

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

CASE NO. 2:26-cv-610-JES-DNF

FABIAN FERNANDEZ PIZO,
(A-)

Petitioner,

v.

WARDEN, *Florida Soft Side South Detention*
Center, et al.,

Respondents.

_____)

PETITIONER'S, FABIAN FERNANDEZ PIZO, RESPONSE IN OPPOSITION TO
RESPONDENT'S, WARDEN OF FLORIDA SOFT SIDE SOUTH DETENTION
CENTER, MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, FABIAN FERNANDEZ PIZO, (hereinafter "Petitioner") hereby files his Response in Opposition to Respondents', Warden of Florida Soft Side South Detention Center, Motion to Dismiss Petition for Writ of Habeas Corpus (DE 10), and in support thereof states as follows:

INTRODUCTION

Petitioner respectfully requests this Court deny Respondent's, Warden of Florida Soft Side South Detention Center ("Warden") Motion to Dismiss. Warden seeks dismissal solely on the ground that he is not the proper respondent in this habeas action. Under long established habeas principles, the proper respondent is the individual who exercises immediate physical custody over the petitioner. Accordingly, the Warden is a proper respondent under 28 U.S.C. § 2241.

ARGUMENT

A. Warden is the Immediate Custodian over the Petitioner.

The Federal Habeas Statute provides that relief must be directed to “the person having custody of the person detained.” 28 U.S.C. § 2243. The Supreme Court has previously held that the proper respondent is “the person” having custody over the petitioner. *See Rumsfeld v. Padilla*, 542 U.S. 426 (2004). The Court held that the only proper respondent to a traditional habeas corpus petition involving a “core challenge[]” to “present physical confinement” is the actual or “immediate custodian” of the facility where the individual is detained. *Id.* at 435. In that case, the immediate custodian was the commanding officer in charge of the naval brig where the petitioner was physically held. *Id.* at 442. This rule applies with full force where, as here, a petitioner challenges present physical confinement.

Warden’s argument hinges on the assertion that immigration detention is somehow different. However, the Supreme Court expressly declined to create such an exception. The Supreme Court expressly left open the question of the identity of the proper respondent(s) to a petition filed by a noncitizen “detained pending deportation.” *Id.* at 435 n.8 (recognizing circuit split on “the question whether the Attorney General is a proper respondent to a habeas petition filed by [a noncitizen] detained pending deportation” and stating “[b]ecause the issue is not before us today, we again decline to resolve it”). Warden’s own Motion acknowledges that Padilla “left open the question” with regard to immigration proceedings. Thus, there is no binding authority displacing the immediate custodian rule in immigration habeas cases.

Several circuits and district courts have applied the immediate custodian rule to immigration habeas actions challenging detention. *See, e.g., Vasquez v. Reno*, 233 F.3d 688, 693-96 (1st Cir. 2000) (pre-*Padilla*); *Kholyavskiy v. Achim*, 443 F.3d 946, 949-53 (7th Cir. 2006)

(post-Padilla); *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444–45 (3d Cir. 2021) (post-Padilla); *Doe v. Garland*, 109 F.4th 1188, 1194-96 (9th Cir. 2024) (post-Padilla).

In this case, the Warden exercises day-to-day control over the facility, is responsible for maintaining custody of detainees, and is the official physically capable of producing Petitioner before the Court. These are precisely the attributes that define the proper habeas respondent under Padilla. Respondent attempts to minimize the Warden's role by emphasizing federal oversight by ICE. However, federal oversight does not negate physical custody. The habeas statute does not require that the respondent have unilateral authority to grant release. It only requires that the respondent have custody over the petitioner, and be capable of producing the petitioner before the Court. The Warden plainly satisfies both requirements. Notwithstanding, Petitioner reserves the right to amend such Petition, should this Court find the Warden's Motion has merit.

CONCLUSION

For the foregoing reasons, the Warden is the official who exercises immediate physical custody over Petitioner and is therefore a proper respondent under 28 U.S.C. § 2241. Accordingly, the Court should deny Respondent's, Warden of Florida Soft Side South Detention Center, Motion to Dismiss, and grant any other relief deemed just and proper.

Dated: March 23, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2026, a true and correct copy of the foregoing was electronically filed with the Clerk of Court and served via the CM/ECF system on all counsel or parties of record on the Service List below.

By: /s/ Mariela E. Cano
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