

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

**HENRY ALEXANDER ESCOBAR-
BOJORQUEZ,**

Petitioner,

v.

RANDI BORGEN, et al.,

Respondents.

Civil Action No. 17-5275 (SDW)

MEMORANDUM OPINION

IT APPEARING THAT:

1. On or about July 19, 2017, Petitioner Henry Alexander Escoba-Bojorquez filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his ongoing immigration detention pending his removal from the United States. (ECF No. 1). In his petition, Petitioner essentially asserts that he has pending applications for relief that may alleviate the order of removal under which he has been held since July 11, 2017, and that he should therefore be released from custody and his removal from the United States, which is currently scheduled for July 20, 2017, should be stayed.

2. Because Petitioner has filed a habeas petition and has paid the appropriate filing fee, this Court is required by Rule 4 of the Rules Governing Section 2254 Cases, applicable to Section 2241 petitions through Rule 1(b), to preliminarily review the petition and determine whether it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” Pursuant to this rule, a district court is “authorized to dismiss summarily any habeas petition that appears legally insufficient on its face.” *McFarland v. Scott*, 512 U.S. 849, 856 (1994).

3. Pursuant to 28 U.S.C. § 2241(c), habeas relief may extend to a prisoner only when he is “in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3). A federal court has jurisdiction over such a habeas petition if the petitioner is “in custody, that custody is allegedly “in violation” of federal law, and the petitioner is detained by a custodian who is also within the reach of the Court’s jurisdiction. *See Id.*; *Maleng v. Cook*, 490 U.S. 488, 490 (1989); *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 494-95, 500 (1973); *see also Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). The “warden of the [facility] where the detainee is held . . . is considered the custodian for purposes of a habeas action,” not a more remote supervisory figure such as a high level immigration official or the Attorney General, regardless of the fact that such a remote figure may have the authority to order the petitioner’s release. *Yi v. Maugans*, 24 F.3d 500, 507 (3d Cir. 1994); *see also Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004). Habeas jurisdiction will therefore only exist under § 2241 where this Court has jurisdiction over the warden of the facility in which the petitioner is held. *Yi*, 24 F.3d at 507-08. It is likewise for that reason that the warden, who is the sole proper respondent in a § 2241 matter, is an indispensable party to such an action, and a petition failing to identify the proper respondent may be dismissed as a result. *Id.* (warden is the sole proper respondent); *see also Saisi v. New Jersey Parole Board*, No. 08-6043, 2009 WL 1314814, *1-2 (D.N.J. May 12, 2009) (proper respondent is indispensable party to habeas action); *Saldana v. New Jersey*, No. 10-4427, 2010 WL 3636259, *1-2 (D.N.J. Sep. 8, 2010) (same).

4. In his petition, Petitioner directly states that he is being held in “a staging center in Alexandria, Louisiana . . . awaiting . . . deportation.” (ECF No. 1 at 2). Although Petitioner states that he expects to eventually be returned to New Jersey (*Id.* at 3), it is clear that, at the time of the filing of his petition, he was not being held within the jurisdiction of this Court, that the warden of

