

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZENGHUI GU,

Petitioner,

- against -

JUDITH ALMODOVAR, *et al.*,

Respondents.

No. 25 Civ. 9240 (LJL)

**RESPONDENTS' REPLY MEMORANDUM OF LAW IN FURTHER 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 REFILING**

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

As discussed in the government’s opening brief (“Gov’t Br.”) (ECF No. 6), venue is not proper in the Southern District of New York for this habeas action because the petitioner was located in New Jersey at the time the petition was filed. Petitioner does not raise a colorable claim that he was in this district at the time of filing. Instead, he argues that he was still in the *legal* custody of ICE’s New York Field Office at the time of filing, and so venue is proper in the Southern District of New York. But the Supreme Court rejected the legal control theory more than 20 years ago. The fact that Petitioner was physically present in New Jersey at the time his petition was filed in this Court is dispositive under *Padilla*, and nothing in Petitioner’s opposition establishes that this district, as opposed to the District of New Jersey, is the proper forum for his habeas action. Thus, the Court should transfer this action to the District of New Jersey, or otherwise dismiss it.

BACKGROUND

As set forth in the declaration of Supervisory Detention and Deportation Officer Merlin Marcellin, based on a review of agency records and consultation with agency employees, Petitioner was transported from 26 Federal Plaza in New York, New York to the Delaney Hall Detention Facility in Newark, New Jersey, departing at or about 1:00 p.m. on November 5, and arriving at Delaney Hall at 1:35 p.m. Marcellin Decl. (ECF No. 7) ¶¶ 5-6.

To dispel any doubt as to the sequence of events, one of the deportation officers assigned to transport Petitioner that day, Deportation Officer Alonzo Paulino, corroborates the timeline in the attached declaration.¹ Officer Paulino is assigned to ICE’s Transportation and Removal Operations unit, and he was on the transport team that took Petitioner to Newark on November 5.

¹ Deportation Officer Paulino was unavailable to submit his declaration by the November 10, 2025, deadline for the government’s opposition due to prior work commitments in the field.

See Declaration of Deportation Officer Alonzo Paulino (“Paulino Decl.”) ¶¶ 5-6. He has been involved in transporting aliens from 26 Federal Plaza to Delaney Hall multiple times a week for the past five months, and he is personally familiar with common travel conditions and times on the route. *Id.* ¶ 6.

On November 5, Officer Paulino and another deportation officer accompanied a group of detainees—including Petitioner—being transported from 26 Federal Plaza to Delaney Hall. *Id.* ¶ 7. They departed 26 Federal Plaza at or about 1:00 p.m., bound for Newark. *Id.* The vehicle transporting Gu exited New York State via the Holland Tunnel—and entered New Jersey—at approximately 1:20 p.m., as the vehicle did not encounter significant traffic or other delays. *Id.* The vehicle arrived at Delaney Hall in Newark at approximately 1:35 p.m. *Id.* ¶ 8. After arrival, Gu’s intake process at the facility, which included clearing security gates, offloading from the vehicle, and handover paperwork, was completed at approximately 2:00 p.m. *Id.*

While Petitioner was present in New Jersey, his counsel filed the instant habeas petition at 1:36 p.m. on November 5. Pet. (ECF No. 1, timestamp). At that time, Petitioner had already crossed into New Jersey via the Holland Tunnel. Paulino Decl. ¶¶ 7-8.

ARGUMENT

THIS COURT LACKS HABEAS JURISDICTION OVER THIS ACTION BECAUSE VENUE IS NOT PROPER IN THE SOUTHERN DISTRICT OF NEW YORK

A straightforward application of *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), leads to the conclusion that the Southern District of New York is not the proper forum for this habeas action. To determine whether a court acquired habeas jurisdiction, “the key is where [the petitioner] was detained when he filed his habeas petition.” *Arevalo-Guasco v. Dubois*, 788 F. App’x 25, 26 n.1 (2d Cir. 2019). There can be no doubt that the petitioner *was not* detained in this District when he filed his habeas petition—he was physically present in New Jersey at the time of filing. See

Paulino Decl. ¶¶ 7-8. Under *Padilla*, that is the end of the inquiry concerning this Court’s habeas jurisdiction.

