

UNITED STATES DISTRICT COURT
[SOUTHERN DISTRICT OF NEW YORK]

Zenghui Gu,

Petitioner,

v.

JUDITH ALMODOVAR, *in her official capacity as Field Office Director of Enforcement and Removal Operations, New York City, Immigration and Customs Enforcement*; KRISTI NOEM, *in her official capacity as Secretary of the U.S. Department of Homeland Security*; PAMELA BONDI, *in her official capacity as Attorney General of the United States*; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No. 1:25-cv-9240 (LJL)

**PETITIONER'S MEMORANDUM OF
LAW IN OPPOSITION TO
RESPONDENTS' MOTION TO
TRANSFER VENUE OR,
ALTERNATIVELY, TO DISMISS**

I. PRELIMINARY STATEMENT

Petitioner respectfully submits this memorandum in opposition to respondent's memo. Respondents seek to shift this habeas action from the Southern District of New York to the District of New Jersey based on an asserted minute-by-minute transfer timeline that is unsupported by contemporaneous documentation. At the time the petition was filed, Petitioner remained in ICE custody under the New York Field Office's authority, and the challenged custody decision was made and executed at 26 Federal Plaza. Venue and jurisdiction are therefore proper in this Court. The government's motion should be denied.

II. FACTS

1. On November 4, 2025, Petitioner was arrested, processed and booked at 26 Federal Plaza, New York, NY.
2. At 12:57 p.m., ICE's Online Detainee Locator System showed Petitioner's detention location as 26 Federal Plaza, New York, NY. ICE's official detainee-locator listed his detention location as 26 Federal Plaza, New York, NY 10278 at the time of filing. **See Exhibit A of Petition for Writ of Habeas Corpus**
3. By 1:37 p.m., shortly after the habeas corpus petition was filed, the same Online Detainee Locator System search returned, "No Location Found." **See Exhibit 1**
4. Respondents claim he was transported to Delaney Hall in Newark and "arrived" there at 1:35 p.m. on November 5, 2025, one minute before the petition was filed at 1:36 p.m. **See Respondents' Declaration in Support of Motion to Transfer Venue**
5. No transport manifest, GPS record, or facility intake log is attached. The sole evidence is a conclusory declaration by ICE Officer Merlin Marcellin, who admits his account is based on

“review of databases” and “consultation with colleagues,” not personal observation.

6. ICE concedes that Petitioner’s intake at Delaney Hall, which completed transfer of custody was occurred at 2:00 p.m., after the petition was filed.

III. ARGUMENT

A. The Government’s Evidence Fails To Establish That Custody Had Transferred at Filing

Jurisdiction attaches at the time a habeas petition is filed. *See Rumsfeld v. Padilla*, 542 U.S. 426 (2004). *Padilla* expressly reaffirmed *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484 (1973), which recognized that jurisdiction may also lie in the district where the custodian acts and exercises control—even if the petitioner is temporarily housed elsewhere. *Padilla*, 542 U.S. at 438–39 (“*Braden* held that because the petitioner was confined in Alabama but subject to Kentucky’s detainer, the proper respondent was the Kentucky custodian responsible for his future confinement.”). Respondents bear the burden of proving that Petitioner was outside this District when jurisdiction attached. Their only evidence is a declaration from ICE Officer Merlin Marcellin, who was not present during transport, and who merely “reviewed databases” and “consulted colleagues.” No contemporaneous transport logs, GPS records, or facility intake sheets were submitted. Marcellin’s statement that the transport van “arrived at Delaney Hall at 1:35 p.m.” is an unsupported estimate, not a certified fact. Indeed, the declaration concedes that Petitioner’s intake was not completed until 2:00 p.m.—after the habeas petition was filed at 1:36 p.m. *Id.* Until that intake was finalized, custody legally remained with ICE New York, under the authority of Respondent Judith Almodovar. Without a declaration from the warden or records officer of Delaney Hall verifying the time of custody transfer, Respondents’ claim is speculative and insufficient to divest this Court of jurisdiction.

B. Venue Is Proper Because the Detention Decision and Custodian were in New York

Under 28 U.S.C. §§ 2241(a) and 1391(e), venue is proper where any respondent resides or where a substantial part of the events giving rise to the claim occurred. Here, both conditions are satisfied:

1. Respondent, Judith Almodovar, the Field Office Director, resides and exercises authority in this District; and,
2. Petitioner was arrested, processed, and booked at 26 Federal Plaza, where the detention decision was made.

The Government’s objection to venue is without merit. At the time the habeas petition was filed, Petitioner remained under the custody and administrative control of the ICE New York City Field Office, located within the Southern District of New York, as confirmed by the ICE Detainee Locator showing “no record found” immediately after filing. *Id.* Jurisdiction under 28 U.S.C. § 2241 attaches upon filing and is not divested by subsequent or contemporaneous transfers. *See Ex parte Endo*, 323 U.S. 283, 304–05 (1944). Venue and jurisdiction under 28 U.S.C. § 2241 are determined at the time of filing of the petition. *See Ex parte Endo*, 323 U.S. 283, 304–05 (1944). Here, at the time this habeas petition was filed, Petitioner remained under the custody and control of the New York City Field Office of Immigration and Customs Enforcement, located within this District. The ICE Detainee Locator reflected “no record found” immediately after filing, confirming that no transfer had yet been effectuated and that the Petitioner remained within this Court’s jurisdiction. *See Exhibit 1.*

C. Alternatively, Jurisdiction Is Proper Under the “Unknown Custodian” Exception

Even assuming Petitioner’s exact physical location was briefly uncertain, jurisdiction and venue remain proper under the “unknown custodian” exception delineated in *Suri v. Trump*, No. 25-1560, 2025 (4th. Cir. July 1, 2025). Courts have consistently held that where a detainee’s location is indeterminate—such as during transfer or temporary transport---venue properly lies in the district where the responsible ICE Field Office exercises immediate administrative control. *See Suri* (holding that where ICE had not yet booked the

petitioner into a detention facility and his precise location was uncertain, jurisdiction remained proper in the district where the petition was filed). Here, Petitioner was apprehended and processed under the authority of the ICE New York Field Office, which maintained operational custody at the time of filing. Requiring a petitioner to pinpoint an exact detention site while in transit would, as the case of *Suri* cautioned, “the Constitution does not yield to administrative convenience, and due process is not suspended merely because two courts may be asked similar questions.” *Suri* at Footnote 6 (4th Cir. July 1, 2025). This principle underscores that the Government cannot manipulate administrative timing or transfers to frustrate judicial review—a result fundamentally inconsistent with *Ex parte Endo*. Accordingly, venue properly lies in this District. As the Fourth Circuit observed in *Suri*, Justice Kennedy’s concurrence in *Padilla*, clarified that the “immediate custodian” and “district of confinement” rules are not jurisdictional limitations on a court’s power but rather operate as venue-like or personal-jurisdiction rules that may be waived or subject to equitable exceptions. *Id.* at 426, 454 (Kennedy, J., concurring). Justice Kennedy explained that the proper forum for a habeas petition “is best understood as a question of personal jurisdiction or venue,” and that the statutory reference to “respective jurisdictions” in 28 U.S.C. § 2241 “does not of necessity establish that the limitation goes to the power of the court to hear the case.” *Id.* at 454. Accordingly, as recognized in *Suri*, when a detainee’s location or custodian is unknown or undisclosed at the time of filing, courts retain habeas authority under the unknown custodian exception to ensure access to judicial review. Where the Government was not forthcoming regarding the identity of the custodian and the place of detention, habeas jurisdiction lies with the district court from whose territory the petitioner was removed. That reasoning applies squarely here. ICE’s minute-specific claim that Petitioner “arrived” in New Jersey at 1:35 p.m. and that the Petition was filed one minute later cannot divest this Court of jurisdiction, particularly when neither Petitioner nor counsel could ascertain his location through official channels.

D. The Government’s Minute-by-Minute Venue Theory Is Unworkable and Constitutionally Unsound

Respondents' reliance on a minute-by-minute chronology of transfer is not only unsupported by competent evidence but also legally untenable. The ICE Detainee Locator itself reflected no search results for Petitioner at the time counsel filed this Petition—demonstrating the impossible position detainees and their families face when ICE withholds or obscures transfer information. *Id.* A petitioner cannot be expected to divine the government's next destination or await bureaucratic convenience while deprived of liberty and contact with counsel. As the Second Circuit, controlling in this Circuit, held in *Öztürk v. Hyde*, No. 25-1019 (2d Cir. May 7, 2025) habeas jurisdiction properly lies where a petition is filed in good faith based on the detainee's last known location, particularly when the government withholds or obscures custodial information.

