

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-22624-JEM

EURIALO LOSADA DIAZ,

Petitioner

v.

CHARLES PARRA, Field Office Director,  
*et al.*,

Respondents.

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**RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF  
HABEAS CORPUS AND REQUEST FOR EMERGENCY INJUNCTIVE RELIEF**

Respondents, Charles Parra, in his official capacity as Assistant Field Office Director; Garrett Ripa, in his official capacity as Field Office Director, Miami Field Office; Todd Lyons, in his official capacity as Acting Director, Immigration and Customs Enforcement; and Kristi Noem, in her official capacity as U.S. Secretary of Homeland Security; respectfully submit this Response in Opposition to Petitioner Eurialo Losada Diaz's Petition for Writ of Habeas Corpus and Request for Emergency Injunctive Relief (ECF No. 1) and this Court's Order to Show Cause (ECF No. 6). This Court should dismiss the Petition because this Court lack jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) to enjoin Respondents from transferring Petitioner to another district, and this Court should deny the Petition because Petitioner failed to establish any violations of his Fifth and Sixth Amendment rights.

**I. BACKGROUND**

Petitioner Eurialo Losada Diaz is a native and citizen of Cuba. *See* Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien (I-213). *See also* ECF No. 1 at ¶ 5. He was

admitted to the United States as a lawful permanent resident on or about December 21, 1988. *See* Exhibit A, I-213. On December 14, 2001, Petitioner was convicted in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida of one count of Lewd and Lascivious Exhibition on a child under the age of sixteen, in violation of Section 800.04(7)(a) of the Florida Statutes. *See id.* For this offense he was sentenced to time served and five years of probation. *See id.*

As a result of this conviction, Petitioner was placed in removal proceedings via the issuance of a Notice to Appear, charging him with removability pursuant to (1) Section 237(a)(2)(E)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1227(a)(2)(E)(i), as an alien who at any time after admission has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment, and (2) Section 237(a)(2)(A)(iii) of the INA, 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien who at any time after admission has been convicted of an aggravated felony as defined in Section 101(a)(43)(A), 8 U.S.C. § 1101(a)(43)(A) of the Act, a law relating to Murder, Rape or Sexual Abuse of a Minor. *See* Exhibit B, Notice to Appear. *See also* Exhibit A, I-213; Exhibit C, EARM Detention History.

On May 20, 2021, an Immigration Judge ordered Petitioner removed to Cuba and granted him deferral of removal to Cuba under Article III of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *See* Exhibit D, Immigration Judge Order. (*See also* ECF No. 1 at ¶ 13.) Petitioner was released from custody pursuant to an Order of Supervision (OSUP) on May 21, 2021. *See* Exhibit E, Order of Supervision.

On June 7, 2005, Immigration and Customs Enforcement revoked Petitioner's OSUP and took him into custody. *See* Exhibit F, Notice of Revocation of Release. (*See* ECF No. 1 at ¶ 12; Exhibit C, EARM Detention History.) Petitioner is currently detained at the Krome Service Processing Center, a detention facility in Miami, Florida, while he is being processed for removal. *See id.* He is detained under the authority of 8 U.S.C. § 1231(a)(6).

## II. ARGUMENT

In his Petition, Eurialo Losada Diaz asks this Court to find that Respondents violated Petitioner's Fifth Amendment right to Due Process (ECF No. 1 at 5-7) and his Sixth Amendment right to Counsel (*id.* at 7-8), and to order as remedies that "Petitioner shall not be transferred" outside this District and that Respondents release Petitioner (*id.* at 7-8). Petitioner's claims lack merit.

### A. **There Has Been No Violation of Petitioner's Fifth Amendment Right to Due Process.**

Petitioner claims that his current detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001) (ECF No. 1 at 5-7). That claim lacks merit. In *Zadvydas*, the Supreme Court held that a six-month detention of an alien pending removal is presumptively reasonable. *Zadvydas*, 533 U.S. at 699-701 (stating "for the sake of uniform administration in the federal courts, we recognize that [six-month] period.>").

The Department of Homeland Security properly revoked Petitioner's order of supervision pursuant to 8 C.F.R. § 241.4(l)(2), and Petitioner has only been in custody since June 7, 2025 (*see* ECF No. 1 at ¶ 12,) meaning he has been lawfully detained a few *days*, and not a few *months* which the Supreme Court found presumptively reasonable in *Zadvydas*. 533 U.S. at 699-701. In such circumstances, courts in this District have routinely dismissed petitions, like the one currently before this Court, when a petitioner, like the one here, seeks

relief before being detained more than six months. *See, e.g. Phadael v. Ripa*, Case 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 removed); *Allotey v. Mia. Field Off. Dir., Immigr*, Case No. 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).

For this reason, this Court should deny Petitioner’s claim of a Due Process violation.

**B. There Has Been No Violation of Petitioner’s Sixth Amendment Right to Counsel.**

Petitioner claims that transferring Petitioner “to another facility without notice” would violate Petitioner’s Sixth Amendment right to Counsel (ECF No. 1 at 7). That argument lacks merit. As the Eleventh Circuit ruled, a “habeas petitioner does not have a constitutional right to counsel,” *Henderson v. Campbell*, 353 F.3d 880, 892 (11th Cir. 2003), and, even if Petitioner did have a right to counsel, the relocation of Petitioner to another district would not deprive Petitioner of access to his current counsel because counsel can travel to Petitioner or communicate through other means.

For this reason, the Court should deny Petitioner’s claim that his removal from this District would violate his Sixth Amendment Right to Counsel.

**C. This Court Lacks Jurisdiction to Issue an Injunction.**

Petitioner asks this Court to issue an injunction preventing his transfer out of this District. This Court should dismiss the Petition because it lacks jurisdiction to issue an

injunction ordering “that Petitioner should not be transferred outside [this District]” (ECF No. 1 at 7).

In *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999), the Tenth Circuit Court of Appeals ruled that 8 U.S.C. § 1252(a)(2)(B) deprives a court of jurisdiction over disputes involving the appropriate place of detention of aliens pending removal or a decision on removal, and 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*, Case 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”).

For this reason, the Court should dismiss the Petition for lack of jurisdiction.<sup>1</sup>

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<sup>1</sup> Petitioner alleges, without specifying any facts to support that allegation, that his removal from this District “would deprive Petitioner of a meaningful opportunity to challenge his detention or removal. . . (ECF No. 1 at 6-7). This Court lacks jurisdiction to hear a claim challenging the decision to *commence proceedings, adjudicate cases, or execute removal orders.*” *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) (citing 8 U.S.C. § 1252(g) (emphasis added)).

**D. Injunctive Relief Is Not Appropriate.**

In the alternative, this Court could dismiss the Petition because injunctive relief is inappropriate.

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 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).

An extraordinary remedy is not appropriate here. As previously stated, *supra* II. A. and II. B., Petitioner’s claims of violations of his Fifth and Sixth Amendment rights lack merit. Moreover, his claims of irreparable injury are unsubstantiated, in that even if Petitioner was transferred, he would still have access to counsel and he cannot establish that any removal to a third country would not be compliant with the requirements articulated in *D.V.D. v. United States Dep’t of Homeland Sec.*, Case 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). *See also D.V.D. v. United States Dep’t of Homeland Sec.*, Case No. 25-10676-BEM (ECF No. 118) (Respondents assurances that they will comply with the requirements set forth in Memorandum on Preliminary Injunction). In addition, the issuance of 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. Finally, the issuance of an injunction preventing Respondents from transferring Petitioner or executing the removal order would undermine the public's interests 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").

For these reasons, if this Court were to find that it had jurisdiction to issue an injunction, this Court should not do so.

### **CONCLUSION**

Petitioner failed to establish any violations of his Fifth or Sixth Amendment rights, and this Court should deny the Petition. Moreover, because this Court lacks jurisdiction to issue injunctive release, this Court should dismiss the Petition for lack of jurisdiction. Finally, if this Court were to find that it had jurisdiction, injunctive relief is not appropriate.

Respectfully submitted,

**HAYDEN P. O'BYRNE**  
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CERTIFICATE OF SERVICE

I certify that on June 16, 2025, I uploaded the attached document to the Court's PACER system.

By: H. Ron Davidson  
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ASSISTANT U.S. ATTORNEY