

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20467-CIV-ALTONAGA
MAGISTRATE JUDGE P.A. WHITE

MARIO JOSEPH,	:	
	:	
Petitioner,	:	<u>REPORT RECOMMENDING TRANSFER</u>
v.	:	<u>OF VENUE</u>
	:	<u>28 U.S.C. §2241</u>
ERIC HOLDER, JR.	:	(DE#17)
	:	
Respondent.	:	

Mario Joseph filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. §2241-43, attacking his continued detention by Immigration and Naturalization Services. Although the petitioner listed his address as Baker County Jail, it was determined by the United States District Court for the Middle District of Florida that Joseph was actually confined in the Krome Detention Center, and the case was therefore transferred the Southern District of Florida.

An Order to Show Cause has been issued, and the government filed a response/motion seeking to transfer this case back to the Middle District of Florida. (DE#17). The petitioner has filed a change of address with the Court to Baker County Jail, where he apparently resides.

Physical custody of the petitioner does not lie in the Southern District of Florida and therefore any relief requested must come from his place of incarceration.

The institution where the petitioner is confined is located in the Middle District of Florida.

The applicable venue provision for a §2241 action is 28 U.S.C. §2241(d), which provides concurrent jurisdiction in the district of confinement and the district of conviction, when a state conviction is attacked as unconstitutional. This petition does not attack the validity of a conviction, and the appropriate venue is therefore the district of confinement. See: Fernandez v. United States, 941 F.2d 1488, 1495 (11th Cir. 1991); Hajduk v. United States, 764 F.2d 795 (11 Cir. 1985); and United States v. Boccadisi, 468 F.Supp. 419 (E.D.N.Y. 1979).

It is therefore recommended that the government's motion to transfer venue (DE#17) be granted., and the Clerk be directed to transfer this case to the Middle District of Florida, pursuant to 28 U.S.C. §1406(a).

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

Dated this 28th day of March, 2011.



UNITED STATES MAGISTRATE JUDGE

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