UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

WARREN RAY PATTERSON,	:	
Petitioner,	:	
	:	CIVIL ACTION NO.
v.	:	3:03cv1363 (SRU)
	:	
IMMIGRATION AND	:	
NATURALIZATION SERVICE,	:	
Respondent.	:	

ORDER

Warren Ray Patterson ("Patterson") petitioned this court for a writ of habeas corpus. On August 25, 2003, this court ordered a stay of Patterson's deportation pending resolution of his petition. The government responded to the petition, arguing this court lacks jurisdiction or, in the alternative, that venue does not properly lie in Connecticut. For the reasons set forth below, this court does have jurisdiction, however, the record is currently inadequate to permit a resolution of the question of venue or the merits of the petition.

I. Facts

The record in this case is sparse. Based on the petition, the response, and the minimal supporting documentation, the following facts appear undisputed.

On April 9, 1992, Patterson was ordered removed from the United States based on his convictions for controlled substance violations. Patterson filed a motion to reopen on the grounds that one of his convictions had been reversed. The motion was granted, but the Immigration Judge found Patterson nevertheless removable. The Immigration Judge also denied Patterson's application for section 212(c) relief. Patterson appealed to the Board of Immigration Appeals ("BIA"), which

remanded to the immigration court. On November 31, 1996, the Immigration Judge again found Patterson removable. On June 22, 1998, Patterson was removed to Jamaica.

On January 12, 2000, Patterson applied for admission to the United States using a passport issued to "Clifford Jones." His admission was denied, and he was paroled into the United States for criminal prosecution. On May 21, 2002, in the District of New Jersey, Patterson was convicted of illegal reentry into the United States in violation of 8 U.S.C. § 1326 and sentenced to 52 months' incarceration.

On April 18, 2000, Patterson moved to reopen his deportation proceedings on the grounds that he had not received notice of his 1996 hearing. The immigration court denied Patterson's motion, and he appealed to the BIA. On October 12, 2000, the BIA dismissed the appeal, finding Patterson had adequate notice of the 1996 hearing.

On August 8, 2003, another removal hearing was held and, on August 28, 2003, the immigration court ordered Patterson deported, pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, as an alien who seeks admission within ten years of the date of a previous departure or removal under section 240. Patterson appealed to the BIA, which, on February 6, 2004, affirmed without opinion the immigration court's decision.

Patterson is currently being detained in Oakdale, Louisiana. His petition to this court was filed on August 7, 2003. Patterson is not represented by counsel.

II. Discussion

A. Subject Matter Jurisdiction

The government argues that this court does not have subject matter jurisdiction because

Patterson has not appealed his August 28, 2003 removal order to the BIA. First, this is irrelevant because Patterson is not directly challenging his 2003 deportation order. He is challenging the denial of his motion to reopen.[1] Second, even were Patterson challenging his removal, his appeal to the BIA was decided in February 2004, making this argument moot.

Accordingly, this court has subject matter jurisdiction over the petition.

B. Personal Jurisdiction

The government next argues that this court does not have personal jurisdiction over the respondent.

As a threshold matter, it is unclear who the alleged respondent is. The petition names only the INS and not a person. Because this is a *pro se* petition, I will look beyond the caption. See Haines v. Kerner, 404 U.S. 519, 520 (1972) ("we hold [*pro se* pleadings] to less stringent standards than formal pleadings drafted by lawyers"). There are two possible respondents: the New Orleans Director of the INS or the cabinet level official ultimately responsible for Patterson during his detention, i.e., either the Secretary of the Department of Homeland Security ("DHS") or the Attorney General of the United States. This court clearly does not have personal jurisdiction over the New Orleans director, making it unlikely Patterson intended to name him. Accordingly, I will treat the petition as naming Secretary of DHS Tom Ridge and Attorney General John Ashcroft as respondents because they are the only potential respondents who could reasonably have been intended.[2]

---

[1] A denial that this court has jurisdiction to review for abuse of discretion. See Zhao v. United States, 265 F.3d 83, 93 (2d Cir. 2001).

[2] The Attorney General is frequently named as respondent in cases such as this. There is actually good reason to think that, under the current regime, the Secretary of DHS serves a similar role

Both the Supreme Court and the Second Circuit have declined to answer the question whether the Attorney General may be named as a respondent in an immigration habeas petition. See Ahrens v. Clark, 335 U.S. 188, 193 (1948); Henderson v. INS, 157 F.3d 106, 130 (2d Cir. 1998). The subject has, however, received treatment in other circuits and in numerous district courts in this circuit. The result is mixed. Different circuit courts are of different opinions[3] as are the different courts in this district[4] and the other districts in this circuit[5]. The Second Circuit itself has discussed the issue at some length (though ultimately not resolving it) and has acknowledged that there are compelling arguments on both sides. See Henderson, 157 F.3d 106; see also Padilla v. Rumsfeld, 352 F.3d 695, 708 (2d Cir. 2003) (concluding Secretary of Defense Rumsfeld, rather than prisoners immediate custodian, was proper respondent in habeas petition brought on behalf of prisoner held as enemy combatant).

