* Dkt. 1; *see also* Pet'r Mot. at 3 ("Petitioner's counsel filed a petition for habeas corpus with this Court . . . at 12:59 A.M. on September 14th, 2025.").

Instead, Gonzalez "was transported to the North Lake Correctional Facility in Baldwin, Michigan" the afternoon before.[1] *See* Declaration of Victor Luis Cuadro, Jr. ("Cuadro Decl.") at ¶ 9. This is critical for this court's jurisdictional analysis in habeas litigation—both under Seventh Circuit case law and a more recent Supreme Court opinion. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam) ("For 'core habeas petitions,' 'jurisdiction lies in only one district: the district of confinement.' The detainees are confined in Texas, so venue is improper in the District of Columbia. As a result, the Government is likely to succeed on the merits of this action."

[1] The North Lake Correctional Facility is located within the Western District of Texas. *See* ICE, *North Lake Correctional Facility*, https://www.ice.gov/detain/detention-facilities/north-lake-processing-center (last accessed on Sept. 22, 2025). This court may take judicial notice of the location of ICE's North Lake Correctional Facility in Baldwin, Michigan. *See, e.g.*, *Michigan v. U.S. Army Corps of Eng'rs*, 758 F.3d 892, 899 (7th Cir. 2014) (taking judicial notice of official government reports). In fact, judicial notice is appropriate regarding the geographic locations of such government offices. *Cf. United States v. Piggie*, 622 F.2d 486, 488 (10th Cir. 1980) (noting how "[g]eography has long been peculiarly susceptible to judicial notice for the obvious reason that geographic locations are facts which are not generally controversial and thus it is within the general definition contained in Fed. R. Evid. 201(b)").

(quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004))). There is no reason this case should be treated differently.

Instead of granting petitioner's motion, this court must dismiss this action for lack of jurisdiction. *See, e.g.*, *Yacobo v. Achim*, No. 06 C 2432, 2007 WL 1238918, at *3 (N.D. Ill. Apr. 27, 2007) ("Since Respondents Bond and Achim are improper for purposes of this petition, Petitioners failed to name a proper custodian. As such, this Court lacks jurisdiction over the habeas petition."). Alternatively, the court should transfer the petition to the United States District Court for the Western District of Michigan (the district where Gonzalez is currently confined, and *was* confined on the day his Petition was filed) under 28 U.S.C. § 1631. *See, e.g.*, *United States v. Prevatte*, 300 F.3d 792, 799 n.3 (7th Cir. 2002) (citing 28 U.S.C. § 1631; *Gray-Bey v. United States*, 209 F.3d 986, 989 (7th Cir. 2000)).

Background

I. Statutory and Regulatory History

The federal habeas corpus statute, 28 U.S.C. §§ 2241–55, provides that the proper respondent to a habeas petition is "the person who has custody over [the petitioner]," 28 U.S.C. § 2242, and that district courts may grant writs of habeas corpus only "within their respective jurisdictions," 28 U.S.C. § 2241(a). For "core" habeas petitions—petitions challenging present physical confinement (like the petition involved here)—the Supreme Court has held that "there is generally only one proper respondent to a given prisoner's habeas petition," and that this singular proper respondent is the petitioner's "immediate custodian." *Padilla*, 542 U.S. at 434–35. Thus, well-settled practice dictates that the custodian is defined as "the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Id.* at 435. As the Seventh Circuit has recognized, this is because the writ of habeas corpus acts not upon

the petitioner, but upon the person who confines him in allegedly unlawful custody. *See Robledo-Gonzalez v. Ashcroft*, 342 F.3d 667, 673 (7th Cir. 2003) (citing *Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 494–95 (1973)). Courts should therefore be cautious not to "conflate the person responsible for authorizing custody with the person responsible for maintaining custody." *al-Marri v. Rumsfeld*, 360 F.3d 707, 711 (7th Cir. 2004).

