UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VICTORIANO RAMOS SAPON, Petitioner, v. KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, Respondents.	)	No. 25 C 11731 Judge Chang

MEMORANDUM IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS

This is a habeas case where petitioner Victoriano Ramos Sapon (a native and citizen of Guatemala), seeks immediate release from custody despite having been ordered removed from the United States *over nine years ago*. *See* Respondents' Exhibit 1. He now petitions for such relief because he currently has a I-918, Petition for U Nonimmigrant Status (hereinafter, "U visa petition") still pending before U.S. Citizenship and Immigration Services ("USCIS") and insists that he must be given a bond hearing. *See* Dkt. 1 ("Pet.") at 16 (Prayer for Relief). But the central problem with Sapon's claims for relief is that this court has no jurisdiction to interfere with the Executive Branch's discretion as to when to execute his reinstated order of removal under 8 U.S.C. § 1252(g). *See* Respondents' Exhibit 2.

By way of background, "U visas provide nonimmigrant status for noncitizen victims of serious crime who help law enforcement." *Vasant Patel v. Noem*, No. 24 C 12143, 2025 WL 1489204, at *1 (N.D. Ill. May 23, 2025) (citing 8 U.S.C. § 1101(a)(15)(U)). "Because only 10,000 U visas can be granted annually, USCIS may grant . . . deferred action to petitioners while their petitions are pending if USCIS finds the petitions to be bona fide." *Id.* (citing 8 U.S.C. § 1184(p)).

But whether a petition for U-visa relief is still pending with USCIS does not inhibit the ability of U.S. Immigration and Customs Enforcement ("ICE"), a separate sub-agency within the United States Department of Homeland Security ("DHS"), from enforcing a final order of removal under § 1252(g). *See, e.g.*, *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). The Seventh Circuit's decision in *E.F.L.* squarely controls the outcome of this case: dismissal for lack of jurisdiction. *See id.* Consequently, not only should Sapon's habeas petition be denied, but this case should be dismissed for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court *must* dismiss the action." (emphasis added)).

Background

I. Statutory and Regulatory History

A. The U Visa Program

In October 2000, Congress created "U nonimmigrant status," for victims of qualifying crimes who cooperate with law enforcement in the investigation or prosecution of those crimes. *See* 8 U.S.C. § 1101(a)(15)(U). Congress limited the number of principal U visa grants to 10,000 each fiscal year. 8 U.S.C. § 1184(p)(2). Anticipating that petitioners would exceed the annual statutory cap, USCIS created a waiting list. *See* 8 C.F.R. § 214.14(d)(2); *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014 (Sept. 17, 2007). USCIS may grant work authorization and deferred action or parole to both a petitioner and their qualifying family members on the waiting list. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 214.14(d)(2).

Although USCIS originally estimated that it would receive about 12,000 principal U visa petitions per year, *see* 72 Fed. Reg. at 53,033, the number of U visa petitions has far exceeded that estimate. The agency has received more than 20,000 principal petitions every year since

2012, including more than 30,000 per fiscal year from 2015 through 2018, and again in 2022, 2023, 2024, and the first two quarters in 2025.[1] To accommodate the increasing number of U visa petitions and backlog of those awaiting placement on the waiting list or final adjudication, USCIS may, in its discretion, grant work authorizations to U visa petitioners after finding that they have pending, bona fide petitions and they do not pose a national security or public safety risk. 8 U.S.C. § 1184(p)(6). These are referred to as "bona fide determinations" or "BFDs."[2]

B. 8 U.S.C. § 1252(g)

To streamline removal proceedings, Congress has restricted judicial review by removing federal courts' jurisdiction to hear certain immigration-related claims in certain forums. More specifically, § 1252(g) deprives all courts of "jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien," notwithstanding "any other provision of law (statutory or nonstatutory)" other than § 1252 itself.[3] 8 U.S.C. § 1252(g); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486–87 (1999) (hereinafter,

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[1] *See* U.S. Citizenship and Immigration Services, *Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status ("I-918 Chart")*, https://www.uscis.gov/sites/default/files/document/data/i918u_visastatistics_fy2025_q2.xlsx (link opens Excel spreadsheet for downloading) (last accessed Sept. 29, 2025).