There is no reason to spill more ink on the subject. I am sufficiently persuaded that the

---

to that of the Attorney General. See Armentero v. INS, 340 F.3d 1058, 1072-73 (9th Cir. 2003) (discussing competing authority of the Attorney General and Secretary of DHS and finding both appropriate respondents to habeas petition). Accordingly, I will also consider Secretary Tom Ridge a respondent.

[3] Compare Armentero, 340 F.3d at 1073 (holding Attorney General a proper respondent), with Vasquez v. Reno, 233 F.3d 688 (1st Cir. 2000) (holding Attorney General not a proper respondent).

[4] Compare Remy v. Ashcroft, 2004 WL 725706 (D. Conn. March 25, 2004) (holding Attorney General properly named); Murray v. Ashcroft, 2004 WL 231419 (D. Conn. Feb. 4, 2004) (same); Barton v. Ashcroft, 152 F. Supp. 2d 235 (D. Conn. 2001) (same); Lecky v. Reno, 120 F. Supp. 2d 225 (D. Conn. 2000) (same), with Pearce v. Ashcroft, 2003 WL 1145468 (D. Conn. March 12, 2003) (holding Attorney General not a proper respondent); Berthold v. Ashcroft, 2003 WL 1056653 (D. Conn. March 6, 2003) (same).

[5] See Walters v. Ashcroft, 291 F. Supp. 2d 237, 242-43 (S.D.N.Y. 2003) (collecting New York District Court opinions that take both positions).

Attorney General may be named as a respondent. I am persuaded by the arguments noted by the Second Circuit in favor of that position, as well as by the reasoning of the Ninth Circuit, and the reasoning of the various judges in this district and the other districts of this circuit. Furthermore, I am persuaded by the Ninth Circuit's reasoning in Armentero that the Secretary of DHS may also be named.

I am particularly compelled to this conclusion by the fact that it seems contrary to the interests of justice to allow the Attorney General to move immigration detainees around the country (including to jurisdictions where the law may be less favorable to them[6]) and then to argue that he is not properly the respondent to a given petition. See Alcaide-Zelaya v. McElroy, 2000 WL 1616981, *5 (S.D.N.Y. Oct. 27, 2000) ("it is clear that absent such a rule, there will be almost no check on the *government's* ability to forum shop") (emphasis in original). This type of centralized, and potentially outcome-determinative, control of a detainee seems to me the essence of custodianship for the purpose of considering a petition for writ of habeas corpus.

Given that the Attorney General and Secretary of DHS are appropriately named as respondents, there is no dispute that they are susceptible to service of process in the State of Connecticut, and so, this court has personal jurisdiction over them.

C. Venue and the Merits

Turning to the question whether venue properly lies in this court, I find that I am unable to make

---

[6] See, e.g., Oakdale Justice: Routine Vacatur of Stays in the Western District of Louisianna, 9-01 Bender's Immigration Bulletin 2 (Jan. 1, 2004) (studying habeas cases in the Western District of Louisiana and finding that petitioners whose cases are transferred there routinely have their stays of removal vacated).

a determination. As the government points out, traditional venue considerations apply in the habeas context. Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 500 (1973). These considerations include (1) where the material events took place, (2) where the records and witnesses pertinent to petitioner's claim are likely to be found, and (3) the relative convenience of the forum to the parties. See Henderson, 157 F.3d at 128 n.25. With the sole exception of the fact that petitioner is detained in Louisianna,[7] there is simply no evidence concerning any of these factors.

Moreover, there is nothing in the record that would allow me to reach the merits of the petition. The government appears to have treated the petition as challenging the August 2003 deportation order, and so has not provided any documentation concerning the April 2000 hearing (the actual subject of the petition). Similarly, Patterson has not attached any supporting documentation to his petition.

In light of the fact that Patterson is currently incarcerated and not represented by counsel, the court asks that the government supplement the record with the relevant documentation concerning Patterson's 2000 immigration proceedings. Both parties may of course file any additional briefing that will be helpful to this court in deciding the merits of the petition. All filings, including the requested supplements to the record, should be filed no later than **May 21, 2004**. Should either party wish to file a response to the other side's submissions, such response must be filed on or before **May 28, 2004**.

It is so ordered.

Dated at Bridgeport, Connecticut, this 30th day of April 2004.

---

[7] Even this is not entirely clear; this court received a call from Immigration and Customs Enforcement indicating that petitioner may be in Connecticut for state criminal proceedings.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge