

**United States Court of Appeals
For the First Circuit**

SELYA, Circuit Judge. We are called upon to decide an important question of first impression at the appellate level: Is the Attorney General of the United States the custodian of an alien being held at a federal detention facility (and therefore a proper respondent to that alien's petition for a writ of habeas corpus)? We conclude that, as a general rule, the

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¹The court made no finding concerning the other two respondents qua

respondent

order

Louisiana because proper custod33330s not INS generally but INS-

In the first place, consistency almost always is a

To cinch matters, the lone statutory clue to the identity of the custodian is found in the same statute. The person to whom the writ is directed is "required to produce at the hearing the body of the person detained." Id. The individual best able to produce the body of the person detained is that person's immediate custodian, his "jailor" in the parlance of an earlier time. In re Jackson, 15 Mich. 416, 439 (1867), quoted with approval in Braden, 410 U.S. at 495; accord Ex parte Endo, 323 U.S. 283, 306 (1944). The immediate custodian rule effectuates section 2243's plain meaning and gives a natural, commonsense construction to the statute. As an added bonus, the rule is clear and easily administered. That is pa

⁴We recognize that the Second Circuit viewed this sequence
of

custodian will make the litigation of habeas claims more complex, forcing courts in many cases to undertake fact-intensive analyses of venue and forum non conveniens issues. Third, and finally, every action has an equal and opposite reaction. Thus, although permitting the Attorney General to serve as a habeas respondent may ease the caseload crunch in the Western District of Louisiana, it may well clog the dockets in those districts in which disproportionate numbers of aliens reside.

For these reasons, the proposed rule should not be adopted. (See also, 114 F.3d at 142.)

In the first case, the petitioner was among those persons caught up in the ill-advised internment of Japanese such as

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here. The petitioner's removal proceedings were conducted in Louisiana and he is being held in custody there.

been nor ever been "assigned to be" in the state where his "nominal custodian" was stationed, id. at 344-45.

We say "normally" because we can envision that there may be extraordinary circumstances in which the Attorney General appropriately might be named as the respondent to an alien habeas petition. Perhaps the best reported example is Demjanjuk v. Meese, 784 F.2d 1114, 1116 (D.C. Cir. 1986), in which the court concluded that the Attorney General was a proper respondent when the habeas petitioner, a suspected Nazi war criminal

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