Here, as the evidence demonstrates, even the ICE detainee locator produced zero search results at the time of inquiry. *See* Exhibit 1. The petitioner cannot be expected to “file blindfolded,” predicting future transfers to remote facilities. As reported by the *Miami Herald*, the public detainee locator system is notoriously unreliable. *See* Exhibit 2. The public detainee locator system has been widely criticized for its unreliability, with numerous instances of detainees effectively “disappearing” from public view—underscoring the fundamental deficiencies in the government's own custodial tracking mechanisms. *Id.* To require a detainee to “predict” the next facility before filing would effectively immunize arbitrary detention from judicial review—precisely the evil the Suspension Clause forbids. The government's minute-by-minute venue theory therefore fails as both a matter of law and constitutional principle.

E. Equitable Considerations Favor Retaining Venue

Petitioner relied on ICE's official locator showing New York as his detention site. Filing in this district was reasonable and in good faith. Dismissing or transferring would defeat the speedy-relief purpose of habeas corpus. Even if the Court finds a technical defect, the action should remain or be deemed properly filed here “in the interest of justice,” 28 U.S.C. § 1631.

IV. CONCLUSION

Because Respondents have not met their burden to show that venue is improper, and because all operative decisions and the responsible custodian lie within this district, the motion to transfer or dismiss should be denied.

V. RELIEF

For all the foregoing reasons, venue and jurisdiction are proper in the Southern District of New York. Respondents have failed to provide competent, contemporaneous evidence that custody was transferred outside this District before the habeas petition was filed.

Accordingly, Petitioner respectfully requests that this Court:

1. Deny Respondents' Motion to Transfer Venue or Dismiss the Petition;
2. Retain jurisdiction and venue in the Southern District of New York; and,
3. Grant such further relief as the Court deems just and proper.

Dated: November 12, 2025,

LAW OFFICE OF NG & WASSERMAN PLLC

/s/ Jed S. Wasserman

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EXHIBIT 1



Search Results: 0

Your search has returned zero (0) matching records. Please re-check the search terms you entered to ensure they are correct and try your query again. Please remember the system does not provide information for detainees under the age of 18.

If you conducted a name-based search, please remember that only exact matches to the name you entered will be returned. You may want to try searching any name or spelling variants used by the detainee.

If you conducted an A-Number search you may want to try conducting a name-based search instead.

If you are unable to find the detainee using the Online Detainee Locator System, please contact your [local field office](#).

For more information on the Missing Migrant Program please visit [link](#).

[BACK TO SEARCH >](#)

Related Information

Helpful Info

- [Status of a Case](#)
- [About the Detainee Locator](#)
- [Brochure](#)
- [ICE ERO Field Offices](#)
- [ICE Detention Facilities](#)
- [Privacy Notice](#)

External Links

- [Bureau of Prisons Inmate Locator](#)



EXHIBIT 2

IMMIGRATION

Hundreds of Alligator Alcatraz detainees drop off the grid after leaving site

By Ben Wieder and Shirsho Dasgupta

Updated September 16, 2025 12:52 PM



Gift Article

Alligator Alcatraz' detainees continue to face obstacles, amended complaint says

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There still are no protocols for attorneys to get in touch with clients at the immigration detention center known as "Alligator Alcatraz," according to new court papers. By Scripps News



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For the hundreds of men who were detained at Alligator Alcatraz, entering the gates of the makeshift migrant detention center in the Everglades meant exiting the labyrinthine but familiar federal immigration process and entering what several

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immigration attorneys described as an alternate system where the normal rules don't apply.

One Guatemalan man detained at the tent site was accidentally deported to Guatemala before a scheduled bond hearing, his attorney said, reminiscent of the case of Kilmar Abrego Garcia who was mistakenly deported to El Salvador.

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A 35-year-old Cuban man could not be located at the California detention facility where U.S. Immigration and Customs Enforcement said they had sent him, leaving his family and attorney frantically trying to determine where he was for more than a week, they said.

As of the end of August, the whereabouts of two-thirds of more than 1,800 men detained at Alligator Alcatraz during the month of July could not be determined by the Miami Herald. The Herald had obtained the names from two detainee rosters.

Around 800 detainees showed no record on ICE's online database. More than 450 listed no location and only instructed the user to "Call ICE for details" — a vague notation that attorneys said could mean that a detainee is still being processed, in the middle of a transfer between two sites or about to be deported.

It's possible that some of the men who couldn't be located were still at Alligator Alcatraz. Unlike most immigration detention centers, Alligator Alcatraz is state-run and detainees often do not appear in the database run by the federal agency. Florida does not maintain a system to look up those detained at the site either.

