



*addressed* to the Secretary of Defense, in his official capacity, and no other respondents are required.” *See id* (emphasis added). It is notable that the government states that any order of relief may be addressed to, rather than will be performed or carried out by, the Secretary of Defense. The appendix to the motion, moreover, includes a footnote containing the following mystifying language:

Counsel for these Petitioner(s) conditioned their consent to Respondents’ motion on agreement by Respondents to several conditions which spoke to the legal authority of the Secretary of Defense, as the only proper respondent, to carry out the relief requested by Petitioners and to act on behalf of the government in the course of this litigation. Because such authority is dictated by the operation of law, Respondents consider such responses as effective refusal to consent to Respondents’ motion.

Motion, Appendix at 2. Respondents’ meaning is completely unclear, and Petitioners cannot ascertain whether or not the government agrees that the Secretary of Defense has the power and authority to grant the relief Petitioners have requested in this action.

3. If the government contends that the Secretary of Defense lacks the power and authority to grant the relief requested in the complaint, either because Petitioners are detained pursuant to the President’s executive authority, or because the Secretary of Defense is not their immediate custodian, or because some forms of relief may also require action by another executive department or agency, then the President or the United States and the Petitioners’ immediate custodians should remain respondents in this action, and the government’s motion should be denied. *See Clinton v. Jones*, 520 U.S. 681, 703-05 (1997) (holding that the President can be subject to court order in appropriate circumstances), and cases cited therein; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (holding that the detainee’s immediate custodian is a proper habeas corpus respondent). If this Court, on the other hand, grants the government’s motion to

dismiss, then the government should be estopped from later arguing that the Secretary of Defense lacks such power and authority to grant the relief requested.

### **Conclusion**

For the reasons stated above, Petitioners respectfully request this Court to deny the government's "Motion to Dismiss Improper Respondents" or, if it grants the motion, to rule that the government is estopped from arguing in the future that the Secretary of Defense lacks the power or authority to grant the relief requested in Petitioners' complaint.

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Respectfully submitted,

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