II. Factual and Procedural History

Gonzalez is a Venezuelan national who entered this country in October 2023. *See* Pet. ¶ 41. He has been in removal proceedings and has been "charged . . . with, *inter alia*, being inadmissible under § 1182(a)(6)(A)(i) as someone who entered the United States without inspection." Pet. ¶ 44. He was "[p]reviously . . . before the Memphis Immigration Court" and was "subsequently ordered . . . removed *in absentia*." *Id.* "On October 18, 2024, Petitioner moved to reopen his case and for the immigration court to rescind his order of removal. The immigration court granted this request and his case was subsequently moved to the Chicago Immigration Court." *Id.* at ¶ 45. Thus, Gonzalez "is presently in immigration proceedings in Chicago, Illinois." Pet. ¶ 44. The Petition alleges he "was arrested by ICE" "[a]round 11:00 AM on September 12, 2025." Pet. ¶ 42. He was thereafter "detained at the Broadview Processing Center, located at 1930 Beach Street in Broadview, Illinois," *id.* at ¶ 43; *see also id.* at ¶ 49, but was "transported to the North Lake Correctional Facility in Baldwin, Michigan" on September 13, 2025, and arrived there "at approximately 6 p.m." Cuadro Decl. ¶ 9.[2] The Petition was filed on September 14, 2025, *see*

[2] Such transfers of the petitioner to out-of-state facilities stem from the Illinois TRUST Act, which was enacted in 2017 to prohibit state law enforcement officials from participating in federal civil immigration enforcement. *See* TRUST Act, 5 Ill. Comp. Stat. 805/1 *et seq.* (2017). The TRUST Act was also amended in 2021 by the Way Forward Act, to, *inter alia*, prevent state and local law enforcement officials from entering into agreements to detain individuals for federal civil immigration violations. *See id.* at 805/15(g). In combination, the Way Forward Act and the

Dkt. 1, which asserts two grounds for habeas relief: (1) a claim arguing that Gonzalez's detention is unlawful under the Immigration and Nationality Act ("INA"), Pet. at ¶¶ 52–54; and (2) a claim arguing that Gonzalez's detention without a bond hearing violates the Fifth Amendment, *id.* at ¶¶ 55–58. Petitioner's motion was filed on September 19, 2025, Dkt. 10, and this court set a hearing on said motion for September 23, 2025. Dkt. 11.

Legal Standard

Under Federal Rule of Civil Procedure 65, a district court may issue a temporary restraining order or preliminary injunction. Here, Gonzalez seeks a TRO. "The standard for issuing a TRO is the same one that governs issuance of a preliminary injunction," *Inventus Power, Inc. v. Shenzhen Ace Battery Co., Ltd.*, No. 20 C 3375, 2020 WL 3960451, at *4 (N.D. Ill. July 13, 2020), which is "never awarded as of right," *Munaf v. Geren*, 553 U.S. 674, 690 (2008), and "is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion," *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (cleaned up). More specifically, a movant for preliminary relief "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

As the Seventh Circuit has explained, an "applicant must make a strong showing that he is likely to succeed on the merits." *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762 (7th Cir. 2020). "[A] possibility of success is not enough. Neither is a 'better than negligible' chance." *Id.* Movants must also demonstrate clearly, and through specific factual allegations, that immediate and irreparable injury will result to them absent the order. *City of Los Angeles v. Lyons*, 461 U.S.

TRUST Act limit cooperation with federal enforcement in numerous ways, including limiting the detention options for foreign nationals within the State of Illinois.

95, 101–02 (1983) (citations omitted). Only if the movant meets their burden of showing both a likelihood of success on the merits and an imminent risk of irreparable harm will courts then engage in further analysis. *See Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006).

Argument

I. Petitioner Has No Likelihood of Success on the Merits Because This Case Must Be Dismissed for Lack of Jurisdiction.

As alluded to above, the petitioner's motion fails on the merits because this court lacks jurisdiction where Gonzalez is not (and was not at the time the Petition was filed) detained in this district. *See J.G.G.*, 604 U.S. at 672 (holding that because "[t]he detainees are confined in Texas . . . venue is improper in the District of Columbia" and that, "[a]s a result, the Government is likely to succeed on the merits of this action"). As in other cases before Article III courts of limited jurisdiction, the petitioner must come forward with "competent proof" supporting his jurisdictional allegations. *NLFC, Inc. v. Devcom Mid-Am., Inc.*, 45 F.3d 231, 237 (7th Cir. 1995); *see also Kontos v. U.S. Dep't of Labor*, 826 F.2d 573, 576 (7th Cir. 1987). The petitioner's motion attempts to paper over the immediate custodian rule by arguing that the true custodian of Gonzalez remains "unresolved." Pet'r Mot. at 7. But the Petition was filed on September 15, 2025, *see* Dkt. 1; *see also* Pet'r Mot. at 3, and on that day, the petitioner was in Michigan. Not in this district. Cuadro Decl. ¶ 9. This is a problem because the Seventh Circuit has held that the only proper respondent to a habeas petition is the warden or immediate custodian of the facility where the petitioner is detained, and that the case must be brought in the proper district of the petitioner's confinement. Not past confinement. *Kholyavskiy*, 443 F.3d at 949–51. No such immediate custodian is present here. *See* Cuadro Decl. ¶ 9. Thus, because none of the respondents is petitioner's immediate custodian, this court lacks jurisdiction and the case should be dismissed under Federal Rule of Civil Procedure 12(h)(3).

