

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

SADIEL VISET-KINET,

Petitioner,

v.

Case No. 2:26-cv-820-JES-NPM

SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY, et al.

Respondents.

**RESPONDENT WARDEN, FLORIDA SOFT SIDE SOUTH'S
UNOPPOSED MOTION TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS**

Respondent, Warden, Florida Soft Side South (“Warden”), pursuant to Federal Rule of Civil Procedure 12(b)(6), moves to dismiss the Petition for Writ of Habeas Corpus (DE 1) for an improper respondent. In support, the Warden states:

BACKGROUND

On March 19, 2026, Petitioner Sadiel Viset-Kinet (“Petitioner”) filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (“Petition”). At the time of the Petition, Petitioner was detained at Florida Soft Side South in Ochopee, Florida (“Facility”). The Facility (also known as Alligator Alcatraz) is a non-federal detention facility operated by the Florida Division of Emergency Management and private contractors that houses federal immigrant detainees pursuant to a memorandum of understanding with U.S. Immigration and Customs Enforcement (“ICE”) under 8 U.S.C. § 1357(g). After he filed the Petition, Petitioner was

transferred to the Broward Transitional Center in Pompano Beach, Florida. *See Exhibit A.*

Petitioner alleges that agency action unlawfully withheld and unreasonably delayed the application to register permanent residence or adjust status under the Cuban Adjustment Act; that there is a lack of meaningful opportunity to contest third country removal through claims of fear of prosecution or torture, and claims of chain nonrefoulement; and that his detention constitutes civil immigration detention without compliance with the regulatory review process and unlawful re-detention following prior lawful release, and which violates 8 CFR § 241.13 and Due Process. Petitioner also states that there was deficient notice of OSUP revocation.

The Petition names the Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General of the U.S.; Todd M. Lyons, Acting Director U.S. Immigration and Customs Enforcement; Garrett Ripa, Ice Ero Miami Field Office Director; and the Warden, Florida Soft Side South Detention Center.

Petitioner asks this Court to release Petitioner, enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court, declare Petitioner's detention unlawful, and award attorney's fees and costs.

The Warden does not have custody over the Petitioner because he is no longer detained at the Facility. Without custody, the Warden is not a proper

respondent to the Petition under 28 U.S.C. § 2241. Accordingly, the Court should dismiss him from this proceeding with prejudice.

LEGAL STANDARD

“The question whether the [Court] has jurisdiction over [a] habeas petition breaks down into two related subquestions. First, who is the proper respondent to that petition? And second, does the [Court] have jurisdiction over him or her?” *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

To that end, courts have granted motions to dismiss respondents to petitions for writ of habeas corpus filed under 28 U.S.C. § 2241 because the respondent did not have custody of the petitioner. *See, e.g., Joseph-Panay v. Holder*, 2012 U.S. Dist. LEXIS 182055 (D. Md. Dec. 27, 2012) (dismissing Eric Holder and other officials as respondents in § 2241 petition); *Minotti v. Whitehead*, 584 F. Supp. 2d 750, 750 n.1 (D. Md. 2008) (same).

ARGUMENT

“The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is ‘the person who has custody over the petitioner.’” *Padilla*, 542 U.S. at 434 (quoting 28 U.S.C. § 2242); *see* 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”). This “custodian” is the person “with the ability to produce the prisoner’s body before the habeas court.” *Padilla*, 542 U.S. at 435; *see also Munaf v. Geren*, 553 U.S. 674, 686 (2008) (“An individual is held ‘in custody’ by the United States when the United States official charged with his

detention has ‘the power to produce’ him.”) (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885) (“[T]hese 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.”)). In other words, when a petitioner challenges his “present physical confinement, the default rule is that the proper respondent is the warden of the facility where the prisoner is being held.” *Padilla*, 542 U.S. at 435.

Petitioner is not detained at the Facility. See **Exhibit A**. That means the Warden does not have custody over the Petitioner because he is no longer “the warden of the facility where the prisoner is being held.” *Padilla*, 542 U.S. at 435. And without custody over the Petitioner, the Warden is not a proper respondent to this Petition. See 28 U.S.C. § 2242); 28 U.S.C. § 2243. For that reason, he must be dismissed.

CONCLUSION

The Court should dismiss the Warden from this proceeding with prejudice.

Dated: July 15, 2026

Respectfully submitted,

/s/Nicholas J.P. Meros
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RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), I hereby certify that the undersigned counsel was conferred with counsel for Petitioner via e-mail prior to filing this motion. Petitioner does not object to the relief sought in the motion.

/s/ Nicholas J.P. Meros
*Counsel for Respondent Warden,
Florida Soft Side South*

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 July 15, 2026.

/s/ Nicholas J.P. Meros
*Counsel for Respondent Warden,
Florida Soft Side South*