

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

NICKLELAS NECESSITY BREWER  
ADC #116152

PETITIONER

VS.

NO. 3:17-CV-00341 BSM/JTR

BOWIE COUNTY, TEXAS

RESPONDENT

**ORDER**

Nicklelas Necessity Brewer, an Arkansas Department of Correction (“ADC”) inmate who is currently incarcerated in the Bowie County Correctional Center in Texarkana, Texas, has filed a Petition for Writ of Habeas Corpus.<sup>1</sup> (*Doc. 1.*) The Petition was not accompanied by the filing fee or a request to proceed *in forma pauperis*.<sup>2</sup>

In addition, the Petition names “Bowie County, Texas” as the sole Respondent. The correct Respondent is Wendy Kelley, the ADC Director, who is the state officer having custody of Brewer. *See* 28 U.S.C. § 2242 (habeas petition

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<sup>1</sup> Brewer filed the Petition in the United States District Court for the Eastern District of Texas. (*Doc. 1.*) On December 28, 2017, that Court transferred the case to the Eastern District of Arkansas, Jonesboro Division, the federal judicial district where Brewer was convicted. (*Docs. 5, 7 & 8.*)

<sup>2</sup> *See* Rule 3(a), Rules Governing § 2254 Cases in United States District Courts (providing that a habeas petition “must be accompanied” by the applicable filing fee or “a motion for leave to proceed *in forma pauperis*, the affidavit required by 28 U.S.C. § 1915, and a certificate from the warden or other appropriate officer of the place of confinement showing the amount of money or securities that the petitioner has in any account in the institution”).

must name “the person who has custody over [the petitioner] and by virtue of what claim or authority”); Rule 2(a), Rules Governing § 2254 Cases in United States District Courts.

IT IS THEREFORE ORDERED THAT:

1. The Clerk of the Court is directed to send Brewer an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO 240).

2. If Brewer wishes to continue with this action, he must, on or **before February 5, 2018**, either: (a) file the completed Application, including the Certificate of Prisoner Accounts;<sup>3</sup> or (b) pay the \$5.00 filing fee, in full.<sup>4</sup> The Court advises Brewer that, if he fails to timely and properly comply with this Order, this habeas action will be dismissed, without prejudice, pursuant to Local Rule 5.5(c)(2).<sup>5</sup>

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<sup>3</sup> The Certificate must be signed by an authorized officer at the incarcerating facility.

<sup>4</sup> Brewer’s payment must clearly indicate that it is for payment of the filing fee in this action, *Brewer v. Kelley*, No. 3:17-CV-00341-BSM/JTR.

<sup>5</sup> Rule 5.5(c)(2) of the Local Rules of the United States District Court for the Eastern and Western Districts of Arkansas, provides: "It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. *If any communication from the Court to a pro se plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice.* Any party proceeding pro se shall be expected to be familiar with and follow the Federal Rules of Civil Procedure." (emphasis added.) *See also* Fed. R. Civ. P. 41(b) (district court may dismiss case for failure to prosecute or comply with court orders); § 2254 Rule 12 (applicability of Federal Rules of Civil Procedure in habeas proceedings).

3. Service of the Petition is not appropriate at this time.

4. The Clerk of the Court is directed to change the Respondent to Wendy Kelley, Director, Arkansas Department of Correction.

DATED THIS 5th day of January, 2018.

  
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UNITED STATES MAGISTRATE JUDGE