IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

EDGAR AMIR GRACIANI,

Petitioner,

v.

CAROL HOLINKA,

Respondent.

ORDER

11-cv-296-bbc

- -

In this petition for a writ of habeas corpus under 28 U.S.C. § 2241, I have issued an order to show cause why petitioner Edgar Amir Graciani, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, should not be transferred to a halfway house. In the meantime, petitioner has filed four motions: (1) "motion for some disposition," dkt. #7; (2) "motion to seal court records and to den[y] media access to the said [documents]," dkt. #8; (3) "motion for more definite statement," dkt. #9; and (4) "ex parte informative motion." Dkt. #10. I am denying each of these motions.

In his "motion for some disposition," petitioner seems to be objecting to respondent Carol Holinka's inclusion in this lawsuit. Initially, petitioner identified the respondent as "U.S. Bureau of Prisons, et al," but I substituted Holinka because she is the warden of the

prison in which petitioner is incarcerated. Eckstein v. Kingston, 460 F.3d 844 (7th Cir. 2006) (correcting caption in habeas case to name warden of prison in which petitioner is incarcerated). Petitioner believes that the bureau is a more appropriate respondent because it is the agency that is responsible for refusing to transfer him to a halfway house. Petitioner's belief is logical; in many lawsuits, the person being sued is the person allegedly responsible for causing the injury. However, that is not the case in the context of a habeas petition. Under the law of this circuit,"when there is only one custody and one physical custodian, that person is the proper respondent" under § 2241. al-Marri v. Rumsfeld, 360 F.3d 707, 712 (7th Cir. 2004). A prisoner's custodian is "the person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge. . . .Typically, for an inmate of a jail or prison, his immediate custodian is the warden." Kholyavskiy v. Achim, 443 F.3d 946, 949 (7th Cir. 2006). "In the federal system, this means [that] the warden (or Commander) rather than the Director of the Bureau of Prisons" is the proper respondent. al- Marri, 360 F.3d at 708.

Petitioner does not deny that respondent Holinka is his custodian, but he is reluctant to include her because he believes that she is trying to help him get a transfer. As I explained above, in the context of a habeas petition, a prisoner's custodian is the proper respondent, regardless whether it is her "fault" that the prisoner remains in custody, something that respondent Holinka no doubt understands. If petitioner does not wish to proceed against

Holinka under any circumstances, he may file a new motion, but that would lead to dismissal of his petition. I cannot substitute a different respondent.

In his motion to seal the record, petitioner says that representatives from publications such as Prison Legal News have contacted him about this lawsuit because of allegations he included in his petition about sexual assaults of other prisoners. He says that he does not want to talk about the case, so he asks the court "to seal all court records and don't publis[h] the court opinions or allow the news media access to any court documents." Dkt. #8, at 2. I cannot grant petitioner's request. "[T]he presumption [is] that judicial proceedings are public." In re Cudahy, 294 F.3d 947, 952 (7th Cir. 2002). Members of the public have an interest in knowing what occurs in the federal judiciary, just as they do with respect to other branches of government. This means that parties cannot hide their filings from public view simply because they would prefer that the litigation be private or even because their lawsuit is generating unwanted attention. Generally, this court does not seal documents unless it is necessary to protect a party's intellectual property or there is a substantial risk that public knowledge of a fact could lead to a party's physical harm. Petitioner does not allege that either of these situations is present in this case. Of course, petitioner is not required to talk to news media about his case, but he is not entitled to an order sealing court records to prevent others from learning about it.

Petitioner's "motion for more definite statement" seems to be another motion for

reconsideration of my decision that some of petitioner's claims could not be raised in the context of a petition for a writ of habeas corpus. I have explained my reasons in two other orders, dkt. ##5 and 11, and petitioner does not raise any new arguments that require additional comment.

Finally, petitioner's "ex parte informative motion" seems to be about his access to the prison law library. He asks the court "to order FCI Oxford SHU staf[f] to allo[w] petitioner Monday to Friday at least 2 hours in the law library in order to complete and conduc[t] legal [re]search and enough time to respon[d] to any allegations of the response submitted by the respondent." Petitioner's motion is confusing. Because respondent has not yet filed a response to the petition, petitioner does not need additional time in the law library at this time to prepare his traverse. To the extent petitioner is seeking a court order to require prison officials to increase his allotted law library time as soon as respondent files a response, petitioner has not shown that such an order is necessary. That is, petitioner has not shown that the time he receives in the law library is insufficient or that, if he needs more time in the law library to prepare his traverse, officials will refuse to give him the time that he needs.

ORDER

IT IS ORDERED that petitioner Edgar Graciana's (1) "motion for some disposition," dkt. #7; (2) "motion to seal court records and to den[y] media access to the said

[documents]," dkt. #8; (3) "motion for more definite statement," dkt. #9; and (4) "ex parte informative motion," dkt. #10, are DENIED.

Entered this 27th day of May, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge