

In the United States District Court
For the Western District of Texas
El Paso Division

Jose Polanco Penalver,
Petitioner,

v.

Pam Bondi et al,
Respondents.

No. 3:26-CV-00169-KC

Response to Order (ECF No. 9)

I. Statement of the issues

Federal Respondents respectfully respond to the Court's Order to Show Cause (ECF No. 9). The Court ordered Respondents to show cause why Petitioner Jose Polanco Penalver's petition for a writ of habeas corpus under 28 U.S.C. § 2241 ("Petition") should not be granted. ECF No. 9. Respondents ask that the Court dismiss the Petition for being duplicative or unnecessary. Alternatively, the Court should deny the Petition for the reasons stated in the Georgia response (ECF No. 7-3). Significantly, however, this Court expressed grave concern with the undersigned's conduct and representations. ECF No. 9. The undersigned apologizes for causing concern to the Court and submits explanations concerning her genuine efforts to conform her response to prior rulings of this Court, in no way intending to violate her duty of candor, to misrepresent the law, or to improperly serve Penalver at a wrong address.

II. Relevant facts and procedural history

Petitioner Jose Polanco Penalver is a Cuban national who once had Lawful Permanent Resident status. Order, ECF No. 2 at 2. Penalver lost that status after he was federally convicted of conspiracy to commit marriage fraud and alien harboring for financial gain in March 2018. *Id.*; ECF No. 7-2 ¶ 7. Penalver received a final order of removal in April 2019 and was released on an order of supervision because at the time, Cuba would not accept Penalver for repatriation. ECF Nos. 2 at 2; 7-2 ¶¶ 5-6. On November 24, 2025, the Enforcement and Removal Operations ("ERO") detained Penalver to execute the 2019 final order of removal. ECF No. 7-2 ¶ 8.¹

Shortly thereafter, on December 10, 2025, Penalver filed a petition for a writ of habeas

¹ The Supreme Court stayed the district court's preliminary injunction enjoining the government from removing aliens subject to a final order of removal from the United States to third countries not designated in their orders of removal. *Dep't of Homeland Sec. v. D. V. D.*, 145 S. Ct. 2627 (2025).

corpus under 28 U.S.C. § 2241 with the United States District Court for the Middle District of Georgia, claiming that his detention violates 8 U.S.C. § 1231 as well as substantive and procedural due process and that his alleged removal to a third country violates his due process rights and the Administrative Procedure Act. ECF No. 7-1 at 5-7. At the time of the filing, Penalver was confined in Lumpkin, Georgia. *Id.* at 2.

The respondents in that case responded in opposition, arguing that the court lacked jurisdiction because the petition was premature. ECF No. 7-3 at 6-7. Given the short duration of the detention, the respondents asserted that Penalver's challenge to the detention was premature because detention of less than six months is presumptively reasonable under binding precedent. *Id.* Alternatively, the respondents contended that Penalver's claims lacked merit because he failed to demonstrate there was no significant likelihood of removal in the reasonably foreseeable future. *Id.* at 8-9. In connection with this argument, the respondents noted, "ICE/ERO is currently awaiting bedspace at a facility in Texas, where Petitioner will be housed while being vetted by the Mexican consulate for removal to Mexico." *Id.* at 3, 8-9. To the extent Penalver sought notice and an opportunity to contest his removal to a third country, the respondents stated his request was moot because they gave him the requested notice. *Id.* at 9-10. The respondents also pointed out that Penalver is a member of the non-opt out certified class in *Department of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025), in which the Supreme Court stayed the injunction enjoining third-country removals. *Id.* at 11-16. As of this Response's filing, the Georgia petition remains pending, and the court there has not ruled on the petition. *Penalver v. Bondi*, 4:25-cv-457-CDL (M.D. Ga).

On January 27, 2026, Penalver filed the instant Petition with this Court, relying on his confinement in El Paso, Texas. ECF No. 3 at 2. The Petition contains claims that are identical to those in the Georgia petition. *Id.* at 5-7. Citing to *Griffin v. Ebbert*, 751 F.3d 288, 290 (5th Cir.

