

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ALEJANDRO OSVALDO GHYSELS
REALES,

Petitioner,

v.

Case No. 2:26-cv-425-KCD-NPM
A No. 089-231-237
Argentina

SECRETARY, UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY, et al. (all official capacity),

Respondents.

_____ /

Response to Motion to Dismiss

The Federal Respondents disagree with the Warden's position. *See* (Doc. 12). As the Government has been saying for months, the Warden is the proper legal Respondent. From the Federal Respondents' perspective, however, the Court should continue to focus on the practical merits of real habeas cases being filed by the hundreds here. That's where the Government is dedicating its efforts—essentially shuttering an entire US Attorney's Office ("USAO") Civil Division to deal with the volume.

The Federal Respondents defer to the Court on whether it's necessary to even address the issue. If it is, the correct answer is to deny. The Court just came to that conclusion. *Guerra Jimenez v. DHS*, No. 2:26-cv-451-KCD-NPM, Doc. 16 (M.D. Fla. Mar. 25, 2026). In any event, the Government consents to inclusion of U.S. Immigration and Customs Enforcement ("ICE") or U.S. Department of Homeland

Security (“DHS”) as a named Respondent.¹

Background

As the Warden contends, the State owns and operates Alligator Alcatraz. That facility houses immigration detainees and is solely responsible for conditions of confinement. The Warden does so under agreements with ICE. The State has broad powers to assist ICE with immigration enforcement and related detention. But, ultimately, all State actors (Warden included) are inferior to the Government on such matters—always subject to the supervision and oversight of ICE.

At the end of the day, the individuals at Alligator Alcatraz are in civil detention at the direction and under the oversight of ICE. Whoever is named in these individual habeas cases, the petitioner remains in immigration detention overseen by ICE. For that reason, the USAO has been tasked with defending the hundreds of Alligator Alcatraz habeas cases filed since the place opened. The USAO will continue to do so as long as the facility operates to house immigration detainees and the DOJ requires the USAO to represent ICE’s interests. *See* 28 U.S.C. § 516.

Discussion

The analysis proceeds in two parts.

First, as a legal matter, the Federal Respondents explain the immediate custodian rule does apply in immigration case. The only exceptions to that were made

¹ ICE is an agency within DHS. Enforcement and Removal Operations (“ERO”) is a component of ICE that is responsible for ICE’s detention and removal efforts.

up by various district courts and openly run afoul *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). So if the Court wants to get in the weeds of a sneaky interesting question, the basic rule applies. And the Warden is the proper Respondent.

Second, this entire exercise is academic since the Government is appearing in these cases regardless of who gets named. As a practical matter, the Federal Respondents have been taking common sense approaches to these cases—including on the named respondents—and the Court should continue doing the same. That is the only sensible way to deal with this unprecedented volume of time-sensitive cases. Since the beginning of this habeas tsunami, the Government consistently conceded ICE's detention authority is at the heart of these cases:

As a practical matter, it generally makes little difference when petitioners also name DHS or ICE in these 1225 v. 1226 cases. After all, the core dispute in such cases is over the statutory designation justifying ICE's detention. Yet Respondents flag the inappropriate party issue for the Court's awareness of administrative struggles in these cases when a bond hearing gets ordered.

E.g., Aranda Garcia v. Warden, No. 2:25-cv-1053-KCD-DNF, Doc. 9 at 3 (M.D. Fla. Dec. 4, 2025). So the Federal Respondents (however named) have been appearing and responding without getting bogged down in the technical respondent rules.

With that said, the analysis begins.

1. Immediate Custodian Rule

Make no mistake, the immediate custodian rule applies to immigration detention. *E.g., Kholyavskiy v. Achim*, 443 F.3d 946, 952-53 (7th Cir. 2006) (applying

rule and holding warden—not ICE field office director—as immediate custodian). In any habeas case, the proper respondent is petitioner’s custodian. 28 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (“[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held.”). This is a traditional, bedrock principle in habeas corpus proceedings. *E.g.*, *Wales v. Whitney*, 114 U.S. 564, 574 (1885) (“All 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.”).

