

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 25-cv-22487-DPG

JOSE GUERRA CASTRO,

Petitioner

v.

CHARLES PARRA, Field Office Director,
et al.,

Respondents.

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS
AND INJUNCTIVE RELIEF AND PRE-HEARING MEMORANDUM OF LAW
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

Charles Parra, Field Office Director, et al. (Respondents), through the undersigned counsel, maintains that Jose Guerra-Castro's (Petitioner) Petition for Writ of Habeas Corpus and Request for Emergency Injunctive Relief (Petition) (ECF No. 1) and accompanying Pre-hearing Memorandum of Law in Support of Petition for Writ of Habeas Corpus should be denied. The Petition should be denied because it is premature under *Zadvydas v. Davis*, 533 U.S. 678 (2001), as Petitioner has not shown post-order detention in excess of six months. Further, even if the Petition was not premature, there is a significant likelihood of removal in the reasonably foreseeable future to Cuba.

Petitioner's arguments seeking injunctive relief should also be denied. First, the Court lacks jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) to enjoin Respondents from transferring Petitioner to another district. Second, Petitioner's transfer to another district would not deprive him of his right to counsel because a habeas petitioner does not have a constitutional right to counsel. Third,

Petitioner cannot challenge the legality of his removal order or indirectly obstruct removal by asking the Court to prevent Respondents from transferring Petitioner to another facility for purposes of executing the removal order under 8 U.S.C. § 1252(g). Fourth, if Petitioner were to be removed to a third country, Respondents would comply with the requirements set forth in *D.V.D. v. United States Dep't of Homeland Sec.*, Civil Action No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197 (D. Mass. April 18, 2025).

I. BACKGROUND

Petitioner is a native and citizen of Cuba. *See* (ECF No. 1 at ¶ 5)

On November 30, 2005, Petitioner adjusted to lawful permanent resident status under the Cuban Adjustment Act. *See* (Exhibit A, Declaration of Deportation Officer Alverio, at ¶ 10).

On March 2, 2010, Petitioner was convicted of Conspiracy to Bring Aliens into the United States, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(I), (a)(1)(A)(v)(I), and Bringing Aliens into the United States, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), for which he was sentenced to sixty months of incarceration followed by two years of supervised release. (*Id.* at ¶ 11).

On March 18, 2014, Petitioner was encountered by immigration officials while incarcerated in Post, Texas. (*Id.* at ¶ 12).

On March 27, 2014, Petitioner was taken into Immigration and Customs Enforcement (ICE) custody. (*Id.* at ¶ 13).

On April 8, 2014, Petitioner was issued a Notice to Appear (NTA), charging him with two counts of removability under Section 237(a)(2)(A)(iii) of the INA, 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony relating to alien smuggling and conspiracy to commit an offense related to alien smuggling. (*Id.* at ¶ 14).

On April 8, 2014, Petitioner appeared *pro se* before the immigration court at the Rolling Plains Detention Center and requested to proceed with his case. On that same date, the Immigration Judge found Petitioner removable and ordered him removed to Cuba. Petitioner waived appeal of the removal order. (*Id.* at ¶¶ 15-17).

On May 9, 2014, Petitioner was released from ICE custody on an order of supervision. (*Id.* at ¶ 20).

On May 29, 2025, Petitioner's order of supervision was revoked under 8 C.F.R. § 241.4(l)(2)(iii) to effectuate removal to Cuba. (*Id.* at ¶ 21).

On May 29, 2025, Petitioner was taken into ICE custody at Krome North Service Processing Center. (*Id.* at ¶ 22).

Currently, Cuba does not require a travel document for repatriation of its citizens. (*Id.* at ¶ 23).

ICE removes aliens via charter flights to Cuba, subject to availability. (*Id.* at ¶ 24).

II. ARGUMENT

A. Return to Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241

In "Petitioner's Pre-Hearing Memorandum of Law in Support of Petition For Writ Of Habeas Corpus," filed on June 11, 2025, he claims that his detention is unconstitutional because "the removal period has passed" yet "removal is not imminent." *See* (ECF No. 14 at 3).

Section 1231(a)(1)(A) directs ICE to remove an alien subject to a final order of removal within the 90-day removal period. 8 U.S.C. § 1231(a)(1)(A) ("Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

The removal period beings on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

However, “federal law authorizes alien....to be detained beyond the ordinary 90-day removal period” in § 1231(a)(1)(B). *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051 (11th Cir. 2002) (citing 8 U.S.C. § 1231(a)(6)). Such extended detention period is found in § 1231(a)(6), which states:

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be *detained* beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

§ 1231(a)(6) (emphasis added).

