IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

BADAR KHAN SURI, *Petitioner*, v. DONALD J. TRUMP, *et al.*, *Respondents*.	Case No. 1:25-cv-00480 (PTG/WBP)

FEDERAL RESPONDENTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, OR IN THE ALTERNATIVE, TRANSFER VENUE

INTRODUCTION

Badar Khan Suri ("Suri") is a citizen and national of India who entered the United States on an exchange visitor visa in December 2022. He alleges he was arrested by U.S. Immigration and Customs Enforcement ("ICE") and charged with removability under 8 U.S.C. § 1227(a)(4)(C). He challenges the lawfulness of his immigration detention, which he alleges is due to his support for and undisputed family ties to Hamas—a designated Tier I foreign terrorist organization that Suri euphemistically refers to as "the government of Gaza"—and therefore he filed his Petition for a Writ of Habeas Corpus seeking his immediate release from ICE custody on that basis. *See generally*, Petition (ECF #1). On April 1, 2025, Respondents filed a motion to dismiss and a motion to transfer in the alternative. ECF # 24-27. In response to Respondents' Motions to Dismiss and Transfer, Suri opted to amend his Petition. ECF #34. Suri filed his opposition on April 15, 2025, which is based on the Amended Petition. ECF #47.

Regardless, the Parties really only dispute how the law should be applied. The Parties do not dispute Suri left Virginia before his Petition was filed. The Parties do not dispute that his Notice to Appear ("NTA"), issued on March 17, 2025, listed the address of the Prairieland Detention Facility as the place of Suri's residence. The Parties do not dispute that the NTA identified the "Prairieland Detention Center" as the location where he would appear before an immigration judge from the Port Isabel Immigration Court. In response, Suri argues the Court should ignore the contents of the NTA, and that the Court should disregard Respondents' declarations on hearsay grounds. This aside, Suri's opposition thunderously argues the merits of the case—not at issue in Respondents' motion—and is rife with rhetorical attacks, conspiracy theories, and hyperbolism, all intended to distract the Court's attention away from a relatively straightforward application of well-settled law. As *Padilla* noted, "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." *Rumsfeld v. Padilla*, 542 U.S. 426, 450-51 (2004).

ARGUMENT

I. Amended Pleadings Generally Moot Pending Motions.

On April 1, 2025, Respondents filed the instant Motion to Dismiss and Motion to Transfer, which sought to dismiss or transfer the Petition. Seeking to avoid a ruling on those motions on the original Petition, Suri amended his Petition. ECF #34. The Amended Petition is nearly three times as long as the original, and it brings almost twice as many claims. *Compare* ECF #1 *with* ECF #34. Suri then filed his opposition, which is predicated exclusively on the Amended Complaint, and he chides Respondents for failing to fully respond to the then-unalleged claims. *See* ECF #47.

In his newly-filed Amended Petition, Suri alleges—and Respondents agree—that Suri had the ability to file an amended pleading as a matter of course. ECF #34, n.1. However, the "general rule" is that "an amended pleading supersedes the original pleading, rendering the original pleading of no effect." *Young v. City of Mt. Rainier*, 238 F.3d 567, 573 (4th Cir. 2001). For that reason, most jurists in this district—including this Court—typically deny all pending motions that are predicated on the original pleading as moot upon amendment. *Wright v. Capital One Bank, N.A.*, No. 1:21-cv-803 (PTG/IDD), 2024 U.S. Dist. LEXIS 37887, at *6 (E.D. Va. Mar. 4, 2024); *El v. United States DOC*, No. 2:18cv190, 2021 U.S. Dist. LEXIS 77257, at *3 (E.D. Va. Mar. 25, 2021). While this practice most often affects pending motions to dismiss, it also applies to the amending party's motions. *Garcia v. Mid-Atlantic Mil. Family Cmtys. LLC*, No. 2:20cv308, 2021 U.S. Dist. LEXIS 78074, at *7 (E.D. Va. Mar. 4, 2021) ("An amended complaint supersedes a prior complaint and renders it of no legal effect…. Plaintiff's Motion for Preliminary Injunction—which seek[s] relief based on Plaintiff's initial Complaint—[is] DISMISSED as moot."); *Merz N. Am., Inc. v. Viveve Med., Inc.*, No. 2:17-CV-00015-BR, 2017 U.S. Dist. LEXIS 107383, at *5-6 (E.D.N.C. July 12, 2017). Although Respondents believe

an exception to the ordinary rule applies to Respondents' motion, if the Court applies this rule regardless of the Parties' positions,[1] then it should do so in both directions.

II. This Court Lacks Habeas Jurisdiction Over Suri's Claims.

Suri tacitly concedes that a straightforward application of the immediate custodian rule would not allow the Court to exercise habeas jurisdiction over this case. Instead, to try to avoid that result, Suri argues that: (1) the Court should circumvent the immediate custodian rule and apply the "unknown custodian" rule because Suri and his counsel disbelieved the NTA when it said Suri would be detained at the Prairieland Detention Facility, notwithstanding that the original habeas petition indicates otherwise (ECF #1 at ¶ 5); (2) Kristi Noem is the proper respondent; and (3) the application of the immediate custodian rule would, according to Suri, "undermine the principles and concerns" behind the rule. ECF #47 at 11. None of these arguments have merit.

