

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ALEM WOLDEGHERGISH

Petitioner

v.

DIRECTOR ROBERT K. LYNCH, ET AL.

Respondents

Civil Action No. 1:25-cv-461

Judge Susan J. Dlott

Magistrate Judge Karen L. Litkovitz

RESPONDENTS SHERIFF RICHARD JONES' AND WARDEN NICK FISHER'S
MOTION TO DISMISS PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

Now comes Respondents Sheriff Richard Jones and Warden Nick Fisher by and through undersigned counsel and respectfully requests this Court dismiss Petitioner's Writ of Habeas Corpus pursuant to Fed. R. Civ. P. 12(b)(6). A memorandum in support is attached.

Respectfully submitted.

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By 

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TABLE OF CONTENTS

INTRODUCTION.....1

TABLE OF AUTHORITIES.....3

PROCEDURAL HISTORY AND STATEMENT OF FACT.....4

MEMORANDUM IN SUPPORT.....4

CONCLUSION.....5

CERTIFICATE OF SERVICE.....5

TABLE OF AUTHORITIES

CASES

Bassett v. National Collegiate Athletic Ass’n, 528 F.3d 426, 430 (2008).....5

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed 2d 929 (2007).....5

Braden v. 30th Judicial Circuit Ct. of Ky., 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973)..4

Henderson v. INS, 157 F.3d 106, 122 (2d Cir.1998).....5

Roman v. Ashcroft et al., 340 F.3d 314, 319 (2003).....4,5

Vasquez v. Reno, 233 F.3d 688, 696 (1st Cir. 2000).....4

STATUTES

Fed. R. Civ. P. 12(b)(6).....4,5

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Petitioner filed a First Petition for Writ of Habeas Corpus with the United States District Court for the Southern District of Ohio on July 2, 2025, and filed a Second Petition for Writ of Habeas Corpus to add a Civil Cover sheet on July 3, 2025. The Petition was received on behalf of Respondents Sheriff Richard Jones and Warden Nick Fisher (“Respondents”) by undersigned counsel from Counsel for Respondent Director Robert K. Lynch. Respondent Nick Fisher is not Warden of the Butler County Correctional Complex a position currently occupied by Warden Kevin Grathwohl. Respondents acknowledge Alem Woldeghergish (“Petitioner”), at the time of this filing, is in custody at the Butler County Correctional Complex as an alien awaiting deportation process by United States Immigration and Customs Enforcement (“ICE”).

MEMORANDUM IN SUPPORT

Butler County Respondents, despite Petitioner’s claims, are not the Petitioner’s 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, 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.

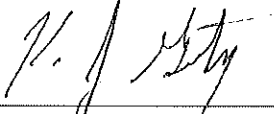
Federal Rule of Civil Procedure 12(b)(6) requires dismissal of an action if the Petitioner has failed, “to state a claim upon which relief can be granted.” “Factual allegations contained in a complaint must ‘raise a right to relief above the speculative level.’” Bassett v. National Collegiate Athletic Ass’n, 528 F.3d 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 they seek, such relief cannot be granted by Respondents as they are not the immediate custodian of Petitioner but merely a contractual agent of ICE. Furthermore, as Respondent Fisher is not the current Warden of the Butler County Jail, the relief Petitioner seeks may not be granted by him and therefore is an additional reason to dismiss the case pursuant to Fed. R. Civ. P. 12(b)(6).

CONCLUSION

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

Respectfully submitted.

Michael T. Gmoser
Prosecuting Attorney of Butler County, Ohio

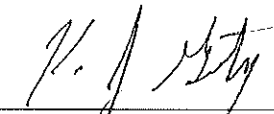
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was electronically filed on July 16, 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  _____

Kevin J. Gerrity, 0085771
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