

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

BINH VAN TRAN,	)	
	)	Case No. 1:25-cv-12546-ADB
Petitioner,	)	
	)	
v.	)	
	)	
PATRICIA HYDE, Acting Director of the	)	
Boston Field Office, U.S. Immigration and	)	
Customs Enforcement;	)	
TODD LYONS, Acting Director of the	)	
U.S. Immigration and Customs Enforcement	)	
MICHAEL KROL, HSI New England Special	)	
Agent in Charge; and	)	
KRISTI NOEM, Secretary of the	)	
U.S. Department of Homeland Security;	)	
in their official capacities,	)	
	)	
Respondents.	)	
_____	)	

**PETITIONER’S MOTION TO STAY TRANSFER ORDER AND FOR  
RECONSIDERATION OF THIS COURT’S SEPTEMBER 22, 2025 ORDER**

Pursuant to Federal Rule of Civil Procedure 59(e), Petitioner Binh Van Tran respectfully requests that the Court to temporarily stay pending the determination of the Motion to Reconsider and to reconsider its September 22, 2025 Order to Transfer his Petition to the Western District of New York and vacate the Order. In its recent Order, the Court granted the Respondents’ Motion to Transfer Petition, which was filed on the late afternoon of September 19, 2025. Petitioner did not have an opportunity to file an Opposition to the Respondents’ Motion to Transfer, per L.R. 7.1(b)(2). If allowed the opportunity to file an Opposition to the Respondents’ Motion to Transfer, Petitioner Tran would have opposed the Motion to Transfer on the basis that he was in the airspace at the time of filing his Writ of Habeas and the Venue for his matter should have been based on the custodian at the time of his departure.

### BACKGROUND

1. Mr. Tran, a citizen of Vietnam, entered the U.S. as refugee. Doc. No. 1, Ex. 1 at ¶ 1.
2. Mr. Tran was ordered removed to Vietnam on or around October 2000 due to a prior Massachusetts criminal record. *Id.* at ¶ 7.
3. The Government held Mr. Tran in immigration detention, pending an unsuccessful attempt to repatriate him to Vietnam. Eventually the Government released Mr. Tran from immigration detention in April of 2001. *Id.* at ¶¶ 8–9.
4. Since his release from immigration detention, he has been living in the United States (“U.S.”) under an Order of Supervision (“OSUP”). To the best of his knowledge, Mr. Tran was complying with his yearly check-ins with Immigration and Customs Enforcement (“ICE”) on a yearly basis and has not violated the terms of OSUP over the last 24 years. ICE has not alleged that Mr. Tran violated the terms of his release at the time he was unlawfully re-detained. *Id.* at ¶¶ 10–13, 17; Doc. No. 8, Ex. 1.
5. However, on September 11, 2025, Petitioner Tran was detained by the Boston Immigration and Customs Enforcement (“ICE”) Field Office in Burlington, MA at his yearly check-in on or around 2:00 PM Eastern Standard Time (“EST”). Doc. No. 1 at ¶ 42.
6. Within four to five hours from when he was detained, Mr. Tran was placed on a plane that departed Massachusetts on or around 6:06 PM EST. Mr. Tran’s plane landed in Buffalo, New York on or around 7:03 PM EST. Doc. No. 8, Ex. 1 at ¶ 8.
7. During Mr. Tran’s air transit to New York, Petitioner, through undersigned counsel, filed a Writ of Habeas Petition with this Court at 6:54 PM EST. Doc No. 1. ICE did not notify counsel about his impending transfer prior to his departure out of District. Thus, it was

unclear to Petitioner and his counsel his physical location at the time of filing. Petitioner could not notify his counsel of his location at the time of filing because he was arrested.

*Id.*

8. This Court issued a temporary stay at 7:15PM EST on the same evening. Doc. No. 2.
9. After the stay order was granted, undersigned Counsel notified Respondents and their counsel of the Order issued before 8:00 PM EST via email.
10. Subsequently, this case was assigned, and the Court issued a stay on the morning of September 12, 2025, ordering Respondents to not remove Mr. Tran from the U.S. and to promptly notify the Court if Petitioner has been moved out of district. Doc. No. 4.
11. Because counsel did not immediately hear back from the Respondents or opposing counsel of the Petitioner's location, counsel continuously checked the ERO system online on September 11th and September 12th. On the afternoon of September 12th, Counsel was able to locate Mr. Tran through the Online Detainee Locator System and reached out to Assistant U.S. Attorney ("AUSA") Mark Sauter. At the time, an AUSA had not been assigned on the case yet or filed an appearance. Petitioner's current location in Buffalo, New York and his information regarding his flight itinerary was provided by Respondents' counsel, without any supporting evidence. Counsel attempted to reach out to the opposing counsel during the week of September 15, 2025, to obtain information on the flight itinerary.
12. It was not until the late afternoon of September 19, 2025, that counsels were able to confer. At no point did the undersigned counsel assent to the Respondents' proposed Order of Transfer to the Western District of New York ("WDNY") because Mr. Tran was in the air when the habeas corpus petition was filed and the proper venue was unclear.

