

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

DAVID SCOTT GOLDSTEIN, Petitioner, vs. CENTER FOR DISEASE CONTROL, Respondent.	4:16-CV-04035-KES ORDER FOR SERVICE
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INTRODUCTION

Petitioner, David Scott Goldstein, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He alleges he is being held against his will by the Center for Disease Control (CDC) at Avera McKennan Hospital in Sioux Falls, South Dakota. Mr. Goldstein names as the sentencing court the “CDC in Atlanta, GA.” Docket 1, p. 2.

A court should always first determine the threshold question of whether it has jurisdiction before it proceeds to determine the merits of a habeas petition. Sampson v. Warden, FCC Coleman USP, 605 Fed. Appx. 861, 863 (11th Cir. 2015). Upon inquiry to the U.S. Marshals Service the court has been informed that Mr. Goldstein remains in the custody of the CDC but is no longer in the state of South Dakota. “A grant of a writ of habeas corpus operates against the restraining authority.” Lee v. Wetzel, 244 F.3d 370, 374 (5th Cir. 2001) citing Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 494-95

(1973). “Therefore, the court issuing the writ of habeas corpus must have jurisdiction over the petitioner or his custodian.” Lee, 244 F.3d at 374 citing Malone v. Calderon, 165 F.3d 1234, 1237 (9th Cir. 1999). “Without such jurisdiction, the court has no authority to direct the actions of the restraining authority.” Lee, 244 F.3d at 374, citing Malone, 165 F.3d at 1237.

ORDER


The court directs that the petition in this case be served and that a response be filed. The respondents should address whether this court has jurisdiction to proceed to the merits of this claim. If the respondents take the position this court does not have jurisdiction, they are instructed to inform this court where Mr. Goldstein is currently being held so an appropriate transfer order can be entered. Accordingly,

IT IS ORDERED:

- (1) that the Clerk of Court shall serve upon respondents and the United States Attorney for the District of South Dakota a copy of the petition and this order;
- (2) that within 21 days after service, respondents are directed to show cause why a writ pursuant to 28 U.S.C. § 2241 should not be granted;
- (3) that petitioner may file a reply within 14 days of service of the respondents’ response.

DATED this 16th day of March, 2016.

BY THE COURT:



VERONICA L. DUFFY
United States Magistrate Judge