UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOSEPH A. DENBOW et al.,

Petitioners,

v.

MAINE DEPARTMENT OF CORRECTIONS et al.,

Respondents.

Docket No. 1:20-cv-00175-JAW

RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF APPLICATION OF THE RULES GOVERNING § 2254 CASES TO THIS ACTION

As ordered by the Court (ECF No. 34), Respondents respectfully submit this memorandum of law in support of their contention that the Rules Governing § 2254 Cases ("Habeas Rules") should apply to this action. The Court should convert the petition into a § 2254 petition because, in the First Circuit, *all* state-prisoner habeas petitions are governed by § 2254. Allowing state prisoners to label their petitions otherwise would make what are meant to be mandatory procedural rules optional. And, if the Court declines to convert the Petition, it should still apply the Habeas Rules in its discretion to avoid the piecemeal litigation of procedural disputes under Fed. R. Civ. P. 81, which the Rules were created to avoid.

Background

Petitioners Joseph Denbow and Sean Ragsdale are incarcerated in Mountain View Correctional Facility, a state correctional facility operated by MDOC. Pet. ¶¶ 13–14 (ECF No. 1); 34-A M.R.S. § 4101. Both have been convicted of state-law crimes. Pet. ¶¶ 13–14.

On May 15, 2020, Petitioners filed a habeas action in federal court, purportedly under 28 U.S.C. § 2241. Pet. ¶¶ 10–11. The Petition seeks various forms of relief, including release, on behalf of a putative class of inmates at higher risk from COVID-19. Pet. ¶ 108.

On June 25, 2020, the Court issued an interim order on discovery. ECF No. 34. The order noted that there were unresolved questions concerning the applicability of the Rules Governing § 2254 Cases ("Habeas Rules") to this proceeding, and required Respondents to file a memorandum "explaining why the Court should convert Petitioners' petition to a petition under [28] U.S.C. § 2254 and the applicability of the Rules." *Id.* at 3.

Argument

I. The Court Should Convert the Petition Into a § 2254 Petition.

Petitioners have mislabeled their petition as a § 2241 petition, when the relief they seek is governed by 28 U.S.C. § 2254. The Court should thus convert the petition to a § 2254 petition.

Section 2241 "establishes the general authority of the federal courts to issue habeas relief." *Dominguez v. Kernan*, 906 F.3d 1127, 1134 (9th Cir. 2018). It establishes categories of prisoners who may seek federal habeas relief, including prisoners in custody in "violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(1)–(5).

Section 2254 is a limitation on § 2241's grant of habeas authority. *See Felker v. Turpin*, 518 U.S. 651, 662 (1996) ("Our authority to grant habeas relief to state prisoners is limited by § 2254, which specifies the conditions under which such relief may be granted to 'a person in custody pursuant to the judgment of a State court.'"); *Brennan v. Wall*, 100 F. App'x 4, 4 (1st Cir. 2004) (per curiam) ("a state prisoner in custody pursuant to the judgment of a state court may file a habeas corpus petition, as authorized by § 2241, but he is limited by § 2254.").[1]

[1] *See also Dominguez*, 906 F.3d at 1134 ("Section 2254 has been understood as *limiting* the authority granted by § 2241 rather than supplementing it"); *In re Wright*, 826 F.3d 774, 780 (4th Cir. 2016) (concluding that § 2254 is a limitation on authority rather than a grant of authority); *Hartfield v. Osborne*, 808 F.3d 1066, 1073 (5th Cir. 2015) ("§ 2254 is not an independent avenue through which petitioners may pursue habeas relief"); *Rice v. White*, 660 F.3d 242, 250 (6th Cir. 2011) (observing that § 2254 is not a separate source of habeas jurisdiction from the grant of general jurisdiction in § 2241(a));

Section 2254(a) is phrased as a restriction, providing for federal habeas review for a state prisoner[2] "*only* on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a) (emphasis added). Section 2254 goes on to impose a number of additional limitations on federal habeas petitions by state prisoners. *Id.* § 2254(b)–(e).

There is a circuit split as to whether state prisoners can challenge the "execution" of a sentence under § 2241, without § 2254's restrictions. *See Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 876 n.9 (1st Cir. 2010). The First Circuit has adopted the majority view "that prisoners in state custody are required to comply with all the requirements laid out in § 2254 whenever they wish to challenge their custodial status, no matter what statutory label the prisoner uses." *Id.* Thus, where state-prisoner petitioners were challenging the revocation of their supervised release—a claim not unlike the one here—the First Circuit held that, despite petitioners' reliance on both § 2241 and § 2254, the latter statute "ultimately governs the relief that they seek."[3] *Id.*

Under *Gonzalez-Fuentes*, there can be no serious dispute that § 2254 "governs" the claims of Petitioners, *id.*, who are undisputedly persons "in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(a). The only question that remains is whether the petition, despite

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Walker v. O'Brien, 216 F.3d 626, 633 (7th Cir. 2000) (observing that § 2254 "implements the general grant of habeas corpus authority found in § 2241" for state prisoners).

