

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSE CARLOS OLIVEIRA,)	8:13CV147
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
COUNTY ATTORNEY,)	
)	
Defendant.)	

The court has conducted an initial review of the Petition for Writ of Habeas Corpus (filing no. [1](#)) to determine whether Petitioner’s claim is potentially cognizable in federal court.

Condensed and summarized for clarity, Petitioner alleges that he is currently being held on an immigration charge and has a motion for withdrawal of a guilty plea pending in state court. (Filing No. [1](#) at CM/ECF p. 1.) Liberally construed, Petitioner asserts his current detention violates his due process rights and his guilty plea was obtained in violation of his due process rights.¹ (*Id.* at CM/ECF pp. 1-12.)

The court preliminarily decides that Petitioner’s claim, as set forth in this Memorandum and Order, is potentially cognizable in federal court. However, the court cautions Petitioner that no determination has been made regarding the merits of his claim or any defenses thereto or whether there are procedural bars that will prevent Petitioner from obtaining the relief sought.

¹Petitioner’s claim, as set forth in this Memorandum and Order, combines Petitioner’s allegations from grounds one, two, and three of the Petition. (Filing No. [1](#) at CM/ECF pp. 1-12.)

IT IS THEREFORE ORDERED that:

1. Upon initial review of the Petition (filing no. [1](#)), the court preliminarily decides that Petitioner's claim is potentially cognizable in federal court.

2. The Clerk of the court is directed to mail copies of this Memorandum and Order and the Petition (filing no. [1](#)) to Respondent and the United States Attorney for the District of Nebraska by regular first-class mail.

3. By **September 12, 2013**, Respondent shall file a motion for summary judgment or records in support of an answer. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: **September 12, 2013**: deadline for Respondent to file records in support of answer or motion for summary judgment.

4. If Respondent elects to file a motion for summary judgment, the following procedures shall be followed by Respondent and Petitioner:

- A. The motion for summary judgment shall be accompanied by a separate brief, submitted at the time of the filing of the motion.
- B. The motion for summary judgment shall be supported by such records as are necessary to support the motion. Those records shall be contained in a separate filing entitled: "Designation of Records in Support of Motion for Summary Judgment."
- C. Copies of the motion for summary judgment, the designation, including records, and Respondent's brief shall be served upon Petitioner.

- D. No later than 30 days following the filing of the motion for summary judgment, Petitioner shall file and serve a brief in opposition to the motion for summary judgment. Petitioner shall submit no other documents unless directed to do so by the court.
 - E. No later than 30 days after the filing of Petitioner's brief, Respondent shall file and serve a reply brief.
 - F. If the motion for summary judgment is denied, Respondent shall file an answer, a designation and a brief that complies with the terms of this order. (See the following paragraph.) The documents shall be filed no later than 30 days after the denial of the motion for summary judgment. ***Respondent is warned that the failure to file an answer, a designation and a brief in a timely fashion may result in the imposition of sanctions, including the release of Petitioner.***
5. If Respondent elects to file an answer, the following procedures shall be followed by Respondent and Petitioner:
- A. No later than 30 days after the filing of the answer, Respondent shall file a separate brief. Both the answer and brief shall address all matters germane to the case including, but not limited to, the merits of Petitioner's allegations that have survived initial review, and whether any claim is barred by a failure to exhaust remedies, a procedural bar, non-retroactivity, a statute of limitations, or because the petition is an unauthorized second or successive petition.

- B. The answer shall be supported by all records which are relevant to the cognizable claims. Those records shall be contained in a separate filing entitled: “Designation of Records In Support of Answer.”
 - C. Copies of the answer, the designation, and Respondent’s brief shall be served upon Petitioner.
 - D. No later than 30 days following the filing of Respondent’s brief, Petitioner shall file and serve a brief in response. Petitioner shall submit no other documents unless directed to do so by the court.
 - E. No later than 30 days after the filing of Petitioner’s brief, Respondent shall file and serve a reply brief.
6. No discovery shall be undertaken without leave of the court.

DATED this 31st day of July, 2013.

BY THE COURT:

s/ John M. Gerrard

United States District Judge

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