UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO (ALBUQUERQUE)

In re:

ALFRED E. LUCKETT, JR.
and CHRISTINE MCCARTHY,
Debtors.

Case No. 19-12093-tbm7

OPINION AND ORDER DENYING MOTION TO RELEASE DEBTORS FROM INCARCERATION

THIS MATTER comes before the Court on the "Motion to Compel Turnover/Release of Debtors from Incarceration" (Docket No. 67, the "Motion for Release from Prison") filed by the Debtors, Alfred E. Luckett, Jr. and Christine McCarthy (together, the "Debtors"). Judgment creditors Michael and M. Kay Coughlin (the "Creditors") objected to the Motion for Release from Prison. (Docket No. 68, the "Objection.")

I. Procedural and Factual Background.

As set forth in detail in the Objection, the Debtors and the Creditors have been engaged in an epic legal conflict for the better part of a decade. Their dispute has spawned multiple bankruptcy cases (in Maine, Delaware, and New Mexico) and a myriad of litigation matters in, among other places: the First Judicial District Court for the County of Santa Fe, New Mexico (the "New Mexico State Trial Court"), the Court of Appeals of New Mexico, the Supreme Court of New Mexico, and the United States District Court for the District of New Mexico. Fortunately, because of the specific and limited nature of the relief requested in the Motion for Release from Prison, the Court need not cite chapter and verse from the entire long litigation saga.[1] Instead, the relevant procedural and factual background is fairly straightforward and uncontested.

A. The Debtors' Pre-Bankruptcy Incarceration.

On October 17, 2017, the New Mexico State Trial Court issued an "Order of Contempt" holding the Debtors "in contempt of court for violations of the [New Mexico State Trial Court's] orders . . . ." in the case: *Michael Coughlin and M. Kay Coughlin v. Cultural Assets 1, LLC, Al Luckett, and Christine McCarthy*, Case No. D-101-CV-2012-2707 (First Judicial District Court for the County of Santa Fe, New Mexico). (Obj. at Ex. G; Mot. ¶ 6-7.) The New Mexico State Trial Court further ordered that the Debtors

> be placed in the custody of the Santa Fe County Sheriff and incarcerated in the Santa Fe County Detention Center until such time as such property, inventory or collections moved

[1] The Court is familiar with at least some of the prior proceedings having presided over a related bankruptcy case: *In re Information Dock Analytics LLC*, Case No. 18-12072 (Bankr. N.M.).

> or hidden by them are placed in the custody and control of the Santa Fe County Sheriff.

(Obj. at Ex. G.) The Debtor have unsuccessfully attacked and appealed the Order of Contempt. It remains in place.

According to the Debtors, they "were arrested in Maine in May, 2018 on the contempt of court warrant (and for resisting or evading an officer or obstructing charges . . . .)." (Mot. ¶ 8.) At some point, the Debtors were transferred from Maine to the Santa Fe County Detention Center (the "Santa Fe Prison") in New Mexico under the control of the Santa Fe County Sheriff (the "Santa Fe Sheriff"). They continue to reside in the Santa Fe Prison. According to the Motion: "Debtors, who are both over the age of 70, have remained incarcerated for more than 18 months." (Mot. ¶ 12.)

B. <u>The Bankruptcy Case</u>.

Apparently while incarcerated in the Santa Fe Prison in New Mexico, on July 29, 2019, the Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code[2] in the United States Bankruptcy Court for the District of Maine (the "Maine Bankruptcy Court"). At the same time, the Debtors filed a "Motion to Compel Turnover/Release of the Debtors from Incarceration" (Docket No. 3, the "Maine Motion for Release from Prison"). The Maine Bankruptcy Court denied the Maine Motion for Release from Prison, without ruling on the merits. (Docket No. 15.) Subsequently, on August 26, 2019, the Maine Bankruptcy Court transferred the Debtors' bankruptcy case from the District of Maine to the District of New Mexico, where it remains pending. (Docket No. 19.)