Indeed, in *Öztürk v. Hyde*, the Second Circuit acknowledged the Supreme Court’s general rule for core habeas challenges that “jurisdiction lies in only one district: the district of confinement,” and explained that “[a]t the time the petition was filed, that ‘one district’ was the District of Vermont, where Öztürk was in transit to an ICE facility for the night. Vermont is therefore the *only* district in which the petition could have been brought at the time it was filed.” *Öztürk v. Hyde*, 136 F.4th 382, 391 (2d Cir. 2025) (emphasis in original).² The same is true here. On November 5, Petitioner departed 26 Federal Plaza at approximately 1:00 p.m., left New York and entered New Jersey through the Holland Tunnel at approximately 1:20 p.m., and physically arrived at Delaney Hall in Newark at approximately 1:35 p.m. See Paulino Decl. ¶¶ 7-8. There can be no legitimate dispute that at the time the petition was filed, Petitioner was located in New Jersey. Whether still “in transit” or at the Delaney Hall Detention Facility, New Jersey “is therefore the *only* district in which the petition could have been brought at the time it was filed.” *Öztürk*, 136 F.4th at 391; accord *Khalil v. Joyce*, 771 F. Supp. 3d 268, 291 (S.D.N.Y. 2025) (holding that the court lacked jurisdiction over the habeas petition because the petitioner “was detained in the District of New Jersey at the time his lawyer filed the Petition,” and further transferring the case to the District of New Jersey “given that the District of New Jersey is the one and only district in which [the petitioner] could have filed his Petition when he did”).

Petitioner does not contest that he was in New Jersey when his counsel filed his habeas petition, and instead makes several arguments for why this Court should nonetheless determine that venue is proper in this District. None has merit.

² Öztürk was arrested by ICE in Massachusetts and filed when she was in Vermont.

First, Petitioner’s principal argument is that venue is proper in this Court based on a legal control theory, under which he asserts that, “[u]ntil [the] intake [at Delaney Hall] was finalized, legal custody remained with ICE New York, under the authority of Respondent Judith Almodovar.”³ Pet’r Opp. (ECF No. 8) at 2; *see also id.* at 3 (“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.”). Petitioner’s reliance on the legal control test to identify the proper respondent is foreclosed by *Padilla*. Under *Padilla*, the “legal reality of control” standard does not determine the proper respondent in a petition that challenges or seeks release from physical confinement. Indeed, by reaffirming the “immediate custodian” rule, the Supreme Court rejected the “legal reality of control” standard that Petitioner appears to urge the Court to apply here. *Padilla*, 542 U.S. at 437-39. In unambiguous terms, the Supreme Court explained that, “[i]n challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Id.* at 439. Judge Furman rejected the same argument in *Khalil*. *See Khalil*, 771 F. Supp. 3d at 280-81 (“in a ‘core’ habeas petition challenging ‘present physical confinement,’ the proper respondent is the ‘warden of the facility where the petitioner is being held,’ not a ‘remote supervisory official.’” (quoting *Padilla*, 542 U.S. at 435)).⁴ Lastly, naming the right custodian is necessary but not sufficient to establish habeas jurisdiction—a habeas petitioner still must satisfy

³ Petitioner named Almodovar as ICE’s New York City Field Office Director, but she is no longer in that position. Kenneth Genalo is the current Field Office Director.

⁴ There, “Khalil contend[ed] that Joyce, the Acting Field Director of the ICE New York Field Office, was his ‘immediate custodian’ at the time of filing because Joyce ‘took and never relinquished custody over Mr. Khalil’ until he arrived in Louisiana.” *Khalil*, 771 F. Supp. 3d at 280. Judge Furman explained that he “has rejected this exact legal argument no fewer than five times.” *Id.* at 281.

the district of confinement rule, *see Padilla*, 542 U.S. at 442-43, which Petitioner indisputably cannot satisfy.⁵

Second, Petitioner argues in the alternative that venue is proper in this District under the “unknown custodian” exception. Pet’r Opp. at 3-4. No such exception applies here. In rejecting the dissent’s invocation of an “unknown custodian” exception to the immediate-custodian and district-of-confinement rules in *Padilla*, the Supreme Court noted that such an exception applies when “a prisoner is held in an undisclosed location by an unknown custodian” because “it is impossible to apply the immediate custodian and district of confinement rules”; but the Court rejected such an exception in *Padilla* because the facts did not support it. *Padilla*, 542 U.S. at 450 n.18. Courts have reasoned that this exception effectively allows a district court to relax the traditional habeas filing rules where the government is refusing to disclose the location of the habeas petitioner (and, therefore, the identity of the custodian), and the petitioner’s counsel cannot feasibly obtain that information. *See Demjanjuk v. Meese*, 784 F.2d 1114, 1116 (D.C. Cir. 1986). This is not such a case.

Petitioner does not argue that ICE refused to tell his lawyer where Petitioner was being held, nor does he argue that ICE was in any way not “forthcoming” with his location. Rather, Petitioner argues only that he filed the petition in this Court based on a review of ICE’s Detainee

⁵ Petitioner’s citation to *Ex Parte Endo*, 323 U.S. 238 (1944) (Pet’r Opp. at 3), misunderstands its holding. *Ex Parte Endo* “stands for the important but limited proposition” that when a habeas petitioner is transferred to a different judicial district *after* the petitioner files a habeas petition in the proper court, that subsequent transfer does not divest the court of habeas jurisdiction. *Padilla*, 542 U.S. at 441. For the same reason that rule was inapplicable in *Padilla*, it is inapplicable here: “*Padilla* was moved from New York to South Carolina before his lawyer filed a habeas petition on his behalf. Unlike the District Court in [*Ex Parte*] *Endo*, therefore, the Southern District never acquired jurisdiction over *Padilla*’s petition.” *Id.*

