



exclusion.” *Barnes v. U.S. Immigration & Customs Enf’t*, No. 05-CV-370, 2005 WL 1661652, at \*1 (E.D.N.Y. July 14, 2005); *see Kilani-Hewitt v. Bukszpan*, 130 F. Supp. 3d 858, 862 (S.D.N.Y. 2015). Accordingly, Petitioner’s challenge to his removal order is denied without prejudice.

What remains of the Petition consists of a challenge to Petitioner’s current detention at the Hudson County Correctional Facility. Outside of the deportation context, it is well-settled that for “habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.” *Zhen Yi Guo v. Napolitano*, No. 09-CV-3023, 2009 WL 2840400, at \*5 (S.D.N.Y. Sept. 2, 2009) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)). In addition, “the warden of the detention facility with physical custody of the petitioner is the ‘immediate custodian’ with the ability to produce the petitioner pursuant to a writ of habeas corpus,” and is therefore the appropriate respondent to a habeas petition challenging present confinement. *Phrance v. Johnson*, No. 14-CV-3569, 2014 WL 6807590, at \*2 (S.D.N.Y. Dec. 3, 2014) (citing *Padilla*, 542 U.S. at 435, 437–39).

The Supreme Court’s decision in *Padilla* “left open the question” whether these rules applied to “a habeas petition filed by an alien pending deportation.” *Zhen Yi Guo*, 2009 WL 2840400, at \*2 (quoting *Padilla*, 542 U.S. at 435 n. 8) (internal quotation marks omitted). However, “[a] clear majority of district courts sitting in this Circuit have applied [these rules] to habeas petitions filed by incarcerated aliens challenging their physical detention prior to deportation.” *Id.* at \*3 (collecting cases); *see, e.g., Concepcion v. Aviles*, No. 14-CV-8770, 2015 WL 7766228 (S.D.N.Y. Mar. 12, 2015); *Fortune v. Lynch*, No. 15-CV-8134, 2016 WL 1162332 (S.D.N.Y. Mar. 22, 2016). The Court adopts the majority rule. Because Petitioner is detained in the District of New Jersey, the Court lacks jurisdiction over his habeas petition. *See Phrance*,

2014 WL 6807590, at \*2 (“[J]urisdiction lies only in the District of New Jersey, where [petitioner] is detained.”); *Concepcion*, 2015 WL 7766228, at \*1 (same). In addition, the Petition fails to name “the warden of the detention facility with physical custody of the petitioner” as respondent, as is required. *Phrance*, 2014 WL 6807590, at \*2.

For the foregoing reasons, the Petition is denied without prejudice.

The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: July 18, 2016  
New York, New York



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J. PAUL OETKEN  
United States District Judge