UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

K.A.V.O.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26 C 5105
	)	
MARKWAYNE MULLIN, Secretary of Homeland Security et. al.	)	Judge Chang
	)	
Respondents.	)	
	)	

RESPONSE TO HABEAS

Pursuant to this court's minute order of May 4, 2026, Dkt. 4, respondents submit the following response. In short, this case should be dismissed or transferred to the Eastern District of Pennsylvania because that is the district where the petitioner's custodian was located at the time petitioner filed the petition.

For "core habeas petitions," habeas action must be brought against the immediate custodian of the petitioner, and it must be brought within the district court whose territorial jurisdiction includes the "district of confinement." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 441-42, 451 (2004)); *see also United States v. Prevatte*, 300 F.3d 792, 802 (7th Cir. 2002). In "core" habeas cases – those where the person in custody challenges his present physical confinement – this will be the warden of the facility where he is being held. *J.G.G.*, 542 U.S. at 435; *see also Kholyavskiy v. Achim,* 443 F.3d 946, 949 (7th Cir. 2006) ("[T]he immediate custodian [is] the individual having 'day-to-day control' over the facility in which a prisoner is housed.").

This "core challenges" principle was expounded upon in *Kholyavskiy*, where the Seventh Circuit held that the immediate custodian rule applies to habeas petitions in which the petitioner "does not challenge the validity of his removal order, but instead attacks the constitutionality of his confinement while he was awaiting removal." 443 F.3d at 952. Like the petitioner here, Kholyavskiy did not name the direct custodian as a respondent. *Id.* at 947; *see also* Dkt. 1. Instead, he named the Chicago field director for U.S. Immigration and Customs Enforcement ("ICE"), the ICE Director, and the Secretary of Homeland Security. *Id.* The district court applied the immediate custodian rule and dismissed the petition because the petitioner did not name the warden of the Kenosha County Detention Center as a respondent. *Id.* at 947. On appeal, Kholyavskiy argued that ICE Detention Operations Manual provided that only an ICE official, "not the warden, has the power to produce the body of the detainee before a habeas court," and he maintained that the ICE director "is the functional equivalent of a warden for purposes of his habeas challenge." *Id.* at 953. Therefore, he contended that he was in actual custody of ICE, not the Kenosha County Detention Center. *Id.* at 953. The Seventh Circuit rejected those arguments and affirmed. *Id.* at 954.

Kholyavskiy thus requires that, for habeas purposes, "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 953 (quoting *Padilla*, 542 U.S. at 439). Consequently, the petitioner in this case should have named as the respondent the person with actual custody over him, because he was the individual who had immediate authority to produce the petitioner. *Id.* In this case, although the petitioner named the President of the National Youth Advocate Program in Illinois, Dkt. 1 at ¶ 4, the petitioner was not housed in that facility at the time the petition was filed. Dkt. 9. Because the petitioner did not name their actual custodian, the petition is subject to dismissal on that basis alone. Dkt. 1 at ¶ 5;

see also Chagala v. Beth, No. 15-cv-531, 2015 WL 2345614, at *1 n.1 (E.D. Wis. May 13, 2015) (finding "the only proper [r]espondent is . . . the Kenosha County Sheriff who oversees the Kenosha County Detention Center, because he has day-to-day control over" the petitioner, and dismissing the Department of Homeland Security, ICE, the "Immigration Courts," and the Attorney General).

Here, at the time the petition was filed, K.A.V.O. was housed at KidsPeace, 1650 Broadway, Bethlehem, PA 18015, which is in the Eastern District of Pennsylvania. Dkt. 9. Mery Trochez Alberto is the proper respondent for that facility in Pennsylvania. Dkt. 9. Accordingly, respondents ask this court to dismiss this case or, in the alternative, transfer it to the Eastern District of Pennsylvania for further proceedings. *See, e.g.*, *Mejia Olalde v. Noem*, No. 25 C 11481, 2025 WL 2841999, at *3 (N.D. Ill. Oct. 7, 2025).

Respectfully submitted,

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