IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

WUANERGE ALBERTO-ALVARENGA, Petitioner, v. RICHARD A. AUMILLE, ET AL., Respondents.	)	CASE NO.: 3:25-CV-02644-JRK JUDGE JAMES R. KNEPP, II MAGISTRATE JUDGE JONATHAN D. GREENBERG RESPONSE IN OPPOSITION TO PETITIONER'S MOTION TO SUBSTITUTE PROPER RESPONDENT

Petitioner requests to substitute the "Proper Respondent," arguing that substituting Warden Kenneth Hoover for Warden Richard Aumille would "promote[] judicial economy and avoid[] dismissal based on technical pleading issues." (Pet.'s Mot. Sub., ECF No. 15, PageID# 212). However, substituting the warden in this case does not solve the problem. Assuming, *arguendo,* this Court has jurisdiction over the Petition to order substitution of the proper Respondent, the warden is not that person. Respondents incorporate by reference herein arguments made on this issue in the Return of Writ (ECF No. 6) and Reply to Traverse (ECF No. 11).

As argued previously, in the Sixth Circuit the proper respondent in this matter is the Immigration and Customs Enforcement ("ICE") Director of the Field Office in the district where Petitioner is being held. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003) ("… although

the warden of each detention facility technically has day-to-day control over alien detainees, the [ICE] District Director for the district where a detention facility is located 'has power over' alien habeas corpus petitioners.")(*quoting Henderson v. I.N.S.*, 157 F.3d 106, 122 (2d Cir. 1998).) The correct Respondent here is Kevin Raycraft, Director of the Detroit ICE Field Office, which covers Michigan and Ohio. (*See* Return of Writ, ECF No. 6, PageID# 115-116; Reply to Pet.'s Trav., ECF No. 11, PageID# 187) ("a court lacks jurisdiction to order a writ if it does not have personal jurisdiction over Petitioner's custodian, here, Director Raycraft.")

Further, Federal Civil Procedure Rule 25(d)'s automatic substitution does not apply here. First, nothing in Rule 25(d) suggests it applies to wardens of correctional facilities. They are not "public officers" as contemplated by the rule. The Advisory Committee Notes to the 1961 Amendment of Rule 25(d) state that the term public officer "comprises Federal, State, and local officers." Fed. R. Civ. P. 25(d), Advisory Comm. Notes, 1961 Amend. Public officials have been defined as "at the very least those among the hierarchy of government employees, who have, or appear to the public to have, substantial responsibility for or control over the conduct of government affairs." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). Second, Rule 25(d) necessitates that the correct predecessor be named on the complaint, before automatic substitution applies. On this issue, the Advisory Committee Notes to the 1961 Amendment of Rule 25(d) explain that automatic substitution is "merely a procedural device for substituting a successor for a past officeholder as a party," and does not affect "any substantive issues which may be involved in the action." Fed. R. Civ. P. 25(d), Advisory Comm. Notes, 1961 Amend.

Here, the Petition named "Sean G. Smith, Ohio Field Office Director." (Pet. ECF No. 1, PageID# 1). Undersigned counsel consulted with ICE agency counsel and inquired as to who Sean G. Smith is, but they have no record of a "Director Smith" and do not know who this refers to. He

certainly is not the Ohio Field Office Director of ICE, because there is no such office. Therefore, even if Petitioner was requesting to substitute the correct Director of the ICE Field Office in Detroit, Kevin Raycraft, Rule 25(d) would not apply because Petitioner did not name Raycraft's predecessor and that person was not the Director when the Petition was filed. (Return of Writ, ECF No. 6, PageID# 115-116), (Reply to Pet.'s Trav., ECF No. 11, PageID# 187).

Technically, Respondents could have argued Rule 25(d) didn't even apply to substitute the incorrectly named public officials on the Petition and argued for dismissal on that basis. [1] (Pet., ECF No. 1, PageID #1). Petitioner correctly points out, "Rule 25(d) provides for automatic substitution of public officers sued in their official capacities when the officer ceases to hold office, and courts *may* direct that the caption be amended accordingly." (Mtn to Sub., ECF No. 15, PageID# 212) (emphasis added). However, it only applies if they cease to hold office "while the action is pending." Fed. R. Civ. P. 25(d). The automatic substitution of a successor public officer as a party to a pending action prevents the "burdensome formality" that existed prior to the 1961 amendment to the rule, which required litigants to make a motion for substitution and demonstrate a substantial need for continuing the litigation. *See* Fed. R. Civ. P. 25(d), Advisory Comm. Notes, 1961 Amend.

The Petition named Merrick Garland, Alejandro Mayorkas, Troy Miller, the unknown "Sean G. Smith," alleged Director of ICE, and Richard Aumille, Warden of Seneca County Jail. (Pet., ECF No. 1, PageID #1.) Rule 25(d) would have applied to Garland, Mayorkas, and Miller, had they actually been in office at the time of filing, December 5, 2025. (Pet.., ECF No. 1, PageID#

[1] Respondents allowed for Rule 25(d) substitution of the incorrectly named public officials who were not in office at the time the Petition was filed to avoid arguing over that technicality. (Return of Writ, ECF No. 6, PageID #111).

1.) The failure to name the correct public officials would have been fatal to the application of Rule 25(d), because none of these officials died, resigned, or otherwise ceased to hold office while the Petition was pending. *See, e.g., Michalik v. Hermann*, Case No. Civ. A. 99-3496, 2001 WL 434489, at *2 (E.D. La. April 26, 2001) (citing *Massachusetts Hospital Asso. v. Harris*, 500 F. Supp. 1270, 1283 (D. Mass. 1980) (holding it would be "improper to name [Respondents] as defendants in their official capacity" when neither served in those capacities while the action was pending)); *Enders v. Boone*, 658 F. Supp. 3d 70, 93 (N.D.N.Y. 2023)(finding it improper to name officer if they cease to hold office before the action is pending); *Kelly v. Burks*, 414 F. Supp. 2d 681, 685 (E.D. Ky. 2006)(finding Rule 25(d) substitution applies to substitute successor as defendant when original defendant ceases to hold office). However, in the interests of judicial economy, Respondents allowed substitution, citing Rule 25(d), because that did not affect the lack of personal jurisdiction over the correct Respondent, Director Raycraft, nor did it affect all the other substantive arguments regarding why the Petition should be dismissed. *See* Fed. R. Civ. P. 25(d), Advisory Comm. Notes, 1961 Amend. ("Automatic substitution… is distinct from and does not affect any substantive issues which may be involved in the action.")

Finally, as argued before, a writ of habeas corpus does not act upon a petitioner who seeks relief, but on the person who holds the petitioner in custody. 28 U.S.C. §§ 2241(a), 2242, and 2243. Therefore, a court has jurisdiction over a habeas petition if it has personal jurisdiction over the petitioner's custodian, here, Director Raycraft. *Roman v. Ashcroft*, 162 F. Supp. 2d 755, 758 (N.D. Ohio, 2001), *citing Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 494-95 (1973). If personal jurisdiction does not exist, a petition may be dismissed pursuant to Fed. R. Civ. P. 12(b)(2). Judicial economy only stretches so far. It cannot create personal jurisdiction

where it does not exist, and this Court does not have personal jurisdiction over Director Raycraft to order a writ. Substitution of the warden does not cure this defect.

For all these reasons, Respondents respectfully request the Court deny Petitioner's Motion to Substitute Proper Respondent.

Respectfully submitted,

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