

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CHRISTOPHER SMITH,	:	Case No. 1:12-cv-425
	:	
Petitioner,	:	Judge Timothy S. Black
	:	
vs.	:	Magistrate Judge Michael R. Merz
	:	
WARDEN, Toledo Correctional	:	
Institution,	:	
	:	
Respondent.	:	

ORDER FOR RESPONSE AND PRESERVATION OF ITEMS

On April 9, 2020, this Court issued an unconditional writ of habeas corpus, requiring Petitioner Christopher Smith’s **immediate release** from State custody (the “Unconditional Writ”). (Doc. 125). Respondent failed to comply with the Court’s Unconditional Writ, resulting in Petitioner being transported to and detained in the Hamilton County Justice Center (“HCJC”). (Doc. 134-1 at ¶ 15).

On April 14, 2020, Hamilton County Common Pleas Judge Robert Ruehlman also ordered Petitioner’s immediate release, pursuant to the Unconditional Writ. (Docs. 140, 143). Later that evening, however, the Court learned that Petitioner was still in custody at HCJC and, in fact, was scheduled for transport back to the Toledo Correctional Institution (“TCI”). (Doc. 140).

Specifically, officials at HCJC advised Petitioner’s counsel that “the Warden [of TCI, *i.e.*, Respondent] had placed a ‘holder’ on Smith yesterday (April 13) for Smith to be brought back to the custody of TCI, and that Hamilton County was now holding Smith

on behalf of the Warden” (*Id.* at 1). Officials at HCJC permitted Petitioner’s counsel to view the holder on HCJC’s computer. (*Id.* at 1-2). Counsel advised the Court that, to the best of her recollection, the holder reflected as follows: “Type: Holder; Status: Active; Agency: special circumstances; Applied: April 13, 2020; Must return to Toledo Correctional Institution.” (*Id.* at 2).

Upon learning of the alleged TCI holder, this Court issued a third Order to cease the scheduled transport and ordered Petitioner’s immediate release within the next hour, *i.e.*, by 9:00 p.m. (Doc. 141). The Court also called the Hamilton County Sheriff’s Office (“HCSO”) to ensure their receipt of the Order, as well as the Unconditional Writ and related Orders. Pursuant to the Order, Petitioner was released at 9:00 p.m.

Shortly thereafter, at 9:03 p.m., the Court received an email from an attorney with the Office of the Ohio Attorney General’s Office (the “AG’s Office”), advising the Court that the Ohio Department of Rehabilitations and Corrections (“Ohio DRC”) does not issue holders and that the AG’s Office had “cleared up the confusion with the Hamilton County Justice Center.”

As this Court continues to assess the nature and extent of Respondent’s noncompliance with the Unconditional Writ and the related Order for release, as well as the potential interference with compliance caused by any and all other individuals involved in these proceedings, the Court hereby **ORDERS** as follows:

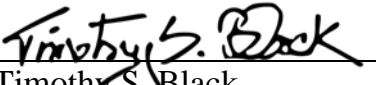
1. Respondent and Respondent’s counsel SHALL preserve, and take all necessary steps to ensure the continued preservation of, the official case file, and any and all other files, folders, documents, notes, records, and communications, which are dated beginning March 20, 2020, and are in the actual or constructive possession of TCI and/or any employees or personnel of TCI, and which

pertain to: Petitioner's detention in TCI; Petitioner's release from TCI; Petitioner's transport/transfer from TCI; Petitioner's detention in Hamilton County; the circumstances that led to the alleged "holder" placed on or about April 13, 2020; and the Unconditional Writ and any other Orders issued by this Court in the course of these habeas proceedings;

2. The HCSO and the HCJC SHALL preserve, and take all necessary steps to ensure the continued preservation of, the official case file, and any and all other files, folders, documents, notes, records, and communications, dated beginning April 6, 2020, which are in the actual or constructive possession of HCSO, HCJC, and/or any employees or personnel of HCSO and/or HCJC, and which pertain to: Petitioner's detention in TCI; Petitioner's release from TCI; Petitioner's transport/transfer from TCI; Petitioner's detention in Hamilton County; the circumstances that led to the alleged "holder" placed on or about April 13, 2020; and the Unconditional Writ and any other Orders issued by this Court in the course of these habeas proceedings;
3. By no later than 4:00 p.m. on April 16, 2020, Respondent SHALL file with this Court a sworn affidavit, explaining, in detail, the circumstances that caused the alleged TCI "holder" to be lodged against Petitioner. Respondent SHALL specifically address and identify, *inter alia*, the "special circumstances" referenced in the holder; and
4. Respondent's counsel SHALL serve a copy of this Order upon the appropriate individual(s) at the HCSO and HCJC. Counsel shall file a verified statement no later than 12:00 p.m. tomorrow, confirming service.

IT IS SO ORDERED.

Date: April 15, 2020



Timothy S. Black
United States District Judge