

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZENGHUI GU,

Petitioner,

- against -

JUDITH ALMODOVAR, *et al.*,

Respondents.

No. 25 Civ. 9240 (LJL)

**RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO TRANSFER THE CASE TO THE U.S. DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY, OR ALTERNATIVELY,
TO DISMISS WITHOUT PREJUDICE TO REFILE**

JAY CLAYTON
United States Attorney for the
Southern District of New York
Attorney for Respondents
86 Chambers Street, Third Floor
New York, New York 10007
Tel: (212) 637-2743

BRANDON M. WATERMAN
Assistant United States Attorney
– Of Counsel –

Preliminary Statement

The petitioner brings this habeas action under 28 U.S.C. § 2241 to challenge his detention by U.S. Immigration and Customs Enforcement (“ICE”) during the pendency of his removal proceedings. But this Court is not the proper forum for this habeas action. Federal district courts possess limited authority to grant writs of habeas corpus within their respective jurisdictions. As the Supreme Court has explained, for challenges to detention, “jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). And “the default rule 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.” *Id.* at 435.

The petitioner was not present or detained within the Southern District of New York at the time this action was filed. Rather, at the time the petition was filed, the petitioner was physically present at the Delaney Hall Detention Facility in Newark, New Jersey, which is located within the District of New Jersey. Thus, this Court did not acquire habeas jurisdiction over this matter, and venue is improper in this district.

Accordingly, this Court should transfer this action to the U.S. District Court for the District of New Jersey, or alternatively, dismiss it without prejudice to refiling in the proper court. If the Court decides to transfer the case, to minimize any delay, the government respectfully requests that the Court waive the seven-day waiting period contained in Local Civil Rule 83.1.

BACKGROUND

In September 2023, Zenghui Gu (“Petitioner”), a native and citizen of China, unlawfully entered the United States near the border. *See* Declaration of Supervisory Detention and Deportation Officer Merlin Marcellin (“Marcellin Decl.”) ¶¶ 2-3. He was apprehended by U.S. Customs and Border Protection, and eventually released and placed into removal proceedings, which remain pending. *Id.* ¶ 3.

On November 4, 2025, Petitioner reported to ICE, at which time he was taken into custody, and it was determined that he would be detained pending his removal proceedings. *Id.* ¶ 4. Gu was processed at ICE’s New York Field Office located at 26 Federal Plaza, and he was booked into 26 Federal Plaza’s temporary hold room at 4:14 p.m., pending his transfer to a detention facility. *Id.* He remained at ICE’s temporary hold room at 26 Federal Plaza until approximately 1:00 p.m. the next day, November 5, 2025, at which time he was booked out of the temporary hold room and transported to the Delaney Hall Detention Facility (“Delaney Hall”) in Newark, New Jersey. *Id.* ¶ 5. ICE departed 26 Federal Plaza with Gu at or about 1:00 p.m., bound for Newark. *Id.* ¶ 6. The vehicle transporting Gu exited New York State via the Holland Tunnel between 1:15 p.m. and 1:20 p.m., and Gu physically arrived at Delaney Hall in Newark at 1:35 p.m. *Id.* His intake process at the facility was completed at 2:00 p.m. *Id.*

At 1:36 p.m. on November 5, 2025, Petitioner filed the instant habeas petition under 28 U.S.C. § 2241, while Petitioner was physically present in Newark, New Jersey.¹ Pet. (ECF No. 1, timestamp); Marcellin Decl. ¶¶ 7-9. The habeas petition challenges his immigration detention as unlawful, and he seeks an order from this Court requiring ICE to immediately release him. *See generally* Pet. (ECF No. 1).

¹ The habeas petition incorrectly alleges that Petitioner was being held at 26 Federal Plaza at the time the habeas petition was filed, *see* Pet. ¶¶ 1, 8, 41, 44, ostensibly based on ICE’s detainee locator page that listed 26 Federal Plaza. But as explained in the Marcellin declaration, Petitioner was physically present at the Delaney Hall Detention Facility in Newark, New Jersey at the time the habeas petition was filed, which is dispositive. Marcellin Decl. ¶¶ 6-9.

ARGUMENT

THE COURT SHOULD TRANSFER THIS ACTION TO THE DISTRICT OF NEW JERSEY OR ALTERNATIVELY DISMISS IT

A. Venue is Improper in this Court

A habeas petition brought under 28 U.S.C. § 2241 challenging detention must be both (i) brought against the immediate custodian and (ii) filed in the district in which the petitioner is detained. Venue is improper in the Southern District of New York because Petitioner was not detained in this district at the time he filed his habeas petition. Marcellin Decl. ¶¶ 5-9. Rather, Petitioner filed the habeas petition in this Court while Petitioner was physically present in Newark, New Jersey. *Id.* ¶¶ 7-9. Consequently, this Court lacks habeas jurisdiction over this action, as venue is improper in Southern District of New York. The Court should thus either transfer this action to the U.S. District Court for the District of New Jersey or dismiss it without prejudice to refiling.