A. Suri Misapplies the Unknown Custodian Rule.

Under *Demjanjuk* and *Moussaoui*, Suri argues that the "unknown custodian" rule applies in his case as Suri's lawyers filed his habeas petition here—in Suri's preferred forum—because "Suri's lawyers ha[d] no way to know where he was at the time they filed his petition." ECF #34. As explained *infra*, this is belied by the record. More fundamentally, however, Suri misunderstands two critical aspects of the "unknown custodian" rule: (1) it does not turn on petitioner's or counsel's subjective

[1] *Jarrell v. Hardy Cellular Tel. Co.*, 2020 U.S. Dist. LEXIS 129436, at *7 (S.D. W. Va. July 22, 2020) ("normal practice when an amended complaint is filed is to moot any pending motion… and permit updated briefing of any motions with respect to the amended complaint to ensure a clean record[.]"); *Buechler v. Your Wine & Spirit Shoppe, Inc.*, 846 F. Supp. 2d 406, 415 (D. Md.) ("[D]efendants should not be required to file a new motion to dismiss simply because an amended pleading was introduced while their motion was pending. If some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading. To hold otherwise would be to exalt form over substance." (quoting 6 WRIGHT & MILLER, FED. PRACTICE & PROCEDURE, § 1476, at 638), aff'd, 479 F. App'x 497 (4th Cir. 2012)).
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claims of knowledge (or lack thereof); and (2) as its name implies, the exception does not apply where the district of confinement *is* known.

By way of background, the "unknown custodian" exception is a very narrow exception to the "immediate custodian" rule and applies only when a petitioner is held in "an *undisclosed location* by an unknown custodian," and where "it is *impossible* to apply the immediate custodian and district of confinement rules." *Padilla*, 542 U.S. at 450 n.18 (emphasis added) (distinguishing *Demjanjuk v. Meese*, 784 F.2d 1114, 1115-16 (D.C. Cir. 1986) (Bork, C.J., in chambers)). The *Demjanjuk* opinion,[2] which was distinguished (without disapproval) by the *Padilla* majority, indicated that the "unknown custodian" rule would apply where a petitioner is held "in a confidential location" and it would be "impracticable to require the attorneys to file in every jurisdiction, and it would be inappropriate to order the whereabouts of the petitioner made public." *Demjanjuk*, 784 F.2d at 1115-16. Given these circumstances, *Demjanjuk* found habeas jurisdiction proper in the D.C. Circuit because "short of concluding that Demjanjuk's application must be considered by a Supreme Court justice,… it is appropriate, *in these very limited and special circumstances*, to treat the Attorney General of the United States as the custodian." *Id.* at 1116. But important to *Demjanjuk* was the fact that no other jurisdiction appeared *more* appropriate to the court at the time of its decision on the merits. *Id.* However, if the district of confinement *becomes* known after filing, the narrow "unknown custodian" exception dissipates: "should it become known that petitioner is held in a jurisdiction other than this one, a judge of this circuit would be divested of jurisdiction." *Id.*

In *Moussaoui*, the Fourth Circuit considered the matter of a September 11th conspirator who filed writs of habeas corpus *ad testificandum* seeking to depose certain members of al-Qaeda whom the United States had captured abroad. *United States v. Moussaoui*, 382 F.3d 453, 458 (4th Cir. 2004). Those

[2] Mr. Demjanjuk was a Ukrainian accused of participation in the Holocaust and was detained pending extradition to Israel at the time. *Demjanjuk*, 784 F.2d at 1117.

witnesses were held at undisclosed locations in military custody abroad, and given that the court could not determine their actual location (which was overseas regardless), *Moussaoui* applied *Demjanjuk* to deem the Secretary of Defense as the proper respondent under the "ultimate custodian" alternative. *Id.* at 465.[3] But ultimately, this was irrelevant to *Moussaoui*'s holding, which was that the testimonial writ was proper in the district where the underlying criminal proceedings were located, rendering the "immediate custodian" question unnecessary to resolve. *Id.* (noting it was not "necessary for the writ to be served upon the witnesses' immediate custodian, who is in a foreign country" because the testimonial writ "existed for the purpose of bringing a [witness] into a jurisdiction" and was therefore not territorially limited).

Under *Demjanjuk* and *Moussaoui*, Suri argues that the "unknown custodian" rule applies here. He is mistaken. First, the "unknown custodian" exception is not unilaterally invocable by petitioners to secure their choice of forum based on subjective claims of confusion, lack of knowledge, or misinformation. Suri argues that habeas jurisdiction is proper in this district because his attorneys "acted swiftly to file a petition" in this district, and they claim they believed Suri to be in the district at the time they filed. ECF #47 at 13. This, according to Suri, "is sufficient by itself for this District to apply the unknown custodian exception[,]" and the fact that Suri was *not actually* in this district at the time is an irrelevant detail. ECF #47 at 13.

