

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CARL ANDRE BERTHOLD,	:	
Petitioner,	:	
	:	Civil Action No. 3:02CV658(CFD)
v.	:	
	:	
JOHN ASHCROFT, ET AL.,	:	
Respondents.	:	

RULING AND ORDER

The petitioner in this habeas corpus action filed pursuant to 28 U.S.C. § 2241 is an alien subject to a removal order from the Immigration and Naturalization Service (“INS”) and is presently confined at the Federal Detention Center in Oakdale, Louisiana. The respondents are the Attorney General of the United States, the Commissioner of the INS, the INS District Director in Connecticut, the INS District Director in Louisiana, the INS, and the U.S. Department of Justice.

Pending is the petitioner’s motion to proceed in forma pauperis [Doc. #1], petition for writ of habeas corpus [Doc. #2], emergency motion for stay of deportation [Doc. #3], and the respondents’ motion to dismiss [Doc. #7]. The respondents have moved to dismiss this case on the basis that no personal jurisdiction exists over the proper respondent to this habeas action.

When a court grants a 28 U.S.C. § 2241 habeas petition, § 2243 provides that the writ issued by the court "shall be directed to the person having custody of the person detained." 28 U.S.C. § 2243. Accordingly, the Court must have personal jurisdiction over the person who holds the petitioner in custody. See Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 495 (1973). Jurisdiction over the custodian is required 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." Braden, 410 U.S. at 494-95.

The district and circuit courts have split on the issue of who is the appropriate respondent to a habeas petition of an alien detained under the immigration laws, and more specifically, whether the Attorney General of the United States is a proper respondent. The Second Circuit has not yet ruled on this issue. See Henderson v. INS, 157 F.3d 106, 124-28 (2d Cir. 1998). For the following reasons, the Court follows the First Circuit opinion in Vasquez v. Reno, 233 F.3d 688 (1st Cir. 2000), holding that the appropriate respondent is the official having day-to-day control over the facility where the alien is being detained.¹

First, as noted by the First Circuit, there does not appear to be a material distinction between an alien held in a detention facility awaiting possible deportation and a prisoner held in a correctional facility awaiting trial or serving a sentence. See Vasquez, 233 F.3d at 693. It thus follows that for habeas purposes, the “custodian” of the individual in both instances is the official having day-to-day control over the facility where the individual is being held. See id. (“Since the case law establishes that the warden of the penitentiary not the Attorney General is the person who holds a prisoner in custody for habeas purposes, it would be not only illogical but also quixotic to hold that the appropriate respondent in an alien habeas case is someone other than the official having day-to-day control over the facility where the alien is being detained.”). As an additional matter, the habeas statute specifically

¹Accordingly, the Court concludes that the Attorney General, the Commissioner of the INS, the INS District Director in Connecticut, the INS, and the U.S. Department of Justice are not proper respondents to this habeas action.

indicates that there is only one proper respondent to a habeas petition: "The writ ... shall be directed to the person having custody of the person detained." 28 U.S.C. § 2243. Further, as noted by the First Circuit, the person to whom the writ is directed is "required to produce at the hearing the body of the person detained." 28 U.S.C. § 2243. "The individual best able to produce the body of the person detained is that person's immediate custodian, his 'jailor'" Vasquez, 233 F.3d at 693; see also Yi v. Maugans, 24 F.3d 500, 507 (3d Cir. 1994) (petitioner's custodian is the official in charge of the facility that has day-to-day control over him and who can "produce [his] actual body"). Finally, Congress enacted 28 U.S.C. § 2255 to give federal criminal prisoners the option of seeking habeas relief in their sentencing court, but has not modified 28 U.S.C. § 2241 in a similar fashion.

For the foregoing reasons, and absent a Congressional mandate to the contrary, the Court concludes that the appropriate respondent in the instant habeas action is the official having day-to-day control over the facility where the alien is being detained. As noted above, the petitioner is presently confined in the Federal Detention Center in Oakdale, Louisiana. He has named Christine Davis, the District Director of the INS in the Western District of Louisiana, as a respondent in the instant case. Though she is arguably the official having day-to-day control over the facility where the alien is being detained,² the petitioner has failed to establish that this Court has personal jurisdiction over her.

²It is unclear whether the proper respondent in an INS habeas petition is the INS district director whose district includes the facility where the petitioner is detained, or the warden of that facility. Compare Vasquez, 233 F.3d at 690 (stating in dicta that INS district director is appropriate respondent), and Henderson, 157 F.3d at 128 (suggesting same), with Vasquez, 233 F.3d at 691 (citing Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam); Blango v. Thornburg, 942 F.2d 1487, 1491-92 (10th Cir. 1991)) (warden is appropriate respondent). The warden of the Oakdale facility has not been named as a respondent here.

In determining whether this Court has personal jurisdiction over Davis, the Court must conduct a two-part inquiry. First, it must determine whether the plaintiff has shown that the defendant is amenable to service of process under the forum state's laws; and second, it must assess whether the court's assertion of jurisdiction under these laws comports with the requirements of due process.

See Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 567 (2d Cir.), cert. denied, 519 U.S. 1006 (1996) (citing Savin v. Ranier, 898 F.2d 304, 306 (2d Cir. 1990)).

To satisfy the first inquiry, the Court must look to the forum state's long-arm statute. See Savin, 898 F.2d at 306. Connecticut's relevant long-arm statute, Conn. Gen. Stat. § 52-59b(a)(1), provides that a court may exercise jurisdiction over a nonresident defendant who "transacts any business within the state" When determining whether the defendant transacted any business within Connecticut, courts do not apply a rigid formula, but instead balance several considerations, including public policy, common sense, and the chronology and geography of relevant factors. See Sherman Associates v. Kals, 899 F. Supp. 868, 870 (D. Conn. 1995); Zartolas v. Nisenfeld, 440 A.2d 179, 182 (Conn. 1981); Zemina v. Petrol Plus Inc., No. CVNH 97128590, 1998 WL 279819, *2 (Conn. Super. Ct. March 3, 1998).

With respect to the second inquiry,

The court must next determine whether the statutory reach of the long arm statute violates constitutional due process. Under the due process standard, a nonresident must have 'minimum contacts' with the forum state. To have these minimum contacts, a defendant must purposefully avail himself of the privileges and benefits of the forum state. . . . [T]he defendant's conduct and connection with the forum state should be such that he should reasonably anticipate being haled into court there.

United States Surgical Corp. v. Imagyn Med. Tech., Inc., 25 F. Supp. 2d 40, 44-45 (D. Conn. 1998) (internal quotation marks and citations omitted). Due process further requires that the defendant be

given “fair warning” that its activities in a state may subject it to suit there. See Metropolitan Life Ins., 84 F.3d at 567.

In addition to minimum contacts, “the court must consider these contacts in light of other factors to determine whether the assertion of personal jurisdiction would comport with ‘traditional notions of fair play and substantial justice.’” Ensign-Bickford Co. v. ICI Explosives USA, Inc., 817 F. Supp. 1018, 1030 (D. Conn. 1993) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); see also Metropolitan Life Ins. Co., 84 F.3d at 568. As part of its “reasonableness” analysis, the Court must consider:

- (1) the burden that the exercise of jurisdiction will impose on the defendant;
- (2) the interests of justice of the forum state in adjudicating the case;
- (3) the plaintiff’s interest in obtaining convenient and effective relief;
- (4) the interstate judicial system’s interest in obtaining the most efficient resolution of the controversy; and
- (5) the shared interest of the states in furthering substantive social policies.

Metropolitan Life Ins. Co., 84 F.3d at 568.

The Court concludes that Davis is not amenable to service of process under Connecticut’s long-arm statute. Conn. Gen. Stat. § 52-59b(a). The petitioner has not established that Davis purposefully availed herself of the privilege of conducting business within Connecticut and that the petitioner’s cause of action arose out of Davis’ activities within the state. See Conn. Gen. Stat. § 52-59b(a)(1); Henderson, 157 F.3d at 123 (examining New York’s long-arm statute). The petitioner has not indicated that Davis conducted any business in Connecticut related to his claims. The petitioner was placed in removal proceedings in Massachusetts, and his actual removal proceedings took place in Louisiana. Nor has the petitioner demonstrated that Davis’ actions parallel those of the INS District Director in Henderson, where the Second Circuit held that the INS District Director may have

“purposefully availed’ himself of the privilege of conducting business in New York.” Henderson, 157 F.3d at 123-25. Accordingly, the petitioner has not established any “articulable nexus” or “substantial relationship” between his claims and any of Davis’ actions in Connecticut. Henderson, 157 F.3d at 123. Consequently, this Court does not have personal jurisdiction over Davis pursuant to Connecticut’s long-arm statute.³ As the Court concludes it does not have personal jurisdiction over the petitioner’s immediate custodian, the petitioner’s case must be dismissed. However, this dismissal is without prejudice to re-filing in the United States District Court for the Western District of Louisiana.

Based on the representations made by the petitioner in support of his motion for leave to proceed in forma pauperis, the motion to proceed in forma pauperis [Doc. #1] is GRANTED. However, for the reasons noted above the petition for writ of habeas corpus [Doc. #2] and emergency motion for stay of deportation [Doc. #3], are DENIED, and the respondents’ motion to dismiss [Doc. #7] is GRANTED.

SO ORDERED this _____ day of March 2003, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

³Therefore, the Court need not consider the second prong of the personal jurisdiction inquiry, whether the Court’s assertion of jurisdiction under these laws comports with the requirements of due process.