The petitioner here asserts jurisdiction under the habeas statute pursuant to 28 U.S.C. § 2241. *See* Pet. ¶ 10. However, the habeas statute clearly provides that federal judges are entitled to issue writs of habeas corpus only "within their respective jurisdictions," and the writ "shall allege the facts concerning the applicant'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. §§ 2241(a), 2242, & 2243; *see also al-Marri*, 360 F.3d at 708. Moreover, the Supreme Court has ruled for over a century that a habeas petitioner's custodian is the person "'who has the *immediate custody* of the party detained, with the power to produce the body of such party before the court or judge.'" *Kholyavskiy*, 443 F.3d at 949 (quoting *Wales v. Whitney,* 114 U.S. 564, 574 (1885) (emphasis added)). Thus, in *Padilla*, the Court held that where there is a challenge to the present physical confinement, the immediate custodian rule should apply. 542 U.S. at 435. In other words, courts have reiterated that the default rule "in habeas challenges to present physical confinement — 'core challenges' — is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Kholyavskiy*, 443 F.3d at 952 (quoting *Padilla*, 544 U.S. at 444).

In applying *Padilla*, the Seventh Circuit arrived at the same jurisdictional conclusion in the immigration context. The *Kholyavskiy* court found, much like the petitioner in the instant case, that since petition for habeas corpus "attacks the constitutionality of his confinement while he was awaiting removal," and that his "excessive detention at Kenosha deprives him of his rights to substantive and procedural due process," Kholyavskiy did not name the "person who has the *immediate custody* of the person detained, with the power to produce the body of such party before the court or judge." *Kholyavskiy*, 443 F.3d at 953 (emphasis in the original) (quoting *Padilla*, 542 U.S. at 435). The same is true in the instant case where petitioner alleges unlawful confinement

while awaiting for his ongoing removal proceedings to play out before an immigration judge, and he also has not named the person who has immediate custody and control over him.

The petitioner in the instant case presents the same type of claim before this court, and faces the same inevitable jurisdictional result: he has not named the proper respondents to each of his claims, and as such, under *Kholyavskiy*, they must be dismissed for lack of jurisdiction. Thus, applying the Seventh Circuit precedent to the instant case regarding where and whom to sue in a habeas corpus petition brought under 28 U.S.C. § 2241, the default rule is that one must (1) sue the actual custodian — the person in charge of the jail or prison — (2) in the district of confinement. *See al-Marri*, 360 F.3d at 708. Pursuant to the federal habeas statute, federal judges are entitled to issue writs of habeas corpus "within their respective jurisdictions," and the writ "shall allege the facts concerning the applicant'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. §§ 2241(a), 2242, and 2243. Relatedly, and as the Seventh Circuit has explained: "Long ago the Supreme Court held that the phrase 'within their respective jurisdictions' in § 2241's predecessor limits proceedings to the federal district in which petitioner is detained." *al-Marri*, 360 F.3d at 709 (citations omitted). And the Seventh Circuit in *Kholyavskiy* again reiterated this point based on another underlying consideration: "To ensure a more even distribution among the federal districts, Congress has required that a habeas petition name the person in direct charge of the local penal institution." *Kholyavskiy* at 443 F.3d at 949 (citing *al-Marri*, 360 F.3d at 710).

With this backdrop in mind, and because the petitioner has named *no one* who has actual custody over him, the habeas petition must be dismissed for lack of jurisdiction. *Yacobo*, 2008 WL 907444, at *3. As the Seventh Circuit stated in *Kholyavskiy*: "Congress has provided that an application for a writ of habeas corpus shall allege, among other matters, the name of the person

who has actual custody over" the petitioner. 443 F.3d at 948 (cleaned up). And if the writ is "granted by the district court, it 'shall be directed to the person having custody of the person detained.'" *Id.* (quoting 28 U.S.C. § 2243) (citing *Robledo-Gonzales*, 342 F.3d at 673). Finally, this strict adherence to the habeas statute "fits within the logic of collateral relief" 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." *Kholyavskiy*, 443 F.3d at 949, (citing *Braden*, 410 U.S. at 494–95). That is, when the relief is granted, the person who can effectuate the relief is the named respondent, the immediate custodian, not a remote official. In this case, none of the named respondents maintain custody over the petitioner, meaning it is impossible for the court here to issue the writ as to the proper person (that is, the actual immediate custodian of Gonzalez). Thus, without naming the proper respondent, there is no effective relief that the court may grant to the petitioner regarding those who allegedly hold him in "unlawful custody," and as such, the case must be dismissed for lack of jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

II. There Is No Showing of Imminent, Irreparable Harm Here.

This court should also deny petitioner's motion because he cannot carry his burden to show that he is likely to suffer imminent, irreparable harm. *See Int'l Union, Allied Indus. Workers of Am., AFL–CIO v. Local Union No. 589*, 693 F.2d 666, 674 (7th Cir. 1982). Instead of making any specific showing of irreparable harm, petitioner simply points to the risk that he may be moved farther away from Chicago, which would then mean he would be farther away from his counsel. *See* Pet'r Mot. at 6. This is pure speculation and not even enough for Article III injury—much less the irreparability necessary for a TRO to be proper. *See, e.g.*, *Ewing v. MED-1 Solutions, LLC*, 24 F.4th 1146, 1152 (7th Cir. 2022) (discussing how "a risk of future harm, without more, is insufficiently concrete to permit standing to sue").

III. The Balance of Equities and the Public Interest Favor Respondents.

The balance of equities and public interest factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). A court "'should pay particular regard for the public consequences'" of injunctive relief. *Winter*, 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). Here again, petitioner's motion hitches the balancing of harms to his claim for irreparable harm. *See* Pet'r Mot. at 6. But he provides *nothing* to show the gravity of such harm. *See id.* Moreover, "[c]ontrol over immigration is a sovereign prerogative" reserved for the political branches and not the courts. *El Rescate Legal Servs., Inc. v. EOIR*, 959 F.2d 742, 750 (9th Cir. 1992). This is also why the public interest in enforcement of immigration laws is significant. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976). And this same public interest would not be served by the court commandeering this power by micromanaging where (and when) removals of foreign nationals are at play.

Finally, this court may grant preliminary injunctive relief only if the petitioner "gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined." Fed. R. Civ. P. 65(c). Rule 65(c) thus makes some form of security mandatory as a general rule in the Seventh Circuit, *see Gateway E. Ry. Co. v. Terminal R.R. Ass'n of St. Louis*, 35 F.3d 1134, 1141 (7th Cir. 1994), although a court may forgo a bond when "a bond that would give the opposing party absolute security against incurring any loss from the injunction would exceed the applicants ability to pay . . . ." *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 607 F.3d 453, 458 (7th Cir. 2010). The risk of harm to respondents here is not insubstantial, and if the court grants his motion, respondents request that the court require that Gonzalez post a security bond during the pendency of the court's order, in the event it is later determined that respondents were (and have been) wrongfully enjoined. *See id.* (reasoning that

the government "may lose money as a result of the" preliminary injunction obtained against it).

IV. Alternatively, This Court Should Transfer This Matter to the United States District Court for the Western District of Michigan.

As an alternative to dismissal, the court should transfer this matter under either § 1631. Section 1631 provides that whenever a "court finds that 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 [ ] court . . . in which the action or appeal could have been brought at the time it was filed or noticed." See also *Middlebrooks v. Smith*, 735 F.2d 431, 432 (11th Cir. 1984) ("Section 1631 is analogous in operation to 28 U.S.C. §§ 1404(a) and 1406(a)."). Turning to the interest-of-justice factors, "when the material events giving rise to the dispute occur outside the chosen forum, [the] plaintiff's preference [for venue] has minimal value." *Schell v. Aldi, Inc.*, No. 21 C 6654, 2022 WL 900212, at *2 (N.D. Ill. Mar. 28, 2022). That principle is apt here because the petitioner's motion admits that Gonzalez was only ever briefly detained within this judicial district, *see* Pet. ¶¶ 6, 14; *see also* Cuadro Decl. ¶ 9, which means that a substantial portion of the events challenged over his detention never took place (or will not take place) here. *See, e.g.*, *Lamont v. Haig*, 590 F.2d 1124 (D.C. Cir. 1978). This case should thus be transferred to the Western District of Michigan.

Conclusion

For the foregoing reasons, the petitioner's motion should be denied.

Respectfully submitted,

ANDREW S. BOUTROS
United States Attorney

By: s/ Joshua S. Press

JOSHUA S. PRESS
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-7625
joshua.press@usdoj.gov