

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Alex Josue Banegas Bados,

Petitioner,

v.

Todd LYONS, in his capacity as Acting
Director, Immigration and Customs
Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; Pamela
BONDI, U.S. Attorney General; Executive
Office for Immigration Review;
David EASTERWOOD, Field Office
Director of St. Paul Field Office for U.S.
Department of Homeland Security, United
States Immigration and Customs
Enforcement, Enforcement and Removal
Operations,

Respondents.

Case No. 0:26-cv-01008-
KMM-EMB

**REPLY TO RESPONDENTS'
RESPONSE TO PETITION
FOR WRIT OF HABEAS
CORPUS**

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CORPUS**

Petitioner submits this reply to the Respondents' response to the petition for writ of habeas corpus, filed on February 5, 2026. (ECF No. 4 "Response").

I. The Court has jurisdiction over Petitioner's habeas case.

In their response, the Respondents contend that this Court does not have jurisdiction over Petitioner's habeas case, because Petitioner is being held in the state of Texas and was there at the time the habeas petition was filed. However, the Federal District Court for the District of Minnesota does have jurisdiction to hear Petitioner's habeas case, which attached at the time of Petitioner's apprehension and detention in Minnesota by Respondents.

The Court should find jurisdiction over Petitioner's habeas petition, because habeas jurisdiction turns on custody and control, not on the Government's post-seizure movement of a detainee. Further, the vast majority of acts at issue in Petitioner's habeas petition occurred in the District of Minnesota and were caused by Respondents' actors in the District of Minnesota. Respondents arrested and detained Petitioner in the District of Minnesota. Prior to his arrest, Petitioner lived in the District of Minnesota for over six years. Petitioner retained counsel in Minnesota to challenge his arrest and detention. The only factor tying Petitioner to a venue in Texas is the unilateral decision of the Respondents to immediately, and without notice, transfer Petitioner to Texas after arresting him in Minnesota, without a warrant and as a part of the current immigration enforcement surge taking place in Minnesota.

The only explanation that Respondents have provided for Petitioner's move from Minnesota to Texas was "for bed-space reasons and not for any purpose of evading jurisdiction or forum shopping." (ECF No. 4 "Response" at 1.) In Respondents' own words, they did not intend to evade jurisdiction or forum shop when they moved Petitioner outside of the District of Minnesota. That is tantamount to saying that jurisdiction remains here, but for their issue of having

initiated a massive arrest operation without accounting for limited detainee bed space.

The Federal District Court for the District of Minnesota does have jurisdiction over this case as “the venue for habeas petitions allow for equitable concerns such as convenience and appropriateness of the district.” *Jose A. v. Noem*, No. 26-cv-480 (JMB/ECW), 2026 WL 172524, at *2 (D. Minn. Jan. 22, 2026).

Further, venue should not be transferred simply because a petitioner was unable to file their petition prior to transfer, particularly when that transfer was not at a petitioner’s request, is wholly outside of their control, and occurs in a very short time after arrest. Transferring venue solely on the basis that a petitioner was transferred, and thereby currently detained elsewhere, could also have the effect of incentivizing forum shopping, as Respondents could quickly transfer detained individuals to a district of their choosing.

Id. Each of these factors and the overall circumstances of the present case weigh heavily in favor of a finding that this District was a proper forum for Petitioner to file his habeas petition. *See Abdiselan A.A. v. Bondi*, No. 26-cv-358 (JRT/ECW), 2026 WL 161526, at *2 (D. Minn. Jan. 21, 2026); *Tah L. v. Trump*, No. 26-cv-171 (MJD/SGE), 2026 WL 184524, at *4 (D. Minn. Jan. 19, 2026), *report and recommendation adopted as modified*, 2026 WL 184529 (D. Minn. Jan. 23, 2026); *Flores-Linares v. Bondi*, No. 26-cv-298 (SJB), 2026 WL 179208, at *5 (E.D.N.Y. Jan. 22, 2026). This Court has previously observed in a similar case that “transferring venue would prolong both [Petitioner’s] detention and the adjudication of his claims” unnecessarily. *Jose A.*, 2026 WL 172524, at *2.

