

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION AT COVINGTON  
CASE NO. 2:25-CV-00168-DCR**

**B.D.E.**

**PETITIONER**

**v.**

**JAMES DALEY, et al.**

**RESPONDENTS**

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**RESPONDENT JAMES DALEY'S RESPONSE TO  
PETITION FOR WRIT OF HABEAS CORPUS**

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Respondent, James Daley, in his official capacity as Campbell County Jailer, ("Daley"), by and through counsel, respectfully submits his Response to Petitioner's Petition for a Writ of Habeas Corpus. (Doc. 7)

**I. FACTS**

The Campbell County Detention Center ("CCDC") is a county jail overseen and operated by the elected Jailer, James Daley. The Jail has the capacity to house 689 maximum, medium, and minimum security inmates at the main jail. Though it primarily serves local law enforcement needs, the CCDC also contracts with various agencies to house state and federal inmates and detainees. Through its contract with the U.S. Marshall's Office, the CCDC houses Immigration and Customs Enforcement ("ICE") detainees.

Pursuant to its contract, the CCDC houses Petitioner B.D.E. ("Petitioner"). Petitioner is being detained by the federal government. (Petition for Writ of Habeas Corpus, Doc. 7 at PageID 46) Petitioner claims that Defendant Russell Hott is the ICE Field Office Director and, as such, is the Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. (*Id.* at PageID 49) Petitioner argues that there is no statutory basis for her detention. (*See generally* Doc. 7) For this reason, Petitioner requests that she be released.

Petitioner does not challenge any of the conditions of her confinement, nor make any specific allegations about the CCDC. *Id.*

## **II. LEGAL STANDARD**

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.” 28 U.S.C. §2241(a). Section 2241 “is an affirmative grant of power to federal courts to issue writs of habeas corpus to prisoners being held ‘in violation of the Constitution or laws or treaties of the United States.’” *Rice v. White*, 660 F.3d 242, 249 (6<sup>th</sup> Cir. 2011) (quoting Section 2241(c)).

## **III. DALEY IS NOT PETITIONER’S CUSTODIAN**

The United States Supreme Court has declared that “the federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is ‘the person who has custody over the petitioner.’” *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). This “immediate custodian rule” to a habeas petition is a long held “default rule” that the proper respondent to a habeas petition challenging present physical confinement “is the warden of the facility where [a] prisoner is being held, not the Attorney General or some other remote supervisory official. *Id.* at 435-39. However, in *Padilla*, the Supreme Court refused to decide who the proper respondent is in the immigration detention context. Moreover, the Supreme Court did *not* address the proper respondent when a detainee is confined in a facility run by an entity other than the federal government. *Id.* at 436 n.8.

*Padilla* does not apply to the case at bar because the CCDC is not a facility operated by the federal government. Indeed, “[h]istorically, the question of who is ‘the custodian,’ and therefore the appropriate respondent in a habeas suit, depends primarily on who has power over the petitioner and ... on the convenience of the parties and the court.” *Roman v. Ashcroft*,

340 F.3d 314, 319 (6th Cir. 2003) (citing *Henderson v. INS*, 157 F.3d 106, 122 (2d Cir. 1998)). In *Roman*, the Sixth Circuit held that for habeas petitions in immigration contexts, “the INS District Director for the district where a detention facility is located ‘has power over’ alien habeas corpus petitioners.” *Id.* at 320. In finding that the Attorney General was not a proper respondent for a noncitizen’s habeas claim and that a habeas claim could have only one respondent, the court reiterated 28 U.S.C. § 2243’s requirement that a writ of habeas corpus “shall be directed to the person having custody of the person detained.” *Id.* at 321.

Kentucky is included in the Chicago ICE Enforcement and Removal Operations (“ERO”) District. See *Enforcement and Removal Operations Field Offices*, <https://www.ice.gov/contact/ero>. Accordingly, the Chicago Field Office Director is the *only* proper Respondent for Petitioner’s request for a writ of habeas corpus. See e.g., *Malam v. Adducci*, 452 F. Supp. 3d 643, 653-654 (E.D. Mich. 2020) (noting that only ICE District Director was appropriately named as a party for an ICE detainee at a state facility).

Because Daley does not have the power to release Petitioner, he is not a proper party to the Petition and any Writ issued against Daley would be meaningless. The Petition as to Daley must, therefore, be denied.

#### **IV. PETITIONER HAS FAILED TO DEMONSTRATE THAT DALEY HAS INFRINGED ON HER CONSTITUTIONAL RIGHTS**

The Due Process Clause of the Fifth Amendment to the United States Constitution forbids the government from depriving a person of life, liberty, or property without due process of law. The protection applies to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). As it pertains to Petitioner, because Daley does not have power over the release of habeas petitioners in an immigration context, the only

remaining claim Petitioner could bring against him is through the Due Process Clause, which prohibits the government from imposing torture or cruel and unusual confinement conditions on non-convicted detainees. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (“[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt.”). This type of Fifth Amendment claim is analyzed under the same “deliberate indifference standard” as Eighth Amendment claims brought by prisoners. *See Villegas v. Metropolitan Government of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013) (“Pretrial detainee claims, though they sound in the Due Process Clause...rather than the Eighth Amendment, are analyzed under the same rubric as Eighth Amendment claims brought by prisoners.”); *Richmond v. Huq*, 885 F.3d 928, 937 (6th Cir. 2018) (citing *Villegas*) (“This Court has historically analyzed Fourteenth Amendment pretrial detainee claims and Eighth Amendment prisoner claims ‘under the same rubric,’” that a constitutional right is violated when prison officials “are deliberately indifferent to the prisoner’s serious medical needs.”)

The Eighth Amendment's deliberate indifference framework includes both an objective and subjective prong. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Helling v. McKinney*, 509 U.S. 25, 35-37 (1993). To satisfy the objective prong, an inmate must show “that he is incarcerated under conditions posing a substantial risk of serious harm.” *Farmer*, 511 U.S. at 834.

In her Petition, Petitioner makes no allegations that she is incarcerated at the CCDC under conditions posing a substantial risk of serious harm to her. Instead, she avers generally that the conditions are indistinguishable from criminal incarceration and that the detention has separated her from her family and prohibits her from being able to financially provide for her family. (Petition for Writ of Habeas Corpus, Doc. 7 at PageID 64)

**V. CONCLUSION**

For these reasons, Campbell County Jailer James Daley respectfully requests that the Court deny the Petition for Writ of Habeas Corpus as to him, and that he be dismissed as a Respondent.

Respectfully submitted,

**/s/ Jeffrey C. Mando**

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*Attorney for Respondent, James Daley, in his  
official capacity as Campbell County Jailer*

**CERTIFICATE OF SERVICE**

This is to certify that on the 12<sup>th</sup> day of November 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will provide an electronic notice to: Lisa Chun, Esq.

**/s/ Jeffrey C. Mando**

Jeffrey C. Mando, Esq.