

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

FRANCISCO F. HERNANDEZ,

Petitioner,

v.

Case No. 5:18cv098-MCR/CAS

STATE OF FLORIDA,

Respondent.

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REPORT AND RECOMMENDATION TO TRANSFER CASE

On or about April 18, 2018, Petitioner Francisco F. Hernandez, proceeding pro se, filed a “Notice of Extension of Time Request for Filing Habeas Corpus Petition.” ECF No. 1. Petitioner Hernandez is an inmate confined at the Northwest Florida Reception Center in Chipley, Florida, located within this district. See *id.*; N.D. Fla. Loc. R. 3.1(A)(2). In his notice, and attachments thereto, he indicates he wishes to challenge a state court judgment and sentence entered in case number 05-2011-CF-040753A by the Eighteenth Judicial Circuit, Brevard County, Florida. See ECF No. 1.

The Clerk’s Office used Petitioner’s filing to open a habeas corpus case, albeit apparently with the incorrect Nature of Suit and Cause designations. As a state prisoner challenging a state court judgment and

sentence, Petitioner's cause should be habeas corpus pursuant to 28 U.S.C. § 2254. Moreover, this Court has no authority to grant an extension of the one-year federal habeas limitations period set forth in 28 U.S.C. § 2244(d)(1). A habeas petition is not "pending" until a § 2254 petition is actually filed. Isaacs v. Head, 300 F.3d 1232, 1239 (11th Cir. 2002). Until a § 2254 petition is filed, this Court has no jurisdiction to consider the timeframe for such petition as there is no case or controversy. See, e.g., United States v. Leon, 203 F.3d 162, 164 (2d Cir. 2000); Swichkow v. United States, 565 F. App'x 840, 844 (11th Cir. 2014).

For § 2254 petitions, jurisdiction is appropriate in the district of confinement and the district of conviction. 28 U.S.C. § 2241(d) (providing that state prisoner may file habeas petition in district where he was convicted and sentenced or in district where he is incarcerated). In this case, however, the district of conviction appears to be the most convenient and appropriate venue, and thus, in an abundance of caution, this case should be transferred to the United States District Court for the Middle District of Florida, Orlando Division. *Id.*; M.D. Fla. R. 1.02(b)(3). See Byrd v. Martin, 754 F.2d 963, 965 (11th Cir. 1985); Parker v. Singletary, 974 F.2d 1562, 1582 (11th Cir. 1992).

It is therefore respectfully **RECOMMENDED** that the case file, including any service copies and pending motions, be **TRANSFERRED** to the United States District Court for the Middle District of Florida, Orlando Division, for all further proceedings.

IN CHAMBERS at Tallahassee, Florida, on May 1, 2018.

S/ Charles A. Stampelos
CHARLES A. STAMPELOS
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Within fourteen (14) days after being served with a copy of this Report and Recommendation, a party may serve and file specific written objections to these proposed findings and recommendations. Fed. R. Civ. P. 72(b)(2). A copy of the objections shall be served upon all other parties. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b)(2). Any different deadline that may appear on the electronic docket is for the Court's internal use only and does not control. If a party fails to object to the magistrate judge's findings or recommendations as to any particular claim or issue contained in a Report and Recommendation, that party waives the right to challenge on appeal the district court's order based on the unobjected-to factual and legal conclusions. See 11th Cir. R. 3-1; 28 U.S.C. § 636.