[2] This memo uses the phrase "state prisoner" as shorthand for a prisoner in custody pursuant to the judgment of a state court, to the exclusion of other individuals detained by the state.

[3] Petitioners have previously suggested (ECF No. 13 at 6) that language in *Gonzales-Fuentes* recognizes that execution-of-sentence challenges may be brought under § 2241. Since attacking the execution of their sentences is precisely what the *Gonzales-Fuentes* petitioners were doing, Petitioners' reading of that stray language is inconsistent with the court's holding. Rather, judging by the court's citation to *Muniz v. Sabol*, 517 F.3d 29 (1st Cir. 2008), the language was referring to federal prisoners, for whom the sentence/execution-of-sentence distinction is—under plain language in § 2255(a) conspicuously absent from § 2254—determinative of whether they must file a motion to vacate or correct their sentence under § 2255 or a habeas petition under § 2241.

being governed by § 2254, should be permitted to retain its self-designation as a § 2241 petition. Honoring this designation would mean that the Habeas Rules—which have mandatory application in cases "filed . . . under 28 U.S.C. § 2254," *see* Habeas Rule 1(a)—would apply only in the Court's discretion as a habeas petition "not covered by Rule 1(a)." *See id.* Rule 1(b).[4]

The Second and Eleventh Circuits, which follow the same majority view as the First Circuit, have endorsed district courts' conversion of petitions by state prisoners styled as § 2241 petitions into § 2254 petitions. *Thomas v. Crosby*, 371 F.3d 782, 787 (11th Cir. 2004); *Cook v. New York State Div. of Parole*, 321 F.3d 274, 278 (2d Cir. 2003). *Thomas* is particularly illuminating. It relied heavily on a prior Eleventh Circuit decision, which, like the cases cited above, concluded that § 2254 functions as a limitation on § 2241:

> Section 2254 presumes that federal courts already have the authority to issue the writ of habeas corpus to a state prisoner, and it applies restrictions on granting the Great Writ to certain state prisoners—i.e., those who are "in custody pursuant to the judgment of a State court." Thus, the text of § 2254 indicates that it is not itself a grant of habeas authority, let alone a discrete and independent source of post-conviction relief.

Medberry v. Crosby, 351 F.3d 1049, 1059–60 (11th Cir. 2003). Based on this understanding of § 2254, *Thomas* concluded that, since a state-prisoner habeas case "is governed by both § 2241 and § 2254," the petitioner "cannot evade the procedural requirements of § 2254 by filing something purporting to be a § 2241 petition." *Thomas*, 371 F.3d at 787. The court thus affirmed the district court's conversion of the petition. *Id.* at 788.

The reasoning of *Thomas* illuminates the logical flaw in Petitioners' position that the

[4] Rule 1 provides in relevant part: "**(a) Cases Involving a Petition under 28 U.S.C. § 2254.** These rules govern a petition for a writ of habeas corpus filed in a United States district court under 28 U.S.C. § 2254 by: (1) a person in custody under a state-court judgment who seeks a determination that the custody violates the Constitution, laws, or treaties of the United States; and (2) . . . . **(b) Other Cases.** The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a)."

Court should treat their petition as a "§ 2241 petition." Because § 2254 is a limitation on federal courts' powers under § 2241, *every* state-prisoner habeas action is a § 2241 petition. *See Brennan*, 100 F. App'x at 4 (recognizing that petitions subject to § 2254 are "authorized by § 2241"). And, at least in majority-view jurisdictions like this one, every state-prisoner habeas action is also governed by § 2254. Thus, if Petitioners are correct that they can exempt themselves from the Habeas Rules by labeling their petition a "§ 2241 petition," so too can every other state prisoner bringing a habeas claim. It is inconceivable that the drafters of Habeas Rule 1 intended for the otherwise mandatory rules to become optional "simply because [a state prisoner] chose to fill out his claims on a form labeled '28 U.S.C. § 2241.'"[5] *In re Wright*, 826 F.3d 774, 782 (4th Cir. 2016) (discussing § 2244(b)); *see Medberry*, 351 F.3d at 1061 (§ 2254 would be "dead letter" if state prisoner could avoid it "simply by writing '§ 2241' on his petition").

The Court should therefore hold that a petition "govern[ed]" by § 2254, *Gonzalez-Fuentes*, 607 F.3d at 876 n.9, must also be a petition "filed . . . under" § 2254 for purposes of Rule 1(a), and should therefore convert the petition to a § 2254 petition. *Thomas*, 371 F.3d at 787; *Cook*, 321 F.3d at 278; *Harrison v. Wolcott*, No. 20-CV-6270, 2020 WL 3000389, at *2 (W.D.N.Y. June 4, 2020) (converting COVID-19-related § 2241 petition to a § 2254 petition).[6]

