

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOSE CASTRO-CRUZ, Petitioner, v. DAVID VENTURELLA, Acting Director, United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; TODD BLANCHE, Acting United States Attorney General; JOHN RIFE, Field Office Director, Philadelphia Field Office, United States Immigration and Customs Enforcement; <i>in their official capacities</i>, Respondents.	Civ. Act. No.: 1:26-cv-00062 Hon. Thomas S. Kleeh
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RESPONSE TO MOTION TO DISMISS OR TRANSFER

NOW COMES the Petitioner, Jose Castro-Cruz, by and through counsel, and hereby responds to Respondents' motion to dismiss or transfer. *See Response to Amended Petition and Motion* (hereinafter "*Response*") (ECF No. 22) at 12-19.¹

When it comes to the jurisdictional and venue issue presented here, this Court is not writing on a blank slate. Rather, this Court's analysis should be guided by the following bedrock principle of habeas corpus, recently reaffirmed by the Fourth Circuit:

As Blackstone put it, "the king is **at all times** [e]ntitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted."
3 William Blackstone, *Commentaries* *131. Put another way, **there is no gap in**

¹ Respondents' brief includes a motion to dismiss or transfer on jurisdictional grounds, *see Response* at 12-19, as well as a substantive response to the Petition. Petitioner will seek leave of court to file a separate reply to substantive portion of the response brief. Given the Court's clarification that it will only hear arguments regarding jurisdiction and venue at the forthcoming hearing, Petitioner is now separately filing his response to the motion or dismiss or transfer.

the fabric of habeas—no place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it.

Suri v. Trump, No. 25-1560, 2025 WL 1806692, at *5 (4th Cir. July 1, 2025) (citation modified) (emphasis added).

Like all persons alleging unlawful detention, Petitioner was entitled to an effective forum for habeas relief at the inception of his detention. At the time the Petition was filed, that forum was the Northern District of West Virginia, Petitioner's last *known* location, where he had been first detained *See* Section I, *infra*. This Court should deny Respondents' motion to dismiss and retain jurisdiction over the instant petition.

In further support of his position, Petitioner states the following:

I. Factual background

On May 28, 2026, Petitioner was initially detained at the Don Patron Mexican Grill in Bridgeport, West Virginia at approximately 10:50 A.M. *See Response* at 2. According to the declaration of John C. Foster, a Deportation Officer ("DO") employed by the U.S. Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Operations ("ICE/ERO"), Petitioner "was transported to the ICE/ERO field office in Pittsburgh, Pennsylvania, at approximately 12:00 P.M." and arrived at said office "at approximately 13:50/1:50 P.M." Foster Declaration at ¶¶ 8-9. According to DO Foster, Petitioner was transported to the Moshannon Valley Processing Center ("MVPC"), where he currently remains, "[a]t approximately 21:30/9:30 P.M." and "arrived at approximately 22:09/10:09 P.M." *Id.* at ¶ 13.

DO Foster's declaration is generally based on a combination of "personal knowledge, belief, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, employees of DHS contract facilities, and information portals maintained and relied upon by DHS in the regular course of business." *Id.* at ¶ 2. DO Foster's declaration

does not specify the basis for his assertions regarding the timing of Mr. Castro Cruz's transportation. *Id.* at ¶¶ 2-3, 8-9. Thus, the basis appears to be some unspecified combination of documents and government records. *Id.* at ¶ 3.

At the time the Petition was filed, counsel had no reasonable means of determining Petitioner's location and immediate custodian. As set forth in the attached affidavit of counsel (*Exhibit A*), prior to filing the petition, counsel undertook efforts to attempt to locate Petitioner in custody and identify his custodian, including calling a representative of the United States Attorney's Office for the Southern District of West Virginia in an attempt to determine an appropriate point of contact for information regarding Mr. Castro-Cruz and other detainees and calling the Pittsburgh ICE ERO Field Office. Sidney Declaration at ¶¶ 12-13. These efforts followed other unsuccessful efforts to obtain information regarding other detainees all afternoon, including: searching via the West Virginia Department of Corrections and Rehabilitation Inmate Search tool; repeatedly searching the ICE Online Detainee Locator System; emailing representatives of the West Virginia ICE Enforcement and Removal Operations ("ERO") Field Office; and calling the Pittsburgh ICE ERO Field Office four times. *See id.* at ¶¶ 7-11. Notwithstanding these efforts, as of the time the petition was filed, counsel was unable to locate Petitioner or identify his present physical custodian. Counsel therefore filed a petition in Petitioner's last confirmed location naming all Respondents known to him with the power to effectuate Petitioner's release.