However, *Padilla* directly addressed and rejected Suri's theories. *Rumsfeld v. Padilla*, 542 U.S. 426, 448 (2004).[4] In *Padilla*, the Supreme Court made abundantly clear that the "unknown custodian"

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[3] Neither *Demjanjuk* nor *Moussaoui* indicate the parties to those cases had any dispute about the exception's applicability in those cases.

[4] *Padilla*, 542 U.S. at 448 ("[T]he dissent contends that if counsel had been immediately informed, she 'would have filed the habeas petition then and there,' while Padilla remained in [his preferred forum], 'rather than waiting two days.' Therefore, …the Government's alleged misconduct 'justifies treating the habeas application as the functional equivalent of one filed two days earlier.'… [But] [t]he dissent cites no authority whatsoever for its extraordinary proposition that a district court can exercise statutory jurisdiction based on a series of events that did not occur[.]").

exception is not an *equitable* doctrine, and rejected Suri's premise that courts can "pretend that [a petitioner] and his immediate custodian were present in the [] District at the time counsel filed the instant habeas petition, thus rendering jurisdiction proper." *Id.* The *Padilla* court also rejected Suri's argument here: that "the facts available to [counsel] at the time of filing" govern and "the facts as they actually existed at the time of filing should not matter." *Id.* at 449 n.17. The Court not should accept what *Padilla* rejected just to maintain Suri's choice of forum.

Contrary to Suri's baseline assumption, the exception looks at whether the *court* can determine who the custodian is. In *Demjanjuk*, Mr. Demjanjuk was held at "a confidential location" and Judge Bork found it "inappropriate to order the whereabouts of the petitioner made public[,]" but "[s]hould it become known that petitioner is held in a jurisdiction other than this one, a judge of this circuit would be divested of jurisdiction." *Demjanjuk*, 784 F.2d at 1116. In *Moussaoui*, the captured al-Qaeda operatives were being held by the military in a foreign country. *Moussaoui*, 382 F.3d at 465. The actual district of confinement for *Demjanjuk* was unknowable *to Chief Judge Bork*, while in *Moussaoui*, as noted *supra*, there was no district of confinement, which was beside the point where the district of proceedings could issue the testimonial writ regardless.

Here, by contrast, the custodian and district of confinement *is* known. The NTA told Suri where he would be confined for his immigration proceedings. Simon Decl. (ECF #26-1), Ex. 1. The NTA listed his residence address as the address of the Prairieland Detention Facility, *id.*, which Suri strategically refers to only as "an address in Alvarado, Texas" in his opposition. ECF #47 at 21. The place of his hearing was identified as the "Prairieland Detention Center." Simon Decl. (ECF #26-1), Ex. 1. His counsel testified that he had access to the NTA at 2:11pm on March 18, 2025. Ahmad Decl. (ECF #21-1) ¶ 7; ECF #21 at 8. Yet, counsel testified that he filed the Petition in this district based *solely* on hearsay from Suri's spouse. *Id.* ¶ 8 ("At the time of filing, I believed that [] Suri was detained in Virginia because of the information he relayed to his wife"). Suri claims he was confused, but even

if true, his *counsel* made filing decisions based on hearsay from Suri's spouse, without regard to what the NTA plainly indicated. *Id.* That his Petition referenced his imminent move to Texas as well as his appearance before the Port Isabel Immigration Court undercuts Suri's explanation. But even if Suri *was* confused, and even if the NTA's details were overlooked in haste to tag Suri's preferred forum, these possibilities do not render the custodian "impossible" to identify. If the "unknown custodian" exception were as subjective as Suri argues, then it would apply every time a petitioner can claim ignorance. *Padilla* rejected that position.

Here, the district of confinement was known – it was (and is) the Warden of the Prairieland Detention Facility, located in the Northern District of Texas. Suri's opposition merely argues the Court should accept his claims about his interpretations of what unnamed officers and nurses allegedly said, and the NTA can be disregarded. ECF #47 at 17. But even if that position had merit, Suri's arguments greatly exaggerate his own declarations. *Compare* ECF #47 at 21 ("[T]he officer who served him the NTA was clear that, notwithstanding anything written on his NTA, he would be detained in *Virginia*, either in Farmville or closer to his family." (citing Suri Decl. (ECF #47-1) at ¶¶ 12, 14), *with* Suri Decl. ¶¶ 12, 14 ("The officer then told me that they needed to take me to Farmville, Virginia…. I asked them if I could be kept closer to my family, and they told me that that might be possible later on, but that it was late and Farmville was the only option. I was then driven to the Farmville Detention Center… I was taken to the nurse…, and… [t]he nurse told me I would be moving to a dormitory. I believed that I would be living there for some extended period of time, or until I was brought home or closer to home, because I was told so by the officer at Chantilly."). Contrary to his agrument, he only claims to have *believed* he would be detained in Virginia, but even his declaration does not claim

ICE *told* him that he would stay in Virginia beyond that evening, much less indefinitely "notwithstanding… his NTA[.]"[5] *Cf.* ECF #47 at 20.