[5] Petitioners' constitutional concerns about the application of § 2244(b)'s prohibition of successive habeas petitions as a result of conversion would be properly addressed not here, but in any future petition filed by one of the Petitioners (both of whom are about to be released). In any event, for precisely the same reason petitioners cannot mislabel their petition avoid the Habeas Rules, they cannot do so to avoid § 2244(b). *See In re Wright*, 826 F.3d at 779; *Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001);

[6] *See also In re Wright*, 826 F.3d at 783 (petition "governed by" § 2254 should be treated as "an application under § 2254" even though it was "styled as a § 2241 petition"); *Saulsberry v. Lee*, 937 F.3d 644, 647 (6th Cir. 2019) (holding § 2254 is the "exclusive vehicle" for a habeas petition by a state prisoner); *Dominguez*, 906 F.3d at 1135 (same); *Walker*, 216 F.3d at 633 (same); *Crouch v. Norris*, 251 F.3d 720, 723 (8th Cir. 2001) (same).

II. The Court Should Apply the Habeas Rules to the Petition Even If It Declines to Formally Convert the Petition.

If the Court were to decline to formally convert the petition to a § 2254 petition, it should exercise its discretion to apply the Habeas Rules to this case under Rule 1(b).

Even if, as the Court observed, the Habeas Rules are to some extent an "awkward fit" for this case, Interim Order at 2, the alternative is worse. That alternative is not wholesale application of the Federal Rules of Civil Procedure. Rather, if the Habeas Rules did not apply, the Court would have to apply Fed. R. Civ. P. 81(a)(4)(B) to each procedural dispute between the parties. That rule requires an analysis of whether the particular civil-procedure rule at issue is consistent with previous practice in habeas cases. The entire point of the Habeas Rules was to rescue federal courts from having to apply that standard, which the Supreme Court has criticized (in a prior form) as "opaque" and "transparently inadequate" to address the unique procedural issues arising in habeas. *Harris v. Nelson*, 394 U.S. 286, 300 n.7 (1969).

Moreover, while the applicability of many civil procedural rules to habeas proceedings under Rule 81(a)(4)(B) would be subject to debate, there is no uncertainty about the applicability of the civil discovery rules. In *Harris v. Nelson*, the Supreme Court held that, under Rule 81(a)(4), civil discovery rules do not "completely and automatically" apply in habeas cases. 394 U.S. at 298; *see Bracy v. Gramley*, 520 U.S. 899, 904 (1997) ("A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course"). Thus, if the Court did not apply the Habeas Rules to this case under Rule 1(b), it would still, under *Harris*, have to evaluate Petitioner's discovery requests under something akin to the "good cause" standard set forth in Habeas Rule 6. It would make little sense to eschew the very rules designed in the wake of *Harris* to aid federal courts in making the determination that *Harris* expressly requires when a habeas petitioner seeks discovery.

It is unsurprising, then, that federal courts faced with habeas petitions falling outside of § 2254 or § 2255 appear to invariably apply the Habeas Rules under Rule 1(b).[7] Out of thousands of federal decisions citing Rule 1(b), Respondents cannot find a single one in which the court declined to apply the Habeas Rules. Indeed, some courts have described application of the Habeas Rules to § 2241 petitions as effectively mandatory. *See Wyant v. Edwards*, 952 F. Supp. 348, 352 (S.D. W. Va. 1997) (concluding, after extensive review of drafting history of the Habeas Rules, that Rules "were intended to apply to § 2241 cases").

Finally, it bears mentioning that, if the Habeas Rules are an awkward fit for Petitioners' claims due to the lack of a state-court record, Interim Order at 2, that is only because Petitioners have disregarded their obligation to exhaust state-court remedies under § 2254(b). *See* Resps.' Mot. to Dismiss (ECF No. 31). Indeed, Petitioner Denbow is currently in the process of generating a substantial state-court record in his parallel state-court post-conviction review proceeding, which now includes a June 24 testimonial hearing on his bail motion and a six-page written decision by Justice McKeon denying bail. Had Petitioners exhausted their state court remedies, there would be such a record for this Court to review.

Conclusion

The Court should rule that the Habeas Rules apply to this action.

[7] *See, e.g.*, *Bramson v. Winn*, 136 F. App'x 380, 382 (1st Cir. 2005) (per curium); *Annamalai v. Warden*, 760 F. App'x 843, 849–850 (11th Cir. 2019); *Adams v. Unknown Party*, No. 18-1030, 2018 WL 3373079, at *1 (6th Cir. June 6, 2018); *Lane v. Feather*, 584 F. App'x 843, 843 (9th Cir. 2014); *Aguayo v. Harvey*, 476 F.3d 971, 976 (D.C. Cir. 2007); *Alpine v. Smith*, No. 2:19-CV-00068-LEW, 2019 WL 8407493, at *3 n.5 (D. Me. Feb. 22, 2019), *report and rec. adopted*, 2019 WL 8407494 (D. Me. Apr. 9, 2019); *Downie v. Maine*, No. 2:18-CV-00187-DBH, 2018 WL 2197956, at *1 (D. Me. May 14, 2018), *report and rec. adopted*, 2018 WL 3117226 (D. Me. June 25, 2018).

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