But that wouldn't have accounted for all the detainees with no record in the federal database, because the facility's population had declined dramatically by late August, falling below 400 people as an Aug. 21 court ruling effectively halted operations at the site.

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The outcomes for detainees who have been housed at the facility have taken on new significance after an appeals court overturned that earlier ruling, allowing the facility to resume operations.

Some Alligator Alcatraz detainees who couldn't be located in the ICE database might have been deported — even though the internal data obtained by the Herald show the vast majority of detainees didn't have final orders of removal from a judge before entering the facility.

Some of those deportations occurred as a result of detainees deciding to abandon their ongoing immigration cases to put an end to their detention at the facility and its harsh conditions, which included being held in chain-link cages in tents with little protection from the elements.

"It became a game of chicken to see who's going to blink first, to see if the client's going to say 'I don't want to be detained in these conditions just send me back,'" said Miami immigration attorney Alex Solomiany.

But some immigrants who didn't want to leave were also deported, even if they still had a legal right to remain.

One of Solomiany's clients is a 53-year-old man from Guatemala who had been in the United States since 2001.

He was sent to Alligator Alcatraz soon after it opened in July after being stopped by the Florida Highway Patrol in Palm Beach County.

Solomiany filed a motion to be released on bond for the Guatemalan man, who worked as a house painter and is married with children. The attorney showed up for a scheduled hearing at the Krome Detention Center in Miami on Aug. 1 expecting to see his client.

That's when an attorney for the government told him that his client had been accidentally sent to Guatemala instead of being transferred to Krome ahead of the hearing, Solomiany said.

Solomiany is now working with ICE to have his client returned to the US. The man's family asked that his name not be used for fear of retribution.

John Sandweg, the former director of ICE during the Obama administration, said the facility's hasty construction in just over a week made errors inevitable.

"The way that this was rolled out, that it was stood up overnight ... all of that lends itself to mistakes," he said.

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A spokesperson for the office of Florida Gov. Ron DeSantis referred the Herald to ICE when asked for comment. The U.S. Department of Homeland Security, which oversees ICE, did not respond to multiple requests for comment.

'The Alligator Alcatraz label'

Now, more than two months after the site first opened, attorneys say that the chaos that marked the facility's early days has followed their clients even after they have left.

"They've all suffered some pretty bad results just from being tagged with the Alligator Alcatraz label," said immigration attorney Zachary Perez, talking about the nearly half-dozen detainees at the facility that his firm has represented.

One former detainee at the facility went missing for more than a week after he was removed from the facility, according to his family.

Michael Borrego Fernandez, a 35-year-old Cuban national, was detained at Alligator Alcatraz for nearly all of July. He was one of several detainees who sued the Trump and DeSantis administrations over legal access at the facility.

Borrego was moved to Krome at midnight on Aug. 2 and according to ICE's detainee locator was transferred around Labor Day to Otay Mesa Detention Center, a privately-run migrant detention site in San Diego.

While at Krome, Borrego called his mother, wife and three-year-old daughter at least once a day, said his mother, Yaneisy Fernandez. But after his transfer, his family didn't hear from him for more than a week.



Michael Borrego Fernandez hugs his mother Yaneisy Fernandez. *Yaneisy Fernandez*

Borrego's attorney Mich Gonzalez said he called the California facility repeatedly but was told each time that no one by that name was detained there.

Borrego's family was worried about his health.

While at Alligator Alcatraz, he needed an emergency surgery for stage 4 hemorrhoids. His mother said that he was in great pain after the surgery and did not get proper medical care during his recovery period, most of which he spent shackled to a bed.

Borrego's family were at their wits end trying to find him, Fernandez said.

"This is like psychological torture," she said. "Where's the humanity?"

Finally, after more than a week, they heard from Borrego again.

But he wasn't in California.

He was 2,000 miles away from where ICE said he would be.

Borrego had abruptly been deported to the Mexican state of Tabasco.

McClatchy's Tyler Dukes contributed to this story.

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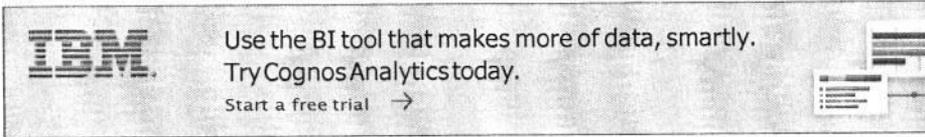
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