UNITED STATES DISTRICT COURT
SOURTHERN DISTRICT OF OHIO
WESTERN DIVISION

AYMAN SOLIMAN Petitioner v. **TODD M. LYONS, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL.** Respondents	**Civil Action No. 1:25-cv-556** **Judge Jeffery P. Hopkins** **Magistrate Judge Michael R. Merz**

RESPONDENT SHERIFF RICHARD JONES' REPLY TO PETIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

Now comes Respondent Butler County Sheriff Richard Jones ("Respondent"), by and through undersigned counsel and respectfully offers the attached memorandum in reply to Petitioner's Memorandum in Opposition to Respondent Sheriff Richard Jones' Motion to Dismiss.

Respectfully submitted.

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MEMORANDUM IN SUPPORT

Petitioner, Ayman Soliman, in his Memorandum in Opposition to Respondent Sheriff Richard Jones' Motion to Dismiss, presents three separately titled, but intertwined, arguments. Respondent addresses Petitioner's first two arguments together and the third separately.

I. The Local Director of Immigration and Customs Enforcement ("I.C.E.") is the Proper Respondent Under Sixth Circuit Precedent Not Respondent Sheriff Jones.

a. *Rumsfeld v. Padilla* is not applicable to Petitioner's case and *Roman v. Ashcroft* remains the applicable precedent.

Petitioner argues that *Rumsfeld v. Padilla* is the controlling precedent in this case. In *Padilla*, the Supreme Court held that, pursuant to the immediate custodian rule, the military commander of an American base where *Padilla* was incarcerated, was the proper Respondent to *Padilla's* Petition for Writ of Habeas Corpus and not Secretary of Defense Donald Rumsfeld. The Court ruled that the Commander exercised "day-to-day control over *Padilla's* physical custody" and the fact that *Padilla* was incarcerated on someone's else's order did not change that fact. 542 U.S.426, 427, 124 S.Ct. 2711, 159 L.Ed2d 513 (2004).

Petitioner is correct that the Sixth Circuit Court's opinion of *Roman v. Ashcroft* preceded *Padilla* by one year. Petitioner is also correct that Respondent has control over limited aspects of Petitioner's day-to-day confinement. However, despite Petitioner's contention that, "*Padilla* applies squarely to immigration detainees held in local facilities" the opposite is in fact true. (Petitioner's Memorandum in Opposition to Respondent Sheriff Richard Jones' Motion to Dismiss, p. 3)

While Petitioner references footnote 9 of *Padilla* in his Memorandum, footnote 8 is the relevant part of that decision to this case:

> In *Ahrens v. Clark*, 335 U.S. 188, 68 S.Ct. 1443, 92 L.Ed. 1898 (1948), we left open the question whether the Attorney General is a proper respondent to a habeas petition filed by an alien detained pending deportation. The lower courts have divided on this question, with the majority applying the immediate custodian rule and holding that the Attorney General is not a proper respondent. . . . Because the issue is not before us today, we again decline to resolve it. *Padilla*. at FN 8. (citations omitted).

Within the citations omitted in the quote above, the Supreme Court acknowledged *Roman v. Ashcroft* which it stated was in support of the immediate custodian rule. This is correct. However, the Sixth Circuit ruled in *Roman* that the immediate custodian of an I.C.E. detainee held in a non-I.C.E. facility, is the local director of I.C.E. and not the Warden of the local facility. *Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003). In footnote 8 of *Padilla*, the Supreme Court acknowledged that *in cases of immigration*, there remains a split as to whether the immediate custodian rule applies and they declined to resolve that split in *Padilla*. As a result, *Roman* has not been overruled in whole or in part since its issuance. Therefore, as Petitioner is an alleged illegal immigrant, detained by federal authorities, seeking relief via habeas corpus, it is clear that *Roman's* immediate custodian rule applies here as Padilla clearly excepted immigration cases from its ruling.

Petitioner, in support of his position that *Padilla*, and not *Roman* is controlling, cites to "*Khodr v. Adduci*".[1] However, the decision in *Khodr* clearly supports Respondent's position and rejects Petitioner's arguments.