Doc. No. 8, p. 2–3. Respondents filed a Motion to Transfer at 3:54 PM EST on September 19, 2025.

13. Petitioner Tran had planned on submitting an Opposition to the Respondents’ Motion to Transfer. However, this morning at 11:17 AM EST, this Court issued an Order to Transfer Petitioner’s Writ of Habeas Corpus Petition to the WDNY. Doc. No. 10.

14. As of today, Mr. Tran remains detained at the Buffalo (Batavia) Federal Detention Facility in Buffalo, New York.

### ARGUMENT

Petitioner Tran respectfully asks this court to vacate the Order issued this morning and return the case to the U.S. District Court for the District of Massachusetts because he was not provided the opportunity to respond to the Respondents’ Motion to Transfer Petition before the Court issued an Order on September 22, 2025. Per L.R. 7.1(b)(2), absent another period fixed by rule, statute, or order of the Court, a party opposing a motion shall have 14 days after service of the motion to file and serve a response. Here, the Court did not allow Mr. Tran an opportunity to file an opposition in response to the Respondents’ motion before it issued the Order to Transfer less than one business day after Respondents’ notice of service.

Recently, ICE has been arresting non-citizens and rapidly transferring detainees into different jurisdictions away from access to their counsel, families and community. Mr. Tran was taken into custody and placed on a plane within four to five hours of his arrest at the ICE Boston Field Office, and it would not have been reasonable for his counsel to know his physical location because she was never notified. At the time of filing this petition, undersigned counsel could not identify the location of Mr. Tran and could not make any contact with him. Mr. Tran also had no means to communicate with counsel of his location because of his arrest and transit in the air.

If Petitioner was allowed to file the Opposition to Respondents' Motion for a Transfer before the Court's order, Petitioner would have had an opportunity to raise a challenge on the transfer based on venue and jurisdiction of the Petitioner at the time of filing. Although neither party disputed the Petitioner's location in the air at the time of filing, Petitioner would have raised a challenge to the proper venue for a habeas action based on who was the custodian at the time of the filing. In this District, the law remains unclear as to who is the custodian when an individual detainee is in the airspace headed to an unknown location. Generally, a habeas corpus action must be brought against the immediate custodian and filed in the district where the immediate custodian is located. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004); 28 U.S.C. § 2242. The *Padilla* Court outlined an "unknown custodian" exception to this rule: when a petitioner "is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules." 542 U.S. at 450, n.18. This court has recognized that this unknown custodian exception applies where ICE has taken a noncitizen into custody, and counsel files a habeas action in the noncitizen's last known district of confinement before ICE transports the noncitizen to an unknown place. *Ozturk v. Trump*, 777 F. Supp. 3d 26, 42 (D. Mass. 2025). This court noted this exception applied where counsel could not have known their client's immediate custodian at the time of filing, calling out in particular that "the irregularity of the processing and transport in a single day and failure to disclose [the noncitizen]'s whereabouts" warranted application of the unknown custodian exception. *Id.*

At the time of Mr. Tran's arrest, he was initially under the custody of the Acting Director of the Boston ICE Field Office, Respondent Patricia Hyde. The chain of custody, however, remains unclear on who has custody of an individual when an individual is detained and transferred to unknown locations. In a recent decision from the Fourth Circuit, the Court ruled

that when a plane carrying a detainee had landed in Louisiana and not yet booked him into the receiving detention facility, the immediate custodian remained unknown and thus it was appropriate to treat the Secretary of Homeland Security as the custodian and not transfer the case to Louisiana. *See Suri v. Trump*, No. 1:25-CV-480, 2025 WL 1310745, at \*8 (E.D. Va. May 6, 2025). In *Suri*, the district of confinement rule became untenable, and “traditional venue considerations” guided the venue analysis. *See id.*, at \*14.

If provided with the opportunity to submit an Opposition, Petitioner would challenge the Respondents’ contention that venue was proper based on where an aircraft physically is at the time of filing of a writ of habeas corpus because the custodian was unknown. The swift transfer of this case to WDNY without considering the Petitioner’s Opposition to the Respondents’ Request to Transfer would unfairly prejudice the Petitioner who has a valid challenge to proper venue. Mr. Tran has an interest in keeping this case in this District, where he would have ready access to counsel, family, and his community. We respectfully request this Court, pursuant to Federal Rule of Civil Procedure 59(e), alter or amend its judgment to provide Mr. Tran an opportunity to file his Opposition to the Respondents’ Motion to Transfer.

#### CONCLUSION

For the reasons discussed above, we respectfully ask the Court to temporarily stay pending the determination of the Motion to Reconsider and to grant Petitioner’s Motion to Reconsider and vacate its Order to allow the Petitioner an opportunity to submit its Opposition to Respondents’ Motion to Transfer within five days.

Respectfully submitted,

BINH VAN TRAN,

By his attorney,

s/ Thao Phuong Ho

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Dated: September 22, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants via first class mail.

/s/ Thao Phuong Ho

Thao Phuong Ho

Dated: September 22, 2025