There might be some “very limited and special circumstances” in which someone can circumvent the immediate custodian rule. *Demjanjuk v. Meese*, 784 F.2d 1114, 1116 (D.C. Cir. 1986). For instance, some courts apply a statute- and tradition-based exception where petitioner is held in an undisclosed location by an unknown custodian. *Ozturk v. Hyde*, 136 F.4th 382, 392 (2d Cir. 2025) (citing 28 U.S.C. § 2242). But as the Supreme Court made clear in *Padilla*, there would need to be some true manipulation or unique form of detention to “provide arguable basis for a departure from the immediate custodian rule.” 542 U.S. at 442.

Scattered judges believe immigration cases meet that exceptional showing given that ICE has ultimate legal custody over the individual despite not possessing physical control. *Masingene v. Martin*, 424 F. Supp. 3d 1298, 1301 (S.D. Fla. 2020). This is an odd conclusion because the same is true for every sort of detention. Does

anyone seriously think a BOP warden has the conclusive power to let felons walk out the front gate? Of course not; the Attorney General and her higher-level delegates have control over BOP detention. *See* 18 U.S.C. § 4001(b); *Henderson v. INS*, 157 F.3d 106, 126 (2d Cir. 1998). Yet wardens still must get named in habeas cases. *Padilla*, 542 U.S. at 439-40 (“If the ‘legal control’ test applied to physical-custody challenges, a convicted prisoner would be able to name the State or the Attorney General as a respondent to a § 2241 petition. As the statutory language, established practice, and our precedent demonstrate, that is not the case.”).

Notably, *Padilla* literally rejected the argument that the immediate custodian rule should be relaxed where “the person exercising the ‘legal reality of control’ over the petitioner” isn’t a warden. *Id.* at 437. It clarified that the rule simply might not apply in cases where “petitioner challenges something other than his present physical confinement.” *Id.* at 438. That would be non-core habeas. But the immediate custodian rule “has consistently been applied in this core habeas context within the United States” (i.e., to people—like Petitioner—challenging detention). *Id.* at 437.

As *Padilla* noted, most courts apply the immediate custodian rule all the same to immigration cases. *Id.* at 435 n.8. Circuit courts have split, however, on who that person should be. Most conclude the warden of a facility—not the Attorney General or ICE—would be the proper respondent. *Doe v. Garland*, 109 F.4th 1188, 1195-97 (9th Cir. 2024); *Robledo-Gonzales v. Ashcroft*, 342 F.3d 667, 673-74 (7th Cir. 2003); *Vasquez v. Reno*, 233 F.3d 688, 693 (1st Cir. 2000); *Yi v. Maugans*, 24 F.3d 500, 507 (3d

Cir. 1994). In fact, *Doe* addressed a much more difficult question: whether the rule applied for ICE detainees housed in private contract facilities. Even in those cases though, the immediate custodian rule applies where—as here—petitioner files a core habeas challenging present physical detention. 109 F.4th at 1195 (“Moreover, this circuit and others have held that state and private contract wardens retain the ability to produce habeas petitioners in courts of law.”). Simply put, the proper respondent is still the private-contractor warden rather than ICE.

True, one circuit applied the immediate custodian rule but held the ICE district director would be respondent. *Roman v. Ashcroft*, 340 F.3d 314, 320-22 (6th Cir. 2003). Given *Padilla*’s clear command a year later, however, there is no way to square the circle and follow *Roman* anymore. In no uncertain terms, *Padilla* stated:

Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement.

542 U.S. at 447. Since then, the answer has been clear—even if some district courts continue making missteps to ignore the rule for immigration cases. Every circuit to consider the Warden’s exact argument post-*Padilla* rejected it in the immigration context. *Doe*, 109 F.4th at 1197; *Kholyavskiy*, 443 F.3d at 953. In countless principled decisions, many district courts nationwide followed suit. *E.g.*, *Rivera-Trigueros v. Becerra*, 720 F. Supp. 3d 808, 813-14 (N.D. Cal. 2024); *Nken v. Napolitano*, 607 F. Supp. 2d 149, 154-61 (D.D.C. 2009).

Like indicated earlier, post-*Padilla* courts reject the Warden’s theory of a true

or ultimate custodian for private contract detention facilities. *Stokes v. U.S. Parole Comm.*, 374 F.3d 1235, 1238 (D.C. Cir. 2004); *Doe*, 109 F.4th at 1195. That a private company has no independent authority to incarcerate people needs no citation. Those contractors obviously derive their detention power from the governmental entity in privity. Even so, the private warden is the respondent to habeas.