Locator page 39 minutes before the time of filing.⁶ Pet’r Opp. at 1, 5. As Judge Furman found in *Khalil*, “this is not the exceptional scenario Justice Kennedy imagined, in which ‘the Government had removed [its detainee] from the Southern District of New York but refused to tell his lawyer where he had been taken.’”⁷ *Khalil*, 771 F. Supp. 3d at 286 (quoting *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring)). In short, the facts of this case do not present exceptional circumstances excusing compliance with the longstanding venue rules for habeas cases.⁸

Third, Petitioner argues that a “minute-by-minute chronology of transfer” is unworkable. Pet’r Opp. at 5. Petitioner offers no legal support for his argument, arguing only that, one minute after he filed his petition, the ICE Detainee Locator page did not show where Petitioner was held, and so he should be excused from complying with the venue rules. *Id.* But as explained above and in the government’s opening brief, the relevant inquiry for whether a court has habeas jurisdiction is where the petitioner was actually located at the time of filing. And contrary to Petitioner’s characterization (Pet’r Opp. at 4), venue is not improper here by just “one minute”—as explained above and in the declaration of Deportation Officer Paulino, Petitioner was present

⁶ Notably, Petitioner admits that when he checked the detainee locator only one minute after filing (37 minutes after Petitioner left 26 Federal Plaza), before the government was aware of this habeas matter, the detainee locator no longer reflected that Petitioner was at 26 Federal Plaza. Pet’r Opp. ¶ 3. That conceded fact helps to corroborate the timeline explained by Respondents’ witnesses in their declarations.

⁷ Nor was there anything unusual or nefarious here. As Judge Furman explained: “this Court can attest from its own experience that noncitizens arrested and detained by immigration authorities in New York City are routinely processed at 26 Federal Plaza and then transferred to New Jersey for detention.” *Khalil*, 771 F. Supp. 3d at 283.

⁸ Petitioner relies entirely on an unpublished Fourth Circuit case’s application of the “unknown custodian” exception to a factually dissimilar case. But in a more analogous case, the Second Circuit in *Öztürk* found that venue was proper in the district where a petitioner was “in transit” at the time of filing, even though the immediate custodian at that exact moment may have been unknown. *See Öztürk*, 136 F.4th at 391, 393. Thus, the “unknown custodian” rule would not excuse Petitioner from the requirement that he file in the district of confinement (New Jersey).

in New Jersey for at least 16 minutes before he filed his habeas petition. Paulino Decl. ¶¶ 7-8. But even if this inquiry came down to one minute—and it does not—Petitioner’s physical presence in New Jersey at the time of filing would still be dispositive.

Lastly, Petitioner argues that “equitable considerations favor retaining venue” because he filed his habeas petition in this Court in “good faith.” Pet’r Opp. at 5. But Petitioner fails to cite any legal support for such an argument, nor could he. If anything, this argument goes only to the propriety of a transfer to the proper court as opposed to outright dismissal. *See, e.g., Liriano v. United States*, 95 F.3d 119, 122 (2d Cir. 1996) (transfer appropriate when action filed in wrong court was done in good faith). While the government’s motion seeks dismissal as a possible alternative disposition, it also seeks and does not oppose expeditious transfer of this case to the proper venue in the District of New Jersey—“the *only* district in which the petition could have been brought at the time it was filed.” *Öztürk*, 136 F.4th at 391.

* * *

In sum, Petitioner has not shown that venue is proper in the Southern District of New York for this habeas action. Nothing in this case justifies bending the well-settled rules pertaining to habeas jurisdiction. As the Supreme Court cautioned, “it is surely just as necessary in important cases as in unimportant ones that courts take care not to exceed their ‘respective jurisdictions’ established by Congress.” *Padilla*, 542 U.S. at 450-51. For the reasons stated above and set forth

in the government’s opening brief, the Court should either promptly transfer the case to the District of New Jersey, or alternatively, dismiss it.⁹

CONCLUSION

For the foregoing reasons, and the reasons stated in the government’s opening brief, the 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.

Dated: November 16, 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

⁹ Because there can be no dispute that Petitioner was located in New Jersey at the time he filed his habeas petition—a fact that is dispositive here—the government respectfully submits that an evidentiary hearing is not necessary. *See, e.g., Charette v. Town of Oyster Bay*, 159 F.3d 749, 755 (2d Cir. 1998) (“An evidentiary hearing is not required when the relevant facts either are not in dispute . . . or when the disputed facts are amenable to complete resolution on a paper record.” (citations omitted)). The government is submitting with this reply a declaration executed under penalty of perjury from Deportation Officer Paulino—one of the officers who was involved in the transport of Petitioner to New Jersey—attesting to these facts. Officer Paulino’s declaration captures the testimony he would provide in a live evidentiary hearing.