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[1] Petitioner cites *Khodr v. Adduci* as "No. 1:19-cv-606, 2019 WL 1316988" in his Memorandum in Opposition. The court case number provided by Petitioner in his citation, 1:19-cv-606, is assigned to a series of three cases in the Northern District of Ohio all involving Petitioner Andrew Hango. *Hango v. McAleenan* 2019 WL 6695829, *Hango v. Nielsen*, 2020 WL 5642112, and *Hango v. Adducci*, 2020 WL 3271061. These series of cases involved *Hango* petitioning for a writ of habeas corpus, a temporary restraining order and the subsequent reconsiderations when his petitions were denied. Only the first case, *Hango v. McAleenan* references *Roman v. Ashcroft*. *Hango v. McAleenan* also happens to be the only case of the three which is relevant to Petitioner's current case. The Westlaw case number provided by Petitioner in his citation for "Khodr v. Adduci" is assigned to an Appellant Brief filed in *Moore v. The State of Texas* which as far as Respondent can tell, has no bearing on this case. When Westlaw is searched for "*Khodr v. Adduci*" a 2010 case, 697 F.Supp.2d 774 (2010), from the Eastern District of Michigan is located and involves a writ

> The Six Circuit recently held, applying the immediate custodian rule for habeas petitions, that the ICE District Director is the proper respondent in a habeas petition brought by an alien, since the District Director has power over such aliens. *Roman v. Ashcroft*. The U.S. Supreme Court recently held, however, that the proper respondent for habeas challenges to present physical confinement is the warden of the facility where the petitioner is being held, as opposed to the Attorney General or some other remote supervisory official. *Rumsfeld v. Padilla*. While this reasoning would seemingly require that the Monroe County Jail Warden be named as the respondent here, the Supreme Court in *Rumsfeld* expressly cabined its holding and did not resolve the question of who would be the proper respondent in a habeas petition filed by "an alien detained pending deportation." Although Petitioner here is not "pending deportation" since he is not subject to a final order of removal and simply waiting to be removed, the Court finds the Supreme Court's statements in footnote 8 of the *Padilla* opinion are sufficiently broad to cover the present situation. Cf. *Kholyavskiy v. Achim*, 443 F.3d 946, 952 n.7 (7th Cir.2006) ("The Supreme Court [in *Padilla*] expressly reserved the question of whether the immediate custody rule applies in the context of immigration habeas petitions." (emphasis supplied). *Accordingly, the Court will follow appropriate Sixth Circuit authority and find the ICE District Director is the proper party to be sued in the habeas case here*. *Khodr v. Adduci*, 697 F.Supp.2d 774, 776 (E. Dist. Mich. 2010) (citations omitted) (emphasis added).

Fortuitously for Respondent, one of the incorrect citations Petitioner attributes to *Khodr*, is the actual citation for *Hango v. McAleenan* which, like Khodr, stands for the exact opposite of Petitioner's arguments here and in support of Respondent. In *Hango*, an illegal immigrant, challenging his detention and deportation, attempted to distinguish his case from *Roman*. As with *Khodr*, the *Hango* court followed *Roman* and explained why *Padilla* is inapplicable in cases such as Petitioner's here.

> In *Padilla*, the Supreme Court held that the proper respondent for habeas challenges to present physical confinement is the warden of the facility where the petitioner is being held, as opposed to the Attorney General or some other executive supervisory official. But, in so ruling, the Supreme Court "expressly cabined its holding and did not resolve the question of who would be the proper respondent in a habeas petition filed by 'an alien detained pending deportation.'" Citing, *Khodr v. Adduci*, 697 F.Supp.2d 774, 776 (E.D. Mich. 2010) (quoting

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of habeas corpus by an I.C.E. detainee. Counsel for Respondent reached out to counsel for Petitioner and was informed that it was this last case with the correct party names Petitioner intended to cite.

> *Padilla*, 542 U.S. at 435 n.8); see *Kholyavskiy v. Achim*, 443 F.3d 946, 952 n.7 (7th Cir. 2006) (noting that '[t]he Supreme Court [in *Padilla*] expressly reserved the question of whether the immediate custody rule applies in the context of immigration habeas petitions.') *Hango v. McAleenan*, 2019 WL 6695829 at ¶2.