While a minority of districts invented an exception to the immediate custodian rule for ICE detainees, they did so based on a footnote in *Padilla*. 542 U.S. at 435 n.8 (declining to resolve “whether the Attorney General is *a proper respondent*” to an immigration habeas (emphasis added)). These decisions also offer a solution in search of a problem. Their worry is that a warden would not have information to respond to habeas. Yet that shouldn’t be any concern in the slightest. If the immediate custodian (or a governmental entity responding for him) does not provide a sufficient habeas return to justify any detention, a court grants habeas and orders release. *See* 28 U.S.C. § 2243. Put different, it would inure to petitioner’s benefit to have the most ignorant respondent possible. So any speculative worry some judges have about ICE simply leaving contract wardens in the lurch without information to deal with habeas is misplaced.

As courts recognized—and recent history in Fort Myers conclusively established—the Government often appears in habeas cases involving ICE detainees. *Rivera-Trigueros*, 720 F. Supp. 3d at 814 (“Indeed, the federal government in practice can and does represent wardens of privately run facilities in habeas cases, even where

they are the sole respondents and no federal respondent is named.”). Whether or not a named party, the Government has been appearing to protect its interests knowing that the Warden cannot. 28 U.S.C. § 516 (In “the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice.”).

Decisions on which the Warden relies (e.g., *Masingene*) have a head scratching misunderstanding over the scope of federal judicial power. They contend a local custodian—like the Warden—“cannot release ICE detainees without ICE’s express authorization.” *Masingene*, 424 F. Supp. 3d at 1302. While true for general detention decisions, this says nothing about the circumstances of release under habeas. This misguided logic seems to be that a Government contract somehow restricts Article 3 power to issue habeas writs within its jurisdiction. At the risk of hyperbole, that’s absurd. Regardless of what an ICE detention contract stipulates, any immediate custodian must comply with a federal court’s writ to produce the body of a prisoner (assuming the jurisdictional limits are satisfied). The Warden has not—and cannot—identify a contractual provision with ICE specifying he should ignore a habeas writ to see what ICE thinks about release. Said simply, the Warden at Alligator Alcatraz must release when this Court issues a habeas writ for him to do so.

In this way, a requirement to include the Warden isn’t all that hyper technical. It is true that modern detention realities are far different from those at common law that gave rise to habeas. But no matter how much the world has changed, jail is still

jail. Even if some distant entity holds the metaphorical ticket to release, a warden still holds a physical key to freedom.

On this question, the Court just made the right call. *Guerra Jimenez*, No. 2:26-cv-451-KCD-NPM, Doc. 16. It held:

Because [the Warden] exercises day-to-day control over the facility where [petitioner] is currently detained, he is the immediate custodian. He is thus a proper respondent, and he must remain in this case.

Id. at 5. That was the correct decision yesterday; it remains the correct decision today.

So as a matter of law, the Warden is the proper Respondent in these cases. To the extent that the Warden seeks his dismissal, the Court must deny. *Padilla*, 542 U.S. at 434-35.

2. Practical Considerations

There are cases in which distinctions between naming the Warden or Government have true legal significance. *See C.M. v. Noem*, No. 2:25-cv-747-SPC-DNF (M.D. Fla.). In these individual habeas cases, however, there is often little practical difference. So even though the Warden is the only proper Respondent, the Government expressly waives any objection to naming ICE and/or DHS as a Respondent too.²

² This is voluntary decision borne of necessity to deal with an unparalleled volume of habeas cases filed throughout the country—particularly in the Middle District. Traditionally, the Government's position has been to enforce the formalities of the immediate custodian rule. The Government reserves the right to do so in the future when the USAO's habeas caseload returns to normal. But currently, the Government does not have the resources to pursue every technical defense (e.g., respondents, service, etc.) while also addressing the merits.

The Federal Respondents concession here dovetails with Judge Chappell's recent rejection of the Warden's motion. *Espinoza-Lopez v. ICE*, No. 2:26-cv-620-SPC-NPM, Doc. 10 (M.D. Fla. Mar. 19, 2026). She held, "As the immediate custodian of [petitioner], the warden is a proper respondent to his habeas petition." *Id.* at 2. The Federal Respondents seek the same outcome—i.e., denying the Motion since the Warden is immediate custodian, including ICE or DHS as a Respondent, and proceeding to the habeas merits.

For months, the USAO has been working tirelessly on immigration habeas cases throughout the Middle District. It often notes that the Warden is the proper Respondent because that is the law. But considering the extreme caseload since last summer, the USAO has followed practical realities in these cases and appeared for the Government to provide the Court with any information that it can. This approach realistically waived technical objections the Government could have raised all along—which would have resulted in a significant number of filings to tax and already overtaxed docket. Yet given the practical needs of this docket, the Government has never raised much issue with petitioners naming ICE or DHS.

Almost invariably, the only governmental organ that the USAO deals with in these cases is ICE. This makes sense as ICE is the agency within DHS having responsibility over immigration enforcement. And, ultimately, recent immigration petitioners are detained at ICE's direction and under its supervision. So the USAO works with ICE to respond and ensure compliance with orders. For example, if the

Court requires release, the USAO does its best to coordinate with ICE lawyers and employees who (in turn) work to process necessary paperwork and get the Warden to release petitioner. The Government agrees that it ultimately directs Warden to detain or release an individual in an effort to enforce Court orders. Yet the Government has not hidden behind the immediate custodian rule to avoid its obligation to ensure compliance.

What's more, as ICE (through ERO) pursues removal of an individual, it directs transfer as appropriate to facilitate the alien's removal or removal proceedings. These transfers sometimes occur through various states. So the Warden frequently is not in physical custody of an individual when the Court rules on a specific petition. Still, ICE continues pursuing the habeas defense and coordinating whatever necessary to respond to orders. This sometimes means facilitating release across the country.

Again, considering the caseload demands and realities of these cases, the Government waives objection to naming ICE and/or DHS as a Respondent. Naming an improper respondent in habeas is a personal-jurisdiction defect subject to waiver. *E.g., Smith v. Idaho*, 392 F.3d 350, 355 n.4 (9th Cir. 2004); *Aziz v. Leferve*, 830 F.2d 184, 186 (11th Cir. 1987). As Justice Kennedy explained, "Because the immediate-custodian and territorial-jurisdiction rules are like personal jurisdiction or venue rules, objections to the filing of petitions based on those grounds can be waived by the Government." *Padilla*, 542 U.S. at 452 (Kennedy, J., concurring).

As the Warden notes, ICE contracts with the state and local governments to

detain people for immigration purposes. Some contractors—like Glades County—have express substitution provisions within their intergovernmental service agreements (“IGSA”). So to honor those contracts and streamline proceedings, ICE has already started substituting itself for Glades. Yet the Warden does not have a similar form agreement in its running of Alligator Alcatraz.

Like the Court, the Government is adapting in real time to unclear circumstances. To try and avoid tangential issues like the proper respondent or avoid additional litigation with petitioners, the USAO has taken evolving, commonsense approaches. Most relevant, highlighting the immediate custodian rule was in response to disputes over who could schedule a bond hearing. *E.g.*, *Aranda Garcia*, No. 2:25-cv-1053-KCD-DNF, Doc. 9 at 2-4. That was an effort to seek habeas relief crafted only to what is within ICE’s power to provide. *Id.* at 4. The goal was to avoid unneeded motions to enforce judgment related to when and how a bond hearing occurs. *Id.*³ Put simply, we have enough to deal with on the merits of the Middle District’s habeas docket, so the USAO has endeavored to eliminate unneeded disputes.

It’s unclear why the Warden now seeks nominal dismissal all these months after the habeas deluge began. Since last summer, the Government has been working alone through hundreds of cases on this docket. In a practical sense, the Government consents to inclusion of ICE or DHS as a named Respondent. But the Warden does

³ For what it’s worth, that initial concern has since proved true. Motions to enforce related to the technical details like how EOIR notices hearings to counsel and merits issues like whether an IJ made the right bond decision are now common.

need to be a named Respondent too. If the Warden now intends to defend itself and attempt to respond on the merits to each petition with the USAO representing only the Federal Respondents, the Government has no objection. Regardless, the Government will continue to appear through the USAO to provide the Court with the information from ICE needed to adjudicate the merits of these habeas petitions.

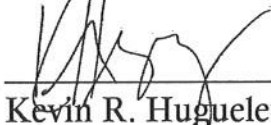
Conclusion

For those reasons, the Court should deny the Motion as the Warden is an appropriate Respondents. Yet the Federal Respondents have no objection to also including ICE or DHS as a Respondent given the current circumstances.

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Respectfully submitted,

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