

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

Alvaro Lara Martinez

Petitioner

V.

CIVIL ACTION NO. 5:25-cv-000105-DCB-LGI

Pam Bondi, et al.

Respondents

RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

COMES NOW Petitioner Alvaro Lara Martinez, by and through undersigned counsel, to file a Response in Opposition to the Respondents' Motion to Dismiss.

BACKGROUND

On October 18, 2025, a transfer was ordered moving this case from the Western District for New York to the Southern District for Mississippi. *See* Dkt. No. 6. This transfer was due to the government transferring Petitioner from New York to Mississippi. On November 17, 2025, Counsel for the government, Jessica Bourne Williams entered an appearance and filed an unopposed motion for time to file an answer to the Habeas petition. *See* Dkt. No. 12 and 14. On November 24, 2025, the U.S. Attorney's office filed a Motion to Dismiss this Habeas petition for lack of personal jurisdiction over the Warden at Adam's County Correctional Center. *See* Dkt. No. 15.

In response to that motion, Petitioner filed an Amended Petition on December 2, 2025, to include the Warden for Adams County Correctional, Rafael Vergara as the sole Respondent. *See* Dkt. No. 17. Mr. Vergara was named in his official capacity as the warden for Adams County Correctional and as an agent of the United States government. In fact, in most Habeas cases pending before this Court, Mr. Vergara is the sole Respondent listed. Despite not being a direct employee of the United States government, he is an agent of the government and is always represented by the U.S. Attorney's office in Jackson, MS.

The District Court for the Southern District of Mississippi has a policy and procedure of personally serving any Respondents named in a properly filed Habeas petition. Without any action by Petitioner or Petitioner's counsel, beyond the filing of the petition, the Court will issue an Order to Show Cause directing the Clerk's office to serve the named Respondents. This is not the practice of all District courts in the United States. It is unclear whether this policy or procedure applies to amended petitions for Habeas relief.

LEGAL ARGUMENT

Respondents' reliance on *Rumsfield v. Padilla* is proper, though an exception to the general rule is mentioned in the case. See *Rumsfield v. Padilla*, 542 U.S. 426, 159 L.Ed.2d 513 (2004), 440. The Court highlights that in *Ex Parte Mitsuye Endo*, there exists an "important but limited proposition that when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court *retains* jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Id.* at 441 (citing *Ex Parte Mitsuye Endo*, 323 U.S. 283 (1994) (emphasis added)). This can apply to our present case in multiple ways. First, this Court could recognize its authority to issue a writ against the current warden, regardless of his name, due to the fact that a petition was properly lodged before a transfer took place.

Second, the Court could issue a writ for release or other relief on "*any respondent*" within its jurisdiction who has the legal authority to release the Petitioner. All the named Respondents besides the warden for Batavia Federal Detention facility have the power to release the Petitioner. In fact, Petitioner cannot and will not be released or deported from the facility in Natchez, MS without the authorization from one of those three Respondents.

Petitioner would also argue that F.R.C.P Rule 25 applies. Subsection (d) states that “an action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending.” In practice this should also apply to the warden in a Habeas petition. The Court, under this rule, may order a substitution at any time, though a lack of an order to substitute does not affect the substitution. The comments to this rule suggest this exact situation is what led to the subsection (d) amendment in 1961.¹ A subsequent amendment moved language from F.R.C.P. Rule 25 to Rule 17 where it states that “[a] public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer’s name be added.” Court ordered substitutions of wardens happens often in habeas actions. *See Gray v. Fender*, 1:23-CV-00222-DCN (N.D. Ohio Jan 28, 2025); *Lane v. Butler*, 133 F.Supp.3d 888 (E.D. Ky. 2015); *Kane v. May*, Civil Action No. 16-373-CFC (D. Del. Mar 04, 2021); *Hill v. Heath*, 5:25-CV-00646-BMB (N.D. Ohio Jan 05, 2026).

Regardless of the individual’s name, in an immigration-based Habeas action, the Warden is an agent of the United States government and is sued in that capacity. It was not Petitioner that sought to change his detention location. He was not sentenced to serve time in a specific facility. Most immigration detention centers are in Texas, Louisiana, and Mississippi where there are fewer legal protections for immigrants. It is not uncommon to have detainees moved rapidly across the country to one of these three states without notice or opportunity to oppose such transfers.

¹ “To require, as a condition of substituting a successor public officer as a party to a pending action, that an application be made with a showing that there is substantial need for continuing the litigation, can rarely serve any useful purpose and fosters a burdensome formality. And to prescribe a short, fixed time period for substitution which cannot be extended even by agreement, see *Snyder v. Buck*, 340 U.S. 15, 19 (1950), with the penalty of dismissal of the action, ‘makes a trap for unsuspecting litigants which seems unworthy of a great government.’ *Vibra Brush Corp. v. Schaffer*, 256 F.2d 681, 684 (2d Cir. 1958).”

Respondents, who are the purveyors of these policies now seek to dismiss this action based on a purported lack of jurisdiction. This is an incredible claim considering absolutely nothing would change in the case if Mr. Vergara was mailed a copy of the complaint and a summons. The U.S. Attorney's office would remain counsel of record.

CONCLUSION

Petitioner respectfully asks this Court to deny the Respondents' motion to dismiss and to rule on the habeas petition on its merits. Personal jurisdiction requirements are meant to ensure that a party's rights are not offended. Denying the motion to dismiss will not offend Mr. Vergara's rights. It's doubtful that he is even aware of the status of the hundreds of habeas actions where he is named. Petitioner would ask this Court to allow the substitution of one warden for another pursuant to F.R.C.P. Rule 25(d).

Dated this 5th day of March, 2026.

Respectfully submitted,

/s/ Brandon H. Riches

Brandon H. Riches

The Riches Law Firm, PLLC

Mississippi Bar #105273

P.O. Box 1526

Ocean Springs, MS 39566

Cell/WhatsApp: (228) 800-4178

Email: Brandon@Richeslawfirm.com