[2] Currently, USCIS adjudicates approximately 80% of such applications within 30.5 months. USCIS's case-processing times are available on the agency's public website. *See* https://egov.uscis.gov/processing-times (last accessed Sept. 29, 2025). This court may take judicial notice of these processing times. *See, e.g.*, *Lubega v. Mayorkas*, No. 23 C 17177, 2024 WL 4206425, at *2 (N.D. Ill. Sept. 11, 2024) (taking judicial notice of the case-processing times on USCIS's website).

[3] Many provisions of the Immigration and Nationality Act ("INA") still refer to the Attorney General. In 2002, however, Congress transferred much of the INA's enforcement authority to the Secretary of Homeland Security. *See* 6 U.S.C. § 557; 8 U.S.C. § 1103; *see also Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019) ("Congress has empowered the Secretary to enforce the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law.").

"*AADC*") (noting how § 1252(g) is "aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation" and that "that provision is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings"); *E.F.L.*, 986 F.3d at 965 ("1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders,'" which "includes challenges to DHS's 'legal authority' to do so.").

C. Expedited Removal

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), replacing much of the INA with a new and "comprehensive scheme for determining the classification of . . . aliens," *Camins v. Gonzales*, 500 F.3d 872, 879 (9th Cir. 2007), including expedited removal. Prior to 1996, the INA "'established two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings.'" *Vartelas v. Holder*, 566 U.S. 257, 261 (2012) (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Under this setup, "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Congress passed "IIRIRA [to] address[] this anomaly by," eliminating the concept of "entry" and exclusion and deportation proceedings, while creating instead a uniform "removal" procedure. *Id.*; *see also Vartelas*, 566 U.S. at 261–62. Removability now turns on whether a foreign national is admissible or has been "admitted" at a port of entry (discussed above). Foreign nationals present in the United States without having been admitted are now "applicants for admission," *id.*, § 1225(a)(1), and generally foreign nationals "seeking admission" who fail to

"clearly and beyond a doubt" demonstrate an entitlement "to be admitted," are detained for a removal proceeding pursuant to 8 U.S.C. § 1229a.[4]

Nevertheless, IIRIRA preserved some elements of the former distinction between exclusion and deportation, including through the statutory enactment of expedited removal proceedings, which ensures that the Executive Branch can both "expedite removal of aliens lacking a legal basis to remain in the United States," *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also* S. Rep. No. 104-249 (1996), and deter individuals from exposing themselves to the dangers associated with illegal immigration, H.R. Rep. No. 104-469, pt. 1, at 117 (1996). "Hence, the pivotal factor in determining" what sort of proceeding a foreign national is entitled to "will be whether or not the alien has been lawfully admitted." *Id.* at 225. Congress thus conferred sizable authority to Executive Branch officers while limiting judicial review to "expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have the merits of his . . . claim promptly assessed[.]" H.R. Rep. No. 104-828, at 209–10 (1996).

The INA thus precludes judicial review over challenges to expedited removal orders issued pursuant to 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(a)(2)(A); *see also Dubey v. DHS*, — F.4th —, 2025 WL 2740703, at *1 (7th Cir. Sept. 26, 2025). It provides, without exception, that "no court shall have jurisdiction to review . . . the application of [8 U.S.C. § 1225(b)(1)] to individual aliens, including the determination made under section 1225(b)(1)(B) of this title." 8 U.S.C.

[4] This memorandum uses the term "foreign national" as equivalent to the statutory term of "alien" within the INA.

§ 1252(a)(2)(A)(iii).[5] Under this summary-removal mechanism, foreign nationals without valid entry documentation or who make material misrepresentations shall be "order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i); *see id.* §§ 1182(a)(6)(C), (a)(7); *accord DHS v. Thuraissigiam*, 591 U.S. 103, 108–13 (2020) (discussing expedited removal); *Odei v. DHS*, 937 F.3d 1092, 1094 (7th Cir. 2019).

