

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

DAVID FERRER LESCAILLE,

Petitioner,

v.

KELIE WALKER, ET AL.,

Respondents.

Case No. 2:26-cv-0011-KCD-NPM

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**RESPONDENTS' OPPOSITION TO MOTION FOR STAY**

Respondents, by and through the undersigned counsel, hereby respond to Petitioner David Ferrer Lescaille's ("Petitioner") emergency motion for a stay of removal (ECF No. 8, "Stay Motion"). For the reasons discussed below, the Court should deny Petitioner's motion.

**INTRODUCTION**

Petitioner, subject to a final order of removal for over twenty years, asserts that Respondents have revoked his longstanding order of supervision contrary to the applicable regulations and in violation of the 5<sup>th</sup> Amendment to the United States Constitution resulting in his unlawful detention. *See* ECF No. 1. While the Court considers whether relief pursuant to the habeas corpus relief is appropriate, Petitioner now asks this Court for a stay of his removal, not under the traditional injunctive

mechanisms available to him, but rather under the All Writs Act. Petitioner has failed to demonstrate that the relief sought in this motion is proper and therefore his motion should be denied.

### **FACTS & PROCEDURAL HISTORY**

Petitioner is a citizen of Cuba. *See* ECF No. 1, ¶¶ 1, 17, 22. He was paroled into the United States in 1980 but ultimately ordered removed from the United States in 2003. *Id.* at ¶¶ 1, 22. Petitioner was placed on an order of supervision thereafter. *Id.* at ¶ 23. November 12, 2025, his order of supervision was revoked and he was taken into custody. On December 27, 2025, a petitioner in another habeas corpus matter filed an amended habeas petition seeking to add this Petitioner to that action. *See Banega v. Ripe, et al.*, No. 25-cv-1152 (M.D. Fla.), Dkt. 9. However, Judge Steele dismissed this Petitioner from that action. *Id.*, Dkt. 12. On January 2, 2026, Petitioner filed his own habeas petition and on January 8, 2026, he filed the instant stay motion. ECF Nos. 1, 8. The government's response to the habeas petition is due on January 26, 2026 and there is no due date presently set on the Stay Motion. *See* ECF No. 3.

### **LEGAL STANDARD**

Preliminary injunctive relief—whether through a temporary restraining order or a preliminary injunction—is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The standard for obtaining either form relief—in the traditional sense—is the same. *See Parker v. State*

*Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001) (per curiam); *Windsor v. United States*, 379 F. App'x 912, 916-17 (11th Cir. 2010) (per curiam). A movant seeking a traditional preliminary injunction or a TRO must show: (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant 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) (citations omitted); see also *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995) (per curiam). “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). Importantly, the party seeking injunctive relief bears the burden of persuasion as to each of the required elements. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000); *Bongiovanni v. Austin*, No. 3:22-cv-237-MMH-MCR, 2022 WL 1642158, at \*5 (M.D. Fla. May 24, 2022).

Traditional injunctions are based upon a cause of action, however injunctions sought pursuant to the All Writs Act are predicated on “some other matter upon which a court has jurisdiction.” *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004). Thus, unlike in the case of a traditional injunction, in the case of an All Writs injunction, there is no requirement to state a claim, rather a successful movant must point to a proceeding, judgment, or order, the integrity of which is threatened by an action or behavior. *Id.*

## ARGUMENT

### I. The Relief Sought Is Jurisdictionally Barred

The instant motion asks this court to stay Petitioner’s removal pursuant to a lawful, valid removal order. *See* Stay Motion; *see also* ECF No. 1, ¶¶ 1, 22. However, the Court is stripped of jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (“*AADC*”) (cleaned up). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

Here, Petitioner is subject to a final order of removal— ECF No. 1, ¶¶ 1, 22.— and in this motion he seeks to halt Respondents’ lawful authority to execute that order. *See* Stay Motion. This matter thus falls squarely within the specific actions *Jennings* contemplated, namely the discrete action of executing a removal order, and this Court lacks jurisdiction to grant Petitioner the relief sought.

### II. Petitioner’s Arguments Are Internally Inconsistent

At the heart of Petitioner’s Stay Motion is the fear that the government’s execution of his final order of removal would destroy this Court’s jurisdiction over his

habeas claims. *See generally* Stay Motion. As Petitioner would have the Court believe, the government is prepared to imminently remove him before he can be heard thus the Court must intervene. *Id.* But this argument fails to square with the very basis of his habeas relief, namely his strong belief that his removal is not likely in the reasonably foreseeable future. *See ECF No. 1*, ¶¶ 31-33, 51. In other words, Petitioner simultaneously argues that his detention is unlawful because there is no way he will be removed from the United States while also arguing that the Court simply must intervene or he will be removed. Petitioner has failed to demonstrate that the Court's intervention is necessary on the facts as pled.