The Supreme Court has made clear that in “core” habeas petitions—*i.e.*, petitions like the instant one that challenges the petitioner’s present physical confinement—the petitioner must file the petition in the district in which he is confined (*i.e.*, the district of confinement) and name his warden as the respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004). In *Padilla*, the Supreme Court described habeas petitions challenging a petitioner’s present physical confinement (*i.e.*, detention) as “core” habeas petitions. *Id.* at 445. For review of such “core” petitions, “jurisdiction lies in only one district: the district of confinement.” *Id.* at 443. Accordingly, “[w]henver a § 2241 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.”² *Id.* at 447; *see also id.* at 443 (explaining that “[t]he plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement”).

In embracing the “immediate custodian” rule, the Supreme Court explained that limiting a district court’s jurisdiction to issue a writ to custodians within their jurisdiction “serves the important purpose of preventing forum shopping by habeas petitioners.” *Padilla*, 542 U.S. at 447 (observing that the result of disregarding the immediate custodian rule “would be rampant forum shopping, district courts with overlapping jurisdiction, and the very inconvenience, expense, and embarrassment Congress sought to avoid when it added the jurisdictional limitation [in 1867]”).

Although *Padilla* addressed a habeas petition outside of the immigration context, the Supreme Court recently applied *Padilla* to a case within the immigration context in *Trump v. J.G.G.*, 604 U.S. 670 (2025). There, the Supreme Court held that for actions challenging immigration detention, they must be brought in habeas and filed in the district of confinement.

² In adopting the “immediate custodian” rule, the Supreme Court rejected the “legal reality of control” standard and held that legal control does not determine the proper respondent in a habeas petition that challenges present physical confinement. *See Padilla*, 542 U.S. at 437-39; *see also id.* at 439 (“In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.”).

J.G.G., 604 U.S. at 672 (“For core habeas petitions, jurisdiction lies in only one district: the district of confinement.” (cleaned up)).³

Because Petitioner was not detained within the Southern District of New York at the time he filed this habeas petition, this Court lacks habeas jurisdiction over this matter and venue is not proper in the Southern District of New York. *See Padilla*, 542 U.S. at 447 (“Whenever a § 2241 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.”); *accord J.G.G.*, 604 U.S. at 672 (“For core habeas petitions, jurisdiction lies in only one district: the district of confinement.” (cleaned up)); *Khalil v. Joyce*, 771 F. Supp. 3d 268, 280–86 (S.D.N.Y. 2025) (holding that court lacked habeas jurisdiction where petitioner was transferred from 26 Federal Plaza to a facility in the District of New Jersey prior to filing of the petition).

Consequently, the Court should either transfer the petition forthwith to the U.S. District Court for the District of New Jersey, or alternatively, dismiss the action without prejudice to refile. *See, e.g., Singh v. Decker*, 20 Civ. 9089 (JPC), 2021 WL 23328, at *5 (S.D.N.Y. Jan. 4, 2021) (“Since the Petition should have been brought in the first instance in the United States District Court for the District of New Jersey, the Court finds that it is in the best interest of justice to transfer this action pursuant to 28 U.S.C. § 1406(a).”).

³ Even before this ruling, a “clear majority of district courts” within the Second Circuit applied “the immediate custodian rule to habeas petitions filed by incarcerated aliens challenging their physical detention prior to deportation.” *Guo v. Napolitano*, No. 09 Civ. 3023 (PGG), 2009 WL 2840400, at *3 (S.D.N.Y. Sept. 2, 2009) (collecting cases); *see also, e.g., Andoh v. Barr*, No. 19 Civ. 8016 (PAE), 2019 WL 4511623, at *2 (S.D.N.Y. Sept. 18, 2019) (“The substantial majority of judges in this District to consider this question have reached the same conclusion, holding that a [petitioner] detained in New Jersey who seeks to challenge his detention, even if under the supervision of ICE personnel in this District, must bring a habeas action in the District of New Jersey.”). This Court was in that “clear majority.” *See Augustin v. Decker*, 20 Civ. 4862 (LJL), 2020 WL 5640061 (S.D.N.Y. July 8, 2020) (“This Court’s independent assessment of the law leads it to align with that majority, and with Respondents.”).

CONCLUSION

For the foregoing reasons, the Court should either transfer this action to the U.S. District Court for the District of New Jersey, or alternatively, dismiss it without prejudice to refiling.⁴

Dated: November 10, 2025

Respectfully submitted,

JAY CLAYTON
United States Attorney
Southern District of New York
Attorney for Respondents

By: /s/ Brandon M. Waterman
BRANDON M. WATERMAN
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2743
brandon.waterman@usdoj.gov

⁴ Should the Court transfer the case, to minimize any delay in having the case heard in the proper forum, the government respectfully requests that the Court waive the seven-day waiting period contained in Local Civil Rule 83.1.