

United States District Court
Western District of Texas
San Antonio Division

Tajdinali Momin,
Petitioner,

v.

Kristi Noem, *et al.*,
Respondents.

No. 5:25-cv-01017-OLG-HJB

Advisory to the Court

On August 18, 2025, Petitioner filed his petition for writ of habeas corpus. ECF No. 1. Federal Respondents¹ file this advisory to alert the Court that no Order to Show Cause has been issued in this case. As such, Federal Respondents have not been properly joined as parties to this litigation. *See* Rule 4, Rules Governing Habeas Corpus Cases.

Under Rule 4, if the Petition is not dismissed *sua sponte* by the Court, “the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order. In every case, the clerk must serve a copy of the petition and any order on the respondent and on the attorney general....” (emphasis added); *see also* 28 U.S.C. § 2243; *Ndudzi v. Castro*, SA-20-0492-JKP, 2020 WL 3317107 at *2-3 (W.D. Tex. June 18, 2020) (noting the “vast procedural differences” between habeas and non-habeas actions).

On September 1, 2025, Petitioner filed his motion for temporary restraining order and preliminary injunction. ECF No. 5. On September 8, 2025, the District Court denied the motion for temporary restraining order. ECF No. 7. On October 9, 2025, the District Court referred the case to this Magistrate Judge for all matters. ECF No. 8. On October 24, 2025, the warden filed her response to the petition. ECF No. 9. The Court has not yet ordered the Clerk to serve the

¹ The warden is not a federal employee, and the Department of Justice does not represent the warden.

Federal Respondents, nor has the Court ordered Federal Respondents to file any response to the Petition.

To effect service upon the United States and/or its agencies, strict compliance with Rule 4(i) of the Federal Rules of Civil Procedure is required. While there are provisions in the Rules that allow for waiver of service, the United States and its agencies are not listed as entities that can waive service. *See* 1993 amendments to Fed. R. Civ. P. 4, subdivision (i). Respondents' actual notice of the litigation is insufficient to satisfy Rule 4's requirements. *See Ayika v. Sutton*, 378 Fed. App'x 432, 434 (5th Cir. 2010) (*citing Way v. Mueller Brass Co.*, 840 F.2d 303, 306 (5th Cir. 1988)).

Because service was never executed on either the United States or its agencies (or the warden), Federal Respondents have not yet been properly joined in this action. *See, e.g.*, Fed. R. Civ. P. 12(a)(2). A defendant has no duty to answer the complaint or defend an action unless or until that defendant has been served with process and properly brought before the court. *Rogers v. Hartford Life & Acc. Ins. Co.*, 167 F.3d 933, 937 (5th Cir. 1999) (*citing Broadcast Music, Inc. v. M.T.S. Enter., Inc.*, 811 F.2d 278, 282 (5th Cir. 1987); *Espinoza v. Humphries*, 44 F.4th 275, 276 (5th Cir. 2022); *see also Hampton v. Abbott*, SA-15-CA-1155-FB, 2017 WL 11679603 at *5-7 (W.D. Tex. Mar. 27, 2017) (examining FRCP 4 and collecting cases regarding proper service under it).

As Petitioner remains detained, Federal Respondents respectfully request the Court order the Clerk to serve Federal Respondents, consistent not only with the Habeas Corpus Rules, but also with Rule 4(i) of the Federal Rules of Civil Procedure. Further, Federal Respondents request that they be given 14 days from the date of proper service to file a response to the habeas petition.

Nothing in this Response is intended to waive service on behalf of Federal Respondents or officially appear on their behalf in this matter. Furthermore, nothing herein is intended to waive any future arguments on behalf of Federal Respondents.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Anne Marie Cordova
Anne Marie Cordova
Special Assistant United States Attorney
Texas Bar No. 45507
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100 (phone)
(210) 384-7118 (fax)
anne.marie.cordova@usdoj.gov