

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

DUBLIN DIVISION

FILED
U.S. DISTRICT COURT
2009 AUG 31 P 2:12
CLERK *B. McCarthy*

CLAUDIO MONTERO,)	
)	
Petitioner,)	
)	
v.)	CV 308-012
)	
WALT WELLS, Warden, et al.,)	
)	
Respondents.)	

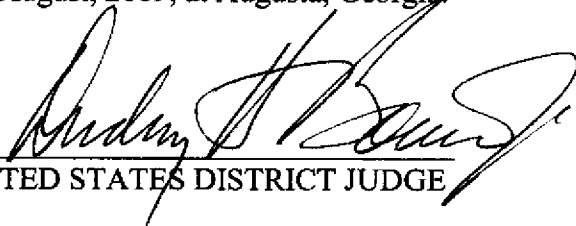
ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, the Attorney General; Janet Napolitano, Secretary of Department of Home Land Security; and John T. Morton, Assistant Secretary of U.S. Immigration and Customs Enforcement, are **DISMISSED** from this case,¹ the instant petition filed pursuant

¹Petitioner also named Michael V. Pugh as a Respondent in this case. However, in a habeas proceeding, the case or controversy is between the person in custody and his custodian. Rumsfeld v. Padilla, 542 U.S. 426, 435 (2004) ("[L]ongstanding practice confirms that in habeas challenges to present physical confinement . . . the default rule is that the proper respondent is the warden of the facility where the prisoner is being held . . ."); Wacker v. Bisson, 348 F.2d 602, 605 (5th Cir. 1965). Thus, as Walt Wells, Petitioner's custodian by virtue of his position as Warden at McRae, is the proper Respondent, Michael V. Pugh is **DISMISSED**.

to 28 U.S.C. § 2241 is **DISMISSED** without prejudice, and this civil action is **CLOSED**.

SO ORDERED this 31st day of August, 2009, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE