

Case No.:\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,  
V.  
CHAD POPPELL,  
SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

## APPENDIX-A

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-14797-B

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JUAN FRANCISCO VEGA.

Petitioner-Appellant,

versus

SECRETARY OF THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent-Appellee.

---

Appeal from the United States District Court  
for the Middle District of Florida

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Before: WILSON, JORDAN, and BRANCH, Circuit Judges.

Juan Francisco Vega appeals from the U.S. District Court for the Middle District of Florida's denial of his *pro se* "Motion to Reinstate Case and to Appoint Counsel," which he filed after the district court transferred his 28 U.S.C. § 2254 petition to the Southern District of Florida. The jurisdictional issues raised in the question that we issued to the parties are CARRIED WITH THE CASE. A final determination regarding jurisdiction will be made by the panel to whom this appeal is submitted after briefing on the merits concludes. In further briefing, the parties are not required to discuss the jurisdictional questions in great detail, but they may address them as they deem necessary or appropriate.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 19-14797-B

---

JUAN FRANCISCO VEGA,

Petitioner-Appellant,

versus

SECRETARY OF THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent-Appellee.

---

Appeal from the United States District Court  
for the Middle District of Florida

---

Before: MARTIN and JILL PRYOR, Circuit Judges.

BY THE COURT:

Juan Francisco Vega has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated May 28, 2020, denying his motions for a certificate of appealability, leave to proceed *in forma pauperis*, and appointment of counsel, in his appeal from the district court's denial of his Fed. R. Civ. P. 60(b) motion to reinstate his case and appoint counsel. Because Vega has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, his motion for reconsideration is DENIED.

Case No.:\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,  
V.  
CHAD POPPELL,  
SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

## APPENDIX-B

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 19-14797-B

---

JUAN FRANCISCO VEGA,

Petitioner-Appellant,

versus

SECRETARY OF THE FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES,

Respondent-Appellee.

---

Appeal from the United States District Court  
for the Middle District of Florida

---

ORDER:

A Florida court ordered Juan Francisco Vega detained pursuant to Florida's Jimmy Ryce Act, which permits a court to commit a person determined to be "a sexually violent predator . . . for control, care, treatment, and rehabilitation." Fla. Stat. § 394.917(2). In July 2019, Mr. Vega challenged the constitutionality of his confinement through a 28 U.S.C. § 2254 habeas corpus petition filed in the U.S. District Court for the Middle District of Florida.

The District Court, acting pursuant to 28 U.S.C. § 2241(d), transferred Mr. Vega's petition to the Southern District of Florida because his order of civil confinement was entered by a state court within that district, and he already had a § 2254 petition related to this matter pending in that district. The transferee court dismissed Mr. Vega's petition as duplicative of his previous § 2254 petition.

Mr. Vega then moved to reinstate his § 2254 petition in the Middle District of Florida. In his motion to reinstate, Mr. Vega noted that the District Court's decision to transfer his case was correct but disagreed with it because the Southern District of Florida's dismissal of his transferred petition made it clear that court did not "want the case." The District Court construed Mr. Vega's motion to reinstate as a motion for relief from a judgment or order pursuant to Federal Rule of Civil Procedure 60(b), which it denied. The court also denied Mr. Vega a certificate of appealability ("COA").

Mr. Vega now seeks a COA to appeal the denial of his Rule 60(b) motion.<sup>1</sup> In order to receive the COA, he must "ma[ke] a substantial showing of the denial

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<sup>1</sup> In general, denial of a Rule 60(b) motion is a final appealable order. See Gulf Coast Fans, Inc. v. Midwest Elecs. Imps., Inc., 740 F.2d 1499, 1507 (11th Cir. 1984). However, an order transferring a habeas petition pursuant to § 2241(d) is not a final appealable order. Dobard v. Johnson, 749 F.2d 1503, 1507 (11th Cir. 1985). For purposes of this proceeding, I assume Mr. Vega's motion for a COA is properly before the Court. See Mountain Valley Prop., Inc. v. Applied Risk Servs., Inc., 863 F.3d 90, 94 (1st Cir. 2017) (assuming decision below was final and appealable and proceeding to the merits); 15A Charles Alan Wright et al., Federal Practice & Procedure § 3905 (2d ed. Apr. 2020 update) (stating it is "clearly appropriate" for courts "to affirm a judgment if the result on the merits is easier to reach than a thorny question of jurisdiction" under the final judgment rule); see also Gonzalez v. Sec'y for Dep't of Corr., 366

