

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

Luis Alberto Bejerano Amador,

Petitioner,

CASE NO.: 2:26-cv-619-JES-NPM

v.

Warden, Florida Soft Side South et al.,

Defendants.

**PETITIONER'S RESPONSE IN OPPOSITION TO
RESPONDENT WARDEN'S MOTION TO DISMISS**

Petitioner Luis Alberto Bejerano Amador, by and through undersigned counsel, respectfully opposes Respondent Warden's Motion to Dismiss (Doc. 6). The Warden asks this Court to dismiss him from this habeas proceeding with prejudice, arguing he is not the proper respondent under 28 U.S.C. § 2241. The motion should be denied for four independent reasons.

First, this Court has already held—in a case arising from the same facility, under the same statute—that all named respondents in a § 2241 immigration habeas case are properly before the court when the government fragments custody across federal and local actors. *See Roblero v. Warden of Fla. Soft Side S.*, No. 2:26-CV-91-KCD-DNF, 2026 WL 522972, at *2 (M.D. Fla. Feb. 25, 2026). The Warden's motion does not cite, distinguish, or even acknowledge *Roblero*.

Second, even if the Court were to conclude that the ICE field office director is a more appropriate respondent, the remedy is substitution or realignment—not dismissal with prejudice. Every case the Warden cites reached the respondent question by identifying the correct custodian and allowing the petition to proceed, not by terminating it.

Third, the motion is functionally irrelevant to the viability of this habeas proceeding. The Petition names multiple federal respondents—including the U.S. Attorney General, the Acting ICE Director, and the U.S. Attorney for this District—who unquestionably have authority over Petitioner’s detention. The Warden moves only for his own dismissal; he does not and cannot seek dismissal of the federal Respondents, who remain parties to this action.

Fourth, the Warden’s own exhibits fail to establish the factual predicate for his custodial-control argument. The documentary record he submits is either inapplicable to this facility or wholly unrelated to detention operations.

ARGUMENT

I. THIS COURT HAS ALREADY HELD THAT ALL NAMED RESPONDENTS ARE PROPERLY BEFORE THE COURT AT THIS FACILITY.

The Warden frames the proper-respondent question as unsettled. It is not—at least not in this Court. In *Roblero v. Warden of Fla. Soft Side S.*, this Court addressed

a § 2241 petition filed by a detainee at the same Florida Soft Side South Detention Center in Ochopee, Florida. No. 2:26-CV-91-KCD-DNF, 2026 WL 522972, at *2 (M.D. Fla. Feb. 25, 2026). Several defendants raised the argument that they were not proper parties. *Id.* The Court rejected that argument, holding that when the government “splits the atom of custody—giving physical control to a local jailer but keeping all legal and administrative authority in the hands of federal agencies—the Court is not going to let the responsible parties off the hook based on a technicality.” *Id.* Since it remained “unclear which specific federal or local official must push the button to grant the required bond hearing or facilitate Petitioner’s release,” the Court retained all named defendants. *Id.*

The *Roblero* court also relied on *Sanchez-Penunuri v. Longshore*, 7 F. Supp. 3d 1136, 1150 (D. Colo. 2013), and *Masingene v. Martin*, 424 F. Supp. 3d 1298, 1302 (S.D. Fla. 2020)—the very case the Warden relies on most heavily here. *Roblero*, 2026 WL 522972, at *2. Notably, the *Roblero* court read *Masingene* and still retained all respondents. If the Warden’s principal authority does not produce dismissal in the same courthouse, involving the same facility, the argument cannot succeed here.

The Supreme Court’s default rule is straightforward: the proper respondent to a core habeas petition is the warden of the facility where the prisoner is held. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That default applies unless a

recognized exception displaces it. No such exception exists here. The Eleventh Circuit has never adopted the reasoning of *Masingene* or any other decision holding that non-federal facility wardens are not proper respondents when ICE controls admission and release. *See Masingene*, 424 F. Supp. 3d at 1301 (acknowledging the Eleventh Circuit has not reached this question). Where the binding authority is silent and the default rule speaks clearly, the default rule governs.

Several courts applying *Padilla* in the immigration context have reached the same conclusion. *See, e.g., Kholyavskiy v. Achim*, 443 F.3d 946, 953 (7th Cir. 2006) (warden of county facility holding immigration detainee was proper respondent); *Nken v. Napolitano*, 607 F. Supp. 2d 149, 159–61 (D.D.C. 2009) (facility warden was proper respondent for detainee subject to final removal order). The Ninth Circuit’s recent decision in *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024), further confirms the default rule’s application to immigration detention. While not binding in the Eleventh Circuit, *Doe* demonstrates that the weight of recent appellate authority supports the default *Padilla* rule in this context. The Warden’s own motion concedes this line of authority exists. (Doc. 6 at 4).

II. EVEN IF THE WARDEN WERE NOT THE PROPER RESPONDENT, THE REMEDY IS SUBSTITUTION—NOT DISMISSAL WITH PREJUDICE.

The Warden asks for dismissal with prejudice. That request finds no support in the very cases the Warden cites.

In *Masingene*, the Southern District did not dismiss the warden with prejudice. It identified the ICE field office director as the proper respondent and allowed the petition to proceed. 424 F. Supp. 3d at 1302. In *Krechmar v. Parra*, 2025 WL 3620802 (M.D. Fla. Dec. 15, 2025), this District likewise concluded that the ICE field office director was a more appropriate respondent—but did not dismiss the petition with prejudice. *Id.* at *2. In *Chiwanga v. Garland*, 2022 WL 20208543 (E.D. Okla. May 20, 2022), and *Rafati v. Barr*, 2020 WL 12968837 (E.D. Okla. Dec. 22, 2020), the courts substituted the ICE field office director and moved forward.

Indeed, the Warden’s own authority recognizes that “immigration detention is more complicated” than the standard habeas custodian analysis. *Krechmar*, 2025 WL 3620802, at *2. That complexity is precisely why *Roblero* retained all named respondents—and precisely why dismissal with prejudice is the wrong remedy here.

This is the universal approach. When a habeas petitioner names the wrong custodian, courts substitute the correct one—they do not terminate the proceeding. *See* Fed. R. Civ. P. 21 (permitting the court to “at any time, on just terms, add or drop a party”); *see also Calderon v. Sessions*, 330 F. Supp. 3d 944, 953 (S.D.N.Y. 2018) (substituting ICE field office director as respondent rather than dismissing petition). Dismissal with prejudice would permanently bar Petitioner from pursuing habeas relief against this respondent—a drastic remedy wholly disproportionate to a curable captioning issue. It would also raise serious concerns under the Suspension

Clause, U.S. Const. art. I, § 9, cl. 2, which prohibits Congress—and by extension, the courts—from rendering the writ of habeas corpus unavailable through procedural technicalities.

The habeas statute itself contemplates amendment. Under 28 U.S.C. § 2242, a habeas application “may be amended or supplemented as provided in the rules of procedure applicable to civil actions.” If the Court has any concern about whether the Warden is properly named, the appropriate remedy is to permit Petitioner to amend the caption—not to foreclose the claim entirely.

III. THE PETITION NAMES MULTIPLE FEDERAL RESPONDENTS WITH UNDISPUTED CUSTODY AUTHORITY.

The Warden’s motion is also largely academic. The Petition names Pamela Bondi, U.S. Attorney General; Todd M. Lyons, Acting Director of ICE; and the U.S. Attorney for the Middle District of Florida as Respondents. (Doc. 1 at 2). These federal officials exercise ultimate legal custody over Petitioner. Even *Padilla* left open whether “the Attorney General is a proper respondent to a habeas petition filed by an alien detained pending deportation.” 542 U.S. at 435 n.8.

The Warden does not seek dismissal of the federal Respondents, nor could he—he has no standing to move on their behalf. The habeas proceeding therefore continues regardless of how the Court resolves this motion. Dropping the Warden, even if warranted, does nothing to affect the viability of Petitioner’s claims.

Indeed, the *Roblero* court confronted this exact scenario and reached the same conclusion: where it is unclear which specific official controls release, retaining all named parties ensures the court's orders are actually carried out. 2026 WL 522972, at *2. The same logic applies here. Rather than dismissing the Warden, this Court should retain him—alongside the federal Respondents—so that any injunctive relief binds every actor in the custodial chain.

IV. THE WARDEN'S EXHIBITS DO NOT SUPPORT DISMISSAL.

The Warden attaches two exhibits: a 287(g) Memorandum of Agreement between ICE and the Florida Department of Corrections (Exhibit A), and a contract between the Florida Division of Emergency Management and IEM International, Inc. (Exhibit B). Neither supports the relief sought.

Exhibit A is the DOC-ICE Jail Enforcement Model MOA, originally executed in August 2020. The Addendum extending it to non-DOC state-operated detention facilities was signed in August 2025. But the motion represents that the Florida Soft Side South Detention Center is operated by the Division of Emergency Management and private contractors—not the Department of Corrections. (Doc. 6 at 2). If the Warden is relying on a MOA that does not directly govern this facility, the factual predicate for his custodial-control argument is incomplete.

Exhibit B is a FDEM contract with IEM International for COVID-19 Public Assistance grant management services—not detention services. (Doc. 6-2 at 35,

Attachment A, “Scope of Work/Deliverables: Public Assistance Grant Management COVID-19”). The Warden cites this exhibit for the proposition that FDEM “contracts with third parties to perform . . . functions, which include providing medical facilities, legal access, and food services.” (Doc. 6 at 9). But Exhibit B says nothing about medical, legal, or food services at any detention facility. This is either the wrong exhibit or a misrepresentation of the record. The Warden bears the burden of establishing the factual basis for dismissal, and the exhibits attached to the motion fail to carry that burden.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court deny the Warden’s Motion to Dismiss. In the alternative, if the Court determines the Warden is not a proper respondent, Petitioner requests leave to amend the caption to substitute the Director of ICE’s Miami Field Office, rather than dismissal with prejudice.

Dated: March 23, 2026

Respectfully submitted

/s/ Arno J. Lemus

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's CM/ECF system, which provides notice to all parties, on March 23, 2026.

Respectfully submitted

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