

United States District Court  
Western District of Texas  
El Paso Division

Jose Polanco Penalver,  
Petitioner,

v.

Pam Bondi et al,<sup>1</sup>  
Respondents.

No. 3:26-CV-00144-KC

**Response to Order (ECF No. 2)**

Federal Respondents respectfully respond to the Court's Order dated January 27, 2026 (ECF No. 2). Petitioner Jose Polanco Penalver file the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, seeking the Court grant his writ of habeas corpus, order his immediate release, and appoint counsel to represent him. *See* ECF No. 3. In reviewing the petition, the Court noted that Petitioner already filed a habeas petition in the Middle District of Georgia (4:25-cv-457), which remains pending. ECF No. 2 at 2-3. Petitioner's Georgia petition shows that at the time of filing of the petition, he was detained in Lumpkin, Georgia. Ex. 1 at 1.

Because Petitioner filed the Georgia petition while he was detained there, the Court noted that the District Court for the Middle District of Georgia "would have jurisdiction over the original habeas petition and could retain jurisdiction despite Penalver's subsequent transfer to El Paso, Texas." ECF No. 2 at 2-3. The Court directed Federal Respondents to address how they intend to proceed in this case and Petitioner's Georgia case and their position as to the jurisdiction of this Court and the Middle District of Georgia over Petitioner's habeas petitions. *Id.* at 3.

---

<sup>1</sup> Petitioner names as a respondent the Warden of Camp Montana East Detention Center. ECF No. 3 at 1. But the named warden is not a federal employee. The Department of Justice does not represent him in this action. Federal Respondents are lawfully detaining Petitioner on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

Federal Respondents maintain that the Court lacks jurisdiction. The declaration from Immigration and Customs Enforcement (“ICE”) shows that on January 29, 2026, ICE transferred Petitioner to the Central Louisiana ICE Processing Center for staging in anticipation of his removal to Cuba. Ex. 2 ¶ 10. Under 28 U.S.C. § 2241, a court extends a writ of habeas corpus to an individual who “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c); *see also Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”). However, district courts are limited to granting habeas relief within their jurisdictions. *See Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004). In habeas proceedings courts have jurisdiction over the custodian. *Id.* When a habeas petitioner challenges physical custody within the United States, the default rule is that the petition be filed in the district of confinement. *Id.* Since Petitioner is detained within the territorial jurisdiction of the Western District of Louisiana, there is no habeas jurisdiction under § 2241 in the Western District of Texas. *Id.*

Despite Petitioner’s subsequent transfers, the court in the Middle District of Georgia could choose to retain its habeas jurisdiction and resolve the matter because Petitioner’s habeas petition

is fully briefed in that case<sup>2</sup>. *Penalver v. Bondi*, 4:25-cv-457-CDL (M.D.Ga.). But the case might become moot before the court's resolution, as ICE now anticipates the removal of Petitioner to Cuba. Ex. 2 ¶ 10. And Petitioner is a citizen of Cuba. Ex. 2 ¶ 3.

Accordingly, the Court should dismiss this petition for lack of jurisdiction.

Respectfully submitted,

Justin R. Simmons  
United States Attorney

By: /s/ Huiju Jeon

Huiju Jeon  
Assistant United States Attorney  
New York Bar No. 5447792  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
(210) 384-7315 (phone)  
(210) 384-7312 (fax)  
huiju.jeon@usdoj.gov

Attorneys for Federal Respondents

---

<sup>2</sup> The United States Attorney's Office for the Western District of Texas does not suggest what the court in the Middle District of Georgia or the United States Attorney's Office for the Middle District of Georgia should or could do. But the United States Attorney's Office for the Middle District of Georgia maintains that the court there lacks jurisdiction over the petition for the reasons stated in their response. Ex. 3 at 6. The Eleventh Circuit case law seems to support the Middle District of Georgia's lack of jurisdiction. The Eleventh Circuit has consistently ruled that "[o]nly a court inside the district where the prisoner is confined has jurisdiction to grant relief pursuant to a § 2241 petition." *United States v. Saldana*, 273 F. App'x 845, 846 (11th Cir. 2008). "When the district court enters a judgment on § 2241 petition even though it lacked jurisdiction over the prisoner, we will vacate the judgement and remand to the district court with instructions to dismiss the petition for lack of jurisdiction." *Id.*; *Padgett v. Warden, USP Atlanta*, 745 F. App'x 859, 862 (11th Cir. 2018).

**CERTIFICATE OF SERVICE**

I certify that on February 3, 2026, I electronically filed this document with the Clerk of Court using the CM/ECF system. I additionally certify that I mailed a copy of this document to the following non-CM/ECF participant via regular mail:

Jose Polanco Penalver



ERO El Paso E. Montana Detention Center  
8915 Montana Avenue, Suite 100  
El Paso, Texas 79925

/s/ Huiju Jeon

**Huiju Jeon**

Assistant United States Attorney