UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners

v.

QUINCY BOOTH, in his official capacity as Director of the District of Columbia Department of Corrections, *et al.*,

Defendants-Respondents.

No. 1:20-cv-00849 (CKK)

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO JOIN UNITED STATES AS A NECESSARY PARTY

The Court should deny the Defendants' motion to join the United States as a necessary party. The United States, which does not seek to join the action but does not oppose Defendants' motion, avers that its *only* interest in this case is a potential future order from this Court directing Defendants to release certain inmates. Because the United States "does not operate or have authority over the . . . D.C. Jail," the sole federal interest that either the District or the United States contend justifies such participation is the possibility that the Court will release of a portion of the jail population. Dkt. No. 46 at 1; Dkt. No. 44-1 ("Defs' Mot'n"), at 4.

Yet Plaintiffs seek release of a portion of the jail population only under the federal habeas statute, 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 2242 and binding Supreme Court precedent, the *only* proper respondent in a federal habeas case is the immediate physical custodian of the inmate. That the United States has legal control, or some measure of legal control, over some jail residents is irrelevant. Under basic principles of habeas corpus law, it is not a necessary party.

It is true that plaintiffs' conditions claims arise under Section 1983 also, but these are not the claims for release; if they were, plaintiffs would have asked to convene a three-judge court, which they have not. *See* 18 U.S.C. § 3626(a)(3)(B) (requiring three-judge court for "any civil action in Federal court with respect to prison conditions"); *cf. id.* § 3626(g)(2) (defining "civil action with respect to prison conditions" to exclude habeas proceedings).

The Defendants' argument, that the United States is a necessary party and must be joined under Rule 19 because "[m]ost of [the inmates] housed in DOC facilities are there under the authority of the United States," Defs' Mot'n 4; *see also id*. at 5, flies in the face of the decisions of this Court, this Circuit, and the Supreme Court. As this Court has recognized, in the "context of a habeas action brought by a prisoner challenging his present physical confinement, it is beyond cavil 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." *Nken v. Napolitano*, 607 F. Supp. 2d 149, 154 (D.D.C. 2009) (Kollar-Kotelly, J.) (quotations omitted).

The Court's analysis in *Nken* demonstrates the fatal flaw in the Defendants' motion to join the United States as a party with respect to this habeas case:

> The federal habeas statute provides that the proper respondent to a habeas petition is "the person who has custody over [the petitioner]." 28 U.S.C. § 2242; *see also id.* § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."). As the Supreme Court has held, "[t]he consistent use of the definite article in reference to the custodian indicates that there is generally only one proper respondent to a given prisoner's habeas petition." [*Rumsfeld v.*] *Padilla*, 542 U.S. 426, 434 (2004). "This custodian, moreover, is 'the person' with the ability to produce the prisoner's body before the habeas court." *Id.* For more than 100 years, courts have understood that "these provisions contemplate a proceeding against some 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, that he may be liberated if no sufficient reason is found to the contrary." *Id.* (emphasis in original) (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). The Supreme Court, in its decision in *Padilla*, confirmed "that in habeas challenges to present physical confinement—'core challenges'—the default rule 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." *Id.* (most alterations in original).
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> Accordingly, is it well settled that, in the typical prisoner context, a "habeas petitioner . . . cannot properly bring suit against such officials as the Attorney General. . . . Rather, the proper defendant in federal habeas cases is the warden." *Chatman–Bey v. Thornburgh*, 864 F.2d 804, 811 (D.C. Cir. 1988); *see also Stokes v. United States Parole Comm'n*, 374 F.3d 1235, 1239 (D.C. Cir. 2004) (reaffirming immediate custodian rule). Moreover, in the wake of the Supreme Court's decision in *Padilla*, the D.C. Circuit has made clear that the immediate custodian rule is not simply one of expedience that may be modified for policy reasons, but rather the default rule that must be applied by district courts in determining whether it has jurisdiction over a prisoner's habeas petition. *See Stokes*, 374 F.3d at 1238 (rejecting prisoner's argument that the immediate custodian rule is a policy rule rather than a hard and fast limitation, concluding that "[if] this theory was once viable, it clearly is not after *Padilla* ").

Nken, 607 F. Supp. 2d at 154–55.

> Under *Padilla*, the United States cannot be a respondent in a federal habeas action:
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> As the Supreme Court observed, the habeas statute indicates that there is *only one proper respondent* to a given habeas petition and that is the person with the ability to produce the prisoner's body before the habeas court. [*Padilla*, 542 U.S. at 434–35], 124. Indeed, the Supreme Court explicitly rejected any argument that a prisoner may bring a habeas petition challenging his present physical custody against a government official who—although not his immediate custodian—exercises the "legal reality of control" over the petitioner. *Id.* at 439.

Nken, 607 F. Supp. 2d at 156 (emphasis added). The Supreme Court concluded in *Padilla*:

> In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent. If the "legal control" test applied to physical-custody challenges, a convicted prisoner would be able to name the State or the Attorney General as a respondent to a § 2241 petition. As the statutory language, established practice, and our precedent demonstrate, that is not the case.

Padilla, 542 U.S. at 439–40.

The precedent and reasoning for the immediate custodian rule are so clear that this Court has held that even where a non-prisoner immigration detainee "[p]etitioner is challenging something more than just his present physical custody," the rule must apply. *Nken*, 607 F. Supp.