II. Jurisdiction and venue are proper in the Northern District of West Virginia

a. This Court has subject-matter jurisdiction over the Petition.

As a preliminary matter, there is no question that this Court has subject-matter jurisdiction over the Petition. While it is unclear whether "the question of the proper location for a habeas

petition is best understood as a question of personal jurisdiction or venue[.]" *see Rumsfeld v. Padilla*, 542 U.S. 426, 451 (2004) (Kennedy, J., concurring), at least this much is clear: the immediate-custodian and territorial-jurisdiction rules set forth in the *Padilla* majority "are not jurisdictional in the sense of a limitation on subject-matter jurisdiction." *Id.* at 451; *see also id.* at 452 (recognizing that "objections to the filing of petitions based on" the immediate-custodian and territorial-jurisdiction rules "can be waived by the Government"); *Padilla*, 542 U.S. at 434 n.7 (recognizing that the opinion in *Padilla* does not use the term "jurisdiction" to mean "subject-matter jurisdiction of the District Court"); *Kanai v. McHugh*, 638 F.3d 251, 258 (4th Cir. 2011):

[R]egardless whether the phrase ["within their respective jurisdictions"] is better understood as a requirement of personal jurisdiction over a habeas respondent, . . . or as a venue provision prescribing the particular location for the filing of a habeas petition, . . . neither of these types of requirements addresses the subject-matter jurisdiction of the district courts.

See also Fisher v. Unknown, No. 23-7069, 2024 WL 5135610, at *1 (4th Cir. Dec. 17, 2024) (unpublished) (*citing Kanai*, 538 F.3d at 255, 257)) (reversing dismissal of § 2241 petition based upon lower court's finding that it lacked subject matter jurisdiction).

b. Venue and jurisdiction were properly vested in the Northern District of West Virginia at the time of filing.

At the time of filing, counsel for Petitioner did not know—and had no further reasonable means of ascertaining—whether Petitioner was still present in the Northern District of West Virginia.

Judge Chambers' opinion in *Linarez Vilchez v. Kluemper*, Civil Action No. 3:26-0261, 2026 WL 1045082 (S.D.W. Va. Apr. 16, 2026) is instructive here. *See id.*, at *3 ("The unknown custodian exception applies to the facts of this case. Petitioner was arrested within the Southern District of West Virginia, and his last verified location was within the Southern District of West Virginia."). Here, as in *Linarez Vilchez*, Respondents attempt to distinguish *Suri* on the ground

that “there are no allegations of some type of clandestine methods or district shopping.” *Response* at 15. But as Judge Chambers noted in *Linarez Vilchez*, “[w]hile the Government accurately distinguishes some facts in *Suri*, the underlying reasoning still applies whether the Government has a malevolent interest in the transfer of the Petitioner or otherwise.” Civil Action No. 3:26-0261, 2026 WL 1045082, at *3. As Judge Chambers recognized, even in the absence of governmental bad faith:

To require Petitioner’s counsel to wait for an update to ICE Online Detainee Locator System to identify the location of the Petitioner or for [a respondent] to locate Petitioner, both completely out of Petitioner’s counsel’s control, would be contrary to the reasoning in *Suri* and completely frustrate the purpose of habeas corpus petitions.

Id. So too here.²

As in *Linarez Vilchez*, here, Petitioner did not err in seeking habeas relief in the Northern District of West Virginia based upon the facts knowable to counsel at the time of filing—i.e., that Petitioner had been arrested in the Northern District of West Virginia and that his last known location was in the Northern District of West Virginia—rather than making a speculative venue determination following his inability to obtain any information from the government. Requiring a greater degree of certainty to determine proper venue under these circumstances would delay filings pending confirmation of information uniquely known to the Government, creating an unacceptable “gap in the fabric of habeas[.]” *See Suri*, No. 25-1560, 2025 WL 1806692, at *5 (citation modified). For this reason, *Suri* explicitly rejected the suggestion that the unknown

²Respondents attempt to distinguish *Linarez Vilchez* on the ground that the petitioner in that matter “appears to have provided more substantive information regarding the efforts and timing regarding ascertaining Petitioner’s location.” *Response* at 15. *But see* Section I, *supra* (detailing counsel’s efforts to ascertain Petitioner’s location). Additionally, Respondents attempt to distinguish *Linarez Vilchez* on the ground that Petitioner in that matter was not physically located in the Western District of Pennsylvania at the time the petition was filed. Petitioner will address Respondents’ argument for transfer in Section II(c), *infra*.

custodian exception only applies after a “prolonged” period. *See id.*, at *6 (“We will not require attorneys to wait to file a habeas petition until ‘prolonged’ period has elapsed or the government sees fit to reveal their client’s location.”).³ The wisdom of *Suri* is confirmed by the facts in the instant case, where, according to DO Foster, Petitioner did not even arrive at the facility of the custodian who Respondents believe should have been sued until more than eleven (11) hours after his arrest. *See Foster Declaration at ¶¶ 7, 13.*

None of the authorities relied upon by Respondents to suggest that jurisdiction in the Northern District of West Virginia is improper involve facts implicating the unknown custodian doctrine as set forth by the Fourth Circuit in *Suri*. *See, e.g., United States v. Little*, 392 F.3d 671, 680 (4th Cir. 2004) (dismissing habeas petition when petitioner refiled his petition while confined in Texas). Respondents’ focus on the location of Petitioner’s immediate custodian’s location outside the Northern District of West Virginia is therefore misguided. *See also, e.g., Bakuradze v. Adams*, No. 5:26-CV-18, ECF No. 10, p. 2 (N.D.W. Va. Mar. 2, 2026) (Bailey, J.) (retaining jurisdiction over habeas petition and granting petition, notwithstanding petitioner’s transfer to MVPC one (1) day after the petition was filed).

At bottom, at the time the petition was filed, counsel had been unable to discover petitioner’s location upon a reasonable inquiry. *Suri*, No. 25-1560, 2025 WL 1806692, at *6. Under these circumstances, an “attorney must be able to file a habeas petition in the detainee’s

³ The cases cited by Respondents for the proposition that “transitory or temporary detention” does not establish habeas jurisdiction (*see Response at 17-18*) are inapposite: all involve petitioners who had been temporarily transferred from a more permanent custodial location where a petition could have properly been filed.

last-known location against their ultimate custodian.” *Id.* Jurisdiction and venue are proper in the Northern District of West Virginia.⁴

c. Respondents have not established that transfer is permissible or warranted.

i. *Respondents bear the burden of establishing that transfer is proper.*

As an alternative to dismissal, Respondents invoke 28 U.S.C. § 1404(a) and seek transfer to the Western District of Pennsylvania. *See Response* at 10, 17.

The party seeking transfer “typically bears the burden of demonstrating that transfer is proper.” *Carroll v. Westfield Nat’l Ins. Co.*, No. 1:22-CV-14, 2022 WL 2286460, at *1–2 (N.D.W. Va. June 22, 2022) (Kleeh, J.). *See also, e.g., Gen. Star Nat’l Ins. Co. v. DiPino*, No. 5:15CV49, 2015 WL 6453155, at *2 (N.D.W. Va. Oct. 23, 2015) (Stamp, Jr., J.) (“[T]he moving party bears the burden of showing that transfer to another forum is proper.”).

Relatedly, “a plaintiff’s choice of venue is entitled to substantial weight in determining whether transfer is appropriate.” *Trs. Of the Plumbers & Pipefitters Nat. Pension Fund v. Plumbing Servs., Inc.*, 791 F.3d 436, 444 (4th Cir. 2015) (citation modified). *See also, e.g., Sherrell v. FTS International, Inc.*, No. 5:19-CV-181, 2019 WL 3082463, at *2 (N.D.W. Va. July 15, 2019) (Bailey, J.) (citation modified) (“[T]he plaintiff’s choice of forum generally should not be disturbed.”). A motion for transfer should not be granted when it “would only shift certain inconveniences between the parties.” *Carroll*, No. 1:22-CV-14, 2022 WL 2286460, at *2.

ii. *Even if transfer were permissible, Respondents have not met their burden of establishing it is appropriate here.*

⁴ Respondents motion asserts that “the Court lacks personal jurisdiction over the immediate custodian.” *Response* at 17. Respondents do not, however, offer any argument as to why personal jurisdiction is improper with respect to any of the named Respondents. Thus, any objection to personal jurisdiction over the named Respondents should be deemed waived. *See* Fed. R. Civ. P. 12(h)(1)(A); Fed. R. Civ. P. (g)(2). But even if such objections are not deemed waived, the rule set forth in *Suri* governs here.