C. <u>The Motion for Release from Prison</u>.

On December 2, 2019, the Debtors filed the instant Motion for Release from Prison (which is virtually identical to the Maine Motion for Release from Prison denied by the Maine Bankruptcy Court some months ago). It is apparent from the Motion for Release from Prison and its timing that the Debtors' principal purpose in filing for bankruptcy protection is to try to use the Court to end their incarceration.

In the Motion for Release from Prison, the Debtors request the following:

- "[The Debtors] request this Court to enter an Order Compelling the Santa Fe New Mexico Sheriff and the Santa Fe County Detention Center to turnover[3] or release the Debtors from incarceration for civil contempt." (Mot. at Preamble.)

---

[2] All references to the "Bankruptcy Code" are to the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* Unless otherwise indicated, all references to "Section" are to sections of the Bankruptcy Code.

[3] In the title of the Motion for Release from Prison and two other places in the text, the Debtors use the word "turnover." In bankruptcy, the usual use of the term "turnover" is in connection with the turnover

- "[T]o meaningfully engage in this bankruptcy proceeding, Debtors must be released from incarceration." (Mot. ¶ 17.)

- "[T]his Court should order the Debtors released [from the Prison] . . . ." (Mot. ¶ 18.)

- "The Court . . . should order Debtors' [sic] released." (Mot. ¶ 20.)

- "Debtors respectfully requests [sic] that this Court enter an Order compelling the Santa Fe New Mexico County Sheriff and the Santa Fe County Detention Center to turnover or release Debtor from incarceration for civil contempt." (Mot. at Final Request for Relief.)

II. Legal Analysis: The Court Has No Jurisdiction to Issue a Writ of Habeas Corpus and Order the Santa Fe Sheriff and the Santa Fe Prison to Release the Debtors from the Santa Fe Prison.

A. By Requesting Release from the Santa Fe Prison, the Debtors Are Requesting the Issuance of a Writ of Habeas Corpus.

As set forth above, the *only* form of relief requested by the Debtors in the Motion for Release from Prison is that this Court order two non-party[4] state actors, the Santa Fe Sheriff and the Santa Fe Prison, to release the Debtors from the Santa Fe Prison. The Debtors did not expressly use the term "habeas corpus" in the Motion for Release from Prison. But, mere labels matter not. In reality, a writ of habeas corpus is exactly what the Debtors are asking for. *See Womack v. Mays (In re Womack),* 253 B.R. 241, 243 (Bankr. E.D. Ark. 2000) (bankruptcy debtor filed adversary proceeding "requesting that the debtor be released from prison" without mentioning habeas corpus; bankruptcy court determined that "under the guise of arguing the applicability of the automatic stay in bankruptcy, the debtor seeks the relief afforded by a writ of habeas corpus").

The writ of habeas corpus (sometimes referred to as the Great Writ[5]) is fundamental to the protection of the liberty of all Americans. As far back as the Magna Carta, English law decreed that "no man would be imprisoned contrary to the law of the

---

of property to the estate. 11 U.S.C. § 542 ("Turnover of property to the estate."). The Debtors themselves are not "property of the estate." So, they do not appear to rely upon Section 542. Instead, as used in the Motion for Release from Prison, the word "turnover" adds nothing and merely appears to be an unnecessary synonym of the word "release." Since there is no independent legal significance to the term "turnover" in the Motion for Release from Prison, the Court focuses simply on the Debtors' request for "release" from the Santa Fe Prison.

[4] The Debtors did not serve the Santa Fe Sheriff, the Santa Fe Prison, or the New Mexico State Trial Court with the Motion for Release from Prison.

[5] See *Fay v. Noia*, 372 U.S. 391, 399-400 (1963) ("We do well to bear in mind the extraordinary prestige of the Great Writ, habeas corpus ad subjiciendum, in Anglo-American jurisprudence: 'the most celebrated writ in the English law.'") (citations omitted).

land." *Boumediene v. Bush*, 553 U.S. 723, 740 (2008) (summarizing Magna Carta Art. 39). Over the following centuries, the doctrine of habeas corpus became "an integral part of our common-law heritage." *Prieser v. Rodriguez*, 411 U.S. 475, 485 (1973). After independence, the Framers incorporated habeas corpus protection into the United States Constitution through the Suspension Clause. U.S. CONST. Art. I § 9 ("The Privilege of the Writ of Habeas Corpus shall not be suspended . . . ."). "The [Suspension] Clause protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account." *Boumediene*, 553 U.S. at 745. As the United States Supreme Court explained, "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody." *Prieser*, 411 U.S. at 484. That is precisely what the Debtors are doing: attacking the validity of their incarceration and requesting to be released.