of a constitutional right.” 28 U.S.C. § 2253(c)(2). Because the District Court denied his claim on procedural grounds without reaching the underlying constitutional claim, he must show that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the [D]istrict [C]ourt was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000). Importantly, analysis of a COA “is not coextensive with a merits analysis,” and denying a COA by reaching the merits of an appeal is, essentially, “deciding an appeal without jurisdiction.” Buck v. Davis, 580 U.S. \_\_\_, 137 S. Ct. 759, 773 (2017) (quotation marks omitted).

Rule 60(b) provides that “the court may relieve a party or its legal representative from a final judgment, order, or proceeding” based on:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

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F.3d 1253, 1263 (11th Cir. 2004) (en banc) (discussing the requirement that a habeas petitioner receive a COA for denial of a Rule 60(b) motion), aff'd sub nom. Gonzalez v. Crosby, 545 U.S. 524, 125 S. Ct. 2641 (2005).

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Mr. Vega's motion to reinstate could only plausibly be construed as seeking relief under paragraph (6). "Rule 60(b) vests wide discretion in courts" and relief under paragraph (6) "is available only in extraordinary circumstances." Buck, 137 S. Ct. at 777 (quotation marks omitted). The movant must show "that absent such relief, an extreme and unexpected hardship will result." Doe v. Drummond Co., 782 F.3d 576, 612 (11th Cir. 2015) (quotation marks omitted).

Reasonable jurists would not debate the District Court's denial of Mr. Vega's Rule 60(b) motion. In his motion before the District Court, Mr. Vega agreed the District Court "did the right thing" by transferring his case to the Southern District of Florida. He has not established that, despite the correctness of the District Court's decision, exceptional circumstances warrant relief. As a result, he has failed to show he is entitled to a COA.

Mr. Vega's motion for a COA is **DENIED**. His motions for leave to proceed in forma pauperis and for appointment of counsel are **DENIED** as moot.

  
Sandy D. Martin  
UNITED STATES CIRCUIT JUDGE

Case No.: \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,

v.

CHAD POPPELL,

SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

## APPENDIX-C

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-14819-G

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JUAN FRANCISCO VEGA,

Petitioner-Appellant,

versus

SECRETARY OF THE FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES,

Respondent-Appellee.

---

Appeal from the United States District Court  
for the Southern District of Florida

---

Before: WILSON and NEWSOM, Circuit Judges.

BY THE COURT:

Juan Vega has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's February 13, 2020, order denying a certificate of appealability and leave to proceed on appeal *in forma pauperis* in his appeal of the district court's denial of his *pro se* construed 28 U.S.C. § 2241 habeas corpus petition. Upon review, Vega's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

Case No.:\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,

v.

CHAD POPPELL,

SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

## APPENDIX-D

Case No.: \_\_\_\_\_

IN THE  
**SUPREME COURT OF THE UNITED STATES**  
JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,  
V.  
CHAD POPPELL,  
SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

## APPENDIX-E

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

JUAN FRANCISCO VEGA,

Petitioner,

v.

Case No.: 2:19-cv-497-FtM-38MRM

REBECCA KAPUSTA,

Respondent.

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**ORDER<sup>1</sup>**

Before the Court is Petitioner's Motion for Leave to Appeal *in forma pauperis* (Doc. 19) filed January 16, 2020. Although the Motion is captioned as being filed in the "United States Court of Appeals for the Eleventh Circuit" (see *id.*), because Petitioner filed the Motion with this Court, the Court will address it in an abundance of caution.

In his Motion, Petitioner states that the Southern District declined jurisdiction of his petition for writ of habeas corpus transferred from this Court. (*Id.*). Consequently, Petitioner seeks to proceed *in forma pauperis* on appeal from this Court's September 18, 2019, Order of Transfer. (*Id.*). Contrary to Petitioner's assertion, the Southern District agreed to "exercise[ ] jurisdiction" but dismissed his petition as duplicative of Petitioner's petition in case no. 18-20729-cv-Altonga, which was also pending before the Southern District. See Case No. 1:19-cv-23891-RNS, S.D. Fla., Order dated October 30, 2019 (Doc. 13). The Court previously found that Petitioner is not entitled to a certificate of

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<sup>1</sup> Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

appealability concerning this Court's September 18, 2019 Order of Transfer. (Doc. 17). Because Petitioner is not entitled to a certificate of appealability, Petitioner may not proceed *in forma pauperis* on appeal.

Accordingly, it is now

**ORDERED:**

1. To the extent Petitioner seeks leave to appeal *in forma pauperis* (Doc. 19) from this Court, the Court **DENIES** the Motion.
2. The Clerk shall forward a copy of this Order to the Clerk for the Eleventh Circuit.

**DONE** and **ORDERED** in Fort Myers, Florida this 17th day of January 2020.

  
**SHERI POLSTER CHAPPELL**  
**UNITED STATES DISTRICT JUDGE**

SA: FTMP-1

Copies: All Parties of Record

Case No.:\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,

v.

CHAD POPPELL,  
SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

## APPENDIX-F

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

JUAN FRANCISCO VEGA,

Petitioner,

v.

Case No.: 2:19-cv-497-FtM-38MRM

REBECCA KAPUSTA,

Respondent.

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ORDER<sup>1</sup>

Before the Court is Petitioner's Notice of Appeal and Application for Certificate of Appealability (Doc. 15) filed December 2, 2019. Petitioner seeks a certificate of appealability from this Court as to two separate orders: (1) the October 25, 2019 order entered by the United States District Court in the Southern District of Florida allegedly dismissing his habeas petition; and (2) this Court's November 19, 2019 Order (Doc. 13) declining to reconsider its September 18, 2019 Order of Transfer and reinstate his petition in this Court.

To the extent Petitioner seeks to appeal the October 25, 2019 Order entered by the United States District Court for the Southern District of Florida, he must obtain a certificate of appealability from that court. See Fed. R. App. Pro. 22(b)(1). To the extent Petitioner seeks a certificate of appealability in connection with this Court's November 19, 2019 Order (Doc. 13), the Court finds no grounds to issue a certificate of appealability.

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The Court denied reconsideration of its September 18, 2019 Order (Doc. 8), which transferred Petitioner's petition under 28 U.S.C. § 2241(d) to the United States District Court for the Southern District of Florida. An appeal is permissible only from a "final order" in a habeas proceeding. 28 U.S.C. § 2253. A final order is "one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945) (construing section 128 of the Judicial Code, 28 U.S.C. § 225(a)). The Court's transfer order did not render judgment on the merits of petitioner's claim for habeas relief. Instead it transferred a case still alive and permitted it to proceed in the Southern District. The order transferring the petition to that court is not a final, appealable order. *Dobard v. Johnson*, 749 F.2d 1503, 1507 (11th Cir.1985) (transfer orders made under § 2241(d) not appealable, final orders). Instead, transfer orders are "nonreviewable interlocutory orders." *Id.* By implication, the Court's denial of reconsideration of its September 18, 2019 transfer order is not reviewable. Further, the Southern District acknowledged it had jurisdiction over the petition. This Court's order of transfer was proper. Petitioner cannot show this Court's procedural rulings are debatable among reasonable jurists. *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

Accordingly, it is now **ORDERED**:

Petitioner's Motion for Certificate of Appealability (Doc. 15) is **DENIED**.