Both *Khodr* and *Hango* are clear in distinguishing *Padilla* from Petitioner's case. See also *Sanchez-Penunuri v. Longshore*, 7 F.Supp.3d 1136 (2013). Both decisions were subsequent in time to *Padilla* with *Khodr* being issued in 2019 fifteen years after *Padilla*. It cannot be questioned that *Roman v. Ashcroft* controls in this case and that *Padilla* does not apply.

b. <u>Petitioner's allegations of violations of his Constitutional Rights within the Butler County Jail do not result in Respondent being a properly named party to this action.</u>

Petitioner has alleged, without any evidence, that he has been deprived of certain constitutional rights by Respondent. Respondent was able to provide evidence to the Court at the telephone conference on September 5, 2025 refuting Petitioner's allegations. While Respondent maintains that Petitioner's accusations are spurious and likely libelous, even if evidence existed to support them, Respondent's Motion to Dismiss must still be granted.

Petitioner alleges that "The Sixth Circuit has recognized that *Roman's* rule is limited to challenges to removal orders, not to the execution or conditions of detention. . . . Post-*Padilla* decisions in the Sixth Circuit have not extended *Roman* to conditions claims like those here." (Petitioner's Memorandum in Opposition to Respondent Sheriff Rich Jones' Motion to Dismiss p. 4). In support of these statements Petitioner relies exclusively on *Khodr v. Adduci*, already addressed in section I.a. and footnote 1 above, and *Hamama v. Adducci*.[2] *Hamama* does not reference the *Roman* case once. *Hamama* involved the Sixth Circuit Court of Appeals overruling

[2]Hamama v. Adducci. The cite provided by Petitioner, 912 F.3d 867, 874-75 (6th Cir. 2018), is assigned to *United States v. Arellano-Banuelos* which involves a Miranda Rights issue involving an illegal alien. Petitioner has confirmed to Respondent that he intended to cite *Hamama v. Adducci* whose correct citation is 912 F.3d 869 (6th Cir. 2018)

district court's injunctions of the federal government in regard to detention of illegal immigrants and removal of said immigrants. Insofar as Respondent can discern, the *Hamama* case does not limit, let alone mention, the Sixth Circuit's decision in *Roman* whatsoever.

More importantly, Petitioner's Petition for Habeas Corpus is not the proper vehicle to challenge the conditions of his incarceration. "As the Supreme Court has made clear, "federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1983." *Hodges v. Bell*, 170 Fed.Appx 389, 392 (2006), quoting, *Muhammad v. Close*, 540 U.S. 749, 124 S.Ct. 1303, 158 L.Ed 2d 32 (2004). "In *Nelson v. Campbell*, 541 U.S. 637, 643, 124 S.Ct. 2117, 158 L.Ed.2d 924 (2004), the Supreme Court reiterated that 'constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core [of habeas corpus] and may be brought pursuant to §1983 in the first instance.'" *Bell* at 392.

Petitioner, in this case, challenges his confinement under immigration law by the federal government. It is not in contention that the constitutional rights violations Petitioner alleges, took place *during his incarceration, and did not result in his incarceration.* Release from illegal custody is the relief provided by Habeas Corpus. Therefore, as demonstrated in the cases cited above, a habeas corpus petition is not the appropriate mechanism to address such concerns within the Sixth Circuit.

II. Petitioner's Assertion that the Butler County Board of Commissioners' Agreement with I.C.E. Supports Respondent as Being a Properly Named Party to This Action Are Without Merit.

Petitioner appears to question the validity of the agreements between the Butler County Board of Commissioners and I.C.E. while simultaneously arguing that such agreements are in support of Respondent's role as immediate custodian of Petitioner. No case law is offered by Petitioner in support of his argument.

As demonstrated above, the day-to-day conditions of an incarcerated person must be challenged by a §1983 claim, not a petition for writ of habeas corpus. The agreements between Butler County and I.C.E. do not change that fact.

Logic dictates that even if Petitioner's challenge of the conditions of his incarceration were properly before this Court any relief would have to be directed to the local district I.C.E. director who is detaining Petitioner, not Respondent. As Petitioner points out, Respondent is required to abide by very strict incarceration standards dictated by I.C.E. itself. (Petitioner's Memorandum in Opposition to Respondent sheriff Richard Jones' Motion to Dismiss p. 6). It is I.C.E. that is currently detaining Petitioner and I.C.E. who is dictating the conditions under which Petitioner must be housed. Respondent has no ability to release a federally detained inmate. This is the very crux of the issue at hand and why the Court in *Roman* ruled as it did.

CONCLUSION

Wherefore, for the reasons stated above, Respondent prays 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.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was electronically filed on September 17, 2025, and will automatically be served on all the parties for whom counsel has entered an appearance.

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