### **III. Transfer to Another District Would Not Destroy Jurisdiction**

To the extent that Petitioner seeks a stay of his transfer to another jurisdiction—Stay Motion at 6—he has failed to demonstrate that this relief is warranted. Once jurisdiction is properly acquired, a petitioner's removal to another judicial district does not destroy a court's jurisdiction. *Ex parte Endo*, 323 U.S. 283, 306 (1944); *Major v. Warden, FCC Coleman - Low*, No. 5:18-CV-269-OC-02PRL, 2019 WL 4194673, at \*1 (M.D. Fla. Sept. 4, 2019). Indeed, “[j]urisdiction attaches upon the initial filing of the § 2241 petition and will not be destroyed by a petitioner's subsequent Government-effectuated transfer and accompanying change in physical custodian.” *Major*, 2019 WL 4194673 at \*1. Here, Petitioner filed his habeas petition in the Middle District of Florida while he was detained within the district. *ECF No. 1*, ¶¶ 3, 17. Jurisdiction was proper at the time of filing, thus even if he were transferred out of the Middle District of Florida, there is no risk of destruction of this Court's jurisdiction over his

Petition as he so asserts. *See* Stay Motion at 6. Furthermore, 8 U.S.C. § 1252(a)(2)(B)(ii) bars review over determinations as to where to house a detainee. *See Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at \*6 (S.D. Fla. Aug. 8, 2025).

#### **IV. Relief Under the All Writs Act is Inappropriate**

Perhaps most fatal to his claims, Petitioner has not demonstrated why injunctive relief pursuant to the All Writs Act is appropriate here. As the Supreme Court has explained:

The All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling. Although that Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate.

*Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985). Here, Petitioner has not sufficiently explained why such an unusual remedy is appropriate. Petitioner has pending before this Court a habeas petition at which he seeks judicial review of his claims of unlawful detention. ECF No. 1. Briefing is expected to close soon. *See* ECF No. 3. Furthermore, Petitioner has the ability to seek traditional injunctive relief to prohibit or restrict his movement while the habeas petition remains pending, yet rather than analyze those traditional factors<sup>1</sup>—which requires that he demonstrate a likelihood of success on the merits, irreparable harm, balance of

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<sup>1</sup> *See e.g.*, *Machado v. Bradley, et al.*, No. 6:25-cv-2457 (M.D. Fla.) Dkt. 5 (seeking temporary restraining order and preliminary injunctive relief pending outcome of habeas petition on substantially similar claims); *Lam v. Dir., Immigr. and Customs Enforcement, et al.*, No. 2:25-cv-1202 (M.D. Fla.) (same).

equities, and public interest—he has opted instead to file the instant motion, arguing that it is “warranted here because it is necessary to ensure that the Court can retain jurisdiction over the plaintiff’s cause of action.” Stay Motion at 3; *see also McDonald’s Corp.*, 147 F.3d at 1306. The instant motion, like the attempt at lumping seven unrelated petitioners together in the previously filed habeas petition and amended habeas petition in *Banega v. Ripa*, is merely another effort to short-circuit the established process for obtaining the relief sought. Rather than utilize the appropriate vehicle for injunctive relief, which indeed carries a more strenuous burden of persuasion, Petitioner has sought relief via the All Writs Act which is not appropriate under these circumstances. *See Pennsylvania Bureau of Correction*, 474 U.S. at 40 (declining to apply the All Writs Act based on inconvenience).

**V. No Other Relief is Proper**

Petitioner has not sought traditional injunctive relief. *See generally* Stay Motion. But even were the Court to construe the Stay Motion as a request for such relief, Respondents urge the Court to find that Petitioner has not met his burden. A movant seeking a preliminary injunction or a TRO must show: (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant 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.*, 147 F.3d at 1306 (citations omitted). Importantly, the party seeking injunctive relief bears the burden of persuasion as to each of the required elements. *Siegel*, 234 F.3d at 1176 (11th Cir. 2000); *Bongiovanni*,

2022 WL 1642158 at \*5. And Local Rule 6.01(a), Middle District of Florida, requires that a motion for a temporary restraining order set forth specific facts demonstrating entitlement to relief, describe precisely the conduct and persons sought to be enjoined, explain precisely the amount and form of required security, and be accompanied by a supporting legal memorandum and proposed order. Local Rule 6.01(a). None of these requirements have been met here. *See generally* Stay Motion. Accordingly, relief is not warranted.

Confusingly, Petitioner also asks that this Court “order that the respondent produce the petitioner’s body for the Court to take custody over the petitioner while it decides his case.” Stay Motion at 6. It’s unclear to Respondents whether this request represents a desire that he be physically transported to a hearing<sup>2</sup> or alternatively whether this requests that the Court somehow assume custody over his person pending the outcome of the habeas matter. In either event, Petitioner has identified no authority that would support such an order. *See generally* Stay Motion.

### CONCLUSION

The court should deny Petitioner’s motion. Petitioner has not met his burden in showing such relief is warranted.

Respectfully submitted,

GREGORY W. KEHOE  
United States Attorney

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<sup>2</sup> Petitioner also requests a hearing, though on what motion he seeks the hearing is unclear. Stay Motion at 6. Respondents aver that this matter—including the stay motion and the underlying habeas matter—can be expeditiously resolved on the papers.

By: /s/ Amanda Saylor  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 9, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: January 9, 2026

Signed:

*/s/ Amanda Saylor*

Amanda Saylor

Assistant United States Attorney