

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GILBERT ALONSO-PORTILLO,

Petitioner

v.

RICHARD JONES, SHERIFF BUTLER
COUNTY, ET AL.

Respondents

Civil Action No. 1:25-cv-306

Judge Michael R. Barrett

Magistrate Judge Kimberly A. Jolson

RESPONDENT RICHARD JONES MOTION TO DISMISS PETITIONER'S 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 Petitioner's 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

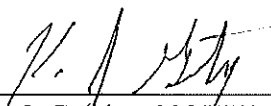
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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Petitioner 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 9, 2025. Respondent Richard Jones, Sheriff of Butler County, has not yet received service of the Petition for Writ of Habeas Corpus, but was notified of the May 12, 2025, Order to not remove Petitioner by the U.S. Attorney's Office. Respondent acknowledges Petitioner is incarcerated at the Butler County Jail pursuant to a United States Immigration and Customs Enforcement ("ICE") detainer. Petitioner's incarceration at the Butler County Jail is at the request of ICE which has a current contract with Butler County to house aliens awaiting deportation process by ICE.

MEMORANDUM IN SUPPORT

Respondent Jones, despite Petitioner's claims, is not the Petitioner's custodian in this case. Therefore, the Petition for Habeas Corpus must be dismissed against Respondent 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, 494-95, 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 petitioners." 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.

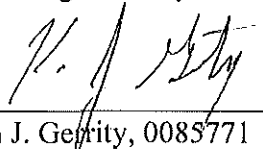
Federal Rule of Civil Procedure 12(b)(6) requires dismissal of an action if the Petitioner has failed, "to state a claim upon which relief can be granted." "Factual allegations contained in a complaint must 'raise a right to relief above the speculative level.'" Bassett v. National Collegiate Athletic Ass'n, 528 F.3d 426, 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 Petitioner may or may not be entitled to the relief he seeks, such relief cannot be granted by Respondent Jones as he is not the immediate custodian of Petitioner 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.

Respectfully submitted.

Michael T. Gmoser
Prosecuting Attorney of Butler County, Ohio

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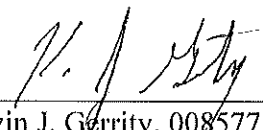
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was electronically filed on May 29, 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

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Kevin J. Gerrity, 0085771
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