**DONE and ORDERED** in Fort Myers, Florida this 11th day of December, 2019.

  
\_\_\_\_\_  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record

Case No.:\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,  
V.  
CHAD POPPELL,  
SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

## APPENDIX-G

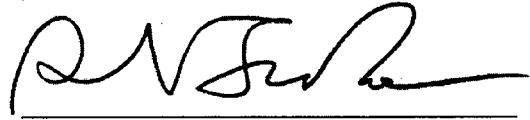
United States District Court  
for the  
Southern District of Florida

Juan Francisco Vega, Petitioner,      )  
    )  
    )  
v.    ) Civil Action No. 19-23891-Civ-Scola  
    )  
Rebecca Kapusta, Respondent.      )

**Judgment**

The Court has dismissed this case. (Order, ECF No. 13.) The Court now enters judgment in favor of the Defendant and against the Plaintiff, as required by Federal Rule of Civil Procedure 58. The Court directs the Clerk to **close** this case. All pending motions, if any, are denied as **moot**.

**Done and ordered** at Miami, Florida, on December 2, 2019.



Robert N. Scola, Jr.  
United States District Judge

Case No.:\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,

v.

CHAD POPPELL,  
SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

APPENDIX-H

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

JUAN FRANCISCO VEGA,

Petitioner,

v.

Case No.: 2:19-cv-497-FtM-38MRM

REBECCA KAPUSTA,

Respondent.

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**ORDER**<sup>1</sup>

Before the Court is Petitioner's Motion to Reinstate Case and Appoint Counsel filed November 12, 2019. (Doc. 11). Petitioner submits with his Motion a petition (Doc. 12) for the Court's consideration. Petitioner requests the Court to accept and reinstate his habeas petition that the Court transferred to the United States District Court for the Southern District of Florida on September 18, 2019. (See Doc. 8). Petitioner states he agrees with the Court's decision to transfer his habeas petition but seeks reconsideration of the Order because the Southern District of Florida "doesn't want the case." (Doc. 11 at 1).

The Court takes judicial notice the Southern District of Florida determined it had jurisdiction over Petitioner's transferred habeas petition, but dismissed the petition finding

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it duplicative of Petitioner's § 2254 petition in case no. 18-20729-cv-Altonga. See *Vega v. Kapusta*, No. 19-23891-Civ-Scola (S.D. Fla. Oct. 23, 2019), *rejecting report and recommendation*. Here, the Southern District ruled on Petitioner's petition. The Court finds no grounds to reconsider its September 18, 2019 Order of Transfer under Fed. R. Civ. P. 60(b) and finds under the law-of-the-case doctrine no basis to disturb the decision by the United States District Court for the Southern District of Florida. *Messinger v. Anderson*, 225 U.S. 436, 444 (1912); *Arizona v. California*, 460 U.S. 605, 618 n. 8 (1983).

Accordingly, it is now

**ORDERED:**

Petitioner's Motion to Reinstate Case and Appoint Counsel (Doc. 11) is **DENIED** in its entirety and the Clerk shall strike and return Petitioner's petition (Doc. 12).

**DONE** and **ORDERED** in Fort Myers, Florida this 19th day of November, 2019.

  
SHERI POLSTER CHAPPEL  
UNITED STATES DISTRICT JUDGE

SA: FTMP-1  
Copies: All Parties of Record

Case No.:\_\_\_\_\_

IN THE  
**SUPREME COURT OF THE UNITED STATES**

JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,

V.

CHAD POPPELL,

SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

**APPENDIX-I**

United States District Court  
for the  
Southern District of Florida

Juan Francisco Vega, Petitioner, )  
v. ) Civil Action No. 19-23891-Civ-Scola  
Rebecca Kapusta, Respondent. )

## **Order Rejecting Magistrate Judge's Report and Dismissing Case**

This case was referred to United States Magistrate Judge Lisette M. Reid, consistent with Administrative Order 2019-02 of this Court, for a ruling on all pre-trial, nondispositive matters and for a report and recommendation on any dispositive matters. On September 20, 2019, Judge Reid issued a Report and Recommendation recommending that the case be dismissed for lack of jurisdiction and the Petitioner be directed to file his claim in the Middle District of Florida. (ECF No. 11 at 3.) For the reasons discussed below, the Court declines to adopt Judge Reid's Report.

