UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSE ALBERTO AYALA ZALDIVAR

Petitioner,

v. Case No. 2:26-cv-1562-SPC-KRH

SECRETARY, MARKWAYNE MULLIN, et al.,

Respondents.

RESPONDENT WARDEN, FLORIDA SOFT-SIDED FACILITY SOUTH'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Respondent, Warden, Florida Soft-Sided Facility 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.[1] In support, the Warden states:

[1] The Warden recognizes that this and other courts within the Middle District have rejected this argument that the Warden is not a proper respondent under 28 U.S.C. § 2241. To be clear, undersigned counsel respects those decisions. It continues to make the arguments, included here, only to preserve his appellate rights – not to dispute those decisions. Further, undersigned counsel is in the process of amending his arguments on this issue to address the courts' analyses and (hopefully) change their minds. But until these updated arguments are ready, since there are often 10-20 new petitions filed daily, the Warden will continue making this argument to preserve the arguments for appeal.

BACKGROUND

On May 9, 2026, Petitioner Jose Alberto Ayala Zaldivar ("Petitioner") filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 ("Petition"). As alleged in the Petition, Petitioner is currently detained at Florida Soft-Sided Facility 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).

The Petition brings counts alleging that there is a lack of foreseeable removal, that prior failed removal demonstrates no likelihood of removal and that his continued detention no longer serves its purpose. Petitioner also alleges that his detention violates Due Process under the Fifth Amendment's Due Process Clause. The Petition asks this court to require Respondents to release Petitioner and award him his attorney's fees and costs.

The Petition names the Miami Field Officer Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, U.S. Attorney General, Executive Office for Immigration Review, as well as Warden, Florida Soft-Sided Facility South.

For the reason(s) discussed below, the Warden is not the proper respondent for a petition for writ of habeas corpus 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.

The Supreme Court in *Padilla*, however, did not clarify whether this "immediate custodian" rule applies to immigration detention centers. *Saravia v. Sessions,* 280 F. Supp. 3d 1168, 1186 (N.D. Cal. 2017) ("*Padilla* refused to decide who the proper respondent is in the immigration detention context, and no controlling authority since has resolved the issue."); *see Padilla*, 542 U.S. at 436 n.8 (noting that the Court has "left open the question whether the Attorney General is a proper respondent to a habeas petition filed by an alien detained pending deportation" and concluding that "[b]ecause the issue is not before us today, we again decline to resolve it"); *see also Rodriguez Sanchez v. Decker,* No. 18-CV-8798, 2019 WL 3840977, at *2 (S.D.N.Y. Aug. 15, 2019) ("The Supreme Court explicitly declined to address the application of the [default] immediate custodian rule to alien detainees."). And the Eleventh Circuit has likewise not reached this question. *Masingene v. Martin*, 424 F.Supp.3d 1298, 1301 (S.D. Fla. 2020)).

Nonetheless, some courts have applied this default "immediate custodian" rule to conclude that the proper respondent to a § 2241 habeas petition is the warden of the facility holding the petitioner. *See, e.g., Kholyavskiy v. Achim,* 443

F.3d 946, 953 (7th Cir. 2006) (warden of the county facility holding an immigration detainee was the proper respondent); *Nken v. Napolitano,* 607 F.Supp.2d 149, 159–61 (D.D.C. 2009) (correct respondent was the warden of the facility holding an individual subject to a final order of removal). Others have concluded the proper respondent is the federal agent responsible for overseeing the non-federal immigration detention facility. *See, e.g., Khodr v. Adduci,* 697 F.Supp.2d 774, 776 (E.D. Mich. 2010) (proper respondent to § 2241 petition was the ICE District Director, not the warden of county jail); *Abner v. Sec'y of Dep't of Homeland Security,* No. 06CV308, 2006 WL 1699607, at *3–4 (D. Conn. June 19, 2006) (ICE field office director, not warden of county facility, was the correct respondent); *Zabadi v. Chertoff,* No. C05-01796, 2005 WL 1514122, at *3 (N.D. Cal. June 17, 2005) (ICE district director, also known as the field office director, was proper respondent because he could direct the county warden to release the petitioner). The facts here, however, add another wrinkle to the analysis. *See Krechmar v. Parra*, No. 2:25-CV-01095, 2025 WL 3620802, at *2 (M.D. Fla. Dec. 15, 2025) ("While a prisoner's immediate custodian is normally the only proper respondent in a habeas action, immigration detention is more complicated.").

The State of Florida's Division of Emergency Management ("DEM"), along with other state agencies and officials, operates the Alligator Alcatraz and North Florida Detention Facilities pursuant to a memorandum of agreement with ICE under Section 287(g) of the Immigration and Nationality Act ("287(g)

agreement"). *See* **Exhibit A.**[2] These 287(g) agreements provide that although DEM retains operational control of the Facilities, "all immigration enforcement activities associated with [Alligator Alcatraz] . . . are entirely under federal control and pursuant to federal law." *Friends of the Everglades, Inc. v. Noem*, 796 F. Supp. 3d 1234, 1275 (S.D. Fla. 2025). For example, section F, titled "ICE Supervision," provides that "[i]mmigration enforcement activities conducted by participating [state agency] personnel will be supervised and directed by ICE," and clarifies that "[p]articipating [state] personnel are not authorized to perform immigration officer functions except when working under the supervision or direction of ICE." Ex. A, at 3. Likewise, the 287(g) agreements note that "[t]he actions of participating [state] personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures." *Id.*

The Southern District of Florida, in the first lawsuit stemming from the Alligator Alcatraz Facility, confirmed that ICE and the federal government exercise this control on the ground at Alligator Alcatraz. *See Friends of the Everglades*, 796 F. Supp. 3d at 1273-75. Specifically, the Court noted testimony by Florida Department of Highway Safety and Motor Vehicles Executive Director David Kerner that "DHS is required to provide direction and supervision to local law

[2] This Court may take judicial notice of the 287(g) agreement as a public record filed in another court under Federal Rule of Evidence 201 because such records are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Navarro v. City of Riviera Beach*, 192 F. Supp. 3d 1353, 1364 (S.D. Fla. 2016) (quoting *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999)).

enforcement officers when taking immigration enforcement actions," *id.*, DE 118-1 ¶ 12, and thus "deputized [state] officers and their activities at the camp are controlled by ICE," *id.*, DE 129 at 225–27. The second case arising from Alligator Alcatraz reaffirmed these facts. *See C.M. v. Noem,* 25-cv-23182 (S.D. Fla. 2025). There, filings show that "[t]he ICE supervisory officer . . . will evaluate the activities of all personnel certified under [a 287(g) agreement]"), ECF 53-1, at 35, deputized officers "performing immigration-related duties pursuant to [the 287(g) agreement] will be assigned to various units, teams, or task forces designated by ICE," *id.* at 33, and candidates "must be approved by ICE" to become deputized immigration officers, *id.* at 34.

What's more, "the federal government is responsible for selecting the pool of prospective detainees and transporting them to the [facility]." *Friends of the Everglades*, 796 F. Supp. 3d at 1275. "[T]he fact that the federal government is responsible for selecting the pool of prospective detainees and transporting them to the camp gives the federal government significant control over who is housed there." *Id.* But even before that, ICE "decides whether and where an apprehended person will be detained for not having legal status," *id.*, DE 129 at 187, and subsequently "directs arresting law enforcement officers whether to take people into custody on suspicion of immigration violations," *id.*, DE 129 at 187, 213. ICE then "makes decisions regarding transfer into [the facility] based on the posture of aliens' immigration proceedings." *C.M. v. Noem,* 25-cv-23182 (S.D. Fla. 2025), ECF 50-1 ¶ 6 (declaration of Juan Lopez Vega). And federal officials transport the

detainees to the Facilities and perform deportations using federally-owned aircraft. *Friends of the Everglades*, 796 F. Supp. 3d at 1274.[3] In fact, if Florida began unilaterally rejecting large swaths of detainees, ICE is contractually authorized to terminate the 287(g) agreement, which would lead to the shuttering of the facility. *See e.g., id.*, DE 24-3 at 8–9 (provisions of 287(g) agreement with FHP detailing the process for ICE to terminate the agreement)).

In other words, as the Southern District of Florida made clear in *Friends of the Everglades*, "ICE maintains custody of the detainees" at the Facility and "is in complete control of detainees' admission and release, while the [287(g) agreements] plac[e] the [deputized state agents] in the role of a mere functionary." 796 F. Supp. 3d at 1275 (cleaned up) (quoting *Masingene*, 424 F.Supp.3d at 1302).

Specifically, the Division and other state officials retain control of the non-immigration aspects of deputized officers' employment. For example, state officials "retai[n] supervision of all other aspects of the employment and performance of duties of participating LEA personnel." *C.M. v. Noem*, 25-cv-23182, ECF 53-1 at 32–33; *see, e.g., Friends of the Everglades*, 796 F. Supp. 3d at 1274, DE 129 at 225–27 (testimony of Director Kerner) ("Deputized state officers'

[3] *See* DE 114 at 97 (testimony of Representative Eskamani that she observed ICE vehicles dropping off detainees and that Director Guthrie confirmed this was the standard protocol); *id.* at 312–14 (testimony of Jessica Namath that she observed ICE-contracted and Customs and Border Protection vehicles transporting between ICE Krome SPC detention facility and the TNT site); DE 129 at 203, 214–15 (testimony of Director Kerner that either federal agencies or contractors, not state agencies, transport detainees to and from the TNT site, and federal agencies are conducting the deportations using federally-owned airplanes).

regular salaries are paid, required uniforms are bought, and standard work hours are controlled by their state agency supervisors."); *id.* at 1275, DE 118-1, ¶ 13 (describing the ways in which state agency supervisors retain control over non-immigration aspects of deputized officers' employment). And the Division contracts with third parties to perform these functions, which include providing medical facilities, legal access, and food services. *See* **Exhibit B**.[4]

This point is important because the Southern District of Florida in *Masingene v. Martin* made clear that "where a petitioner is held in a facility pursuant to a contract, rather than by the state or federal government itself, application of the [default] immediate custodian rule must take account of that fact." 424 F.Supp.3d at 1302 (quoting *Saravia,* 280 F. Supp. 3d at 1185). That is because the warden – a non-federal official "who is not represented by the Department of Justice and who would be the sole defender of the federal government's interests – would be ill-equipped to respond to the merits of the claims underlying the Petition." *See Masingene*, 424 F.Supp.3d at 1302 (quoting *Saravia,* 280 F. Supp. 3d at 1186) (cleaned up). "The warden simply does not have any information to answer for federal authorities, nor does the warden have any reason to litigate these claims." *Masingene,* 424 F.Supp.3d at 1302 (quoting *Calderon v. Sessions,* 330 F. Supp. 3d 944, 953 (S.D.N.Y. 2018)). Likewise, federal immigration detainees are detained "pursuant to the power and authority of the

[4] This Court may take judicial notice of this contract between FDEM and its contractors for the same reason as the 287(g) agreements – a public record under Federal Rule of Evidence 201.

federal government and not the warden of the non-federal facility where they are detained." *Masingene*, 424 F.Supp.3d at 1302 (quoting *Saravia*, 280 F. Supp. 3d at 1186) (cleaned up). As a result, "[t]he local warden cannot release ICE detainees without ICE's express authorization." *Masingene*, 424 F.Supp.3d at 1302.

For all these reasons, "the federal official charged with overseeing the detainees in that facility is more akin to the 'immediate custodian'—the individual with the power to produce the body of the petitioner before the court—than a non-federal warden." *Id.* (citing *Padilla*, 542 U.S. at 434). And "when the warden of the detention facility has no literal power to produce the petitioner, and cannot provide meaningful answers to important factual and legal questions, there is no reason to apply the [default] immediate custodian rule." *Masingene*, 424 F.Supp.3d at 1302 (quoting *Calderon*, 330 F. Supp. 3d at 953).

Accordingly, the Southern District in *Masingene* concluded that "the proper respondent in this context is the director of the ICE field office responsible for overseeing the contract facility where the petitioner is detained," rather than the warden of the detention center. 424 F.Supp.3d at 1302. The Court explained that this approach remains "faithful to the Supreme Court's dictates in *Padilla* that the immediate custodian is the person with the ability to produce the party's body before the habeas court, while at the same time recognizing the reality that non-federal actors are poorly situated to defend federal interest in these situations." *Id.* (quoting *Decker*, 2019 WL 3840977, at *3).

Other federal courts, including some in Florida, have recently come to the same conclusion. The Eastern District of Oklahoma, for example, noted that at immigration detention facilities like Alligator Alcatraz and North Florida, "ICE is in complete control of detainees' admissions and release," and the local state "warden simply does not have any information to answer for federal authorities." *Chiwanga v. Garland*, No. 22-CV-116, 2022 WL 20208543, at *1 (E.D. Okla. May 20, 2022) (quoting *Calderon*, 330 F. Supp. 3d at 953); *see also Rafati v. Barr*, No. 20-CV-411, 2020 WL 12968837, at *1 (E.D. Okla. Dec. 22, 2020) (same). Accordingly, the Court twice concluded that the proper respondent to a habeas petition is "the director of the ICE field office responsible for overseeing the contract facility where the petitioner is detained" because "only a federal official – not the state prison warden – can release an alienee detainee." *Chiwanga*, No. 22-CV-116, 2022 WL 20208543, at *1; *Rafati*, No. 20-CV-411, 2020 WL 12968837, at *1.[5]

In addition, most relevant to this case, the Middle District of Florida in *Krechmar v. Parra* recently agreed that "[w]hile Alligator Alcatraz is a state-run facility, ICE controls who is admitted, detained, and released," which means "[t]he

[5] *See also, e.g.*, *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003) ("We conclude that although the warden of each detention facility technically has day-to-day control over alien detainees, the INS District Director for the district where a detention facility is located has power over alien habeas corpus petitioners" and "[t]herefore the INS District Director for New Orleans is Roman's immediate custodian for habeas corpus purposes."); *Calderon*, 330 F. Supp. 3d at 952) (holding that the proper respondent to plaintiff's habeas petition is the Director of the Miami Field Office for ICE, who is responsible for supervising federal immigrant detainees at a county detention center); *Sanchez-Penunuri v. Longshore*, 7 F. Supp. 3d 1136, 1145 (D. Colo. 2013) ("[T]he ICE District Director is the only official who appears authorized by regulation to make custody decisions for immigration detainees.").

warden of Alligator Alcatraz would be ill-equipped to respond to the merits of Krechmar's claims and to be the sole defender of the federal government's interests." 2025 WL 3620802, at *2. As a result, the Court concluded that "the director of ICE's local field office is a more appropriate respondent" than the warden of Alligator Alcatraz. *Id.*

The reality on the ground at the Facilities matches the descriptions in *Friends of the Everglades* and *Krechmar v. Parra*: ICE selects the pool of possible deportees, decides whether to detain them, and determines where to send them pursuant to federal law. *See supra*. And only ICE can determine whether and when to release a detainee. This makes ICE the "immediate custodian" of all detainees at Alligator Alcatraz and the North Florida Detention Facilities. And under *Padilla* and 28 U.S.C. § 2241, that means the director of ICE's local field office responsible for Alligator Alcatraz– not its "warden" – is the proper respondent. Accordingly, the Court should dismiss Respondent, Warden, Florida Soft-Sided Facility South.

CONCLUSION

For the foregoing reasons, the Court should dismiss the Warden from this proceeding with prejudice.

Dated: May 19, 2026

Respectfully submitted,

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RULE 3.01(g) CERTIFICATION

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

/s/ Nicholas J.P. Meros
Counsel for Respondent Warden,
Florida Soft-Sided Facility 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 May 19, 2026.

/s/ Nicholas J.P. Meros
Counsel for Respondent Warden,
Florida Soft-Sided Facility South