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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Hung Bui,

12 Petitioner,

Case No.: 16cv2763-CAB-BLM

ORDER DISMISSING PETITION

13 v.

14 Troy Lund, Bureau of Immigration
15 Customs Enforcement; Jeh Johnson,
16 Secretary of Homeland Security; Loretta
Lynch, Attorney General,

17 Respondents.
18

19 On November 7, 2016, Petitioner Hung Bui (“Petitioner”), proceeding *pro se*, filed
20 a “Motion to Issue Order Directing Respondents to Answer to Abuse of Process Claim
21 due to their Failure to Lift a Department of Homeland Security Detainer Pursuant to 8
22 U.S.C. §§1252 & 1253,” which Petitioner alleges is brought pursuant to 28 U.S.C. §2241
23 (“Petition”).

24 DISCUSSION

25 Petitioner commenced this action against Troy Lund, Bureau of Immigration
26 Customs Enforcement; Jeh Johnson, Secretary of Homeland Security; and Loretta Lynch,
27 Attorney General. See Pet. at 1. However, the proper respondent in a habeas case is the
28 person having custody, i.e. legal control, over the petitioner. 28 U.S.C. § 2243; *Rumsfeld*

1 *v. Padilla*, 542 U.S. 426, 439 (2004). For ordinary prisoners, such a custodian is the
2 prisoner's warden. *Chatman–Bey v. Thornburgh*, 864 F.2d 804, 811 (D.C. Cir. 1988).
3 Here, Petitioner has not named a warden.

4 In addition, a habeas petition under § 2241 must be filed in the federal court with
5 territorial jurisdiction over the respondent. See 28 U.S.C. § 2241(a) (providing that
6 “[w]rits of habeas corpus may be granted by ... the district courts ... within their
7 respective jurisdictions”); *Stokes v. U.S. Parole Comm'n*, 374 F.3d 1235, 1239
8 (D.C.Cir.2004) (“[A] district court may not entertain a habeas petition involving present
9 physical custody unless the respondent custodian is within its territorial jurisdiction.”).
10 According to the Petition, Petitioner is incarcerated at the Federal Correctional Institution
11 in Mendota, California, which is within the territorial jurisdiction of the United States
12 District Court for the Eastern District of California. See
13 <https://www.bop.gov/locations/institutions/men/>; 28 U.S.C. §84(b). Therefore, even if
14 Petitioner were to name the warden of the institution where he is incarcerated, the
15 Petition must be filed in the Eastern District of California.

16 Finally, pursuant to Federal Rule of Evidence 201, the Court takes judicial notice
17 of the court records in the United States District Court for the Central District of
18 California in Case No. 16cv1138-RGK-RAO, where Petitioner filed a nearly identical
19 petition against the same respondents, which petition was summarily dismissed. [See
20 C.D. Cal. Case No. 16cv1138, Docket No. 5.]¹ Thus, while this Court has discretion to
21 transfer the case to the Eastern District pursuant to 28 U.S.C. §1631², the Court finds that
22 it is in the interests of justice to dismiss the Petition.

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26 ¹ This Court adopts the reasoning of the Central District in Docket No. 3 as additional grounds for
27 dismissal of this Petition. See Case No. 16cv1138, Docket No. 5 at 2-4.

28 ² Section 1631 gives federal courts “authority to make a single decision upon concluding that it lacks
jurisdiction-whether to dismiss the case or, ‘in the interest of justice,’ to transfer it to a court of appeals
that has jurisdiction.” *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 803, 108 S.Ct. 2166,
100 L.Ed.2d 811 (1988).

1 CONCLUSION

2 For the reasons set forth above, **IT IS HEREBY ORDERED THAT** the Petition
3 shall be **DISMISSED**.

4 Dated: December 28, 2016



5 _____
6 Hon. Cathy Ann Bencivengo
7 United States District Judge

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