

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FIDEL A. PENA-GIL,
(A )

Petitioner

v.

TODD M. LYONS, in his official capacity as
Acting Director, U.S. Immigration and
Customs Enforcement; ROBERT
GUADIAN, Field Director of the Denver
Field Office; WARDEN, Aurora Contract
Detention Facility;

Respondents

Case No. 1:25-cv-3268

**REPLY IN SUPPORT OF PETITIONER'S
MOTION FOR ISSUANCE OF AN ORDER
TO SHOW CAUSE AND FOR A
PRELIMINARY INJUNCTION**

On October 16, 2025, Petitioner Fidel Pena-Gil (“Mr. Pena”) filed a petition for a writ of habeas corpus on the basis that his immigration detention violates the Immigration and Nationality Act as well as his substantive and procedural due process rights. *See* ECF No. 1. He also sought an order directing Respondents to forthwith respond to the petition for a writ of habeas corpus and an order precluding Respondents from transferring him out of the jurisdiction pending resolution of this petition. ECF Nos 7-8.

Respondents oppose the motion, asserting that Mr. Pena cannot dictate where Department of Homeland Security (“DHS”) detains him. *See* ECF No. 13 (discussing 8 U.S.C. § 1231(g)).

Respondents misapprehend Mr. Pena’s motion and incorrectly assert that this Court cannot issue such an order under the All Writs Act. *Opp.* at 6. *See Arosegui-Maldonado v. Baltazar*, -- F. Supp. 3d --, 2025 WL 2280357, *12 (D. Colo. Aug. 8, 2025) (recognizing that the Court “has authority under the All Writs Act to enter an injunction preventing Maldonado’s transfer out of the District of Colorado during the pendency of this habeas action”). First, Mr. Pena is not challenging

the place of his detention; indeed, he does not challenge DHS's ability to transfer him from Florida to Colorado—away from his family and community. *Cf. Tercero v. Holder*, 510 F. App'x 761, 766 (10th Cir. 2013). Nor does Mr. Pena argue that the Court would be deprived of jurisdiction in this case if he were transferred to another facility. This Court's jurisdiction is clearly established. *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004). Rather, Mr. Pena requests an order precluding additional transfers during the pendency of his petition so that he can continue to participate in the proceedings. Outside of claiming absolute discretion of where to house immigration detainees and a desire to enforce an exclusion order that is more than 30 years old (without demonstrating a significant likelihood of removal in the reasonably foreseeable future, as described in the accompanying reply to Respondents' return), Respondents have cited no reason or hardship or difficulty in keeping Mr. Pena in Colorado until these proceedings have concluded. *See generally* Opp.

Additionally, while Respondents disagree with this Court's recent invocation of the All Writs Act in several recent decision, Opp. at 6, the only citation they provide to support their claim is a decision that is, at best, abrogated and of questionable validity. *See* Opp. at 8 (citing *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999)); *see also Arosegui-Maldonado*, 2025 WL 2280357, at *15 (stating that "it is unclear that the Tenth Circuit's reasoning in *Van Dinh* applies" outside of a *Bivens* class action, and "even if it did, the Supreme Court's decision in *Kucana v. Holder*, 558 U.S. 233 (2010), calls the Tenth Circuit's reasoning into question."). Ultimately, this Court retains the ability under the All Writs Act to issue an order precluding Mr. Pena's transfer outside this jurisdiction during the pendency of these proceedings, and, for the reasons provided in his motion and corresponding petition, he requests the Court issue such an order.

CONCLUSION

For these and the reasons presented in Mr. Pena's motion, Mr. Pena requests the Court preclude Respondents from transferring Mr. Pena outside this jurisdiction pending resolution of this case.

Respectfully submitted,

November 11, 2025

Respectfully submitted,

/s/ Jessica A. Dawgert
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