

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

M.K., S.D., M.R.,

Petitioner

Civil Action No. 1:25-cv-281

Judge Matthew W. McFarland

Magistrate Judge Stephanie K. Bowman

v.

**RICHARD JONES, SHERIFF BUTLER
COUNTY, OHIO, ET AL.**

Respondents

MOTION FOR LEAVE TO FILE AMENDED MOTION TO DISMISS, INSTANTER

Now comes Richard Jones, Sheriff Butler County, Ohio (“Sheriff”) by and through undersigned counsel, and pursuant to Rule 15 of the Federal Rules of Civil Procedure, hereby respectfully requests leave to amend his Motion to Dismiss filed yesterday in this matter. The grounds for this motion are delayed service of the writ and short response time that resulted in the Motion to Dismiss not being converted into searchable text and containing clerical errors. A copy of Respondent’s Amended Motion to Dismiss is attached hereto.

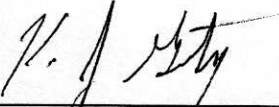
No other party to this action would be prejudiced by the court’s decision to grant Sheriff the requested leave. Sheriff has neither sought, nor been granted, any extensions of time previously in this matter.

WHEREFORE, Sheriff respectfully requests that he be granted leave to amend his previously filed Motion to Dismiss. Sheriff further requests that said Motion to Dismiss be deemed filed as of the date the Court rules upon this motion.

Respectfully submitted.

Michael T. Gmoser

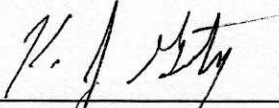
Prosecuting Attorney of Butler County, Ohio

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was electronically filed on May 15, 2025, and will automatically be served on all the parties for whom counsel has entered an appearance.

Michael T. Gmoser
Prosecuting Attorney of Butler County, Ohio

By 
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Chief Assistant Prosecuting Attorney

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**Civil Action No. 1:25-cv-281
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**RESPONDENT RICHARD JONES AMENDED MOTION TO DISMISS PETITIONERS'
PETITION FOR WRIT OF HABEAS CORPUS AND DECLARATORY AND INJUNCTIVE
RELIEF**

Now comes Respondent Richard Jones, Sheriff Butler County, Ohio by and through undersigned counsel and respectfully requests this Court dismiss Petitioners' Writ of Habeas Corpus and Motion for Declaratory and Injunctive Relief pursuant to Fed. R. Civ. P. 12(b)(6). A memorandum in support is attached.

Respectfully submitted.

Michael T. Gmoser
Prosecuting Attorney of Butler County, Ohio

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Petitioners filed a Petition for Writ of Habeas Corpus and Declaratory and Injunctive Relief with the United States District Court for the Southern District of Ohio on May 1, 2025. Respondent Richard Jones, Sheriff of Butler County, Ohio received service of the Petition for Writ of Habeas Corpus on May 9, 2025. Respondent cannot provide any factual background on this matter as he is unable to determine if the Petitioners are in his custody due to Petitioners' use of initials in place of legal names. Respondent does acknowledge that a contract exists between Butler County and United States Immigration and Customs Enforcement ("ICE") for the housing of aliens awaiting deportation process by ICE and that Respondent does hold such persons at the Butler County Jail.

MEMORANDUM IN SUPPORT

Respondent Jones, as stated above, cannot determine at the time of this filing if the three Petitioners are in his custody due to the fact they are not named in the Petition for Habeas Corpus. Assuming arguendo that all three Petitioners are in fact being detained at the Butler County Jail Respondent Jones, despite Petitioners' claims, is not the Petitioners' custodian in this case. Therefore the Petition for Habeas Corpus must be dismissed against Respondent Jones pursuant to Fed. R. Civ. P. 12(b)(6). "As a general rule, a petitioner should name as a respondent to his habeas corpus petition 'the individual having day-to-day control over the facility in which [the alien] is being detained.'" Roman v. Ashcroft et al., 340 F.3d 314, 319 (2003), quoting in part, Vasquez v. Reno, 233 F.3d 688, 696 (1st Cir. 2000). A "writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody." Roman at 319, quoting, Braden v. 30th Judicial Circuit Ct. of Ky., 410 U.S. 484, 495-95, 93 S.Ct. 1123, 35 L.E.d.2d 443 (1973).

The Sixth Circuit Court of Appeals has ruled in the case of aliens detained by United States Immigration and Customs Enforcement (ICE) (previously Immigration and Naturalization) that, “although the warden of each detention facility technically has day-to-day control over alien detainees, the INS District Director for the district where a detention facility is located ‘has power over’ alien habeas corpus petitions.” Roman at 320, citing, Henderson v. INS, 157 F.3d 106, 122 (2d Cir.1998). Where local law enforcement contract with ICE to hold aliens detained by the federal government the

wardens of all these facilities act pursuant to INS Detention Standards and are considered agents of the INS District Director in their district. It is clear that the INS does not vest power over detained aliens in the wardens of detention facilities because the INS relies on state and local governments to house federal INS detainees. Whatever daily control state and local governments have over federal INS detainees, they have that control solely pursuant to the direction of the INS. Roman at 320.

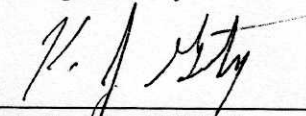
Federal Rule of Civil Procedure 12(b)(6) requires dismissal of an action if the Petitioner has failed, “to state a claim upon which relief can be granted.” “Factual allegations contained in a complaint must ‘raise a right to relief above the speculative level.’” Bassett v. National Collegiate Athletic Ass’n, 528 F.3d 4265, 430 (2008), quoting in part, Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed 2d 929, (2007). While Petitioners may or may not be entitled to the relief they seek, such relief cannot be granted by Respondent Jones as he is not the immediate custodian of Petitioners but merely a contractual agent of ICE.

CONCLUSION

Wherefore, for all of the reasons stated above, Respondent prays this Honorable Court grant his motion to dismiss the Petition for Writ of Habeas Corpus and Declaratory and Injunctive Relief pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted.

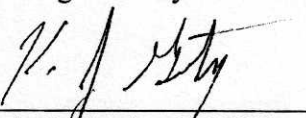
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CERTIFICATE OF SERVICE

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