In adjudicating a transfer motion, courts weigh a number of case-specific factors in determining whether the moving party has met its burden of justifying transfer from petitioner's chosen forum. *See Carroll*, No. 1:22-CV-14, 2022 WL 2286460, at *2.

Respondents do not present any substantive arguments for transfer other than the fact that Petitioner and his immediate custodian are presently located in Pennsylvania. But in light of the unknown custodian doctrine, it was proper for Petitioner to file the petition against his "ultimate custodian[s]" as respondents. *See Suri*, No. 25-1560, 2025 WL 1806692, at *6. And while Respondents argue that "the Court lacks personal jurisdiction over the immediate custodian," *see Response* at 17, the named Respondents in this matter clearly have the power to effectuate Petitioner's release. Accordingly, Judge Bailey, Judge Johnston, and Judge Chambers have all issued orders resulting in the release of habeas petitioners arrested in West Virginia following their transfer out of state. *See, e.g., Bakuradze*, No. 5:26-CV-18, ECF No. 10 (ordering petitioner's release notwithstanding his prior transfer to MVPC); *Cruz-Cruz v. Venturella*, No. 3:26-cv-404, ECF No. 10 (S.D.W. Va. June 22, 2026) (Johnston, J.) (ordering petitioners' release notwithstanding their prior transfer to MVPC); *Serna Zarate, v. Mason*, No. 2:26-cv-00069, ECF No. 29 (S.D.W. Va. Feb. 9, 2026) (Johnston, J.) (ordering petitioners' release notwithstanding their prior transfer to California); *Linarez Vilchez v. Kluemper*, Civil Action No. 3:26-0261, 2026 WL 1049282 (Apr. 17, 2026) (Chambers, J.) (ordering petitioner's release notwithstanding his prior transfer to Cambria County Prison in Pennsylvania). Respondents' authorities in support of their transfer argument, *see Response* at 17-19, are inapposite because they are not cases wherein the unknown custodian doctrine applies.

With respect to the convenience of the parties, especially given that Petitioners can appear at hearings by Zoom upon order of the Court, Respondents suffer no inconvenience as a

result of the forum. Petitioner's counsel, on the other hand, would be inconvenienced by a transfer. This Court has found that only issues of law are before the Court at this time. *See* ECF Nos. 26, 27. But even to the extent questions of fact come before the Court, there is no reason to believe that transfer would inconvenience Respondents, and in any event, transfer is inappropriate when it would only shift certain inconveniences between the parties." *Carroll*, No. 1:22-CV-14, 2022 WL 2286460, at *2. And to the extent witnesses to Petitioner's arrest are relevant to the proceeding, they would by and large be inconvenienced by transfer.

Further, traditional principles of venue militate towards this Court retaining jurisdiction. Petitioner was arrested in the Northern District of West Virginia, where he resides with substantial community connections. *See Suri*, 785 F.Supp.3d at 148 ("It is not an exercise in forum shopping for Petitioner to file and seek review of his habeas claims in this District—the jurisdiction in which he resides, was arrested, and was originally detained.").

Additionally, transfer of the petition is not in the interest of justice because it would result in further delay in the ultimate disposition of the petition. *See Sanchez v. Noem*, Civil Action No. 3:26-0067, 2026 WL 483475, at *1 (S.D.W. Va. Feb. 20, 2026) (Chambers, J.) ("The endless opportunity of the American dream that promises 'liberty and justice for all' is tarnished with each night an individual spends wrongfully detained."); *Johnson*, No. 2:21-cv-00380, 2022 WL 19039524, at *8 (finding that transfer would result in delay of adjudication of pending motions and would therefore "not further the interest of justice").

Finally, as set forth in the separately filed response of Petitioner Cristal Cumes (1:26-cv-00056), a transfer in that matter would be impermissible. Given the virtually identical issues at play in the various cases, it would serve the interests of justice and judicial economy for this Court to retain jurisdiction of Petitioner Castro-Cruz's matter as well.

In short, Respondents have not demonstrated that transfer is appropriate. The motion to transfer should be denied.

Dated: June 25, 2026

Respectfully submitted,
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