

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROGELIO BOLUFE IZQUIERDO,

Petitioner,

v.

Case No. 2:26-cv-35-KCD-NPM

A No. 

Cuba

WARDEN, SOUTH FLORIDA SOFT-
SIDED FACILITY SOUTH, et al. (all
official capacity),¹

Respondents.

_____ /

Motion to Dismiss

This case is a head scratcher. Petitioner Rogelio Bolufe Izquierdo seeks unclear relief in an improper way. Even on possible habeas grounds, the Court clearly lacks jurisdiction. So it must dismiss or transfer this case.

Apparently, Bolufe Izquierdo tries to bring tort claims with *Bivens* liability for money damages along with injunctive and declaratory relief. Respondents do not have enough pages here to address the untold legal defects. Yet they object to Bolufe Izquierdo's improper filing of a civil action under the guise of habeas. In the interest of caution, Respondents simply raise failure to serve. Fed. R. Civ. P. 12(b)(4)-(5). Yet

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec'y, Fla. Dep't of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. See, e.g., *Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE either to bring petitioner for a bond hearing or release by a specific date).

Respondents will raise a slew of 12(b)(1) and 12(b)(6) defenses if the case will proceed as a civil action for monetary relief.

That said, to the extent that the Court liberally construes an actual habeas challenge to confinement by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”), the Court has no jurisdiction because Bolufe Izquierdo has not been in the Middle District since August. (Ex. 1). Since he was detained in New Mexico when the case was filed, the Court lacks habeas jurisdiction.

Background

Bolufe Izquierdo is a citizen and national of Cuba who overstayed a visa. (Ex. 2 at 2). In November 2025, an immigration judge (“IJ”) ordered him removed from the United States. (Ex. 3 at 1). It appears Bolufe Izquierdo has a pending appeal of that removal order with the Board of Immigration Appeals (“BIA”). EOIR Automated Case Information, *available at* <https://acis.eoir.justice.gov/en/caseInformation> (last visited Feb. 12, 2026). Those removal proceedings occurred in Otero Immigration Court—which is in New Mexico. (Ex. 3 at 1).

When Bolufe Izquierdo filed this case, he was not detained within the Middle District; rather, he was still in New Mexico. (Ex. 1 at 1). In fact, ICE continues to detain Bolufe Izquierdo there. (Ex. 1 at 1). His detention history makes clear that Bolufe Izquierdo was only housed in the Middle District for three days back in August 2025. (Ex. 1 at 1).

Buttressing this detention history are his own filings. Bolufe Izquierdo filed by

mail. (Doc. 1-6 at 1-4). The return address on the envelopes clearly lists “Torrence County Detention Center” and “Estancia, NM 87016.” (Doc. 1-6 at 1, 3). Torrence is a detention facility in Estancia, New Mexico—which is where Bolufe Izquierdo is currently housed. ICE Locator, *available at* <https://locator.ice.gov/odls/#/details> (last visited Feb. 12, 2026).

On these facts, the Court must dismiss.

Discussion

A. Improper Civil Action and Failure to Serve

Again, Bolufe Izquierdo seems to attempt bringing a civil action under the auspices of habeas. This is inappropriate use of the great writ:

This action was filed as a 28 U.S.C. § 2241 petition for writ of habeas corpus. A section 2241 petition is available to challenge the fact or duration of a petitioner’s confinement, but not the conditions of his confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Stated another way, “the sole function of habeas corpus is to provide relief from unlawful imprisonment or custody, and it cannot be used for any other purpose.” *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979). Thus, if relief on a claim would not require [petitioner’s] release from confinement, that claim does not belong in a habeas corpus petition.

E.g., Brito Matom v. ICE, No. 2:25-cv-648-JES-NPM, 2025 WL 2577424, at *3 (M.D. Fla. Sept. 5, 2025). The Court must dismiss or reject any relief beyond release. *See DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (Claims “far outside the ‘core’ of habeas may not be pursued through habeas.”).

If Respondents must raise a defense, there has been no effort to serve whatsoever. Fed. R. Civ. P. 12(b)(4)-(5). When suing the United States (along with its

agencies or officers), a plaintiff must follow specific service procedures for a summons. Fed. R. Civ. P. 4(i). Most notably, service must be made on the Attorney General and relevant US Attorney. *Id.* at 4(i)(1)(A)-(B). Neither of those requirements were met. There has been no proper service on Respondents—much less the appropriate Governmental entities—for the purpose of a civil action.

Since there was no proper process or service on the Government, the Court should dismiss. *See Thorpe v. Dumas*, 788 F. App'x 644, 647-48 (11th Cir. 2019). The mandatory extension of time set out in Rule 4(i)(4) does not apply as there was no proper service on the Attorney General or US Attorney and no federal employee was sued individually. Fed. R. Civ. P. 4(i)(4). The Court should dismiss and allow Bolufe Izquierdo to file a (doomed) civil action if he intends to do so. *See Flory v. United States*, 79 F.3d 24, 25 (5th Cir. 1996) (affirming Rule 12(b)(5) dismissal because Government raised it at first chance and put plaintiff on notice of defect with time to cure); *see also Nelson v. Barden*, 145 F. App'x 303, 310 (11th Cir. 2005) (The “defendant’s actual notice is not sufficient to cure defectively executed service.”).²

With that out of the way, Respondents turn to the only habeas issue worth noting—i.e., whether jurisdiction exists.

² Again, there are a litany of defects if this were a civil action. Tort claims against the Government must be filed under the Federal Tort Claims Act (“FTCA”)—with its unmet presentment and exhaustion requirements. Separately, there is no chance for *Bivens* liability on these (or any other) facts. There is no waiver of sovereign immunity for generalized constitutional claims against the Government. Nor can the Government be liable for the conduct of contractors on some sort of an imputed liability theory. The list of substantive defenses could go on and on. Suffice it to say, there is no civil liability.

B. Lack of Habeas Jurisdiction

Under 28 U.S.C. § 2241, petitioner must file for habeas in the district of confinement at the time of filing. *Rumsfeld v. Padilla*, 542 U.S. 426, 442-43 (2004); *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). As the Supremes explained, “the traditional rule has always been that the Great Writ is issuable only in the district of confinement.” *Padilla*, 542 U.S. at 442 (cleaned up). Other courts simply lack jurisdiction. *Padilla*, 542 U.S. at 443 (“The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”); *see also Ortiz Chirinos v. ICE*, No. 6:26-cv-264-AGM-DCI, 2026 WL 327639, at *3 (M.D. Fla. Feb. 8, 2026). When petitioner files in the wrong district, a judge could perhaps transfer the matter. *See* 28 U.S.C. § 1631; *Dobard v. Johnson*, 749 F.2d 1503, 1507 (11th Cir. 1985).

Here, Bolufe Izquierdo was—and remains—detained in New Mexico. (Ex. 1). New Mexico is about 1,000 miles outside the Court’s jurisdiction. Since the Court lacks habeas jurisdiction, it must dismiss or transfer. Given the confused allegations, it would seem more appropriate to dismiss altogether—allowing Bolufe Izquierdo to refile a civil action here (if he can do so on a non-frivolous basis) or seek habeas in New Mexico.

For those reasons, the Court must dismiss or transfer.

Local Rule 3.01(g) Certification

To the extent that Local Rule 3.01(g) applies here, Respondents seek leave to

excuse compliance. Petitioner is a pro se individual in immigration detention. And from the translated documents filed, it appears he may not speak English fluently. To expedite matters, Respondents ask the Court to excuse any conferral requirement and consider the Motion opposed.

Certificate of Service

I certify this Motion was sent by U.S. Mail on February 12 to the following:

Rogelio Bolufe Izquierdo (A# 
c/o Torrance County Detention Center Warden
P.O. Box 837
Estancia, NM 87016

Date: February 12, 2026

Respectfully submitted,

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