Suri claims to have his reasons for disbelieving the NTA—made in support of his litigation position—but the fact is that he was told *where* he would be detained in his NTA, and his counsel had access to it *before* the Petition was filed.[6] Disbelief, whether genuine or strategic, does not change reality. As the *Padilla* court explained, the "unknown custodian" exception does not apply "where the identity of the immediate custodian and the location of the appropriate district court are clear." *Padilla*, 542 U.S. at 450 n.18.

B. The "Ultimate Custodian" Argument Fails with the Unknown Custodian Argument.

Suri next argues that this district is proper—notwithstanding that neither he nor his immediate custodian is in this district—because "Suri named the Secretary of Homeland Security and the Attorney General… who had the ultimate legal authority… to release him[.]" ECF #47 at 17. "In habeas 'challenges to present physical confinement,' the Court holds that 'the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.'" *Doe v. Shenandoah Valley Juvenile Ctr. Comm'n*, 985 F.3d 327, 336 n.10 (4th Cir. 2021). The possibility of serving the "ultimate custodian" in lieu of the immediate custodian only comes into play for the Great Writ when "the immediate custodian is unknown." *Moussaoui*, 382 F.3d at 465. Were it otherwise, petitioners challenging their immigration detention could file in any district. As such, Suri must show the narrow

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[5] Suri makes much about not knowing who, specifically, he would name as a respondent when a facility is privately-owned. ECF #47 at 14. But even privately-owned facilities have wardens, *e.g.*, *N.E.C.V. v. Warden, Stewart Det. Ctr.*, No. 4:24-cv-181-CDL-AGH, 2025 U.S. Dist. LEXIS 58526 (M.D. Ga. Feb. 11, 2025) (CoreCivic facility). And while listing the first and last name of the warden is best practice, many courts do not insist on it, *e.g.*, *Hope v. Warden York Cty. Prison*, 972 F.3d 310 (3d Cir. 2020), and some courts will *sua sponte* substitute the name for the office holder. *E.g.*, *Workman v. King*, No. 2:22-cv-00165, 2022 U.S. Dist. LEXIS 86397 n.1 (S.D. W. Va. Apr. 18, 2022). Not knowing the first and last names of the immediate custodian does not make the custodian "unknown."

[6] Mr. Ahmad does not claim to have been confused by the NTA. *See* ECF #21-1.

"unknown custodian" exception applies in the first place, and as explained *supra*, he has not made that showing.

C. The Forum Shopping Claims Are Meritless and Misplaced.

Suri's final argument to disregard *Padilla* is a claim of "forum shopping[.]" ECF #47 at 17. To quickly recap the facts, it is undisputed that the NTA listed his residence as the address of the Prairieland Detention Facility. Simon Decl., Ex. 1. It is undisputed that his NTA ordered him to appear before a judge of the Port Isabel immigration court, and listed the room for that appearance as "Prairieland Detention Center." *Id.* It is undisputed that this NTA was issued to him on March 17, 2025. *Id.* According to Suri's counsel, he had access to the NTA at 2:11pm on March 18, which was before the Petition was filed. Ahmad Decl. ¶ 7; ECF #21 at 8. According to Suri's spouse, she heard from ICE late in the evening of March 17 that Suri was scheduled for a hearing in a Texas immigration court. Saleh Decl. (ECF #6-1) ¶ 14. Suri's counsel claims he filed the Petition in this district on the evening of March 18 based purely on hearsay from Suri's spouse. Ahmad Decl. at ¶ 8. That Petition acknowledges Suri would be moved to Texas, his counsel had access to the NTA—which indicated he would be detained in Texas—before the Petition was filed, and yet Surimade the strategic choice to file in this district anyway. In light of the above, Suri claims *Respondents* are forum shopping.

Suri's first argument is that Respondents transferred Suri to Texas "for the purpose of frustrating his lawyer's ability to challenge his confinement." ECF #47 at 17. But again, Suri's lawyer had access to the NTA (Ahmad Decl. (ECF #21-1) ¶ 7) before the Petition was filed, which indicated where Suri was going to be detained. That ICE followed through on what the NTA indicated is not secretive, and Suri's *post hoc* claims of confusion do not make it so. Suri has a well-staffed retinue of a dozen highly-qualified attorneys, secured an *ex parte* order enjoining his removal, and filed several motions seeking preliminary relief. It is not clear in which part Suri has been frustrated in his ability to litigate.

Suri next argues a conspiracy theory: that he was transferred to Texas as part "pre-planned scheme undertaken pursuant to an ICE directive to transfer… to detention centers in the southern United States, far from their families and attorneys, in an effort to thwart jurisdiction in states perceived to be less desirable." ECF #47 at 18-19. Suri has his conspiracy theories, but the fact is that Texas has more ICE facilities than all the states from Virginia to Maine combined.[7] And per Suri's declaration, he was one of 300 others transferred out of Virginia the same day. Suri Decl. ¶ 17. Suri's opposition rhetorically frames this as something akin to a nefarious kidnapping scheme, but the same organizations representing Suri have urged the closure of facilities nearby, and lobbied State and local authorities to ban or severely restrict ICE's ability to detain in most northeastern states.[8] The ACLU celebrated the closure of all ICE facilities in Maryland, "there is no bigger relief than knowing that every ICE detention center in the state of Maryland will be closed," and "we are thrilled to see immigration detention finally end in Maryland[.]"[9] The ACLU has also demanded that Farmville Detention Center (which, ironically, is the same Suri demands to be returned to) be shut down.[10] While Suri may be understandably displeased that the closure of ICE facilities in the northeast means that he (and many others) must now be detained out-of-state in districts that he believes are less favorable to him, States and certain NGOs—including one who represents him here—have worked tirelessly for that result.[11] ICE is not "deliberately undermin[ining] their [alleged] constitutional rights

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[7] https://www.ice.gov/detention-facilities.