B. <u>The Habeas Corpus Statutes Do Not Authorize Bankruptcy Courts to Release Federal or State Prisoners</u>.

Although the writ of habeas corpus has common law roots and is protected in the Constitution, "the power to award the writ [of habeas corpus] by any of the courts of the United States, must be given by written law" — a statute. *Ex Parte Bollman*, 4 Cranch 75, 94 (1807). In fact, one of the first orders of business of the First Congress was to enact statutory habeas corpus protection through passage of the Judiciary Act of 1789. *Rasul v. Bush*, 542 U.S. 466, 473 (2004) ("[t]he [habeas corpus] statute traces its ancestry to the first grant of federal court jurisdiction [in the Judiciary Act of 1789]").

Two hundred and thirty years later, the current set of habeas corpus statutes are located in Chapter 153 of Title 28 of the United States Code titled: "Habeas Corpus." The linchpin of the statutory scheme is 28 U.S.C. § 2241(a), which governs the "Power to Grant Writ." That statute provides, in relevant part:

> Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

A host of companion statutes, 28 U.S.C. §§ 2242-2253, establish the procedure for prosecuting and appealing writs of habeas corpus. And, there is a more specific statute extending habeas corpus protections to prisoners (like the Debtors) in state custody: 28 U.S.C. § 2254. That statute dovetails with 28 U.S.C. § 2241 and identifies which federal judges may issue writs of habeas corpus and on what basis:

> The Supreme Court, any justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court 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). The habeas corpus statutes directed to prisoners in state custody (like the Debtors) are supplemented by a series of "Rules Governing Section 2254 Cases in the United States District Courts." Throughout Title 28 of the United States Code, Congress made distinctions between "district courts" and "bankruptcy courts." *Compare* Chapter 5, Title 28 U.S.C. (governing district courts); Chapter 6, Title 28 U.S.C. (governing bankruptcy judges). Suffice it to say that bankruptcy judges are not district judges and, as a result, do not have the same statutory powers as district judges in our judicial system. Indeed, bankruptcy court jurisdiction is quite limited. *See* 28 U.S.C. §§ 157 and 1334 (providing for district court jurisdiction in bankruptcy matters and referral to bankruptcy judges).

When construing federal statutes, such as the various habeas corpus statutes set forth in Chapter 153 of Title 28 of the United States Code, the Court employs a fair reading method that dictates the primacy of the statutory text. The inquiry must center on the "language of the statute itself." *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011) (quoting *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989)). The starting place is the "plain" or "ordinary" meaning of the text. *Clark v. Rameker*, 134 S. Ct. 2242, 2246 (2014); *Hamilton v. Lanning*, 560 U.S. 505, 513 (2010). For this Court, a simple and plain reading of both 28 U.S.C. §§ 2241(a) and 2254(a) establishes that bankruptcy judges are not included in the list of federal judicial officers authorized to issue writs of habeas corpus freeing prisoners in state custody from incarceration.

C. Bankruptcy Judges Have No Jurisdiction in Habeas Corpus Proceedings.

The exclusion of bankruptcy judges from the list of other federal judicial officers (Supreme Court Justices, circuit judges, and district judges) in 28 U.S.C. §§ 2241(a) and 2254(a) is notable and dispositive. Applying standard canons of statutory interpretation, the legal text proves that Congress did not empower bankruptcy judges to set state prisoners free through a writ of habeas corpus — even if a violation of the Constitution or federal law is apparent. *See Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002) (discussing the interpretive canon *expressio unius est exclusio alterius,* "expressing one item of [an] associated group or series excludes another left unmentioned"); *see also* Antonin Scalia and Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 107 (Thompson/West Pub. 2012) (discussing *expressio unius est exclusio alterius* canon). Instead, that power resides only with Supreme Court justices, circuit judges, and district judges.

A short detour through statutory history also proves the point. Congress considered granting bankruptcy judges the authority to issue writs of habeas corpus in certain limited circumstances through the Bankruptcy Reform Act of 1978. Congress even went so far as to draft a statute on the topic, 28 U.S.C. § 2256, which stated:

> A bankruptcy court may issue a writ of habeas corpus —

> (1) when appropriate to bring a person before the court —
>
> (A) for examination;
>
> (B) to testify; or
>
> (C) to perform a duty imposed on such person under this title; or
>
> (2) ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if —
>
> (A) such debtor was arrested or imprisoned on process in any civil action;
>
> (B) such process was issued for the collection of a debt —
>
> (i) dischargeable under title 11; or
>
> (ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and
>
> (C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ.

But, the proposed statute empowering bankruptcy judges to issue writs of habeas corpus never became effective. *See* Pub. L. No. 98-353, Title I, § 113, 98 Stat. 343; *Salazar v. McCormick (In re Crestview Funeral Home, Inc.)*, 292 B.R. 711 (table), 2002 WL 31793997, at *2 (10th Cir. BAP 2002) (unpublished) (28 U.S.C. § 2256 "never took effect"); *Bryan v. Rainwater*, 254 B.R. 273, 276 (N.D. Ala. 2000) (28 U.S.C. § 2256 "was repealed before it ever became effective"). Thus, the statutory history shows that Congress apparently had second thoughts and put the kibosh on the idea of extending writ of habeas corpus jurisdiction to bankruptcy courts altogether.

Based upon the text of 28 U.S.C. §§ 2241(a) and 2254(a) and the history of the never-effective proposed 28 U.S.C. § 2256, the Court rather easily concludes that it does not have jurisdiction to entertain the Debtors' request for release from the Santa Fe Prison. As a further step in the Court's analysis, and as a sort of check, the Court also has considered case law on the topic. The Court has been unable to locate any reported decision in which a bankruptcy judge ordered a jailer to free a prisoner held in either federal or state custody for violation of the Constitution or laws of the United States. The Debtors certainly have not cited any such cases.

Instead, and contrary to the request made by the Debtors, numerous bankruptcy and appellate courts have reached the almost self-evident conclusion that bankruptcy judges lack jurisdiction to issue writs of habeas corpus. One of the best and most similar examples is from New Mexico a few years back: *Salazar,* 2002 WL 31793997. That case involved the New Mexico Chapter 11 bankruptcy proceedings of Crestview Funeral Home, Inc. ("Crestview"). John Lester Salazar ("Salazar"), a former officer and shareholder of Crestview, filed an adversary proceeding against a host of defendants in the Crestview bankruptcy case. The trouble was that Salazar was "serving [a] sentence in a New Mexico state prison." *Salazar*, 2002 WL 31793997, at *1. As the trial date approached, Salazar filed an "Emergency Writ of Habeas Corpus" asking, among other things, that the bankruptcy court "order his release from state custody" — the exact relief requested by the Debtors in their Motion for Release from Prison. *Id.* Thereafter, the New Mexico bankruptcy court denied the writ of habeas corpus "declaring that it had no authority to alter or amend the terms of [Salazar's] incarceration." *Id.* Salazar appealed and lost. Making fairly short work of the appeal, the Bankruptcy Appellate Panel for the Tenth Circuit ruled succinctly:

> Jurisdiction of bankruptcy matters is given to federal district courts under 28 U.S.C. § 1334, and then referred by those courts to bankruptcy courts under 28 U.S.C. § 157(a). Nothing in these provisions gives bankruptcy courts jurisdiction of habeas corpus petitions filed by prisoners held in state custody on state criminal charges.

Id. at *3. The Court concurs with the *Salazar* appellate precedent.