2014), this Court directed Respondents to address “(1) how they intend to proceed in this case and Penalver’s case in the Middle District of Georgia; and (2) their position as to the jurisdiction of this Court and the Middle District of Georgia over Penalver’s habeas petitions.” ECF No. 2 at 3. Two days later, Immigration and Customs Enforcement (“ICE”) transferred Penalver to the Central Louisiana ICE Processing Center for staging in anticipation of removing Penalver to his native country, Cuba. ECF No. 7-2 at ¶ 10.

On February 3, 2026, the undersigned on behalf of Respondents responded that the Court lacked jurisdiction over the Petition because Penalver’s transfers deprived the Court of jurisdiction. ECF No. 7. The undersigned mailed the Response to the El Paso detention center, which is Penalver’s address on file with the Clerk. *Id.* at 4. Because the docket listed that detention facility address as Penalver’s address, which had remained unchanged despite Local Rule CV-10,² the undersigned believed she was obligated to first attempt service at that address irrespective of Penalver’s transfer to Louisiana.

This Court disagreed with Respondents, concluding it had jurisdiction here. ECF No. 9 at 3. In rejecting Respondents’ arguments, the Court expressed grave concern that counsel for Respondents “appears to have made” statements “in violation of her duty of candor” and “to refrain from making false statements of law” by not addressing *Griffin* and by suggesting Penalver’s transfer deprived the Court of jurisdiction. ECF No. 9 at 1-3. The Court further strongly expressed its concern, “Respondents’ counsel appears to have knowingly served Penalver at the wrong detention facility,” and “have not provided any information” as to whether the Middle District of Georgia has been informed of Petitioner’s transfer to El Paso and whether that court intends to

² Local Rule CV-10 states, “[a]n unrepresented party . . . must promptly file a notice of any change in the party’s . . . mailing address.” Local Rule CV-10(d). To this date, Penalver has not filed a notice.

retain jurisdiction or transfer the case. *Id.* at 2-3. In response to these concerns, the Court ordered Respondents to show cause why the Petition should not be granted; to make all necessary arrangements to bring Petitioner to the hearing set for February 17, 2026; to inform the Court of Petitioner's choice of language and need for a translator; to serve Petitioner and file the notice of Petitioner's current address; and to notify the Court within 48 hours of Petitioner's transfer if he is transferred to a different facility. *Id.*

Upon receiving the Order, the undersigned immediately informed ICE of the Order and requested that ICE arrange Petitioner's attendance at the hearing set for February 17, 2026, and notify the undersigned if Petitioner is transferred to a different facility. She also mailed a copy of the Response (ECF No. 7) and the Order (ECF No. 9) to Penalver at the Louisiana detention facility address and directly requested help with ICE's counsel at the facility with serving those documents on Penalver. ECF No. 10. She also submits this Response to address the Court's concerns about her representations and conduct and to suggest the Petition be denied for the reasons stated herein.

III. The undersigned did not intend to misrepresent the law or violate the duty of candor.

Before turning to the Petition, the undersigned sincerely apologizes for causing grave concern to the Court. The concern derived from the Response in which the undersigned suggested that this Court did not have jurisdiction over the Petition. The undersigned acknowledges, and the Court correctly points out, that *Griffin* held "[j]urisdiction attached on that initial filing for habeas corpus relief, and it was not destroyed by the transfer of petitioner and accompanying custodial change." ECF No. 9 at 1. Replying on *Griffin*, the Court concluded it has jurisdiction here because Penalver was in El Paso, Texas when he filed the Petition. ECF No. 9 at 3. Before the Court reached that conclusion, the undersigned argued that Penalver's transfer to Louisiana deprived this Court of jurisdiction. ECF No. 7. In making that argument, she did not address *Griffin* and sincerely

apologizes for that omission. The omission was regrettable but unintentional.