[8] https://www.aclu.org/press-releases/aclu-foia-litigation-reveals-new-information-regarding-ices-plans-to-expand-immigration-detention-in-new-jersey ("The Biden administration must instead work to close [all New Jersey] facilities now.")

[9] *Lawsuits Ends… As Detention Centers Are Shut Down*, ACLU Maryland (https://www.aclu-md.org/en/press-releases/lawsuit-secured-release-immigrants-detained-maryland-during-pandemic-ends-detention).

[10] https://www.aclu.org/press-releases/aclu-calls-biden-administration-shut-down-ice-detention-facilities

[11] *Lawsuits Ends… As Detention Centers Are Shut Down*, ACLU Maryland (https://www.aclu-md.org/en/press-releases/lawsuit-secured-release-immigrants-detained-maryland-during-pandemic-ends-detention).

through transfers to remote immigration detention centers[,]" rather, Respondents are faced with limited detention options locally – and, in any event, Suri has no constitutional right to the facility of his choosing. *Vega Reyna v. Hott*, 921 F.3d 204, 211 (4th Cir. 2019); *see also Olim v. Wakinekona*, 461 U.S. 238, 245 (1983) ("[inmate] has no justifiable expectation that he will be incarcerated in any particular State").

In support of his conspiracy theories, Suri posits that Respondents' capacity considerations are "not credible" because "ICE reported that the average daily population at Farmville and Caroline was 488 and 284, far lower than their capacities of 732 and 336, respectively." ECF #47 at 19-20 (citing ECF #35-1 (attaching data reported by third-party tracreports.org)). His argument is based on falsehoods and inaccuracies on multiple fronts. First, a third-party organization—not ICE—reported the data Suri relies on to support his claims, so he relies on inadmissible hearsay.[12] Even so, the hearsay data shows Virginia's facilities were nearing their highest capacity since 2020.[13] Additionally, males and females must be housed separately,[14] and low-, medium-, and high- security detainees also must all be housed separately according to their classification level.[15] Even assuming there were empty beds between Caroline and Farmville, that does not necessarily mean Suri could have been housed there.

Moreover, this is all beside the point because DFOD Simon *did not* say there were 0 beds available, or that there was no capacity at that time. DFOD Simon stated Suri would be housed in Texas to forestall "*potential* overcrowding in Virginia[.]" Simon Decl. ¶ 8 (emphasis added). Even

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[12] "The Transactional Records Access Clearinghouse (TRAC) is a data gathering, data research, and data distribution organization that was founded in 1989 at Syracuse University." https://tracreports.org/about/

[13] Sabrina Moreno, Russell Contreras, *Virginia's Immigrant Detention Centers Near Highest Capacity Since 2020*, Axios.com (Feb. 28, 2025) (https://www.axios.com/local/richmond/2025/02/27/virginia-ice-facilities-near-capacity).

[14] Caroline Detention Facility houses males and females. https://www.ice.gov/doclib/foia/odo-compliance-inspections/carolineDetFac_BowlingGreenVA_Jul9-11_2024.pdf

[15] https://www.ice.gov/doclib/dro/detention-standards/pdf/classification_system.pdf

assuming the truth of Suri's hearsay-based claim that "almost 300 available beds in two detention facilities in Virginia[,]" overcrowding prevention—like any other preventative action—occurs *before* there is a problem. And indeed, Suri testifies that he was one of 300 on his flight to Louisiana, which undermines his claim that the overcrowding concern was pretextual. Suri Decl. ¶ 17. Under Suri's illogic, overcrowding is only a "credible" concern once a facility is at or above its bedspace. Suri may reject common sense, but the Court should not.

III. Discovery Would Be Inappropriate and Unnecessary

Lastly, Suri argues that "[i]nadmissible hearsay may not be offered in support of or opposition to a habeas petition." ECF #47 at 25. Respondents agree. Almost every argument Suri makes in his opposition relies heavily on hearsay.

For example, Suri's declaration—which his opposition cites over 27 times—is comprised almost entirely of what he claims others said to him, Suri Decl. ¶ 4, 6, 7, 8, 9, 14, 16, 20, at least some of which is inadmissible hearsay. And even that which is arguably admissible is exaggerated beyond recognition by his papers. *See*, *e.g.*, *supra* p. 7-8. Saleh's declaration, too, is based on inadmissible hearsay. ECF #6-1.[16] Suri also relies on hearsay data for most of his overcrowding-is-an-invalid-concern arguments. ECF #47 at 19-20. Further, Suri relies on two media articles that report on anonymous hearsay to support his theory that the decision to detain him in Texas, a State with more ICE facilities than exist between Virginia and Maine, had sinister motives. *E.g.*, ECF #47 at 19 (relying on an article from *The Atlantic* reporting hearsay from anonymous sources), 22 (relying on an article from *Axios* reporting hearsay from anonymous sources). In Suri's words, "[i]nadmissible hearsay may not be offered in support of or opposition to a habeas petition." ECF #47 at 26 (citing *Greiner v. Wells*, 714 F.3d 305, 325–26 (2d Cir. 2005); *cert. denied*, 546 U.S. 1184 (2006); *Herrera v. Collins*, 506 U.S. 390,

[16] *E.g.*, Saleh Decl. (ECF #6-1) ¶ 13 ("… they said…"); ¶ 14 ("He told me…. He informed me…"); ¶ 15 ("…[Suri] told me… [Suri] told me… [Suri] also said…").

417–18 (1993); *Rosemond v. Hudgins*, 92 F.4th 518, 523 (4th Cir. 2024)). Respondents agree. Therefore, the Court should disregard Saleh's declaration (ECF #6-1) and all of Suri's hearsay-reliant arguments contained in his opposition.

As to DFOD Simon's declaration, DFOD Simon has been with ICE for 16 years, including five years in leadership. Simon Decl. ¶ 1. In his current role as DFOD, he is "responsible for the officers that process incoming detainees, and the decisions made in the intake process including custody determinations and detention decisions" and has "access to records maintained in the ordinary course of business by ICE, including documentary records concerning ERO Virginia and the alien detainees who fall within its responsibility." Simon Decl. ¶ 2. Simon's declaration states that it is based on his "personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, and other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business." Simon Decl. ¶ 4. Simon testifies as to where Suri was between March 17 and April 1, 2025. *Id.* ¶¶ 4-14.

It is well-established that "government officers, in submitting declarations under Rule 56(c)(4), may rely on information obtained from subordinates in the course of performing their official duties." *Emuwa v. U.S. Dep't of Homeland Sec.*, 113 F.4th 1009, 1016 (D.C. Cir. 2024); *Londrigan v. FBI*, 670 F.2d 1164, 1174 (D.C. Cir. 1981). This tenant is commonly known as the "*Londrigan* rule." *Ecological Rights Found. v. U.S. EPA*, 541 F. Supp. 3d 34, 50 (D.D.C. 2021). In *Londrigan*, the declarant at issue was a Special Agent who was a supervisor of the FBI's Freedom of Information Privacy Act Branch. The agent signed a declaration "based upon (his) knowledge, upon information available to (him) in (his) official capacity, and upon decisions reached in accordance therewith." *Londrigan*, 670 F.2d at 1167. The D.C. Circuit held that the agent was competent to testify on topics like "his own observations upon review of the documents…; the procedural history of Londrigan's attempt to acquire information held by the FBI; the agency's procedures with respect to investigations during his own

tenure therewith and earlier practices of which he possesses personal knowledge; and his personal experiences as an agent." *Id.* at 1175. Likewise, in *Emuwa*, the D.C. Circuit rejected a plaintiff's contention that an agency declaration was insufficiently detailed and therefore inadmissible, where there were no "specific concerns about the [] lack of connection between the information and the declarant's ordinary official duties" and the plaintiff presented "no reason to doubt her qualifications or knowledge to provide the supplemental declaration." *Emuwa*, 113 F.4th at 1016. As courts in this district have recognized, "Government declarations are accorded a 'presumption of legitimacy[,]'" and "simply stating that discovery is needed to check the accuracy of those affidavits does not override the presumption afforded to the Government[.]" *Gebremedhin v. Gentry*, No. 1:24-cv-1636, 2025 U.S. Dist. LEXIS 74273, at *5 (E.D. Va. Apr. 17, 2025).

Here, Suri argues Simon's declaration "is wholly insufficient to establish any facts surrounding ICE's decision to detain… Suri out[side] of Virginia and who had custody of [Suri] when his habeas petition was filed." ECF #47 at 27-28. Suri reaches this conclusion by claiming Simon was required to differentiate which details came from each source listed in ¶ 4 of his declaration. ECF #47 at 27-28. But Suri is incorrect. For one, Suri does not contend that this information is outside the scope of Simon's official duties, or that Simon is competent to testify on the same. *Da'Vage v. D.C. Hous. Auth.*, No. 21-1318 (RDM), 2023 U.S. Dist. LEXIS 119916, at *18 (D.D.C. July 12, 2023) (rejecting challenge to similar declarations where "[t]he contested statements in [the] affidavit, however, are not the kind over which the affiant 'cannot possibly have personal knowledge.'" (citing *Londrigan*, 670 F.2d at 1175)). Two, "the *Londrigan* rule encompasses all information obtained by a declarant in the course of official duties, whether through conversation with other agency employees or review of documents." *Ecological Rights Found.*, 541 F. Supp. 3d at 50. Simon was not required to specify which details came from, e.g., his review of agency records versus reports from his subordinates. *Id.* Suri's argument that he was required to do so is legally unsupported.