But, there is more. Bankruptcy and district courts from across the country uniformly have determined that bankruptcy judges lack jurisdiction to entertain requests from debtors for release from federal or state prison (*i.e.,* issuance of writs of habeas corpus). A few examples include: *McDermott v. Kerr (In re Kerr)*, 2016 WL 1578758, at *2 (Bankr. N.D. Ohio Apr. 15, 2016) (noting "strong majority view that bankruptcy courts do not have the authority to issue a writ of habeas corpus"); *Gowan v. Westford Asset Mgmt. LLC (In re Dreier, LLP)*, 2014 WL 3767430, at *1 (Bankr. S.D.N.Y. Jul. 31, 2014) (noting that "the majority of the few cases to consider the issue have concluded that a bankruptcy judge lacks statutory authority to issue a writ of *habeas corpus*" and listing cases in which courts have concluded that bankruptcy judges lack statutory authority to issue writs of habeas corpus); *In re Kluever*, 373 B.R. 163, 164 (Bankr. M.D. Fla. 2007) ("Section 2241(a) does not imbue bankruptcy courts with the authority to issue writs of habeas corpus. Accordingly, bankruptcy courts lack such authority."); *Bryan*, 254 B.R. 276 ("28 U.S.C. § 2241 makes it clear that only the 'Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions' have the authority to grant writs of habeas corpus."); *Womack*, 253 B.R. at 243 (bankruptcy court "has no jurisdiction to entertain a Petition for Writ of Habeas Corpus" and release a debtor from prison); *Cornelious v. Bishop (In re Cornelious*), 214 B.R. 588, 590 (Bankr. E.D. Ark. 1997) ("[T]his [Bankruptcy] Court has no jurisdiction to entertain a Petition for Writ of Habeas Corpus. The modern authority for release from incarceration is found in

28 U.S.C. § 2241, et seq., under which only the 'Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions,' has authority to issue such a writ."). So, compelling and persuasive case law authority supports the Court's conclusion that it lacks jurisdiction to release the Debtors from the Santa Fe Prison.

III. Conclusion.

For the foregoing reasons, the Court DENIES the Motion for Release from Prison on jurisdictional grounds.[6] If the Debtors filed for bankruptcy protection solely in an attempt to secure release from the Santa Fe Prison, they may wish to reconsider this entire bankruptcy proceeding. Dismissal might be appropriate under these circumstances if sought by the Debtors, the Chapter 7 Trustee, the United States Trustee and/or the Creditors. But the issue of potential dismissal is not ripe at this stage. Instead, for now, the Court decides only that it has no power to order the Santa Fe Sheriff or the Santa Fe Prison to release the Debtors.

Dated this 31st day of January, 2020.

BY THE COURT:

Thomas B. McNamara,
United States Bankruptcy Judge
(Sitting in the District of New Mexico by Designation of the United States Court of Appeals for the Tenth Circuit.)

[6] Since the Court lacks jurisdiction to free the Debtors (which is the only relief requested in the Motion for Release from Prison), the Court does not rule on the merits of the Debtors' request for a writ of habeas corpus (*i.e.*, the Debtors' argument that their continued incarceration violates the automatic stay under 11 U.S.C. § 362(a)).

Notice Recipients

District/Off: 1084−1	User: admin	Date Created: 1/31/2020
Case: 19−12093−tbm7	Form ID: pdfor1	Total: 8

Recipients of Notice of Electronic Filing:

aty	Luke Walter Holmen	lwh@modrall.com
aty	Scott Logan	scott@southernmainebankruptcy.com
aty	Spencer Lewis Edelman	sle@modrall.com

TOTAL: 3

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Alfred E Luckett, Jr.	Inmate No. 338603	28 Camino Justicia	Santa Fe, NM 87508	
jdb	Christine McCarthy	Inmate No. 368248	28 Camino Justicia	Santa Fe, NM 87508	
tr	Edward Alexander Mazel	Edward Mazel Trustee	1122 Central Ave SW	Ste 4	Albuquerque, NM 87102
aty	J Scott Logan	Law Office of J. Scott Logan, LLC	75 Pearl Street, Suite 212	Portland, ME 04101	
aty	Roger A. Clement, Jr., Esq.	Verrill Dana, LLP	One Portland Square	P.O. Box 586	Portland, ME 04112−0586

TOTAL: 5