In *Zadvydas*, the Supreme concluded that six months is a presumptively reasonable period to detain a removable alien awaiting deportation. *Id.* (stating “for the sake of uniform administration in the federal courts, we recognize that [six-month] period.”).

Additionally, in *Akinwale*, the Eleventh Circuit clarified that to “state a claim under *Zadvydas* the alien not only must show post-removal order *detention* in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale*, 287 F.3d at 1052. (emphasis added).

If a petitioner has been detained fewer than six months, then the § 2241 petition should be dismissed as premature. *See Phadael v. Ripa*, No. 24-CV-22227-RKA, 2024 U.S. Dist. LEXIS 109481, 2024 WL 3088350, at *3 (S.D. Fla. June 21, 2024) (Because the petitioner “filed his Petition . . . comfortably within *both* the six-month period of presumptive reasonableness

under *Zadvydas* and the ninety-day mandatory detention period set by § 1231(a)(1), . . . his § 2241 petition must be dismissed as premature.”(emphasis in original); *Allotey v. Mia. Field Off. Dir., Immigr.*, 24-cv-24765-DPG, 2024 WL 5375519, 2024 LEXIS 239135, *5 (denying habeas petition has premature under *Zadvydas* when petitioner had only been detained for eighteen days prior to filing the habeas petition).

Here, the Petition should be dismissed as premature because Petitioner has not shown post-order detention in excess of six months under *Zadvydas*. *Akinwale*, 287 F.3d at 1051-52. (“The six-month period must have expired at the time [the] § 2241 petition was filed in order to state a claim under *Zadvydas*.”). Between the time his order of removal became final on April 8, 2014, and when he filed the Petition, Petitioner has been detained for a total of approximately 62 days.¹

Nonetheless, even if the detention period under *Zadvydas* had elapsed, detention is still lawful because there is a significant likelihood of removal to Cuba in the reasonably foreseeable future. It is undisputed that Petitioner is a Cuban national. Further, ICE removes aliens to Cuba, which does not require a travel document for repatriation of its citizens.

Accordingly, the Petition should be dismissed as premature under *Zadvydas* because Petitioner has only been detained for 62 days. Further, even if the Petition was not premature, Petitioner cannot meet his burden that there is no significant likelihood of removal in the reasonably foreseeable future because Cuba accepts repatriation of its nationals.

B. Preliminary Injunction

In order to obtain the extraordinary remedy of a preliminary injunction, a plaintiff must prove: “(1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered

¹ He was detained from March 27, 2014, to May 9, 2014, for a total of 61 days. Currently, he has been detained since May 29, 2025. He filed the Petition on May 30, 2025. Thus, he had been detained for one day in 2025 prior to filing the Petition; totaling 62 days in custody.

unless the injunction issues; (3) the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). Because a preliminary injunction is “an extraordinary and drastic remedy,” it should not be granted unless the plaintiff “clearly carries the burden of persuasion as to the four prerequisites.” *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985) (citation and internal quotations marks omitted).

1. Substantial Likelihood of Success on the Merits

In his Petition, Petitioner requests the Court enjoin Respondents from transferring Petitioner to another district because the “transfer would deprive Petitioner of a meaningful opportunity to challenge his detention or removal, and denied him effective access to the legal process at a critical moment.” (ECF No. 1 at ¶¶ 19).

First, the Court lacks jurisdiction under § 1252(a)(2)(B)(ii) to enjoin Respondents from transferring Petitioner to another district. § 1252(a)(2)(B) states that “no court shall have jurisdiction to review any action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General” § 1252(a)(2)(B)(ii). Specifically, 8 U.S.C. § 1231(g)(1) falls within the subchapter and states the “Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.” 8 U.S.C. § 1231(g)(1). *See Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (“§ 1252(a)(2)(B)(ii) provides that no court has jurisdiction to review *any* decision or action the Attorney General has discretion to make ‘under this subchapter’ except for ‘the granting of relief under section 1158(a).’ ‘This subchapter,’ which is subchapter II of Chapter 12 of Title 8, covers §§ 1151-1378, including § 1231.”).

Several other courts have agreed with the Tenth Circuit Court of Appeals finding that discretion referred to in § 1252(a)(2)(B)(ii) “encompasses the Attorney General’s authority to ‘arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.’” *Vasquez-Ramos v. Barr*, No. 20-CV-6206-FPG, 2020 U.S. Dist. LEXIS 266756, 2020 WL 13554810, at *4 (W.D.N.Y. June 26, 2020) (citing, *Salazar v. Dubois*, No. 17-CV-2186 (RLE), 2017 U.S. Dist. LEXIS 146957, 2017 WL 4045304, at *1 (S.D.N.Y. Sept. 11, 2017). “[T]he place of detention is left to the discretion of the Attorney General.” *Kapiamba v. Gonzalez*, No. 07-CV-335, 2007 WL 3346747, 2007 U.S. Dist. LEXIS 82767, *2-3 (W.D. Mich., Nov. 7, 2008) (citing, *Sinclair v. Attorney General of the United States*, 198 Fed. Appx. 218, 222 n. 3 (3rd Cir. 2006) (listing cases). *See also*, *Marogi v. Jenifer*, 126 F. Supp. 2d 1056, 1066 (E.D. Mich. 2000) (“Congress has placed the responsibility for determining where aliens are to be detained within the sound discretion of the Attorney General”).

Second, Petitioner’s transfer to another district would not deprive him of his right to counsel. (ECF No. 1 at ¶¶ 21-25). Petitioner argues that “relocation would significantly disrupt ongoing legal representation.” (ECF No. 1 at ¶¶ 21, 23). However, a “habeas petitioner does not have a constitutional right to counsel.” *Henderson v. Campbell*, 353 F.3d 880, 892 (11th Cir. 2003). Further, even if inconvenient, relocation to another district would not deprive Petitioner of access to his current counsel because counsel can travel to Petitioner. Petitioner can also secure representation from another local immigration attorney.

Third, Petitioner argues that the “transfer would deprive Petitioner of a meaningful opportunity to challenge his...removal.” *See* (ECF No. 1 at ¶ 19). However, the Court does not have jurisdiction under § 1252(g) to challenge his removal.

Similarly, the Court does not have jurisdiction under § 1252(g) to stay a transfer to another detention center when the transfer is undertaken to facilitate a removal. *See* (ECF No. 1 at ¶ 15) (alleging that Cuban nationals detained at Krome are transferred prior to being removed to a third country).

§ 1252(g) explicitly states that “no court shall have jurisdiction to hear *any* cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” (emphasis added). § 1252(g). *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) (“the statute’s words make that clear. One word in particular stands out: ‘any.’ Section 1252(g) bars review over ‘any’ challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government’s ‘authority’ to execute their removal orders.”).

§ 1252(g) plainly bars direct attacks on the legality of the removal order. Further, § 1252(g) bars indirect attacks on the execution of the removal order. Here, Petitioner is asking the Court to enjoin Respondents from transferring Petitioner to another facility to indirectly prevent the execution of the removal order, in the event the removal will be executed from a detention center where Petitioner is not located. § 1252(g) bars such indirect attacks because they are nonetheless a challenge to the execution of the removal order. *cf. Patel v. United States AG*, 971 F.3d 1258, 1272 (11th Cir. 2020) (en banc) (noting that “a party may not dress up a claim with legal or constitutional clothing to invoke our jurisdiction.”).

Fourth, Petitioner claims his detention is unconstitutional because he has not received notice that he will be removed to a third country, as required under the class action of *D.V.D. v. United States Dep’t of Homeland Sec.*, Civil Action No. 25-10676-BEM, 2025 U.S. Dist. LEXIS

74197, (D. Mass. April 18, 2025). (ECF No. 1 at ¶¶ 15, 17); (ECF No. 14 at 4). Respondents concur that Petitioner has not received notice of removal to a third country. If Petitioner were to be removed to a third country, Respondents maintain they will comply with the requirements set forth in Memorandum on Preliminary Injunction in *D.V.D. v. United States Dep't of Homeland Sec.* See (ECF No. 118), if legally binding

2. Irreparable Injury Will Be Suffered Unless the Injunction Issues

Petitioner cannot prove irreparable harm will occur if the injunction enjoining Respondents from transferring Petitioner is not issued. As explained above, even if Petitioner was transferred, he would still have access to counsel. Further, any removal to a third country would be compliant with the requirements articulated in *D.V.D. v. United States Dep't of Homeland Sec.*

3. The Threatened Injury Outweighs Whatever Damage the Proposed Injunction May Cause the Opposing Party.

Third, the threatened injury to Petitioner does not outweigh the damage the injunction will cause Respondents. An injunction precluding Respondents from transferring or removing Petitioner would deprive Respondents of their statutory discretionary ability to transfer Petitioner and statutory ability to execute his removal order.

4. If Issued, The Injunction Would Not Be Adverse to The Public Interest.

An issuance of an injunction preventing Respondents from transferring Petitioner or executing the removal order would be adverse to the public interest because enforcing federal immigration law furthers the public's interest. See *Garcia v. Martin*, 379 F. Supp. 3d 1301, 1308 (S.D. Fla. 2018) (denying a preliminary injunction requesting a stay of removal because an execution of a removal order "is commensurate with the public's interest in enforcing federal law.")

Accordingly, for the reasons explained herein, the Petition should be denied.

Respectfully submitted,

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