Suri relies on *Martinez v. Hott*, 527 F. Supp. 3d 824 (E.D. Va. 2021), which is clearly distinguishable. In *Martinez*, Judge Alston struck three paragraphs of an AFOD's declaration that "there are four Salvadoran arrest warrants issued pertaining to [Martinez] that allege that Petitioner committed aggravated homicide… with respect to four different individuals" insofar as the government in that case argued that these warrants were issued by the Salvadoran government for the crimes alleged and that the content of those warrants supported § 1226(c) detention. *Id.* at 833. The circumstances here are clearly dissimilar. Here, Simon is testifying only as to a detention decision made within his authority, what he considered in making that decision, and how that decision was executed. Simon Decl. ¶¶ 5-14. *Martinez* does not provide a helpful analogue.[17]

Next Suri argues the Simon declaration should be disregarded because it does not include the Rubio memorandum, a custody determination, and a Form I-200. ECF #47 at 28. But none of these documents are pertinent to what Suri wants the Simon declaration excluded for, which is the timeline of where he was. Rather, as Suri acknowledges, he wants them for his habeas petition on the merits – i.e., whether Suri's "detention was authorized under the INA[.]" ECF #47 at 28. But Suri does not argue that these documents would contain anything relevant to the Government's motion, which concerns only whether habeas jurisdiction is proper in this Court. *Id.*

Additionally, Suri argues that he is entitled to discovery because "it is vague and contradicted by other evidence before the Court" because Suri wants to investigate the transfer decision, and he claims Simon's stated operational concerns "are credibly contradicted by evidence that there was in fact detention space available in Virginia." ECF #47 at 29. He is wrong. First, the data Suri relied on for his "evidence" is inadmissible hearsay which, as Suri argues, cannot be considered. Second, as noted *supra*, that there were empty beds does not equate to capacity to accommodate Suri. *Supra*, p.

[17] Tellingly, the rest of Suri's authorities in support of his position are docket orders unavailable on commercial databases and which provide little to no analysis.

11-12. Third, as noted *supra*, Suri argument that "there was in fact detention space available in Virginia" is a strawman. Simon did not say there were zero beds available, he said the decision was made out of concern for "*potential* overcrowding" given the "surge of targeted enforcement actions within the Northern Virginia and Washington D.C. region" around that time. Simon Decl. ¶ 8. Simon did not say there were *zero* beds, or that there was "no" capacity at that point in time. *See id.* Common sense indicates that overcrowding *prevention* prevents overcrowding before it occurs. Regardless, the hearsay data Suri relies on shows that the facilities had reached their highest capacity in the last five years around that time. *Supra* n.13. As such, the hearsay evidence Suri relies on supports—as opposed to contradicts—Simon's reasoning.

Finally, Suri argues discovery is warranted to dive into his conspiracy theory that ICE "engaged in a coordinated plan to hastily and surreptitiously move Petitioner to Louisiana and then Texas to establish a more favorable forum for themselves and interfere with Petitioner's access to counsel and his counsel's ability to successfully challenge his arrest and detention." ECF #47. His argument is misplaced. *First*, even if Suri did not exclusively rely on hearsay to support his claims, *Padilla* squarely rejected Suri's argument "that [habeas] jurisdiction might be premised on 'punishing' alleged Government misconduct." *Padilla*, 542 U.S.at 448; *Id.* at 449 n.17 (describing this theory as not a "valid legal argument"). So even if Suri were able to produce evidence that no concern about overcrowding is "credible" until 0 beds are available, under *Padilla*, that would not allow the Court to construct a fiction to manufacture jurisdiction here. *Id.* As such, Suri's requested discovery is a fishing expedition utterly without consequence. *Cf. Gardner v. United States*, 184 F. Supp. 3d 175, 184-85 (D. Md. 2016) (rejecting request for discovery to use in opposing dispositive motion because it was "grounded in speculation" and "would amount to a fishing expedition"). *Second*, there is nothing "surreptitious" about moving Suri to the Prairieland Detention Facility when the NTA—which his counsel had access by 2:11pm on March 18, 2025 (ECF #21-1)—both listed the address of the

Prairieland Detention Facility as Suri's residence address and listed the "Prairieland Detention Center" as the "room" of his upcoming appearance before an immigration judge. *See* NTA. Suri's unilateral disbelief of the NTA does not make detaining him there secretive or surreptitious. *Third*, decisions regarding where to detain and where to institute removal proceedings are not subject to judicial review under the INA, and in any event, the Court should not assume the role as the arbiter of ICE's place of detention assignments. ECF #28; *Lenz v. Washington*, 444 F.3d 295, 304-05 (4th Cir. 2006) (noting that custodial decisions rely on "on many criteria, including, but not limited to, prisoner dangerousness and the maximum capacity of each facility" and "concerns of… comparative expertise militate against federal court supervision of administrative decisions made by state departments of corrections."). As such, discovery would be inappropriate, even if it sought information of any consequence.