In not referring to *Griffin* and arguing against jurisdiction, the undersigned did not intend to misrepresent law but instead genuinely believed that citations to the Supreme Court precedents supporting her position would be sufficient because she perceived, at the time of the filing, that her position complied with the Supreme Court precedents and the Court's prior orders at the time of the filing. After setting forth relevant case law, this Court had entered temporary restraining orders preventing "transfer" of immigrant detainees "from the forum jurisdiction" because "the action temporarily enjoined by the Court," which included a transfer from this district or removal out of the United States, "if allowed to take place, would destroy jurisdiction or moot the case." *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2606118, at *1 (W.D. Tex. Sept. 9, 2025). The Court in *Santiago* explained, "many courts recognized that . . . transferring [immigration habeas petitioners] to another judicial district may strip the reviewing court of jurisdiction." *Id.* at *3; *see also Alves v. U.S. Dep't of Just.*, No. EP-25-CV-306-KC, 2025 WL 2629763 (W.D. Tex. Sept. 12, 2025). Other courts, including those in this district, have taken the same position. Order, ECF No. 3 at 2-3, 3:26-cv-278-DB (W.D. Tex. Feb. 2, 2026) (citing to *Santiago*, 2025 WL 2629763, at *2-3) (ordering "Petitioner not be removed . . . to a facility *outside the jurisdiction* of the Western District of Texas – El Paso Division" (emphasis added)); *Gamez Lira v. Noem*, No. 1:25-CV-00855-WJ-KK, 2025 WL 2581710 (D.N.M. Sept. 5, 2025) (holding "[t]he Supreme Court has held that habeas relief is available only in the district of confinement" and thus enjoining removal of a petitioner out of the district to retain jurisdiction); *Misirbekov v. Venegas*, 793 F. Supp. 3d 892 (S.D. Tex. 2025).

That is consistent with the Supreme Court's precedents. The Supreme Court has held for habeas petitions, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v.*

Padilla, 542 U.S. 426, 432 (2004)—the case the undersigned relied on in the Response. The Supreme Court reinforced this holding in April 2025 by stating that “[f]or core habeas petitions,” like the Petition here implying the invalidity of Petitioner’s confinement, “jurisdiction lies in only one district: the district of confinement.” *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (internal quotation marks omitted). Based on that rule, the Court determined that “[t]he detainees [in *J. G. G.*] are confined in Texas, so venue is improper in the District of Columbia.” *Id.* Applying the language of *J. G. G.* here, when the undersigned filed the Response, Petitioner was “confined in” Louisiana, “so venue [was] improper” here. *Id.*

Since *J. G. G.*, other district courts have likewise determined that when “there was no dispute that the petitioner was no longer confined in [their] District but had been transferred to confinement in” another district—as is the case with Petitioner—courts “no longer had jurisdiction” over habeas petitions and “transfer to [the district of confinement] was appropriate.” *Alberto Rodriguez v. Jeffreys*, No. 8:25CV714, 2025 WL 3754411 (D. Neb. Dec. 29, 2025); *Garcia v. London*, No. 8:25CV624, 2025 WL 3540922, at *1 (D. Neb. Dec. 10, 2025) (“[T]here is no dispute that Petitioner is no longer confined in this District but is now confined in [another district]. Thus, this Court no longer has jurisdiction, and transfer is appropriate.”).

One district court explained that although “[i]t is true that jurisdiction attaches on the initial filing for habeas corpus relief and is not destroyed by a transfer of the petitioner . . . such a conclusion is clearly disputed, given the differences in interpretation and application amongst district courts handling comparable immigration matters.” *Castillo v. Andra-Ybarra*, No. CV 25-1074 JB/JFR, 2025 WL 3251223, at *13 (D.N.M. Nov. 21, 2025) (internal quotation marks omitted). The undersigned believed that after considering the relevant law, this Court had resolved this dispute in holding that “transferring [immigration habeas petitioners] to another judicial

district may strip the reviewing court of jurisdiction.” *Santiago*, 2025 WL 2606118, at *3. Based on that belief, the undersigned stated in the Response that transfers deprive the Court of jurisdiction.³ The undersigned now understands this Court’s decision in *Santiago* did not stand for the proposition that a transfer of a detainee strips a court of habeas jurisdiction.

