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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Petitioner filed a Petition for Writ of Habeas Corpus with the United States District Court for the Southern District of Ohio on November 26, 2025. An Order to Not Remove Petitioner from this District was entered on December 2, 2025, and later that day Counsel for Sheriff filed his Appearance of Counsel. Sheriff 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 Sheriff does hold such persons at the Butler County Jail. Sheriff does admit there is an inmate being held in the Butler County Jail whose name is Bashir Jama Isse.

MEMORANDUM IN SUPPORT

Sheriff, despite Petitioner’s claims, is not Petitioner’s custodian in this case. Therefore, the Petition for Habeas Corpus must be dismissed against Sheriff pursuant to Fed. R. Civ. P. 12(b)(6). “As a general rule, a Plaintiff 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 Plaintiff 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 Sheriff as he is not the immediate custodian of Petitioner but merely a contractual agent of ICE.

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. Rumsfeld v. Padilla, 542 U.S. 426, 427, 124 S.Ct. 2711, 159 L.Ed2d 513 (2004).

Roman v. Ashcroft preceded *Padilla* by one year. Petitioner is correct that Respondent has control over limited aspects of Petitioner's day-to-day confinement. However, despite Petitioner's contention that *Padilla* controls in this case the opposite is in fact true. Petitioner fails to address footnote 8 of *Padilla* which 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.

CONCLUSION

Wherefore, for the reasons stated above, Sheriff 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 December 8, 2025, and will automatically be served on all the parties for whom counsel has entered an appearance.

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