2d at 156. Specifically, in *Nken* this Court held that the fact that the petitioner was challenging his imminent deportation and alleged due process violations in an immigration program did not render the Secretary of the Department of Homeland Security the proper respondent. *Id*. Although the Homeland Security Secretary had legal authority and thus could control the petitioner's release, the "proper respondent [was] the person responsible for maintaining—not authorizing—the custody of the prisoner." *Id*. at 157 (citations omitted). Therefore, because the petitioner was held at a facility in Maryland when he filed his petition and the proper respondent was therefore located in Maryland, this Court concluded that it did not have jurisdiction over the matter. *Id*. at 162.

The Court's analysis in *Nken* remains a correct statement of the law today. In 2017, the D.C. Circuit again reiterated *Padilla*'s holding that the only proper respondent in a federal habeas proceeding is the petitioner's immediate physical custodian. *Day v. Trump*, 860 F.3d 686, 689–90 (D.C. Cir. 2017). And, just last year, the United States successfully opposed a Rule 19 motion seeking to add various federal parties as respondents in an immigration case in the United States District Court in New Jersey by arguing that the only necessary party was the warden of a *state* facility. *Tahir G. v. Ahrendt*, No. 18-CV-17175 (ES), 2019 WL 6712344, at *2 n.2 (D.N.J. Dec. 9, 2019). There, the petitioner sought to add additional parties, including the Acting Secretary of the United States Department of Homeland Security, to his 28 U.S.C. § 2241 action. *Id.* (Dkt. No. 36-1 at 1). The petitioner argued that the parties should be joined pursuant to Rule 19 because "the claims asserted by Petitioner necessarily implicate these additional Respondents, since they are the parties that would need to take action in order for him to be scheduled for and appear at a custody review hearing, as he has requested in his petition for a writ of habeas corpus." (*Id.* at 1). The United States opposed the motion, citing, *inter alia*, *Padilla*. *Id*. (Dkt. No. 39 at 1). It argued that warden of the Bergen County Jail was "the *only* proper Respondent[.]" *Id*. (emphasis added).

The joinder motion was denied. *Id*. at 2 n.2; *see also Alafyouny v. Chertoff*, No. 3:06-CV-204 (ICR), 2006 WL 1581959, at *5 (N.D. Tex. May 19, 2006) (granting the United States' motion to be dismissed as a respondent in a Section 2241 habeas petition brought by a federal immigration detainee where the federal government "argue[d] that the only proper respondent for this habeas action is the Warden of the Rolling Plains Detention Center"). Indeed, the United States has also urged this Court to dismiss it as respondent in a habeas petition involving a federal detainee held in a state facility, arguing that the only proper respondent is the warden of the state facility confining the petitioner. *See Zhenli Ye Gon v. D.C. Office of Atty. Gen.*, 825 F. Supp. 2d 271, 277 (D.D.C. 2011) ("The [United States] has taken the consistent position throughout this litigation that the only proper respondent for the habeas petition is the warden of the Virginia jail where petitioner is confined."), *aff'd sub nom. Zhenli Ye Gon v. Sloane*, 496 F. App'x 90 (D.C. Cir. 2012). Having argued for years that the United States is not a proper respondent in habeas cases like these, the Court should not countenance the United States' change of position.

It is therefore entirely clear that "the *only* proper respondent" to a habeas petition under 28 U.S.C. § 2241 is "the warden of the [] facility in which he was incarcerated at the time he filed the petition." *Stokes*, 374 F.3d at 1238 (emphasis added). The fact that many members of the proposed class may be held in DOC custody "under the ultimate authority of the U.S. Attorney General," Defs' Mot'n 5, does not make the United States a proper party to this action with respect to the potential release of residents. Indeed, if it did, the United States would be a proper party in every habeas corpus action properly brought against the warden of a prison or jail on behalf of a federal prisoner or detainee. But as this Court explained in *Gon*, were the United States a proper habeas respondent in every case in which the United States was "the source of the original order of detention," that would "facilitate unprecedented and unseemly forum shopping by D.C. prisoners

housed in institutions all over the country." 825 F. Supp. 2d at 276 n.3. And as this Court explained in *Nken*, in this precise procedural posture, the United States is not a proper party even when it has ultimate authority over the prisoner. *Nken*, 607 F. Supp. 2d at 156.

Lewis v. District of Columbia, 324 F.R.D. 296 (D.D.C. 2018), is not to the contrary for the simple reason that it was not a habeas corpus action. It was a Section 1983 suit challenging the District's practices for processing arrestees, and "any ruling the Court makes in this case will necessarily impact the operations of the U.S. Attorney's office because it will impact the papering, *i.e.*, processing, of arrestees charged with offenses prosecuted by that office." *Id*. at 298.

Nor can Defendants classify the United States as a necessary party based on the speculative possibility that they will incur inconsistent obligations in the United States' absence. The risk that a habeas order would conflict with other duties imposed on the District remains wholly hypothetical given Defendants' failure to define the obligations a release order could undermine or even identify the specific contractual or statutory provisions that impose potentially competing mandates. *See* Defs' Mot'n 4; *see also FDIC v. Bank of N.Y.*, 479 F. Supp. 2d 1, 12 (D.D.C. 2007) (concluding that the risk of "being subject to multiple or inconsistent obligations must be real, and not a mere possibility" for a nonparty to be necessary under Rule 19(a)(1)(B)(ii) (internal citation and quotation marks omitted)). In any event, even if the District had justified its position, the law remains clear that the United States *cannot* be a respondent in a habeas action for the release of individuals not in its custody and therefore *cannot* be a required party in this lawsuit. The District cannot rely on vague concerns to escape the clear legal rule that the Supreme Court, the D.C. Circuit, and this Court have applied, and which the United States itself has endorsed.

Defendants' motion to join the United States pursuant to Rule 19 should be denied.

DATED: April 20, 2020
Washington, D.C.

Respectfully submitted,

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