## I. Procedural History

The instant petition was originally filed in the Middle District of Florida challenging the Petitioner's civil commitment under the Jimmy Ryce Act, Fla. Stat. § 394.910. (ECF No. 1 at 2.) The Petitioner is currently confined in Arcadia, Florida, which is located in the Middle District of Florida. The Petitioner seeks to challenge the Second District Court of Appeals' affirmance of the Twelfth Judicial Circuit's Order denying his state court petition for writ of habeas corpus. (ECF Nos. 1-1, 1-2.) On September 18, 2019, the Middle District of Florida transferred this case to the Southern District of Florida pursuant to 28 U.S.C. § 2241(d). (ECF No. 8.) The court reasoned that the Petitioner is challenging an order of civil commitment originally entered by the state court in Miami-Dade County. (*Id.* at 2.) Therefore, it should be transferred to the Southern District.

On September 20, 2019, Judge Reid issued a Report and concluded that the Petitioner is required to file any action pursuant to 28 U.S.C. § 2241(d) in the district of confinement, the Middle District in this case, not the Southern District of Florida. (ECF No. 11 at 2.) Moreover, according to Judge Reid's Report, the civil confinement determination that Petitioner is challenging took place in DeSoto County, which is also in the Middle District. (*Id.* at 3.) Therefore, the case should be filed in the Middle District.

## II. Analysis

Under to 28 U.S.C. § 2241(d), an application for a writ of habeas corpus may be filed “in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application.” The Petitioner is in custody in the Middle District of Florida and the original order of civil confinement that he is challenging was entered in Miami-Dade County. *See Vega v. Attorney General of Fla.*, Case No. 20729-cv-Altonaga (S.D. Fla. Feb. 26, 2019) (ECF No. 1). Therefore, the Southern District and the Middle District have concurrent jurisdiction under 28 U.S.C. § 2241(d).

The question before this Court is whether the Southern District should exercise jurisdiction or, as recommended by Judge Reid, this should be sent back to the Middle District.<sup>1</sup> “Certainly, the decision of a transferor court should not be reviewed again by the transferee court.” *In re Cragar Indus., Inc.*, 706 F.2d 503, 505 (5th Cir. 1983). “Such an independent review would implicate those concerns which underlie the rule of repose and decisional order we term the law of the case.” *Id.* A district court should only re-transfer a case under “the most impelling and unusual circumstances or if the transfer order is manifestly erroneous.” *Id.* (citations and quotations omitted). Moreover, re-transferring a case has “the potential mischief of tossing cases back and forth to the detriment of an adjudication of the underlying merits of the case and respect due sister courts.” *Id.*

Here, the Court finds that the Middle District’s transfer was not clearly erroneous because the two courts have concurrent jurisdiction under 28 U.S.C. § 2241(d). There are no unusual circumstances or impelling reasons to re-transfer or decline to exercise jurisdiction over this matter. Accordingly, the Court declines to adopt Judge Reid’s Report.

The Court will also consider the merits of the Petitioner’s case. The Petitioner challenges his civil confinement on four grounds: (1) the trial court erred in discarding the jury verdict; (2) ineffective assistance of counsel on appeal; (3) the Jimmy Ryce Act is unconstitutional; and (4) the criminal convictions used for the civil commitment were over 20 years old and barred by

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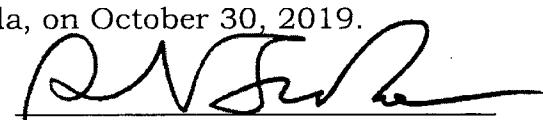
<sup>1</sup> The Court notes that Judge Reid’s Report does not recommend “transferring” the case but rather recommends that this Court dismiss this case and direct the Petitioner to refile his case in the Middle District. (ECF No. 11 at 3.) This is, practically speaking, the same as a transfer, except that it prejudices the Petitioner by imposing new hurdles and a new filing fee if he were to refile this case.

the statute of limitations. (ECF No. 1 at 1-2.) In the related § 2254 case pending before Judge Altonaga, the Petitioner seeks relief based on the same four grounds, in addition to a number of other claims. (See Case No. 18-20729, ECF No. 1 at 3-7.) Accordingly, the Court finds this case duplicative of the Petitioner's § 2254 petition in Case No. 18-20729-cv-Altonaga and is due to be dismissed.

