

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RICHARDO SANTOS,
Petitioner,

v.

CIVIL ACTION NO. 15-10799-NMG

STATE OF RHODE ISLAND,
Respondent.

MEMORANDUM AND ORDER

GORTON, J.

On March 11, 2015, petitioner Richardo Santos, a prisoner in custody at MCI Concord in Concord, Massachusetts, filed a self-prepared petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, on a template form (AO 242). Petitioner alleges that in 2014, he attempted to submit a petition and request pursuant to the Interstate Agreement on Detainers Act (“IAD”), 18 U.S.C. App. 2 §§ 1-9, so that he could resolve an outstanding criminal matter in Rhode Island. He contends that the Massachusetts Department of Correction has refused to file his request. He also contends that Rhode Island has refused to resolve his criminal case until after he is released from Massachusetts Confinement. He names the State of Rhode Island as the respondent and seeks an order to Rhode Island officials to honor his IAD request.

On July 6, 2015, an Order (Docket No. 4) issued, directing petitioner to pay the filing fee or to file a motion for leave to proceed *in forma pauperis*.

On July 24, 2015, petitioner paid the \$5.00 filing fee.

Discussion

I. The Proper Respondent

Petitioner has named the State of Rhode Island as the respondent; however, the proper respondent in a habeas petition is petitioner’s immediate custodian. See Rumsfeld v. Padilla, 542 U.S. 426, 439 (2004)(immediate custodian of petitioner is proper respondent in habeas action); Prall v. Providence Superior Court, 2014 WL 2800789 (D.R.I. 2014)(in report and

recommendation for § 2241 petition by New Jersey state prisoner with respect to his IAD challenge seeking to appear immediately on a Rhode Island criminal charge, proper respondent was warden of the prison).

In light of this, Lois Russo, Acting Superintendent of MCI Concord, shall be substituted as the sole respondent in this action.

II. Service of the Petition

This Court will direct service of the habeas petition as set forth below.

Conclusion

Based on the foregoing, this Court hereby orders that:

1. Lois Russo, Acting, Superintendent of MCI Concord, shall be substituted as the sole respondent in this action;
2. The Clerk of this Court shall serve a copy of the petition upon (i) Lois Russo, Acting Superintendent, MCI Concord, 965 Elm Street PO Box 9106, Concord, MA 01742; and (ii) the Attorney General for the Commonwealth of Massachusetts; Attention: Chief of the Appellate Division, One Ashburton Place, 18th Floor Boston, MA 02108-1598;
3. The respondent shall, within 21 days of receipt of this Order, file an answer or other responsive pleading to the petition for writ of habeas corpus. The answer (or other responsive pleading) must also include a statement notifying this Court of the existence of any victim or victims as defined by 18 U.S.C. §3771. This Court further requests the respondent, as part of the return, file such documents which reflect on the issue as to whether petitioner exhausted available state remedies with respect to the matters raised by the petition;¹ and
4. A courtesy copy of the habeas petition and this Memorandum and Order shall be sent to

¹Although petitioner has used a template form for a petition pursuant to 28 U.S.C. § 2241, this Court has considered IAD challenges as properly raised pursuant to 28 U.S.C. § 2254. See, e.g., Thompson v. Gelb, 63 F. Supp. 3d 125 (D. Mass. 2014) *appeal pending Thompson v. Gelb*, No. 15-1038 (1st Cir. 2015)(Judgment, Document No. Document: 00116869808 denying certificate of appealability, entered July 31, 2015). See e.g., Rashad v. Walsh, 300 F.3d 27 (1st Cir. 2002) (addressing speedy trial issues under the IAD through a § 2254 petition); White v. Duval, 29 F.3d 619 (1st Cir. 1994) (determining whether violation of the IAD would amount a “fundamental defect” that would entitle petitioner to relief under 28 U.S.C. § 2254).

the Legal Division of Rhode Island Office of the Attorney General, 150 South Main Street, Providence, RI 02903.

SO ORDERED.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated: September 10, 2015