

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-21540-CIV-GAYLES

SANDRA VIVIANA FRANCO FERRO,
as next friend of BERNARDO FRANCO FERRO,

Petitioner,

v.

WARDEN, SOUTH FLORIDA DETENTION FACILITY,

Respondent.

_____ /

MOTION TO DISMISS OR TRANSFER ACTION

Pursuant to Fed. R. Civ. P. 12(b)(1), the United States respectfully moves to dismiss Petitioner, Sandra Viviana Franco Ferro, as next friend of Bernardo Franco Ferro's Petition for a Writ of Habeas Corpus or transfer it to the Middle District of Florida. In support of this Motion, Respondents state the following:

INTRODUCTION

Petitioner is challenging as unlawful the immigration detention of Bernardo Franco Ferro in the custody of Immigration and Customs Enforcement at the South Florida Detention Facility (also known as Florida Softside South Detention) in Ochopee, Florida. *See* Petition at ¶ 2. Ochopee is in Collier County, Florida, which is in the Middle District of Florida. *See* Federal Judicial Districts of Florida, <https://www.flsd.uscourts.gov/Federal-Judicial-Districts-Florida>.

ARGUMENT

The habeas statute, 28 U.S.C. § 2241 allows “the [U.S.] Supreme Court, any justice thereof, the district courts and any circuit judge” to grant writs of habeas corpus “within their respective jurisdictions.” 28 U.S.C. § 2441(a). The Supreme Court has interpreted the “within their respective jurisdiction language to mean that a Section 2441 petitioner challenging his present physical custody must file a petition for writ of habeas corpus in the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 446-47 (2004). “In challenges to present physical confinement... the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Padilla*, 542 U.S. at 435-40, 439.

Recently, in *Trump v. J.G.G.*, the Supreme Court reinforced that even for habeas petitions filed by immigration detainees, “jurisdiction lies in only one district: the district of confinement” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (citing *Padilla*, 542 U.S. at 426, 443). In *J.G.G.*, the Supreme Court found that detainees in Texas improperly filed a putative class action challenging their detention in the District of Columbia. (“The detainees are confined in Texas, so venue is improper in the District of Columbia.”). Importantly, this Court, citing *Padilla*, has previously dismissed habeas petitions for lack of jurisdiction filed by immigration detainees located outside the Southern District of Florida. *See Zhang v. United States*, 21-CV-81382-ALTMAN, 2021 U.S. Dist. LEXIS 162725, at *2-3 (S.D. Fla. Aug. 25, 2021) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Glades County Jail, in Glades County, Florida, because jurisdiction lies in the district of confinement); *Dolme v. Barr*, 20-CV-24106-Altman, 2020 U.S. Dist. LEXIS 197596, at *2-3 (S.D. Fla. Oct. 21, 2020) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Wakulla County Jail, in

Wakulla County, in the Northern District of Florida, because jurisdiction lies in the district of confinement).

WHEREFORE, the United States respectfully request that this habeas petition be dismissed or transferred to the Middle District of Florida, where Petitioner is currently detained.

Respectfully submitted.

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