### **III. Conclusion**

Based on the foregoing, the Court rejects Judge Reid's Report (**ECF No. 11**) and exercises jurisdiction over this case. The Court **dismisses** the petition (**ECF No. 1**) as duplicative of Case No. 18-20729-cv-Altonaga currently pending in the Southern District of Florida. The Clerk is directed to **close** this case.

**Done and ordered**, at Miami, Florida, on October 30, 2019.



Robert N. Scola, Jr.  
United States District Judge

Case No.:\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
JUAN FRANCISCO VEGA,  
PETITIONER / APPELLANT,  
V.  
CHAD POPPELL,  
SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,  
RESPONDENT / APPELLEE.

## APPENDIX-J

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

JUAN FRANCISCO VEGA,

Petitioner,

v.

Case No.: 2:19-cv-497-FtM-38MRM

REBECCA KAPUSTA,

Respondent.

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**OPINION AND ORDER<sup>1</sup>**

This matter comes before the Court upon initial review of the file. Petitioner, who is civilly committed to the Florida Civil Commitment Center, initiated this action on July 18, 2019 by filing a Petition (Doc. 1). Petitioner contends that his civil commitment is unconstitutional on the ground that his underlying criminal conviction that was used as a qualifier and resulted in an order of involuntary civil commitment was barred by the civil statute of limitations. (Doc. 1 at 2). Petitioner acknowledges that his underlying qualifying conviction and the order of civil commitment were entered by the Eleventh Judicial Circuit Court, which is in Miami, Florida. (*Id.* at 3). Petitioner further states, and the Court's files reflect, that Petitioner currently has a habeas corpus petition pursuant to 28 U.S.C. § 2254 pending in the United States District Court for the Southern District of Florida, Miami

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Division, in which he is challenging his civil commitment on three other grounds. (*Id.* at 1-2; see case number 1:18-cv-20729-CMA).

The Court finds in "its discretion and in furtherance of justice" this action should be transferred to the United States District Court for the Southern District of Florida, Miami Division because Petitioner is challenging the order of civil commitment entered by the state circuit court in and for Miami-Dade County, Florida and currently has a habeas petition pending in that Court. 28 U.S.C. § 2241 (d).

Accordingly, it is hereby

**ORDERED:**

1. Pursuant to 28 U.S.C. § 2241(d), this case is transferred to the United States District Court for the Southern District of Florida, Miami Division for all further proceedings.
2. The Clerk of Court shall: 1) immediately forward the file to that Court; 2) terminate any outstanding motions; and, 3) close this file.

**DONE** and **ORDERED** in Fort Myers, Florida this 18th day of September, 2019.

  
**SHERI POLSTER CHAPPELL**  
**UNITED STATES DISTRICT JUDGE**

SA: FTMP-1  
Copies: All Parties of Record

Case No.: \_\_\_\_\_

IN THE

**SUPREME COURT OF THE UNITED STATES**

JUAN FRANCISCO VEGA,

PETITIONER / APPELLANT,

V.

CHAD POPPELL,

SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

RESPONDENT / APPELLEE.

# APPENDIX-K

**PETITION UNDER TITLE 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court	District: Southern District of Florida
Name (under which you were convicted): Juan Francisco Vega	Docket or Case No.: 1:18-cv-20729-CMA
Place of confinement: Florida Civil Commitment Center, 13619 S.E. Highway 70, Arcadia, FL 34266	Prisoner No.: 991353
Petitioner (name under which you were convicted): Juan Francisco Vega	Respondent (person having custody of petitioner): Mike Carroll, Secretary, Dept. of Child. & Fam.
The Attorney General of the State of Florida: Pamela Jo Bondi.	

