

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

CONROY CONDECORE,

Petitioner,

Case No. 2:26-cv-1704-SPC-NPM

v.

U.S. ATTORNEY GENERAL, et al.,

Respondents.

**RESPONDENT DIRECTOR KEVIN GUTHRIE’S MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS**

Respondent, Kevin Guthrie, in his official capacity as Director of the Florida Division of Emergency Management (“Guthrie”), 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, Guthrie states:

BACKGROUND

On May 19, 2026, Petitioner Conroy Condecare (“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 South Florida Soft Side Detention Facility in Ochopee, FL (“Facility”). Pet. ¶ 23. 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 violation of substantive due process under the Fifth Amendment's Due Process Clause. The Petition asks this court to require Respondents to release Petitioner under a condition of supervision, declare Petitioner's detention unlawful, 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, as well as Kevin Guthrie, Executive Director of South Florida Detention Center/ Florida Division of Emergency Management..

For the reason(s) discussed below, Guthrie 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 Petition, however, does not name the warden of Alligator Alcatraz. Instead, it names Kevin Guthrie, who is the Executive Director of the Florida Division of Emergency Management (FDEM). Indeed, the Petition’s caption names Director Guthrie “in his official capacities” as Executive Director of [FDEM].” Nonetheless, Paragraph 21 of the Petition lists Director Guthrie as a

respondent “as the state official managing SFDF.” Petition ¶ 21. FDEM’s website shows that is wrong.¹ This Court may take judicial notice of that website as a public record under Federal Rule of Evidence 201 because this information is “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)); see, e.g., *Taylor v. Shore*, No. 8:11-CV-2137-T-17/TBM, 2013 WL 3287089, at *3 (M.D. Fla. June 27, 2013) (taking judicial notice of information on Manatee County website). And when judicially-noticed information contradicts a complaint’s allegations, the former wins out. See *Chapman v. Abbott Lab’ys*, 930 F. Supp. 2d 1321, 1323 (M.D. Fla. 2013); *Campos v. I.N.S.*, 32 F.Supp.2d 1337, 1343 (S.D.Fla.1998) (“A court need not accept as true allegations in a complaint that contradict or are inconsistent with judicially-noticed facts.”).

Thus, Director Guthrie is not the Warden of Alligator Alcatraz. And he has no custody over detainees because he does not have the “ability to produce the prisoner’s body before the habeas court.” *Padilla*, 542 U.S. at 435. Indeed, as this Court recently held, the Director “heads a state agency. He does not exercise day-to-day, physical control over the detainees at Alligator Alcatraz.” *Marco Olivera v. Warden Matthew Mordant*, Case No. 2:26-cv-547-KCD-NPM (M.D. Fla. April 8, 2026). Moreover, “[a]s the Supreme Court made clear in *Padilla*, a supervisory

¹ See Fla. Div. of Emergency Management, *Executive Director’s Office*, <https://www.floridadisaster.org/dem/Executive-directors-office/> (last visited March 6, 2026).

official who is miles away from the physical reality of the detainee's confinement is not a proper respondent in a core habeas challenge," which "remains true even if they maintain 'legal control' over the facility." *Id.* (quoting *Padilla*, 542 U.S. at 439). And the Petitioner here offers other legal or factual basis to keep Director Guthrie in this suit.

Accordingly, the Court should dismiss Director Guthrie from this suit.

CONCLUSION

The Court should dismiss Director Guthrie from this proceeding.

Dated: May 27, 2026

Respectfully submitted,

/s/Nicholas J.P. Meros
Nicholas J.P. Meros (FBN 120270)
SHUTTS & BOWEN LLP
215 South Monroe Street, Suite 804
Tallahassee, Florida 32301
(850) 241-1717
nmeros@shutts.com
chill@shutts.com
trosenberger@shutts.com

*Counsel for Respondent, Kevin Guthrie,
Director of the Florida Division of
Emergency Management*

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 objects to the relief sought in the motion.

/s/ Nicholas J.P. Meros
*Counsel for Respondent, Kevin Guthrie,
Director of the Florida Division of
Emergency Management*

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 27, 2026.

/s/ Nicholas J.P. Meros
*Counsel for Respondent, Kevin Guthrie,
Director of the Florida Division of
Emergency Management*