IV. Suri Misunderstands the Government's Arguments

Suri argues that his construction of Respondents' "argument suggests that there was a several-day period where habeas relief was simply unavailable to Dr. Khan Suri – an outcome that is plainly contrary to the principles universally applied to habeas cases." ECF #47 at 23. Suri misconstrues Respondents' argument in lieu of responding to it.

Respondents' argument is that Suri's Petition should have been filed in the Northern District of Texas because the NTA identified the Prairieland Detention Facility as the place of his confinement, and the place from which he will appear at his May 6 immigration hearing. Under *Poole*, his time in transit in Virginia to Texas was only "a hiatus to another jurisdiction" and, having been informed in advance that he would be detained in Alvarado, Texas, his Petition should have been filed in the Northern District of Texas. *United States v. Poole*, 531 F.3d 263, 273 (4th Cir. 2008). Although *Poole* arose in the context of a prisoner who was already established in Kentucky and was temporarily in Maryland to attend proceedings, the logic of *Poole* applies no less to a detainee who is in transit to the "original place of incarceration." *Id.* at 271. Suri's reasoning converts § 2241(a)—which was intended

to provide predictability and uniformity—into a "tag" jurisdictional provision by, e.g., allowing a Petitioner to establish habeas in a district that he was merely passing through on the way to the permanent place of confinement. That cannot possibly be correct, nor is it under *Poole*.

Suri also argues that, even if *Poole* applies, "*Poole* counsels in favor of allowing this District to maintain jurisdiction, because it is the district in which was [sic] Dr. Khan Suri's original custodian is located." ECF #47. But not so. Suri may have been arrested in Virginia, but he was assigned to detention in Texas. The proper district for Suri's habeas petition is the Northern District of Texas because that is where he was told he would be confined, and it is where he is currently confined. *Trump v. J.G.G.*, No. 24A931, 2025 U.S. LEXIS 1450, at *3 (S. Ct. Apr. 7, 2025). That he was only *en route* to Texas does not mean the doors of the U.S. District Court for the Northern District of Texas were closed to him; indeed, under *Braden*, Suri was able to institute his action in that district while he was in transit to that district because he challenges his confinement in that district. *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 499 (1973) (Alabama prisoner's habeas petition challenging Kentucky detainer—which would result in future detention in Kentucky—is properly filed in Kentucky, not Alabama). Respondents' argument here is neither new nor novel, relies on what Suri tacitly concedes is a straightforward application of the immediate custodian and district of confinement rules, and most certainly does not "suggest" that there was "a several-day period where habeas relief was simply unavailable[.]"

His NTA—which his counsel had access to before the Petition was filed—indicated he would be confined at the Prairieland Detention Facility in Alvarado, Texas. The doors of the Northern District of Texas (Dallas Division) are and were open to him. Suri's unilateral confusion or disbelief of the NTA does not make the custodian unknown, nor is the Government's action following through on what his NTA told him "surreptitious." Moreover, Suri's opposition does not dispute that he had left Virginia by the time his Petition was filed. ECF #47; ECF #47-1 at ¶¶ 17-18 ("At some point in

the late afternoon or early evening of March 18, the plane landed. I did not know where I was, but I later gathered that I was in Louisiana"). The Court should not allow Suri to convert § 2241(a)'s habeas jurisdiction provision into a "tag" jurisdictional provision, particularly where the tag in this case is not predicated on where he *actually* was located at the time of the Petition, but rather where his attorneys claim they "believed" he was located. *Padilla*, 542 U.S. at 448 (explaining "extending *Endo* to a case where both the petitioner and his immediate custodian were outside of the district at the time of filing" would be "contrary to our well-established precedent"). The Government decided to detain Suri in Texas, it informed him of that decision, and it followed through on that decision quickly.

The only forum shopping occurring here is from Suri's side, who asserts the Court must misapply or expand narrow exceptions, avoid applying too "strictly" well-established legal precepts, and employ equitable power to permit Suri to select a forum of his choosing.

CONCLUSION

As Suri's opposition indicates, the Court would have to employ the "unknown custodian" exception, bypass the immediate custodian rule, and deviate from *Padilla* to find jurisdiction. Many of Suri's theories—such as exercising habeas jurisdiction outside of the district of confinement to "punish" perceived misconduct, exercising habeas jurisdiction based only on what his attorneys claimed they knew (or did not know), or deviating from the district of confinement rule for equitable purposes—were all directly rejected by *Padilla*. *Padilla*, 542 U.S. at 448-49. The Court should not breathe new life into theories that *Padilla* forcefully rejected.

The Parties do not dispute that Suri was outside this district at the time of filing. For that reason, the only thing the Court needs to decide is whether it was properly filed here. If it was not, then the Court should dismiss without prejudice to refiling in the district of confinement. Suri argues for transfer over dismissal, except as to the Northern District of Texas. But there is no other

appropriate district, and Suri suggests none. The Court should dismiss, but if it does not, it should transfer the case to the Northern District of Texas.

DATE: April 21, 2025

Respectfully Submitted,

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