

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

JERMAINE GARCIA,

Petitioner,

vs.

Cause No. 1:17-cv-00333 WJ-GJF

MATTHEW ELWELL, DIRECTOR
Sandoval County Detention Center

DAVID RIVAS, WARDEN
San Luis Regional Detention and Support Center,

STEVE AFEMAN, CHIEF EXECUTIVE OFFICER
Emerald Companies, Inc.

ROBERT B. CORIZ, TRIBAL COURT JUDGE
GOVERNOR for the Pueblo of Kewa

&

PUEBLO OF KEWA
(Formerly known as the Pueblo of Santo Domingo)

Respondents.

RESPONDENT STEVE AFEMAN'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6)
AND MEMORANDUM IN SUPPORT

COMES NOW, the Respondent, STEVE AFEMAN, by and through his attorney of record, ADAM D. RAFKIN, P.C. (Adam Daniel Rafkin, Esq.), and hereby submits his Motion to Dismiss and Memorandum in Support, and in support thereof, would state the following:

1. The Petition herein makes no factual allegations regarding Respondent Steve Afeman

(Respondent), other than to identify him in the caption of the Petition as the Chief Executive Officer of the Emerald Companies, Inc., which operates the prison where Petitioner is apparently currently being housed.

2. Respondent is not a proper party to this action, as he does not have “immediate custody” of Petitioner. It is well-settled that there is only one person who is the proper respondent in a habeas corpus proceeding, and that is the warden of the facility at which the petitioner is being housed.

In *Rumsfeld v. Padilla*, the United States Supreme Court reiterated this longstanding rule, stating:

“The federal habeas statute straightforwardly provides that the proper respondent is “the person” having custody over the petitioner. §§ 2242, 2243. Its consistent use of the definite article indicates that there is generally only one proper respondent, and the custodian is “the person” with the ability to produce the prisoner’s body before the habeas court, see *Wales v. Whitney*, 114 U.S. 564, 574, 5 S.Ct. 1050, 29 L.Ed. 277. In accord with the statutory language and *Wales*’ immediate custodian rule, longstanding federal-court practice confirms that, in “core” habeas challenges to present physical confinement, the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official. No exceptions to this rule, either recognized or proposed, apply here.”

Rumsfeld v. Padilla, 542 U.S. 426, 427, 124 S. Ct. 2711, 159 L. Ed. 2d 513 (2004).

Insofar as Petitioner makes no allegation that he is in the “immediate custody” of Respondent Afeman, who is merely the CEO of the company operating the facility in question, Mr. Afeman is not a proper party herein and the Petitioner fails to state a claim upon which relief can be granted against him. *FRCP 12(b)(6)*.

3. Due to the nature of this Motion, concurrence or opposition from opposing counsel of record for Petitioner was not sought.

WHEREFORE, the Respondent, STEVE AFEMAN, prays this Court enter its Order dismissing the Petition with prejudice as to the claims asserted against him, and for such other and further relief as the Court deems just and proper.

Respectfully Submitted:

/s/ Adam Daniel Rafkin, Attorney at Law

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ATTORNEY FOR RESPONDENT
AFEMAN

Certificate of Service

I HEREBY CERTIFY THAT on the 3rd day of April, 2017, I filed the foregoing electronically through the CM/ECF system, which caused the following parties to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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