The Court should find that the same rationale applies in the present case and should apply it equally. As the Supreme Court reasoned in *Braden*, “so long as the custodian can be reached by service of process, the court can issue a writ ‘within its jurisdiction’ requiring that the [petitioner] be brought before the court for a hearing on his claim, or requiring that he be released outright

from custody, even if the [petitioner] himself is confined outside the court's territorial jurisdiction." *Braden v. 30th Jud. Cir. Ct. Of Ky.*, 410 U.S. at 495 (1973). It is clear that Respondents can be reached through service of process, proven in the fact that they received the Order of this Court and they were capable of complying by filing their response. Accepting Respondents' argument would require petitioners in immigration-related habeas proceedings to speculate as to forum or to risk the petition being summarily rejected as having been brought in an inappropriate forum. Such circumstances have no place in habeas litigation challenging the legality of detention, especially when, like here, the arguments raised in support of that detention have been overwhelmingly rejected by Courts across the nation.

II. Petitioner is not subject to a final order of removal.

The Respondents also contend in their response that Petitioner is subject to a final order of removal from 2009 and that certain allegations in the petition are incorrect. The Respondents do not state which specific allegations in the petition are incorrect.

Petitioner most recently entered the United States in December of 2018, and he was arrested by immigration officials upon his entry. During Petitioner's detention, an asylum officer determined that he had a reasonable fear of persecution or torture if he was to return to his country of origin. Ex. C. Per that determination, he was issued a Form I-863, Notice of Referral to the Immigration Judge. *Id.* That Form I-863 states the following:

"... DHS has reinstated a prior exclusion, deportation, or removal order of the above-named alien [Petitioner] pursuant to section 241(a)(5) of the Act [Immigration and Nationality Act]... The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **has** a reasonable fear of persecution or torture. The matter has been referred for a determination in accordance with 8 CFR § 208.31(e)."

Petitioner's case was not thereafter referred to an Immigration Judge for determination as DHS failed to comply with 8 C.F.R. § 208.31(e), which states in part, "[s]uch cases shall be adjudicated

by the immigration judge in accordance with the provisions of § 208.16.”

After Petitioner was found to have a reasonable fear of persecution or torture, he was not in fact subject to a final order of removal like the Respondents contend. He was instead subject to the referral of his case to an Immigration Judge. After this referral, he was released from custody and allowed to enter the United States. Ex. D. This procedure is in line with the statutory requirements under 8 C.F.R. § 208.31(e).

The referral of Petitioner’s case to an Immigration Judge was not his responsibility, nor did Petitioner ever have the capacity or authority to make that referral happen. The referral notice that he received never led to any scheduled hearing with an Immigration Judge for the adjudication of his case, which is a failure of either DHS, EOIR, or both, and certainly not a failure of Petitioner. Rather, Petitioner entered the United States after he was released from custody and awaited the referral to an Immigration Judge that never took place. Petitioner continued to have a reasonable fear of return to his home country, so he pursued relief in the only way he could, with an application before the United States Citizenship and Immigration Services. Had Petitioner’s case ever actually been referred to an Immigration Judge, he would have filed that same application for relief defensively and appeared as required.

CONCLUSION

As discussed above, Petitioner respectfully requests that the Court maintain jurisdiction over Petitioner’s habeas petition, and order that he be immediately released from immigration detention based on his warrantless arrest. In the alternative, as per the Petition, Petitioner requests that the court provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a), enjoin Respondents from denying Petitioner a bond hearing under U.S.C. § 1225(b)(2), and should the Immigration Judge grant a bond, enjoin Respondents from invoking the auto-stay provision found

at 8 C.F.R. § 1003.19(i)(2) during the pendency of any bond appeal, and grant any other and further relief that this Court deems just and proper.

DATED this 6 February 2026

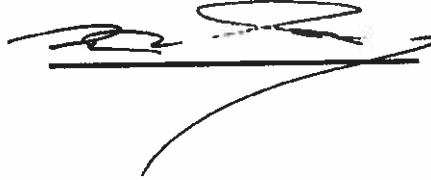


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Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned Counsel has discussed with Petitioner the events described in this Reply and, on the basis of those discussions, verify that the statements in the Petition are true and correct to the best of his knowledge and belief.

Date: 6 February 2026

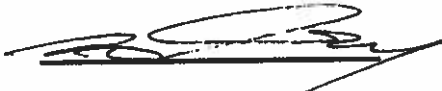
A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

I certify that I caused a copy of the foregoing

REPLY

to be served on all counsel of record via ECF.

Dated this 6th day of February 2026.


Matthew M. McGilvray