For the Georgia case, the undersigned could not conclude after research that the Eleventh Circuit has resolved the jurisdictional issue in a binding decision. Given the lack of the Eleventh Circuit’s binding authority on point and conflicting interpretations of the law, the undersigned does not want to speculate whether the court in the Middle District of Georgia intends to retain jurisdiction or transfer Petitioner’s Georgia petition. The Middle District of Georgia court’s docket makes clear only that the United States Attorney’s Office for the Middle District of Georgia has not argued a lack of jurisdiction or transfer based on Petitioner’s physical confinement elsewhere. The docket further reveals that the Georgia court has not made any jurisdictional ruling. The case has been fully briefed, but the Court has not indicated its position as of the filing of this Response.

The court and the respondents’ counsel in Georgia have been on notice of Penalver’s transfer. Upon learning that Petitioner was in Louisiana, the undersigned immediately alerted the counsel of record for the respondents in the Georgia case that Petitioner was transferred to Texas and later to Louisiana. Ex. 1.

However, the Georgia response reveals that the respondents were aware of the impending transfer to Texas. The Georgia response⁴ stated that “ICE/ERO is currently awaiting bedspace at a

³ The undersigned did not argue that the court in Georgia lacked jurisdiction, as she explicitly refrained from “suggest[ing] what the court in the Middle District of Georgia . . . should or could do.” ECF No. 7 at 3 n.1. Instead, the undersigned pointed out that the United States Attorney’s Office in Georgia already asked to dismiss the petition for lack of jurisdiction, albeit for a different reason, and the Eleventh Circuit case law “seems to support” this conclusion. *Id.*

⁴ The undersigned filed this document (ECF No. 7-3) with the Court.

facility in Texas, where Petitioner will be housed while being vetted by the Mexican consulate for removal to Mexico.” ECF No. 7-3 at 3. The response also put the court in Georgia on notice of the transfer to Texas.⁵ As of this Response’s filing, the Georgia court has not yet ruled.

Respondents did not transfer Petitioner to “play[] forum games or [keep] moving [him] so that his filing could not catch up.” *Khalil v. Joyce*, 771 F. Supp. 3d 268, 285 (S.D.N.Y. 2025) (internal quotation marks omitted). As one district court observed, “[t]he practical, and unfortunate, reality is that the Government regularly transfers detained noncitizens between facilities, often multiple times.” *Id.* at 284 (internal quotation marks omitted). “And transfers to remote locations are routinely made without any prior notice to counsel.” *Id.* Petitioner’s “transfers from facility to facility . . . do not appear to be that unusual.” *Id.* “[R]apid transfers from one immigration detention facility to another also appear to be common,” and Petitioner has not shown otherwise. *Id.* at 285. Here, ICE transferred Penalver to Louisiana to execute the removal order—for staging in anticipation of his removal to Cuba.⁶ ECF No. 7-2 ¶ 10. Petitioner is indeed scheduled to be removed to Cuba on or before March 15, 2026. Ex. 2. After the hearing, Petitioner will be transferred back to the Louisiana detention facility in preparation for his removal. *Id.*

In sum, the undersigned sincerely apologizes for causing concern to the Court and does not contest the Court’s finding that it has jurisdiction here.

⁵ Without making inquiries to Respondents, the court in Georgia can look up Petitioner’s detention location on ICE’s public website, <https://locator.ice.gov/odls/#/search>.

⁶ Transfers here took place “as a necessary prelude to securing Petitioner for [his] removal.” *Westley v. Harper*, No. CV 25-229, 2025 WL 592788, at *2 (E.D. La. Feb. 24, 2025). That means the decisions to transfer Petitioner “arise from the officials’ decision to execute his removal order” and “are all directly connected to the execution of the deportation order.” *Foster v. Townsley*, 243 F.3d 210, 214 (5th Cir. 2001). “Therefore, their acts fall within the ambit of section 1252(g) and are precluded from judicial review.” *Id.* at 214-15; *Momin v. Tate*, No. 4:25-CV-4389, 2025 WL 2956131 (S.D. Tex. Oct. 1, 2025), report and recommendation adopted, No. 4:25CV4389, 2025 WL 2962574 (S.D. Tex. Oct. 20, 2025).

IV. The Court should dismiss the Petition for being duplicative or unnecessary.

Next, Respondents address the Order directing them to show why the Petition should not be granted. ECF No. 9. Because the Georgia petition raising the claims nearly, if not entirely, identical to those alleged here remains pending, the Court should dismiss the Petition for being duplicative or unnecessary. “Federal courts do . . . retain broad powers to prevent duplicative or unnecessary litigation.” *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). “The federal courts long have recognized that the principle of comity requires federal district courts—courts of coordinate jurisdiction and equal rank—to exercise care to avoid interference with each other’s affairs.” *W. Gulf Mar. Ass’n v. ILA Deep Sea Loc. 24, S. Atl. & Gulf Coast Dist. of ILA, AFL-CIO*, 751 F.2d 721, 728 (5th Cir. 1985).

“As between federal district courts, the general principle is to avoid duplicative litigation.” *Id.* “The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.” *Id.* at 729. “To avoid these ills, a district court may dismiss an action where the issues presented can be resolved in an earlier-filed action pending in another district court.” *Id.* “In particular, a court may in its discretion dismiss a declaratory judgment or injunctive suit if the same issue is pending in litigation elsewhere.” *Id.* (internal quotation marks omitted). Thus, the Fifth Circuit has held “the court with prior jurisdiction over the common subject matter should resolve all issues presented in related actions.” *Id.* at 730 (internal quotation marks omitted).

“Consistent with these ‘first-filed’ principles, habeas petitions under 28 U.S.C. § 2241 have been dismissed as duplicative of other pending petitions.” *Vetcher v. Sessions*, No. 3:18-CV-1724-K (BH), 2018 WL 4006812, at *2 (N.D. Tex. July 12, 2018), report and recommendation adopted, No. 3:18-CV-1724-K, 2018 WL 4002533 (N.D. Tex. Aug. 21, 2018). Here, Penalver filed the

Georgia petition first, alleging the counts that are nearly identical—if not entirely identical—to the counts alleged in the Petition here, as he is challenging the validity of his detention, not the conditions of detention specific to an individual detention facility. *Compare* ECF No. 3 *with* ECF No. 7-1. The Georgia petition is fully briefed and has been pending before the court there for more than a month. “Because the habeas petition in that case was filed before the initial filing in the present case, this case should be dismissed . . . as duplicative of the petition and issues pending” in the Georgia case. *Vetcher*, 2018 WL 4006812, at *2. “[T]he court with prior jurisdiction over the common subject matter,” which is the court in Georgia, “should resolve all issues presented in related actions.” *W. Gulf Mar.*, 751 F.2d at 730 (internal quotation marks omitted).

V. Respondents adopt the rationales set forth in the Georgia Response.

Alternatively, the Court should deny the Petition for the reasons stated in the Response (ECF No. 7-3). Respondents explicitly incorporate in and adopt the Response (ECF No. 7-3). To avoid the redundancy of refiling the same documents and to maintain consistency of the docket references, Respondents submit that they have filed the Georgia response as an exhibit to their prior Response. ECF No. 7-3. In addition, Respondents have shown that there is a significant likelihood of Penalver’s removal in the reasonably foreseeable future because Penalver is scheduled to be removed to Cuba on or before March 15, 2026. Ex. 2. Lastly, the Court need not reach Penalver’s claims regarding third-country removals because Penalver will be removed to Cuba, not to a third country.

VI. Conclusion

The Court should dismiss or deny the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 12, 2026, I electronically filed this document with the Clerk of Court using the CM/ECF system. I additionally certify that I mailed a copy of this document to the following non-CM/ECF participant via regular mail:

Jose Polanco Penalver



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/s/ Huiju Jeon

Huiju Jeon
Assistant United States Attorney