II. Factual and Procedural History

Sapon is a Guatemalan national who previously entered the United States in June 2016. *See* Respondents' Exhibit 1 at 4. That was an illegal entry over the Rio Grande River, however, and he was expeditiously ordered deported that same month. *See id.* at 3. According to the petition, Sapon must have returned to the United States the following year, and he "has been present . . . for more than 8 years." Pet. ¶¶ 2, 18. This is curious, though, based on how his removal order explicitly stated that Sapon was barred from returning to the United States for five years. *See* Respondents' Exhibit 1 at 1; *see also* 8 U.S.C. § 1182(a)(9). Regardless of the illegality of his return to the United States, Sapon evidently came to the United States once more, "was apprehended on September 24, 2025 in Chicago, Illinois and transported to the Broadview Service Staging Area (BSSA) located in Broadview, Illinois." Declaration of Carly Schilling ("Schilling Decl.") at ¶ 10. Sapon was therefore "processed as a reinstatement of removal based

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[5] In three other numbered paragraphs, the INA provides for no judicial review, "except as provided in subsection (e)." 8 U.S.C. §§ 1252(a)(2)(A)(i), (ii), (iv). The statute then provides—"in subsection (e)"—for review in habeas corpus of three discrete questions that are not asserted here. 8 U.S.C. § 1252(e)(2). Specifically, such review is available, "but shall be limited to determinations of—(A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under such section, and (C) whether the petitioner can prove" that they have been lawfully admitted as a lawful permanent resident ("LPR"), asylee, or refugee. 8 U.S.C. § 1252(e)(2). These situations are not present in this case.

on his 2016 removal." *Id.* at ¶ 11; *see also* Respondents' Exhibit 2. With a reinstated expedited removal order in hand, ICE moved Sapon out of Broadview on September 26, 2025, "at approximately 1130 hours (CDT), . . . transported from BSSA to ICE AIR, which was staging in Gary, Indiana. RAMOS-SAPON arrived in Gary, Indiana at approximately 1230 hours (CDT)." Schilling Decl. ¶ 12. About 30 minutes later, Sapon "was flown to a detention facility in Oakdale," Louisiana. *Id.* at ¶ 14.

Sapon filed his petition for habeas corpus later that same day. *See* Dkt. 1. The petition generally alleges that detaining and deporting him is both unconstitutional and unlawful while his derivative U visa is still pending with USCIS, and that he must be given a bond determination rather than have his removal order executed. *See* Pet. at 15–16. Shortly thereafter, this court issued an order enjoining petitioner from being moved outside of this judicial district. *See* Dkt. 3. That order was later amended by this court that same day to allow Sapon to also be detained in either the States of Indiana or Wisconsin, in addition to the State of Illinois. Dkt. 6. Because he had already been moved outside of this judicial district by the time of this court's order on the afternoon of September 26, 2025, Dkt. 3, respondents have returned Sapon to Indiana, and he is currently housed in the Clay County Detention Center, *see* Schilling Decl. ¶¶ 16–17.

Legal Standard

Section 2241 confers jurisdiction on this court to order the release of any person who is held in the custody of the United States in violation of the "laws . . . of the United States" or the United States Constitution. 28 U.S.C. § 2241(c). The burden rests on the person in custody to prove their detention is unlawful. *See, e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Argument

I. This Court Lacks Jurisdiction Because Of 8 U.S.C. § 1252(g).

As alluded to above, this court lacks jurisdiction under § 1252(g). Among other things,

that provision precludes judicial review of the decision to execute removal orders. The language in 8 U.S.C. § 1252(g) is unequivocal and its text controls here:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien *arising from the decision or action by the Attorney General to commence proceedings*, adjudicate cases, *or execute removal orders against any alien* under this chapter.

8 U.S.C. § 1252(g) (emphases added). Given this statutory language, the Supreme Court has likewise noted this power of immigration-related enforcement discretion on numerous occasions. *See, e.g.*, *Arizona v. United States*, 567 U.S. 387, 396 (2012) ("A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all."). The petition here ignores both the statute and this historical discretion. But binding case law does not.

In *AADC*, for example, the Supreme Court considered the reach of § 1252(g) and the Executive's discretion over immigration enforcement—concluding that the provision demands a narrow reading. More specifically, the jurisdictional bar "applies . . . to three discrete actions that the [federal government] may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (emphases in original). "At each stage the Executive has discretion to abandon the endeavor" of removal, or to proceed, without judicial interference. *Id.* at 483–84.

The Seventh Circuit's decision in *E.F.L.* is equally helpful regarding the definition of what constitutes "any" challenge to one of § 1252(g)'s three stages. In that case, the habeas petitioner sought injunctive relief to prevent her deportation pending administrative review of another petition for immigration relief (more specifically, a petition for relief under the Violence Against

Women Act ("VAWA")). *E.F.L.*, 986 F.3d at 961–62. Although the *E.F.L.* petitioner's VAWA petition was still pending with USCIS, the court of appeals nonetheless held that § 1252(g) barred habeas jurisdiction because the "habeas petition falls directly in § 1252(g)'s path" as she "challenge[d] DHS's decision to execute her removal order while she seeks administrative relief." *Id.* at 964. And *E.F.L.* likewise explained that section "1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders,'" which "includes challenges to DHS's 'legal authority' to do so." *Id.* at 965 (alteration in original).

The petitioner's challenge in this case is indistinguishable from *E.F.L.*, as it is simply another challenge to the Executive's legal authority to execute a removal order while Sapon's U-visa petition is still pending before USCIS, with the added twist of including a policy argument about bond hearings during removal proceedings. *See* Pet. ¶¶ 3, 19, 22–27. To conclude that there is some sort of wiggle room around § 1252(g) under such circumstances would make the provision "a paper tiger; any petitioner challenging the execution of a removal order could characterize his or her claim as an attack on DHS's 'legal authority' to execute the order and thereby avoid § 1252(g)'s bar. [The court] will not render § 1252(g) so toothless." *E.F.L.*, 986 F. 3d at 965 (internal citations omitted). And that approach is in line with many other courts of appeals. *See Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022); *Camarena v. Dir. of ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim . . . arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *Tazu v. Att'y Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) (rejecting a habeas petition challenging the timing of DHS decision to execute a removal order); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018); *Silva v. United States*,

866 F.3d 938, 941 (8th Cir. 2017) (noting how § 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Tsering v. ICE*, 403 F. App'x 339, 342–43 (10th Cir. 2010); *Foster v. Townsley*, 243 F.3d 210, 214 (5th Cir. 2001).

In fact, other decisions from this judicial district are in line with *E.F.L.* In *Albarran v. Ricardo Wong*, for example, the plaintiff believed he was entitled to a stay of a reinstated removal order based on his interpretation of an internal ICE memorandum that made his offense "a second level priority." 157 F. Supp. 3d 779, 782 (N.D. Ill. 2016). The *Albarran* court concluded that § 1252(g) blocks review of specific types of administrative decisions. *Id.*; *accord Hussain v. Keisler*, 505 F.3d 779, 783–84 (7th Cir. 2007); *Wigglesworth v. INS*, 319 F.3d 951, 960 (7th Cir. 2003); *Gomez-Chavez v. Perryman*, 308 F.3d 796, 800–01 (7th Cir. 2002); *Sharif ex. rel. Sharif v. Ashcroft*, 280 F.3d 786, 787 (7th Cir. 2002). Importantly, a foreign national cannot evade § 1252(g) by attempting to recharacterize a claim that, at its core, attacks the decision to execute a removal order. *See Lemos v. Holder*, 636 F.3d 365, 367 (7th Cir. 2011); *Fedorca v. Perryman*, 197 F.3d 236, 240 (7th Cir. 1999) (affirming dismissal of habeas petition brought under 28 U.S.C. § 2241, because the relief sought (a stay of deportation) was barred by § 1252(g)); *Jung Ok Seol v. Holder*, No. 13 C 1379, 2013 WL 3835370, at *3 (N.D. Ill. July 24, 2013); *Dave v. INS*, No. 03 C 852, 2003 WL 466006, at *1 (N.D. Ill. Feb. 20, 2003).

In this case, Sapon cannot and does not challenge the validity of his underlying 2016 removal order, nor does he raise any legal arguments for release from confinement to the extent that order will be executed by ICE. His claims are simply that no removal order can be executed while his derivative U visa petition is pending, and that he cannot be detained without a bond

hearing during any subsequent removal proceedings. *See* Pet. ¶¶ 51–101.[6] Given the case law discussed above, though, that challenge is barred by § 1252(g). *See AADC*, 525 U.S. at 482; *see also Velarde-Flores v. Whitaker*, 750 F. App'x 606, 607 (9th Cir. 2019) (no jurisdiction under § 1252(g) to enjoin removal of foreign nationals with final orders of removal and pending U Visa petitions); *Rivas-Melendrez v. Napolitano*, 689 F.3d 732, 737–38 (7th Cir. 2012) (no jurisdiction under § 1252(g) to hear challenge to execution of removal order after removal occurred).

Finally, to the extent the court reads the petition as an attack on Sapon's short-term detention by ICE in order to execute his reinstated removal order to Guatemala, that claim would be equally barred by the plain language of § 1252(g). *See, e.g.*, *Tazu*, 975 F.3d at 298. This is because a "challenge to [a] short re-detention for removal attacks a key part of *executing* his removal order." *Id.* (emphasis added). The verb "execute" within § 1252(g)'s phrase "execute removal orders" means "[t]o perform or complete." Execute, *Black's Law Dictionary* (11th ed. 2019). And to perform or complete a removal, DHS must exercise its "discretionary power to detain an alien for a few days. That detention does not fall within some other 'part of the deportation process.'" *Id.* (quoting *AADC*, 525 U.S. at 482). Thus, "a brief door-to-plane detention is integral to the act of 'execut[ing] [a] removal order[.]'" *Id.* (quoting § 1252(g)).

II. This Court Also Lacks Jurisdiction Because the Petition Was Not Brought Against the Petitioner's Immediate Custodian.

This court should also deny the petition because Sapon was not detained in this jurisdiction (or by a respondent within the jurisdiction of this district court) at the time he filed his petition.[7] The federal habeas corpus statute, 28 U.S.C. §§ 2241–55, provides that the proper respondent to

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[6] For unknown reasons, the petition jumps from paragraphs 61 to 100. *See* Pet. at 15.

[7] Because both § 1252(g) and the immediate custodian rule are jurisdictional, this court has the discretion to "address jurisdictional issues in any order [it] choose[s.]" *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 4 (2023).

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." *Padilla v. Rumsfeld*, 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 Cir. Ct. of Ky.*, 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); *see also Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (holding that because "[t]he detainees are confined in Texas . . . venue is improper in the District of Columbia" and that, "[a]s a result, the Government is likely to succeed on the merits of this action").

As in other cases before Article III courts of limited jurisdiction, the petitioner must come forward with "competent proof" supporting his jurisdictional allegations. *NLFC, Inc. v. Devcom Mid-Am., Inc.*, 45 F.3d 231, 237 (7th Cir. 1995); *see also Kontos v. U.S. Dep't of Labor*, 826 F.2d 573, 576 (7th Cir. 1987). The petition here attempts to comply with the immediate custodian rule by claiming that he is detained at the "Broadview Detention Center, located in Broadview Illinois." Pet. ¶ 1. But the petition was filed on the afternoon of September 26, 2025, *see* Dkt. 1,

and by that time, the petitioner was on a flight to Louisiana that had departed from Gary, Indiana, nowhere in this district. Schilling Decl. ¶¶ 12–14. That is a problem because the Seventh Circuit recognizes that habeas cases must be brought in the proper district of the petitioner's confinement. Not past confinement. *Kholyavskiy v. Achim*, 443 F.3d 946, 949–51 (7th Cir. 2006). No such immediate custodian is present here. *See* Schilling Decl. ¶¶ 12–14. Thus, because none of the respondents is petitioner's immediate custodian, this court lacks jurisdiction, and the case should be dismissed under Federal Rule of Civil Procedure 12(b)(1).

Another way of looking at this is how the petition asserts jurisdiction under the habeas statute pursuant to 28 U.S.C. § 2241. *See* Pet. ¶¶ 10, 12. 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)). Thus, 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, the 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 the 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 petitioner in this 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 this 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. "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." *al-Marri*, 360 F.3d at 709 (citations omitted); *see also Kholyavskiy* at 443 F.3d at 949.

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 v. Achim*, No. 06 C 1425, 2008 WL 907444, at *3 (N.D. Ill. Mar. 31, 2008). 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 (cleaned up). 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). In this case, no respondent had custody when the petition was filed, meaning it is impossible for the court here to issue the writ as to the proper person (that is, the actual immediate custodian). Thus, without a proper respondent, there is no relief that the court may grant to the petitioner regarding those who allegedly hold him in "unlawful custody," and as such, the case must be dismissed for lack of jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

Conclusion

For the foregoing reasons, the court should dismiss this case for lack of jurisdiction.

Respectfully submitted,

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