**AMENDED PETITION**

1. (a) Name and location of court that entered the judgment of conviction that you are currently challenging:  
**Florida Eleventh Judicial Circuit Court, 1351 N.W. 12<sup>th</sup> Street, Miami, FL 33125.**  
(b) Criminal docket or case number (if you know): **09-50922CA25.**
2. (a) Date of the judgment of conviction (if you know): **February 21, 2013.**  
(b) Date of sentencing: **February 21, 2013.**
3. Length of sentence: **Indefinite.**
4. In this case, were you convicted on more than one count or more than one crime:  Yes  No
5. Identify all crimes of which you were convicted and sentenced in this case: **Case number 86-4671 (sexual battery); Case number 85-32541 (sexual battery); Case number 85-32540 (sexual battery); and Case number 85-32539 (sexual battery).**
6. (a) What was your plea? (Check one)
 

<input type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Guilty
<input type="checkbox"/> (2) Nolo contendere	<input type="checkbox"/> (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial what kind of trial did you have? (Check one)

Jury       Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes       No

8. Did you appeal from the judgment of conviction?

Yes       No

9. If you did appeal, answer the following:

(a) Name of Court: **Florida Third District Court of Appeal.**

(b) Docket or case number (if you know): **3D13-838.**

(c) Result: **Per Curiam Affirmed.**

(d) Date of result (if you know): **March 11, 2015;** Rehearing denied on **March 24, 2017.**

(e) Citation to the case (if you know): **189 So.3d 781.**

(f) Grounds raised: **THE TRIAL COURT'S ACTION IN DISCARDING A JURY VERDICT FOR THE PETITIONER AND ENTERING ITS OWN VERDICT FOR THE STATE AND THEN CIVILLY COMMITTING HIM, WAS UNAUTHORIZED AND IN DEROGATION OF THE CONSTITUTION, STATE STATUTE, AND RULE .**

(g) Did you seek further review by the higher state court?  Yes       No

If yes, answer the following:

(1) Name of court: **N/A**

(2) Docket or case number (if you know): **N/A**

(3) Result: **N/A**

(4) Date of result (if you know): **N/A**

(5) Citation to the case (if you know): **N/A**

(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court?  Yes  No

If yes, answer the following:

(1) Docket or case number (if you know): **16-9297.**

(2) Result: **Denied.**

(3) Date of result (if you know): **October 2, 2017.**

(4) Citation to the case (if you know): **Don't know.**

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?  Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: **Florida Third District Court of Appeal.**

(2) Docket or case number (if you know): **3D13-838** (same docket number as direct appeal).

(3) Date of filing (if you know): **April, 2017.**

(4) Nature of the proceeding: **Petition for Writ of Habeas Corpus on Ineffective Assistance of Appellate Counsel.**

(5) Grounds raised: **HAD APPELLATE COUNSEL ARGUED ON DIRECT APPEAL (IN THE INITIAL BRIEF) THAT THE STATE DID NOT ADEQUATELY PRESERVE ITS CLAIM TO HAVE THE VERDICT REDIRECTED AND THAT THERE WAS CONFLICTING TESTIMONY OF EXPERT WITNESSES PRECLUDING A DIRECTED VERDICT, THE OUTCOME OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.**

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result: **Denied.**

(8) Date of result (if you know): **June 1, 2017.**

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: **Florida Eleventh Judicial Circuit Court.**
- (2) Docket or case number (if you know): **09-50922CA25.**
- (3) Date of filing (if you know): **February, 2016.**
- (4) Nature of the proceeding: **Petition for Annual Review of Involuntary Civil Commitment**
- (5) Grounds raised: **THE JIMMY RYCE ACT IS UNCONSTITUTIONAL FOR HAVING UTILIZED THE CONJUNCTION "OR" IN SECTION 394.912 SUBSECTION (10) (B), FLORIDA STATUTES; FOUCHA V. LOUISIANA, 504 U.S. 71 (1992) DEMONSTRATES THAT FOR THERE TO BE AN INVOLUNTARY CIVIL COMMITMENT THE ELEMENTS OF A MENTAL ABNORMALITY "AND" PERSONALITY DISORDER MUST EXIST AND MUST BE PROVEN.**

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes       No

(7) Result: **Denied.**

(8) Date of result (if you know): **March 3, 2016.**

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: **N/A**

(2) Docket or case number (if you know): **N/A**

(3) Date of filing (if you know): **N/A**

(4) Nature of the proceeding: **N/A**

(5) Grounds raised: **N/A**

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes       No

(7) Result: **N/A**

(8) Date of result (if you know): **N/A**

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition,