

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JOSE RUBEN GUTIERREZ URBAN,

Petitioner,

-vs-

**Case No. 16-C-303
(Consolidated with
Case No. 16-C-304)**

DALE J. SCHMIDT
Dodge County Sheriff,¹

Respondent.

DECISION AND ORDER

Pro se Petitioner, Jose Ruben Gutierrez Urban, who is being detained at the Dodge County Detention Center, seeks leave to proceed *in forma pauperis* (ECF No. 2) on his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also filed a separate petition for relief pursuant to 28 U.S.C. § 2241 and seeks leave to proceed *in forma pauperis* on that action as well.

Both petitions relate to March 5, 2015, immigration proceedings against him. Therefore, the Court consolidates the two actions. *See* Civil

¹ In lieu of the U.S. Department of Homeland Security, which Gutierrez named as Respondent, the Court has substituted Schmidt who is the proper respondent because he has day-to-day control over Gutierrez. *See Robledo-Gonzales v. Ashcroft*, 342 F.3d 667, 672-73 (7th Cir. 2003.) The U.S. Department of Homeland Security is dismissed from this action.

L.R. 42 (E.D. Wis.) From now on all papers must be filed and docketed only in Case No. 16-C-303. Given the consolidation of the two actions, Gutierrez's motion for leave to proceed *in forma pauperis* in Case No. 16-C-304 is denied as moot.

Gutierrez filed two different pleadings, and because they will proceed as a single action, Gutierrez must file an amended § 2241 petition which includes all the allegations on which he intends to proceed. A copy of the form is enclosed.

With regard to Consolidated Case No. 16-C-303, to authorize a litigant to proceed *in forma pauperis*, the Court must make two determinations: first, whether the litigant is unable to pay the costs of commencing the action; and second, whether the action is frivolous or malicious. 28 U.S.C. §§ 1915(a)(1) and (e)(2). With respect to Gutierrez's ability to pay the \$5.00 filing fee, his resident history report discloses that he has \$220.39 in his account. Thus, Gutierrez demonstrates an ability to pay the fee for filing this action.

Therefore, Gutierrez's motion for leave to proceed *in forma pauperis* is denied. Gutierrez is advised that if he does not pay the fee by the stated deadline, this action will be dismissed without further order of the Court. *See* Civil L.R. 41(c).

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS
HEREBY ORDERED THAT:**

Case Nos. 16-C-303 and 16-C-304 are **CONSOLIDATED** as a
§ 2241 action;

All papers must be filed and docketed only in Case No. 16-C-303;

Dodge County Sheriff Dale J. Schmidt substituted for the
Department of Homeland Security, which is **DISMISSED** from these
actions.

Gutierrez's motions for leave to proceed *in forma pauperis* (ECF No.
2) are **DENIED**.

No later than April 28, 2016, Gutierrez must pay the \$5.00 filing
fee and file an amended § 2241 petition.

Dated at Milwaukee, Wisconsin, this 28th day of March, 2016.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge