UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALI NEZAMABADI, Petitioner, v. CALEB VITELLO, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement, *et al.*, Respondents.	)	No. 25 C 1568 Judge Chang

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO RELEASE PETITIONER FROM CUSTODY

Petitioner Ali Nezamabadi has filed a habeas corpus petition for this court to compel the respondents to release him from custody while he awaits the outcome of his pending removal proceedings. Dkt. 1 ("Petition" or "Pet."). To that end, Mr. Nezamabadi has also filed a motion for immediate release from custody. Dkt. 6 ("Pet'r Mot."). But the appropriate respondent to a petition for habeas corpus is the petitioner's *immediate* custodian. *See, e.g.*, *Kholyavskiy v. Achim*, 443 F.3d 946, 953 (7th Cir. 2006); *Asolo v. Prim*, No. 21 C 50059, 2021 WL 3472635, at *2 n.1 (N.D. Ill. Aug. 6, 2021). The petition names three persons (the Secretary of Homeland Security, the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), and the director of ICE's Chicago field office) as respondents, but none is Mr. Nezamabadi's immediate custodian. Consequently, rather than granting his motion for release, this court must dismiss this action for lack of jurisdiction. *See, e.g.*, *Yacobo v. Achim*, No. 06 C 2432, 2007 WL 1238918, at *3 (N.D. Ill. Apr. 27, 2007) ("Since Respondents Bond and Achim are improper for purposes of this petition, Petitioners failed to name a proper custodian. As such, this Court lacks jurisdiction over the habeas petition.").

Background

I. Statutory And Regulatory History.

A. Federal Habeas Relief

The federal habeas corpus statute, 28 U.S.C. §§ 2241–55, provides that the proper respondent to a habeas petition is "the person who has custody over [the petitioner]," 28 U.S.C. § 2242, and that district courts may grant writs of habeas corpus only "within their respective jurisdictions," 28 U.S.C. § 2241(a). For "core" habeas petitions—petitions challenging present physical confinement (like the petition involved here)—the Supreme Court has held that "there is generally only one proper respondent to a given prisoner's habeas petition," and that this singular proper respondent is the petitioner's "immediate custodian." *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). Thus, well-settled practice dictates that the custodian is defined as "the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Id.* at 435. As the Seventh Circuit has recognized, this is because the writ of habeas corpus acts not upon the petitioner, but upon the person who confines him in allegedly unlawful custody. *See Robledo-Gonzalez v. Ashcroft*, 342 F.3d 667, 673 (7th Cir. 2003) (citing *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494–95 (1973)). Courts should therefore be cautious not to "conflate the person responsible for authorizing custody with the person responsible for maintaining custody." *al-Marri v. Rumsfeld*, 360 F.3d 707, 711 (7th Cir. 2004).

B. Screenings At United States Ports Of Entry.

Every person who arrives in the United States is subject to inspection. *See United States v. Flores-Montano*, 541 U.S. 149, 152 (2004). Thus, every foreign national seeking admission is subject to inspection by U.S. Customs and Border Protection ("CBP") and has the burden of

demonstrating their admissibility.[1] *See* 8 U.S.C. § 1225(a)(3); *see also* 8 U.S.C. § 1361. After arriving at a port of entry from abroad, CBP officers inspect each foreign national requesting admission under 8 U.S.C. § 1225. The officer will determine if an inadmissibility ground under 8 U.S.C. § 1182 applies, and verify whether any database maintained by DHS has information about the individual. *Cf. Nwaorie v. CBP*, 395 F. Supp. 3d 821, 832 n.32 (S.D. Tex. 2019) (discussing one such database). These "inspections" by CBP may include "primary" or "secondary" inspections, but the distinction between "primary" and "secondary" is one of nomenclature—"secondary inspection is no less a matter of course and no less routine than the primary inspection." *United States v. Galloway*, 316 F.3d 624, 629 (6th Cir. 2003). Primary inspection is where "[t]he passenger is usually asked questions regarding his trip, including the countries he has visited, any merchandise he has brought back, and the value of such merchandise. His answers are checked against his customs declaration form, and usually he is sent on his way." *Id.* In contrast, "[a] secondary inspection occurs when further information is required from a noncitizen and the individual is taken aside at the port of entry for further questioning." Kevin R. Johnson et al., *Immigration Law* 384 (2d ed. 2015).

II. Factual And Procedural History.

Mr. Nezamabadi is an Iranian national with conditional permanent resident ("CPR") status in the United States. *See* Pet. ¶¶ 4, 8–13. He filed the Petition on February 13, 2025. *See* Dkt. 1. The Petition alleges that Mr. Nezamabadi is "a beneficiary to his father's I-526, Petition by Alien Entrepreneur," *id.* at ¶ 8, whose petition to remove the conditions on his lawful permanent resident ("LPR") status was denied, which resulted in "Petitioner along with his family" being placed into "removal proceedings with his next Master Court [sic] Hearing scheduled for March 19, 2025,"

[1] This memorandum uses the term "foreign national" as equivalent to the statutory term of "alien" within the Immigration and Nationality Act.

id. at ¶ 11. According to the Petition, Mr. Nezamabadi left the United States and was attempting to return when "ICE officials took Petitioner into custody on or about February 11, 2025, and Petitioner was detained in federal custody at O'Hare International Airport[.]"[2] *Id.* at ¶ 15.

According to CBP records, "[o]n February 11, 2025, the Petitioner stated that he required medical attention, and CBP took him to the emergency room at Resurrection Hospital in Chicago, Illinois." Declaration of Joseph Chavez ("Chavez Decl.") at ¶ 9. "After being treated, the Petitioner was released from the hospital on February 12, 2025 and brought back to O'Hare International Airport. CBP then picked up a medical prescription for the Petitioner." *Id.* at ¶ 10. "CBP [then] contacted ICE for the availability of detention facilities, and ICE reconfirmed that there was space at the Waukesha County Jail. On February 12, 2025, CBP transported the individual to that facility in Wisconsin." *Id.* at ¶ 11.

Mr. Nezamabadi filed the Petition the next day, which asserts two grounds for habeas relief: (1) a claim arguing that he is being unlawfully detained for an indefinite period under 8 U.S.C. § 1226(c), *id.* at ¶¶ 21–24; and (2) a claim arguing that, because he is a CPR, "Respondents have ABSOLOUTLY [sic] no right to detain" him "when he entered the U.S. with the explicit permission of the United States," *id.* at ¶¶ 25–29.

Argument

I. The Petition Must Be Dismissed For Lack Of Jurisdiction As Petitioner Has Not Named a Proper Respondent In This Case.

The party invoking jurisdiction bears the burden of establishing its requirements. *See, e.g., Lujan v. Defenders of Wildlife,* 504 U.S. 555, 559–60 (1992). A petitioner therefore must come forward with "competent proof" supporting his jurisdictional allegations. *NLFC, Inc. v. Devcom*

[2] As alluded to above, ICE does not operate at ports of entry. Instead, CBP officers work at ports of entry such as O'Hare International Airport. *See generally, e.g., Odei v. DHS*, 937 F.3d 1092 (7th Cir. 2019); *Dubey v. DHS*, No. 24 C 5286, 2025 WL 371790 (N.D. Ill. Feb. 3, 2025).

Mid-Am., Inc., 45 F.3d 231, 237 (7 Cir. 1995); *see also Kontos v. U.S. Dep't of Labor*, 826 F.2d 573, 576 (7th Cir. 1987). The initial jurisdictional defect in this case is that petitioner has not named a proper respondent to the habeas petition. This is a problem because, for nearly two decades, the Seventh Circuit has required that the only proper respondent to a habeas petition is the warden or immediate custodian of the facility where the petitioner is detained, and that the case must be brought in the proper district of the petitioner's confinement. *Kholyavskiy*, 443 F.3d at 949–51. No such immediate custodian is present here because the petitioner is not even being detained in this judicial district. *See* Chavez Decl. ¶ 11. Respondents therefore respectfully move to dismiss the habeas petition for lack of jurisdiction because none of them is Mr. Nezamabadi's immediate custodian.

The petitioner here asserts jurisdiction under the habeas statute pursuant to 28 U.S.C. § 2241. *See* Pet. ¶ 1. However, the habeas statute clearly provides that federal judges are entitled to issue writs of habeas corpus only "within their respective jurisdictions," and the writ "shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him, and by virtue of what claim or authority if known." 28 U.S.C. §§ 2241(a), 2242, & 2243; *see also al-Marri*, 360 F.3d at 708. Moreover, the Supreme Court has ruled for over a century that a habeas petitioner's custodian is the 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.'" *Kholyavskiy*, 443 F.3d at 949 (quoting *Wales v. Whitney,* 114 U.S. 564, 574 (1885) (emphasis added)). More recently in *Padilla,* the Court held that where there is a challenge to the present physical confinement, the immediate custodian rule should apply. 542 U.S. at 435. In other words, both courts have reiterated that the default rule "in habeas challenges to present physical confinement — 'core challenges' — is that the proper respondent is the warden of the facility

where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Kholyavskiy*, 443 F.3d at 952 (quoting *Padilla*, 544 U.S. at 444).

In applying *Padilla*, the Seventh Circuit arrived at the same jurisdictional conclusion in the immigration context. The *Kholyavskiy* court found, much like the petitioner in the instant case, that since petition for habeas corpus "attacks the constitutionality of his confinement while he was awaiting removal," and that his "excessive detention at Kenosha deprives him of his rights to substantive and procedural due process," Kholyavskiy did not name the "person who has the *immediate custody* of the person detained, with the power to produce the body of such party before the court or judge." *Kholyavskiy*, 443 F.3d at 953 (emphasis in the original) (quoting *Padilla*, 542 U.S. at 435). The same is true in the instant case where petitioner alleges unlawful confinement while awaiting for his ongoing removal proceedings to play out before an immigration judge, and he also has not named the person who has immediate custody and control over him.

The petitioner in the instant case presents the same type of claim before this court, and faces the same inevitable jurisdictional result: he has not named the proper respondents to each of his claims, and as such, under *Kholyavskiy*, they must be dismissed for lack of jurisdiction. Thus, applying the Seventh Circuit precedent to the instant case regarding where and whom to sue in a habeas corpus petition brought under 28 U.S.C. §2241, the default rule is that one must (1) sue the actual custodian — the person in charge of the jail or prison — (2) in the district of confinement *See al-Marri*, 360 F.3d at 708. Pursuant to the federal habeas statute, federal judges are entitled to issue writs of habeas corpus "within their respective jurisdictions," and the writ "shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him, and by virtue of what claim or authority, if known." 28 U.S.C. §§2241(a), 2242, and 2243. Thus, the proper respondents in this case depend on the institution where the petitioner is

being held—and that person is not a named respondent here. *See Yacobo*, 2007 WL 1238918, at *3.

Petitioners' argument regarding habeas jurisdiction fails because the habeas must be filed in the district of confinement depending on where the individual detainee is housed, and as such a federal district court judge could grant no meaningful relief, as petitioners were returned to their detention facilities long before the court has even determined whether it has jurisdiction over the matter. As the Seventh Circuit has already held: "Ms. Achim's authority to arrange for Mr. Kholyavskiy's release does not make her his immediate custodian for habeas purposes." *Kholyavskiy*, 443 F.3d at 943 (citing *Padilla*, 542 U.S. at 439 ("In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.")).

Furthermore, under the Supreme Court's holding in *Padilla,* the habeas petition may only be brought in the district of confinement: "The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement." 542 U.S. at 443. This is a serious flaw here because Mr. Nezamabadi is not being detained in this judicial district. Chavez Decl. ¶ 11. This is critical because, as the Court instructed in *Padilla*, "the district of confinement is *synonymous* with the district court that has jurisdiction over the proper respondent" because "by definition the immediate custodian and the prisoner reside in the same district." *Id.*

In *al-Marri*, for example, the Seventh Circuit took note of this same requirement: "Long ago the Supreme Court held that the phrase 'within their respective jurisdictions' in § 2241's predecessor limits proceedings to the federal district in which petitioner is detained." 360 F.3d at 709 (citations omitted). And the Seventh Circuit in *Kholyavskiy* again reiterated this point based

on another underlying consideration: "To ensure a more even distribution among the federal districts, Congress has required that a habeas petition name the person in direct charge of the local penal institution." *Kholyavskiy* at 443 F.3d at 949 (citing *al-Marri*, 360 F.3d at 710).

With this backdrop in mind, and because the petitioner has named *no one* who has actual custody over him, the habeas petition must be dismissed for lack of jurisdiction. *Yacobo*, 2008 WL 907444, at *3. As the Seventh Circuit stated in *Kholyavskiy*: "Congress has provided that an application for a writ of habeas corpus shall allege, among other matters, 'the name of the person who has actual custody over [the petitioner]." 443 F.3d at 948 (alternation in original) (quoting 28 U.S.C. § 2242 ¶ 2). And if the writ is "granted by the district court, it 'shall be directed to the person having custody of the person detained.'" *Id.* (quoting 28 U.S.C. § 2243) (citing *Robledo-Gonzales*, 342 F.3d at 673). Finally, this strict adherence to the habeas statute "fits within the logic of collateral relief" because "[t]he writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody." *Kholyavskiy*, 443 F.3d at 949, (citing *Braden*, 410 U.S. at 494–95). That is, when the relief is granted, the person who can effectuate the relief is the named respondent, the immediate custodian, not a remote official. In this case, none of the named respondents maintain custody over the petitioner, meaning it is impossible for the court here to issue the writ as to the proper person (that is, the actual immediate custodian of Mr. Nezamabadi). Thus, without naming the proper respondent, there is no effective relief that the court may grant to the petitioners regarding those who allegedly hold him in "unlawful custody," and as such, the case must be dismissed for lack of jurisdiction.

Conclusion

For the foregoing reasons, the petitioner's motion should be denied, and this case should be dismissed for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(h)(3). The

real remedy for Mr. Nezamabadi lies before the immigration judge handling his removal proceedings. More specifically, the petitioner can move for a bond hearing where the assigned immigration judge may set a bond for his release from custody during the pendency of his removal proceedings.

Respectfully submitted,

MORRIS PASQUAL
Acting United States Attorney

By: s/ Joshua S. Press

JOSHUA S. PRESS
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-7625
joshua.press@usdoj.gov