

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

ANTONIO AGUIRRE VILLA,

Petitioner,

v.

WARDEN TONY NORMAND, et al.,

Respondents.

CIVIL ACTION NO.: 5:25-cv-89

ORDER AND REPORT AND RECOMMENDATION

Petitioner filed a Petition for Writ of Habeas Corpus and Complaint for Declarative and Injunctive Relief under 28 U.S.C. § 2241. Petitioner seeks release from Immigration and Customs Enforcement (“ICE”) detention at the Folkston Detention Center. He claims he has been unconstitutionally detained despite an immigration judge’s order releasing him on a \$10,000.00 bond. Doc. 1 at 1–2.

Petitioner, through counsel, filed a Motion for Order to Show Cause. Doc. 5. Counsel asks the Court to: (1) direct the Clerk of Court to serve a copy of the 28 U.S.C. § 2241 Petition served upon the United States Attorney’s Office; (2) require Respondent to respond to the Petition within three days; (3) require Respondents to produce a copy of the record for Petitioner’s immigration proceedings; and (4) order Respondents to produce Petitioner’s body so the Court can have custody over Petitioner during the resolution of this cause of action. *Id.* at 2. Petitioner has also filed an Emergency Motion for Temporary Restraining Order, seeking the same remedy he seeks in the Petition itself: “to restrain ICE from continuing to unlawfully detain him.” Doc. 7 at 2.

Rule 4 of the Rules Governing Section 2254 Cases mandates that, unless “it plainly appears from the petition . . . that the petitioner is not entitled to relief,” the “judge must order the respondent to file an answer, motion, or other response within a fixed time.”¹ Rule 4 of the Rules Governing Section 2241 Cases. “In every case, the clerk must serve a copy of the petition and any order on the respondent and on the attorney general or other appropriate officer of the state involved.” Id. The Court has reviewed the Petition, as Rule 4 mandates. Petitioner’s claims against Respondent Normand do not appear plainly futile. However,

[t]he federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is “the person who has custody over [the petitioner].”

28 U.S.C. § 2242; see also id. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained”). The consistent use of the definite article in reference to the custodian indicates that there is generally only one proper respondent to a given prisoner’s habeas petition. This custodian, moreover, is “the person” with the ability to produce the prisoner’s body before the habeas court. We summed up the plain language of the habeas statute over 100 years ago in this way: These provisions contemplate a proceeding against some person who has the *immediate custody* of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary.

Rumsfeld v. Padilla, 542 U.S. 426, 434–35 (2004) (internal citations and quotation marks omitted). Accordingly, the only proper Respondent in this action is Warden Tony Normand. Therefore, I recommend Respondents Todd Lyons, George Sterling, Kristi Noem, and Pamela Bondi all be dismissed. See id. at 435 (“[L]ongstanding practice confirms that in habeas challenges to present physical confinement—“core challenges”—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”). Furthermore, as described above, the Court does not take custody of the Petitioner’s body but rather may direct the Respondent to

¹ The Rules Governing Section 2254 Cases may also apply to habeas actions brought under Section 2241. Rule 1(b) of the Rules Governing Section 2254 Cases.

“produce the body before the habeas court.” Id. at 434. Therefore, I deny Petitioner’s request for the Court to order Respondent to produce Petitioner’s body or for the Court to take custody of Petitioner during the pendency of this case.

Consequently, the Court **GRANTS in part** and **DENIES in part** Petitioner’s Motion for Order to Show Cause. The Court directs the United States Marshal to serve a copy of the Petition, doc. 1, Petitioner’s Motion for TRO, doc. 5, and a copy of this Order by registered or certified mail upon: (1) the Attorney General of the United States; (2) the named Respondent; and (3) the civil process clerk at the office of the United States Attorney for the Southern District of Georgia. See Fed. R. Civ. P. 4(i).

Given the emergent nature of the cause and associated Motion for TRO, the Court **ORDERS** Respondent to show cause, in writing, why Petitioner’s writ should not be granted by filing an Answer within **14 days** of service of the Petition. See Rule 5 of the Rules Governing Section 2254 Petitions. Respondent’s Answer must address the allegations in the Petition. In addition, the Respondent must attach to the answer parts of any transcript that the respondent considers relevant. See Rule 5(c) of the Rules Governing Section 2254 Petitions. To that end, the Court directs Respondent to produce a copy of the record of Petitioner’s immigration proceedings, including any bond proceedings. Id. The Court also directs Respondent to respond to Petitioner’s Motion for TRO within **7 days** of filing his Answer. Once an attorney has entered an appearance on Respondent’s behalf, the Court will set a briefing schedule for the parties and direct argument as to whether a hearing is necessary on the Motion for TRO. The Court **DIRECTS** the Clerk of Court to serve a courtesy copy of this Order on the United States Attorney for the Southern District of Georgia.

Therefore, the Court **GRANTS in part** and **DENIES in part** Petitioner's Motion for Order to Show Cause. Doc. 5. I **RECOMMEND** that the Court **DISMISS** Respondents Lyons, Sterlin, Noem, and Bondi. Any objections to this Report and Recommendation shall be filed within 14 days of today's date. Objections shall be specific and in writing. Any objection that the Magistrate Judge failed to address a contention raised in the Complaint must be included. Failure to file timely, written objections will bar any later challenge or review of the Magistrate Judge's factual findings and legal conclusions. 28 U.S.C. § 636(b)(1)(C); Harrigan v. Metro Dade Police Dep't Station #4, 977 F.3d 1185, 1192–93 (11th Cir. 2020). To be clear, a party waives all rights to challenge the Magistrate Judge's factual findings and legal conclusions on appeal by failing to file timely, written objections. Harrigan, 977 F.3d at 1192–93; 11th Cir. R. 3-1. A copy of the objections must be served upon all other parties to the action.

Upon receipt of objections meeting the specificity requirement set out above, a United States District Judge will make a de novo determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made herein. Objections not meeting the specificity requirement set out above will not be considered by the District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United States Court of

Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a District Judge.

SO ORDERED and REPORTED and RECOMMENDED, this 19th day of September, 2025.



BENJAMIN W. CHEESBRO
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA