

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LUIS DAVID PORTES DEL RIO,

Petitioner,

v.

JOHN TSOUKARIS, et al,

Respondents.

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Civ. No. 16-8721 (KM)

MEMORANDUM AND ORDER

Petitioner is an immigration detainee currently lodged at the Essex County Correctional Facility in Newark, New Jersey. He is proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner's application to proceed *in forma pauperis* will be granted.

The proper sole respondent in this case is Charles Green, who is the warden of the Essex County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004). Therefore, the petition will be dismissed with prejudice as to respondent John Tsoukaris.

Petitioner challenges his current immigration detention in his federal habeas petition amongst his arguments. "Federal courts have habeas jurisdiction to examine the statutory and constitutional bases for an immigration detention unrelated to a final order of removal." *Ufele v. Holder*, 473 F. App'x 144, 146 (3d Cir. 2012) (citing *Demore v. Kim*, 538 U.S. 510, 517-18 (2003)); *see also Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 226 (3d Cir. 2011). In accordance with Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b) of the Rules Governing Section 2254 Cases, this Court has screened the habeas petition for dismissal and determined that dismissal without an answer and the record on this issue is not warranted. In addition to any arguments that respondent may make in the answer in response to

petitioner's claims, respondent shall specifically address what impact, if any, *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469 (3d Cir. 2015) has on the habeas petition.

Accordingly, IT IS this 7th day of December, 2016,

ORDERED that the habeas petition is dismissed with prejudice as to respondent John Tsoukaris; and it is further

ORDERED that petitioner's application to proceed *in forma pauperis* is granted; and it is further

ORDERED that the Clerk shall serve a copy of the petition (Dkt. No. 1) and this Order upon respondent Green by regular mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk shall forward a copy of the petition (Dkt. No. 1) and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

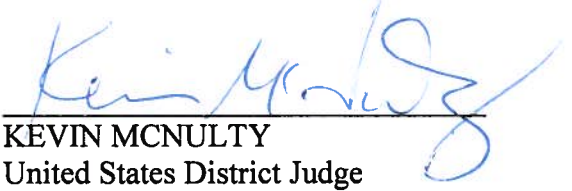
ORDERED that within thirty (30) days of the date of the entry of this Order, respondent shall file and serve an answer which responds to the allegations and grounds in the petition and which includes all affirmative defenses respondent seeks to invoke, in addition to any other arguments respondent may make, the answer shall specifically address what impact, if any, *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469 (3d Cir. 2015) has on the petition; and it is further

ORDERED that respondent shall file and serve with the answer certified copies of all documents necessary to resolve petitioner's claim(s) and affirmative defenses; and it is further

ORDERED that within thirty (30) days of receipt of the answer, petitioner may file a reply to the answer; and it is further

ORDERED that within seven (7) days of petitioner's release, by parole or otherwise, respondent shall electronically file a written notice of the same with the Clerk; and it is further

ORDERED that the Clerk shall serve this Order on petitioner by regular U.S. mail.



KEVIN MCNULTY
United States District Judge